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## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title: REQUEST FOR REMOVAL OF SECTION 75 AGREEMENT**

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(DEVELOPMENT MANAGEMENT)**

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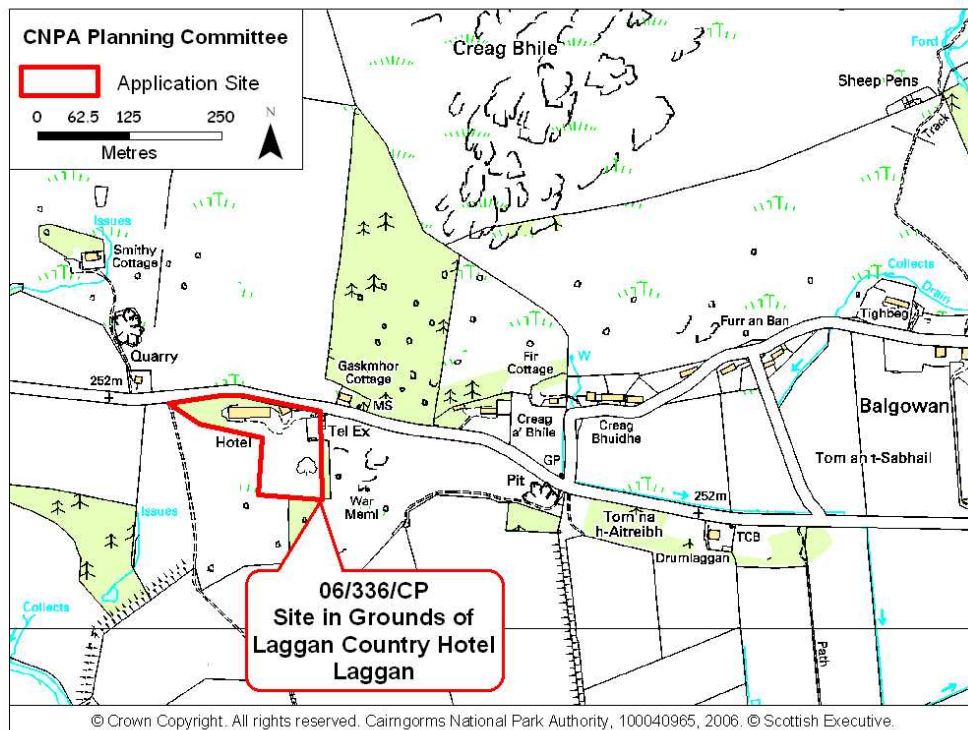
**DEVELOPMENT WITH S75: ERECTION OF DWELLING AT  
LAGGAN COUNTRY HOTEL**

**REFERENCE: 06/336/CP**

**APPLICANT: MR & MRS HUISMAN**

**ORIGINAL DECISION: 1 JUNE 2007**

**RECOMMENDATION: REFUSE REQUEST TO REMOVE  
SECTION 75 AGREEMENT**



**Fig. 1 - Location Plan**

## PURPOSE OF REPORT

1. This paper is to allow Members to consider a request to remove a Section 75 Legal Agreement on a house, now in an advanced stage of construction that was approved previously by the CNPA. The Committee should note that a request to remove was made at the July 2010 Planning Committee Meeting when the Committee decided to refuse. The planning report and minute of that meeting is included as part of the appendix to this report.

## BACKGROUND

2. The site of this house lies within the grounds of the Laggan Country Hotel approximately 1.5 kilometres to the east of Laggan Village accessed off the A86 Trunk Road (see fig.1).
3. The site is on open undulating ground with trees to the east dividing the site from a Memorial. The site has wide views over the Strath to the west.



