
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

**Prepared by: MARY GRIER, PLANNING OFFICER,
(DEVELOPMENT CONTROL)**

DEVELOPMENT PROPOSED: FULL PERMISSION FOR DEMOLITION OF A BOTHY AND THE ERECTION OF A DWELLING HOUSE ON GARDEN GROUND AT MALVERN, DUACK BRIDGE, NETHYBRIDGE.

REFERENCE: 06/107/CP

APPLICANT: MRS. DOREEN PARK, MALVERN, DUACK BRIDGE, NETHY BRIDGE, PH25 3DB

DATE CALLED-IN: 7TH APRIL 2006

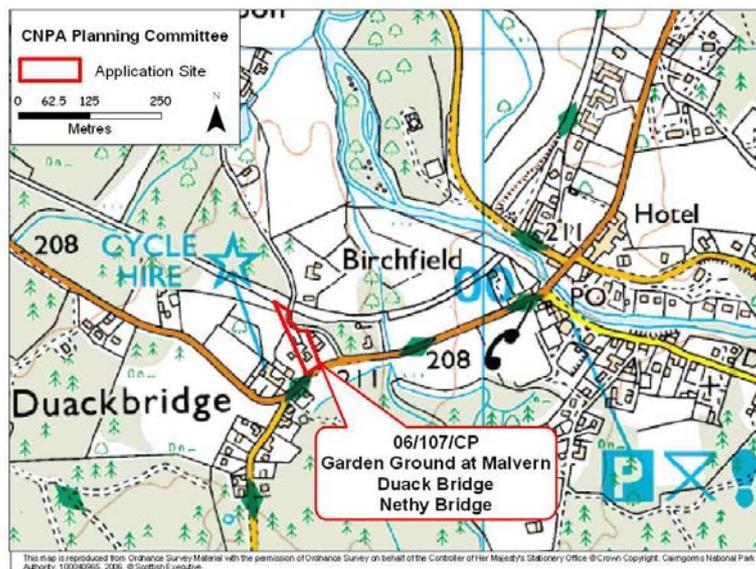


Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. **This application was initially discussed by the CNPA's Planning Committee of the CNPA at its meeting of August 11th 2006. The Committee resolved to defer a decision on the proposal, in order to allow the applicant further time to consider the issue of entry into a section 75 agreement restricting the proposed residential unit to use as accommodation ancillary to the main dwelling house, as well as exploring other issues with a view to addressing concerns regarding siting and visual impact. All amendments to the text of the original report are highlighted in bold type.**
2. Full permission is sought in this application for the demolition of a bothy and the erection of a dwelling unit. The proposal is on garden ground to the rear of a property known as 'Malvern' at Duack Bridge, Nethybridge. Permission is sought for the erection of a one and a half storey timber clad structure, accommodating a bedroom, shower room, kitchen and large living room at ground floor level and a second bedroom, bathroom and storage room on the first floor. The proposed design includes three access points, two of which provide entry into the living area, while the third provides direct entry into the kitchen. One entry point is contained within a projecting porch area, and the remaining two entry points are located in either gable end. Various window sizes are indicated on the elevation drawings, all incorporating Georgian panes. Two dormer windows, as well as windows in each of the upper gable ends are proposed to serve the upper floor.
3. The external finish of the proposed dwelling consists of timber cladding, described in supporting information as 'horizontal rectangular sections', with the roof covering consisting of slate. The elevation drawings illustrate that the proposed structure would be erected on foundation pads. Foul drainage is proposed to be disposed of via a connection to the public sewer and the water supply is to be provided from a connection to the public supply.
4. The existing dwelling house on the site (Malvern) is a traditional one and three quarter storey stone built structure. The new dwelling house is proposed to be positioned on a north – south axis, 16 metres from the rear of 'Malvern' and a maximum of 4 metres from the western site boundary, with the separation distance between the structure and the boundary being reduced to 3 metres in the vicinity of the projecting porch area. The proposed dwelling is oriented such that the elevation accommodating the projecting porch and upper floor dormer windows faces westwards close to the western site boundary.



Fig. 2 : 'Malvern' and front garden area.

- The dwelling house is to be positioned immediately adjacent to the eastern boundary of the existing timber clad bothy which is proposed for demolition as part of this application. The bothy is located approximately 20 metres from the rear of 'Malvern' on slightly elevated ground, immediately contiguous to the western site boundary. It is a single storey structure, with a sloping monopitch roof. It has not been used for many years and is in deteriorating condition.



