

Agenda Item	6.7
Report No	PLN/089/23

HIGHLAND COUNCIL

Committee: North Planning Applications Committee
Date: 6 December 2023
Report Title: 23/04610/FUL : Mr Ruraidh Cameron Stewart
Land 55M NE Of Willowbank The Square Balmacara
Report By: Area Planning Manager North

Purpose/Executive Summary

Description: Change of use of croft land to a caravan site with 7 stances for holiday use, associated roads, parking, drainage and water connections.
Ward: 05 - Wester Ross, Strathpeffer and Lochalsh
Development category: Local Development
Reason referred to Committee: Applicant is an elected Member.

All relevant matters have been taken into account when appraising this application. It is considered that insufficient information has been submitted with the application. The proposal does not accord with the principles and policies contained within the Development Plan and is unacceptable in terms of the applicable material considerations.

Recommendation

Members are asked to agree the recommendation to **REFUSE** the application as set out in section 11 of the report.

1. PROPOSED DEVELOPMENT

- 1.1 Planning permission is sought for a change of use of land to a caravan site containing 7 pitches. The description of development also refers to the associated roads, parking drainage and water connections. The applicant has confirmed that the pitches will be used for holiday use. No details of the style of caravan that would occupy the pitches has been provided. Information relating to the associated works is limited to a statement that there are existing roads on the site constructed from permeable materials and that stances will be set on a concrete base. Parking will be provided between stand to comply with the Caravan Site and Control of Development Act 1960. The site layout plan includes the route of a drainage and water connection to the public systems but no other details of the operations development involved.
- 1.2 The site is served by an existing rough track that is a continuation of the private driveway that serves the applicants house, Willowbank. An overhead powerline crosses the site east to west. Beyond the eastern boundary of the application site is a watercourse which runs from north to south.
- 1.3 Pre Application Consultation: No informal or formal pre application submission has been made prior to the current application being lodged. Two previous applications were submitted by the applicant but were not validated. The applicant appealed the non-validation of these applications. The DPEA concluded that they had no remit with regards to these earlier applications.
- 1.4 The following post submission additional information has been provided by the applicant:

“The application is for a change of use of a small area of croft land to a caravan site. The location is situated on the outskirts of Balmacara Square, which is a designated growing settlement in the West Plan. The proposal aligns with identified Placemaking Priorities, provision of tourist facilities, and croft-based development. The sloping site is separated from Hamilton Road by a steep embankment and a burn. This site boundary has mature native broadleaves providing natural screening. The boundaries with Willowbank and the area of common grazing have 125 metres of mature native hedge planted over 20 years ago, at a density of 6 plants per metre. To ensure that the site does not compromise neighbouring privacy or amenity, the proposed site is relatively small-scale with only 7 stances. The proposal involves using a section of the croft land for tourism, which is an acceptable form of croft diversification according to the Crofting Commission. This means we are repurposing land that is not suitable for grazing livestock. This approach will not only make the most of the underutilised area but also have a positive impact on the long-term sustainability and success of the agricultural holding. The rest of the croft land will remain accessible. This aligns with the crofting considerations outlined in HwLDP Policy 47. Independent research has shown that there is a consistent demand for self-catering tourist accommodation in the Skye and Lochalsh area, which is growing, especially with the Isle of Skye gaining international tourist recognition. The evident demand for tourist accommodation is expected to extend visitors' stays in the area. This proposal will contribute not only to the local economy but also benefit other nearby businesses. It is estimated that the site will provide two permanent (non-

seasonal) job opportunities. Therefore, this application accords with the principals of Policy 30 of NPF 4 and with HwLDP Policies 43 and 44 which follow the same general direction as NPF 4 Policy 30. The site is accessible via a public road classified as B, which connects the A87 to the Balmacara Square Settlement. The visibility in both directions while entering the public road from the site is good and aligns well with the expected traffic speeds of 30 mph. The existing access point is known to local road users. One of the advantages of the site's location is that visitors who arrive by car can avoid passing through Balmacara Square to reach the site or the A87 road. Nonetheless, those who are interested in the amenities of Balmacara Square, such as the visitor centre, shop, and café, can easily access them by walking or cycling as they are within 0.5 km from the site access point. Furthermore, the site offers excellent connectivity to public transportation. A nearby bus stop provides connections to Glasgow and Inverness. Visitors who prefer not to use private cars can also use the train station in Kyle of Lochalsh. It is worth noting that, according to the DPEA "Change of use applications do not involve operational development. It is also our understanding that, generally, the establishment of caravan sites does not require permission to be obtained for operational development." and "the siting of a caravan is generally not regarded as operational development, permission for use of the appeal site for the siting of caravans would not specify any particular type of caravan, and any caravan located at the site might be replaced with another without the need for planning permission" Therefore we refer you to section 29(1) of the Caravan Sites and Control of Development Act 1960, ("the 1960 Act") if you require further clarification, this states a caravan is defined as; any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted but does not include: a) any railway rolling stock which is for the time being on rails forming part of a railway system or b) any tent. The definition in the 1960 Act was amended by section 13(1) of the Caravan Sites Act 1968 ("The 1968 Act"). Section 13(1) provides that: A structure designed or adapted for human habitation which- (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway road when assembled. For the purposes of the 1960 Act, as amended, the expression "caravan" shall not include a structure designed or adapted for human habitation that falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely— length (exclusive of drawbar): 65.616 feet (20.00 metres); width 22.309 feet 6.80 metres); height 10.006 feet (3.05 metres). Additionally, you may wish to explore the websites of some well known caravan manufacturers Swift Group, Bailey of Bristol, Victory Leisure Homes, ABI, Willerby or Delta. Browsing these sites will offer you a visual representation of various caravan models, designs, and features, helping you better grasp the concept of a caravan and its diverse forms in the market. I would like to bring to your attention several examples of planning applications that were approved without specifying any particular caravan. These include applications 19/03392/FUL, 21/05786/FUL, 20/03483/FUL, and 18/02893/FUL. This is not an exhaustive list and indicates a precedent for caravan site-related planning approvals.

