

SITE DESCRIPTION AND PROPOSAL

1. The site is located to the east of Loch Insh immediately to the south of the junction of the B970 with the minor road to Glenfeshie. The application site for this single detached house lies on a separate plot to the south west of the 'C' listed Insh House which is the applicant's current home and includes guest house accommodation. The house is a Thomas Telford designed manse built in 1828. The site is divided from the listed building by a pair of semi detached stone and timber holiday cottages that are part of the applicant's tourism accommodation business. There is another dwelling immediately to the south east of the site.



Fig.2 cottages left new build right



Fig.3-view of new house from south

2. This application is made in respect of Section 42 of the Town and Country Planning (Scotland) Act 1997 and seeks to remove or vary condition number 2 of planning permission 08/130/CP which allowed permission for a house which is currently under construction at the site (figs 2 & 3). The house is a retirement house for the applicant's. However, in the short term they intend to continue the operation of the holiday cottages. Condition No 2 of that permission stated that: "the house and two holiday cottages (seen to the left of figure 2) and indicated within the red line site plan (fig 4) shall be retained within the same ownership and not sold separately from each other. The cottages shall be used as holiday cottages and shall not be used by a tenant, lessee, owner or occupier as their only or principal dwelling house". Occupation was restricted to holiday use for maximum one month periods.

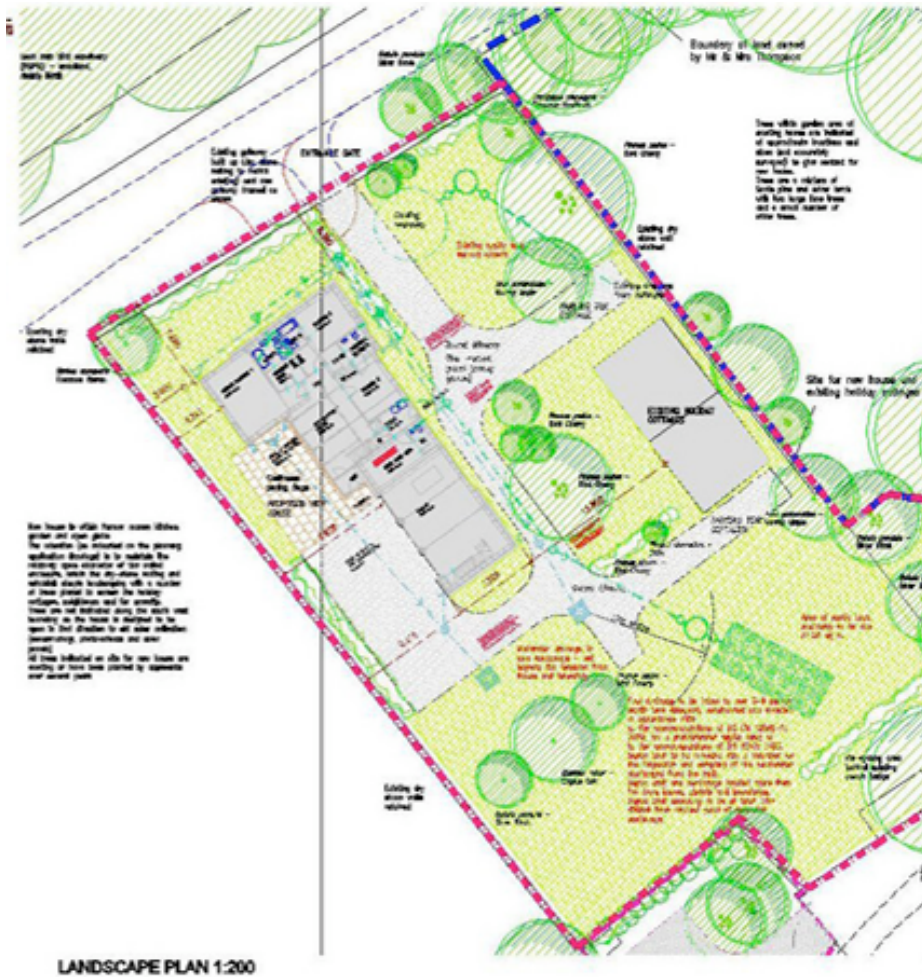


Fig. 4 - Plan submitted in support of application showing relationship between new house left and cottages right



