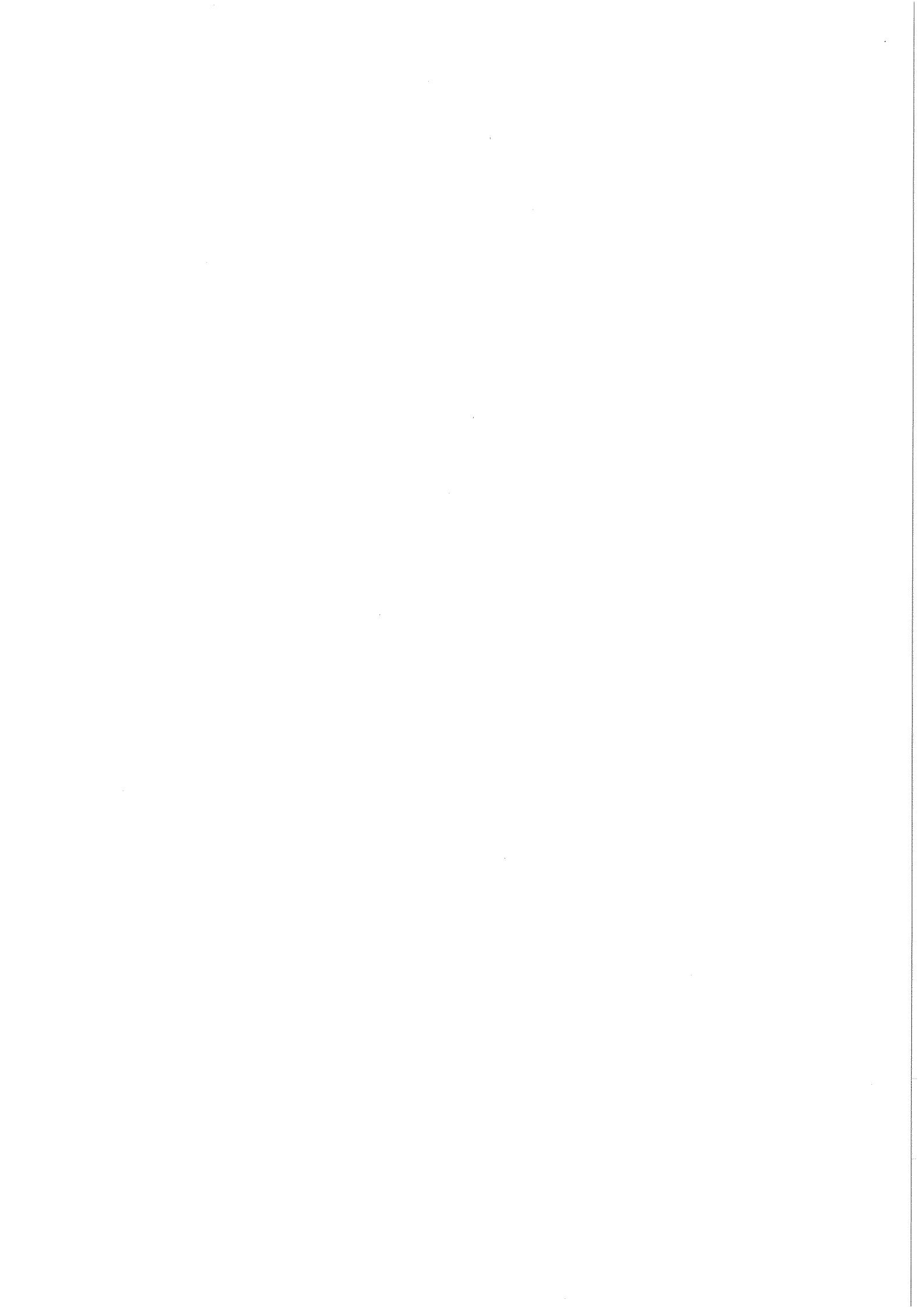


Paper 3

**Appeal Decisions for
Information**



Appeal Decision Notice

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Decision by Philip G Hutchinson, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-001-2001
- Site address: Former "Waltzing Waters", Main Street, Newtonmore, PH20 1DR
- Appeal by Mr A Donald against the enforcement notice dated 5 October 2012 served by the Cairngorms National Park Authority [CNPA]
- The alleged breach of planning control; "construction of additional height to a boundary wall on the west boundary so that the visibility splay at the junction of Church Terrace does not comply with the requirement of Highland Council..."
- Date of site visit by Reporter: 13 December 2012

Date of appeal decision: 10 January 2013

Decision

I dismiss the appeal and direct that the enforcement notice dated 5 October 2012 be upheld subject to the variation of the terms of the notice by the following:

Deletion of the words "reduce the height of the wall and reinstate the wall to the height that existed as at 20 September 2011 and thereby restore the previously existing visibility splay at the junction of Church Terrace" and -

...their replacement with the words "reduce the height of that part of the boundary wall falling within 2.5 metres of the edge of the carriageway in Church Terrace, to a maximum of 1 metre above finished pavement level on each frontage".

Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

Note: Although the appeal has met with a degree of success in the form of less onerous remedial steps, it has been technically necessary to uphold the notice and ensure that it continues to have effect in its amended form.

Reasoning

1. The appeal against the enforcement notice was made on the following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:

(d) at the date when the notice was issued, no enforcement action could be taken in relation to the matters stated in the notice to involve a breach of planning control.

(f) the steps required by the notice to be taken (or the activities required by the notice to cease) exceed what is necessary to remedy any breach of planning control stated in the notice, or to remedy any injury to amenity caused by that breach.

2. The boundary wall which is in contention lies at the heel of an unfinished footpath and defines the appellant's two road frontages, respectively to Balavil Brae (to the west) and to Church Terrace (to the north). It also features an angled section across the corner. This is at the rear of the former Waltzing Waters visitor attraction, which occupied a relatively monolithic steel-framed building. This is now part-occupied by a Co-operative supermarket. The remaining section (facing Church Terrace) is presently being converted into 5 terraced houses. At the street corner, enclosed by the disputed wall, an area of private open space is being prepared apparently for the joint use of these future households. There is no denying that a breach of planning control has taken place in respect of parts of the boundary wall having been increased to their present height of 1.1m - 1.3m depending on the point of measurement. These parts encroach into the apparently desired (but still unspecified) sight line on the east side of the junction where the said roads meet.

3. In respect of the appeal on ground (d) I consider that the breach of planning control can initially be said to have arisen in two separate ways:

(a) The wall replaces an earlier version which was significantly lower until some time in the last 16 months (approx). This is in breach of condition 3(f) attached to planning permission 11/179/CP dated 20 September 2011 in respect of the change of use of the building to residential and retail use. This states "nothing shall be established within the site to conflict with the visibility splay which currently exists at the junction of Church Terrace".

(b) Each section of the wall fronts a road. Its uppermost parts are higher than 1 metre above adjacent ground level. The wall does not enclose the curtilage of any one dwelling house. Accordingly those parts which are marginally in excess of 1m in height are excluded from Permitted Development as defined in Class 7 of Schedule 1 to The Town and Country Planning (General Permitted Development (Scotland) Order 1992 [the GDO]. Moreover even had the wall enclosed open space designed for the sole use of the closest new house its same upper parts would still have been excluded from Permitted Development by the terms of Class 3E in the amending GDO of 2011.

4. Condition 3(f) attached to the above planning permission fails to meet two of the 6 tests prescribed in Circular 4/1998 – *The Use of Conditions in Planning Permissions*. Firstly it is fatally imprecise. It defines neither the vertical or horizontal extent of any visibility splay. It says nothing about the site's condition on 20 September 2011. Parties may well be familiar, but it is important to remember that planning permission runs with land not individuals. It is vital that successors in title also understand - unambiguously - the precise meaning of a planning condition, possibly decades down the line. Because of this lack of precision - especially the failure to define the visibility splay geometrically - I find the condition unenforceable. Additionally, the wall had been a very great deal lower when this condition was imposed (according to a CNPA photograph of July 2011). In other words the condition restricts the appellant's Permitted Development rights to build a frontage wall up

to 1m in height. Paragraph 86 of the Annex to the Circular expresses a presumption against conditions which do just that.

5. Given these multiple shortcomings of condition 3(f) I cannot support the attempt by the enforcement notice to restrict the property's Permitted Development rights. In other words the appellant should retain his freedom to build a frontage wall up to 1m in height around this street corner. I therefore disregard the breach of control as envisaged by CNPA in paragraph 3(a) above and must focus on the way I have explained it in 3(b) above.