We hope for consistent treatment and would appreciate it if this application is also granted a similar level of understanding.”

- 1.5 The following comments were also received from the applicant in relation to the initial consultation response dated 9 November 2023 from the Transport Planning Team.

Transport Planning comment : The existing U4891 is an unlit single-track route after the junction with the A87(T), which appears to have 2No. defined passing places between the A87 and the proposed access to this development. In addition, existing private accesses on the route also appear to provide additional opportunities for opposing vehicles to pass.

Applicant Response: “I am unsure how the officer has reached this conclusion as there are three defined passing places between the existing access and the A87. The three existing passing places on this route provide ample opportunity for opposing traffic to pass as these interviewable passing places are no more than 150 metres apart and therefore conforms to the design requirements as outlined in section 5.3.6.1 of the Highland Council Roads and Transport Guidelines for New Developments.(The Guidelines).”

Transport Planning Comment: Whilst there may be locations where vehicles can attempt to pass, the actual passing places don't appear to meet the dimensional requirements for a standard passing place as set out in Figure 5.1 from our published Roads and Transport Guidelines for New Developments. This is reinforced by there being visual evidence of vehicles having overrun the soft roadside verge adjacent to those passing places.

Applicant Response : “Regarding the dimensional requirements of the three existing passing places, I would like to point out that the existing road and passing places appear to have been originally designed and constructed according to the guidelines. However, I would like to bring to your attention that recent road improvement and resurfacing works, carried out by the council without any planning of the existing surface, have resulted in a reduction in the width of the carriageway and the passing places. There is clear evidence of this in the attached photographs (more photographs are available upon request), which clearly demonstrate the preexisting carriageway extending beyond the new surface. Consequently, I cannot understand why the council will request that these recent road improvements be reversed, since they were obviously implemented for operational reasons”.

Transport Planning Comment : The access into the development from the U4891 is located directly adjacent to an existing structure supporting the public road over an existing watercourse. No information has been provided to clarify if the vehicles needing access can do so without adversely impacting that adjacent structure. This could include cars towing touring caravans, or larger vehicles delivering static caravans. It could also include the proposed private refuse collection vehicles.

Applicant Response: “To clarify, we anticipate that all vehicles requiring access will be able to do so without any negative impact on the "adjacent structure" mentioned

in the representation. It's worth noting that this is an existing agricultural access that has been successfully used by a variety of vehicles of different shapes, lengths, and widths in the past.”

Transport Planning Team: No information appears to have been provided on the current achievable clear visibility distances in each direction along the U4891 from the existing private access. Given this development will be increasing vehicle movements through that private access, suitable information should be provided to clarify if the achievable visibility distances are sufficient and if not, what changes will be required. With regards to determining whether the achievable visibility splays from the existing access will be sufficient, the distance sought by our Guidelines will be based on general vehicle speeds using that route. Whilst that section of road appears to be covered by a derestricted 60mph speed limit, its form means that actual general vehicle speeds are unlikely to be more than 30mph. Therefore, the required visibility distances for such traffic speeds would be 90m from that 2.4m setback within the mouth of the access. If the Promoter wishes to suggest that lesser visibility distances should be deemed acceptable, this should be supported with suitable surveyed vehicle speeds along that section of the U4891.

Applicant Response: “I accept that the vehicle speeds are unlikely to exceed 30mph. However, I am concerned that the transport planning officer has not provided an accurate representation of Section 5.7 of the council's Guidelines. Despite this inaccuracy, I can confirm that the visibility from a 2.4m setback is more than 60m in both directions and therefore compliant with the guidelines.”

Transport Planning Comment : The Council's published standards look for gates on private accesses to be sufficiently set back from the edge of the local public road so that vehicles can safely pull off that road before reaching the gates. This is generally at least 8m and where larger vehicles will be regularly using the access, the gates may need to be set back further. It's not clear from the information provided whether the existing gates are sufficiently set back to achieve the minimum 8m setback.

Applicant Response: “I am having trouble understanding the relevance of the comments made regarding the gates. The gates are already in place as part of the agricultural holding. As you may have noticed, the gates open inwardly and do not obstruct vehicles leaving the roadway to access the site.”

Transport Planning Comment: The submission says that 7No car parking spaces will be provided within the development to support the 7No. caravan stances proposed. As we don't have specific parking standards for caravan parks, the parking needs for the proposed development will need to be assessed on merit. This will require further information on the types and sizes of caravans likely to be making use of the stances proposed. For example, a site promoting facilities purely for touring caravans is only likely to require 1No. parking space per stance. However, larger static caravans could accommodate groups of people who may be travelling in different cars, possibly from different locations.

