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

- Planning appeal reference: PPA-270-2249
- Site address: Land 120 metres southwest of Tigh Na Greine, Broadford, IV49 9AS
- Appeal by Ross Lambie against the decision by The Highland Council
- Application for planning permission in principle 20/04826/PIP dated 4 December 2020 refused by notice dated 27 April 2021
- The development proposed: Planning permission in principle for a one and a half storey dwelling plot
- Application drawings listed in schedule
- Date of site visit by Reporter: 22 August 2021

Date of appeal decision: 20 December 2021

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## Decision

I allow the appeal and grant planning permission in principle subject to the nine conditions listed at the end of the decision notice. Attention is drawn to the two advisory notes at the end of the notice.

My decision on the appellant's claim for expenses made against The Highland Council is set out in a separate decision notice.

## Preliminary

Planning application 20/04826/PIP was concurrently refused with two other planning applications, each seeking planning permission in principle for a single house on land to the north of the appeal site. These applications are subject to appeals PPA-270-2247 and PPA-270-2248 and my decisions are set out on separate decision notices.

## 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 West Highlands and Islands Local Development Plan 2019 (WestPlan). Having regard to the provisions of the development plan the main issues in this appeal are, firstly, whether the proposed house, which would be located outwith the settlement development area for Broadford could give rise to harm or have an adverse effect on the wider countryside to the west of the settlement. Secondly, and mindful of the reason why the council refused the planning application, it is necessary for me to determine whether the site's development is

premature, at least until such time that the long term housing allocation on adjacent land is “brought forward by developers”.

### **The development plan**

2. The appeal proposal seeks planning permission in principle for the erection of a single storey, or one and half storey, detached house in the southernmost of three (formerly four) plots of land west of the B8083, the construction of a new vehicular access to the adjoining B8083 and the formation of a foul drainage treatment plant to the west of the site. The 1407 square metres site comprises of rough agricultural land which continues westwards towards the Broadford River, interspersed in part with recently planted areas of woodland. It is separated from the single-track road by a verge which supports dense vegetation. An indicative plan shows the house orientated towards the east and located in the southern part of the plot. The site, southwest of Broadford, is adjacent to the east with an area of rough agricultural land which is allocated in Westplan as a long-term housing allocation.

3. It is necessary for me to assess the appeal against policies contained in the HwLDP and specifically policy 28 ‘Sustainable Design’, policy 29 ‘Design Quality and Placemaking’ and policy 36 ‘Development in the Wider Countryside’, and the related ‘Supplementary Guidance on Housing in the Countryside: Siting and Design’. I also require to have regard to policy 47 ‘Safeguarding Inbye/AppORTioned Croftland’, policy 65 ‘Waste Water Treatment’ and policy 66 ‘Surface Water Drainage’. Policy 35 has been raised by third parties but is not applicable to these applications because the site is not within a designated ‘Hinterland area’ as designated in the HwLDP. The placemaking priorities contained in WestPlan are also relevant.

4. As set out in WestPlan I note that future growth prospects in Broadford are described as “positive” and there are no constraints due to school and sewerage capacities although water supply capacity requires upgrading. The Broadford West Map which forms part of WestPlan confirms that the appeal site is outwith Broadford’s settlement development area. The council, in refusing the application, acknowledges that WestPlan does allow for the expansion of Broadford, in both the short and longer term, and on land in the wider countryside outwith the settlement development area.

