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Ms K Lyons
Highland Council
Sent By E-mail

Our ref: PPA-270-2261
Planning Authority ref: 21/02473/FUL

21 April 2022

Dear Ms Lyons

PLANNING PERMISSION APPEAL: HAMARA COOLIN DRIVE PORTREE IV51 9DN

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

DPEA is continuing to look at how we can improve the services we deliver and welcomes contributions from all those involved. In this regard I would be grateful if you could take five minutes to complete [our customer survey](#).

We collect information if you take part in the planning process, use DPEA websites, send correspondence to DPEA or attend a webcast. To find out more about what information is collected, how the information is used and managed please read the DPEA's privacy notice <https://beta.gov.scot/publications/planning-and-environmental-appeals-division-privacy-notice/>

I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Morag Smith

MORAG SMITH
Case Officer
Planning And Environmental Appeals Division





Appeal Decision Notice

Decision by Michael McGlynn, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2261
- Site address: Hamara, Coolin Drive, Portree, INV51 9DN
- Appeal by Mr Metawie against the decision by The Highland Council
- Application for planning permission 21/02473/FUL dated 20 May 2021 refused by notice dated 25 October 2022
- The development proposed: erection of one (previously two) holiday letting units
- Date of site visit by Reporter: 16 February 2022

Date of appeal decision: 21 April 2022

Decision

I allow the appeal and grant planning permission subject to six conditions listed at the end of the decision notice. Attention is drawn to the three advisory notes at the end of the notice.

Preliminary matter

My decision on a claim for an award of expenses has been issued separately.

Reasoning

Development plan

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 key issues are; principle of development, siting, design and visual impact, residential amenity and privacy and access, parking and site servicing.
2. The development plan comprises the Highland Wide Local Development Plan 2012 (HwLDP) and the West Highland and Islands Local Development Plan 2019 (WestPlan) together with adopted supplementary guidance. The relevant policies in this case are in the HwLDP: 28 Sustainable Design; 29 Design Quality and Place-Making; 31 Developer Contributions; 34 Settlement Development Areas; 44 Tourist Accommodation; 51 Trees and Development; and, 65 Waste Water Treatment.
3. The council has also submitted non-statutory guidance: House extensions and other residential alterations (2015); Roads and Transportation Guidelines for New Developments (2013); and, Access to Single Houses and Small Housing Developments (2011). As these provide guidance on matters relating to design, scale and siting of development, and parking and access. I have taken these into account in the application of development plan policy.

Principle of the development

4. Policy 34 says that proposals will be supported in Settlement Development Areas if they meet requirements of Policy 28. Policy 44 says proposals for tourist accommodation in settlement boundaries will be supported subject to no adverse impacts upon neighbouring uses, compliance with Policy 28 and no impact on housing land supply. I find that the two most relevant criterion of Policy 28 are impact on individual and community residential amenity, and sensitive siting and high quality design.

5. The appeal site is within the Portree Settlement Development Area (of WestPlan). It is not allocated for housing and as a result would not affect housing land supply. Therefore, subject to assessment against Policy 28 the principle of the proposal is acceptable.

Siting, design and visual impact

6. Policy 29 states that development should make a positive design contribution to the place in which it is located. Applicants are to demonstrate sensitivity and respect towards the local distinctiveness. Policy 51 supports protecting existing hedges, trees and woodlands on and around development sites.

7. The appeal site is located in a residential area of mixed housing types. I observed that within rear garden grounds there are a number of outbuildings and sheds related to houses. The proposed development would be located close to the rear of the existing house within garden ground. The northern elevation would extend beyond the side elevation of the existing house and is set off the northern boundary. The building would be visually contained by the existing hedge on the northern boundary.

8. I find the siting of the building would be related to the existing house, well contained within garden ground, and set off site boundaries to the extent it does not significantly impact on properties which bound onto the site or those located on Martin Crescent. The siting also reflects the existing street and building layout with buildings parallel to the street.

