
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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DEVELOPMENT PROPOSED: FULL PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE, LAND TO REAR OF HILLCREST, NETHYBRIDGE ROAD, BOAT OF GARTEN

REFERENCE: 06/270/CP

APPLICANT: IAN AND JULIE ROURKE, 41 BURNSIDE AVENUE, AVIEMORE

DATE CALLED-IN: 28 JULY 2006

RECOMMENDATION: REFUSAL

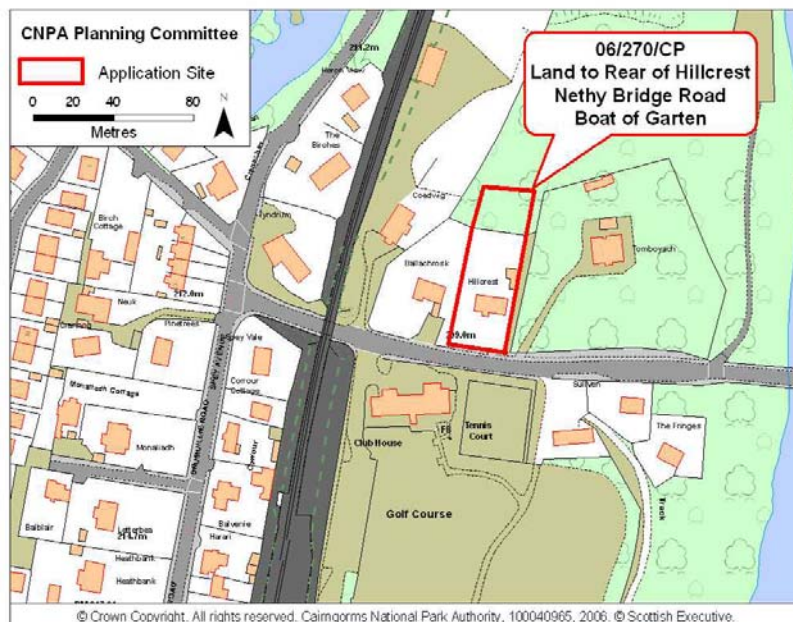


Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

Background

1. Members of the Committee will recall that this application for a new house was first reported to the Planning Committee of 27 July 2007. The recommendation was one of approval, subject to conditions, but also the completion of a Section 75 Legal Agreement. The agreement was required to ensure that neither the house proposed nor the existing house on the site ("Hillcrest") could be sold separately from each other. The reasons for requiring this restriction related to the inadequacy of the layout in terms of space, the shared access and the overall relationship between the two properties. Due to the family circumstances and the nature of the application, it was felt that approval could be recommended on the basis of the S75. The applicants agreed to the S75 at that time. With the S75 requirement, the applicants have subsequently tried to gain a mortgage or any other type of funding, for the new house. The applicants have now stated that this has proved ultimately unsuccessful. Their personal circumstances have also unfortunately changed. They therefore wish further consideration of their application, but without the need for the S75 agreement restriction.

Proposal

2. To recap, this site lies to the rear of a single storey bungalow property known as "Hillcrest" which sits above and on the north side of the public road to Nethybridge in Boat of Garten (**Fig. 1.**). The site slopes upwards from the back of "Hillcrest" in a northerly direction and constitutes partly garden ground for the existing house, and partly sparsely planted birch woodland which has been purchased by the owners. This birch woodland area extends beyond the site northwards and eastwards towards the River Spey. To the east side of the site, is a large detached traditional house known as "Tomboyach" which sits in a sizeable garden area and is set back from the road in an elevated position. To the west side is another house known as "Ballachrosk" which sits approximately on the same building line as "Hillcrest". The Boat of Garten Golf Clubhouse is located across the public road on the south side. A single point of vehicular access to "Hillcrest" is taken off the public road and passes to the east side of the existing house to access garaging and parking areas to the rear. There is also a narrow, overgrown strip of land between the boundaries of "Hillcrest" and "Tomboyach" which provides access to the birch woodland beyond. (**see Photos at Figs. 2, 3, & 4.**)