**Fig 2 showing relationship between house and hotel**

4. The application for full planning permission (06/336/CP) was considered by the CNPA Planning Committee on 1 June 2007. The site is located in an area of Restricted Countryside in the old Badenoch & Strathspey Local Plan 1997 which held a presumption against new housing other than for management of land, related family and occupational reasons. The Highland Structure Plan 2001 and Highland Council's Development Plan Policy Guidelines (April 2003 and March 2006) reinforced this position. The application was put forward

on a business need case in that separate residential accommodation was required for the applicant and his family who were, and still are, residing in temporary accommodation at the site. The family wanted separate accommodation. Part of the justification for a house also pointed out that when the Hotel was running at capacity, often as a result of coach tours, there was no living accommodation available within the Hotel. The case was accepted by the CNPA and in effect an exception to planning policy was allowed based upon the applicant voluntarily signing a Section 75 Legal Agreement restricting the occupancy of the house and ensuring that it should not be sold separately from the Hotel. Transport Scotland also recommended that the house should not be sold off separately because of concerns about the Hotel access onto the A86 Trunk Road.

5. Construction works for the house were noticed by the CNPA in spring 2009 and the applicant advised to stop work. The applicant had not signed the Section 75 Agreement at that stage so no planning decision notice had been issued by the CNPA for the house. The agreement was signed in May 2009 allowing the release the decision notice and construction to continue.
6. The Section 75 Agreement held two elements the first held that ‘ **the applicants and their successors in title, hereby undertake that the development, once erected, may only be occupied by someone engaged solely or mainly in the operation of the hotel business which is based on the site and by a dependant of such person residing with him or her. In the event that the applicant or their successors in title cease to be engaged in such work for any reason whatsoever, the National Park Authority may determine that some of all of the conditions, restrictions, obligations and others contained within this agreement may be modified, varied or discharged**’. The second element of the agreement held that ‘**the applicants, for themselves and their successors in title, undertake that the development, once erected on site may not be disposed of separately from the remainder of the site**’.
7. This latest request to remove the agreement was initially made as a result of a letter submitted by the applicant dated 12 October 2011. This letter enquired about the CNPA’s progress with mortgage lenders on securing mortgages for people whose houses are subject to occupancy restrictions under Section 75 Agreements. The CNPA wrote pointing out the potential for the agreement to be varied to a cascade mechanism (see next section of report below). On hearing about the letter from the Chief Planner that Section 75 Agreements should not normally be used the applicants confirmed on 1 December that they would like the agreement to be lifted rather than varied in any way. A copy of the Chief Planner’s letter is appended to this report.

8. The letter from the applicant points out that that the hotel has suffered expensive water damage which has resulted in considerable costs to the business, in addition to the bad economic situation. The house is 90% complete but the business is in danger of 'going bust' before April, due to funds being diverted away from the business and towards the house. As a result £50,000 needs to be borrowed from the bank. The letter notes that this is a limited amount that could be re-paid in 5 years. However, the Section 75 prevents the funds being acquired by a mortgage.

### **CURRENT SITUATION REGARDING SECTION 75 AGREEMENTS AND MORTGAGES**

9. As previously highlighted the CNPA has met with the Council of Mortgage Lenders (CML) and since a previous case involving the lifting of a Section 75 Agreement was put before the Committee has also met the Scottish Government's Chief Planner a number of times along with other planning authorities to discuss this issue. The current situation is that the CNPA, following discussion with the Council of Mortgage Lenders, has developed a cascade system whereby if a mortgage is defaulted upon a property can be marketed progressively more widely, until if no buyers are found it eventually reverts to the open market. This is not in anticipation of applicants defaulting but does give lenders more confidence that they can recover funds in the event of needing to. This gives the lender more confidence to lend.

