
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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DEVELOPMENT PROPOSED: ERECTION OF DWELLING AT LAND 100M NORTHWEST OF BIRCH COTTAGE, DRUMUILLIE, BOAT OF GARTEN (OUTLINE PP)

REFERENCE: 07/414/CP

APPLICANT: MR ALEXANDER D GRANT

DATE CALLED-IN: 2 NOVEMBER 2007

RECOMMENDATION: REFUSAL

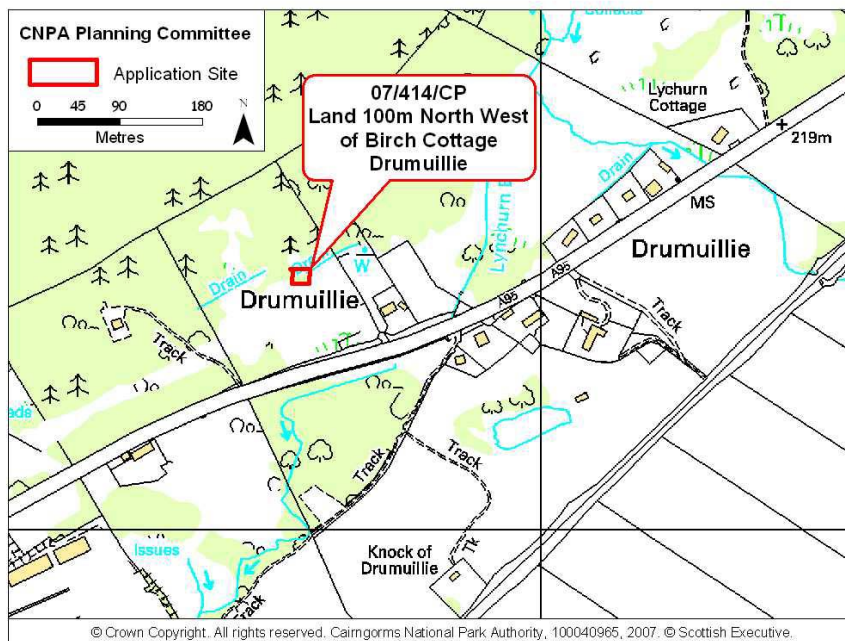


Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. Outline planning permission is being sought for the erection of a dwelling on land 100m northwest of Birch Cottage, Drumuillie.
2. The site to which this application relates is located on the north side of the A95 on croft land, known as Lot 5, within the loose grouping of houses and buildings known as Drumuillie, which lies to the north of Boat of Garten. The immediate area surrounding the proposed site is approximately 3.1ha, and the land rises up gently from the main road (Fig 2).



Fig. 2 – Photo taken looking north wards showing Lot 5.

3. The southern part of the croft land is currently being used as a grazing paddock, with a caravan having been placed to the south east of the site, while the northern part, which is where the dwelling is proposed, is covered by trees, with only a small section within this woodland having been cleared. The location of the proposed dwelling is just inside this woodland on a flat ridge (Fig 3). The site has been excavated with a septic tank having been installed. To my knowledge a retrospective building warrant application has been received by Highland Council, and is pending a decision.



Fig. 3 – Photo taken looking north west showing the track leading up to the woodland area at the back of the site. Arrow shows the location of the proposed dwelling.

History and Background

4. The applicant has previously applied for 2 separate outline planning permissions on Lot 7, which is adjacent to the current application. One application was for the erection of a dwelling on the southern part of Lot 7 and another for the erection of a dwelling on the northern part of Lot 7. Both applications proved unsuccessful and were refused by Highland Council on 9 September 1996 for the following reasons:
 1. *The proposal would be contrary to the Housing in the Countryside Policies contained in the Final Draft with Modifications (3) Badenoch and Strathspey Local Plan, which indicates that a strong presumption will be maintained against the development of houses in (inter alia), the Drumuillie area except where required for land management or related reasons. The Plan Policy also presumes against development of further ad hoc clusters of houses in the countryside, the relationships of proposed dwellings to each other, and to existing dwellings, would result in the formation of such an ad hoc cluster.*
 2. *The proposed development would help to consolidate existing scattered dwellings into a ribbon pattern of development which would be likely to be detrimental to road safety, by virtue of the increase in the use and number of individual accesses taking direct access to this busy trunk road*
 3. *The applicant has failed to show that the land which would be required for the visibility splays from the proposed access is in his control.*

