

APPENDIX 2

Committee Report and Minute

From

23 July 2010 Planning Committee

06/336/CP

CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REQUEST FOR REMOVAL OF SECTION 75 AGREEMENT

Prepared by: ANDREW TAIT, PLANNING OFFICER
(DEVELOPMENT MANAGEMENT)

DEVELOPMENT WITH S75: ERECTION OF DWELLING AT
LAGGAN COUNTRY HOTEL

REFERENCE: 06/336/CP

APPLICANT: MR D HUISMAN

ORIGINAL DECISION: 1 JUNE 2007

RECOMMENDATION: REFUSE REQUEST TO REMOVE
SECTION 75 AGREEMENT

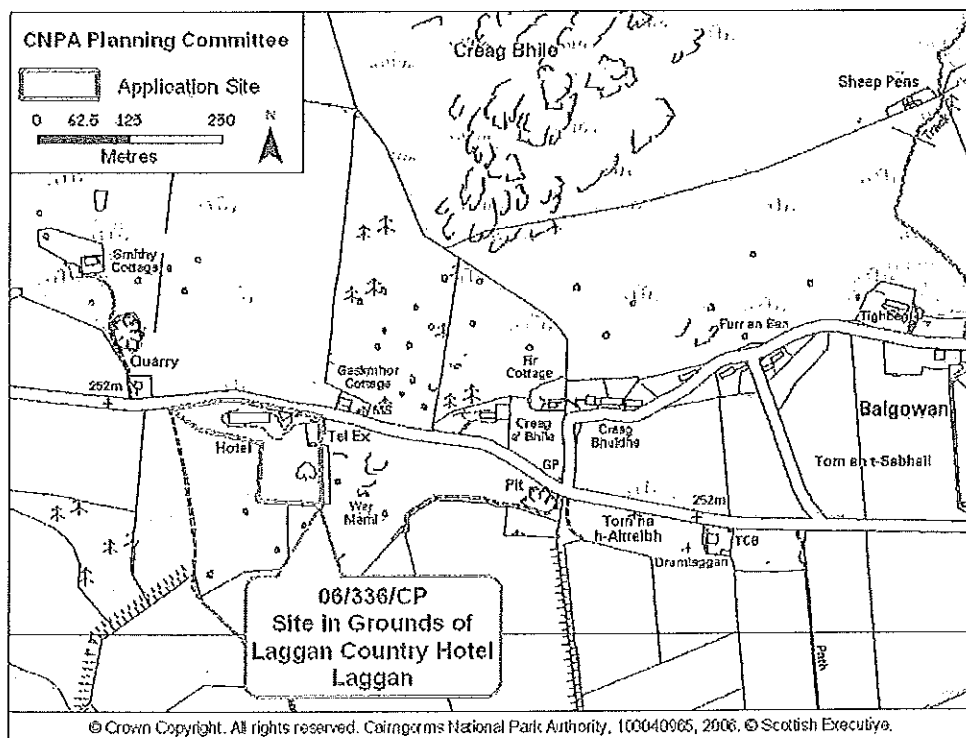


Fig. 1 - Location Plan

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.

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 (see fig.1).
3. The site was open undulating ground with trees to the west dividing the site from a Memorial. The site has wide views over the strath to the west. The house is currently under construction (see fig.2).