### *Sustainable design*

5. For the proposal to be acceptable policy 28 ‘Sustainable Design’ of the HwLDP requires that new development must be sensitively sited. It must be of a high-quality design using acceptable materials and be appropriate with local character and the historic and natural environments. Proposed developments must also be adequately serviced and not adversely impact on residential amenity. Similarly, HwLDP policy 29 ‘Design Quality and Placemaking’ repeats the need for good design and compatibility with the local landscape setting. Being development in the countryside it is necessary for the appeal proposal to be supported by policy 36 ‘Development in the Wider Countryside’, and the related ‘Supplementary Guidance on Housing in the Countryside: Siting and Design’. For the reasons that I set out below I judge that the principle of the proposal would not amount to incongruous development in a rural area; it would be compatible with local landscape character and sympathetic to the existing patterns of development. It would contribute to the existing mix of development types around Broadford. It has not been argued that the

site's development would lead to the loss of locally important croftland and it can be serviced without public expense. In my determination I have noted that it is only along the A87 that high quality siting and design is a placemaking priority for Broadford in WestPlan.

### *The site and its surroundings*

6. Being a proposal for planning permission in principle the detailed design, finishing materials, landscaping and means of access to the house would be assessed by the council at a later date, and conditions attached to this decision notice regulate these matters. Notwithstanding these matters the location of the appeal proposal is a factor that would contribute to its sustainable design and in this context I have noted the location of adjacent houses that are to the north and northeast of the site's boundary. Specifically, outwith the Broadford settlement development area Tigh Na Greine, a one and a half storey house, and the single storey Burnside Cottage to its north, like the appeal proposal, are both served by the B8083. The adjacent one and a half storey house at Beinn na Li is east of the B8083 and within the settlement development area.

7. I have no evidence before me that concludes that the proposal would have an unacceptable effect on inbye and croftland. Despite the attractiveness of the hedgerow there are no local or national landscape or natural heritage designations that relate to the appeal site. The ground levels of the site are below that of the B8083 thereby minimising any visual impact that a new house could have. Much of the vegetation along the roadside, and the adjacent remains of a drystone dyke, could be retained pursuant to detailed landscaping proposals being submitted in accordance with condition 6, should the council so decide. There are no grounds to dismiss the appeal on these matters of detail. Consequently I judge that the development of a house type of similar scale to those in the vicinity of the site would not have a harmful impact on the character or appearance of this southern approach into Broadford.

8. Notably, to the east of the site separated from the adjacent B8083, is undeveloped and gently-rising agricultural land adjoining an unadopted access road leading from a point north of the 30 mph speed restriction. Being WestPlan allocation BF03 for the development of housing in the longer term, I am mindful that in accordance with the currently adopted local development plan, residential development could take place on this land at some future point in time. The council's sole reason for refusing the application contends that the proposal is premature "until such time as allocation BF03 is brought forward by developers". Those opposing the proposal suggest that this land may never be developed and, in any event, the local development plan is subject to periodic reviews.

9. In my determination of the appeal I have noted that the glossary in WestPlan confirms that land identified as "long term" indicates that the council would not normally support development of such a site within the first five years of the Plan's adoption which was in September 2019, but that the land may be suitable for development thereafter, that is to say after 2024. WestPlan is now approaching a halfway point prior to its statutory five-year review cycle and the council is otherwise committed to its choice of "short term" development sites over that period. As set out in the glossary the council acknowledges that the actual timing of long term sites will "vary enormously" from six to twenty years and beyond, and such sites would be subject to a review and monitoring to "check" whether they are still suitable for development. WestPlan advises that any developer wishing to

activate a long term site, such as BF03, and which could occur as early as from 2025, could do so without otherwise having to argue an exceptional case for its early development.

10. In my consideration I attach weight to the views expressed by the council's development plans officer in a consultation response on the application. This internal consultation response does not envisage the site to be developed within the short or medium term as it is a long-term housing site. Nevertheless its designation as such indicates the council's preference for growth beyond the plan period to 2024. As things stand there remains at least the potential for developer interest in allocation BF03 to come forward although WestPlan is clear, as I describe in paragraph 9, the actual timing of long term sites will "vary enormously".

