
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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(DEVELOPMENT MANAGEMENT)

DEVELOPMENT PROPOSED: Erection of Dwelling House

REFERENCE: 08/423/CP

APPLICANT: Fiona Powell and Mick Morris

DATE CALLED-IN: 24 December 2008

RECOMMENDATION: APPROVAL



Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. The site is located South of Mullingaroch Croft house at Street of Kincardine. The site measures 0.183ha and is located on the registered croft of Mullingaroch. There is an existing shed on the site that is proposed for use as a garage. To the South is an open field and But and Ben, a house positioned adjacent to the road. But and Ben is the original croft house, now in separate ownership. The site is set back 14 metres from the public road (B970). Over the public road, is a linear development dominated by six houses built on de-crofted land in the 1970's and 1980's. To the West is the River Spey and over the river is the Boat of Garten golf course. The house site is positioned on nearly flat land on a bench embankment approximately 5 metres above the normal river level and a minimum distance of 14 metres from the river's edge. Mature Alder trees mark the river's edge.
2. It is proposed to erect a 4 bedroomed, 6 apartment house in an L-shaped form and single storey layout. In a Design Statement, the agent describes the proposed house, stating that the styling draws on traditional Speyside steading designs in a modern idiom. The building would be finished in traditional off-white wet dash render, vertical timber boarding and slates to the roof. It would incorporate a number of energy saving design features and renewable energy devices.
3. The application follows an earlier submission for a house positioned more centrally in the field. Following discussion, the proposed position was selected to best protect the privacy and amenity of surrounding neighbours, make more efficient use of the available agricultural land, improve the visual relationship with adjacent buildings and the River Spey, improve the passive solar gain to the house and bring the house closer to the public road to respect the linear nature of Street of Kincardine.
4. A static caravan located at the South West corner of the field is largely screened by Leylandii and could be removed. It is unsuitable for full time occupation.



Fig. 2 Site adjacent to Mullingaroch Croft, looking North



Fig. 3 Site looking South West, Mullingaroch Croft to right and Ben to left

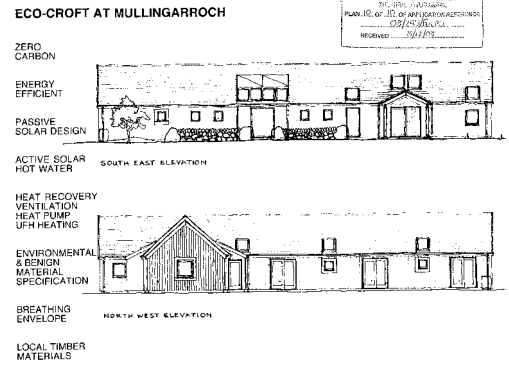




Fig. 4 Site Layout and Elevations

DEVELOPMENT PLAN CONTEXT

Cairngorms National Park Plan 2007

5. Strategic objectives for Landscape, Built and Historic Environment include; ensuring that development complements and enhances the landscape character of the Park; and new development in settlements and surrounding areas complementing and enhancing the character, pattern and local identity of the built and historic environment. Strategic objectives for Farming and Crofting include encouraging the continued development of crofting. Strategic objectives for Housing include increasing the accessibility of rented and owned housing to meet the needs of communities throughout the Park.

Highland Structure Plan 2001

6. **Policy G2 (Design for Sustainability)** states that developments will be assessed on the extent to which they, amongst other things; impact on individual and community residential amenity; impact on resources and designations; demonstrate sensitive siting and high quality design; accommodate the needs of all sectors of the community; and contribute to the economic and social development of the community.
Policy H3 (Housing in the Countryside) advises that housing development will generally be within existing settlements but elsewhere housing in the countryside of an appropriate location, scale, design and materials may be acceptable where there is a land management justification or it supports communities experiencing difficulty in maintaining population and services. In

addition, the Structure Plan recognises that there is a strong demand for crofting tenancies from potential new entrants.

Policy L4 (Landscape Character) states that there is a desire to maintain and enhance present landscape character in the consideration of development proposals.

Highland Council Development Plan Policy Guidelines 2003

7. These guidelines consider that **open countryside** is **all** land outside the boundaries of defined settlements. New housing in the countryside will be exceptional and will only be permitted, in accordance with national policy and approved structure plan policy where it is required for the management of land or related family purposes (retired farmers and their spouses); provided by a social housing provider; involves the conversion/re-use of a traditional building; involves the replacement of an existing dwelling which does not meet the requirements for modern living and where the costs of upgrading are not justified on economic and environmental grounds (subject to the existing dwelling being demolished); or is part of a comprehensively planned new settlement.
8. For a justification based on croft land management it is recognised that a degree of flexibility will be required, for example, it may not be possible to sustain full time employment. Any application submitted on the basis of crofting need should be accompanied by confirmation from the Crofters Commission of the bones fides of the crofting application. Regards will also be had to the history of previous housing development on the croft and the density of development. Any new house must support and respect the traditional settlement pattern and not compound sporadic suburban type development. Approvals granted on the basis of land management will be subject to an occupancy condition.

