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

- Planning appeal reference: PPA-270-2243
- Site address: Ladystone Steading, Ladystone, Bunchrew, Inverness shire IV3 8TB
- Appeal by Christy Marshall against the decision by The Highland Council
- Application for planning permission in principle 20/02342/PIP dated 27 June 2020 refused by notice dated 9 March 2021
- The development proposed: Conversion of steading to form short term let holiday accommodation (10 units) and associated facilities
- Date of site visit by Reporter: 30 June 2021 and 24 September 2021

Date of appeal decision: 30 September 2021

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## Decision

I dismiss the appeal and refuse planning permission in principle.

## Preliminary

The appellant has submitted a claim for an award of appeal expenses against the council. My decision on that claim will be issued separately.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises the Highland-wide Local Development Plan 2012 (the HwLDP) and the Inner Moray Firth Local Development Plan 2015 (the IMFLDP).
2. Having regard to the provisions of the development plan the main issues in this appeal are, firstly, whether the proposal would cause a significant increase in activity that would have a detrimental impact on the amenity of neighbouring occupiers and recreational users and is not compatible with the scattered residential character of the settlement of Ladystone. Secondly, it is necessary for me to assess whether the proposal would have a significant adverse effect on the existing road network as well as impacting on the recreational use of the area which includes a section of the long distance route, the Great Glen Way.

### *The appeal proposal*

3. The appeal seeks planning permission in principle for the conversion of an unlisted and ruinous traditional farm steading to form tourist accommodation containing 10 self-



catering units with 16 bedrooms, together with a shop, a spa facility, a gym and cycle hire for the use of guests. Parking for 13 cars in an adjacent field would be some 85 metres distant from neighbouring residential properties. The site lies centrally within a cluster of occupied houses and its current appearance detracts from the environmental qualities elsewhere at Ladystone Steading. The site is in a rural setting, with some scattered housing centred around Bunchrew, north-west of Inverness. There are no natural, built or cultural heritage designations on the appeal site. Undeveloped land included in the planning application boundary would be used by the appellant for horticulture and woodland planting.

4. Ladystone Steading is situated in the wider countryside west of Inverness in an area characterised by scattered housing and is some two kilometres from Bunchrew. It is within the Inverness Hinterland, as defined by the HwLDP. The appeal site is currently accessed from the A862 via a weight-restricted, unadopted railway bridge and Network Rail is concerned about the bridge's intensified usage that would ensue from the appeal proposal. Network Rail would object to the proposal unless conditions were imposed on any planning permission that require the appellant to provide a safe and suitable access route to the appeal site from Leachkin Brae in Inverness, and that this route is satisfactorily publicised. Accordingly the appellant proposes to utilise an alternative and signposted route west of Leachkin Brae over which she has a right of access, but which is outwith the planning application boundary. This route is an unsurfaced and historic drove road, extensively used by walkers and cyclists, which passes through a mix of forestry and woodland. It would provide the access to the appeal site up to a point where it connects with a 600 metre long private and unsurfaced north-south track, within the control of the appellant and within the planning application boundary. The Great Glen Way, a designated long distance footpath, joins the old drove road, a core path, in the vicinity of a former reservoir. From this point westwards the designated trail shares the portion of the old drove road for some 150 metres, over which vehicular access to the appeal proposal would also be taken.

### **The development plan**

5. The proposal is for a tourism related development and it is necessary for me to assess the appeal against policy 43 'Tourism' and policy 44 'Tourist Accommodation' contained within the HwLDP. Additionally, because the appeal site is within the Inverness hinterland as defined in the development plan I must take into account policy 35 'Housing in the Countryside' of the HwLDP and the related 'Supplementary Guidance on Housing in the Countryside: Siting and Design'. I also require to have regard to policy 28 'Sustainable Design', a development plan policy that is referred to in both of the council's reasons for refusing the planning application. The proposal adjoins the settlement of Bunchrew and so policy 3 of the IMFLDP is also relevant. Policy 78 of the HwLDP provides that the council, will safeguard and seek to enhance long distance routes, including the Great Glen Way, and its setting.

