
CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DECISION

Title: Section 75 Agreements/Planning Obligations

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Head Planner

Purpose:

To seek Members' agreement to an interim position on the use of Section 75 Agreements/Planning Obligations to control disposal of a new house pending comprehensive consideration of the wider use of Section 75 Agreements/Planning Obligations at a later date. To consider the request from the applicant to revise the terms of approval for the Section 75 Agreement/Planning Obligation for 10/486/CP Ailanbeg Lodge, Nethy Bridge. To consider the request from the applicant to revise the terms of the existing Section 75 Agreement/Planning Obligation for 10/048/CP Altnacriche, Aviemore.

Recommendation

That Members of the Planning Committee agree:

- A. As an interim position, to the circumstances as set out in Para 13 of this report where a Section 75 Agreement/Planning Obligation will be used to control occupancy of a house only and will not be used to control its disposal.**
- B. Revisions to the terms of approval for the proposed Section 75 Agreement/Planning Obligation for 10/186/CP Ailanbeg Lodge, Nethy Bridge as set out in Para 19 of this report.**
- C. Revisions to the existing Section 75 Agreement/Planning Obligation for 10/048/CP Alltnacriche, Aviemore as set out in Para 23 of this report.**

Background

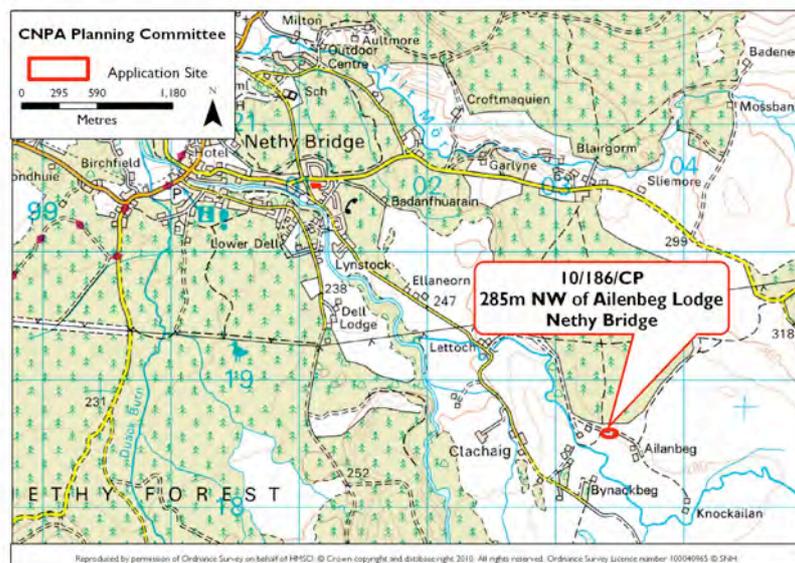
1. Section 75 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act, makes provision for a planning authority to enter into an agreement with any person with an interest that enables them to bind land for the purpose of restricting or regulating the development or use of that land.
2. These used to be called Section 75 Agreements, but under the 2006 Act they are now to be referred to as Planning Obligations.
3. Scottish Government advice is that, where planning permission cannot be granted without some form of restriction or regulation, the planning authority should consider whether this can be achieved by the use of a planning condition on the permission. A planning obligation should only be necessary where successors in title must be bound by its requirements. They are not to be imposed, but voluntarily entered into.
4. Over the last few years CNPA has on occasion used Section 75 Agreements/Planning Obligations to secure contributions to offsite road infrastructure and payment or provision of affordable housing. For the most part though, they have been used where a need case has been made for a new house to support a croft, farm or other rural business and there is a requirement to retain the house for the purpose for which permission was sought and granted. In such cases the Section 75 Agreement/Planning Obligation has restricted the occupancy of the house to someone engaged in that particular business and to prevent it from being disposed of separately from the business i.e. a tie.
5. It is important to note that the vast majority of housing granted planning permission in the Park is not subject to this type of Section 75 Agreement/Planning Obligation: it is only in the very specific circumstances described above. This is now reflected in Policy 22 'Housing Development outside Settlements' in the Cairngorms National Park Local Plan.
6. We have previously taken legal advice on our use of Section 75 Agreement/Planning Obligations and been advised that it is appropriate and in line with Scottish Government Guidance.
7. As Members are aware there have, however, been concerns expressed with regard to difficulty in obtaining a mortgage on a property that is restricted in the manner described in Para 4 above. For the last year or so we have been in discussions with Scottish Government and Council for Mortgage Lenders as well as specific lending institutions and our legal advisers to find a mechanism that will allow the terms of a Section 75 Agreement/Planning Obligation to remain, but a mortgage to be obtained. Members have been periodically updated on progress and in the meantime have had to respond to specific requests to vary or waive Section 75 Agreement/Planning Obligations.