Badenoch and Strathspey Local Plan 1997

9. **Policy 2.1.2. Housing in the Countryside** states that single houses will require to be located in harmony with the landscape; compatible with the scale and character of local buildings and designed to a high standard with particular emphasis on proportions, roof pitch, fenestration and materials.
Policy 2.1.2.3 Restricted Countryside Areas, identifies a strong presumption against house development at specified locations where service restrictions become necessary. Street of Kincardine is identified as a location where drainage, ground conditions and access are considered to be suspect. Exceptions

will only be made where a house is essential for the management of land. The occupancy of such houses will be restricted and enforced and good siting and design will be required.

The site appears on the settlement plan for Boat-of-Garten where it is defined as amenity and forestry where restraint will be exercised other than houses where an essential need can be demonstrated (**Para. 5.10.4**). It is well beyond the confines of Boat-of Garten and countryside policies apply.

CONSULTATIONS

10. **Highland Council Area Roads Manager:** no objection but recommends a number of conditions including a visibility splay of 120 metres x 3 metres in both directions along the public road.
11. **SEPA:** part of the site is within the 1:200 year flood risk area. A formal objection is lodged pending a Flood Risk Assessment. SEPA notes that the ground assessment and percolation test indicate a faster than usual percolation rate. (This is due to highly permeable riverine sands at the site). Advice is given on the design of the soakaway system to avoid the pollution of watercourses or ground water.
12. **Scottish Water:** No objection but it is noted that there are no public sewers in the vicinity.
13. **SNH:** the site is located adjacent to and at its nearest point 13m from the River Spey Special Area of Conservation and SSSI. Given the distance from the SAC the possibility of a direct impact is remote but there may be a risk of an indirect impact through drainage discharge. SEPA should be consulted.
14. **Crofting Commission:** there is a clear need for residency by the applicant based on the proposed business plan (Operational Needs Assessment) by the Scottish Agricultural College and the proposed keeping of livestock.
15. **Boat of Garten Community Council:** no objection. The proposal is regarded as an asset to the community as assurance has been given that the applicants intend to live on and work the land.

REPRESENTATIONS

16. Two letters of objection raising concerns regarding:

- concern that the croft has not been cultivated by the family for many years and unsure about what is intended,
 - But and Ben Cottage was the original croft house for Mullingaroch before the applicants parents built Mullingaroch Croft. Land for a further 6 houses over the road was then de-crofted, sold and developed, impacting on the rural feel of the area,
 - the proposed house is very large and not in-keeping with the locale where single storey road side crofts are traditional. The house is not appropriate for a croft house. The siting nearer the river is not in keeping with the linear nature of Street of Kincardine,
 - the site would spoil the amenity of the river and the drainage may impact on the environment,
 - concerns about sight lines past trees at But and Ben and the position of the existing septic tank and soakaway in relation to the proposed development.
17. A further two letters submitted in response to the first application have not been resubmitted. One raises concerns about the size of the house and the intended crofting proposals. The other is supportive of the crofting proposal but is concerned about the location of the house in the first application.
18. In a letter in support of the first application but again, not repeated for the second application, Marina Dennis, the Crofters Commission Assessor for Badenoch and Strathspey writes in a personal capacity .She states that she has mentored the applicant in crofting matters. The applicant is a young local person returning to live on and work the family crofts at Mullingaroch and Croftnagarn. She has demonstrated a clear commitment to crofting including an 8 month session run by Highlands and Islands Local Food Network. She has sought out information from many sources. She is an enthusiastic and capable person with realistic and achievable plans with the added bonus that she can be near her mother at Mullingaroch Croft. The applicant has also submitted a letter in support describing her family circumstances and plans for the crofts.

APPRAISAL

The Principle of the Development

19. Mullingaroch Croft and Croftnagarn, together, comprise 12ha. of agricultural land (Farm Code 438/0007). They have traditionally been farmed from Mullingaroch but in recent years the land has been let out due to family circumstances.

Mullingarroch comprises around 6ha on both sides of the road at Street of Kincardine. Croftnagarn is a croft 2 kilometres to the North East at the Loch Garten junction. The applicant has inherited Mullingaroch and Croftnagarn crofts but is currently resident at Hopeman whilst her partner completes his service in the RAF. On leaving the RAF the couple plan to return to the crofts and recommence croft farming and other activities to make up a full time living. The application is accompanied by an Operational Needs Assessment by the Scottish Agricultural College (copy attached). This describes an enterprise consisting of horticulture with tomatoes, herbs, brassicas, salad leaves and raspberries grown in poly tunnels on approximately 0.8ha of land and 40 sheep, 2 sows and 10 hens on largely Class 3(2) land in the River Spey valley. These activities generate 893 hours per annum, (cp. 7days/week at 8 hours/day = 2800 hours per annum full time labour) and does not include set up cost/time and on-going marketing and business development. The welfare requirements of the animals require a full time presence on the croft.