Fig. 2. "Hillcrest" and access – site to rear

3. The proposal is to erect a new one and half storey dwellinghouse (5 bedrooms) into the sloping land to the rear of "Hillcrest". The house will have finishes of slate and wet harl with a single storey wing (kitchen) of timber walls and corrugated metal roof sheeting. Following a request for more information on impact on trees at that time, a revised plan shows that two trees will be felled, but that they will be replaced elsewhere on the plot. Access will be from the existing access, with parking created between the existing and proposed properties. The original plan proposed the house in a position located further up the slope to the north on birch woodland and on land outwith the curtilage. The revised proposal shows the house now moved further down the slope towards the existing house and now within the existing domestic curtilage. However, the rear garden area for the new house will still extend into the birch woodland area (**see Figs. 5 & 6**).
4. The house is for the daughter and son-in-law (Mr. & Mrs. Rourke), plus two children (ages 10 and 6), of the owner of "Hillcrest". Both applicants work locally (currently live in Aviemore) and they enjoy the support of the grandmother who helps take care of the children during the day. Mr. Rourke is employed at the family painting and decorating business which is based at "Hillcrest". Due to the sad passing though of the grandfather (since the previous determination in July 2007), who also owned the painting business based at "Hillcrest", Mr. Rourke is now running the painting business and hopes to be an employer himself in the near future.



Fig. 3. Rear of “Hillcrest” viewed from the site

Fig. 4. Site viewed from the north looking down towards rear of “Hillcrest”