Fig. 3 : Bothy



Fig. 4 : Bothy and proposed dwelling house position

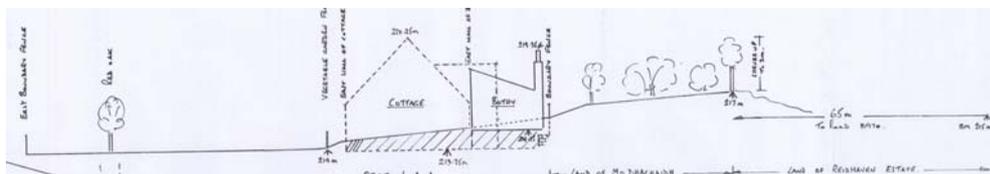


Fig. 5 : East – west cross section

- At the outset of this application a site layout plan was submitted showing the proposed dwelling unit positioned towards the northern end of the bothy, approximately 23 metres from the rear boundary of the existing dwelling house. The site plan at that time did not show any subdivision of the garden area of Malvern, and upon the CNPA querying whether or not the proposed dwelling was intended as

ancillary accommodation to the main dwelling house,¹ it was confirmed by the applicant² that “the proposed cottage would be ancillary.” Supporting documentation submitted with the planning application corroborates this, with the applicant detailing her intentions to move from the existing dwelling house into the new structure, whilst other family members would take up occupation of the main dwelling house. Further letters submitted in the course of the application refer to this aspect in more detail, stating that the applicants daughter and her husband, who has worked on Tulchan Estate at Advie for over 30 years and is retiring this year, presently live in a tied house and “plan to move into Malvern at the first possible moment.”

7. **Members will recall that the previous report circulated in respect of this planning application referred to various amendments that had been made to the nature of the proposal in the course of the application. At the outset of the application the site layout plan showed the proposed dwelling unit positioned in the rear garden of the existing property, with communal use of the existing garden area, access drive and car parking arrangements. At a later stage in the application assessment, the site layout plan was altered to identify a subdivision of the existing garden area, effectively creating two house plots i.e. one plot consisting of the garden area encircling Malvern (the existing dwelling house) and also including a further strip of garden ground adjacent to the eastern site boundary (measuring approximately 10 metres x 28 metres), while the second plot proposed at that time was to consist of the area surrounding the new dwelling house and also extending northwards to incorporate a treed area to the rear of the original overall site. A shared access was proposed to serve both plots, extending inward for approximately 8 metres from its junction with the public road. The access drive divided at that point with the existing hard surfacing area to the east serving ‘Malvern’ and a new 3 metre wide access road identified to extend northwards adjacent to the western site boundary to serve the proposed new dwelling house.**

8. **Further to the Committee’s deliberations on the proposal at the meeting of August 11th 2006 and the decision to defer determination pending investigation and resolution of a number of issues, the applicant has now agreed to enter into a Section 75 agreement restricting the use of the proposed structure to accommodation ancillary to the main dwelling house and restricting the sale of the structure separate from the main dwelling. An amended site layout plan has also been submitted in conjunction with the agreement to treat the proposed new structure as ancillary accommodation, which shows the proposed structure located 16 metres to the rear of the existing dwelling house and sharing the existing garden area. Formal boundaries**

¹ Letter requesting further information issued by CNPA planning officer on 26th May 2006.

² Response received from Mrs. Park (applicant) via e-mail on 2nd June 2006.

creating a subdivision of the grounds associated with each property no longer form part of the proposal, although I understand from a telephone conversation with the applicant as well as recently submitted written details that the intended occupier³ of Malvern may intend erecting some stock proof fencing within the garden area for the purposes of protecting areas of vegetable garden or flower planting.

9. Details of external boundary treatments have been included on a site layout plan submitted to the CNPA on 30th August 2006. The western boundary of the site is intended to consist of the existing wooden slatted fence, combined with proposed new stock proof fencing in the form of “squared netting wire overlaid with rabbit netting.” The stock proof fencing is proposed as the boundary treatment along the majority of the western boundary with the wooden slatted fence only occupying a small portion of this boundary. In addition it is also proposed to remove existing vegetation alongside the western boundary towards the front of the site. The vegetation to be removed is described as the “remains of a spruce hedge” and lilac scrub. The majority of the eastern site boundary already has a wooden slatted fence. A 1 metre high rendered wall forms the boundary between the subject site and the adjacent residential property known as Feorag Cottage.



