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Decision by Allison Coard a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2228
- Site address: Achaderry Steading, Roy Bridge, PH31 4AN
- Appeal by Mr Tim Sims against the decision by Highland Council
- Application for planning permission 19/05322/FUL dated 2 December 2019 refused by notice dated 10 March 2020
- The development proposed: Proposed Clay Pigeon Shooting Club on existing agricultural land
- Date of Site Visit by Reporter: 5 September 2020

Date of appeal decision: 2 October 2020

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## Decision

I dismiss the appeal and refuse to grant planning permission.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are whether the proposal would result in an unacceptable level, frequency or character of noise and whether compliance with Policies 28 and 72 of the Highland Wide Local Development Plan can be demonstrated in the absence of a detailed noise assessment report. In addition other issues are raised regarding recreational access and the impact on nature conservation and woodland.
2. Policy 28 is concerned with the impact on residential amenity for communities and individuals. Policy 72 requires proposals that may result in noise pollution to provide a detailed assessment report on levels, character, transmission and receiving environment to show how the pollution can be appropriately avoided and if necessary mitigated. Where the council applies conditions to any permission to deal with pollution matters these may include subsequent independent monitoring.
3. Policy 36: Development in the Wider Countryside requires development to be assessed for the extent to which it is: acceptable in terms of siting and design; sympathetic to existing patterns of development; compatible with landscape character and capacity; and can be adequately serviced.



4. Policy 43 deals with tourist facilities specifically and requires the scale of the proposal to be proportionate to its location based on whether it: is within a settlement; will complement tourist facilities; will increase the length of people's stay; will increase visitor spending or promote a wider spread of visitors; and will safeguard and promote access, interpretation and management of natural, built and cultural heritage features.
5. On my site visit I walked along the core path close to the site and viewed the site from the other side of the river where a clearer view over to the application site can be achieved. The application references an existing track into the site and the council's report of handling describes an existing rough quad track being replaced by a new track approximately 100 metres in length. Car access would be confined to the reception and parking area next to the steading although access to the shooting gallery by those with mobility problems would be enabled by use of all-terrain vehicles. I walked the adjacent path including the loop around the lochan which I understand is a popular walk with local residents.
6. There is reference to existing clay pigeon shooting on the estate which the appellant states has been taking place on less than 28 days a year. I understand that shooting activity, whether authorised or not, was carried out in relative proximity to the appeal site (within 300 metres). I noted what appeared to be the shed related to these activities on my site visit. However my assessment below is concerned only with the current proposals albeit I understand the same shed is proposed to be relocated onto the appeal site but with the addition of further noise insulating material. The proposal is relatively small scale with 4-10 people using the range at any one time.

### Noise Assessment

7. The council's submissions state the residential property most likely to be affected by the noise impact of the proposal is at the end of the Braeroy Road (number 9) some 680 metres from the site and behind the direction of proposed shooting. However, there is also a closer house nearer to the river at some 550 metres. It sits slightly down in the wooded river valley but does not appear to have been subject to any noise assessment. I also note the relative proximity of most other parts of Roy Bridge which are within one kilometre albeit screened by the established landscape. The Stronlossit Hotel in Roy Bridge would be just over 700 metres away to the South West. As described above the site is also in proximity to walking routes.
8. The relevant guidelines are referenced as Chartered Institute of Environmental Health – Guidance on the control of noise - clay target shooting. This recommends a buffer zone of not less than one kilometre to the rear of the direction of shooting and 1.5 kilometre in the forward arc of shooting. This would not be achieved in this case and the location of the site within this recommended buffer zone indicates the likelihood of noise nuisance. The guidance suggests annoyance is less likely to occur at a mean shooting noise level below 55dB(A) and very likely to occur above 65dB(A). I note the ambient noise level in the area is recorded as 45.9dB (A). The council's environmental health officer's report acknowledges this is higher than would be expected. I noted the noise of the river on my site visit but appreciate this may vary at different times of the year and according to the amount of rainfall.

9. The council's environmental health officer carried out noise measurements on the morning of 7 January at 9 Braeroy with the shooting taking place from the proposed shooting site – though without the shooting shed being in place there. The average of the loudest 25 of 41 test shots, corrected for the background ambient noise levels mentioned above, produced a result of 61.3dB(A) shooting noise level. All shots exceeded the background noise level by more than 10dB(A). The submitted report accepts clear potential for noise nuisance in the absence of any mitigation.

10. Taking measurements of shots within the noise enclosure indicated attenuation could be achieved with a reduction in the noise measurements recorded by 12.2 at the side and 19 to the rear. I accept this provides some assurance as to the likely potential for mitigation of the noise level. However, whilst the evidence indicates attenuation may be possible this is not demonstrated at the appeal site where the shed would be sited.