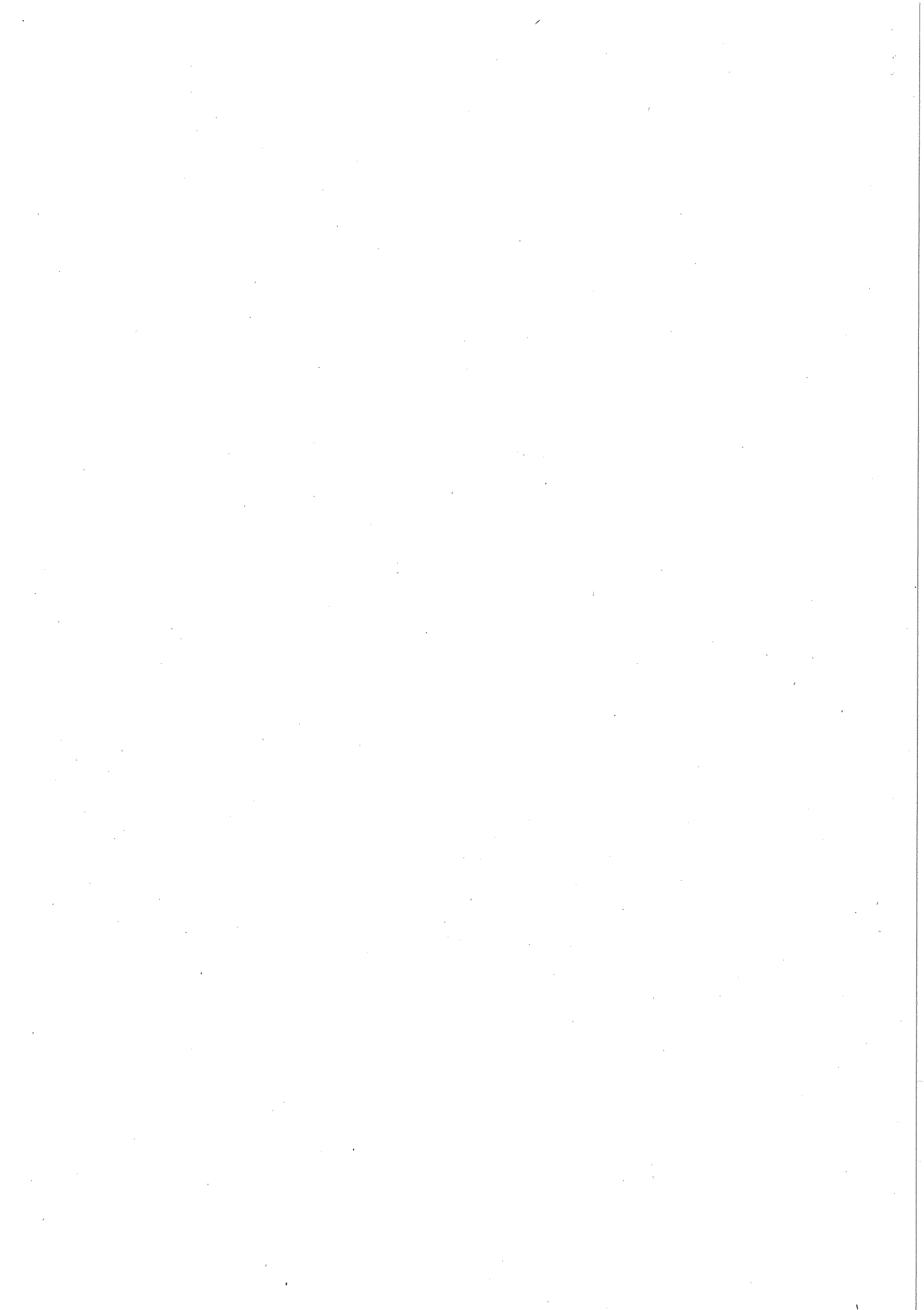
6. In this different respect a breach of planning control has occurred. It is self-evident from submitted photographs. Its very recent construction is clear from its fresh appearance. I am therefore in no doubt that, whatever was there before (even back in the 1980s) the wall has been increased to its present height within the last 16 months (approx). Accordingly the appeal on ground (d) fails.

7. I now turn to the appeal on ground (f). So far as any injury to amenity is concerned I find the wall unobjectionable. However from my site inspection (and my prolonged visit when passing the very next day) I am satisfied that some minor adjustment is needed. This is to provide *adequate* visibility of west-going traffic in Church Terrace for drivers emerging from Balavil Brae. It is also necessary to secure adequate reciprocal visibility. In a completely new layout I would imagine that roads officials would seek a 4.5m x 90m visibility splay cutting across the street corner (Church Terrace being treated as the major road). However no particular standard has been put to me. I find that the physical and historical contexts call for flexibility.

8. Traffic joining Church Terrace from Balavil Brae does so on an up-slope. Drivers are presented with 'give way' road markings and negligible visibility in the other direction. In practice they have every reason to halt. I consider that very few vehicles are likely to travel along Church Terrace at 30 m.p.h. I note that Newtonmore is heavily populated with blind junctions, not least on Main Street. I appreciate that 5 new houses in the rear of the converted building will increase the use of this junction, but one can only speculate how much. Some approaches do not involve Balavil Brae. I have therefore decided that the modification set out at the beginning of this notice is sufficient. I consider that it represents a fair and balanced compromise. Moreover I can only seek to remedy the breach of planning control rather than remove Permitted Development rights. To this extent the appeal on ground (f) succeeds.

Philip G Hutchinson

Reporter



Appeal Decision Notice

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Decision by Philip G Hutchinson, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-001-2010
- Site address: Former "Waltzing Waters", Main Street, Newtonmore, PH20 1DR
- Appeal by Mr A Donald against the decision by the Cairngorms National Park Authority [CNPA]
- Planning application 2012/01596/FUL (date undisclosed) refused by notice dated 24 August 2012
- The development proposed: In retrospect – the formation of additional windows, and other external material variations (from plans already approved for the formation of 5 houses from northern part of building).
- Application drawings: CO[AQ1] - 101 (location plan); -102 (block plan) – 103 (Rev A) (floor plan); - 104 (Rev A) (proposed elevations).
- Date of site visit by Reporter: 13 December 2012

Date of appeal decision: 10 January 2013

Decision

I allow the appeal and grant planning permission subject to the following condition:

1. The shower room window in the east gable shall be obscure glazed. The kitchen window in the east gable shall be obscure glazed for its lower 50%. In each case any opening mechanism shall be subject to the prior written approval of the planning authority. This arrangement (and approved details of any opening mechanism) shall be retained at all times except with the prior written approval of the planning authority. (Reason: To reasonably maintain privacy in Glenavon House to the east).

