



## Town and Country Planning (Scotland) Act 1997 Appeal Decision Notice

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Decision by Sinéad Lynch, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2297
- Site address: Plot 3, Rear of Former Filling Station, Onich PH33 6RY
- Appeal by Stuart Murray against the decision by The Highland Council to grant planning permission reference 23/02786/FUL dated 12 December 2023 subject to conditions
- The development proposed: erection of a house
- The conditions appealed against are: condition 3 and condition 5
- Date of site visit by Reporter: not applicable

Date of appeal decision: 25 July 2024

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### Decision

I dismiss the appeal and refuse to vary the terms of the planning permission.

### Reasoning

1. This is an appeal against the imposition of two of the planning conditions attached to planning permission ref 23/02786/FUL, which was granted by the council in December 2024.
2. Condition 3 relates to a no dig cellular confinement system for the access road to the new house and reads as follows:

'No development shall commence on the construction of the house hereby approved until a Method Statement which includes a specification for a 'no dig' cellular confinement system for the access road where it passes along The Old Manse boundary wall or within 8m of trees within the curtilage of The Old Manse, has been submitted to, and approved in writing by, the Planning Authority. Thereafter works will proceed in accordance with these approved details, unless otherwise first agreed in writing by the Planning Authority.'

**Reason:** To avoid damage to the listed boundary wall and root damage to existing trees through excavation or compaction both during the construction phase and post development, to ensure the protection of retained trees during construction and thereafter, in accordance with policies 51 and 57 of the Highland wide Local Development Plan, 2012.'

3. Condition 5 relates to the revocation of permitted development rights within the curtilage of the approved dwelling house and reads as follows:

'Notwithstanding the provisions of Article 3 and Class(es) 1A, 1B, 3A, 3B, 3C, 3D of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), no development of a type identified in the aforementioned classes shall take place within the

curtilage of the house hereby approved, without planning permission being granted on application to the Planning Authority.

**Reason:** In order to safeguard the landscape setting within the National Scenic Area and to prevent overdevelopment which might otherwise occur; in accordance with policies 28, 29, 36 and 57 of the Highland wide Local Development Plan, 2012.'

4. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. In this case, the development plan consists of National Planning Framework 4 (NPF4) and the Highland-wide Local Development Plan 2012 (HwLDP).
5. The determining issues in this appeal are whether conditions 3 and 5 meet the six tests of Circular 4/1998: The use of conditions in planning permissions. These are: the condition should be precise, enforceable, relevant to planning, relevant to the development, necessary and reasonable. Having reviewed the various submissions, I am satisfied that the first four tests have been met. I must then consider whether condition 3 and condition 5 are both necessary and reasonable.
6. When an appeal is made against the grant of planning permission subject to conditions, it is the grant of permission as well as the conditions that is before me to be determined. Given the history of planning consent for a new home on this site, and the limited extent of the variations that are embodied in this consent, I am satisfied that the principle of a new home on this site is established.
7. There have been representations addressing matters relating to the principle of the development and to particular aspects of it and the planning application, and these are addressed below.

### Condition 3

8. This proposal includes an amended access layout to the appeal site, with access now from the west side of the plot. In previous planning consents, access had been from the east of Plot 3.
9. The appellant advises that he considers it unfair that the same conditions have not been imposed on recent developments on or close to the listed boundary wall of the Old Manse. The new access road would have a minimal impact on the root zone of the retained trees. The system is expensive, and the financial burden would only be on the appellant.
10. The council advises that in all previous consents for a house on Plot 3, of which there were at least three, a condition requiring a particular form of construction for part of the access was imposed. The construction system is required to avoid root damage to the retained trees during and after construction, and to protect the Old Manse garden wall and gate piers. Policies 51 and 57 of the HwLDP 2012 are both referenced by the council.
11. In addition to HwLDP policies, NPF4 Policy 6 states that development proposals will not be supported where they will result in the loss of ancient or veteran trees or result in adverse impacts on individual trees of high biodiversity value. HwLDP Policy 51 relates to trees and development and requires the protection of trees on and around development sites. There is also Supplementary Guidance (SG) on Trees, Woodland and Development. The SG requires that mitigation measures may be required where works encroach within root protection areas.

12. I note that the parties do not disagree that the access route encroaches onto the root protection area. The appellant has provided additional photographic evidence, as required in a procedure notice dated 30 April 2024. From those photographs, I have observed the existing structures on the southern side of the listed wall, in the vicinity of the retained trees and their root protection zone.

13. I find that the 'no dig' construction area of the approved access within Plot 3 would be relatively limited in terms of the overall site area, and limited to that which is within 8 metres of the retained trees. The existence or otherwise of structures outside the appeal site is not a matter that negates the need to protect the tree roots where possible. I am satisfied that to meet the terms of Policy 51 of HwLDP, condition 3 is both necessary and reasonable.