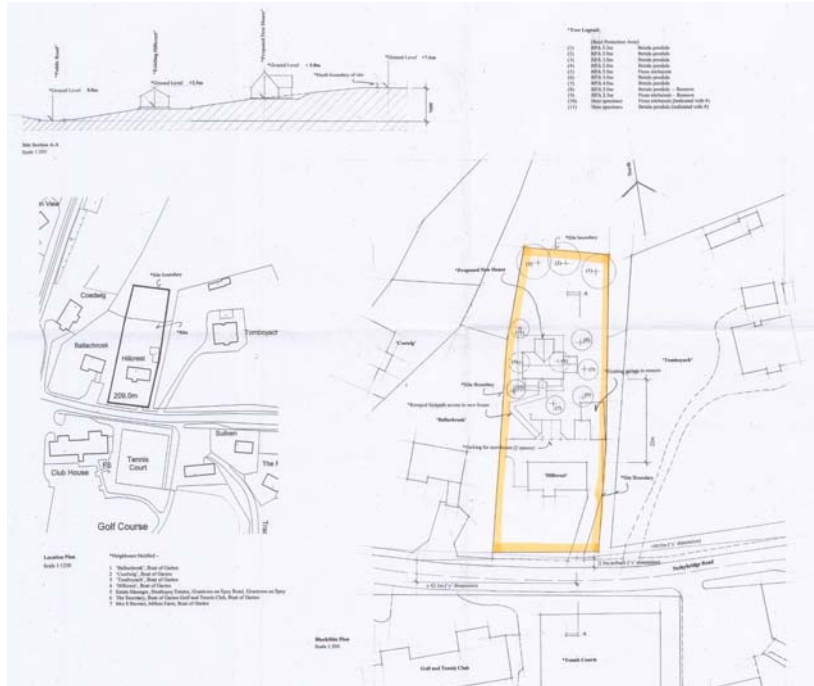


Fig. 5. Location plan, site plan and site section

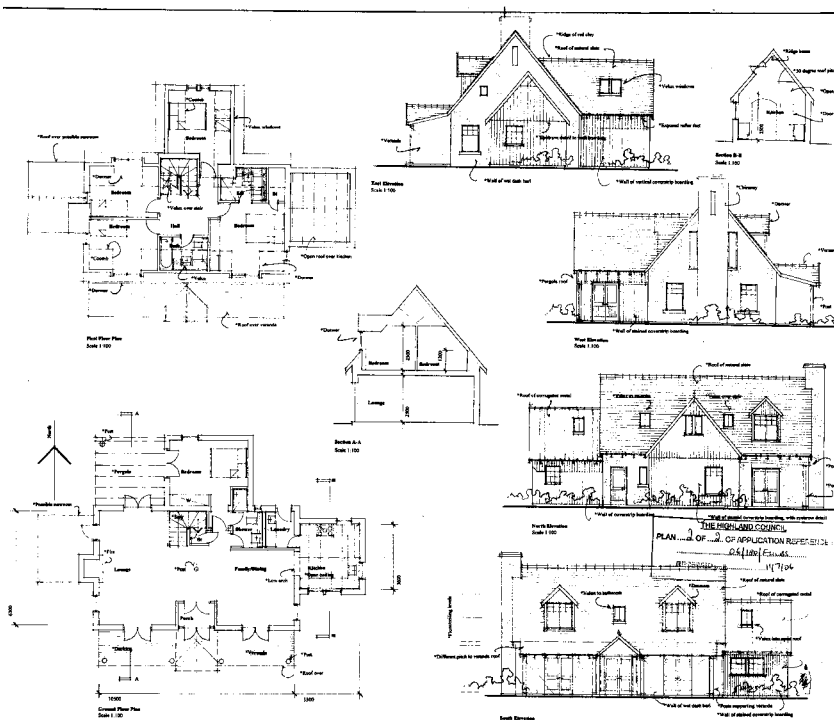


Fig. 6. Elevations and Floorplans

DEVELOPMENT PLAN CONTEXT

Cairngorms National Park Plan 2007

5. Strategic objectives for **Housing** contained within the approved Park Plan, include: increasing the accessibility of rented and owned housing to meet the needs of communities throughout the Park; and improving the physical quality, energy efficiency and sustainable design of housing in all tenures throughout the Park. Strategic objectives for **Landscape, and Built and Historic Environment**, include; ensuring development complements and enhances the landscape character of the Park; and new development in settlements complementing and enhancing the character, pattern and identity of the built and historic environment.

Highland Structure Plan 2001

6. To accord with the structure plan's objectives and strategic themes, policies for **housing development** aim to steer demand to appropriate locations within existing settlements. **Policy L4 (Landscape Character)** advises that regard will be had to the desirability of maintaining and enhancing present landscape character in the consideration of development proposals. **Policy G2 (Design for Sustainability)** sets out criteria against which development proposals will be assessed. These include, the extent to which they; are compatible with service provision; are accessible by public transport, cycling and walking as well as by car; maximise energy efficiency in terms of location, layout and design; make use of brownfield sites; impact on individual and community residential amenity; demonstrate sensitive siting and high quality design; and contribute to the economic and social development of the community.

Badenoch and Strathspey Local Plan 1997

7. Part of the site extends into an area designated in the Boat of Garten settlement map, under **Policy 5.10.4. (Amenity)**. This states that there will be a presumption against further development not associated with existing recreational, agricultural or forestry activity, or the community's essential servicing requirements on remaining land surrounding the village. The rest of the site, including "Hillcrest" and the adjacent properties, are included in an area covered under **Policy 5.6.3.(Infill)**. This policy, advises that, in the interests of safeguarding the character of established residential areas, there will be a presumption against further infill housing including sub-division of existing plots, where development would involve; inappropriate scale, design or orientation; inadequate plot size or spacing between properties; breaching established building lines; felling significant trees; loss of privacy or amenity to neighbouring occupiers; or substandard access.

CONSULTATIONS

8. The following are a repeat of the consultations received and considered at the time of the original application.
9. **Scottish Water** has no objections to the application but at this stage they cannot guarantee a connection to their water and waste water infrastructure. A separate application should be made to them for connection in the event that planning permission is granted. There may be some issues in the water and waste water networks but at present there is capacity to service the proposal at the Boat of Garten WWTWs and the Blackpark WWTWs.
10. **SEPA** has no objections. However, they promote SUDS (eg. soakaway or filter trench) for the disposal of surface water.
11. **The Boat of Garten and Vicinity Community Council** have stated that they understand that no further applications can be considered for connection to the public water and waste water systems as there is no capacity. Regarding the building itself, they state that the use of corrugated metal appears to be at odds with other slated roofing materials in the area. They would prefer all roofing materials to be similar. They also raise an issue about the indication of a potential sunroom on the house drawings. An issue is also raised in relation to the "infill" policy in the Local Plan.
12. **Highland Council's Area Roads Manager** requires the existing access to be upgraded in terms of width and surfacing. There are also requirements for parking and manoeuvring space on site. In addition, there was a requirement to provide visibility splays at the junction of the existing access and the public road. Following confirmation from the applicant's agent that the required splay to the east could be formed but the one to the west could not (short by just over 15m) because of third party land involvement, the Area Roads Manager has advised that the dimension required in the west direction was already a relaxation (by 30m) on the usual requirement in a 30mph zone. However, for confirmation, given the short distance involved and the fact that the access has operated for some time with lesser splays, he does not think that this failing would in itself be grounds for refusal.
13. **The CNPA's Landscape Officer** has stated that the proposed house is sited in a hollow below the crest of the slope and that it is in accordance with the general housing pattern and density in the area. A house would not dominate the principle view for adjacent neighbours. It would be largely unseen from the north due to the level differences, although it would be visible from the adjacent footpath access. The design and finishing materials are reasonably sympathetic to the birch woodland setting and therefore there is no landscape objection to the proposed dwelling or its siting. There was some concern about the impact on trees at the site though.