Attention is drawn to the advisory note at the end of this notice on page 5.

Reasoning

1. Several of the matters which comprise the appeal proposal are driven by changes to the interior floor layouts of units 1 and 5. However, taking all of them together they can be described as follows (on the next page);



- (a) the insertion of 3 additional windows, making 4 altogether, in each gable elevation serving units 1 and 5. (Those in the west gable are in place, but only the bare openings have been formed in the east gable. In addition the design of the already approved lounge windows in each gable has been slightly amended.)
- (b) the omission of approved front dormer windows in units 1 and 5 (this is complete with the roof having been fully slated);
- (c) detailed changes in the design of the 6 surviving front dormer windows (these are complete);
- (d) redesigned front entrance porches with the main roof pitch continuing right to the front of each porch, instead of each porch being a 'lean-to' structure (this is complete);
- (e) the substitution of wet-dash harling for timber cladding on each front porch, (which is complete) and;
- (f) not explicitly mentioned in the application but evident from the drawings, the omission - in favour of blank harled wall panels - of ground floor front windows in units 1 and 5 (which is also complete).

The key issues

2. The key issues are (1) whether the different variations set out above are consistent with the development plan and (2) if not whether other material considerations justify a development plan departure.
3. The most relevant parts of the development plan are policy G2 (Design for Sustainability) in the Highland Structure Plan and policy 16 (Design Standards for New Development) in the Cairngorms National Park Local Plan. The first in summary indicates that new development proposals will be assessed - among other things - on the extent to which they make use of brownfield sites, existing buildings and recycled materials, how accessible they are by modes other than the private car, how easily serviced they are likely to be, and on their sensitive siting and quality of design - which should be in keeping with local character. The second policy, in summary, likewise encourages new development to reflect the character of its surroundings, reinforcing the local vernacular by the use of appropriate materials and design, to protect the amenity of neighbouring residents, offering a sustainable use of resources and conforming to a Sustainable Design Guide. The latter expects development to reflect the existing development pattern, its setting and the natural and cultural heritage of the National Park.
4. The other material considerations are (i) the balance of the relevant policy background and other guidance which has been drawn to my attention (ii) whether any site-specific features or structural details warrant flexibility and (iii) whether planning conditions can help resolve any difficulties which emerge. I approach these matters and those covered in the previous paragraph as if the proposal (as it stands) had been submitted at

the outset. I accept that many of the changes can be interpreted as the appellant's self-inflicted difficulties. I recognise that the catalogue of unauthorised changes must have been irritating for officials. However I must put this background picture on one side and take the current proposal strictly on its merits. I now turn to all 6 of the above variations before revisiting these key issues.

Variations (a) and (b) – additional gable windows and omission of end dormers

5. The windows in the west gable (overlooking Balavil Brae) are unproblematic. They do not detract from the appearance of the building and are an acceptable distance from any neighbouring property. This much is effectively conceded in paragraph 32 of the case officer's report.

6. Of the 4 window openings in the east gable the ground floor living room window is not seriously in contention. This overlooks the rear garden of Glenavon House which lies at a much lower level, but that garden is also completely open to passing public views from Church Terrace. This window is different - but not radically so - from that shown in the approved gable elevation. It involves no serious window-to-window relationships.

7. The appellant proposes to obscure-glaze the small windows to a kitchen and a shower room (in the east gable). There is nothing unusual in this response to the situation. It is an obvious and sensible precaution in respect of the shower room. Strictly speaking this would otherwise look down onto the neighbour's obscure-glazed roof-light which apparently serves a bathroom. At a much more acute angle it would look down to a bedroom window, although the line of sight is seriously interrupted by an outbuilding next door. I cannot treat these relationships as serious overlooking, especially with the offer of obscure glazing. Having stood at the opening for the kitchen window, even on tiptoe, I could barely identify the lintel of the neighbour's ground floor bedroom window. This was on account of the sharp angle of view and the neighbour's outbuilding which stands directly in-front of the latter. However I accept that a very tall (and unreasonably curious) person standing hard against the kitchen window might conceivably be able to see part of that bedroom window's glazed area. This does not mean that this kitchen window needs to be 100% obscure. Its design on drawing CO(AQ1) 104 (Rev A) indicates that it could be easily fitted with obscure glass in its lower half. In each case I will leave parties to agree what if any opening mechanism is most appropriate. For example a bottom-hinged and inward-opening mechanism would deny all scope for any loss of privacy. The same could be said of totally fixed lights with extractor fans. There may be other options.