9. A 1.5 metre fence between north and south boundaries is proposed. This would divide garden ground between the existing house and the proposal. The usable garden ground associated with the existing house would, in the main, be located to the north of the existing house with smaller areas to the west and east. I find the size and relationship of the remaining garden ground to be acceptable and comparable to other houses nearby.

10. Due to the size and massing of the building it would sit lower than the existing house and would appear secondary to it. White rendered walls would reflect the existing house while timber and dark finishes for the roof and windows would complement the modern design. However, no details of materials have been provided. I find the design and external appearance of the building, while modern, would not detract from the existing house nor surrounding area, subject to a condition to allow external finishes to be approved.

11. Public views of the proposal would be possible from the north and west, and to a lesser extent from the east. Views from the north would be restricted due to the existing hedge. Nonetheless, there would be views of the upper walls/roof and this would increase as you move east along Martin Crescent. To the west there is a gap in the hedge allowing views into the site and of the proposal. It would be viewed against the backdrop of the existing house and to a lesser extent other houses on Coolin Drive. Therefore, it would not

appear isolated. From the east, the building would largely be obscured by the existing house.

12. I find that the visual impact from public viewpoints would be limited and when visible, due to the positioning and scale of the proposal, would not have an imposing visual impact and therefore not be detrimental to the appearance of the area. There are more direct views of the building from properties located on Coolin Drive to the south. These properties have substantial rear gardens which when considering the distances involved result in minimal visual impact. Any views of the building would also be mitigated by the existing hedge on the south western boundary. It would be appropriate to impose a planning condition to retain the hedges.

13. Taking these matters into account, I find that the proposal is in compliance with policies 28, 29 and 51; subject to planning conditions.

Residential privacy and amenity

14. Policies 28 and 34 are relevant in assessing impact on privacy and amenity, and how the proposal conforms with existing and approved land uses.

15. The Council's Planning Guidance: House Extensions and Other Residential Alterations states that, generally, the minimum acceptable distance between windows of habitable rooms facing each other is 18 metres. The proposed building would be located 19.7 metres from properties to the northwest and 28 metres from properties to the south. To the east there is no window to window relationship with any property. Overall, I find that the window to window distance complies with council's guidance.

16. In relation to the existing property, there would be a doorway and a decked area to the east which could impact on the privacy of the existing property in terms of relationship with windows on the west elevation and the garden ground to the east. From drawing 21003-P06B a 1.5 metre fence is to be erected between the northern and south western boundaries. I am satisfied this would act as a visual barrier and mitigate any impact.

17. Potential for overshadowing is a residential amenity consideration and has been raised in representations. Taking into account the path of the sun and positioning of the building there would be no overshadowing to the properties to the south or west. I estimate that given the positioning and height of the building that shadowing to the north would not be greater than that resulting from the existing hedge. Any impact would be minimal on the properties to the north given their distance and position.

18. I must also consider impact on the existing property in terms of overshadowing. There would be a limited impact on the rear windows of the existing building and minimal impact on the garden ground to the north and west of the existing building. Given the scale of the building together with its location, I conclude that this would not be to a significant extent.

19. The introduction of accommodation for holiday lets to the area would bring with it an increase in activity in terms of comings and goings by people using the building. The extent to which this would have an impact on the amenity of the area has to be considered in terms of the scale and location of the proposal.

20. The size of the building would limit its use to up to two people. Access is taken within the appeal site by a path from the proposed off street parking. It is reasonable to conclude that most of the activity would be within the building thereby limiting impact. Having said

that, the small decking area and garden ground would be used when weather allows. I find this would not be significantly different should the garden be used by the occupants of the existing building in the absence of the proposal. On this basis, I conclude that the proposal would not have an adverse impact on residential amenity due to noise or disturbance.

21. Issues have been raised by representations in respect of the behaviour of occupants of the existing holiday let that may cause disturbance. I have been presented with no evidence to support this. Having said that, should noise and disturbance issues arise there are mechanisms in place through Environmental Health legislation to deal with it.