8. Since February 2011 a person against whom a planning obligation is enforceable has been able to apply to the planning authority seeking their agreement for its modification or discharge. There is now a right of appeal to the Scottish Ministers if the planning authority does not agree or if it fails to give notice of a decision within 2 months.
9. The discussions with Scottish Government have focused on the use of Section 75 Agreement/Planning Obligations across the country as their use is not restricted to the National Park. At a recent meeting between Scottish Government, Heads of Planning Scotland and Council for Mortgage Lenders it was accepted that the small number of circumstances where we have been using them was appropriate and several other authorities had a similar practice. It was agreed that the use of a cascade mechanism, such as has been used in England in some cases, would form an appropriate basis for addressing the issue of ability to secure a mortgage. Further discussions are still taking place on the specific form of a template that could be used throughout Scotland whilst allowing for local circumstances. In essence, in the event of default on a mortgage, the restriction on occupancy would be progressively widened over a period of (probably) 12 weeks until it could eventually be sold unencumbered on the open market.
10. A further report will be brought to Members in the near future once the work with Scottish Government and others has been concluded. This will seek the agreement of the Planning Committee to a comprehensive approach to the use of Section 75 Agreements/Planning Obligations. It will definitely include proposals for use of a cascade mechanism.
11. In the meantime Members will also be aware of an issue that has been raised with regard to VAT. CNPA staff have liaised with the technical department of HM Revenue and Customs to clarify matters. A new house is normally zero rated for VAT, but this does not apply if the Section 75 Agreement/Planning Obligation prohibits its separate disposal. The HMRC issue is with separate disposal and not with separate use. A Section 75 Agreement/Planning Obligation which contains an occupancy restriction would not prohibit the zero rating of a new house.
12. Although personal financial circumstances are not a material planning consideration it is considered that in certain instances the impact of VAT on the affordability of housing for individuals is relevant in the broader sense. It could also be relevant when considering the affordability of housing for charitable purposes related to the aims of the Park.
13. If a case has been made by an individual for a house outside a settlement in order to work a croft, farm or small business then it is recommended that it is sufficient to restrict the occupancy to reflect this case via the Section 75 Agreement/Planning Obligation and not to restrict the disposal. In other words the property has to be occupied by someone engaged in the business that gave rise to the need, but its disposal is not linked to that business. Similarly in cases where a charity is operating in the Park, the activities are linked to the Park aims, and a case has been made for a house to support the venture, then it is recommended that the occupancy is controlled via the Section 75 Agreement/Planning Obligation, but not the disposal.

Recommendation

- A. That Members of the Planning Committee agree as an interim position to the circumstances as set out in Para 13 of this report where a Section 75 Agreement/Planning Obligation will be used to control occupancy of a house only and will not be used to control its disposal**

10/186/CP Erection of House at land 285M North West of Ailanbeg Lodge, Nethy Bridge