20. The existing Mullingaroch Croft house is owned and occupied by the applicant's mother. It has been de-crofted and is not available to the applicants. The six houses on former croft land at Street of Kincardine are in separate ownership. There is no house currently available on either of the crofts but a clear case has been made for the need to stay in the vicinity of the proposed livestock enterprise. The crofting activity has not yet commenced other than a token vegetable patch cultivated in 2008 but the circumstances of the applicants, together with their proposals set out in the SAC report and the training done and preparations made by Ms Powell hitherto, strongly indicate that the proposals are a genuine intention to farm the croft to provide at least a significant part of full-time productive employment.

Drainage and Flooding

21. Development at Street of Kincardine is restricted by Local Plan Policy 2.1.2.3 unless it is demonstrated that a house is essential for the management of the land and drainage and access constraints can be overcome. Foul drainage will be to a septic tank and soakaway system. Percolation tests indicate a high rate of percolation. SEPA have raised concerns regarding the potential for pollution of ground water and the near-by River Spey, caused by excessively fast run-off. The septic tank is proposed to be positioned 15 metres from the top of the bank in the adjacent field and the soakaway would be at least 12 metres from the river's edge. A detailed design specification

prepared by A.F.Cruden Associates states that the soakaway will be furnished with a 20mm depth of dense sand designed to slow down percolation. Full layout details of the scheme are required following the re-submission of the application but a scheme that meets SEPA criteria for pollution prevention can be achieved.

22. Part of the site closest to the river embankment is identified on the SEPA maps as occurring within the 1:200 flood risk area. This has led to a formal objection from SEPA subject to a Flood Risk Assessment to demonstrate that the development will not take place on the functional flood plain. There is a significant change in levels between the application site and the flood plain below. It is believed that the findings of SEPA arise due to the calibration of flood data on the OS map base at large scales. This means that there are small plotting inaccuracies that can be critical to higher level land at the edge of the flood area. Suitable evidence is in preparation but the situation observed on site is manifestly and clearly not at risk of flooding therefore it is appropriate to consider the application in its present form.

Roads and Access

23. A proposed new access is located adjacent to the boundary at Mullingaroch Croft. This aims to provide a short access to the house whilst at the same time improving the sightlines compared with the very restricted view when emerging from the existing field gate. There is a 40mph restriction on the B970 through Street of Kincardine due to the significant number of domestic and field access points onto the public road in the area. However, traffic tends to speed along the straight section of road. The Area Roads Manager advises that a 120 metre x 3 metre sight line is provided in both directions. Presently, the proposed access would have only a 44 metre x 3 metre sightline to the South. Some work to the neighbour's shrubs and first two Leylandii trees would improve the sightline to 60 metres x 2.5 metres. The full sightline sought by the Area Roads Manager could only be achieved by complete removal of the shrubs and trees at But and Ben. This option is not available to the applicants. The applicants are currently discussing the more limited works with their neighbour, with a view to making an informal agreement. A careful examination at the road side indicates that safe egress can be made if a 60 metre sightline can be arranged. A road side lay by will be formed and larger vehicles are not expected to use the access very frequently. The existing field gate will not be used for domestic purposes but it is required for safe stock movements across the road. The improved sightline will also benefit this access and that at But and Ben. On balance, it is

recommended that a 60 metre sightline, similar to the other domestic accesses in the vicinity, is accepted in this case.

Siting and Design

24. A house approved as an exception, in association with a land management need is required to be of a good design and in harmony with the landscape. It should be compatible with the scale and character of local buildings. Street of Kincardine is characterised by linear development along the road side. Original local buildings are small traditional single storey croft houses but more recent houses are varied in style but are generally bungalows or two storied chalet bungalows in a 1970's idiom. The proposed house adopts an L-shape in order to fit all accommodation on a single storey. It is larger than a traditional croft house but is designed to meet modern family needs and possible future business needs. Its design and materials are traditional in character and well suited to the site and the proposed function. It is likely to prove a good example of rural housing appropriate to the local landscape. A strong emphasis on low carbon and energy saving is built into the design. It is in compliance with policy aims to encourage good house design in the countryside.
25. The amended application and the repositioning of the house will improve its siting in relation to the linear character of Street of Kincardine. It's set back from the road protects the amenities of houses opposite and aligns the house with the adjacent Mullingaroch Croft. The position also greatly improves the amenity and outlook for But and Ben, adjacent to the South and best preserves the integrity of the remaining field for agricultural production.