Fig. 6 : Example of vegetation to be removed along the western boundary



Fig. 7 : Example of existing wooded slatted fence on eastern boundary

³ The applicants daughter and son in law.

10. There are several mature trees located in the garden area of the overall site, including silver birch and scots pine. In addition to the trees existing within the applicants garden area, there are several mature trees located on lands to the east which are in the ownership of a number of other parties. **A TPO has recently been confirmed on some of the lands in question including the lands at the rear of the applicants garden.**



Fig. 8 : View towards rear of site



Fig. 9 : view from rear of site towards proposed house position & Malvern.

11. The general pattern of development in the immediate vicinity is one of detached dwelling houses, positioned towards the front of large plots, with dwellings centrally positioned relative to the plot frontage. This is typified by the properties either side of Malvern. The property east of the site which is known as 'Feorag', does however have a smaller dwelling house (Feorag Cottage) positioned to the rear. The original site area is believed to have been subdivided several years ago, and access to the cottage is taken directly from an adjacent laneway, which continues past it to provide access to Rothiemoon Farm.



Fig. 10 : Side elevation of Feorag Cottage, as viewed from garden ground of Malvern and position of proposed dwelling house.

12. In addition to changes to the proposed site layout, alterations have also been made to the design of the proposed dwelling house in the course of the application. The overall design concept of both the original and currently proposed structure is based on a Finlodge 'kit build' package from Scandinavian Systems (<http://www.scandinavian-systems.com/>), with the original design being the 'Standard Finlodge 2' type property. This took the form of a Scandinavian type log cabin, with prominent

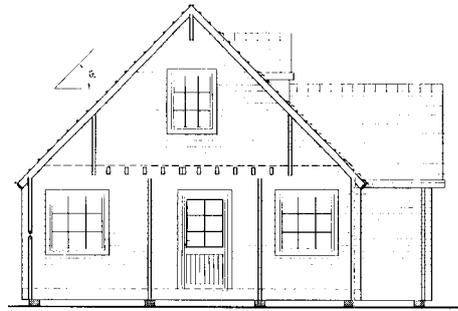
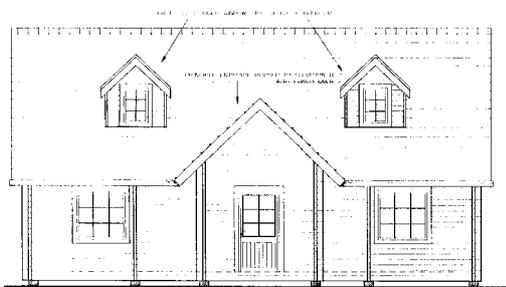
design features including dominant gable ends, a large overhanging roof, a decked veranda area at ground floor level and also a balcony leading from the bedroom at first floor level.



Fig.11 : Typical 'Finlodge 2' design



Fig. 12 : originally proposed design



Fig's 13 and 14 : Currently proposed 'Amended Finlodge 2' design

13. In response to concerns raised by the CNPA planning section regarding the proposed design concept, some alterations were made to the design. The proposed 'Amended Finlodge 2' design is intended to introduce design features more closely associated with the traditional architecture of the area, such as the dormer windows and projecting entrance porch.
14. The subject site has a history of a previous permission. Full planning permission was granted for the erection of a dwelling house in the garden area of Malvern on 8th April 1992 (Highland Council ref. no. BS/1992/28⁴). No development subsequently occurred and the permission therefore expired in April 1997. The dwelling permitted was a one and a half storey traditional dwelling house, with off white "traditional Scottish wet dash harling" under a slate roof.

⁴ Permission granted by Highland Regional Council under the Town and Country Planning (Scotland) Act 1972.

18. In terms of specific policies relating to the subject site, the actual site / garden ground encompasses two distinct land use allocations. The existing dwelling house and the surrounding garden area extending as far as the side boundary of the bothy, and also including a strip adjacent to the eastern site boundary, is identified as 'infill' housing. The remainder of the garden area i.e. from the site of the bothy northwards to the rear boundary, is allocated as a Forestry / Restraint area. The majority of the plot that would be created in conjunction with the proposed dwelling house is located within the Forestry/Restraint area, with the actual position of the dwelling house straddling the boundary of the two distinct land use allocations, with a substantial proportion of the structure within the Forestry / Restraint area.