11. I recognise the uncertainties rehearsed by the council in its statement on the appeal. I am clear that the commencement of development on the allocated site cannot be pre-empted through the planning system and as such I accept that there can be no assurance that development plan compliant housing could timeously commence. In any subsequent review of WestPlan, due in 2024, the council may choose not to consider the site as a longer term housing site, although that could be the subject of the statutory examination of any proposed replacement plan, the outcome of which cannot be predicted.

12. The Town and Country Planning (Scotland) Act 1997, at section 59, sets out the legal provisions that relate to planning permission in principle. Section 59(2) prohibits development commencing without the approval of matters specified in conditions contained within a planning permission in principle. An application for the approve of these matters which must be made within three years of the date of the permission in principle. At section 59(4) a planning permission in principle does not lapse until after the expiration of two years from that requisite latter approval being obtained. In my consideration of the appeal I attach weight to the reasonable prospect that a development plan compliant planning permission for residential development on WestPlan allocation BF03 could be in place concurrently with, or shortly after the commencement of the construction of a house on the appeal site.

13. I find that the appeal proposal is tantamount to a continuation of the existing small grouping of buildings that includes the Broadford Hotel and those adjacent houses to the south of the hotel. In isolation the appeal site could be tantamount to ribbon development straddling the B8083, thus giving rise to some tension with the council's emergent 'Housing in the Countryside Supplementary Guidance'. However I describe above why, in my judgement, I attach weight to the long term housing allocation east of the road. The proposed house would be only marginally further from the centre of Broadford as would be any houses built on allocation BF03. Improved footpaths along the B8083 would provide a safe and active travel link to the village centre. I therefore conclude that the proposal would generally accord with that placemaking priority for Broadford as set out in WestPlan and which seeks the village centre's consolidation at its western end.

#### *Residential amenity*

14. On my site inspection I observed the design and orientation of the closest adjoining houses at Tigh na Greine, and at Beinn Li. The precise position, orientation, design and scale of the proposed house would require to be assessed by the council at a later stage in the planning process. I have noted the distance between Tigh na Greine and the northern boundary of the appeal site and the position of the windows of its habitable rooms. Given

the separation distances involved and the relationships between the properties and the dimensions of the appeal site I judge that the residential amenity of the occupiers of Tigh Na Greine and Beinn Li can readily be safeguarded in the detailed design process so as not to conflict with privacy, daylighting and sunlighting. The impact on an existing view from properties over the appeal site is not a material planning consideration.

### *Access*

15. In not objecting to the planning application, the council's Transport Planning service require that the proposal would not affect the proposed distributor road running through allocation site BF03 and the existing 30 mph speed limit would require extending southwards. It would be necessary to ensure the road verge on the eastern side of the B8083 would not be overrun by cars gaining access to the plot and additional streetlighting is required. In allowing the appeal I have taken into account the council's 'Access to Single Houses and Small Housing Development May 2011'. I have noted the regular use of the B8083 by heavy goods vehicles, and that the road could in future be adjoining residential development on allocation BF03. I have required that the detailed design and location of the access into the plot must be approved by the council in accordance with condition 4. Condition 9 will require street lighting to be installed and condition 10 will require the repositioning of the current 30 mph speed restriction, both at the appellant's expense, before any works commence.

16. An informal path crosses land adjoining the site and leads westwards to a point on the Broadford River which is popular with village residents. It is submitted that the construction of the houses could prevent local people from enjoying this feature, although evidence in the council planning officer's handling report contends that the route is not a right of way and in any event alternative access points to the Broadford River are available. The loss of this informal access does not justify dismissal of the appeal.

### *Flooding*

17. On my site inspection I observed the surface character of the site in relation to the Broadford River, which appeared in places as being boggy ground. The council has not refused the planning application on the basis of flood risk and I acknowledge the absence of any requirement for the views of the Scottish Environment Protection Agency (SEPA) and the council's flood team to be obtained. In allowing the appeal I am mindful that pluvial flooding and roadside would be addressed by condition 2(v) and under building standards provisions in a future application for a building warrant. I therefore consider that there are no grounds to dismiss the appeal on the basis of HwLDP policy 65 and policy 66 which require foul and surface water drainage to meet standards that minimise the risk of pollution and flooding.