### *Tourism*

6. The importance of the tourism sector to the Highland economy is recognised by the development plan. Indeed I find that there can be little doubt that the appeal proposal could assist in supporting the local economy. I am mindful of the employment that it would provide and the positive economic effects of the contribution of visitors' expenditure in the locality. I also recognise the wider economic benefits of the proposed facility from where

the appellant would promote the use of local supply chains and sale of local produce to visitors.

7. Policy 43 'Tourism' of the HwLDP sets out several criteria for assessing proposals for tourism related development. In particular to accord with policy 43 a tourist development proposal must, amongst other things, be proportionate to its location. I find that the appeal proposal, contained within an existing but ruinous building with some architectural interest, would not increase the extent of built development nor adversely affect the rural character of this part of the Inverness hinterland around Bunchrew. Physically the conversion of the building would be proportionate to its location within the wider area around Bunchrew. Given the location of the car parking area, and subject to planning conditions imposed to protect residential amenity, the appeal proposal could be implemented with minimal adverse impact on residents at Ladystone.

8. However to accord with policy 44 'Tourist Accommodation' proposals that are outwith a settlement, such as the appeal proposal, require to be supported by policy 35 'Housing in the Countryside' of the HwLDP. The sixth bullet of this policy supports the conversion or reuse of traditional buildings, which would be the case here. However, policy 35 also provides that where new development in the countryside is justified a proposal must accord with the council's adopted 'Housing in the Countryside / Siting and Design: Supplementary Guidance'. A 'general development consideration' contained within the supplementary guidance specifies that its support is dependent on a proposal that is serviceable by the local road network, without the need for improvements and upgrades which would be out of keeping with the character of the surrounding countryside. I address the matter of access to the development below.

### *Sustainable design*

9. Within policy 28 'Sustainable Design' of the HwLDP are 13 criteria that set out the necessary tests for compliance. Mindful that the appeal seeks only planning permission in principle I note that the proposal would make use of an existing ruinous building, it could be built to maximise energy efficiency, and it could be a sensitively designed high quality building, using reclaimed building materials where possible. Measures could be integrated into a scheme to minimise flood risk at the adjacent Cross Burn, and a waste management plan would relate to the proposal. It would not adversely impact on the natural environment, nor the area's built and cultural heritage. There are no objections from the council's environmental health service in respect of its impact in the amenity of adjacent residents. The appellant submits that because of the current condition of the steading it would continue to deteriorate without any investment.

10. Accordingly, and with the exception of those criteria included in policy 28 that relate to the proposed access and the local road network, the proposal would otherwise accord with the requirements of policy 28 and would be sustainable design. I address the matter of access to the development below.

### *Access*

11. As I set out above policy 28 and policy 44 of the HwLDP require a satisfactory standard of access to be provided to the site of the proposal. Taking into account the council's reasons of refusal, I observed the frequency of the recreational usage of the old

drove road, a core path, during my two site inspections. It is clear to me that the route is regularly used by members of the public, including parents with prams, dog walkers, joggers, cyclists and long distance walkers. I conclude that there is extensive use made of the old drove road for these passive outdoor recreational purposes and for the peaceful enjoyment of the countryside, in an area with characterised by its attractive natural wooded environment. Whilst I note the Great Glen Way in the vicinity of Inverness, and its route east of Blackfold, uses existing classified roads, I conclude that the secluded section of the route, particularly along the long distance path adjoining the proposed access to the appeal site, has a very high quality of amenity as it passes through attractive mature woodland. The proximity and value of this facility to the residents of an expanding urban area underscores the importance of protecting its natural attributes for residents and for visitors. There can be little doubt that the old drove road is a valued local amenity for persons enjoying passive outdoor recreation in a location that is readily accessible from Inverness.

