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Our ref: NA-270-002
Planning Authority ref:21/01853/FUL

22 July 2022

Dear Andrew Tait

DECISION NOTICE

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997. THE TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS) (SCOTLAND) DIRECTION 2009. PROPOSED DWELLINGHOUSE TO REPLACE EXISTING ANNEXE AT CAMERONS AND KYLEAKIN POST OFFICE, KYLEAKIN, ISLE OF SKYE IV41 8PL ('the proposed development')

1. This letter contains Scottish Ministers' decision on the above planning application submitted to Highland Council by Rural House Ltd on behalf of Mrs Caroline Clouston.
2. The application was called in for Scottish Ministers' determination on 11 November 2021. The application was considered by means of written submission and an unaccompanied site inspection which took place on 11 May 2022, by Amanda Chisholm, a reporter appointed for that purpose. A copy of the reporter's report ('the report') is enclosed.

Consideration by the Reporter

3. The reporter's overall conclusions and recommendations are set out in Chapter 4 of the report. The reporter recommended that planning permission be refused.

Scottish Minister's Decision

4. Scottish Ministers have carefully considered all the evidence presented in the reporter's report. They agree with the reporter's overall conclusions and recommendation that planning permission should be refused, and adopt the reporter's reasoning for the purpose of their own decision, which is summarised below.

5. Scottish Ministers agree with the reporter that the proposed development is predicted to be at a medium to high risk of coastal flooding (0.5% annual probability or a 1 in 200 year flood event), has no existing or planned flood protection and is at significant risk of flooding. Scottish Ministers agree with the reporter's findings that the proposed dwelling, including its

front and side garden would be surrounded by water in the event of a 1 in 200 year flood event. Access roads would likely also be surrounded by water in a flood event, safe access and egress cannot be assured.

6. The reporter has taken account of the Equalities Act 2010 as the applicant is applying for planning permission to seek a more practical home for herself in her older age and to also accommodate a family member with special mobility needs. The reporter understands that a new dwelling on the site could help meet these particular needs. However, the reporter considers that this is not a compelling enough reason to set aside established national planning policy in respect of avoiding flood risk for highly vulnerable development. Ministers agree with the reporter that the health and safety of any occupiers of a house who have special mobility needs could be put at risk during a 1 in 200 year flood event, especially in relation to being able to safely evacuate the property. Ministers agree with the reporter's conclusions that this matter does not carry sufficient weight to justify a recommendation to grant planning permission in this instance.

7. Scottish Ministers agree with the reporter's view that granting planning permission would be contrary to the precautionary approach set out in Scottish Planning Policy, and to the advice that areas at medium to high risk of flooding are generally not suitable for dwellings unless protected by formal flood protection measures.

8. Scottish Ministers agree with the reporter's conclusion that while the proposed development accords with many local development plan policies, it is not considered that this is sufficient to outweigh the risk that the proposed development could flood in the future and the adverse consequences for human health and safety for the property that this would bring.

9. Scottish Ministers agree with the reporter that the proposed development is not in overall accordance with the provision of the development plan and there are no material considerations that would indicate planning permission should be granted.

10. Accordingly, for the reasons set out in the reporter's report and as summarised above, Scottish Ministers refuse planning permission for the proposed dwelling house to replace an annexe at Camerons and Kyleakin Post Office, Isle of Skye IV41 8PL.

11. The decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If an appeal is made, the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

12. A copy of this letter and the report has been sent to Highland Council and SEPA.

Yours sincerely

Paul Lawson

Paul Lawson
Planning Decisions, Scottish Government



Report to the Scottish Ministers

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Report by Amanda Chisholm, a reporter appointed by the Scottish Ministers

- Case reference: NA-270-002
- Site Address: Camerons and Kyleakin Post Office, Kyleakin, Isle of Skye, IV41 8PL
- Application by Mrs Caroline Clouston
- Application for planning permission, reference 21/01853/FUL dated 14 February 2021, called-in by notice dated 11 October 2021
- The development proposed: Proposed dwelling house to replace existing annexe
- Date of site visit: 23 February 2022