Applicant Response : “Rest assured the parking needs for the proposed development have been assessed on merit, and as per the application the is for 7 stances and 7 car parking spaces. . Furthermore, I refer you to my email of October

21st where I clearly state that “specific plans for individual caravan units are not within the scope of this application. Our application concerns the change of land use. Detailed layouts and external appearances of caravans are not part of this application, and pursuing this matter further will not yield any further information.” It might be helpful for you to seek advice from Mark Fitzpatrick, your colleague who created the report regarding the suggested change of land use for the placement of 47 static holiday caravan plots (Your reference 21/05786/FUL), without any particular caravan designs specified”.

Transport Planning Team: The Councils published parking standards would also require suitable disabled and cycle parking facilities being provided at the proposed development. We therefore recommend that further information is sought on the intended arrangements for providing suitable disabled and cycle parking at the proposed development. This should include the proposed location, quantity and designs for such provisions, which should adhere with the requirements from Chapter 6 of our published Roads and Transport Guidelines for New Developments. For disabled parking, our standards are likely to require at least 1No. space from the overall car parking levels required. However, this is on the basis that the overall parking levels won't require more than 20No. spaces. Cycle parking levels will need to be assessed on merit due to the lack of defined parking standards for a caravan site. The closest one within our standards is likely to be for Recreational use, which requires at least 1 cycle parking space per 8No. car parking spaces proposed. Such facilities should be suitably protected from the elements and allow users to safely secure their bikes.

Applicant Response: “Each of the 7 car parking spaces will conform to the standard for disabled parking. With regards to the request for Cycle parking levels, it is my understanding that 7 (the number of car parking spaces that will be provided) is less than 8 thus I fail to understand the relevance of this comment.”

Transport Planning Team: Current Planning and Transport Policy seek developments that are or have the ability to be connected by sustainable non-car modes of travel. This reflects the current declared climate emergency and the desire for developments to support more sustainable modes of travel. We've not identified any information clarifying how this development will be accessed by non-car modes of travel.

Applicant Response: “The site benefits from a convenient public transport system, with a bus stop located at a short walking distance. This allows visitors to easily access Glasgow, Inverness, and the train station in Kyle of Lochalsh, without the need for a private car.”

1.6 Variations: None

2. SITE DESCRIPTION

2.1 The site extends to approximately 0.32 hectares and forms part of an enclosed field that lies to the east of the applicant's property. The ground is mostly under grass but includes areas of hardstanding/tracks which appear to have been formed in recent

years. There is a gentle slope towards the burn which forms the eastern boundary to the field. Mature trees and shrubs edge both banks of the watercourse. The southern and western site boundaries are defined trees. The northern and eastern boundaries are undefined. There is an overhead power line which bisects part of the site. The applicant's house lies to the west of the site. Beyond the watercourse, east of the site at a distance of approximately 30 meters lies the houses on Hamilton Road. Directly opposite the site are Nos 16 and 17 Hamilton Road, to the north-east is the property known as Pheonix House Croft 7 Balmacara and to the south-east is No 8 Hamilton Road. Beyond the southern boundary of the site at a distance of approximately 25 metres is a further residential property known as Garadh Measan Croft House 8 Balmacara.

3. PLANNING HISTORY – Neighbouring Land

3.1	02.03.2022	22/00467/PNO- Erection of agricultural building	Prior Approval Not required- not implemented to date
3.2	25.02.2004	04/00004/REMSL – Erection of house	Approved and built – Willowbank

4. PUBLIC PARTICIPATION

4.1 Advertised: Schedule 3 Development and Unknown Neighbour

Date Advertised: 27.10.2023

Representation deadline: 10.11.2023

Timeous representations: 5 representations from 5 individual addresses

Late representations:

4.2 Material considerations raised are summarised as follows:

- a) Contrary to the aims of the Development plan which seeks to safeguard in bye croft land around Balmacara.
- b) Loss of croft land to a business use.
- c) Impact on public road and pedestrian safety due to additional traffic using single track roads.
- d) Clarification as to the style of caravan that is proposed.
- e) Impact on residential amenity due to noise and disturbance, light pollution.
- f) Visual impact and out of keeping with the local built environment and landscape.
- g) Impact on the village water and drainage services.

4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam.

5. CONSULTATIONS

5.1 **Lochalsh Community Council-** Consultation response concludes that the proposed decrofting and development of a 7 static caravan holiday park would not be in keeping with the location, environment and crofting landscape of Balmacara. The following is a summary of the matters raised.

- Consider the development would be a loss of community-gifted croft land for personal speculative purposes.
- No information that National Trust for Scotland has given its consent as landlord.
- The change of use would set a precedent that local crofting land can be privatised and used for personal gain.
- Loss of local important croft land is against the placemaking priorities of the West Highland and Island Local Development Plan
- The development would reduce the area of land available for agricultural activity and therefore the agricultural viability of the croft.
- The land should be let to someone on the waiting list for a croft.
- Single track road from the A87 is unsuitable for an increase in traffic, a lack of pavements means that there is a danger to pedestrians who frequently walk on the road.
- Concern about capacity within water treatment works.
- No information about surface water runoff and how this could affect properties and other crofts in the vicinity.
- Impact on neighbouring residential amenity from light, noise pollution and an invasion of privacy.
- Lack of information about the visual appearance of the caravans.

The community council also highlighted that they would wish to review and comment on any further information submitted.

5.2 **Environmental Health** - Applicant will require to comply with the conditions for a caravan site licence which relates to sites of more than 5 units. There will be no specification regarding the appearance of the caravans. The focus is health, safety and preventing nuisance.

5.3 **Transport Planning Team** - Initial response dated 09 November sought further information. Following receipt of a response from the applicant (see paragraph 1.5 above) a further consultation response was received dated 17 November.