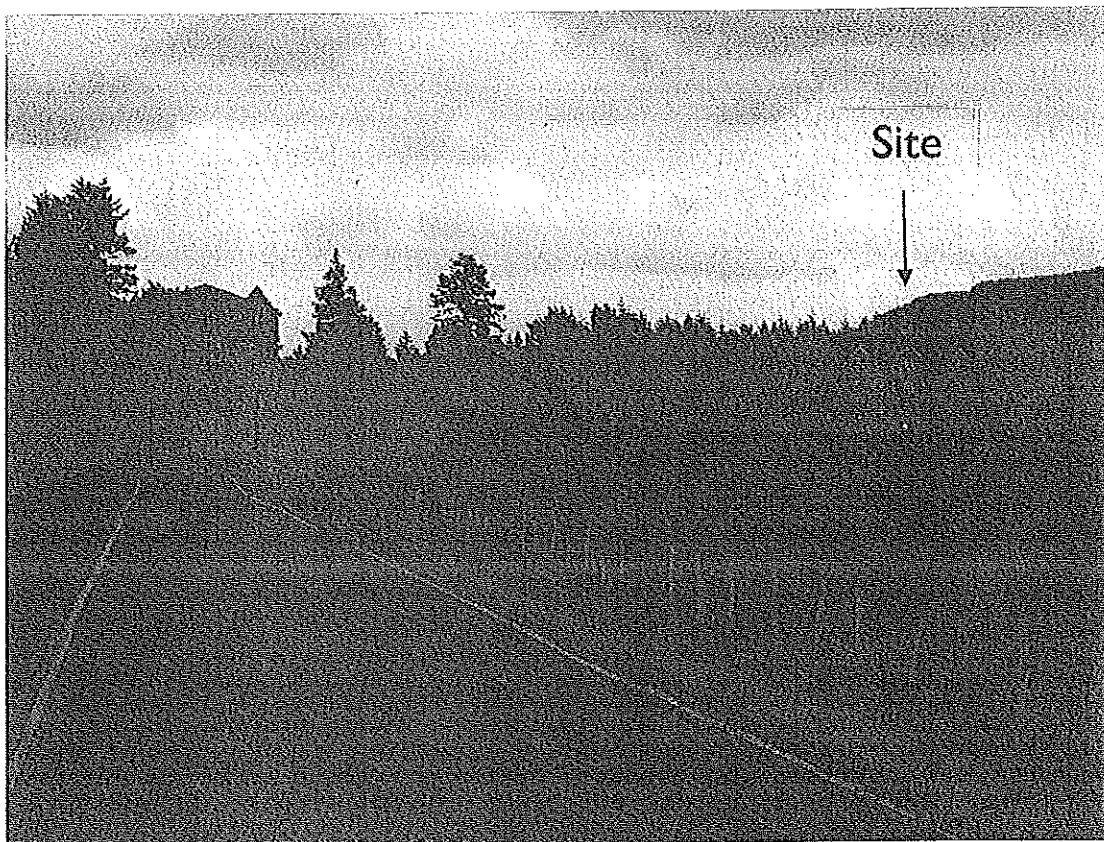


Fig 2 recent (June 2010) view of house (right of photo) from A86

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 existing Badenoch & Strathspey Local Plan 1997 where there is 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.

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 legal agreement held two elements the first held that *'the applicant's 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. A request was made by a planning agent on June 9 acting on behalf of the applicant (Mr Huisman) for the Section 75 Agreement to be removed from the house. This e-mail is attached at the back of this report. The e-mail requests that the agreement is set aside based upon the financial circumstances of the applicant. This, in particular, relates to the difficulties in gaining finance to finish the property. The e-mail comments that over 30 separate financial institutions have been approached and none are prepared to provide a mortgage facility for a development that is subject to a Section 75 Agreement. The e-mail recognises that neither the CNPA nor the applicant could have foreseen the unprecedented change in economic conditions which results in the legal agreement being impractical in relation to the development. A letter from the Bank of Scotland is also attached. The point is also made that without the ability to finish the house Mr Huisman and his family are still living in temporary chalet accommodation at the site. It is understood that the temporary accommodation is resulting in health problems for the family.

CURRENT SITUATION AND APPRAISAL

8. As previously highlighted the CNPA has met with the Council of Mortgage lenders 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 along with other rural authorities to discuss this issue. This process is still ongoing but it is hoped that a common approach will be achieved amongst planning authorities.
9. 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 special justification. The justification was based upon the business need of the hotel enterprise and effectively the need for an operator's accommodation. Consequently, because the approval was exceptional it was subject to the legal agreement ensuring that the house was to be used by operators of the hotel and not sold off separately.
10. The request being made here is based upon the impracticality of the agreement because its presence prevents Mr Huisman from gaining funds to finish the house. A request was made of the agent for further information regarding whether a mortgage or business loan was being sought. Mr Huisman confirms that both mortgages and business loans have been investigated as a way of financing the house completion. Evidence of the numbers of institutions approached and their responses was also requested. This resulted in a letter dated 30 April 2010 from the Bank of Scotland which sets out that the Bank is unable to lend on a property with a Section 75 Agreement because it represents a restriction in the event of an enforced sale of the property. The letter is attached at the back of this report. No evidence has been provided of responses from other lenders.
11. The 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.
12. While being sympathetic to the particular circumstances of the applicant and his family it is crucial to stress that the any decision being made is a planning decision and not a decision based upon the financial circumstances of an individual. Planning law dictates that decisions should be made in line with the development plan unless material considerations indicate otherwise. No operational argument is being made in practical planning terms that the house is no longer required for the management of the hotel. Given that financial circumstances are not a material consideration only limited weight can be carried by this argument when balanced against the restrictive housing policy criteria of the development plan for this location. It is also the case that the new CNPA Local Plan policy would not support such development without restriction along the lines of that applied by the legal agreement, so no weight

can be gained from this new policy regime in terms of supporting the removal of the agreement.