REPRESENTATIONS

14. The application was initially advertised by Highland Council as a "Development Contrary to the Development Plan". Two letters of representation against the development were received from the same neighbouring occupier. One was received on the original submission and another received on receipt of the revised plan. The issues raised include:
- the site is a greenfield one (not a brownfield one), purchased in 2003, which is not in the Local Plan for housing.
 - the shared access is too narrow, cannot accommodate emergency vehicles and is steep.
 - the shared access is close to a bend in the road and any increase in usage will be dangerous for pedestrians, especially children and the elderly and infirm because of lack of visibility.
 - concern about the use of metal corrugated roof sheeting on part of the house.
 - there is limited space for parking and manoeuvring for both properties on the site – this is unsafe to the occupiers.
 - the new house may be used as a guest house – thus increasing the amount of traffic movements.
 - the proportions of the house and its garden are not in keeping with others in the area and therefore constitutes overdevelopment.
 - some trees have been cut down already.
15. Received prior to the Committee in July 2007 and circulated on the day, was a further letter from the owner of the neighbouring property. This raised further concerns about road safety, the increase in traffic movements in and out of the site, and the possibility of multiple occupancy of the house. Also circulated on the day was a further letter from the applicant's agent.
16. Submitted at the time of the original application, a letter from the applicants, in support, advises of their personal circumstances, employment in the local area, special childcare needs, and desire and need to stay close to their parents.
17. The applicants have submitted a further letter which advises of their current situation, the changed family circumstances, the reasons why they are unable to move forward with the S75 restriction, and their desire to honour the principle of retaining their new house in the family in the future.
18. **Copies of all these letters are attached to the report. Also attached is the letter from the Community Council received at the time of the original submission.**

APPRAISAL

19. When this proposal was considered back in July 2007, the issues raised included; relationship with adopted land use policy; impact on amenity and character of the area; design; and the technical matters of road safety and infrastructure provision. Essentially these remain at the core of the assessment. However, the request to have no restriction on the sale of the property and "Hillcrest", introduces a change to this assessment. In this respect though, I wish to start with the elements of the appraisal that essentially remain the same.

Design

20. To reiterate, some concern was raised by the Community Council, about the design of the proposed house and in particular the proposed metal roof sheeting on the single storey wing. I continue to have no such concerns about the design. I find it wholly acceptable for this site in terms of its character, appearance and finishing materials. As a single storey wing accommodating the kitchen, the proposed roof cladding complements the proposed timber cladding on this part of the house.

Drainage and Water Provision

21. The Community Council has stated that there is no capacity in the public infrastructure systems to take the development. However, Scottish Water have confirmed that they have no objections to the issuing of planning permission in this case but that the applicants will be required to apply for connections thereafter. Planning advice states that in such a circumstance there should be no barriers to granting permission where Scottish Water have not objected.

Access

22. The site is served by a steep and narrow vehicular access. Highland Council's Area Roads Manager initially required a splay of 60m in the westerly direction and 90m in the easterly direction. The applicant's agent has shown on a plan that the splay to the east can be formed without involving land in the control of a third party. However, the splay to the west will fall 15 or so metres short, unless land within a neighbour's property can be used. In considering their position further though, Highland Council advised that in itself, this slight failing, would not be sufficient for them to justify recommending refusal on road safety grounds but every effort should be made to work with the neighbour. The site lies within the 30mph zone and there remains an argument that the traffic using the site will not be significantly increased because the applicants already use the site on a daily basis for work and family reasons. Previously, taking account of the fact that the Area Roads Manager did not feel there was justification to resist the proposal on these grounds alone, and that the proposed S75 "tying" the

properties together was a requirement, I saw no merit in insisting on the provision of the full visibility requirement to the west side at that time. I continue to take this view. However, the fact that the properties would not now be “tied” together does, to a degree, raise the general use of this access again.

