
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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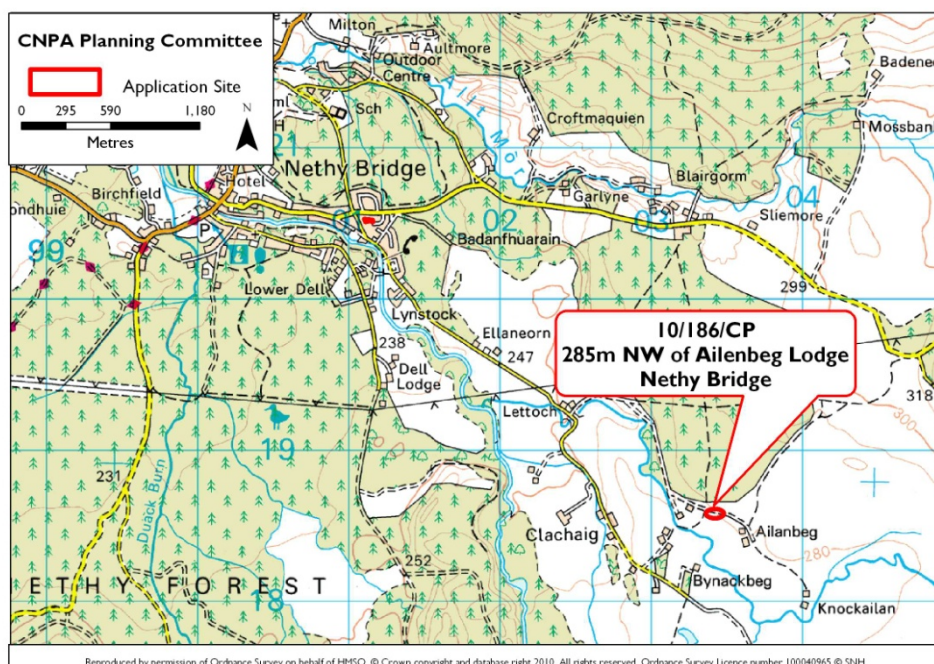
DEVELOPMENT PROPOSED: PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF A DWELLING HOUSE ON LAND 285 METRES NORTH WEST OF AILANBEG LODGE, NETHY BRIDGE

REFERENCE: 10/186/CP

APPLICANT: MR. SHAW AND MISS SMITH
C/O AW LAING LTD., HIGH STREET, GRANTOWN ON SPEY

DATE CALLED-IN: 25 JUNE 2010

RECOMMENDATION : APPROVE WITH CONDITIONS



Grid reference : 303406 818571

Fig. 1 - Location Plan

BACKGROUND AND PURPOSE OF PAPER

1. A planning application seeking planning permission in principle for the erection of a dwelling house on land to the north west of Ailanbeg Lodge was called in by the CNPA in 2010. The site lies approximately 3.7 kilometres to the south east of Nethy Bridge. The application was considered by the CNPA Planning Committee at their meeting on 17 September 2010, and following a vote the Committee agreed to approve the application subject to
 - (a) The applicants commissioning and submitting a report by an independent expert to demonstrate the land management need for the house;¹ and
 - (b) A Section 75 Agreement tying the house to the farm and occupancy to persons who are engaged to work on the farm.

The information subsequently provided was considered sufficient to demonstrate the land management need for the proposed dwelling. Following the verification of this, work commenced on the preparation of a draft Section 75 agreement.

2. On 1 April 2011, a planning paper was considered by the CNPA Planning Committee on the subject of Section 75 Agreements / Planning Obligations. The purpose was to seek Members' agreement to an interim position on the use of such agreements to control the disposal of a new house, pending a later comprehensive consideration of the wider use of such agreements. As well as considering an interim position, the planning paper also sought agreement on revisions to the terms of the Section 75 Agreement / Planning Obligation relating to the proposed dwelling house at Ailanbeg, as requested by the applicant.
3. A number of factors were discussed in the planning paper in relation to the request including a request from the applicant that a restriction on the disposal of the house separate from the croft would only apply to part of the crofting enterprise (Balno Croft). In addition another key aspect which Members were asked to consider was the recent Scottish Government view that in instances where a case has been made by an individual for a house outside a settlement in order to operate a croft, farm or small business, it should be sufficient to restrict the occupancy, to reflect the case made, without also restricting the disposal. In light of this and also having regard to the likely imminent acceptance by the Scottish Government and banking institutions of the use of a cascade mechanism in the event of a default on a mortgage, it was recommended that Members agree to revise the terms required in the Section 75 Agreement / Planning Obligation "to the effect that the disposal of the house is not restricted, but occupancy remain restricted to persons engaged in work on the farm as described by the applicant, and with a 12 week cascade mechanism for the disposal of the house in the event of default on a mortgage." The Planning Committee agreed to the recommendation. Work

¹ The minutes of the meeting state that "if the report states that the house is required then the Head of Development Management is delegated to issue the decision notice. If the report states otherwise the application is to be referred back to the Planning Committee for further consideration and determination."

subsequently commenced on redrafting the terms of the Agreement. Communications have taken place between solicitors acting on behalf of the CNPA and the applicant, but to date the Agreement has not been completed, and consequently the CNPA has not yet been in a position to issue a decision notice.