Fig.5 - Plan showing proposed amenity ground for new house/cottages

Section 42 applications

3. Section 42 of the Town and Country Planning (Scotland) Act 1997 is a mechanism which allows for the submission of a planning application for the development of land without complying with conditions subject to which a previous planning permission was granted. Section 42 of the Act stipulates that in this type of application “the planning authority shall consider only the question of the conditions subject to which planning permission should be granted.” Therefore in the context of this application, the only matter which is required to be considered is the appropriateness and acceptability of removing or varying condition No 2 in line with the submitted request.

Applicants Justification

4. The reason for the application is prompted by the inability of the applicants to claim VAT back on their building project. Personal financial circumstances are not material planning considerations. However, the applicants believe that there are planning justifications for removing or varying the condition. The justification for the variation is attached at the back of this report. It is considered by the applicants that the linking of the house and holiday cottages by condition 2 places an unfair burden on them for two reasons: The first reason is that the applicants consider that if granted now the new house would comply with new CNP Local Plan Policy 21 ‘Housing Development in Rural Building Groups’ and could receive permission without the burden of such a planning condition. The second reason is that although the applicants wish to retain the holiday cottages as a source of income for the moment, in future, when retiring they may not want to operate them. They are happy for the cottages to remain designated as holiday cottages but inevitably they may have to be operated by another party in future and potentially sold separately for this to happen. The applicants also ask for the decision notice to be back dated to the original decision in 2008 or to the start of works on 1 December 2009.

DEVELOPMENT PLAN CONTEXT

Scottish Planning Policy

5. Scottish Planning Policy (2010) considers that development management is a key part of the planning system and should operate in support of the Scottish Government’s central purpose of increasing sustainable economic growth. Under ‘Rural Development’ paragraph 94 of the guidance considers that development plans should support more opportunities for small scale housing development in all rural areas, including clusters and groups, extensions to existing groups and plots on which to build individually designed houses as well as new build or conversion housing that is linked to rural business.

Highland Structure Plan

6. Highland Structure Plan (approved March 2001) Policy H3 (Housing in the Countryside) states that housing will generally be within existing and planned new settlements. New housing in the open countryside will not be permitted unless it can be demonstrated that it is required for the management of land and related family purposes or where it supports communities experiencing difficulty in maintaining population and services. This policy points out that housing should be appropriate in location, scale, design and materials. Policy L4 (Landscape Character), states that the Council will have regard to the desirability of maintaining and enhancing present landscape character in the consideration of development proposals. Policy G2 (Design for Sustainability), lists a number of criteria on which proposed developments will be assessed. These include service provision (water and sewerage, drainage, roads, schools electricity); accessibility by public transport, cycling, walking and car; energy efficiency in terms of location, layout and design (including the utilisation of renewable energy sources); use of brownfield sites, existing buildings and recycled materials; demonstration of sensitive siting and high quality design; contribution to the economic and social development of the community; and the impact on resources such as habitats, species, landscape, scenery and freshwater systems.

Cairngorms National Park Plan 2007

7. The Park Plan highlights the special qualities of the Cairngorms, stating that the “Cairngorms is widely recognised and valued as an outstanding environment which people enjoy in many different ways.” It recognises that there is a wide diversity of landscape, land-uses, management and community priorities across different parts of the Park. In a section entitled ‘Living and Working in the Park’ the subject of ‘housing’ is explored. The Strategic Objectives in relation to housing refer to the need to ensure greater access to affordable and good quality housing in order to help create and maintain sustainable communities. A further strategic objective relates to improving the physical quality, energy efficiency and sustainable design in all tenures throughout the Park.
8. In terms of ‘Conserving and Enhancing the Natural and Cultural Heritage’ the National Park Plan includes a number of objectives in relation to Landscape, Built and Historic Environments. Strategic Objectives include maintaining and enhancing the distinctive landscapes across the Park and ensuring that development complements and enhances the landscape character of the Park. Of particular relevance to the current proposal are the strategic objectives relating to landscape and the built environment which seek to ensure that development complements and enhances the landscape character of the Park; understands and conserves the archaeological record, historic landscapes and historic built environment.