Implications for Adopted Land Use Policy and Impact on Amenity/Character of the Area

23. The original proposal was for a house located on the higher slope of birch woodland, outwith the established domestic curtilage, at a distance of over 35m from the rear of “Hillcrest”. Being in this location, the proposed house was sited in an area where Policy 5.10.4. (Amenity) of the Badenoch and Strathspey Local Plan provided a presumption against new development unless it was associated with existing recreational, agricultural or forestry activities. This policy also covers other areas of undeveloped land surrounding Boat of Garten and essentially aims to protect the natural setting of the settlement. This policy presumption against development led to the application being called-in by the CNPA.
24. Following discussions with the applicant’s agent, a revised proposal was submitted which brings the siting of the proposed house further down the slope towards the rear of “Hillcrest” and outwith the restrictive “Amenity” policy designation. Although the site boundaries ie. the proposed domestic garden area for the new house, still extend into the “Amenity” area, I feel that the revised positioning of the house within the site provides two advantages. Firstly it takes it physically out of the restrictive “Amenity” policy area. Secondly, it moves it further down the slope and thus reduces its elevation in the landscape. However, the revised positioning, now puts the house in the “Infill” policy area. This policy covers substantial parts of the existing residential areas in Boat of Garten. Its aim is to protect the character of these areas and as such provides a presumption against infill development unless it can meet certain criteria – please refer to paragraph 7 above. Essentially, the proposal still needs to be assessed in relation to these criteria, but the assessment now has to include the fact that the two houses will not now be “tied” together through any enforceable planning control mechanism.
25. The proposed house is sited in a “backland” location ie. behind an existing house but served off the same access. In general terms this can result in poor standards of amenity, loss privacy, disruption to the pattern of development, and substandard access arrangements. Essentially, these are the same criteria that are required to be met in Policy 5.6.3. (Infill). In this case, in some respects, I find that the site does not generally have any significant adverse implications for the normal problems associated with “backland” development, mentioned above. However, in other respects, without the properties being “tied” together, I now consider that it does.

26. As stated by the CNPA's Landscape Officer, I do not see that the house position adversely conflicts with the pattern of development in the area. In this location there are four houses on the east side of the railway line (see Fig. 1.). Two of these, "Ballachrosk" and "Hillcrest", are sited lower down the slope closer to the public road but the other two, "Coedwig" to the west and "Tomboyach" to the east, are set higher up and further back from the road, essentially in a line with the proposed house. The size of the site, with its extension northwards, does not create an inadequate size of plot and because the house will be cut into the slope, there will be no adverse visual or landscape impact. Although some trees will come down, the majority will remain. There will also be replacement tree planting. As such, the character of the wider area will not be significantly adversely affected.
27. However there continues to be areas of concern. These relate to a potential substandard and reduced standard of amenity for "Hillcrest". Although there continues to be a physical distance of over 20m between the properties, the proposed house will be higher than "Hillcrest" and overlook, down the slope, across land which would normally be considered to be, private amenity ground belonging to "Hillcrest". Indeed, the siting of the new house now removes any private rear garden space for "Hillcrest" and no formal sub-division of garden areas is proposed. In addition, the route of the shared access and the parking and turning areas are very close to "Hillcrest". Indeed, the parking and manoeuvring space for each property is essentially shared on the land between the two properties. At the time of the previous recommendation, although having some reservations, taking account of the applicant's personal, work, and family reasons for wishing to reside in such close proximity to "Hillcrest", I considered that these inadequacies could be overcome, by ensuring that both properties remained in the same family ownership. Hence, there was the requirement for the S75 agreement. It was not considered that an "ancillary unit" planning condition was appropriate because the house is not an ancillary unit but is a five bedroomed family property.
28. The applicants have now advised that they have tried to source finance for the new house but that despite concerted efforts this has been unsuccessful. While it is not the Planning Authority's remit, I undertook some investigations with the Royal Bank of Scotland and our own legal advisors, Ledingham Chalmers.
29. The RBS felt that it would be impossible to register the standard security over a property which had a shared title. The issue for any lender would be that it would be difficult to register the standard security over a property in which you had no interest (ie. you had provided no mortgage). In this case, this would relate to "Hillcrest". They do state that theoretically it could work if both properties became vacant at the same time, were sold at the same time, and to the same

person who then held one title. Considering this would have to be repeated ad infinitum, they believe that this would be highly unlikely.