11. I consider the work carried out by the council's environmental health officer goes some way to demonstrate what the likely noise impacts would be and the potential to secure mitigation through the erection of the proposed shed. However, my understanding is that the noise assessment work carried out by the council's environmental health officer does not reflect the full detailed assessment report required by the local development plan. I have no detailed site specific advice on the character, transmission and receiving environment or independent verification of the effectiveness of the proposed mitigation. It is notable that the environmental health officer's report acknowledges some uncertainty in concluding that the noise limit is likely to be met but that that the sound of each shot may well be audible at noise sensitive properties where it may be considered by residents to amount to amenity loss.

12. I share the concerns of the council and local residents that there has been no detailed noise assessment. Despite the assurance provided by the available report there is remaining uncertainty, in the absence of detailed assessment information, that acceptable noise levels could be achieved once the proposed shed is in situ and the shooting activity commences. For these reasons I find conflict with Policy 72 of the local development plan.

### Potential for Mitigation

13. The council has reflected local concerns and is not persuaded that the acceptability of the proposal can be secured by condition. I have carefully considered the potential for mitigation. I understand the degree of local concern and I accept that even if the level of the noise is addressed its intermittent and unexpected nature and frequency may increase the consequent levels of annoyance and disturbance. I also appreciate the expressed desire for the facility to be located further from the village. However I must assess the acceptability of the proposal at the location as specified in this appeal.

14. In recommending approval the council's planning officer, as supported by the council's environmental health officer, proposed that the issues arising could be addressed by condition. To this end a condition was included to require a noise impact assessment to be carried out once the shed, with added noise mitigation measures, was in place and that further mitigation works could be instigated in the event that the noise level of 55dB(A) was exceeded. However I have concerns as to how this condition would prevent shooting activity commencing or continuing in the event that the further noise assessment showed

the 55dB(A) noise threshold was not achieved and further mitigation works were either: not feasible; not carried out; or insufficient.

15. Circular 4/1998 on planning conditions advises that noise conditions should be tailored to particular circumstances and drawn up in consultation with Environmental Health Officers. The addendum includes model planning conditions. These include negatively worded conditions. The Circular also suggests a condition to secure that noise levels are maintained below the specified level.

16. In response to my procedure notice the council confirmed that a suitably worded suspensive condition, that meets the tests in Circular 4/1998, could be used to ensure that recommended noise limits are not exceeded. The council's response confirmed a negatively worded condition as referenced in the Circular would be preferable to the condition as originally suggested. Some alternative wording to that effect was provided at my request and the appellant confirmed agreement with this approach.

17. The council also agreed that an additional condition would also be necessary, as recommended by the council's environmental health officer, that all shooting activities must be carried out within the confines of the approved shed. The agreement of the appellant was also confirmed.

18. I consider the above has potential to address the containment of noise levels. However without detailed advice on this matter I have remaining concerns that restrictive provision would not alone address the potential impact on residential amenity given the character and intermittent nature of the noise. The council's suggested hours of operation to avoid early mornings before 10am, avoid operation between 12 noon, and 2pm and cease firing by 4pm would reduce the extent of that potential nuisance. In addition, no operation would be permitted on a Sunday or on Scottish Public Holidays. It was further recommended that the number of shooters is limited to one person shooting at any one time, unless it could be demonstrated that a noise level less than 55dB (A) can be achieved at the nearest noise sensitive premises. Nevertheless I consider it likely that walkers enjoying the path network and nearby residents would experience some audible and potentially distracting bursts of firing during the week and on Saturdays. I consider the nature and proximity of the noise likely to be to the detriment of residential amenity.

19. Taken together I consider that the suspensive condition approach on noise assessment and control coupled with the limit of times of operation could mitigate the impact on residential amenity to some extent. However, as stated above I have no independent advice or verification of the likely noise levels. The development of the access track and enclosure would effectively need to be completed prior to that verification. The nature and intensity of the noise and its audibility given proximity to residential areas has potential to result in frequent complaints and the need for ongoing monitoring which would be a less than desirable outcome.

20. The appellant has indicated agreement to a condition that would involve abortive works in the event that the required noise limits could not be demonstrated. However, such an approach would enable construction and other works to proceed prior to it being demonstrated that the use is appropriate to this location. Even in the event that the noise limits were achieved it is not demonstrated that the specific nature of the noise would avoid

detriment to the amenity of local residents. Consequently given the proposed location relative to the village and the indicated uncertainties, in the absence of a current detailed assessment, I consider there would remain tension with the terms of local development plan Policies 28 and 72.