The following matters have been highlighted and further information is required in order to fully assess the proposals;

- further information on the types of caravans that would be making use of the proposed stances and suitable vehicle tracking information reflecting the turning movements of the vehicles needing access.

to ensure that such vehicles would be able to safely manoeuvre into and out of the existing access without adversely impacting on the adjacent bridge structure and to clarify if any changes would be needed to either the private access or the public road to safely accommodate those turning manoeuvres.

- Further clarity on the intended types and sizes of caravans that the proposed development would be accommodating.

This is to determine the suitability of the 7No. car parking spaces proposed. As no further information has been forthcoming on this matter we must object to the proposals as submitted as we are unable to determine if the levels of car parking proposed are sufficient for the proposed development.

- further information is sought for consideration on the achievable visibility splays from the existing private access in both directions along the U4891.

If 90m in each direction cannot be demonstrated, the Promoter should provide suitable information clarifying what remedial measures they will be delivering to achieve the required visibility splay. This should include demonstrating that either they are in full control of the land where remedial measures are required, or provide written confirmation from the impacted landowner(s) that they are in full agreement to the remedial works proposed and that they are content for the visibility splays to be kept clear going forward, either by themselves as landowner or by the Applicant.

If the Promoter wishes to suggest that lesser visibility distances should be deemed acceptable, this should be supported with suitable surveyed vehicle speeds along that section of the U4891.

- Further clarity whether the existing gates are set back at least 8m from the edge of the public road.

This requirement is about ensuring there is sufficient space between the public road and any gates for vehicles needing access to fully leave the public road before reaching the gates. It is an unacceptable road safety issue to have vehicles, including any trailer or caravan they may be towing, hanging out into the local public road whilst someone from the vehicle gets out to open the gates.

- Further clarity on the arrangements for providing suitable disabled and cycle parking at the proposed development.

To ensure that such provisions are accommodated within the proposed development, we recommend that any permission issued includes a suitably worded Condition requiring the design details for disabled parking within the development be submitted to and accepted by the Planning Authority prior to any works commencing, with those agreed details then being fully implemented and available for use prior to any occupation of the proposed development.

- at least 1 cycle parking space per 8No. car parking spaces is required. Therefore, if 7No. car parking spaces is agreed as being required (see comments above) then this development would be required to provide at least 1No. cycle parking space. Such provision should be in a suitably covered facility that permits users to secure their bikes safely. The cycle parking should be clearly visible and overlooked for security purposes.

To ensure that suitable facilities are provided, we recommend that any permission issued includes a suitably worded Condition requiring the location and design details for the secure cycle parking be submitted to and accepted by the Planning Authority and subsequently fully implemented and available for use prior to this development beginning to operate.

- Given that the traffic generated by the proposed development will be additional and could be cars towing caravans or larger vehicles delivering static caravans, it is recommended that 2No. existing passing places on the U4891 are upgraded to meet the dimensional requirements for a standard passing place. The works should also provide appropriately located new back-to-back passing-place signs and be delivered before the main works commence on site to support construction access needs for the proposed development.

The existing U4891 is an unlit single track route after the junction with the A87(T), which appears to have 2No. defined passing places between the A87 and the proposed access to this development. In addition, existing private accesses on the route also appear to provide additional opportunities for opposing vehicles to pass. Whilst there may be locations where vehicles can attempt to pass, the actual passing places don't appear to meet the dimensional requirements for a standard passing place.

The further information provided by the applicant with regards to how the development would be accessed by more sustainable non-car modes of travel clarifies that the development will benefit from a convenient public transport system, with a bus stop located at a short walking distance. We assume that this is bus stop facilities on the A87 Trunk Road in the vicinity of the junction with the U4891. If so, we again assume that patrons need to stand in the roadside verge of the A87(T) and hail down bus services as they pass, as we've not identified any bus stop or pedestrian infrastructure on that part of the A87(T). However, happy to receive more clarification on this if the Applicant has more information. Any such stops are circa 400m walking distance from the site access along the U4891 local public road. There is no street lighting or designated pedestrian facilities along this route, therefore bus patrons would need to share the carriageway with other traffic using that route. Whilst not ideal, this is not uncommon across rural parts of the Highlands. Also, there doesn't appear to be any injury incident collision data along this route to suggest that such activities would not be safe. However, that is based on current pedestrian and vehicle usage, which this new development is likely to increase. This helps to reinforce why enhanced passing places are needed along this route, as suitably sized passing places would also provide a safe point where pedestrians and vehicles could safely pass each other without the pedestrian feeling the need to step off the carriageway.

- 5.4 **Scottish Water** – No objections. There is currently sufficient capacity in the Kyle of Lochalsh Water Treatment Works to service the development. Further investigations may be required once a formal application has been submitted. The proposed development will be serviced by Balmacara Waste Water Treatment Works, we are unable to confirm capacity currently. The applicant is advised to submit a pre-development enquiry directly to Scottish Water. We are unable to reserve capacity at our water and waste water treatment works.
- 5.5 **Crofting Commission** – Land is subject to crofting tenure. The proposed use would fall under “another purposeful use” of a croft. The following matters should be taken into account; the siting of any proposed development should not restrict the continuing cultivation of a croft; the siting of any proposed development should not restrict proper access to all other areas of the croft, and the siting of any proposed

development avoids using the better quality land on a croft. The neighbouring house site (Willowbank) was purchased following decrofting approval in 2004. The tenant of the land will require to obtain the landlord's consent for the development, or failing that, the tenant could apply to the Commission for consent. Another option maybe that the applicant may wish to remove the area from crofting tenure to obtain finance and so they would be required to make an application either to the Commission or possibly the Scottish Land Courts.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 National Planning Framework 4 (2023)