8. The bedroom window in each gable has been necessitated by the presence of stout tubular diagonal beams associated with the steel frame and the building's original use. The presence of these important structural members should never have come as a surprise. Nevertheless from my internal inspection of the roof space I agree that it is a very obvious and compelling complication – certainly if these parts of the building are to be fully utilised. It calls for pragmatism. Neither gable as a whole is injurious to public amenity. The bedroom window in the east gable has drawn less criticism than the shower room and kitchen windows. In addition a bedroom window tends to offer less overlooking potential than a lounge window. Moreover any overlooking of Glenavon House would be at a sharp angle both vertically and horizontally. I could identify no serious window-to-window

relationships in connection with this particular bedroom window opening. For all these reasons I am persuaded that the new bedroom window in the east gable is acceptable. Its counterpart at the other end of the building has escaped detailed criticism.

9. In the light of the previous 4 paragraphs I find that all the additional gable windows should be approved (subject to the above condition). In passing I have already indicated that pragmatism justifies the omission of the two end dormers. To insist on a complete re-engineering of main parts of the original steel frame would be disproportionate. Accordingly I find that variations (a) and (b) deserve support. I return later to the key issues.

Variation (c) – redesign of the remaining 6 front dormers

10. This variation has drawn only the most muted criticism from CNPA. The case report observes that there have been changes in the proportions of these dormers. It suggests that - cumulatively with other changes - they detract from the original design concept. I nevertheless find them unobjectionable and consider that such criticisms - or rather preferences - fall short of a compelling basis for refusal.

Variations (d), (e) and (f) – changes to the ground floor front elevation

11. Although the extent of these additional variations is considerable, I have to ask whether the outcome is so unacceptable as to justify refusal. While I understand the disappointment felt by CNPA, I fail to see what is seriously objectionable in any of these changes. I have to assess them in the unremarkable context of Church Terrace. This backwater has a mixture of architectural styles - traditional and modern. The outcome must surely be a vast improvement on the street scene before the Waltzing Waters building started its conversion to retail and residential use. The site does not fall in any conservation area and my attention has been drawn to no neighbouring listed buildings or other designations. I appreciate, and very slightly share, the preferences expressed by CNPA. However it would be disproportionate to seize on these preferences as if they were a compelling basis for refusal. Moreover I cannot see why living conditions for the future occupants of units 1 and 5 should suffer from lounge windows being placed in their respective gables rather than facing north and directly across the street. I would have thought that the opposite is more likely.

The development plan

12. In the light of the above reasoning I find no decisive conflict with structure plan policy G2. This development as varied or as previously approved, involves the reuse and recycling of a redundant industrial-scale building on what can be considered a brownfield site. It lies only 90 metres from bus routes on Main Street. No servicing complications have been drawn to my attention, and (from paragraphs 5-11 above) I find all the design changes sufficiently consistent with the development's physical context. Its setting is a quiet residential street with a mixture of architectural styles, in which the back of the Balavil Sport Hotel is prominent. The street scene will be improved relative to the period in which Waltzing Waters operated as a visitor attraction. No other alleged conflicts with policy G2

have been drawn to my attention. By the same token I find the above variations to be sufficiently in tune with local plan policy 16 and the associated sustainable design guide. I therefore find that the first key issue supports the appeal proposal.

Other material considerations

13. The CNPA case report discusses Scottish Planning Policy [SPP] at some length - in 8 paragraphs. However, none of the associated points set out there draw me away from my above findings. The re-engineering of important parts of the building's steel frame would be required in order to deliver the exterior design preferences of CNPA. This burden would be seriously disproportionate. I consider that even with the variations completed this small housing scheme will remain "the right development in the right place". Additionally there is much to be gained by the completion of this development, by its early occupation by 5 households and thereby bringing an end to the present building site clutter. I struggle to understand why officials apparently sought so hard to identify conflicts between the appeal proposal and SPP and for that matter with the Cairngorms National Park Partnership Plan.

14. I have carefully considered whether the above variations conflict with any of the Aims of the National Park. However, the types of conflict upon which CNPA has tried to draw upon have already been disposed of above. In other words I consider the design changes, bearing in mind the precise physical context, to be relatively trivial, and I consider that the overlooking problem can be addressed perfectly well by the use of the above condition.

15. In passing I have already thoroughly dealt with the site-specific situation, and the challenges posed by major parts of the building's steel frame. I have also covered the remaining material consideration, having found that a planning condition can reasonably secure the provision of obscure glazing where it is needed. This perfectly routine solution was far too swiftly swept aside. There is simply no reason why it cannot be enforced over the long term.

Conclusion

16. Drawing together all the above matters I conclude that all the variations identified on page 2 of this notice are sufficiently consistent with the development plan and that the other material considerations (taken together) also support the success of this appeal. Careful account has been taken of all the other matters which have been raised but they do not outweigh those considerations on which this decision is based.

Philip G Hutchinson

Reporter

Advisory note -

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).]