5. Subsequently the applicant appealed Highland Council's decision to refuse the erection of a dwelling on the southern half of Lot 7. The decision to refuse was upheld by the SEIRU on 27 August 1997.
6. The Committee is asked to note that, it was brought to the attention of the CNPA by Highland Council on 6 February 2008 that the applicant has sited a static home on the proposed site. As I understand it, the applicant and his wife currently reside in the static home permanently as they have sold their property in Boat of Garten. The static home has also been connected to the Septic Tank on site. 2 letters have been received by the residents of Locheil and Birch Cottage in Drumuillie in relation to this, which have been attached to the back of the report for your information only (See APPENDIX 1). As it stands, Highland Council gave the applicant 14 days in which to submit a planning application for the retrospective temporary siting of the static home. This has now been submitted. However the application has not been validated as yet.

DEVELOPMENT PLAN CONTEXT

7. **Highland Structure Plan (approved March 2001) Policy H3** 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. This is to strengthen the role of the existing settlements and to safeguard the character of the countryside for both residents and visitors. In areas where communities are experiencing difficulty in maintaining population and services some housing may be acceptable. **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 compatibility with service provision (water and sewerage, drainage, roads, schools, electricity); accessibility by public transport, cycling, walking and car; maximisation of energy efficiency in terms of location, layout and design (including the utilisation of renewable energy sources); and impacts on resources such as habitats, species, landscape and cultural heritage.
8. The site lies within an area covered by **Policy 2.1.2.3 for Restricted Countryside Areas** in the **Badenoch and Strathspey Local Plan (September 1997)**. This policy has a strong presumption against the development of new houses. Exceptions will only be made where a house is essential for the management of land, related family and occupational reasons. Restrictions on the subsequent occupancy of such houses will be enforced, and adherence to the principles of good siting and design will be required. **Policy 2.1.2. (Housing in the**

Countryside) states that single houses outwith recognised settlements will require to be, compatible with the scale and character of local buildings where appropriate, properly located in harmony with the landscape, and designed to a high standard with particular emphasis on proportions, roof pitch, fenestration and selection of materials. **Policy 2.5.4. (Woodland and Trees)** protects existing trees and established woodland areas which are important landscape, wildlife and amenity features of the countryside.

9. Highland Council's **Development Plan Policy Guidelines (April 2003)** provides more detailed guidance on the interpretation of specific policies contained in the 1997 Local Plan, in light of the subsequently approved Structure Plan of 2001. This document states that new housing within the open countryside will be exceptional, and will only be permitted where it is required for the management of land or it is required for family purposes related to the management of land (retired farmers and their spouses). In certain areas, some housing in the countryside may be permitted to support the viability of rural communities experiencing difficulties in maintaining population and services. For justification based on croft management it is recognised that a degree of flexibility will be required, for example, in such circumstances it may not be possible to sustain full time employment and this will be taken into consideration. Any application for a house associated with crofting should be accompanied by confirmation from the Crofters Commission of the bones fides of the crofting application.

Cairngorms National Park Plan 2007

10. The recently adopted **Cairngorms National Park Plan (2007)** 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 Plan refers to the need to ensure greater access to affordable and good quality housing in order to help create and maintain sustainable communities as one of the key challenges in the National Park. Reference is also made to the quality and design of new housing which is expected to meet high standards of water and energy efficiency and sustainable design and also to be consistent with or enhance the special qualities of the Park through careful design and siting.
11. The plan also seeks to ensure that development complements and enhances the landscape character of the Park. The Plan goes on to consider that new development in settlements and surrounding areas should complement and enhance the character, pattern and local identity of the built and historic environment.

12. The section known as 'Conserving and Enhancing the Park' explores Integrated Land Management and highlights the importance of farming and crofting. Strategic Objections for this section include encouraging the continued development of crofting where it provides opportunities for small-scale and part-time land management and production, in addition to the mainstream farming sector.

