
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: AMENDED REPORT ON CALLED-IN PLANNING APPLICATION

Prepared by: MARY GRIER, PLANNING OFFICER (DEVELOPMENT MANAGEMENT)

DEVELOPMENT PROPOSED: OUTLINE PERMISSION FOR THE ERECTION OF A DWELLING HOUSE ON LAND 370 METRES TO THE NORTH EAST OF THE OLD SCHOOLHOUSE, DUTHIL, CARRBRIDGE.

REFERENCE: 06/388/CP

APPLICANT: MR. JAMES YULE, C/O A.W.LAING LTD., 110 HIGH STREET, GRANTOWN ON SPEY, PH26 3EL

DATE CALLED-IN: 6TH OCTOBER 2006

RECOMMENDATION : REFUSAL OF PLANNING PERMISSION

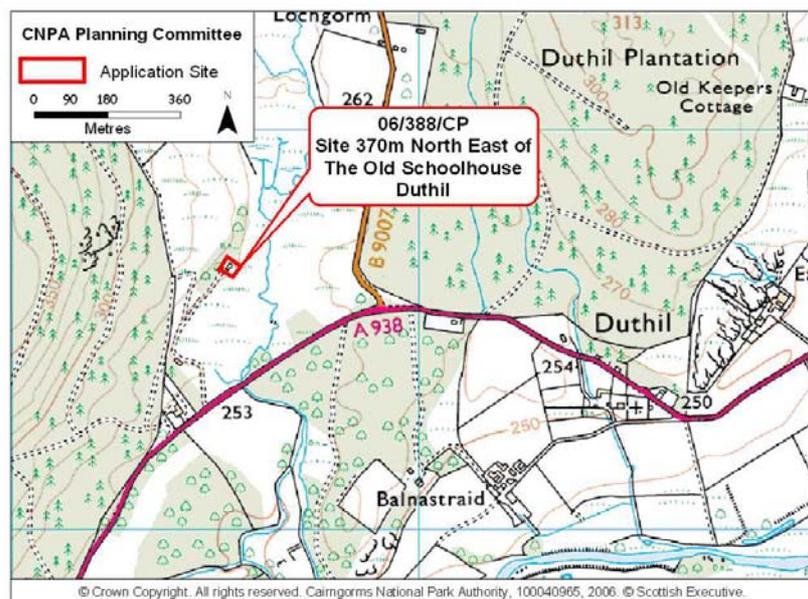


Fig. 1 - Location Plan

BACKGROUND TO AMENDED REPORT

1. An application for outline permission for the erection of a dwelling house on land located approximately 370 metres to the north east of the Old Schoolhouse near Duthil, Carrbridge was brought before the Planning Committee of the CNPA for determination on 15th December 2006. As the applicant Mr. James Yule, had advanced a land management case based on his involvement in the operation of the family farm, the development proposal was considered as an exception to the normal presumption against new housing in areas identified in the existing Badenoch and Strathspey Local Plan as Restricted Countryside. Based on an overall analysis of the proposal, including the aforementioned planning policy, as well as other planning considerations such as siting and landscape impact, access and servicing etc., it was recommended that planning permission be granted subject to the completion of a Section 75 legal agreement, and also subject to a number of conditions. The Planning Committee accepted the recommendation. For ease of reference a full copy of the original report is attached to the rear of this current report.
2. The recommended Section 75 legal agreement referred to restricting “the occupancy of both the existing dwelling house i.e. the Yule family home, and the new dwelling house, to the applicant or any person employed (or last employed) in land based management activity on the landholding and restricting the sale of the existing and proposed dwelling houses except as one overall unit in conjunction with the 56 hectare landholding currently owned by the Yule family.” It is worth noting that it was indicated in a letter from their agent (dated 7 December 2006) to the CNPA planning section that “Mr. Yule and his parents are aware that they might have to enter into an occupancy agreement for both the existing farmhouse and the new dwelling.” Despite this understanding it was however also stated that “they would rather avoid this if possible.”
3. The proposed site occupies an area of approximately 1,600 square metres (0.39 acres) and is set back 260 metres from the public road to the south (A938 Carrbridge to Dulnain Bridge) and is approximately 300 metres to the west of the B9007 Ferness Road. The remains of a storm damaged implement shed are in existence on the proposed site, with a significant stand of deciduous trees forming the immediate backdrop. The land to the front (south) of the identified site area is generally flat and slightly lower lying and is in use for agricultural purposes. Access would be provided off the existing farm track which serves the land, with the exception of an initial section of approximately 95 metres from its junction with the A938 public road. Indicative access arrangement drawings submitted in the course of the application indicate that this extent of farm track would be closed and a new access would be created off the existing farm track, to extend southwards for approximately 90 metres to terminate eastwards of the existing access, at a point where improved visibility could be achieved.