Appeal Decision Notice

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Decision by R W Maslin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-001-2011
- Site address: Gairnshiel Lodge, Glengairn, by Ballater AB35 5UQ
- Appeal by Mr & Mrs Buchanan against the decision by the Cairngorms National Park Authority
- Application for planning permission: 2012/0212/DET, dated 11 June 2012 and refused by notice dated 24 August 2012
- The development proposed: formation of vehicular access
- Application drawings: Ordnance Survey extract showing location with site boundary added and "Plan views" (drawing number GL/12/01 dated June 2012)
- Date of site visit by Reporter: 7 January 2013

Date of appeal decision: 17 January 2013

Decision

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

Background

1. In 2009, The Appellants applied for planning permission to erect two self-catering chalets in the grounds of Gairnshiel Lodge. The Authority's committee report for its meeting on 5 February 2010 includes the following particulars.

- The chalets are to be used as self-catering holiday lets and as overspill accommodation in association with the letting out of Gairnshiel Lodge (paragraph 6).
- The chalets would allow the existing business to expand into a different area of the tourism accommodation market by providing self-catering facilities for groups and families while maintaining the existing accommodation for house parties (paragraph 36).



- The site occupies a sensitive location. The proposed layout accommodates the development without impacting on the immediate surroundings of the lodge or the nearby listed bridge or the wider landscape in general (paragraph 37).

2. Figure 4 of the committee report indicates access from the public road to the chalets by means of the existing driveway to Gairnshiel Lodge and thence, as the driveway approaches the lodge, by means of a new access branching off to the southwest.

3. Planning permission was granted on 5 February 2010. The permission was subject to eight conditions. Condition 2 says:

The use and occupancy of the self-catering units hereby approved are restricted for holiday purposes only (ie no use by a tenant, lessee, owner or occupier as their principal dwellinghouse, with no single period of occupation exceeding three months) and

the self-catering units (collectively) hereby approved shall be retained in the ownership of the Gairnshiel Lodge business in perpetuity, unless otherwise agreed in writing by the Cairngorms National Park Authority (CNPA) acting as planning Authority.

Reason: To ensure the continued use of the lodges for self-catering purposes allied to the existing Gairnshiel Lodge.

4. At the time of my inspection, construction of the chalets appeared to be complete.

Reasoning

5. The determining issue in this appeal is the impact that the proposed access would have on the local landscape.

6. At Gairnshiel Lodge, the A939, coming west from Ballater, swings sharply to the north and crosses the River Gairn by means of an impressive single-span stone-arched bridge. At the sharp corner, the A939 is joined by the B976 from Crathie. Ground associated with Gairnshiel Lodge adjoins the west side of the A939 from the bridge to the junction with the B976 and also adjoins a section of the B976. The frontage to the A939 is very roughly 200 metres long and the frontage to the B976 is very roughly 100 metres in length.

7. On both parts of the Gairnshiel Lodge frontage there is a wall of traditional dry-stone construction. Immediately to the west of the road junction, the driveway to the Lodge joins the B976. The gateway at the start of the drive is set back from the general line of the wall. This is achieved by a double curve (or ogee) alignment of the wall on each side of the gateway.

8. The two recently-constructed chalets are located behind the B976 frontage. The proposal that is the subject of this appeal is formation of an access on this frontage, to serve the two chalets. The site plan accompanying the application includes the notation "3.0 m min" with regard to the width of the access.

9. The first reason for refusal of permission makes reference to two specific effects. The new entrance "would adversely impact on the historic setting of the localised Gairnshiel landscape, to which the existing extensive dry-stone walling makes a significant contribution" and "would result in an inappropriate fragmentation of the traditional dry-stone wall."

10. Regarding the first effect, from my inspection I note that a number of features contribute to the character of the local landscape. These include Gairnshiel Lodge itself, pine trees within the grounds of the Lodge, the dry-stone wall, the bridge over the river and buildings to the west of the appeal site. It appears that at one time there were other stone walls in the locality, on the south side of the roads in the vicinity of the junction. All that is now left of such walls are lines of stones virtually at ground level, and they make no significant contribution to local landscape character.

11. I find that creation of a three-metre wide gap in the existing dry-stone wall would have little effect on the totality of the various features that create the local landscape. From this I conclude that the proposed access would have no significant effect on the character of the local landscape.

12. With particular regard to the dry-stone wall itself, this has a length of some 300 metres. The proposed access would have no more than a minor impact on so long a length of wall. The impact could be minimised by careful design of the new opening. For example, sections of new wall might be erected on each side of the proposed access for a short distance into the site, linked by curved sections to the exposed ends of the existing wall. This would reduce the visual effect of the proposed gap when approaching it along the public road.

13. Regarding the second effect to which reference is made, "fragmentation" suggests that the proposal would result in the wall being divided in small sections, with the gap dominating and with continuity of the line of the wall lost. I find that this would not be the case. The gap would occupy no more than a minor proportion of the length of the wall. The wall would still be seen as a continuous feature, especially if the proposed opening were carefully designed.