22. Given the relationship between the existing house and the proposal, I find that it would not be suitable as a standalone permanent residence. The reasoning for this is that the proposal does not have a street frontage and that it would share access and servicing arrangements; all in close proximity to one another. This would not establish an acceptable level of amenity for long term residents of either property. Taking this together with my findings based on the scale of the proposal as a holiday let, it is appropriate to control its future use through a planning condition.

23. Based on the above, I conclude the proposal would have acceptable privacy and amenity impacts and comply with policies 28 and 34 in that respect; subject to conditions.

Access, parking and site servicing

24. Policies 28, 31 and 65 are relevant to impacts on access, parking, and site servicing. I also sought clarification from the council and the appellant on these matters.

25. The appellant advises that the existing property is used for self-catering purposes with three bedrooms, accommodating up to nine guests including children. The appellant plans to reduce this to seven guests if the proposal is consented. Parking is located within the existing driveway and all guests receive instructions on where to park.

26. The council advise that based on their Roads and Transportation Guidelines that the parking requirement is for a total of four spaces to accommodate the proposed development (one space) and the existing self-catering use (three spaces), and any allowance for staff serving them. The size and location of the spaces should comply with guidelines. Access arrangements to the site should also comply with guidance in the Access to Single Houses and Small Housing developments. The council have said that all these requirements can be achieved on the appeal site, subject to planning conditions.

27. The site is accessed by Coolin Drive and Martin Crescent. From my site inspections (morning, afternoon and early evening), there is evidence of on street parking; increasing later in the day. This is due to local car ownership and limited off street parking. On-street parking can result in difficulty manoeuvring through the streets given there is two way traffic.

28. It is reasonable to conclude that people using the proposed accommodation would use a car. One additional vehicle onto the local road network, notwithstanding on-street parking issues, would not significantly affect the functioning of the local road network. The council has not raised any issues on traffic and road impacts and this supports that view.

29. An issue raised by representations is access to the Fire Station; located to the east of the appeal site on Martin Crescent. From my site inspection and noting the level of on street parking, together with on-site parking provisions, I find that this would not prevent the

Fire and Rescue Service accessing the station. In addition, I have not been made aware of any representations made by the Fire and Rescue Service or the council in that respect.

30. Access to the appeal site would be by an existing vehicular access from Coolin Drive. The council's report of handling indicates that to comply with access requirements in Access to Single Houses and Small Housing Developments there is a need to make alterations to the access to achieve visibility splays and access width. No details have been submitted for such alterations. From my site inspection, and considering the guidance (section 5.3), I am satisfied the requirements can be implemented within the control of the appellant. This concurs with the council's view.

31. The appellant's drawing 21003-P06B shows four off-street parking spaces to be provided within the site. This does not include an allowance for staff servicing the properties. However, given the scale and nature of the proposal, along with the existing self-catering property, I would not envisage more than a single member of staff being required when there is a turnover in guests. Also, this would likely occur when guests are not likely to be present. On this basis, the absence of a dedicated parking space for staff is not a significant issue. Therefore, the proposal broadly complies with the council's standards. I would also agree with the council that access, parking details and the implementation of works should be controlled through planning conditions.

32. Policy 31 considers new or improved public services, facilities or infrastructure through developer contributions. I have noted in the council's report of handling that there is a deficiency in the capacity at the local primary school and a contribution would normally be sought for a residential unit. However, Developer Contributions Supplementary Guidance states that tourist accommodation, not likely to be suitable for permanent residential accommodation, will be exempt from contributions subject to an occupancy restriction being in place. As noted above, I find the use of an occupancy condition is appropriate. On this basis, I find no requirement for a developers' contribution in this instance.

33. The appellant says the existing house is served by public foul drainage and would be connected to the public system. Representations have questioned this position and if services are adequate to accommodate development. I have not been provided with information to dispute the appellant's position. Having said that, I do not have details from the appellant to confirm this position either. Therefore, it is appropriate to attach a planning condition to address this matter.