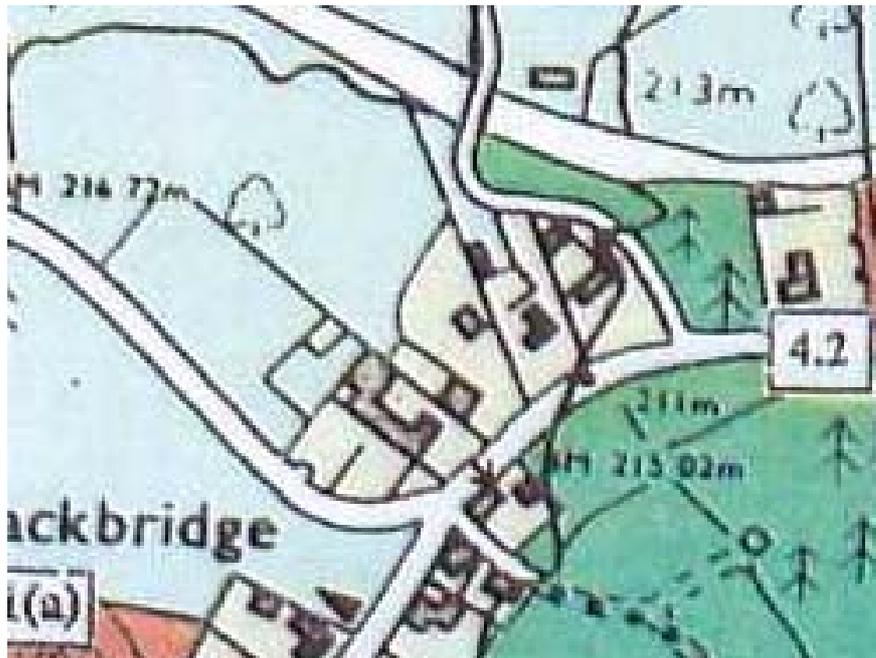


Fig. 16 : Extract from Badenoch and Strathspey Local Plan (1997) – Settlement Map 4, Nethy Bridge.

19. **Section 4.1.3** of the **Local Plan** details the policy in relation to land allocated as 'infill', stating that there will be a presumption against further infill housing including sub-division of existing plots, in the interests of safeguarding the character of established residential areas, where development would result in the following :
- 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.

