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Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2213
- Site address: 7 Kylerhea, Breakish, Isle of Skye, IV42 8NH
- Appeal by Margaret Robertson against the decision by Highland Council
- Application for planning permission in principle 18/03994/PIP dated 26 August 2018 refused by notice dated 15 April 2019
- The development proposed: Erection of house
- Date of site visit by Reporter: 19 August 2019

Date of appeal decision: 9 September 2019

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## Decision

I dismiss the appeal and refuse planning permission in principle.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. The appeal site is within the Kylerhea Settlement Development Area as defined in the West Highlands and Islands Local Development Plan 2010 (as continued in force 2012) ( the 2010 Plan). The main issues in this appeal are whether the proposal is supported by policies contained in the Highland-wide Local Development Plan 2012 (HwLDP) and in particular policy 28 'Sustainable Design', policy 29 'Design Quality and Placemaking' and policy 34 'Settlement Development Areas'. It is also necessary for me to determine whether the proposal is consistent with policy 47 'Safeguarding In-bye/AppORTioned Croftland' and whether the proposal can be satisfactorily serviced in terms of policy 65 'Waste water treatment', policy 66 'Surface Water Drainage and policy 77 'Public Access'. It is also necessary for me to assess the proposal in the context of the objectives of the Kylerhea Settlement Development Area.

2. Because the appeal seeks planning permission in principle for the erection of a house there are no details before me of the design, siting and external appearance of the proposal although these matters could be controlled by conditions as proposed by the council, if I was minded to uphold the appeal. As set out on drawing 18/24/03-rev. D the site boundaries of the 850 square metres site have been extended to incorporate provision for water supply and drainage. The house would have appropriate parking and turning arrangements and would be satisfactorily accessed from the north with adequate visibility onto the unmetalled track shared, along with its maintenance responsibilities, by many of the occupiers of houses in Kylerhea.

3. On my site inspection I observed the house recently constructed on the northern part of the croft holding and subject to planning permission 09/00020/FULSL. At the time of my site inspection there was no clear evidence that the land subject to the appeal, like the greater part of the undeveloped croft north of the access road, was being used productively for agriculture. Rather, the appeal site comprises, in the main, of unmaintained and rough grassland interspersed with some trees, bracken and shrubs. The location of the proposed house would detach much of the southernmost part of the croft holding from that of the larger part north of the unmetalled access track. The remaining part of the appellant's land south of the access road, excluded from the appeal site boundary, comprises rough vegetation and a partially overgrown track leading to a footbridge over the Kylerhea River. Across the access road to the north this land abuts another area of scrub woodland.

4. In support of her appeal the appellant describes the location of the proposed house as an "existing house site ruin" and it includes shared access to lower croft land. It is submitted that within Kylerhea there are 2 houses on croft 1 and 3 houses on croft 6. To the appellant throughout the "crofting counties" 2 or more houses are permissible by what she terms "crofting rules".

## **The development plan**

### *Siting and design*

5. The 2010 plan sets out 6 objectives that relate to development in the settlement development area of Kylerhea. Specifically in relation to the appeal, and in line with an objective of the settlement development area, proposals must safeguard in-bye croft land quality by favouring siting on poorer parts of crofts.

6. To comply with policy 34 of the HwLDP proposals for new houses within defined settlement development areas must meet the requirements of policies 28 and 29 and all other relevant policies of the plan. Policy 28 'Sustainable Design' sets out, amongst other things, the site-specific criteria against which proposals are to be assessed. Policy 29 'Design Quality and Place-making' seeks a high quality of design, requiring new development to be designed in a way that it makes a positive contribution to the architectural and visual quality of the place where it is located.

7. The prevailing and scattered settlement pattern of Kylerhea is characterised, in the main, by single-storey traditional croft houses and reflects that of the pattern of a traditional crofting community. To comply with policy 28 of the HwLDP, proposed developments can be supported if they promote sustainable design and enhance the social, residential and environmental wellbeing of the people in Highland. In the context of policy 28 I conclude that an appropriately designed house on the appeal site would not be visually prominent and would not affect public seaward views in accordance with the objectives of the designated settlement development area; it would accord overall with the dispersed settlement character of Kylerhea. Because of intervening distance it would not have any adverse impact on the residential amenity enjoyed by persons living in adjacent houses.