34. I find that the proposal, subject to the imposition of planning conditions, would be acceptable in terms of access, parking and site servicing and complies with policies 28, 31 and 65 in that respect.

Material considerations

35. Scottish Planning Policy aims for development and changes in land use to occur in suitable and sustainable locations. It says the planning system is to provide protection from inappropriate development and recognises that tourism is a key sector with the opportunity for growth. Given my assessment in the preceding paragraphs, I conclude that the proposal broadly accords with the aims of Scottish Planning Policy.

36. The proposal has attracted a level of public interest. I have considered most of the issues raised in my assessment above, with the exception of a moratorium on holiday lettings in the area. Portree and Braes Community Council raised the issue but I have not

been made aware that this matter is being considered by the council. Therefore, I have assessed this proposal on its own merits.

37. Evidence has been submitted by the appellant on the location of other holiday accommodation in the area. The nature and use of these has been questioned by the council. However, I have assessed the proposal based on its individual merits.

38. Overall, I conclude that the relevant material considerations, including issues raised in the representations, do not suggest dismissing the appeal.

Conclusions

39. I therefore conclude, for the reasons set out above, that the proposal accords overall with the relevant provisions of the development plan and that there are no material considerations which would 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.

40. The council have proposed a number of draft conditions if the appeal was successful. I broadly agree with the imposition of the conditions, subject to my findings above. In addition, I have made some minor amendments to ensure the conditions are precise.

Michael McGlynn

Reporter

Conditions

1. The development hereby approved shall be used for holiday letting purposes only, let to up to two people, and shall not be used as a principal private residence or be occupied by any family, group or individual for more than three months (cumulative) in any one calendar year. The owners/operators of the holiday accommodation shall maintain an up-to-date record of the holiday lets for the development hereby approved, detailing both the length of each holiday letting period and the occupant's names during that period and this record shall be made available for inspection on request by the planning authority.

Reason: To ensure the accommodation is not used as permanent accommodation.

2. Prior to the development hereby approved being brought into use, the car parking arrangements detailed on plan ref. 21003 – PO6B Rev B shall be completed in full and made available for use by the properties. Thereafter, all car parking spaces shall be maintained in perpetuity.

Reason: In the interests of road safety and to comply with council's guidance.

3. The existing hedging, on the northern and south western boundaries, as denoted on the site layout plan ref. 21003 – PO6B Rev B shall be retained and at a minimum height of 1.8 metres. In the event that the hedging fails it will be replaced with a comparable landscaping boundary subject to the prior approval of the planning authority.

Reason: In the interests of visual and neighbour amenity.

4. No development shall commence until full details of the external materials for the building and the surfacing for the car parking area and access have been submitted to and

approved in writing by the planning authority. Thereafter, the development shall be implemented in accordance with the approved details.

Reason: In the interests of visual amenity.

5. No development shall commence until the full details of improvements to the vehicular access onto Coolin Drive have been submitted to and approved in writing by the planning authority. This shall include the following:

- i) visibility splays in accordance with 'sketch 5.3.1' as shown in The Highland Council's 'Access to Single Houses and Small Housing Developments' guidelines. Within the visibility splays, no walls, fence or hedge/vegetation shall be higher than 0.85 metres
- ii) a cohesive finishing material shall extend for a distance of at least 6 metres back from the nearside edge of the public road.

The access improvement work shall be carried out and completed prior to the commencement of work on the building, unless otherwise first agreed in writing by the planning authority.

Reason: In the interests of road safety and to comply with council's guidance.

6. No development shall commence until the full details of the proposed means of disposal of surface and waste water from the development have been submitted to and approved in writing by the planning authority.

Reason: To ensure the provision of an acceptable drainage system in the interests of the amenity of the area.

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
2. **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)).
3. **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)).

Schedule of Drawings

Drawing Reference	Drawing Title
21003-P01	Location Plan
21003-P02	Existing site plan
21003-P03A	Floor Plan

21003-P04B	Proposed elevation
21003-P05B	3D Images
21003-P06B	Proposed site plan