30. However, the legal advice received from Ledingham Chalmers advises that the RBS assessment may not be entirely the end of the matter and that there could be other mechanisms which could be explored. These are however quite complex.
31. These opinions were forwarded to the applicants. However, they have stated that they now wish to move forward without the restriction and seek a determination on this basis.

Conclusion

32. **Without the restriction on the sale of the properties separately, and the applicants agreement to it, my recommendation back in July 2007 would not have been one of approval. While the intentions of the applicants to honour the spirit of the restriction, and the unfortunate change in the family circumstances, are acknowledged, it is our remit to assess the proposal on planning considerations. This includes the future implications of the two properties not being in the same ownership. If the properties were to be in separate ownership, my opinion is that there would be inappropriate and unacceptable standards of residential amenity created between the new and the existing properties. The use of the access could also be intensified without sufficient planning control, and a precedent could be set for other similar substandard developments elsewhere, particularly in areas covered by the "Infill" policy in the Local Plan. Most important though, the proposal would fail to comply with the terms of this "Infill" Policy (Policy 5.6.3.) of the adopted Development Plan in that it would create inadequate plot size and spacing between properties and loss of privacy or amenity to neighbouring properties. Moving the new house back up the site and reorganising the layout may help overcome these concerns but this would then put the house back in an area covered by the "Amenity" Policy which presumes against new housing development in principle. While I accept that the recommendation is quite finely balanced, the factors detailed in this appraisal lead me to the conclusion that this site, from a policy and physical constraint perspective, is not appropriate for a new house which could in time be annexed from the existing property. My recommendation is therefore one of refusal.**

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

33. The development will not have any adverse impacts on any natural heritage designations or features of cultural or built heritage. Some trees will be removed but they will be replaced and the majority will remain. The landscape character of the area will not be significantly impacted upon.

Promote Sustainable Use of Natural Resources

34. There are no significant implications for this aim. Although it could be argued that there is the potential to reduce car travel journeys for the applicants.

Promote Understanding and Enjoyment

35. There are no implications for this aim.

Promote Sustainable Economic and Social Development

36. The development will allow a local family to have a new house in a location which will improve their family and work related needs. However, the arrangement on site will lead to substandard levels of residential amenity and could act as an undesirable precedent.

RECOMMENDATION

37. That the Committee agree a recommendation to:

Refuse Full Planning Permission for Erection of Dwellinghouse, at Land to Rear of Hillcrest, Nethybridge Road, Boat of Garten, for the following reasons;

1. The proposal is to erect a new dwellinghouse, in a backland position, by sub-dividing and extending an existing residential plot, in an area covered by Policy 5.6.3. (Infill) in the adopted Badenoch and Strathspey Local Plan. This policy provides a presumption against further infill housing, including sub-division of existing plots, where development would involve, amongst other things, inadequate plot size or spacing between properties, and loss of privacy or amenity to neighbouring occupiers. The positioning of the new dwellinghouse, its relationship with the existing dwellinghouse, and the general arrangement of access, parking, and private garden space, creates an adverse impact on standards of residential amenity between the two properties. As such, the proposal fails to comply with the criteria set out in Policy 5.6.3. (Infill) in the adopted Badenoch and Strathspey Local Plan.

2. The development, if approved, would set an undesirable precedent for the inappropriate subdivision of other existing residential plots, in areas of Boat of Garten and elsewhere in the National Park. This is with particular reference to areas covered by policies in the adopted Badenoch and Strathspey Local Plan, which seek to safeguard the character of established residential areas by providing a presumption against infill development where certain siting and design criteria are compromised.

Neil Stewart
27 February 2008

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