12. Taking into account the position of Network Rail, the appellant proposes the access route to Ladystone Steading to be via Leachkin Brae, a route that avoids the use of the railway bridge adjacent to the A862. The access to the appeal proposal would begin west of the adopted Leachkin Brae, a road with eight passing places in the north-western part of Inverness. From a point west of Leachkin Brae, vehicular access to the site would thereafter use around 1 kilometre of the old drove road. The route, incorporating the Great Glen Way in its more western part, in turn connects with the unsurfaced north-south private road, also serving a single house, which leads to Ladystone Steading.

13. The appellant's transport statement of August 2020 assesses the transport implications of the proposal and sets out a travel plan. I note that public transport is limited to bus stops at Glenview and Bunchrew, respectively some three kilometres and two kilometres from the site, although staff would be encouraged to car-share or to walk or cycle to work. Nevertheless the appellant expects that "the vast majority" of guests would travel to the appeal site by private vehicle. I have no evidence before me that concludes that larger vehicles, such as refuse freighters and delivery vehicles, would be able to use the railway bridge. Consequently I assume that access to the proposal for all visitors, staff and servicing would be taken using the old drove road.

14. The appellant concludes that the predicted maximum activity at the proposed tourist facility would result in 33 vehicle movements in the 15 hours between 07.00 and 22.00, equating to five vehicles every hour or one vehicle every 12 minutes. As such, to the appellant, the predicted level of trips would have a negligible impact on the operation of Leachkin Brae, and would not pose safety issues for walkers or cyclists on the Great Glen Way. The council's Transport Planning Team, who could not visit the site in the height of the pandemic and during the determination of the planning application, noted that traffic generated by the proposal has been derived from a Trip Rate Information Computer System (TRICS) assessment but due to a lack of TRICS survey data the traffic figures are based on two sites with no direct compatibility to the 10 unit holiday accommodation proposed. Therefore the council's technical officers have been unable to make their own calculations as to what the actual traffic volumes generated by this development are likely to be, although the figures contained in the transport statement are considered to be an under-representation.

15. The council has advised me of its view that if I were minded to uphold the appeal a suspensive planning condition ought to be included in the planning permission that requires

that prior to the commencement of any development, a scheme of works for the upgrading of Leachkin Brae and the drove road, to include carriageway and passing place improvement, shall be submitted to and approved in writing by the planning authority in consultation with the roads authority. The works would require to have been implemented in accordance with the approved scheme, prior to the commencement of development on the site.

16. The council's access officer requires that in accordance with policy 78 of the HwLDP any negative impacts on public access in general, and the Great Glen Way in particular, are to be mitigated, with details of that included within an access management plan to be controlled by condition. This mitigation would include a segregated two metre wide path serving as the Great Glen Way and running parallel to the upgraded section of the drove road where it hosts the Great Glen Way, with associated drainage.

17. The old drove road is owned by Dochfour Estate, although the appellant has submitted legal evidence demonstrating that she has a right of access over this route. This is not disputed by the Estate. To the appellant it is within her rights of usage to ensure the access is fit for purpose, and as such, any works pertaining to widening and resurfacing as proposed fall within the rights held and therefore no agreement is required from any other landowner. What the appellant terms "these determinations," enable her to carry out necessary works to accord with the council's requirements. It is further argued that the appeal proposal would enable regular maintenance to the access route, benefitting the wider community for recreational use, as well as providing access to the site. The council's Roads and Transport Guidelines for New Developments defines a private road as a road over which public access can be permitted but which is not adopted by the council; however a private road requires to be designed to suitable standards, approved by the council. The legal opinion on the status of the old drove road addresses rights of access; it does not confer status over the land in respect of the provisions of the Town and Country Planning (Scotland) Act 1997.

18. In its response to my procedure notice the council provided me with its web-based information that gives advice to applicants for planning permission in principle. Applicants are to submit an Ordnance Survey based plan which must clearly identify the site of the proposal. Within the site boundary, which is to be lined in red, must be included all of the elements that require planning permission to facilitate development, including access to a public road. All other land owned by an applicant must be outlined in blue.