### Other matters

21. The forestry office has indicated no adverse effect on forestry or woodland however from the submitted material I found that the route of the track relative to the trees was difficult to discern. I understand the shooting arc would be above the trees and the shed and disabled access area is located in a clearing. I note the planning officer's reference to the need for a condition to ensure the construction of the track does not result in significant tree loss although no condition was subsequently included. However I accept that the proposed route of the track may avoid any damage to trees and that had I been minded to allow this appeal this is a matter that could have been addressed through a suitably worded condition. I agree with the council that a condition would suffice to secure the minor upgrade required to the access junction. Given the limited scale and nature of the proposal in terms of access provision and the siting of the shed I consider that compliance with Policy 36 on Development in the Wider Countryside could be achieved.

22. I understand the blue" track on the location plan is a Core Path which would be crossed by construction and operational traffic. A condition would therefore also be required to retain the path open and free from obstruction or encroachment before, during and after completion of the development. Whilst not alone sufficient reason for refusal I consider the nature and proximity of the noise (within 100 metres) is likely to detract from the peaceful enjoyment of this countryside area by walkers using the path network.

23. Concern is also raised about the impact on wildlife but no details of this are provided and I have no evidence to indicate that the nature of this activity would have any significant impact on natural heritage interests. Disturbance of Annex 1 breeding birds is an offence under the Wildlife and Countryside Act 1981.

24. In the interests of public safety I agree that the shooting arc would have to be clearly marked out on the ground and the appropriate signs provided when shooting is taking place to ensure people are totally excluded from this area. On the matter of safety I accept there would be no reason for anyone to access the shooting arc, other than to pick up any unbroken clays (for re-use) after a shooting session. Conditions could ensure the adjacent Core Path is unaffected in safety terms by requiring warning signs. I understand the layout of the site would be covered by a police licence. The restriction to shooting from the shed and the position of the wing walls, together with proper management of the site, would ensure shots and targets are all contained within this area. In addition operational management would be governed by other legislation, relating to fire-arms licensing.

25. Sixteen representations were received to this appeal raising concerns relating to the noise level and nature and the impact on residents, pets and livestock including on the anxiety caused by this type of noise. Concern is also raised as to the impact on wildlife and the nearby National Nature Reserve and Site of Special Scientific Interest at Glen Roy. Reference is made to sound ricocheting given the nature of the surrounding topography. I have also considered the 26 objections received from local residents by the council when

processing the planning application. Additional matters include concerns about rifle shooting which is not addressed in the application, the need for the facility given others nearby, risk of avalanche, impact on property value and risk to walkers.

26. Where these issues relate to planning matters I have addressed then in my reasoning above. The application references only clay pigeon shooting and the availability of other facilities in the area is not something I can take into account. My reasoning above shares the concern of local residents that whilst mitigation might secure noise levels at or around likely acceptable limits there are uncertainties around this. The lack of a comprehensive noise assessment leaves some remaining risk of noise nuisance given the nature, intensity and frequency of the noise from this activity even if the recommended noise limits can be secured. I find insufficient information to clearly demonstrate otherwise.

27. I understand from the submissions that the appellant felt badly advised by the council in relation to an apparent understanding that the work carried out on noise assessment would be sufficient. However, this appeal is not concerned with the conduct of the council or its officers but with assessment in the context of the development plan and any material planning considerations.

28. Scottish Planning Policy, at paragraph 105, indicates planning authorities should consider the potential to promote opportunities for tourism and recreation facilities in their development plans. The proposal would also draw some support from Local Development Plan Policy 43 in this respect. However, paragraph 108 of Scottish Planning Policy states that proposals for business, industrial and service uses should take into account surrounding sensitive uses, areas of particular natural sensitivity or interest and local amenity and make a positive contribution towards place-making.

29. I understand the development would provide a relatively small-scale business enterprise and farm diversification in a rural area which is in keeping with the adjacent land uses. I also appreciate the activity is a form of rural diversification which would bring income to the estate with possible wider benefits particularly as it is intended to offer access to the disabled. However, my concerns are focussed not on the principle of this use but on its acceptability in such proximity to settlement given the nature of the consequent noise and its impact on amenity.

### Conclusion

30. I therefore conclude, for the reasons set out above, that the proposed development does not accord with Policies 28 and 72 of the Highland Wide Local Development Plan. Whilst it draws some support from Policy 43 and 36 I do not consider these benefits outweigh the identified policy conflicts. Consequently, the proposal would not accord overall with the development plan. There are no material considerations that lead me to a different conclusion.

*Allison Coard*

Reporter