14. In addition, condition 3 references HwLDP Policy 57 Natural, Built and Cultural Heritage. Criteria 1 of the policy sets out that development will be allowed if it can be demonstrated that it will not have an unacceptable impact on the heritage resource, in this instance the listed Old Manse garden wall. I have observed the proximity of the approved access spur on Plot 3 to the listed structure and agree that it would need to be protected during construction. As the retained tree root zone already requires the 'no dig' system, I do not consider that it serving a dual purpose in also protecting the listed garden wall is discriminatory or unfair, as alleged by the appellant. I am satisfied that to meet the terms of Policy 57 of HwLDP, condition 3 is both necessary and reasonable.

15. Overall, I conclude that condition 3 should remain as part of the terms of the planning permission.

#### Condition 5

16. The appellant objects to the imposition of condition 5, which removes permitted development rights. He believes it was imposed to protect the listed Old Manse building. He believes it will be expensive as he will have to apply for planning permission for normal domestic structures such as sheds and storage within the curtilage of his home.

17. The council advises that the condition was imposed to protect the National Scenic Area, and the Onich to North Ballachulish Woods SSSI which adjoins the northern boundary of Plot 3. Permitted development rights are restricted to prevent any adverse impacts on the SSSI and the wider ancient woodland designation, not to protect the setting of the listed building.

18. I find that the condition is clear, in that the intention is to protect the landscape setting of the National Scenic Area. The condition references HwLDP Policies 28, 29, 36 and 57. Policy 28 Sustainable Design sets out that amongst other criteria, development must demonstrate sensitive siting in relation to the natural environment. Policy 29 Design Quality and Place-Making sets out that development should demonstrate sensitivity towards the local distinctiveness of the landscape. Policy 36 Development in the Wider Countryside sets out that proposals will be assessed to determine if they are compatible with landscape character and capacity, amongst other criteria. Policy 51 relates to trees and development and requires the protection of trees on and around development sites. In addition, NPF4 Policy 7 Historic assets and places seeks to protect and enhance the historic environment. I am satisfied that condition 5 is required to ensure that the development on Plot 3 is in accordance with the terms of those policies.

19. The council has explained that as permitted development rights have been removed, then any application for such development would be exempt from fees. The burden of making an application would remain, but I do not consider that the inconvenience of making planning applications for domestic use would outweigh the benefit to the landscape setting of the National Scenic Area.

20. Overall, I conclude that condition 5 is both necessary and reasonable and should remain as part of the terms of the planning permission.

#### Other matters

21. A number of representations were made at the planning application and appeal stages of this proposal. Many related to the proposed change in elevation, which meant the new house would have been higher than previously consented. I note the appellant amended the proposal, and that the approved Finished Floor Level (FFL) of the new house will be one metre higher than the existing consent, and the same FFL as the adjoining house on Plot 2.

22. Many representations related to the principle of a new house on this plot. Given the previous consents on the site, and its location within the village envelope, I am satisfied that a house in this location is acceptable. I find that NPF4 Policy 16 Part f) iii is met by the proposal, as it is for a smaller scale opportunity within a settlement boundary. The development is for a single home within the village envelope. NPF4 Policy 17 Rural homes part b) I find is also met by the development.

23. A representation has questioned the validity of the planning application and appeal, based on the plans submitted with the planning application and the Heads of Planning Scotland Validation Guidance Note. The council advises that the application submission met its own validation criteria.

24. Concern has also been raised regarding the commencement of works at the site and potential non-compliance with the previous consent. The latest planning permission and this appeal decision appear to address the issues raised. Any non-compliance with approved plans is a matter for the local planning authority to investigate and to take any required action.

25. Potential impacts on the privacy of adjoining homes has been raised in representations. I note that a new house in this location on Plot 3 would be orientated away from the Old Manse and is also some 13 metres from the common boundary. I am satisfied that any impact on privacy would be acceptable.

26. The appellant advises that it is difficult to acquire new family homes in the area, and that they required a bigger family home. Whilst the Scottish Government has declared a national housing emergency, I do not consider that either condition 3 or condition 5 would prevent a new family home being built on Plot 3.

27. There would be a cost associated with the 'no dig' system stipulated in condition 3, but this is a condition that has been attached to all previous consents associated with Plot 3 and a known expense when purchasing the site. The cost of construction is not a matter that would justify the removal of condition 3. I am satisfied that the exemption from planning fees associated with applications required by the removal of permitted development rights would minimise any additional costs.

Conclusions

28. I therefore conclude, for the reasons set out above, that conditions 3 and 5 of planning permission ref 23/02786/FUL are both necessary and reasonable and meet the tests set out in Circular 4/1998: The use of conditions in planning permissions. I refuse to vary the terms of the planning permission.

29. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Sinéad Lynch*

Reporter