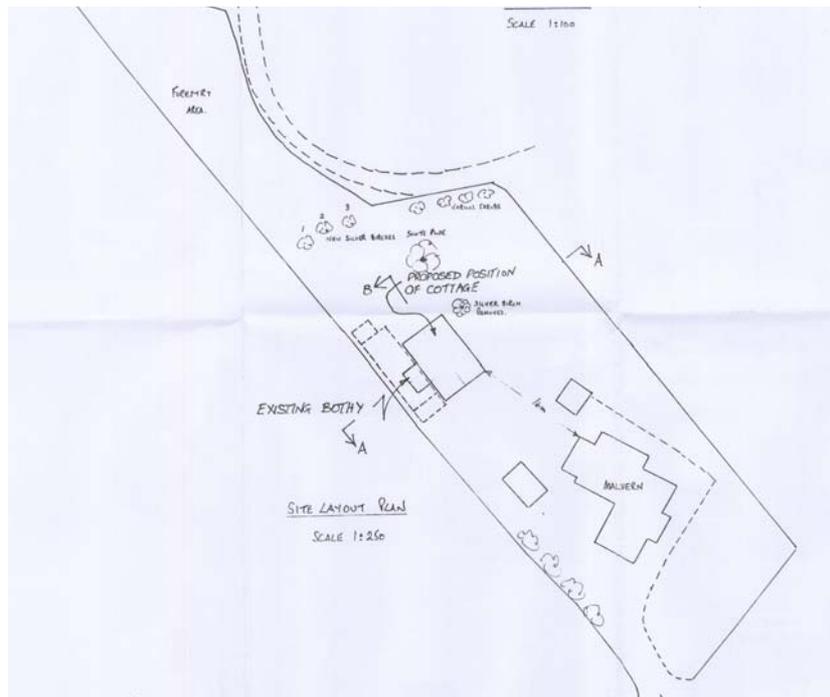


Fig. 17 : Currently proposed site layout plan

20. **Section 4.5.5** of the **Local Plan** discusses the settlement edges of Nethybridge, which includes lands allocated for Forestry / Restraint. It highlights the importance of land adjoining Nethybridge to the community's setting, nature conservation and the rural economy. The Plan states that the land is not allocated for specific purposes and in conjunction with this advises that it will be safeguarded from sporadic development. **Section 4.5.6** clarifies that it is the Council's objective to retain the treed character and setting of Nethybridge.
21. Highland Council's **Development Plan Policy Guidelines**⁵ sets out the standards to apply when considering applications for new development. Whilst many of the standards detailed are applicable to larger housing development proposals, factors such as privacy and daylighting are pertinent to single house proposals. Standard 13 on Privacy stipulates that "the minimum acceptable distance between windows of habitable rooms that are directly facing each other is 18 metres" and on the subject of daylighting (standard 14) the guidelines state that new development should not result in significant loss of daylight or overshadowing of any habitable or usable room within a neighbouring building.

⁵ The Development Plan Policy Guidelines publication "is founded upon the Structure Plan and provides more detailed guidance for Local Plans, development control, developers and the public on the interpretation of specific policies contained in the Plan."

Tree Preservation Order

22. An emergency Tree Preservation Order was served on lands in the Duack Bridge area of Nethybridge on 31st March 2006, with the area concerned including all of the lands associated with Malvern, as well as other lands to the east (see attached copy of TPO no. 67). Following this a period of consultation commenced with various representations, including a letter of objection from the applicant, being made to Highland Council. Following the receipt of representations, some alterations were made to the extent of area to be included within the TPO, including the omission of some of the applicants garden ground and in particular the area in which the dwelling house is proposed. The northern area of the site, which includes a number of mature trees is to remain within the area of the TPO (please see attached TPO map dated August 2006). **The TPO was confirmed at a meeting of the Badenoch and Strathspey Area Committee of Highland Council on 7th August 2006.**
23. For information purposes only, the **Consultation Draft of the Cairngorms National Park Local Plan** describes the character of the area as “very much dominated by its woodland setting” and states that “this woodland character should not be compromised by over-development.” All of the subject site is included within the settlement boundary of Nethybridge.

CONSULTATIONS

24. The consultation response from **Scottish Water** states that there are no objections to the proposal subject to compliance with a number of conditions. The sewer network assets are described as having adequate capacity to accommodate the development at the present time, although it is also advised that the granting of planning consent does not guarantee a connection to Scottish Water’s assets. **Scottish Water** also state that the water network infrastructure is not affected by this proposal at the present time, but nonetheless advise that a supply from the public water connection is dependant on the spare capacity at the time of an application for a water connection.
25. The conditions that **Scottish Water** require compliance with include a the applicant providing evidence of formal approval from the affected landowner(s) through whose ground the connection to the public waterwater system / water main must pass, in the event that the public sewer or watermain requires to be laid through land outwith the applicant’s ownership. The applicant is also required to make a separate application to the Planning and Development Services team of Scottish Water for permission to connect to the public wastewater system and / or water network at the appropriate time.

26. The response also advises that a totally separate drainage system will be required with the surface water discharging to a suitable outlet and highlights the support of **Scottish Water** for the principle of a sustainable urban drainage system (SUDS) and accordingly suggest that the developer should consider utilising this in the surface water drainage design.
27. A consultation response from the **Area Roads and Community Works** section of Highland Council recommends that a number of conditions are attached in the event of the granting of planning permission. The conditions require that the works stipulated are undertaken prior to any other work starting in connection with the proposed development. Works include modification of the existing access, in order to incorporate a service bay requirement. On this matter reference is made in a consultation response to an understanding that the applicant is hoping to pursue a shared access / service bay arrangement with the western neighbouring property. The shared access provision is welcomed in the response and it is suggested in such circumstances that the access to each property connect at an angle close to perpendicular to the rear of an elongated and symmetrical roadside service bay.
28. Further works which are required prior to the commencement of any other development include the achievement of adequate visibility splays and in order to achieve this it is noted that the removal or lowering of walls and fence lines and cutting back of roadside vegetation will be required. Further works required include the provision of parking and manoeuvring space for at least 2 cars within the curtilage of both the new and existing properties, such that all vehicles may enter and leave the site independently in forward gear.
29. Following an initial assessment of the proposal by the **Forestry Section** of Highland Council, the initial response referred to the land falling within Highland Council Tree Preservation Order No. 67 (area identified in emergency TPO). The response at that time stated that there was "no objection in principle to the erection of a dwelling within the Tree Preservation Order Area" but advised that the position of the cottage as shown on the site layout at that time would require the removal of a large Scots pine and an associated group of birch. It was suggested in the consultation response that consideration should be given to positioning the footprint of the dwelling to the south of its proposed position to ensure the safe retention of the trees. Reference was also made to siting the dwelling in a way whereby foundations, services and access would not threaten the trees, as per the recommendations of BS8357 : 2005 Trees in Relation to construction.