Conclusions

26. The exceptional need case for a house in support of an agricultural enterprise is considered to be genuine. The enterprise is a start up (or restart) by a new generation, on a long established family croft and therefore sits well with the social and economic aims of the National Park. The house design and repositioned site are good and are unlikely to be detrimental to the countryside or character of Street of Kincardine. The amenities of neighbours have been carefully considered and are protected as much as possible. Satisfactory standards for road access and drainage can be achieved and planning policies met therefore the application is recommended for approval.

IMPLICATIONS FOR THE AIMS OF THE PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

27. Steps have been taken to protect the interests of the environment of the River Spey. Crofting is recognised nationally and in development plan policy to contribute to the cultural heritage and a distinctive way of life in the Highland area. The proposal would be supportive of a renewal of crofting activity and therefore supportive of this aim.

Promote Sustainable Use of Natural Resources

28. The proposed house aims to be highly energy efficient and supportive of crofting activity to produce local foodstuffs.

Promote Understanding and Enjoyment

29. No material implications for this aim.

Promote Sustainable Economic and Social Development

30. The proposal would be supportive of the economic and social development of the area and is therefore supportive of this aim.

RECOMMENDATION

Grant Full Planning Permission subject to:

- (a) the submission of a Flood Risk Assessment or other evidence leading to the withdrawal of the formal objection from SEPA on the grounds of a flood risk or, otherwise, a referral of the application to Scottish Government, in accordance with the regulations;
- (b) the completion of a Section 75 Agreement restricting the occupation of the approved house to person(s) mainly employed in the working of the registered croft at Mullingaroch and Croftnagarn and which does not permit the house to be disposed separately from the registered croft (Code 438/0007) and;
- (c) the following conditions:

1. The development to which this permission relates must be begun within five years from the date of this permission.
2. The occupation of the dwelling shall be limited to a person(s) mainly employed on the registered croft unit (Code 438/0007) at Mullingaroch and Croftnagarn Croft, or a dependant of such a person residing with him or her, or a widow or widower of such a person.
3. Prior to the commencement of any other works at the site, the approved access and the accompanying sight lines shall be formed to the satisfaction of the Cairngorms National Park Authority acting as Planning Authority, in consultation with the Highland Council Area Roads Manager. All traffic associated with the development and the subsequent occupation of the approved house shall be via the access so formed and the existing adjacent field access shall be stopped up and permanently disused.
4. Prior to the commencement of the development hereby approved, full details of the size, design and position of the foul water septic tank and soakaways for the new house and any remedial works for adjacent houses shall be submitted for the further approval of the Cairngorms National Park acting as Planning Authority, in consultation with SEPA. Drainage shall be installed entirely in accordance with the approved scheme.
5. Prior to the commencement of any of the other works hereby approved, the following works shall be completed to the satisfaction of the Cairngorms National Park authority in consultation with the Highland Council Area Roads Engineer:
 - i) A combined service bay/passing place in accordance with the standards set out in the Highland Council Road Guidelines For New Developments, shall be formed at the point of access to the site. A verge of at least 1 metre shall be maintained behind the nearside edge of the bay. Construction for at least the first 6 metres from the near side edge of the public road shall consist of a minimum of 40mm thick Close Graded Wearing Course on 60mm Dense Basecourse on a minimum thickness of 350mm Type 1 sub base, all on a sound formation.
 - ii) Visibility splays shall be provided and maintained on each side of the access. These splays shall be 2.5 metres by 120 metres to the North and a minimum of 2.5 metres by 60 metres to the South.

Within the visibility splays nothing shall obscure visibility up to a height of 1 metre above the road level.

- iii) No walls, fences, trees or shrubs shall be established within 2 metres of the nearside edge of the public road or within 1 metres of the rear of the service bay.
 - iv) Any gates that are provided shall be set back at least 2.5 metres from the edge of the public road and shall open into the property only.
 - v) Parking and manoeuvring space for at least 3 cars shall be provided within the curtilage of the house hereby approved, such that each vehicle may enter and leave the site independently and in forward gear.
 - vi) No water shall discharge on to the public road.
6. For the avoidance of doubt, the residential plot hereby approved is defined by the site boundary marked on the approved plans. The boundaries, if marked, shall only be marked by stock fencing and/or dry stone walling and/or hedging formed from native deciduous plants, unless an alternative is first approved in writing by the Cairngorms National Park Authority acting as Planning Authority.

ADVICE NOTE

Roads: Prior to any work of excavation or surfacing starting within 2 metres of the public road edge a road opening permit shall have been obtained from the Highland Council as Roads Authority. It should be noted that the applicant shall be responsible for any measures necessary to prevent road water from entering the site. Details of such measures shall be submitted for the prior approval of the Roads Authority.

Hilary MacBean
17 February 2009

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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

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