19. Also in response to my procedure notice the appellant submitted drawing '904\_101' entitled 'Location Plan\_RevA', dated 9 August 2021. This plan differs to that initially submitted with the planning application by including more extensive Ordnance Survey cartographic information, showing the location of the dwelling east of the north-south access track and that track connecting to the old drove road. The revised location plan continues to exclude the route of the old drove road. Dochfour Estate says it has not been consulted or reached any agreement as to what works are required on its land to bring the route up to a suitable standard for the proposed development. Referring specifically to that section of the old drove road that is to be widened to incorporate the Great Glen Way, to the Estate there is insufficient width to facilitate access for vehicles and pedestrians in the manner proposed. Dochfour Estate accepts the earlier legal opinion confirming that the appellant has a right of access over the old drove road. However any interpretation of the

terms of that decision, including the extent of rights of access and what it permits, is a separate legal matter which it is not for me to determine.

20. On my two site inspections I walked between Leachkin Brae and Ladystone Steading, both before I issued the procedure notice and after my receipt of the responses to it. The appellant proposes that before development commences 19 passing places would be provided on the route west of Leachkin Brae to Ladystone Steading. Similarly before development commences a separate pedestrian path adjacent to some 150 metres of the old drove road would incorporate a section of the Great Glen Way. The appellant also proposes to widen this section to facilitate the passage of pedestrians and vehicles without the need for a diverted path, but allowing separation of the two.

21. On my most recent inspection I was able to observe some four areas adjacent to the old drove road that were readily discernible and useable as passing places, although the width of one in the vicinity of the former reservoir was restricted by large boulders and the eastern most passing place was used regularly for car parking by persons walking along the route. Generally I observed a discrepancy between the ground levels on the existing private road and the land to the north where new passing places would be formed. Additionally, over lengthy sections of the route, particularly to the south, a ditch adjoins the carriageway which may have a designed or unintended drainage function. In many locations on either side of the road mature trees grow in close proximity, with their root structures extending under the more open verges and the old drove road. In the vicinity of the proposed diversion of the Great Glen Way the land to the south slopes away from the track.

22. Accordingly I find that the provision of the proposed passing places and the deviation of the Great Glen Way would comprise of engineering operations on the land; the requisite work would not be insignificant or otherwise *de minimus*. Overall it could not be carried out without, in varying degrees, the importation of fill and surfacing material, tree felling, the removal of tree roots, infilling or excavation works, and the diversion or changes to a drainage ditch. The council's proposed condition does not in fact require the appellant's passing places to be provided, but rather leaves the details of the improvements to the drove road to be agreed at a later date. Therefore it could be the case that a quite different scheme for upgrading the road, perhaps in accordance with the council's guidance on construction of private roads, would be required. In any event, it appears to me highly likely that the scale of the works proposed would be such that a separate express planning permission would be required for them.

23. As I describe above the core path along the old drove road plays an important role in the provision of outdoor recreation through attractive woodland in the countryside north-west of Inverness. This role is enhanced by the provision of an integral part of the Great Glen Way, a designated long distance footpath. The appellant's prediction of traffic levels is questioned by the council and it is clear to me that the vehicles that would use the road would include not just visitors' cars but, after its construction, commercial vehicles servicing the facility including refuse removal and the delivery of goods. Even with the implementation of the mitigation measures set out in the appellant's transport statement it is a matter of fact that works are required to facilitate the safety of the not insubstantial vehicular access to the proposed tourism development.

24. Integral to the proposal would be the maintenance, drainage and snow clearance of the access route. The drove road is outwith both the application site the land marked in blue as being within the control of the appellant. Therefore, leaving aside the separate dispute about the legal rights to improve and maintain the road, I could not ensure the continuing maintenance and management of the old drove road through any conditions placed on the appeal proposal. I do not doubt the appellant's intention to maintain the route. But my inability to control these matters through conditions is a significant concern given the length of the route, its use by other parties and the high importance of maintaining an adequate and safe access for visitors, staff and other vehicles at all times of the year.