4. The advice from the Scottish Government on the use of Section 75 Agreements / Planning Obligations was elaborated on further in November 2011, with the circulation of a letter from the Scottish Governments Chief Planner, and in December 2012 with the publication of Circular 3/2012 – Planning Obligations and Good Neighbour Agreements.’ More details will be provided on the content of those documents in subsequent sections of this report.
5. The scheduling of this application for re-consideration at this time results from the need to take account of Scottish Government guidance on the use of Section 75 Agreements / Planning Obligations. The principle of the development has been accepted and should not be revisited. This planning paper has been prepared in order to seek Members agreement on proceeding to issue a grant of planning permission, without the previously required Section 75 Agreement / Planning Obligation.

SITE DESCRIPTION AND PROPOSAL

6. The following is a summary of the key elements of the proposal and the site characteristics :
 - Planning permission in principle is sought for the erection of a dwelling house;
 - The proposed site is approximately 0.39 acres (in excess of 1,600 square metres);
 - The site is on open agricultural land. A plantation woodland forms a backdrop approximately 100 metres to the rear (north east) of the site;
 - The nearest residential properties are located approximately 132 metres to the west (Balno) and 240 metres to the south east (Ailanbeg Lodge). The proposed site would be served by the same access track which leads to those properties;
 - A number of other dwellings are also visible in the surrounding area, in a generally dispersed pattern, the majority of which are located on the southern side of the Dorback Burn and are accessed off the public road which leads to Lettoch and Lurg.

The Applicants' Case

7. Further to the resolution of the CNPA Planning Committee (as outlined in paragraph 1 above), the applicants provided further information in support of their case for a dwelling house. Details provided included reference to Ms. Smith working part time on the family farm. The documentation described Ms. Smith as a key worker for the family business, with duties including feeding sheep and cattle over the winter, checking stock in the evenings during calving

and lambing times, acting as a deterrent to thieves and being in a position to raise the alarm in the event of a burglary, and also dealing with any problems that might arise from the steady flow of members of the public using the Abernethy Walk which runs through the family landholding.² As noted in paragraph 14 of the report to Planning Committee on Section 75 Agreements / Planning Obligations, the details provided were accepted as providing sufficient justification of the land management need.



Fig. 2: Divergence of track towards proposed site (left) and Balno (right)



Fig. 3: Proposed site and properties in the vicinity, as viewed from the unclassified public road

DEVELOPMENT PLAN CONTEXT

8. The planning paper pertaining to this application which was originally considered by the CNPA Planning Committee on 17 September 2010 contained a detailed description of the planning policy that applied at that time. The paper can be viewed on the CNPA website at : <http://cairngorms.co.uk//park-authority/about-us/meeting-papers/committee->

² Duties listed in this respect included shutting gates that had been left open; asking walkers to keep control of their dogs; settling scared livestock; spot and report any litter or flytipping; and warn members of the public about any newly calved cows or playful bulls.

[papers/?meetingID=581&typeID=2](#) The following paragraphs provide a brief summary of the policies which were considered in assessing the proposal.

National Policy

9. **Scottish Planning Policy³ (SPP)** is the statement of the Scottish Government's policy on nationally important land use planning matters. As a replacement for a variety of previous planning policy documents the new **Scottish Planning Policy** includes 'subject policies'. The 'subject policies' of relevance to this application included :
- Housing;
 - Rural Development; and
 - Landscape and Natural Heritage.

Strategic Policy

10. At the time of considering the application, the **Cairngorms National Park Plan (2007)** was in effect. It has since been superseded by the **Cairngorms National Park Partnership Plan 2012-2017**. The latter plan is the management plan for the National Park for the next 5 years. It sets out the vision and overarching strategy for managing the Park and provides a strategic context for the Local Development Plan. Three long term outcomes have been identified to deliver the vision for the Park, in order to continue the direction set out in the first National Park Plan and to together deliver the four aims of the National Park. The outcomes are :
- A sustainable economy supporting thriving businesses and communities;
 - A special place for people and nature with natural and cultural heritage enhanced; and
 - People enjoying the park through outstanding visitor and learning experiences.