30. Further to receipt of the final revised layout on 31st July 2006, a second consultation response was received from the **Forestry Section**. The response refers to the on site meeting attended by a Highland Council forestry official and states that “the revised layout shows the proposed house placed further away from the property and on a north / south axis.” Reference is made to two adjacent trees - a birch and Scots pine, positioned 3 metres and 8 metres respectively from the proposed dwelling house. It is also noted that the location of those trees as shown on the site layout plan is inaccurate. Both trees are described as being semi-mature and in good health. In terms of their proximity to the proposed building, the consultation response unequivocally states that both trees would require to be removed.

31. Reference is also made to the TPO, which has been detailed in earlier sections of this report, and it is confirmed that the trees that would require felling to facilitate the development are not covered in the revised TPO. The Forestry Officer states in his response that it is his opinion that the loss of the birch and Scots pine trees would not have a significant impact in tree or visual terms, but nonetheless recommends in the event of the granting of planning permission that a condition be included requiring replacement planting elsewhere within the garden area, as well as a general condition covering the retention of the remaining garden trees not covered by the revised Tree Preservation Order.

REPRESENTATIONS

32. One letter of objection has been received from Diane Pinder and Andrew Farmer of Feorag Cottage, which is the property located to the east of the subject site. Seven points are raised under the general heading of ‘objections’ and include the following : - proposed building overlooking their cottage and taking away privacy; the occupants of the building having a direct view of the cottage, drive and only access to their property; concern that the occupants of the proposed dwelling would be able to see directly through the windows of the objectors bedrooms; the proposed dwelling taking away the objectors natural light due to it being taller and larger than the existing structure; the proposed dwelling being closer to the boundary with the objectors property than the existing bothy; and concern that the occupants of the proposed dwelling would be able to view the objectors from various windows, thereby affecting their privacy. The objectors also suggest that the proposed development would completely change the benefits of living in their cottage and its surroundings.

33. Further points raised in the letter, under the title 'Other Concerns' include a query on the number of trees that would need to be felled to enable the work to be carried out; concern that in future years the back lane may be used to access the development, thereby creating more traffic on the small lane; reference to a decrease in the value of their property; queries on the location at which it is proposed to park any vehicles associated with the development proposal; and finally a request that the "initial level of the new building could be lowered."

Applicants response to letter of objection

34. The applicant has submitted a letter to the CNPA⁶ responding to concerns raised in the objection letter. The applicant states that the proposed cottage will be in the garden area of Malvern and although the rear of the garden has not been used as much recently as in previous years, anyone gardening in the area already has the potential to be very close to Feorag Cottage and its garden.
35. An aerial photograph of Malvern, which also shows some of the surrounding properties, was included with the response letter, and reference is made to this photograph illustrating that anyone using the lane already has a direct view of the drive and the entrance to Feorag Cottage. Reference is made to the proposed design,⁷ window position and internal layout to suggest that the proposed property would not overlook Feorag Cottage. With reference to the objectors concerns on the potential loss of natural light, the applicant advances a case that any light restriction in spring and autumn would come from the existing tall Scots Pines in the garden area, emphasising that they were there when Feorag Cottage was sold last year. Reference is made to the proposed cottage being positioned on the site of a previously approved, but now lapsed permission.
36. Further points made in response to the letter of objection include an assertion that "it is not necessary for any trees to be cut down;" the existing laneway referred to is in use by a farmer with large machinery, as well as vehicles from other properties on the lane; "Feorag Cottage is by no means in a private location and can be overlooked from the rear windows of Malvern and Feorag, as well as from their gardens;" and a final comment that there is plenty of parking area at Malvern.