### **Conclusion on the development plan**

18. The appeal seeks planning permission in principle and so the evidence before me does not include details of the design of the house, its finishing materials, its means of access and landscaping. I am mindful that, always subject to any consequent appeal, the council retains an option to approve or refuse its detailed consideration of design, access, landscaping and finishing materials. The council did not refuse the planning application on policy grounds. I have set out above why I judge that the site's location west of the B8083

accords with HwLDP policy 28 'Sustainable Design', policy 29 'Design Quality and Place Making', policy 36 'Development in the Wider Countryside', and the related 'Supplementary Guidance on Housing in the Countryside: Siting and Design'.

19. I agree with the council that, as reflected in its notice of refusal, there is no tension between the appeal proposal and specific development plan policies. I am mindful of both WestPlan's definition of a "long term housing site" and the uncertainty surrounding the timing of the implementation of allocation BF03 being brought forward by developers. As such the absence of any proposals for housing development on allocated site BF03 currently being advanced by a developer is not unexpected. That date cannot be pre-empted by the planning system. It is against this background that I judge that the proposal is acceptable, despite in other circumstances it could otherwise be tantamount to linear roadside development in the wider countryside outwith Broadford.

### **Material considerations**

#### *Draft Supplementary Guidance*

20. In support of its decision to refuse planning permission in principle the council submits that its draft 'Housing in the Countryside Supplementary Guidance' that is dated September 2020, once adopted, would replace and update that currently forming part of the development plan. The draft recognises that siting and design matters, including linear development along rural roads near settlements, could give rise to unacceptable design. Specifically unplanned development along a roadside, unrelated to land use or to a traditional township pattern is not supported in the emerging guidance. I have set out above how, in my determination of the appeal, I have attached considerable weight to WestPlan housing allocation BF03. The long term development of that allocation would offset any challenges of linear road side development as described in the emerging draft policy. As it is in draft form in my determination I can attach only limited weight to the September 2020 guidance.

#### *Representations*

21. Some eight objections were received by the council opposing the proposal and parties have augmented their positions following the appeal. I have described above my judgment on matters raised by representees including drainage and flooding, the effects on the natural heritage, road safety and access. The conditions that I set out below prohibit the commencement of development until several detailed matters have been approved by the council. The enforcement of planning conditions is the responsibility of the council, and it is for the person with a legal interest in the land to ensure compliance.

22. Matters raised that bring into question the council's handling of the planning application, and the alleged "misleading" factual content of the appellant's evidence and council planning officer's report to committee, do not lend weight to my determination of the application. Any disagreement with internal council arrangements are for the council to assess. Similarly, comments expressed by third parties that relate to views over the site, land ownership and the appellant's intentions for the site's development do not apply to my consideration of the planning merits of the proposal.

## Overall conclusion

23. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant 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

## Schedule of approved plans

Location Plan 01 REV P2 14.12.2020

Site Layout Plan 10 REV P1 10.12.2020

General Plan 95 REV P0 22.02.2021

## Schedule of conditions

1. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.

*Reason:* to ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.)

2. No development shall commence until all of the matters specified below have been approved on application to the planning authority:

- i. a detailed layout of the site of the proposed development (including site levels as existing and proposed);
- ii. the design and external appearance of the proposed development;
- iii. landscaping proposals for the site of the proposed development (including boundary treatments);
- iv. details of access and parking arrangements; and
- v. details of the proposed water supply and drainage arrangements;

*Reason:* Planning permission is granted in principle only and these specified matters must be approved prior to development commencing.