Policy 1 - Tackling the Climate and Nature Crises

Policy 2 - Climate Mitigation and Adaptation

Policy 3 - Biodiversity

Policy 5 - Soils

Policy 29 - Rural Development

Policy 30 - Tourism

6.2 Highland Wide Local Development Plan 2012

28 - Sustainable Design

29 - Design Quality and Place-making

31 - Developer Contributions

34 - Settlement Development Areas

36 - Development in the Wider Countryside

44 - Tourist Accommodation

47 - Safeguarding Inbye/AppORTioned Croftland

55 - Peat and Soils

56 - Travel

65 - Waste Water Treatment

66 - Surface Water Drainage

6.3 West Highland and Islands Local Development Plan 2019

Balmacara and Reraig are identified as a growing settlement. The local plan does not define a boundary to these settlements. The following are set out in the local plan as the placemaking priorities;

- To locate development as close as possible to the core of each settlement and where adequate servicing can be achieved.
- To secure a mix in uses including the completion of the shinty pitch and associated facilities at Reraig, a tourist/community facility most sensibly at the former caravan park at Balmacara and housing infill or croft based development elsewhere.
- To safeguard local natural heritage interests, particularly woodland that contribute to the setting of Balmacara and Reraig.
- To preserve the views from the A87 major tourist route by retaining the tree screen at Balmacara and preventing seaward side of the road development at Reraig.

6.4 **Highland Council Supplementary Planning Policy Guidance**

Developer Contributions (March 2018)

7. **OTHER MATERIAL POLICY CONSIDERATIONS**

7.1 None

8. **PLANNING APPRAISAL**

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

Determining Issues

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Planning Considerations

8.3 The key considerations in this case are:

- a) compliance with the development plan and other planning policy
- b) Landscape character and visual impact
- c) Individual and community residential amenity
- d) Access and impact on wider road network
- e) Impact on croft land

Development plan/other planning policy

8.4 All planning applications must now be determined in accordance with the provisions of NPF4 and the existing Local Development Plan unless material considerations provide justification otherwise. If there is an inconsistency between NPF4 policies and an LDP which was adopted before 13 February 2023, the NPF prevails under Section 24(3) of the Town and Country Planning (Scotland) Act 1997 (as amended).

8.5 In the remote rural area, which is defined through the Scottish Government's 6 fold Urban Rural Classification 2020, NPF4, Policy 29 supports new development which will support local employment, and is considered suitable in terms of location, access, siting, design, and environmental impact.

8.6 NPF4 Policy 30 (a) supports new tourist facilities including caravan and camping site in locations identified in the LDP. The application site is not identified as an allocated site in the West Plan.

Policy 30 (b) relates to all tourism development and sets out the following criteria

Proposals for tourism related development will take into account:

- i. The contribution made to the local economy;

- ii. Compatibility with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors;
- iii. Impacts on communities, for example by hindering the provision of homes and services for local people;
- iv. Opportunities for sustainable travel and appropriate management of parking and traffic generation and scope for sustaining public transport services particularly in rural areas;
- v. Accessibility for disabled people;
- vi. Measures taken to minimise carbon emissions;
- vii. Opportunities to provide access to the natural environment.

- 8.7 Policy 44 of the Highland wide Local Development Plan provides general support for tourist accommodation proposals both within settlement boundaries and also in the wider countryside highlighting that when considering development it must be able to be accommodated without adverse impacts on neighbouring uses, does not prejudice residential land supply in settlement development areas and that within the wider countryside it can be demonstrated that a demand exists for this type of accommodation and that it can be achieved without adversely impacting on landscape character as well as being consistent with other guidance on siting and design.
- 8.8 It is considered that there is no significant tension between the tourism policy of NPF4 and the tourist accommodation policy of the HwLDP and that both are applicable in this instance.
- 8.9 The area around Balmacara is a popular tourist destination lying close to the major A87 tourist route and Skye. The development of a caravan site in this location is therefore likely to increase the length of time visitors stay in the area which would be beneficial to the local economy, including tourist attractions, restaurants, and businesses. Thus, it is considered that the proposed development in principle accords with the first criterion of policy 30. It is also considered that the principle of development is consistent with the general aims of the placemaking priorities for Balmacara and Reraig in that the site is located close to the centre of Balmacara Square, it involves a tourist related development and is croft based, and it will not impact on the woodland that contributes to the setting of Balmacara. Furthermore, it is considered that the development would provide opportunities for visitors to access the countryside, as set out in the final criterion of policy 30.
- 8.10 NPF4 Policy 5 seeks to protect carbon-rich soils and peatland similarly Policy 55 of the HwLDP requires development to demonstrate how they will avoid unnecessary disturbance, degradation or erosion of peat and soils. No detailed information has been submitted regarding what ground works would be required to achieve the 7 pitches proposed, however, based on a site visit there is no significant evidence of peat within the application site. It is also recognised that the proposed development is intended to support the operations of the croft and as such is consistent with the aims of NPF4 Policy 5 (c) and is not incompatible with Policy 55 of the HwLDP
- 8.11 Policy 47 of the HwLDP sets out that the Council expects development proposals to minimise the loss of in-by-ear apportioned croftland. The proposed use of the land is

recognised by the Crofting Commission as an alternative purposeful use, as such the proposed use will not result in the loss of apportioned croftland. There is, however, a lack of detail as to how access to the remaining parts of the field will be maintained.