⁶ Received 25th April 2006.

⁷ Reference to the design in the letter received on April 25th 2006 is in relation to the original proposal, and not the current design upon which the assessment is now based.

APPRAISAL

37. There are a number of issues to consider in the assessment of this proposal, including the principle of the development in the context of current planning policy and land use allocations, the siting and design of the proposed development and the manner in which it relates to the pattern of development in the vicinity, the impact on existing trees on site and the history of development in the area. **In addition, the fact that the applicant has consented to enter into a section 75 agreement which would result in the proposed structure being classified as accommodation ancillary to the main dwelling house, as opposed to a dwelling house in its own right, is a further material consideration which is extremely pertinent to the assessment of the proposal.**

Forestry / Restraint Allocation

38. **Paragraphs 14 to 20** of this report detail the relevant development plan policies applicable to this proposal. The proposed structure is substantially located within an area identified as Forestry / Restraint. The remainder of the existing garden ground surrounding Malvern is within the area on which the infill housing policy applies. A large amount of the land surrounding the built area of Nethybridge are identified as Forestry / Restraint areas, with the clear intention in such areas being the safeguarding of such areas from sporadic development in the interests protecting the woodland setting of the village.
39. **As detailed in the previous report on this application** various submissions have been made by the applicant at earlier stages in this application suggesting that the entire area should be allocated as 'infill' as opposed to the land to the rear of the bothy being allocated as 'Forestry / Restraint.' I accept the applicants point that the original feu associated with Malvern included the bothy. However, as stated in the previous report the acquisition of the land as a single entity and its use as garden ground does not preclude a distinction being made between various parts of the garden for the purposes of land use zoning in the context of the current Local Plan. Indeed there are several examples in the Badenoch and Strathspey Local Plan (1997), in the vicinity of Nethy Bridge and also in other settlement areas where portions of land used as the garden ground of existing dwelling houses has been identified as either 'Forestry / Restraint' or 'Amenity Woodland'.⁸ The differentiation between the 'infill' allocation and the 'Forestry / Restraint' designation in the case of the Malvern lands is quite clear, with the division occurring at the southern boundary of the bothy on the site, and corresponding to the area of the garden that includes a significant number of mature trees. In this respect, the two distinct land use

⁸ Planning applications called in recently by the CNPA on garden grounds where a portion of the area was designated as either 'Forestry / Restraint' or 'Amenity Woodland' include 06/164/CP : dwelling house on garden ground at Dell of Rothiemurchus and 06/270/CP : dwelling house on land to the rear of Hillcrest, Nethybridge Road, Boat of Garten.

allocations relating to the site were clearly intended as such and are entirely justifiable.



Fig. 16 : Existing vegetation in the vicinity of the bothy

Other permissions in the vicinity

40. In the course of an on site meeting with the applicant reference was made to a new dwelling house which is currently in construction a short distance to the south west of the subject site, with the applicant suggesting that this was an indication of general acceptance of housing within Forestry / Restraint areas. In light of such suggestions, I feel that it is pertinent to provide some background information on that permission, which illustrates Highland Council's understanding and implementation of planning policies and objectives relating to land allocated as Forestry / Restraint and also the specific aspects of the development proposal on that neighbouring site which justified the granting of planning permission.
41. Permission was sought under Highland Council planning ref. no. BS/01/233 for the erection of a dwelling house and formation of a new vehicle access on land west of Kimberley, Nethybridge, on garden ground adjoining an existing house and outbuildings. The development was advertised as "not in accordance with the Provisions of the Development Plan." The Planning Officers report which was prepared for the relevant Committee referred to the proposal being a departure application because the "site of the house is shown in the Local Plan Proposals Map as subject to the restrictive policy protecting settlement edges" although reference was made to it being on land that had been for some time an integral part of the curtilage of Kimberley.
42. A case was put forward by the applicants confirming that the proposed dwelling was to be occupied by themselves while operating Kimberley Holidays Homes i.e. the adjacent property. The proposal was recommended for approval with the reason for departing from the provisions of the Development Plan referring to the proposed dwelling being "related to the operation of an existing business at the property." The recommendation was accepted by the relevant planning committee and permission was granted with a condition which stipulated that the "dwelling hereby approved shall be occupied by a person or persons

solely or mainly employed in the operation and management of the business known as Kimberley Holiday Homes, or relatives or dependants of such person or persons.” The reason for the condition stated that “the occupational link with the Holiday Homes business justifies an exception to the Adopted Local Plan Policy affecting the site.”