3. Any details pursuant to Condition 2 above shall show a development featuring the following elements:

- i. a detailed layout of the site of the proposed development (including site levels as existing and proposed);
- ii. walls finished predominantly in a white/off-white wet-dash render/smooth coursed cement render/natural stone;
- iii. a roof covering of natural slate;
- iv. single storey or 1½ storeys in height;
- v. windows with a strong vertical emphasis.
- vi. a roof symmetrically pitched of not less than 35° and not greater than 45°; and
- vii. predominantly rectangular in shape with traditional gable ends.

*Reason:* Planning permission is granted in principle only and these specified matters must be approved prior to development commencing.

4. No other development shall commence until the site access has been constructed in accordance with The Highland Council's 'Access to Single Houses and Small Housing Developments' guidelines and the Access Schedule of 22 March 2021 with:
- i. the junction formed to comply with drawing ref. SDB1; and
  - ii. visibility splays of 2.4m x 90m (the X dimension and Y dimension respectively) in each direction formed from the centre line of the junction. Within the stated visibility splays, at no time shall anything obscure visibility between a driver's eye height of 1.05m positioned at the X dimension and an object height of 0.60m anywhere along the Y dimension.

*Reason:* To ensure that an adequate level of access is timeously provided for the development; in the interests of road safety and amenity.

5. Any details pursuant to condition 2 above shall show car parking spaces provided within the curtilage of the dwellinghouse and formed in accordance with The Highland Council's 'Access to Single Houses and Small Developments' prior to first occupation, and thereafter being maintained for this use in perpetuity. Provision, which shall exclude garages, shall be as follows:
- i. Two spaces per 1 to 3 bedrooms;
  - ii. Three spaces per 4 to 5 bedrooms; and
  - iii. Four spaces per 6 or more bedrooms.

*Reason:* In order to ensure that the level of off-street parking is adequate.

6. No development shall commence until a full specification of the footpath as shown on drawing 2020 DR 02 95 P0 has been submitted to and approved in writing by the planning authority, in consultation with the roads authority. Thereafter, and prior to the first occupation of the development hereby approved, the footpath shall be constructed in accordance with the agreed details across the full frontage of the site and as far to the north as necessary to create a physical continuation of the existing footpath. The footpath shall be retained for public use in perpetuity.

*Reason:* To enable pedestrians to keep out with the public road and the path of oncoming traffic; in the interests of road safety.

7. No development shall commence until details of a scheme of hard and soft landscaping works have been submitted to, and approved in writing by, the planning authority. Details of the scheme shall include:



- i. All earthworks and existing and finished ground levels in relation to an identified fixed datum point;
- ii. A plan showing existing landscaping features and vegetation to be retained;
- iii. The location and design, including materials, of any existing or proposed walls, fences and gates;
- iv. All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities; and
- v. A programme for preparation, completion and subsequent on-going maintenance and protection of all landscaping works.

Landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the commencement of development, unless otherwise stated in the approved scheme. Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

*Reason:* In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site.

8. The hedgerow running along the eastern boundary to the site shall not be altered, trimmed or removed during the months of March to August inclusive.

*Reason:* In order to protect the nesting habitat of birds

9. Prior to first occupation of the house hereby approved, the street lighting as shown on approved plan 2020 DR 02 95 P0 shall be erected and made operational.

*Reason:* In the interests of road safety

10. No development shall commence until a Traffic Order has been made which will extend the 30mph speed limit from its current position to the new location shown on approved plan 2020 DR 02 95 P0. The signage for the new limit shall be provided at the expense of the developer.

*Reason:* The development would not be acceptable without the extension of the 30mph speed limit as there would be a danger to road traffic as a result of the intensification of use due to the development.

11. No development or work (including site clearance) shall commence until proposals for an archaeological watching brief to be carried out during site clearance and excavation works, has been submitted to, and approved in writing by, the planning authority. Thereafter, the watching brief shall be implemented as approved.

*Reason:* In order to protect the archaeological and historic interest of the site.

**Advisory notes**

1 **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

2. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)

*Reason:* To accord with section 27B(2) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006.