
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON REQUEST FOR VARIATION OF SECTION 75 LEGAL AGREEMENT

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DEVELOPMENT: ERECTION OF DWELLING AND GARAGE ON SITE OF FORMER SUMMER HOUSE, CROFTRONAN, BOAT OF GARTEN

REFERENCE: 04/229/CP

APPLICANT: MRS LAWNS, MALVERN TERRACE, PERTH

DETERMINED BY CNPA: SEPTEMBER 2004

RECOMMENDATION: DISCHARGE SECTION 75 LEGAL AGREEMENT

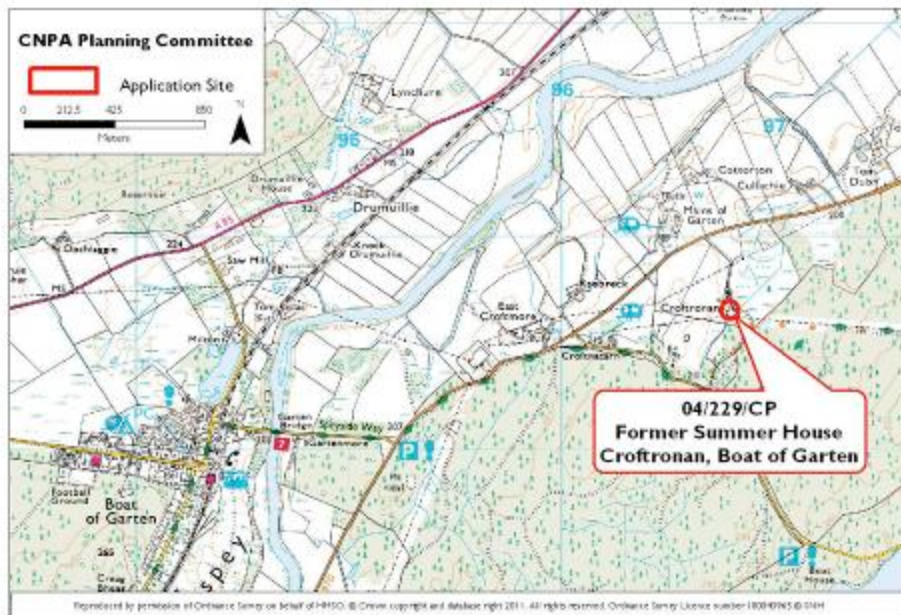


Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. This site is located to the south of the B970 between Nethy Bridge and Boat of Garten and is accessed via an unmade track from the B970 (see figure 1). The house that is the subject of this request is part of a group that includes a larger traditional house, a relatively new house constructed around 2005 and a steading that is currently undergoing conversion as a result of a previous permission.
2. The CNPA granted planning permission for a house at the site which has now been constructed (see figs 2 & 3). The site was in an area where housing was not normally allowed by the Badenoch and Strathspey Local Plan without a land management justification. The case for the house was based upon the applicant being able to move back to Croftronan from Perth and thereby enabling her to attend to the croft and assist her mother who lives in a recently constructed house on the croft adjacent to the B970.
3. Planning Officers at the time recommended the application for refusal as it was considered that there was not sufficient land management justification. Ultimately, the Planning Committee resolved to approve the application but requested that it be subject to a section 75 Legal Agreement. The agreement held two key elements. The first was that the property shall only be occupied by someone engaged solely or mainly in crofting work on the croft and by a dependent of such individuals. The second element held that the dwelling house should not be sold separately from the remainder of the site (croft).



Figs. 2 & 3 showing building group and house

Applicants Case

4. A letter attached at the back of this report sets out the reasons why the applicant is requesting a variation of the agreement. A number of arguments are made. The main difficulty relates to a need for an income from the property. The applicant is struggling to maintain two homes (currently living in Perth and visiting the croft on a fortnightly basis) and a variation of the agreement allowing some ability to use the house for holiday lets would assist in this regard. The letter sets out the nature of the letting that is being requested over a period of five years.