Fig. 1 : Proposed site, with remains of damaged implement shed

4. The applicant proposes to build a dwelling house for his own habitation at the proposed location. The case advanced by Mr. Yule in support of his application for a dwelling house in a Restricted Countryside area was detailed in paragraphs 4 to 7 of the original report. The main facts of the matter are that Mr. Yule currently resides with his parents in the family home, Lochgorm, on the family landholding. He is currently serving a trade apprenticeship with a local joiners and building contractors, but is also involved in operating the farm with his parents. The overall farm area currently consists of 2,984 hectares¹, the majority of which is leased land. The actual area of that land owned by the Yule family is 56 hectares.
5. Information submitted in support of the applicants case indicates that he completes his farming duties in the evenings and at weekends and has responsibility in particular for arable operations. His input is described as being “necessary for the future sustainability of the farm.” The applicant has provided an approximate estimation of the approximate amount of working hours which he contributes to the operation for the farm on an annual basis. The applicants working hours on the farm vary throughout the year, depending on the nature of the activity at that time. In a typical year, the months of January and February, as well as the period between September and December are quieter times on the farm, during which the applicant is only required to work for a limited number of hours over some weekends feeding animals or maintaining machinery. The four month period between March and June is the busiest time of the year and Mr. Yule is required to undertake numerous tasks, as detailed in table 1 below, with several

¹ 2,303 hectares consists of rough hill grazing, with the remainder consisting of woodland and arable land. Seasonal grazing occupies an additional 1,130 hectares. The farm sustains a flock of 1,000 ewes and 42 cattle, and the arable land is used to grow hay, barley and turnips.

of the tasks occurring in connection with the annual ploughing of 50 acres of the land.

Activity	Hours		Activity	Hours
Ploughing	60		Rolling black ground	25
Disking	40		Mucking out court	20
Levelling	40		Spreading manure	10
Stone lifting	10		Drilling	25
Sowing	35		Rolling grass	60

Table 1 : Indicative labour hours between March – June annually²

6. In addition to the applicants' specific duties on the family farm, the original submission also stated that he regularly assists with livestock, with the hours of work varying depending on the requirements of the applicants parents and their ability to sustain their current working practice, where each works 12 hour days, 7 days a week.³

The Applicant's Case

7. Following the decision of the CNPA's Planning Committee on 15th December 2006, procedures commenced in relation to the Section 75 legal agreement. In order to assist in the preparation of the agreement, the applicant, through his agent, provided all relevant information, including a landholding map identifying the 56 hectares which would form part of the agreement, and also identifying the location of the existing house on the landholding. However in February 2007 Ledingham Chalmers (solicitors acting on behalf of the CNPA in the preparation of the Section 75 agreement) received a letter from Munro and Noble Solicitors, acting on behalf of the applicant, Mr. Yule, in which it was stated that "our client cannot accept a Planning Permission subject to a Section 75 Agreement as recommended." It stated that the applicant "cannot allow restrictions to be imposed on his parents' house" as his parents have made no plans for their retirement and it would not be appropriate for the occupation of their house to be restricted to working the farm land. Reference was also made to Mr. Yule's inability to "obtain mortgage funds if his title to the new house is subject to a restriction on occupancy to a person employed or last employed in agriculture."
8. A copy of the letter from Munro and Noble Solicitors is attached to the rear of this report. Members will note that it is suggested towards the conclusion of the letter that Mr. Yule would be "prepared to accept a **condition** to the effect that any new house being built by him must be occupied in conjunction with the land to the west of the burn and further that the occupancy of the house in the future must be by a person occupying the land to the west of the burn in a land based management activity." A foregoing section of the letter describes the

² Total indicative labour hours for the busiest four month period on the farm are 325 hours. This suggests that the applicant has an average labour input of approximately 20 hours per week in the busiest period on the farm.