Date of this report and recommendation: 11 May 2022

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Abbreviations

AOD	Above Ordnance Datum
HwLDP	Highland-wide Local Development Plan
NPF	National Planning Framework
SEPA	Scottish Environment Protection Agency
SPP	Scottish Planning Policy
WestPlan	West Highland and Islands Local Development Plan



Summary of Report into Called-In Planning Application

The erection of a proposed dwelling house to replace an existing annexe at Camerons and Kyleakin Post Office, Kyleakin, Isle of Skye, IV41 8PL

• Case reference	NA-270-002
• Case type	Called-in application for planning permission
• Reporter	Amanda Chisholm
• Applicant	Mrs Caroline Clouston
• Planning authority	The Highland Council
• Other parties	Scottish Environment Protection Agency Scottish Water
• Date of application	14 February 2021
• Date case received by DPEA	11 October 2021
• Method of consideration and date	Written submissions and unaccompanied site inspection on 23 February 2022
• Date of report	11 May 2022
• Reporter's recommendation	Refuse planning permission

Background

The application site is located at the east end of the village of Kyleakin on the Isle of Skye, on a peninsula of land surrounded by water on three sides: the tidal inlet An t-Òb and its harbour to the south, and Loch Alsh to the east and north. The site is located to the east of and within the garden grounds of the applicant's dwelling house "Seabank", and is currently occupied by three garden sheds and a small corrugated metal single-storey building, formerly a post office and shop.

The proposal is to demolish the sheds and existing building and replace them with a one-and-a-half storey dwelling, with sleeping accommodation on both the ground and first floors. Traditional materials would be used in a modern design. A garden would be provided, along with parking for three vehicles. The dwelling would be connected to public sewer and water supply. The design of the dwelling has been amended to include flood protection measures.

The Scottish Environment Protection Agency (SEPA) objected in principle to the application, as the site lies in an area considered to be at medium to high risk of coastal flooding and would likely put additional people and property at risk during a 1 in 200 year flood event. Scottish Water did not object but noted that surface water connections into the combined sewer system will not be accepted.

The Highland Council's planning officials recommended refusal of the application on flooding grounds. The application was referred to the North Planning Applications Committee, which was minded to grant planning permission based on the view that there is no history of flooding at this site and no certainty that the site will flood in the future. In coming to this decision, the committee gave consideration to the proposed design and materials; the site's location within the settlement boundary; and the replacement of the existing building with a modern dwelling that would enhance the streetscape.

SEPA's case

The SEPA flood risk map shows that the proposed site is at risk of being flooded by a 1 in 200 year flood event (an annual probability of 0.5%); it is therefore considered to be at medium to high risk of flooding. The 1 in 200 year flood levels are predicted as 4.07 metres Above Ordnance Datum (AOD) and future levels, taking into account climate change, are predicted to be 4.97 metres AOD.

The proposal to replace the existing building (a "least vulnerable" use) with a residential dwelling is considered to increase its vulnerability to flooding to "highly vulnerable". It would be likely to introduce additional people and property to an area at risk of flooding. No formal flood protection measures exist or are planned in this location.

While the finished floor level of the dwelling is proposed as 4.07 metres AOD, the existing ground level (3.5 metres AOD) is such that the property would be surrounded by water in the event of a flood. As the area of elevated ground to the rear of the proposed property would form an island in times of flood, it is not considered by SEPA to provide safe ground. There would be no safe flood-free route for emergency access and egress.

Raising the finished floor level of the dwelling or employing flood-resilient construction methods would not remove it from the functional flood plain. Unless the proposed flood defence wall was a formal measure, then it would not influence SEPA's advice on flood risk at this site.

The applicant's case

The issue of coastal flooding was not raised in the council's response to the applicant's pre-application inquiry, nor was a flood risk assessment requested. There is no history of flooding in this area and a 1 in 200 year flood is likely to be a rare occurrence and, should it occur, short-lived in duration. Suitable flood mitigation measures have been proposed. The existing building is ancillary to and within the curtilage of the residential property "Seabank". It is therefore considered to be residential in nature and the proposal would not constitute a change of use. The site is also brownfield. Taking these things together, the proposed dwelling would be of equal vulnerability to flooding as the existing use. In times of flood, egress to higher ground at the rear of the site would be feasible. It is not reasonable to expect all properties in low-lying areas to benefit from entirely flood-free egress. The predictability of such an event would allow the applicant and wider community to prepare and prevent personal injury. SEPA's view that climate change levels should be a consideration is a recommendation rather than a requirement, and is likely to result in the blighting of low-lying coastal communities. There should be a balance between the avoidance and mitigation approaches.