Structure Plan Policy

Highland Council Structure Plan (2001)

11. **Highland Council Structure Plan** is founded on the principles of sustainable development, which are expressed as –
- Supporting the viability of communities;
 - Developing a prosperous and vibrant local economy; and
 - Safeguarding and enhancing the natural and built environment.
- A variety of detailed policies emanate from the principles.

12. Policies which were applied in the consideration of the application included :
- Policy H3 – Housing in the Countryside;
 - Policy H8 – Developments involving new or improved access to serve more than 4 houses;
 - Policy N1 – Nature Conservation;
 - Policy L4 – Landscape Character; and
 - Policy G2 – Design for Sustainability.

³ February 2010

Local Plan Policy

Cairngorms National Park Local Plan (2010)

13. The Cairngorms National Park Local Plan was formally adopted on 29th October 2010. The full text can be found at : <http://www.cairngorms.co.uk/parkauthority/publications/results.php?publicationID=265> Given that the CNPA Planning Committee had resolved to proceed to adopt the Local Plan at a meeting on 20 August 2010, the CNP Local Plan was consequently considered the most material consideration in determining the application in September 2010, and had in practise superseded the former Badenoch and Strathspey Local Plan (1997).
14. Policies which were taken into account in considering the application included :
- Policy 5 – Biodiversity;
 - Policy 6 – Landscape;
 - Policy 16 – Design Standards for Developments; and
 - Policy 22 – Housing Development outside Settlements.

CONSULTATIONS

15. A number of consultations were carried out in the course of the original assessment of the proposal. The following paragraphs provide a brief summary of the main points.
16. *Highland Council TEC Services* : no response received.
17. *CNPA Landscape Officer* : the Landscape Officer recommended that that various mitigation measures could be implemented, including the provision of shelter planting and the siting of the dwelling back from the river terrace and closer to the woodland. Further mitigation was also recommended at the design stage, including reference to traditional form, roof line and fenestration.
18. *CNPA Access* : The Access Officer noted that the Lettoch Walk promotes a path network which exits the wood to the north of the subject site, and in light of this suggested that it may be beneficial to potential residents of the dwelling house to angle the building in a way which would not result in users of the path looking directly into the new property.

REPRESENTATIONS

19. No representations were received in connection with the development proposal.

APPRAISAL

Principle

20. The principle of a dwelling house and the associated needs case provided to justify that have already been considered and accepted. Those factors are not therefore the subject of consideration at the current time. As outlined at the outset of this report, the purpose in scheduling this application for re-consideration relates purely to the appropriateness of using a Section 75

Agreement / Planning Obligation in light of recent Scottish Government guidance on the subject.

Key considerations in relation to the use of Section 75 Agreement / Planning Obligations

Scottish Government Chief Planner Letter (2011)

21. The key guidance from the Scottish Government which must be considered in this current planning application is (a) a letter issued by the Scottish Government Chief Planner in November 2011 on the subject of 'occupancy restrictions and rural housing' and (b) Scottish Government Circular 3/2012 entitled 'Planning Obligations and Good Neighbour Agreements' (2010). The letter from the Chief Planner highlighted that a number of issues had arisen with the use of occupancy restrictions resulting in some people having difficulty accessing mortgage facilities, while others have faced difficulty in selling a house in instances where they have been forced by necessity to move. It was noted in the letter that "occupancy conditions can be intrusive, resource-intensive and difficult to monitor and enforce." The Chief Planner also reminded that Scottish Planning Policy promotes a positive approach to rural housing and "it does not promote the use of occupancy restrictions." The letter emphasised that "the Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided." The Chief Planner also provided advice on determining an application for a new house in the countryside, indicating that "where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy." The Chief Planner's letter did not however have the status of formal guidance in the form of a Circular.

Circular 3/2012 – Planning Obligations and Good Neighbour Agreements (2012)

22. The introduction of Circular 3/2012 – 'Planning Obligations and Good Neighbour Agreements' in 2012 formalised the advice already provided the Chief Planner. The circular sets out the circumstances in which planning obligations and good neighbour agreements can be used and how they can be concluded effectively. It is conceded in the Circular that it is not possible to indicate all circumstances in which planning obligations are appropriate. Planning authorities are advised that they should take decisions based on the relevant development plan, the proposed development and tests set out in the Circular. The tests which should be considered are
- Policy tests – tests include consideration of whether a Planning Obligation is necessary to make the proposed development acceptable in planning terms, and would it serve a planning purpose;
 - Necessity tests – could the issue equally be resolved in another way, for example through the use of a planning condition;
 - Planning purpose test – planning authorities are required to satisfy themselves that an obligation is related to the use and development of land;
 - Relationship to proposed development test – planning obligations must relate to the development being proposed;