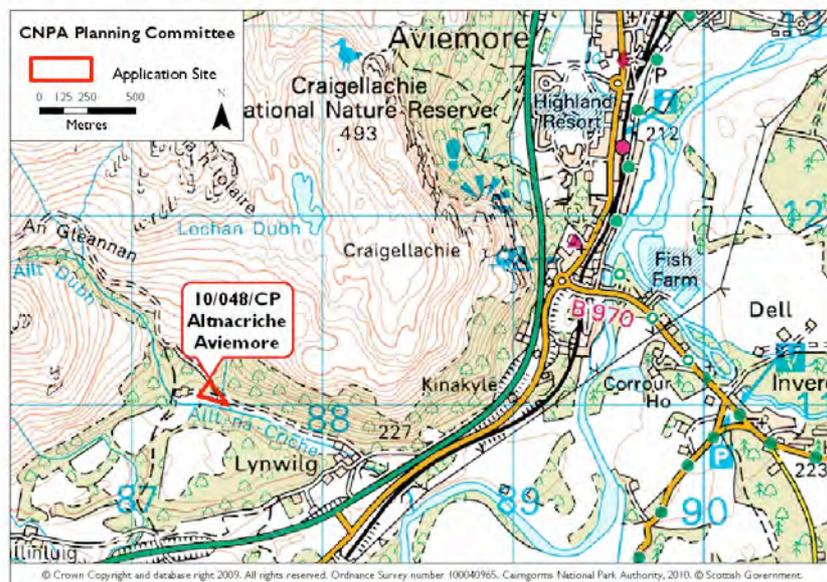
14. The Planning Committee on 17 September 2010 resolved to grant planning permission in principle for this house subject to a report from an independent expert, such as Scottish Agricultural College (SAC), demonstrating that there is a land management need and to a Section 75 Agreement tying the house to the farm and occupancy to persons engaged in work on the farm.
15. The applicants subsequently submitted a report from SAC which supported the case for a house.
16. The “farm” that provided the justification for the house comprises a registered farm holding and two registered crofts not all within the applicants’ control. In order for the new house to be tied to this farm unit all interested parties would have to be signatories to the Section 75 Agreement/Planning Obligation.
17. Following discussions with the applicant they have now written (**Appendix I**) requesting a change in the terms of the Section 75 Agreement/Planning Obligation to the effect that the restriction on disposal would only apply to Balno Croft and not to the other croft or farm holding as other parties would be unwilling to sign the Section 75 Agreement/Planning Obligation.

18. This request in itself is considered to be reasonable, but in the meantime we have been considering the issue reflected in Para 13 above and the likelihood that there will soon be agreement with Scottish Government and others on the use of a cascade mechanism in the event of default on a mortgage.
19. This is an application by individuals on the basis of a land management need and the affordability dimension referred to in the preceding section of this report is relevant. In the circumstances it is therefore recommended that the terms of a Section 75 Agreement/Planning Obligation be revised 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 disposal of the house in event of default on a mortgage. The precise terms of steps in the cascade to be agreed by the Head Planner in consultation with the Convener/Vice-Convener of the Planning Committee.

Recommendation

- B. That Members of the Planning Committee agree to Revisions to the terms of approval for the proposed Section 75 Agreement/Planning Obligation for 10/186/CP Ailanbeg Lodge, Nethy Bridge as set out in Para 19 of this report.**

10/048/CP Erection of Four Houses for Staff Accommodation at Alltnacriche, Aviemore



20. Following the resolution of the Planning Committee on 23 July 2010, Planning Permission was granted to Scripture Union Scotland for this development in October 2010 after completion of a Section 75 Agreement that restricts both the occupancy and disposal of the houses.

21. By way of background for those who were not on the Planning Committee at the time, Alltnacriche is a residential activity centre owned by Scripture Union Scotland approximately 3 miles from Aviemore. It has group accommodation and offers educational and activity programmes within the Park mainly for young people.
22. A letter has been received from Scripture Union Scotland (**Appendix 2**) requesting that Clause 4 of the Section 75 Agreement/Planning Obligation be discharged so that the project can be zero rated for VAT purposes.
23. This charity is providing a service that is closely linked with the Park aims and in line with the approach set out in Para 13 of this report it is recommended that Members agree to the request to revise the terms of the Section 75 Agreement/Planning Obligation by discharging Clause 4.

Recommendation

C. That Members of the Planning Committee agree to Revisions to the existing Section 75 Agreement/Planning Obligation for 10/048/CP Alltnacriche, Aviemore as set out in Para 23 of this report.

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24 March 2011