- 8.12 HwLDP Policy 36 aims to be supportive of new development throughout rural Highland whilst recognising the importance of siting and design, securing compatibility with landscape character and capacity and achieving development which is sympathetic to the existing pattern of development in the area.
- 8.13 The proposals are also subject to consideration under HwLDP Policy 28 which sets out the requirement for all development to be designed in the context of sustainable development and climate change and requires development proposals to be assessed in relation to their compatibility with public service provision, accessibility by public transport, cycling and walking in addition to, individual and community residential amenity. Matters such as sensitive siting and high quality design, accommodating all sectors of the community, including those with disabilities, in addition to reducing greenhouse gas emissions are included within Policy 28 and reflect the aims and policy intent of NPF 4 Policies 1 and 2 as well as a number of the criteria of Policy 30, as set out above.
- 8.14 The key issues for this application are considered to be what impacts the proposal would have on the character and appearance of the area; impacts on residential amenity; impacts on road infrastructure and road safety and impacts that the development will have on the ability of the remaining croftland to be properly accessed. For the following reasons it is considered that insufficient information has been submitted with the application to address a number of these key issues and consequently officers are unable to assess whether or not the proposal accords with the development plan.

Landscape character and appearance

- 8.15 The application is for full planning permission. The change of use will involve the installation of features – caravans – on the land. Visual impact is a material planning consideration for any proposal involving such features. Policies which require an assessment of visual and landscape impact and seek good quality design are therefore applicable to such proposals. It is for this reason, amongst others, that following registration of the application a request for further information was issued to the applicant under Regulation 24 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations seeking information about the design of caravan anticipated to be accommodated on the land. This would have allowed us to establish whether the proposed caravans would for example be large statics caravans, chalets or smaller units. It is considered that without such information it is not possible for an assessment to be made about the impact that the change of use of the land will have on the landscape character and appearance of the area.
- 8.16 Regrettably, the applicant has declined to provide the requested information, citing that, as there is a clear definition of a caravan, no other details require to be submitted. He also refers to correspondence issued by the DPEA which suggests that an application that seeks planning permission for the change of use of the land

only, does not require further information and that the Caravan Sites and Control of Development Act 1960 (the 1960 Act) controls the appearance of the caravans. However, it is considered that this application seeks permission for a change of use and operational development. The involvement of the DPEA is explained in paragraph 1.3.

8.17 The Planning Service recognises and accepts that there is a legal and clear definition of the size and construction of a caravan. It does not accept that the 1960 Act controls the design of a caravan. Section 5(2) of The Act clearly states the following:

- No condition shall be attached to a site licence controlling the types of caravans which are stationed on the land by reference to the materials used in their construction.

Environmental Health have confirmed that the licensing regime does not allow for the licence to control external appearance, their focus being on health, safety and preventing nuisance.

8.18 As regards the comments made by the DPEA Reporter, the judgement of *R (Patricia Shave) v Maidstone Borough Council v Mr and Mrs P Body* helpfully considers the decision to grant planning permission for the change of use of land for the stationing of 18 holiday caravans. Although this judgement is an English decision, the facts and judgement reached, are considered to be of real significance to this application, given the fact that section 5(1) and (2) of the 1960 Act apply in the same way to both England and Scotland.

8.19 One of the grounds of challenge in the above mentioned case was based on the contents of the planning case officer's report to the Committee. This was considered misleading in a number of respects. The Court found that, in respect of design, the Maidstone Borough Council had erred in law in its assertion that it was not justified for the planning authority to seek more details of the lodges - which fell within the definition of a caravan - because planning permission was only required for the change of use of the land to station or accommodate the lodges for holiday purposes, as had been set out in the officer's report. Paragraphs 54 and 55 of the court judgement state the following:

54. Although the powers under the two statutory codes overlap to some extent, it is necessary for an authority to be careful about assuming that any aspect of design which could be controlled under planning legislation can or should be left to the 1960 Act. First, as we have seen, s.5(2) of that Act excludes control over the materials used in the construction of a caravan, or in this case holiday lodge. Second, conditions may only be imposed on a site licence within the parameters set by s.5(1) of the 1960 Act. Third, a condition may not be imposed on a site licence purely for planning reasons, for example solely for the benefit of the visual amenities of other land. Similarly, planning policies would appear to be immaterial to the licensing function under the 1960 Act.

55. Accordingly, it was an error of law for the Committee to be advised that the planning authority could not require appropriate design details to be provided, and so could not exercise planning controls in relation to the design of the lodges, by deciding whether or not to grant permission or by the imposition of conditions on any permission.

- 8.20 It is acknowledged that it is common practice for the Planning Service to attach conditions to consents which involve the siting of caravans, which seek further details of their external finishes. An example is planning consent ref 21/05786/FUL, referred to by the applicant. Such conditions are considered only appropriate, in instances where sufficient information has first been submitted at the assessment stage of the application to allow the planning service, consultees and third parties to have an understanding of the design and anticipated occupancy level of the caravans. In the planning application referred to above the supporting information submitted with the application, included a clear reference that the proposals involving lodges of a range of sizes (defining out touring caravans) and that both single and double/twin lodges were proposed. The statement also includes, in the form of a visualisation, an indication of the proposed materials for the lodges. This information was sufficient to allow the major amenity impacts of the proposal to be assessed. The use of a condition to secure exact details of the external appearance of the lodges was therefore appropriate and represented a minor decision that could be taken without public consultation through the post-consent satisfaction of conditions procedure.
- 8.21 It is the Planning Service view that it is justified in requesting information about the design of the caravans that will occupy the site (including any operational development and whether reprofiling or underbuilding will be necessary to take account of any slopes on site). It is a matter of fact that different styles of caravan will have more or less of an impact on the landscape character and appearance of the area and that without a general understanding of what form the caravans will take it is not possible to reach a view as to whether the development achieves compliance with the relevant development plan policies.