³ More recent correspondence from the applicant and his solicitor has made reference to the applicants parents approaching retirement.

burn as roughly splitting the 56 hectares of land in two halves and reference is made to the applicant not having any specific plans for the land to the east of the burn, but suggesting that “conceivably at some point in the future that land might be developable.”

9. A further letter was received from the applicant on 20th April 2007 (copy attached to the rear of this report) personally outlining his reasons for non acceptance of planning permission subject to a Section 75 agreement. Mr. Yule does not consider it appropriate for the occupation of the existing house on the landholding i.e. his parents house, “to be restricted in any way.” He also states that he is not prepared to accept that all of the 56 hectares of land that his parents own should be tied to the proposed new dwelling house. Lastly the applicant states that “the occupancy of the new dwelling house should not be restricted by way of ‘any person employed or last employed in land based management’ living in the house.” This is a different position to the one outlined by his solicitors in their letter of February 14 2007. In essence, as detailed in the fourth paragraph of Mr. Yule’s letter, the only form of agreement which he is willing to accept is one where the portion of the overall landholding to the west of the aforementioned burn is linked to the proposed dwelling house.

APPRAISAL

10. The report originally presented to Committee in December 2006 outlined relevant planning policies, from national level guidance through to the **Highland Council Structure Plan** (2001) and the **Badenoch and Strathspey Local Plan** (1997). **Policy H3** of the Structure Plan states that housing will generally be within existing and planned new settlements. New housing will not be permitted unless it can be demonstrated that it is required for the management of land and related family purposes. Similarly, the Local Plan identifies the subject site as being within an area of Restricted Countryside. Within such areas there is a strong presumption against the development of houses. Exceptions will only be made where a “house is essential for the management of land, related family and occupational reasons.” Section 2.1.2.3 of the Plan also clearly states that restrictions on the occupancy of such houses will be enforced.
11. It was accepted in the course of the original assessment of the application that the applicant was involved in the overall land management of the family landholding (including the entire area of land within the ownership of the applicants family, as well as the area of leased land extending to over 2,900 hectares), despite the fact that the applicants input to the farming operations is in a part time capacity, with his full time employment not being connected with land management. It was on the basis of the case advanced for the extent of works undertaken over the entire landholding on which labour is solely provided by the applicant and his parents, that allowed the

development proposal to be treated as an exception to the normal presumption against the development of new houses in this restricted countryside area. In order to ensure that the proposed dwelling house on the site remains in use by persons involved in the land management of the farm on which the site is located, and in the interests of consistency with previous permissions granted for dwelling houses in the countryside on the basis of land management justification,⁴ I consider that the Section 75 as recommended to and accepted by the Planning Committee (and indeed also accepted at that stage by the applicant) is entirely appropriate.

12. In the event, as suggested by the applicant, that planning permission was granted without restricting the occupancy of the proposed dwelling house to persons involved in the management of the land and only subject to a Section 75 agreement linking the proposed dwelling house to a limited portion (approximately 26 hectares) of the overall land unit, it is my view that it would result in planning permission being granted for a dwelling house without adequate land management justification, and without any restrictions precluding its subsequent sale on the open market, other than the fact that it would be accompanied by an area of surrounding land. The granting of planning permission in this situation would set a precedent for unjustified dwelling houses in the Restricted Countryside area and would be contrary to the current housing policy applicable to this area. It would also be inconsistent with previous decisions taken by the CNPA acting as Planning Authority, where permission was refused for houses in the restricted countryside area as there was an insufficient land management justification.
13. As outlined in previous sections of this report, the applicants full time employment is away from the land and his involvement in the family farm is in a part time capacity. The land management case previously put forward by the applicant was accepted as it related to the overall landholding, where the extent of the combined leased and family owned lands was significant and labour requirements appeared to justify two dwelling houses on the landholding, to accommodate those involved in the operations of the farm i.e. the existing family home, Lochgorm, where the applicant currently resides with his parents, and the proposed new dwelling house for the applicant. The nature of the Section 75 legal agreement recommended to Members in the report presented at the CNPA Planning Committee on 15th December 2006 which would restrict the occupancy of the existing and proposed dwelling houses, was intended to ensure that an adequate supply of