Reporter's conclusions

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires this application for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.

From the information provided by SEPA it is clear that the application site is located in an area that is predicted to have a medium to high risk of coastal flooding (0.5% annual probability or a 1 in 200 year return period). Flood levels will increase as a result of climate change; even without climate change levels there could still be flooding on and around the site. The fact that such a flood has not been experienced by the current residents does not mean that it could not occur in the future, when areas that have never flooded will be at higher risk due to climate change.

While the existing building may be ancillary to the use of Seabank, the proposed dwelling would not. The application is for a new and separate dwelling that would include sleeping accommodation on both floors. The proposal would not be a like-for-like replacement and its residential nature renders it a highly vulnerable use.

The benefit accruing to the re-use of brownfield land does not outweigh the increased vulnerability of the proposed dwelling in comparison to that of the existing building.

The proposed dwelling would be surrounded by water in the event of a 1 in 200 year flood. Although it might be possible to access higher ground in the event of a flood, it would be difficult (not to say dangerous) to make the journey. Egress could be further complicated by age or disability of residents. This area would not constitute a place of safe refuge, given that it has no shelter or facilities. As access roads and this area would likely be surrounded by water, it could be difficult for the emergency services to evacuate those residents needing assistance.

SEPA operates a flood warning system. Although early warning could facilitate a safe evacuation of the building prior to the flood occurring, this does not take account of how quickly the flood could occur, the rate at which the water could rise or how fast it could be flowing.

The measures proposed by the applicant are designed to ameliorate against the effects on the proposed dwelling of a flood once it has occurred, rather than to prevent the flood affecting the dwelling in the first instance. While some of these measures may assist in protecting the dwelling itself, perhaps by preventing water ingress, there is no evidence as to how effective they may be in doing so. In addition, the effectiveness of the proposed defence wall has not been demonstrated: it would only operate against flooding from the south and could exacerbate flooding from the north through a build-up of depth or by channelling water towards other property.

Other Material Considerations

While a new dwelling on the site could help to meet the particular needs of the appellant and her family, this is not a compelling enough reason to set aside established national planning policy in respect of avoiding flood risk for sensitive development. The health and safety of any occupiers of a house on the site who have special mobility needs could be put at risk as a result of a 1 in 200 year flood event, especially in relation to being able to safely evacuate the property. This matter does not carry sufficient weight to justify a recommendation to grant planning permission.

Overall conclusions

The principle of the development is supported, subject to conformance with other policies. In terms of non-flooding matters, the proposal would comply with Policy 31 (Developer

Contributions), Policy 42 (Previously Used Land), Policy 65 (Waste Water Treatment) and Policy 66 (Surface Water Drainage).

In regard to flood risk, the proposed dwelling does not accord with the requirements of Policy 64 (Flood Risk), as it cannot be demonstrated that the dwelling house would avoid areas susceptible to flooding. For the same reason, it does not comply with Policy 30 (Physical Constraints) as it does not ensure that the proposed development does not adversely affect human health and safety.

The proposed dwelling complies with the requirements of Policy 28 (Sustainable Design) in terms of its use of a brownfield site, its impact on residential amenity, and its siting and design. However, it does not comply with the policy's requirement, further elaborated in the supplementary guidance, that all development should be located outwith any functional floodplain. Given the risk of flooding, it would not fully comply with the requirement of being a safe place set out in Policy 29 (Design Quality and Place-Making).

While it is the case that the proposed dwelling conforms with many local development plan policies, this is insufficient to outweigh the risk that the dwelling house could flood in the future, with the adverse consequences for human health and safety and for property that this would bring. The proposed development is not in overall accordance with the provisions of the development plan.

Granting planning permission would be contrary to the precautionary approach set out in Scottish Planning Policy, and to the advice that areas at medium to high risk of flooding are generally not suitable for dwellings unless protected by formal flood protection measures.

Recommendation

It is recommended that planning permission be refused.