Individual and Community Residential Amenity

- 8.22 There are a number of residential properties that lie close to the application site. Beyond the watercourse, east of the site at a distance of approximately 30 metres lie the houses on Hamilton Road. Directly opposite the site are Nos 16 and 17 Hamilton Road, to the north east is the property known as Pheonix House Croft 7 Balmacara and to the south east is No 8 Hamilton Road. Beyond the southern boundary of the site at a distance of approximately 25 metres is a further residential property known as Garadh Measan Croft House 8 Balmacara.
- 8.23 The need for information which would allow an understanding of the occupancy levels is required to allow a full assessment of the proposals. It is noteworthy that the third-party comments raise concerns about loss of privacy, noise and disturbance. These matters are material to the consideration of the proposals. Without an understanding about the design and likely occupancy levels the Planning Service is not able to make a judgment about the impact that the change of use of the land would have on the neighbouring properties. The design of 'caravans' proposed by this application could range from as little as 7 one-person pods to 7 eight-person chalets. That is the difference between 7 occupants on the site and 49 occupants. These two scenarios are materially different from each other and may raise different considerations in terms of amenity impact and parking for example. To deal with such matters through the use of a condition has the potential of undermining public confidence in the planning process. An example of the information that can be provided is included in the supporting documentation attached to planning consent 18/02893/FUL referred to by the applicant. In that case details of the private drainage

system were provided which indicated the number of touring pitches and population equivalent of the static caravans.

Access and impact on wider road network

- 8.24 It follows on that, if the number of holiday makers that could occupy the site at one time is not known, it is not possible to adequately assess the likely impacts that visitor numbers will have on the road network. The Transport Planning team has highlighted a number of concerns which relate to the passing places on the single track public road, as well as the direct junction with the road which would be used by customers of the caravan site. They also comment on the need for a proper assessment about the number of parking spaces and cycle stands which would be required within the site. These matters are relevant considerations under the development plan and are material to the determination of the application. It may be the case that no significant impact to road safety would result from the development and that the site itself is of a suitable size to accommodate caravans and car parking at a level which is commensurate with the occupancy capacity. However, this position could only be adopted if an assessment can be properly undertaken. The information provided by the applicant in which it is suggested that the direct junction is capable of accommodating a wide variety of vehicles and that there will be sufficient room for a car to park beside each of the 7 pitches is not considered sufficient. Once again, details of the design of caravan which provides the decision maker, consultees and third parties with an understanding of the intended occupancy level of the seven pitches is required to allow a full and proper assessment of the proposals to be made.

Impact on croftland

- 8.25 There is a requirement under the terms of the 1960 Act that a caravan site is enclosed by a boundary fence, as such there is a need to identify how the remaining section of the field, which is not the subject of the application, and which is separated from the rest of the croft which lies to the north west by a post and wire fence will be accessed. No information has been provided about this matter. It is considered that such details could be dealt with by way of a condition, in the circumstance where planning permission was to be granted, as there is scope to accommodate an agricultural vehicle access as part of the design details for the boundary treatment of the caravan site.

Non-material considerations

- 8.26 Comment has been made that the applicant as an elected Member of NPAC has undue influence over any decision taken by the Committee. The Councillors' Code of Conduct details when an interest should be declared in a planning application and the Council's Standing Orders relating to the conduct of meetings sets out the requirement that any Member with an interest to declare is to make that declaration at the start of the meeting. The applicant will require to leave the meeting for the determination of this application.
- 8.27 The issue of neighbouring property values being affected by the development is not a material planning consideration. Comment has been made that the landowner – The National Trust for Scotland who own Balmacara Estate – is unlikely to agree to the development. This is a separate legal matter for the applicant to resolve and is

not a material consideration in the determination of the planning application. Conflict with existing business in the area - market competition - is not a material consideration.

9. CONCLUSION

- 9.1 This application is brought before the Committee as the applicant is an elected Member of the Highland Council. Unfortunately, the applicant has declined to provide post submission additional supporting information about the design of the caravans which would occupy the 7 stances and sufficient details of the other operational development involved. A request was issued under Regulation 24 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations following registration of the application. Further requests have been made following the receipt of comments from our Transport Planning Team and also those from neighbouring third parties. The submission of this information would have allowed greater clarity and provided more certainty in terms of the assessment of the proposal and its possible implications on the wider area and its residents. The applicant has maintained his position that such information is not required to allow a determination of the application.
- 9.2 The applicant has suggested there is an inconsistency in the way this application is being assessed in comparison to 4 previous examples of applications which involved the siting of caravans. Two of the examples 18/02893/FUL and 21/05786/FUL are addressed in the report above. The other two cases 19/03392/FUL and 20/03483/FUL both relates to extensions to existing caravan sites where the existing development provided a clear context for the visual and amenity material considerations. In each of these cases, in contrast to the current application, necessary detail in respect of the design of caravans was made available to the planning authority either on submission or by request.
- 9.3 It is the view of the Planning Service that the request for information is proportionate in relation to the scale of development proposed, particularly given the wide range of structures which fall within the definition of a caravan, the location of the site, the means of access to the site and the proximity to existing residential properties. An assessment of the likely impacts on landscape character, residential amenity and road impacts cannot be competently undertaken based solely on the site plan submitted. A number of these concerns were echoed in the public representations made. Without some supporting information about the design of the caravans and related operational development, an evaluation against the relevant development plan policies cannot be competently carried out.