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

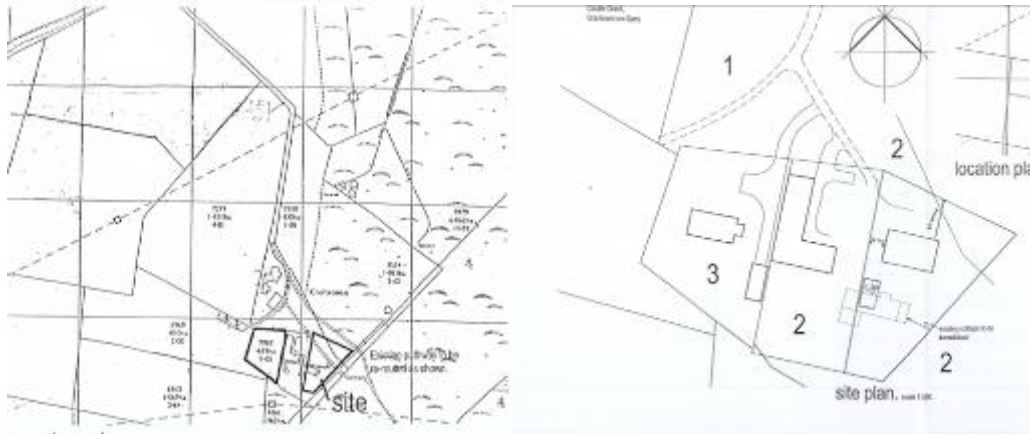
9. The current request is purely seeking the variation of a legal agreement for a development which has already been accepted at the site, when considered by the CNPA Planning Committee in the context of policies that were applicable at the time of the original decision in 2004. Policies have however 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 request 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. Also of relevance to this request is Local Plan Policy 22 Housing Development Outside Settlements. This considers that housing (other than affordable) outside settlements will be permitted where: a) the accommodation is for a worker in an occupation appropriate to the rural location; or b) the dwelling is for a retiring farmer or crofter, on land managed by them for at least 10 previous years; or c) the development is sited on rural brownfield land.
14. 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.

APPRAISAL

15. The CNPA have approved a house that has been constructed at the site and is subject to a legal agreement stating that it should be occupied by someone involved in management of the croft and shall not be sold separately from the croft. This was because of the restrictive housing policy at the site when the application was determined.
16. This appraisal can only consider the request for variation and whether any circumstances have changed that would allow changes to the agreement. A case is put forward based on difficult financial circumstances for the applicant. This is not a material consideration.
17. The most significant change in material circumstances since the application was approved relate to the adoption of the CNP Local Plan in October 2010. This is the key determinant of planning applications and the ability to vary or the relevance of the Section 75 Agreement can be reviewed against the policies contained within the plan.



**Figs. 4 & 5 Illustration of building group,
subject of this request is plot on right of plan**

18. It is important to note in this case that the new dwelling is part of a tight, cohesive building group (see figs 4 & 5). The new dwelling reinforces the character of the group and does not detract from the landscape setting. The siting of the dwelling clearly meets the criteria set out for Policy 21 and the Supplementary Planning Guidance on Housing in Rural Building Groups in that it would increase the group by one third over the plan period and be in-keeping with the character of the group and local landscape.
19. In addition, when the application was approved there was an old corrugated iron building on this site that had at one time been used as a summer house though long since abandoned. Policy 22 of the CNP Local Plan relates to Housing Development Outside Settlements. Criteria c) of the policy notes that new houses in the countryside will be permitted where development is sited on brownfield land. Clearly, the house is sited on previously developed land and can only be considered to accord with this policy.

Conclusion

20. In conclusion, current policy would allow a house in the countryside at this location under both policies 21 and 22 of the CNP Local Plan without any special justification being made. Consequently, there is no longer a policy justification for retaining the legal agreement.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

21. The house has already been constructed and the discharge of the agreement is in line with the policies of the CNP Local Plan. The retention of this house to serve the croft would contribute to the aim of sustainable economic and social development in terms of land management at the site. However, the applicant maintains that she is committed to the croft house and has no intention of disposing of it. A number of houses have been constructed on the croft in recent years so there has been ample opportunity for housing development to support the croft. Consequently, it is unlikely that officers would support any further housing development at this site solely based upon

a crofting case. However, this current request clearly complies with planning policy and results in a clear recommendation that the agreement should be discharged.

RECOMMENDATION

22. That Members of the Committee support a recommendation to **DISCHARGE** the Section 75 Legal Agreement relating to planning permission 04/229/CP for the Erection of Dwelling and Garage on Site of Former Summer House, Croftronan, Boat of Garten.

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23 February 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.