Cairngorms National Park Local Plan

9. The current application is purely seeking the variation of one part of a single condition for a development which has already been accepted at the site, when considered by the CNPA Planning Committee in the context of policies that were applicable at the time of the original decision in 2008. Policies have however altered in the time since the application was originally determined. While the Highland Structure Plan policy remains applicable, Badenoch and Strathspey Local Plan policies have been superseded by the adoption of the Cairngorms National Park Local Plan on 29th October 2010. The full text can be found at :
<http://www.cairngorms.co.uk/parkauthority/publications/results.php?publicationID=265>
10. The Cairngorms National Park Local Plan contains a range of policies dealing with particular interests or types of development. These provide detailed guidance on the best places for development and the best ways to develop. The policies follow the three key themes of the Park Plan to provide a detailed policy framework for planning decisions:
 - Chapter 3 - Conserving and Enhancing the Park;
 - Chapter 4 - Living and Working in the Park;
 - Chapter 5 - Enjoying and Understanding the Park.
11. The Local Plan policy which is of most relevance to the current planning application is Policy 21 Housing Development in Rural Building Groups. This policy considers that proposals for new housing development as part of an existing rural building group which comprises three or more occupied dwellings, will be permitted where the proposal reinforces and enhances the character of the group, does not detract from the landscape setting, and does not add more than one third to the existing size of the group within the Local Plan period (based on the size of the group on the date the policy is implemented).
12. Local Plan Policy 21 is supported by Supplementary Policy Guidance “Housing Development in Rural Building Groups” This sets out more detail on the interpretation of Policy 21. The guidance considers that the group must be well-connected and cohesive, in its pattern of development through built form or landscape features. Under “General Site Principles” any proposal must demonstrate satisfactory integration into the existing building group in terms of pattern and layout within appropriate and clearly definable sites. Not more than a third can be added to the number of dwelling houses over the Local Plan period (extant permissions are included in this calculation). Proposals must positively contribute, reinforce and enhance the layout and pattern of the existing rural building group; be an appropriate addition; recognise the need to respond to the character of the group, and: reflect the traditional building pattern of the area.

13. The CNP Local Plan is the subject of an appeal under Section 238 of the Town and Country Planning (Scotland) Act 1997 against the decision of the CNPA to adopt the CNP Local Plan 2010. The Appeal will be decided by the Court of Session and is a material consideration. Therefore, account has been taken of the Appeal in the determination and the recommendation made in respect of this application.”

CONSULTATIONS

14. Kincaig and Vicinity Community Council supports this application as being consistent with earlier comment in relation to the CNP Local Plan in which concern was expressed regarding linkages between domestic property and associated business structures on adjacent land. One of the Park’s aims is to encourage business. Small businesses such as the B & B undertaking currently conducted from Insh House need help from the planning process to start up but also to be able to exit without penalty when the time comes for retirement. In this instance, the unintended consequence of being unable to claim VAT relief on the building of the new retirement property is unhelpful to the exit strategy and the removal of the condition is supported.

REPRESENTATIONS

15. The application has been advertised in the Badenoch and Strathspey Herald. No representations have been received.

APPRAISAL

16. In determining this planning application regard is to be had to the development plan and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. Crucially as this is an application made under Section 42 of the Town and Country Planning (Scotland) Act 1997 the matter on which the Planning Committee are being asked to decide is very specific, concerning only planning condition No 2.
17. The principle and detail of the house is accepted by CNPA planning permission 08/130/CP. The house is at an advanced stage of construction and the pre-commencement and planning conditions complied with. All that is being considered by this report is the fact that the new house is effectively tied to the two holiday cottages.
18. When considering the appropriateness of altering a condition, the discretion of the planning authority is typically limited to assessing the necessity of the condition and considering it in line with the guidance contained within Scottish Government Planning Circular 4/1998 - The use of conditions in planning permissions. The use of planning conditions is to assist in regulating development and allowing development when it would otherwise not be allowed on the basis of policy.