10. IMPLICATIONS

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: Not applicable

10.5 Risk: Not applicable

10.6 Gaelic: Not applicable

11. RECOMMENDATION

Action required before decision issued N

Subject to the above actions, it is recommended to **REFUSE** the application for the following reasons

1. Insufficient information has been submitted with the application relating to the design of caravan that would occupy the 7 proposed stances and details of the associated road parking, drainage and water connections in order to assess adequately that the site is suitable for its proposed use in relation to landscape impact, impact on individual and community residential amenity, parking and road safety. Accordingly, the proposals are contrary to NPF4 Policies 29 and 30 and Policies 28, 36, 44, and 56 of the Highland Wide Local Development Plan.

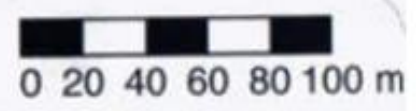
Signature:

Designation: Area Planning Manager – North

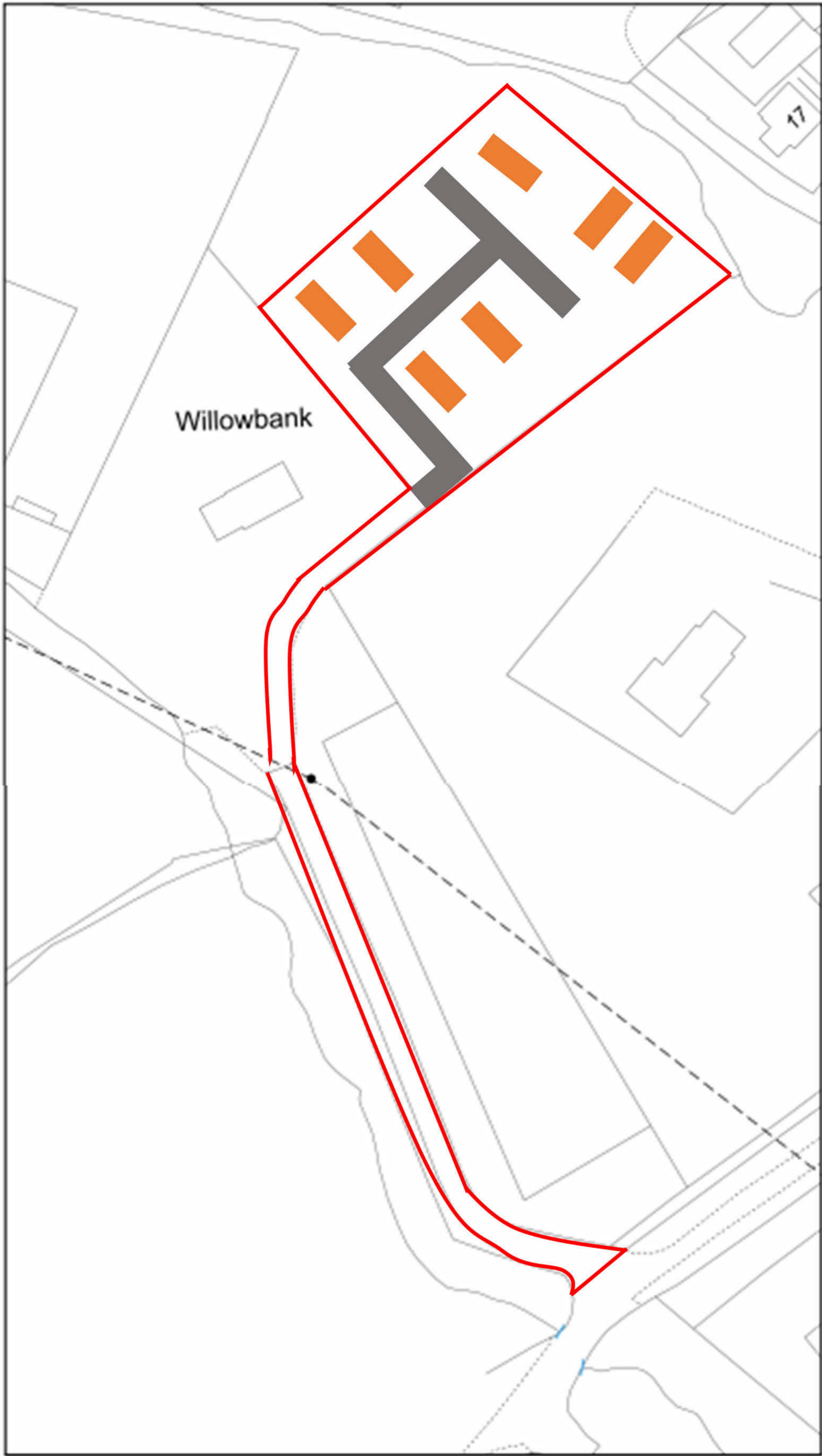
Author: Erica McArthur

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 - 000001A- Location plan
Plan 2 - 000002 – Site plan



1:2,500



Willowbank

17



1:500 @ A2

The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a boundary.
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