13. The argument is put forward by the agent that there is no other physical location for a further house at the site which would mitigate against the house under construction being sold off. However, the site where the temporary accommodation is situated at the entrance to the hotel could, potentially provide a site for a house and there is no guarantee that an unrestricted house that would result from the lifting of the agreement would not be sold off separately from the hotel.
14. This particular case differs significantly from the Section 75 Agreement on a croft house at Newtonmore that was lifted by the Planning Committee recently on a one-off basis. The key difference being that the previous case was for a crofting related family house based upon the special needs of crofting and its long standing relationship with the heritage and management of parts of the area. In addition a substantial amount of information was presented in support of that case. This current case was based upon an exception to policy to provide operator's accommodation for a full time business, enabling the efficient running of the hotel and allowing it to run at or near to full capacity. Lifting the agreement and allowing the potential for the house to be sold off could undermine the efficient operation of the hotel.

RECOMMENDATION

15. Overall, there are no material considerations that would justify making a recommendation against the development plan provisions. 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.

Andrew Tait
Planning Officer

planning@cairngorms.co.uk

14 July 2010

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.

Sent: 09 June 2010 14:08

To: Planning

Subject: Section 75 Agreement -- Erection of house at Laggan Country Hotel, Laggan, Newtonmore Ref : 06/336/CP

Mr Don McKee
Head of Planning
Cairngorms National Park Authority
Albert Memorial Hall
Station Square
Ballater
AB35 5QB
2010

9 June

Dear Mr McKee

Section 75 Agreement -- Erection of house at Laggan Country Hotel, Laggan, Newtonmore Ref : 06/336/CP

I hope you don't mind me sending this communication via e-mail but I am experiencing some printer problems at the moment.

I refer to recent discussions between yourself and the applicant, Mr Huisman, concerning removal of the Section 75 Agreement in respect of the above development. I had been advised by your officers to lodge a formal application with Badenoch and Strathspey but have since been told the proper procedure is to contact you direct.

Construction of the new house has progressed well and is nearing completion but the presence of the Section 75 Agreement is proving an insurmountable obstacle in the applicant's attempts to secure final borrowings to finish off the project. The reluctance on the part of financial institutions to lend capital in the face of largely unprecedented economic conditions is well publicised and, in this instance, the applicant

finds himself short of funds by approximately 15% of the finished value of the property. He has approached over 30 separate institutions and none are prepared to provide a mortgage facility for a development subject to a Section 75 Agreement.

This situation could not have been foreseen by either the applicant or the National park as planning authority whilst the application was being determined. This is not to question the principle of the Agreement but to highlight the difficulties arising out of the practicality of completing the development whilst the legal burden remains in place. There is an added complication in that, for so long as the applicant is unable to progress the development, he continues to rely upon unsatisfactory temporary accommodation for his family, a situation already resulting in health problems for the younger family members. So resolution is not only sought but required quickly.

The site lies within a Restricted Countryside Area in the 1997 Badenoch and Strathspey Local Plan, where new housing is permitted by exception only. The house was considered essential for management, related family and occupational reasons and its approval on that basis reflected also national planning policy in both housing and tourism terms. As part of its tight control, the Local Plan seeks to govern future occupancy as well as adherence to principles of good siting and design. The latter was achieved through discussion and negotiation and the Section 75 Agreement, entered into reluctantly on the part of the applicant but as the only way in which planning permission could be secured, was intended to control the occupancy aspect. Accordingly, the house is restricted for occupation by persons engaged in the operation of the hotel and the applicant and successors in title undertake not to dispose of the house separate from the remainder of the site.

The physical presence of a house is now fact and the planning unit including the hotel remains the same. The applicant's intention is to continue his relationship and the development's link with the Hotel. In terms of planning constraint there is little if any opportunity for a further house on the planning unit and in any case such a proposal and its circumstances if it were ever to come about would require to be subject to the full planning process.

Scottish Planning Policy, published in February 2010, states planning conditions must be fair, reasonable and practicable and Planning Agreements can be used where conditions would not suit. It is reasonable to assume the same standards of fairness, reasonableness and practicability apply to Agreements also. In this case, there is no doubting the fairness or reasonableness, only the practicability of the Agreement in so much as its very presence is proving an onerous burden and insurmountable obstacle to the completion of this development.

In determining any planning application a planning authority is obliged to have regard for the Development Plan unless material considerations indicate otherwise. Planning Circular 4/2009 accepts the range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. The purpose of this application therefore is to ask that the planning authority consider the practicable problems being experienced with this Section 75 Agreement as a material consideration in a re-assessment of the proposal.