19. The house was granted in 2008 as an exception to policy on the basis of three mitigating factors. Firstly, a pair of semi detached cottages was constructed at the site at the end of the 1980's. These cottages were intended as holiday cottages but had no planning condition restricting them to that use. In other words they could have been sold off as separate dwellings. The granting of permission for the house enabled the CNPA to restrict the use of the holiday cottages for their stated purpose and ensured that they could not be sold separately from the house. A second factor related to the fact that the site held a caravan site licence which meant that caravans could be sited on the area occupied by the new house. Granting permission for the house removed the potential for the front of the site to be used as a caravan site with its subsequent landscape impacts. The third factor related to the house being of a very sustainable design.

20. The main reason for applying the planning condition was because the house was in an area where new housing would not normally be allowed by the planning policy at the time. The reason for this application relates to the applicant's personal financial circumstances which are not a material planning consideration. However, the first part of the justification for the application is based upon a change of housing policy by the introduction of the CNP Local Plan. The applicants refer to Policy 21 Housing Development in Rural Building Groups and that if applied for today permission could be granted without the need for condition No2. The justification which includes a plan appended at the back of the report ably illustrates how the new house fits into the group which consists of five houses if the cottages are taken into account. The application would appear to comply with the policy as it was accepted as being appropriate in terms of pattern and character when approved on this site. The site has defined boundaries in the form of a dry stone wall which the new build sits within. It is divided from Insh House by the cottages and a number of significant trees. Given this assessment there is no longer a policy justification for retaining the condition. In addition, with regard to the second part of the applicants justification it would seem reasonable to relax the condition which would secure the continued use of the cottages for tourist accommodation purposes by another party should the applicants decide to retire fully from their business.

21. The condition was also applied to ensure appropriate levels of amenity between the new house and the cottages. There are no directly overlooking windows between the cottages and new house. However, the relationship between what would be the garden areas for the respective buildings could be of concern if the condition was removed completely, this could also reduce the dedicated garden ground for what is a significant new house. As a relationship between a full time dwelling and tourist accommodation without any of the established facilities of a full time house and garden the situation is considered acceptable. However, this does provide a justification for retaining the second part of the condition that the cottages are designated for tourist accommodation. Subject to this, removing the first part of the condition is considered acceptable. This results in the new condition set out at the end of this report.

22. The applicants have requested that the decision is back dated to the original decision in 2008 or to the start of works on the house in December 2009. However, the decision notice must refer to the date on which the decision is issued. Again, it must be pointed out that the condition is being recommended for variation based upon a change of policy that occurred with the introduction of the CNP Local Plan on 29 October 2010. To back date a decision notice would be at odds with the time at which the policy changed to justify the variation of the condition.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve & Enhance the Natural & Cultural Heritage of the Area

23. The application relates to part of a single planning condition on a previous application so has no relevance to this aim.

Promote Sustainable Use of Natural Resources

24. The proposal has no relevance to this aim.

Promote Understanding & Enjoyment

25. The proposal no relevance to this aim.

Promote Sustainable Economic & Social Development

26. Altering the planning condition still ensures the continued economic use of the cottages.

RECOMMENDATION

27. That Members of the Planning Committee resolve to **GRANT** Planning Permission to vary Condition No 2 of CNPA Planning Permission 08/130/CP for a house on land to the west of Insh House, Kingussie subject to the following revised condition:

- I. The existing holiday cottages indicated on plan BKN102 received 26 November 2010 shall be used as holiday cottages and shall not be used by a tenant, lessee, owner or occupier as their only or principal dwellinghouse. No single period of occupation shall exceed one month. Occupation shall be restricted to use by persons requiring to stay in the area for recreational or vocational purposes and not for reasons of work, business, retirement or study. Nothing contained in this application shall be deemed to affect or vary the conditions imposed on the extant planning permission 08/130/CP

Reason: To ensure the continued economic use of the cottages, to ensure adequate neighbouring amenity and to ensure conditions imposed by the previous application are still applicable.

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21 January 2011

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