⁴ 05/349 – Outline permission for the erection of a dwelling house on land at Corriechullie, Grantown on Spey, subject to a Section 75 legal agreement restricting the occupancy of both the existing dwelling house and the new dwelling house to the applicant or any person employed (or last employed) in land based management activity on the landholding at Corriechullie and restricting the sale of the existing and proposed dwelling houses except as one overall unit in conjunction with the landholding. Other examples of housing permitted in Restricted Countryside Areas, subject to Section 75 Agreements include 04/178/CP – outline planning permission for a dwelling house at Ballintean, nr. Kincaig; 06/485/CP – outline planning permission for a dwelling house at Strone Road, Newtonmore.

accommodation is retained on the landholding to accommodate the workers required to operate the farm.

14. In the recent submission from the applicant reference is made to his parents retiring in the future and their desire to “have some land to keep a small holding on” i.e. the portion of the 56 hectares of family owned land east of the burn. An earlier letter from the applicants solicitor also referred, as detailed in paragraph 8 of this report, to Mr. Yule’s parents not having any plans for their approaching retirement, but suggesting that the land east of the burn might be developable. The circumstances referred to are considerably more uncertain than the land management case presented at the outset of the application. Rather than the applicants land management case being based on regular (albeit part time) and on going essential involvement in a landholding extending to almost 3,000 hectares of leased and family owned land, together with the two full time workers in that enterprise (his parents), the situation that has now emerged involves the potential retirement of the two main workers on the landholding and no definitive plans for the continued agricultural use of over half of the 56 hectares owned by the family. In addition the applicant is silent on any future intentions to continue leasing the land which makes up the major part of the landholding at present. As detailed in the applicants letter he is also opposed to the occupancy of the proposed new dwelling house being restricted to “any person employed or last employed in land based management.”
15. I accept that the applicant may have concerns regarding restrictions being placed on the occupancy or sale of his parents existing house on the landholding and that the applicant has general concerns about the consequences to his parents “if anything went catastrophically wrong.” Nonetheless, it is important to bear in mind that a Section 75 legal agreement is revocable in appropriate circumstances, subject to an application being made to the relevant Planning Authority and supported by details of any altered circumstances to justify any request to vary or revoke any component of the legal agreement.
16. Having regard to the applicants refusal to enter into the Section 75 legal agreement approved by the CNPA’s Planning Committee in December 2006 and the fact that the only restriction which Mr. Yuke is willing to accept would result in a new dwelling house on an associated landholding of approximately 26 hectares (which in itself is not of a scale to justify a sufficient land management involvement to warrant a new dwelling house at this location), without any reference to the occupancy of the dwelling being restricted to persons employed (or last employed) in land management on the landholding on which the applicants original case was based, I do not consider that the proposal complies with the existing housing policy in Restricted Countryside Areas as detailed in section 2.1.2.3 of the **Badenoch and Strathspey Local Plan**. In addition, given that the land management case appears to now be significantly diminished, I also consider that it is contrary to

Policy H3 of the Highland Council **Structure Plan** under which new housing will only be permitted where it can be demonstrated that it is required for the management of land and related family reasons.

AMENDED RECOMMENDATION

17. That Members of the Committee support a recommendation to :

Refuse Outline Planning Permission for a new dwellinghouse on a site 370 metres north east of the Old Schoolhouse, Duthil, Carrbridge for the following reasons :

1. The proposed development is contrary to Regional and Local Planning Policy as contained in Highland Structure Plan Policy H3 (Housing in the Countryside), Development Plan Policy Guidelines 2003 and the Badenoch and Strathspey Local Plan Policy 2.1.2.3. (Restricted Countryside Areas), all of which restrict new houses in the countryside unless there are particular circumstances and special needs in relation to land management. As the applicant has rejected the imposition of any restriction on the occupancy of the proposed dwelling house or other residential property on the landholding to persons employed or last employed in the land management of the landholding and is also unwilling to associate a significant proportion of the landholding with the proposed new dwelling house by way of a Section 75 legal agreement, an insufficient case has been advanced on land management grounds to justify consideration of the proposal as an exception to the normal presumption against the development of new houses in this area. If approved the development would encourage the sporadic siting of other residential developments in similar rural locations, all to the detriment of the character of the countryside and the amenity of this part of the National Park.

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26th April 2007

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.