14. With regard to the "historic" setting, submissions indicate that the dry-stone wall is not listed. There is no evidence to suggest that the wall has any special, but more local, historical interest. From my inspection, I note that the wall has an appearance typical of such structures. I find that "historic" is a general reference to a past era, rather than a reference to something from the past that is of unusual importance.

15. I therefore conclude that the proposed access would not have an adverse effect of any significance on the local landscape and would not result in an inappropriate fragmentation of the dry-stone wall.

16. The first reason for refusal goes on to refer to local plan policy 11: *The Local and Wider Cultural Heritage of the Park*. This policy says that “there will be a presumption against development that does not protect or conserve and enhance a site, feature, or use of land of local or wider or cultural historic significance, or its setting.” I take “presumption against” to mean that there is not an absolute ban on development that fails to have the positive effects listed in the policy. This is perhaps borne out by the second part of the policy, which indicates that if development would have adverse effects “reasonable measures to avoid, minimise and mitigate those effects” must be taken.

17. Although I have concluded that the proposal would not have an adverse landscape effect of any significance, I accept that there would be a minor adverse effect. The wall is an attractive component of the local landscape and the proposal would remove a part of it. In these circumstances, the second part of local plan policy 11 is applicable. Consideration should thus be given to measures that would “avoid, minimise and mitigate” the adverse effect.

18. One measure has already been mentioned – careful design of the new opening. This could be secured by imposition of a condition on any permission.

19. A second measure might be closing up one of the number of other openings that exist at several points along the length of the wall, as has been suggested by the Appellants (Grounds of Appeal Statement, paragraph 8.14). Having found that creation of the proposed new opening would not have an adverse effect of any significance on the local landscape, I am not convinced that closure of one of the existing openings (which are generally smaller than the size of the proposed opening) would provide useful mitigation.

20. There is one other possible form of useful mitigation. During my inspection, I noted that sections of the row of capstones along the top of the wall were missing. Some replacement of the missing capstones would improve the appearance of the wall and would help offset such adverse effect as there would be from creation of the access. Capstone replacement is unlikely to be more, or significantly more, onerous than the suggested closing of one of the existing openings. It would ensure compliance with policy 11. It could be secured by imposition of a condition on any permission.

21. I note that the first reason for refusal also quotes from the Cairngorms National Park Partnership Plan 2012-2017. What is quoted is the second of the three long-term outcomes found on page 29 of the Partnership Plan. This outcome coincides to a large extent with local plan policy 11. In view of my conclusion regarding policy 11, I do not find significant conflict between the proposed development and the second outcome.

22. I note that the first long-term outcome is “a sustainable economy supporting thriving businesses and communities.” The Appellants contend that creation of the proposed access would make the chalets and the Lodge more attractive to visitors. The Authority

disputes this contention. Having carefully considered the submissions and viewed the site, I find that the proposed access would indeed make the accommodation more attractive to visitors which in turn would help the Appellants' business to thrive. This would accord with the first long-term outcome.

23. Making the accommodation more attractive to visitors would also accord with the third long-term outcome, which is "people enjoying the Park through outstanding visitor and learning experiences."

24. The second reason for refusal says that existing access provision, as envisaged in the planning permission for the chalets, is adequate to serve both the chalets and the Lodge. As indicated above, I find that the proposed access would make the accommodation more attractive to visitors. By the same token, what was originally envisaged is less satisfactory in relation to the operation of the business. However, the more important point is that I find the proposed access would not have the adverse effects and the conflict with policy that are set out in the first reason for refusal. This being so, there is no need to justify the proposal in relation to the operation of the business.

25. The second reason for refusal goes on to say that the proposed access "would create the impression of segregation of elements of the overall enterprise on the site and would be inconsistent with the principles on which the holiday chalets were approved, with those chalets being intrinsically linked to the business operation of Gairnshiel Lodge."

26. Submissions do not draw to my attention any policy that requires there to be no impression of a segregation of elements on a site such as that at Gairnshiel Lodge.

27. In the "Background" section of this decision notice, I quote condition 2 imposed on the planning permission for the two chalets. This is the only condition that imposes an ongoing restriction on the approved development. The proposed access would not infringe the terms of condition 2. There is no condition to prevent development that might give an "impression of segregation of elements."

28. If "the principles on which the holiday chalets were approved" included the intention that there should be no development that might give an "impression of segregation of elements," this should have been set out as a condition of permission. As there is no such condition, I find that the proposed access is not inconsistent with the terms on which permission for the chalets was granted.

29. In paragraph 6 of its Response, the Authority says that the proposed access would increase the visual impact of the chalets. During my inspection, I noted that the section of wall nearest to the chalets was about 1.4 metres high. The chalets are clearly visible beyond the wall. The wall screens only the lowest parts of the chalets.

30. The proposed access would open up a view into that part of the site occupied by the chalets, but to no more than a very limited extent. This extent could be further reduced if the access design incorporated short sections of new wall alongside the first part of the

access, as mentioned above. My conclusion is that the proposed access would not have any significant effect in relation to the visual impact of the chalets.