8. Policy 29 of the HwLDP reinforces the need for appropriate design and again I am satisfied this could be controlled by the planning conditions suggested by the council, if I were to allow the appeal.

9. In conclusion I judge that a well-designed and appropriately scaled house, incorporating traditional vernacular detailing, would accord with the relevant development plan policies on sustainable design and placemaking that are applicable to the Kylerhea Settlement Development Area.

### *Servicing and Infrastructure*

10. Policies 65 and 66 of the HWLDP emphasise that, in the absence of a public sewer connection, the council's preference for private foul drainage is for its discharge to land rather than to water. Similarly surface water drainage requires to follow sustainable principles. The environmental standards of the proposed drainage arrangements, and any impact on the adjacent Kylerhea River, would be subject to requisite building warrant requirements. Persons opposing the proposal point to problems with the availability of fresh water, particularly in dry summers. Although a public water supply is not available, there are no objections to the proposal from Scottish Water and it would be for the appellant to secure a supply. There are no access or road safety objections to the proposal from the council and the proposal does not conflict with policy 77 'Public Access'. I conclude that, subject to a detailed assessment of drainage and access arrangements, there would be no tension between the appeal proposal and HwLDP policy 65 'Waste water treatment'; policy 66 'Surface water drainage' and policy 77 'Public Access'.

### *Croft land*

11. An objective of the Kylerhea Settlement Development Area, as set out in the 2010 Plan, is that in-bye croft land requires to be safeguarded and new development on poorer parts of crofts is favoured. The appellant refers to the appeal site being "an existing house site ruin" without submitting supporting evidence. On my site inspection I noted an adjacent single-storey house to the east of the site that is currently being refurbished. However there is little, if any, physical evidence on the ground to suggest that the remains of even a long abandoned house has been present on land delineated on the appeal location plan. On my site inspection I closely observed the, in the main, unmaintained grassland that would be lost if I was to allow the appeal. I note that it comprises of category 5 'Land capable of use as improved grassland', in accordance with the classification of the Crofting Commission. The Commission recognises this category of land as being important in-bye land which plays an important part of the economy of 'Scottish Hill lands'. Without an identified need for a new house the Crofting Commission has difficulty in supporting the appeal proposal.

12. As I set out in paragraph 4 the curtilage of proposed house would be south of the unmetalled access track. Although the proposal could incorporate a shared access I am mindful that the Crofting Commission acknowledges that there is a potential that the loss of the croft land could impede that remaining. However I conclude that it could be possible to link the two parts of the croft holding and access provision could be clarified in a subsequent application for the approval of matters specified in conditions, if I were to allow the appeal.

13. The appellant has not argued that there is need for a second house on the relatively small croft holding. Nor has any wider community interest in support of the proposal been submitted to me. Rather the appellant submits that there are other croft holdings in

Kylerhea with more than 1 house and according to “crofting rules” applicable to the “Crofting Counties” 2 houses are allowed. No evidence is before me that refers to the “crofting rules” as argued by the appellant and for the appeal to succeed it must comply with the development plan. Policy 47 of the HwLDP provides that in-bye land, such as the appeal site, is of value to the local economy and its loss must be minimised. The appeal proposal would give rise to a second house on croft 7 without any demonstrable need, causing the loss of important in-bye land contrary to policy 47 and the objectives of the Kylerhea Settlement Development Area, as set out in the West Highlands and Islands Local Development Plan 2010.

### *Material considerations*

14. Representations on a proposal that relate to a planning matter are material considerations in my determination of the appeal. I have studied closely the representations that have been received, all of which oppose the proposal, and the appellant’s response to each one.

15. My determination of the appeal must be made in accordance with the development plan and in my determination, although raised by representees, I can attach little weight to the provisions of the Crofting (Scotland) Act 1993. Matters relating to the appellant’s place of residence, rights of access, the effects of temporary construction traffic on the condition of the access road, the interests of a prospective purchaser wishing to use the land for crofting purposes, land values and the maintenance of the unmetalled access road are not planning matters. Any prospective use of the house for holiday letting purposes, like others currently used as such in Kylerhea, is not a material planning consideration.

16. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Chris Norman*

Reporter