Part Five of the Agreement allows for modification or discharge of any aspect of the Agreement should any part be rendered no longer relevant, providing the parties act reasonably in considering any change in circumstances. It is submitted that the very presence of the Section 75 Agreement, by its impracticability in so far as it presents a barrier to funding thus denying completion of the development, renders itself no longer an appropriate or relevant control mechanism and it is respectfully requested it would be reasonable for it to be laid aside in this instance.

Should you require any further information in support of this request or clarification of any of the points raised, please do not hesitate to contact me.

Yours Sincerely

Dave Macdonald

*Highland Planning
Tigh na Greine
Quebec Bridge
Tain
IV19 1NG*

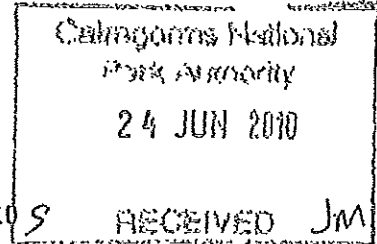

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PRIVATE BANKING

Private Banking
2-6 Eastgate, Inverness, IV2 3NA

Mailing address:
PO Box 5727
Inverness
IV1 9BH

Mr David Huisman
Laggan Country House Hotel
Laggan
Newtonmore
Inverness shire
PH20 1BS



30th April 2010

Dear Mr Huisman

SECURED LENDING ON SECTION 75 TITLED LAND

I refer to telephone conversation this week and confirm that we are unable to lend on properties that have Section 75s in their Planning Permission and subsequent Title.

This is due to the fact that in the event of a forced sale we will have restrictions on the sale of this property.

Please do not hesitate to contact me should you have any queries.

Regards




Dianne Bellshaw
Private Banking Manager

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AGENDA ITEM 9:

**REPORT ON CALLED-IN PLANNING APPLICATION FOR ERECTION OF
FOUR HOUSES FOR STAFF ACCOMMODATION AT ALTNACRICHE,
AVIEMORE**

10/048/CP (FULL PLANNING PERMISSION)

(PAPER 4)

76. Duncan Bryden informed Members that Paul Bayton, Manager of Scripture Union (Applicant) had requested to address the Committee. The Committee agreed to the request.
77. Derek Manson presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
78. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:
 - a) Clarification that the wording of the Section 75 Legal Agreement allowed staff member's families to reside in the proposed dwellings.
79. The Committee agreed to approve the application subject to the conditions stated in the report.
80. Duncan Bryden thanked Paul Bayton for attending the meeting.

AGENDA ITEM 10:

**REPORT ON REQUEST FOR REMOVAL OF SECTION 75 LEGAL
AGREEMENT: ERECTION OF DWELLING AT SITE IN GROUNDS OF
LAGGAN COUNTRY HOTEL, LAGGAN**

06/336/CP (FULL PLANNING PERMISSION)

(PAPER 5)

81. Lucy Grant declared a direct interest and left the room.
82. The Committee paused to read 2 letters of representation which had been submitted within the required timescales. The Committee were advised that one of the letters had only been circulated to Members (not members of the public) due to it containing sensitive medical information.
83. Duncan Bryden informed Members that David Huisman, Applicant, had requested to address the Committee. The Committee agreed to the request.
84. Andrew Tait presented a report to refuse the request for the removal of the Section 75 Legal Agreement which was attached to the application. He advised that the CNPA had been continuing to work with Jim McKinnon, Chief Planner and Mortgage Lenders regarding S75's. Andrew Tait informed Members that Trunk Roads had no objection to the initial application providing that the house was not sold separately from the Hotel, therefore, should the Committee be minded to lift the S75 Trunk Roads would have to be re-consulted prior to any decision letter being issued.