31. The only local plan policy to which reference is made in the reasons for refusal is policy 11. Submissions also contain references to local plan policies 6, 16 and 33.

32. Local plan policy 6: *Landscape* sets out a presumption against development that does not complement and enhance the landscape character of the Park and the setting of the proposed development. For reasons given above in relation to policy 11, I find that the proposed development would not have significant adverse effects on the landscape character of the Park. Such effects as there would be could be minimised and mitigated. I conclude that the proposed development would not conflict with policy 6.

33. Policy 16: *Design Standards for Development* lists eight requirements in relation to the design of development. Most of these requirements are not applicable to the proposed development. A carefully-designed access could reflect and reinforce local vernacular distinctiveness. Reuse of stone salvaged from creation of the opening would be a sustainable use of resources. I conclude that the proposed development would not conflict with policy 16.

34. Policy 33: *Tourism-related Development* supports tourism-related development in certain circumstances. I find that the proposed development would enhance accommodation for tourists and would have no significant adverse impact. My conclusion is that policy 33 supports the proposed development.

35. The Community Council and an objector raise concerns about road safety. The Roads Officer of Aberdeenshire Council raises no objection to the proposed development, provided any permission is subject to conditions regarding gradient and paving of the access and regarding provision of visibility splays. From my inspection of the site and consideration of the details of the concerns, I conclude that the proposed access would not be detrimental to road safety.

36. My overall conclusion is that planning permission should be granted. Permission should be subject to conditions to cover matters set out by the Authority in its note of suggested conditions and to seek some mitigation by way of capstone replacement.

R W Maslin

Reporter

Conditions

1. Annotated drawings showing in detail the design of the proposed access and related works shall be submitted to the Planning Authority. In particular, the drawings shall show:

- (a) the location of the access;
- (b) the gradient of the access;
- (c) the means of construction of the access, including materials proposed for use as base layers and as wearing course;
- (d) construction of new sections of dry-stone wall on both sides of the access, joined to the existing wall by curved sections of new wall, or such other arrangement as may be acceptable to the Planning Authority;
- (e) visibility splays to both sides of the access where it joins the public road;
- (f) a layout plan showing all changes to the layout (especially positions of access routes and parking) approved in terms of the planning permission granted on 5 February 2010 in respect of planning application 09/324/CP;
- (g) the positions of trees whose root systems would be affected by the proposed works;
- (h) with regard to trees identified in terms of (g) above, measures to ensure that any such tree will not be seriously damaged or made vulnerable to windthrow; and
- (i) proposals for replacement of missing sections of capstones in relation to the dry-stone wall along the roadside boundary of the Gairnshiel Lodge property.

Reasons: To ensure that the access provides a safe means of entering and leaving the public road. To ensure that construction of the access has least possible adverse effect on the appearance of the existing wall: this wall is an attractive feature of the locality. To ensure that the internal layout of the site remains acceptable in terms of its appearance from the surrounding area. To ensure that no tree is lost as a result of the development: the existing trees are an attractive feature of the locality and provide screening in relation to the chalets. Replacement of capstones will improve the appearance of the wall and help mitigate the effect of the development on the appearance of the wall.

2. The first five metres of the access going in from the public road shall have a gradient that does not exceed 1 in 20.

Reason: To ensure that the access provides a safe means of entering and leaving the public road.

3. The first five metres of the access going in from the public road shall be fully paved.

Reasons: To ensure that the access provides a safe means of entering and leaving the public road. To minimise the extent to which any loose material is carried from the access on to the public road.

4. The dimensions of the visibility splays shall be 2.4 metres by 45 metres to the north-east and 2.4 metres by 59 metres to the south-west.

Reason: To ensure that the access provides a safe means of entering and leaving the public road.

5. Construction of the proposed access shall not begin before all the drawings and other information required in terms of conditions 1, 2, 3 and 4 have been submitted to and approved in writing by the Planning Authority.

Reason: To ensure that the development is implemented in an acceptable manner.

6. The proposed access and the associated works shall be carried out in accordance with the drawings and particulars approved in terms of condition 1.

Reason: To ensure that the development is implemented in an acceptable manner.

7. The proposed access shall not be brought into use before the following have been completed:

- (a) construction of the first five metres in accordance with the drawings and particulars approved in terms of condition 1;
- (b) construction of the works approved in terms of condition 1(d); and
- (c) replacement of capstones as approved in terms of condition 1(i).

Reason: To ensure that essential parts of the development and associated works are implemented.

8. The proposed access shall not be brought into use until all obstructions to visibility that are higher than the level of the adjacent carriageway have been removed from the visibility splay areas approved in terms of conditions 1(e) and 4.

Reason: To ensure that the access provides a safe means of entering and leaving the public road.

9. During all times that the proposed access is in use or is available for use, the visibility splay areas shall be kept free of all obstructions to visibility that are higher than the level of the adjacent carriageway.

Reason: To ensure that the access provides a safe means of entering and leaving the public road.

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).)