25. Similarly I find the value of the route of the old drove road for passive outdoor recreation to be a significant consideration in my determination. Whilst the provision of passing places and the regular maintenance of the route would help to address road safety matters, the increased usage of the old drove road by cars and larger vehicles would adversely affect its current attractive and natural characteristics that are self-evident. Recreational users would require to be alert to traffic, they would require to step off the existing carriageway, vehicles may well have to reverse to passing places and the frequency of use resultant from the regular trips generated by the proposed development would diminish users' experience of the qualities of informal outdoor recreation that the route currently provides.

26. Drawing these strands together, the terms of policy 28 and policy 44 of the HwLDP require an acceptable access with a minimal impact on the road network, and one which does not limit the recreational enjoyment of the area around the appeal site. Policy 78 of the HwLDP requires the Great Glen Way and its setting to be safeguarded. The power to impose a negatively worded condition on land not included in the planning application has been established but particular care is required in so doing. It has not been argued that the necessary works do not require planning permission.

27. On the basis of the evidence before me I conclude that the proposal, which would result in the restoration of an existing building and without impacts on the natural environment or other locally important heritage features, would not conflict with the thrust of policy 3 of the IMFLDP, other than its impact on recreational areas significant to the wider local community. Nevertheless I am unable to conclude that an acceptable access to Ladystone Steading can be provided by the appellant, contrary to policy 28 'Sustainable Development', policy 44 'Tourist Accommodation' (by virtue of its failure to comply with the supplementary guidance and thereby Policy 35) and Policy 78 'Long Distance Routes' of the HWLDP.

## **Material Considerations**

### *Scottish Planning Policy*

28. Scottish Planning Policy 2014 (SPP) is an important material consideration and sets out national planning policies for the planning system and for the development and use of land. It emphasises that development should be located in areas that are capable of being integrated into effective networks for all forms of transport, including walking, cycling and public transport. I do not find that this would be case for the appeal proposal. On the other hand I have acknowledged above the economic and tourism benefits of the proposal, and these derive support from SPP.

## *Representations*

29. I note that some 29 representations on the planning application were made to the council, 24 of which opposed the development, 4 were made in support and 2 were neutral in their comments. Material considerations raised include non-compliance with the development plan, the layout and design of the proposal, the inadequacies of existing infrastructure including the access to the site, the adverse impacts on the occupiers of adjacent houses, adverse impacts on protected species and the loss of habitat.

30. I am mindful that the presently ruinous buildings have the potential to house bats, a protected species. However my dismissal, of the appeal obviates the need to consider this matter further in the context of the development that is proposed. Similarly points raised by objectors in respect of the layout and design of the proposal would have been relevant to the consideration of further details had I upheld the appeal. Similarly if I had found the proposal acceptable and granted planning permission in principle the conditions suggested by the council's environmental health service and a detailed consideration of the design and layout of the development would address concerns expressed about its effect on residential amenity.

31. Kirkhill and Bunchrew Community Council object to the application, raising concerns regarding the proposed access from Leachkin Brae which they considered sub-standard. Inverness West Community Council note the impact of the proposed development on traffic volume and frequency along Leachkin Brae noting the road improvements may create a popular loop from Charleston to Bunchrew which is currently discouraged due to the current standard of track. Inverness West Community Council considered the road safety and increased traffic concerns should be considered in full following consultation with relevant consultees prior to determining the application.

32. There can be little doubt that the appeal proposal could assist in supporting the local economy. I deal above with the access-related issues and with the effects on neighbouring amenity. Overall I conclude that the proposal would give rise to a significant increase in activity that would have an adverse impact on the enjoyment of the recreational use of the old drove road

## **Conclusion**

33. Overall, there are no material considerations which would cause me to determine the appeal other than in accordance with the development plan. 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