CONSULTATIONS

13. **The** proposal has been assessed by **SEPA**, who have no objection to the development so long as the proposal for foul drainage is acceptable, where the required minimum distances can be achieved.¹
14. **The Crofters Commission** have advised that their records show the owner of the croft to be Mr Alexander D Grant. They state that, Mr Grant has been the owner of the croft since 1995 and since that time there have been no Decrofting Directions issued in respect of the croft. In conclusion the Commission support the building of croft housing to enable a crofter or owner of the croft to reside there and make best use of the land.
15. **Transport Scotland (Trunk Roads Network Management Directorate)** advises that planning permission be refused. Their reasons for this recommendation are:
 1. The proposed development could result in an increase in the number and type of vehicles entering and leaving the traffic stream at a point where visibility is restricted thus creating interference with the safety and free flow of traffic on the trunk road;
 2. The development proposes to take access at a location where there has been a serious accident, thus the proposed development may result in increasing the likelihood of another accident at this location, consequently, creating interference with the safety and free flow of traffic on the trunk road.
16. The CNPA's **Heritage and Land Management Group (HLM)** examined the proposal, particularly from a landscape perspective. **HLM** comments are provided assuming that a sufficient justification can be made under land management criteria.

¹ In the interests of protecting surface waters a minimum distance of 10 metres from a soakaway to a watercourse (including ditches and field drains) and 50 metres from soakaway to a well or abstraction is required. In the interests of protecting groundwater a minimum distance of 1 metre from the bottom of distribution pipes of a soakaway to the seasonally highest water table is required.

Impact upon trees and the woodland

17. The building would be located within mature pine woodland and is contiguous the Ancient Woodland designation above the site. Several trees would need to be felled and this would clearly have an effect on the character of the woodland edge. Some work has been undertaken in the vicinity of the proposal but so far this has had no visual effect on the wider area because it is only visible from within the woodland.
18. It is quite likely that in addition to the direct effect of building the dwelling, indirect effects may require the removal of additional trees either now or in the near future. These might be to facilitate a garden area, increase light to the property or open up a particular view for example.

Landscape and Visual impact

19. Generally the other houses in the area are closer to the road and/or on the same level. Most of them are less than 30m from the road though there is one that is 60m. There is a small number to the south west that are away from the road and higher up. However most of these are separated from the settlement by woodland and beyond the visual envelope for it.
20. This dwelling would clearly belong to the settlement of Drumullie, however there is a concern that its location, being further away and higher will mean a significant change in the general settlement pattern.

Possible mitigation

21. To avoid the negative effects listed above it would be possible to locate a dwelling lower down the slope, either close to the existing free standing lum or possibly close to the caravan. Either location would prevent damage to the woodland edge and reinforce the existing building pattern which is a characteristic of the settlement.
22. **Boat of Garten and Vicinity Community Council** have no objection to the proposal.

REPRESENTATIONS

23. The application has been advertised by Highland Council as a potential Departure from the Development Plan. 3 letters of objection have been received, 2 of which are from the same objector (See APPENDIX 2). In summary the issues raised, include:
 - No notification for the septic tank and soak away which was installed in July 2007 was received;

- Infrequent agricultural activity on the 'croft' does not justify the request for a croft house;
 - Increased use of the access off the A95; and
 - Proposal contrary to development plan policies and granting planning permission could set a precedent in the area.
24. In addition, the applicant has submitted letters of support for the application which is attached to the back of this report (See APPENDIX 3).