85. David Huisman, Applicant, addressed the Committee.
86. The Committee were invited to ask questions of the speaker and the following points were raised:
- a) The potential for the Applicant to sell the existing Gate Lodge in order to raise funds to complete the development.
 - b) Mr Huisman's statement that it would not be sensible for Applicants to start building a house without first obtaining finance and the relevance of this statement to Mr Huisman's current situation.
87. Duncan Bryden thanked the speaker.
88. The Committee discussed the report and the following points were raised:
- a) The approval of other dwellings in the locality, their siting in policy areas which supported rural development (without the need for a S75). The difference between these approvals and the permission granted to Mr Huisman for a dwelling which, in policy terms, was located in a Restricted Countryside area where development would not normally be permitted without a S75 Agreement.
 - b) Previous owners of the Hotel not living on site and the varying degrees of success they had in operating the business.
 - c) The need to investigate alternative methods of allowing developments to proceed without the need for a S75.
 - d) Concern about the impact on the local tourism industry should the development not be completed.
 - e) The requirement for an update on S75 talks that had taken place. Andrew Tait advised Members that Don McKee had been dealing with this issue. He stated that Don McKee had recently met with Jim McKinnon, Chief Planner and other Local Authorities to discuss a common working practice to S75's. This issue was to be taken forward to the Heads of Planning meeting scheduled for the Autumn to agree a future approach.
 - f) The potential for the efficient running of the Hotel to be affected should the S75 be lifted.
 - g) The further consultation of Trunk Roads should the S75 be lifted.
 - h) The level of traffic to the site, which could be increased by a rise in private business alongside the existing coach party trade.
 - i) S75 being a voluntary agreement into which the Applicant enters.
 - j) S75's being a mechanism to allow development to proceed in areas where it would not usually be permitted.
 - k) The precedent set by lifting previous S75s and the issue of fairness countrywide to those other Applicants who had complied with the terms of the S75 Agreements.
 - l) The need for applications to be dealt with on a case by case basis and assessed on its individual merits.
 - m) Sympathy for the Applicants current living arrangements.
 - n) The need to be mindful of the country's change in financial situation and the implications it may have for individuals wishing to borrow finance.

- o) Previous Committee discussions regarding S75s and assurances that Mortgage Lenders would be on board.
- p) The requirement for Applicants to fully understand the implications of a S75 Agreement prior to signing.
- q) The timing of the signing of the S75 for this application (May 2009).
- r) The need for the Applicant to have had finance in place prior to the commencement of the development.
- s) The potential to defer any decision until after the Heads of Planning meeting in the Autumn.

89. Jane Hope, Chief Executive, addressed the Committee and clarified the situation as there was confusion as to whether the Applicant was applying for borrowing against the house or the business, this situation was different to that of the crofting house previously discussed. These two issues were intrinsically different and it was a level of conversation which needed to take place at Scottish Government level.

90. The Committee resumed their discussion and the following points were raised:

- a) Clarification if the Applicant had sought to borrow funds against the business and not just on the dwelling. Mr Huisman responded that he had approached their current lenders, Abbey National and also the Chelsea, and they were not willing to lend on the basis of the S75. He advised that he wished to keep the business and dwelling finances separate as they may extend the Hotel in future and would require additional finance for that project.

91. Peter Argyle proposed a Motion to Refuse the application for the reasons stated in the report. This was seconded by Richard Stroud.

92. Willie McKenna proposed an Amendment to Approve the removal of the Section 75 Legal Agreement due to the country's changing financial climate, the difficulties in individuals obtaining borrowing and the need for compassion in certain situations. This was seconded by Andrew Rafferty.

93. The vote was as follows:

	MOTION	AMENDMENT	ABSTAIN
Peter Argyle	√		
Eric Baird	√		
Stuart Black	√		
Duncan Bryden	√		
Dave Fallows		√	
Marcus Humphrey	√		
Bob Kinnaird	√		
Willie McKenna		√	
Eleanor Mackintosh	√		

Ian Mackintosh	√		
Anne MacLean	√		
Andrew Rafferty		√	
Richard Stroud	√		
Susan Walker	√		
TOTAL	11	3	0

94. The Committee agreed to Refuse the request to lift the agreement for the reasons stated in the report.
95. Lucy Grant returned.

**AGENDA ITEM 11:
ANY OTHER BUSINESS**

96. Eleanor Mackintosh raised the previously discussed issue of the Crown Estate applying for individual house sites in Tomintoul and surrounding area and the need for a meeting between the Estate and the Planning Officials regarding Affordable Housing. She stated that there was a need for Affordable Housing in Tomintoul and the Crown Estate could potentially be a provider.
97. Eleanor Mackintosh raised concern that Moray Council had again missed notifying the CNPA of several applications which fell within the CNP boundary, and this had been picked up by a member of planning staff. She requested that the Planning Officials address this issue with Moray Council either at a Protocol or special meeting and report back to Committee on the matter. Andrew Tait confirmed that Don McKee would address the issue and report back on the action points.
98. Eric Baird stated that the Crown Estate must have an indication of future plans for Tomintoul and surrounding area and these should be discussed with the Planning Officials.
99. Sue Walker stated concern about the allegations, made by an earlier speaker, regarding enforcement matters in Laggan and requested that Bruce Luffman, Enforcement Officer, visit the area to investigate. Lucy Grant confirmed that there were enforcement issues in Laggan which required looking into.
100. Dave Fallows requested that a comprehensive debate be organised on Planning Gain and the CNPA aspirations for its delivery.