- Scale and kind test – planning obligations must be related in scale and kind to the proposed development; and
 - Reasonableness test – planning obligations should be reasonable in the circumstances of the particular case. A series of questions should be asked, including is an obligation as opposed to conditions necessary to enable the development to go ahead; and is the requirement in the obligation so directly related to the regulation of the proposed development that it should not be permitted without it. Where the answer to any of those questions is no, a planning obligation is generally not appropriate.
23. Circular 3/20 also contains a specific section addressing the topic of ‘Obligations imposing restrictions on the use of land or buildings.’ It notes that there is a limited role for obligations in restricting the use of land or buildings and specifically mentions that such restrictions have historically been used in respect of housing in rural areas. Paragraph 50 reiterates the advice previously provided in the letter from the Chief Planner that imposing restrictions on use should generally be avoided and states that “where the authority is satisfied that an adequate case has been made, it should not be necessary to use a planning obligation as a formal mechanism to restrict occupancy or land use.”

Conclusion

24. Reference has been made in paragraph 7 of this report to the details provided by the applicants in support of their case for a dwelling house on land outside a settlement, and the subsequent acceptance of this information. In light of this acceptance and consistent with informal advice contained in the 2011 letter from the Chief Reporter and reiterated as formal guidance in Circular 3/20 in 2010, it is recommended that Members agree to grant planning permission in principle for the proposed dwelling house, without the use of a legal agreement / planning obligation.

RECOMMENDATION

That Members of the Committee support a recommendation to GRANT planning permission in principle for the erection of a house on land 285 metres to the north west of Ailanbeg Lodge, Nethy Bridge, subject to the following conditions :

- I. A formal planning application and detailed plans indicating all matters relating to the siting, design and external appearance of the building, means of access thereto, site levels, car parking, means of enclosure, and sustainability statement shall be submitted for the prior approval of the Planning Authority within 3 years of the date of this permission and the development must be commenced within 3 years of the date of this permission or within 2 years from the date of final approval of all the foregoing Matters specified in conditions.

Reason : To comply with Section 59 of the Planning Etc (Scotland) Planning Act 2006.

2. The proposed dwelling house shall be designed in accordance with the traditional vernacular architecture of the area and shall be a maximum of 1 ½ storeys in design, and shall incorporate the use of external materials that visually compliment existing properties in the vicinity.

Reason : In order to ensure that the dwelling complements the landscape setting.

3. An application for Approval of Matters Specified in Conditions shall be accompanied by a detailed landscaping plan which shall include details of trees, shrubs and hedges (including siting, numbers, species appropriate to the rural setting and heights (at the time of planting).

The landscaping scheme shall be completed during the planting season next following the completion of the development, or such other date as may be agreed in writing with the CNPA acting as Planning Authority.

The landscaping plan shall also include a detailed maintenance schedule/table. Any trees or shrubs removed, or which in the opinion of the CNPA acting as Planning Authority, are dying, being severely damaged or becoming seriously diseased within three years of planting, shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

Reason: In the interests of protecting the visual amenity of the area and in order to enhance the natural heritage of the area.

4. Visibility splays shall be provided and maintained on each side of the site access. These splays are the triangles of ground bounded by the first 3.0 metres along the centreline of the access road (the x dimension) and the nearside edge of the main road (the y dimension) measured 150 metres in each direction from the intersection of the access road with the main road.

Within the visibility splays nothing shall obscure visibility between a driver's eye height of 1.0 metres positioned at the x dimension and an object height of 1.0 metres anywhere along the y dimension.

Reason : In the interests of traffic safety.

5. Parking and manoeuvring space for at least 2 no. vehicles shall be provided within the curtilage of the property such that each vehicle may enter and leave the site independently in forward gear.

Reason : In the interests of traffic safety.

6. All public services for the development, including electrical, cable television and telephone cables, shall be located underground throughout the site.

Reason: In the interests of minimising the visual impact of the development.

Advice note :

- (a) The landscaping required in condition no.3 shall include shelter planting which should be appropriate in design, extent and species to reflect the character of the area and in order to soften the visual contrast and reduce the overall potential prominence of a new building. Advice should be sought from the CNPA's Landscape Advisor prior to formalising a landscaping plan.

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20 February 2013

The map on the first page of this report has been produced to aid in the statutory process of dealing with planning applications. The map is to help identify the site and its surroundings and to aid Planning Officers, Committee Members and the Public in the determination of the proposal. Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Cairngorms National Park Authority and other Copyright holders. This permission must be granted in advance.