APPRAISAL

25. The proposed development is for a dwelling house in a Restricted Countryside Area. The key issue to assess in this application is the principle of a dwelling house on this site in relation to development plan policies. This assessment will also reflect on other important issues such as general siting, visual impact, road access and the precedent that such a development may set.
26. In terms of principle, the proposed siting of the dwelling is identified in the Local Plan as an area of Restricted Countryside, where there is a strong presumption against residential development unless there is a land management (agricultural or crofting) justification for allowing otherwise.
27. Highland Council's Development Plan Policy Guidelines 2003 recognises that a degree of flexibility will be required. Any application for a house should be a registered croft or associated common grazing and be accompanied by appropriate confirmation from the **Crofters Commission** of the bonafides of the crofting application. As noted in the consultation sections of this report, the **Crofters Commission** has expressed general support for applications of this nature.
28. The **CNPA** has previously supported croft house proposals in Restricted Countryside areas, where there is a proper case being put forward by the applicant. In light of this and in the interest of consistency in the assessment of planning applications of this nature, the applicant was asked to submit further details to verify the justification for a dwelling on this site. Information specifically requested by the **CNPA** included:
- Confirmation of overall size of croft and landholding map;
 - Numbers and species of live stock;
 - Any existing accommodation on the landholding;
 - Confirmation on the agreement to enter into a Section 75 legal agreement, restricting the occupancy of the proposed dwelling, and;
 - Details on tree felling required on the site and extent of planting proposed in the vicinity.

29. A response was received by the applicant in support of the planning application. However the letter failed to fully address the above requests. While there is no dispute that the applicant is the registered croft owner, no adequate land management justification has been provided. The applicant has also not agreed to an occupancy restriction being imposed, in the standard way, by a Section 75 legal agreement. I therefore consider that, despite the **Crofters Commission** general support for croft housing, an insignificant amount of justification has been demonstrated to comply with the terms of the Restricted Countryside policy.
30. The applicant's response also advised of the previous history of the Lot, which included the siting of 3 dwellings which have been removed. It is important to note, the existence of previous dwellings would only be a significant material consideration if they were still on site, in which case this application could have been considered as a replacement house.
31. It is also important to note, previous planning applications determined by **Highland Council** in the 1990s in the adjacent Lot 7 where refused for the reasons stated in paragraph 4.
32. The negative response to the application from **Transport Scotland** is noted in paragraph 15. Their response reinforces the objections raised from neighbouring properties, on the concerns about the increased traffic flow the proposed development would have on the trunk road and the precarious location, which has witnessed a serious accident. The Committee should note, if they feel approval should be given, the refusal recommendation from **Transport Scotland** would mean the application would require to be notified to the Scottish Government for a final decision.
33. As proposed this development would mean intruding into woodland, and the removal of several trees, which would create a visual impact and weaken the settlement pattern of Drumullie. The **HLM** Group, as suggested in paragraph 21, have identified possible steps which could be taken to mitigate any negative impact the proposal would have on the landscape. However, doing this would not remove the fundamental policy and trunk roads objections. Moving the house closer to the road would also create ribbon development.
34. Taking on board the lack of information provided by the applicant and its importance in assessing the justification of a dwelling on this site, as well as the recommendation of refusal by **Transport Scotland** on the basis of increased vehicular activity, the only recommendation that I can give is one of refusal.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

35. Although there are no natural heritage designations, a new unjustified dwelling house on this prominent site, together with the formation of its access, will have negative impacts on the character and quality of this part of the rural landscape of the National Park and would potentially set a precedent for additional development which could further erode the character of the area. It would not therefore promote the conservation or enhancement of the natural heritage of the area.

Promote Sustainable Use of Natural Resources

36. This is an outline planning application, therefore, details of the proposed new building have not been provided. It is not therefore possible to assess compliance with this aim.

Promote Understanding and Enjoyment

37. Not relevant to this application.

Promote Sustainable Economic and Social Development

38. The development proposal represents a dwelling house in the countryside, which has not been sufficiently justified as being necessary for land management purposes.

RECOMMENDATION

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

REFUSE Outline Planning Permission for erection of dwelling house, at land 100m northwest of Birch Cottage, Drumuillie, Boat of Garten 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. It has not been sufficiently demonstrated that the proposed dwelling house is required for the purposes of land management. If approved, the development would set a precedent for further unjustified development of this nature and 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.

- 2. The proposed development will result in an increase in the number and type of vehicles entering and leaving the traffic stream on the A95 Trunk Road, at a point where visibility is restricted and where there has been a serious road traffic accident in the past. To permit the proposal would create additional interference with the safety and free flow of traffic on the A95 Trunk Road and as such increase the likelihood of further serious road traffic accidents at this location.**

**Iram Mohammed
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28th February 2008**

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.

APPENDIX 1

APPENDIX 2

APPENDIX 3