### **CHANGE IN POLICY CONTEXT**

10. An important change in policy circumstances is the adoption of the CNP Local Plan in October 2010 (currently under challenge at the Court of Session). In this case, the house would now be judged under Policy 22 Housing Developments Outside of Settlements of the CNP Plan, as the house could not be considered to form part of a rural building group. The policy considers that developments for new housing outside settlements will be permitted where: a) the accommodation is for a worker in an occupation appropriate to the rural location; and the presence of the worker on site is essential in order to provide 24- hour supervision of the rural business; and there is no suitable alternative; and – the proposed dwelling is within the immediate vicinity of the worker's place of employment; or b) the dwelling is for a retiring farmer or crofter. The policy goes onto consider that **where relevant such proposals will be secured through planning condition or legal agreement.**

## APPRAISAL

11. With regard to this particular request, and as already mentioned, the site is in an area where new housing would not normally be permitted without a particular justification. The justification was based upon the business need of the hotel enterprise and effectively the need for operator's accommodation. Consequently, because the approval was exceptional it was subject to the legal agreement ensuring that the house was to be used in connection with the hotel and not sold off separately. The tests for applying such an agreement are contained in Scottish Government Planning Circular 1/2010: Planning Agreements, Planning Obligations and Good Neighbour Agreements. The tests are that planning agreements must:

- be necessary;
- serve a planning purpose;
- be related to the proposed development;
- related in scale and kind to the proposal; and
- be reasonable

The agreement is considered to meet these tests as it relates to a house receiving permission in exceptional circumstances the necessity and planning purpose of the agreement being based upon a business justification and to ensure that the house remains in place to serve the business. The agreement is clearly related in scale and kind by securing a connection between the hotel business and the house. It is also considered to be reasonable as the proposal would not have been recommended for approval without it.

12. The request being made last time was based upon the impracticality of the agreement because its presence prevents Mr Huisman from gaining funds to finish the house. No argument was made that the house was no longer required for its purpose of managing the Hotel. This latest request started life as a request to lift or vary the agreement. However, in the light of a letter from the Scottish Government's Chief Planner the applicants now ask for the agreement to be lifted.

13. As pointed out before financial circumstances of a particular applicant are not a material planning consideration, but the ability to provide houses in rural areas where a specific case has been made is a material consideration. It is also a material consideration that where houses have been provided on a specific need case they should be retained for that need, otherwise the rationale for making the original decision and the policy are undermined. The letter from Jim Mackinnon is a material consideration that must be given weight. The letter states that **"The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided"**.

14. Members considered a paper on planning in the current economic climate which included reference to Section 75 Agreements at the 6 January meeting, and endorsed the approach set out. It was considered that the current CNPA policy approach to rural housing was reasonable and proportionate. Importantly, this approach is based upon a relatively up to date Local Plan adopted in 2010 after extensive public consultation. Policy 22 of the plan reflects the need to secure new housing by legal agreement or condition where it is justified on a business need case. The financial circumstances of the applicant cannot receive any significant weight in terms of balancing any decision. The letter from the Chief Planner must be given due weight. However, such a recently issued letter should not outweigh an adopted plan that has been subject to extensive consultation. The vast majority of housing in the National Park is not subject to Section 75 Agreement. Such agreements are only applied in circumstances where a new house is required because of a specific rural activity (in this case a hotel). The house was entirely justified on the operational needs of and being tied to the Hotel. Without the Section 75 to achieve this link the house would not have been recommended for approval. No operational argument is being made that the house is no longer required for the Hotel. Conversely, if the agreement was removed and the house sold off, this could actually undermine the viability of the Hotel. This is because the argument was previously made that all of the hotel space is required for coach tours resulting in no space being available for manager's accommodation within the building.
15. It is important to note that when the application received permission in 2007 Transport Scotland (Trunk Roads) agreed to the proposal on the basis that the house would be tied to the Hotel, they are still of that view. It is also important to note, unlike previously the applicant can now appeal against the Section 75 Agreement to the Department of Planning and Environmental Appeals should the Committee refuse to lift the agreement.

## RECOMMENDATION

16. Overall, and while taking account of the letter from the Chief Planner there are no changes of circumstance, or material considerations of a weight that would justify making a recommendation against the CNP Local Plan. Consequently, the recommendation is that Members of the Committee **REFUSE** the request to remove the Section 75 Agreement from Planning Permission 06/336/CP for the erection of a dwelling at Laggan Country Hotel.

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26 January 2012

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