On site meeting – June 2006

43. At the request of the applicant, an on site meeting was held on 26th June 2006, attended by the applicant and her son, CNPA planning officer and Highland Council Forestry Officer. At that meeting general agreement was reached on a revised position for the proposed structure, substantially located within the area of the garden allocated as ‘infill’, with only very minor encroachment into the Forestry / Restraint area. At that time the use of the structure as ancillary accommodation to the main dwelling house also formed part of the proposal. In addition to avoiding unnecessary encroachment into the Forestry / Restraint area, the revised position discussed at that meeting also met with the approval of Highland Council’s Forestry Officer in achieving adequate separation distance between the proposed structure and the existing trees in the vicinity, thereby ensuring the protection of the trees. Discussions also concerned the proposed design with advice being given in relation to the need to ensure that any design should taken into account the built character and traditional architecture of the area, as well as considering its orientation and position of openings etc. to take account of the need to minimise its impact on neighbouring properties. The applicant undertook to submit revised design proposals.

Post CNPA Planning Committee alterations to the proposal

44. In detailing the planning policy background in earlier sections of this report, as well as demonstrating Highland Council’s interpretation of the policy in the case referred to above, it is clear that **a proposal for a new dwelling house and an associated sub divided site area, as was the case presented to the CNPA’s Planning Committee at the meeting of 11th August 2006, would represent a departure from the provisions of the current Local Plan. As referred to earlier in this report the applicant has since agreed to enter into a section 75 legal agreement restricting the use of the proposed dwelling house to accommodation ancillary to the main dwelling house and restricting the sale of the structure separate from the main dwelling house.**

45. In addition to the applicants confirmation of her agreement to enter into the Section 75 legal agreement, further details were also required in an effort to address concerns regarding siting, visual amenity and landscaping. Due to the variation in ground levels between the site of the existing bothy and the proposed ancillary accommodation unit a contoured site plan and accompanying cross sections were submitted. The contoured site plan has not been submitted thereby resulting in difficulty in establishing the accuracy of ground levels and finished floor levels detailed on the cross sections submitted. The east to west cross section shows the existing bothy cut into the slope of the site to a depth of approximately 0.75 metres achieving a finished floor level at the 214.85 metre contour. By contrast, the ancillary accommodation unit which is to be positioned further down slope to the east of the bothy is proposed to have a finished floor level at the 213.75metre contour line, and excavations of approximately 1.2 metres would be necessary on the highest part of the ground closest to the bothy in order to achieve this. The existing bothy has a ridge height of 3.5 metres⁹ while the proposed new structure has a ridge height of 6.5 metres. The ridge height of the proposed new structure combined with cutting into the slope of the site would result in the new dwelling unit being approximately 2 metres higher than the existing bothy.¹⁰

CONCLUSION

46. Given the size of the site involved in this application and indeed the size of the existing dwelling house on the site, it is clear that an opportunity exists to provide additional / ancillary accommodation to satisfy the applicants changing living arrangements at Malvern, either in the form of an extension to the main dwelling house or by the provision of a suitably and sympathetically designed ancillary unit within relatively close proximity to the main structure and within the infill area. In terms of the former option, it is my view that an extension to the main dwelling house would offer significantly greater potential to assimilate with the character, proportions and architectural detail of Malvern, than the currently proposed free standing structure in the rear garden. However, I am sympathetic to the applicants hopes to progress her new living arrangements as conveniently as possible given her advancing years and in this regard appreciate that the erection of a structure detached from the existing dwelling house, could perhaps be completed with minimal interference to her current accommodation, thereby allowing a smooth transition to the new living arrangement.

⁹ Excluding the chimney stack which projects to a higher level.

¹⁰ Excluding the chimney stack which projects to a higher level and is not included in the calculation of ridge height.

47. Due to the applicants agreement to enter into a Section 75 agreement, the proposed new structure can now be assessed as ancillary accommodation within the overall garden grounds of an existing residential property as opposed to its previously proposed form as a new independent dwelling house, with its own subdivided site area on land allocated as Forestry / Restraint which is unjustifiable in the context of planning policy. Ancillary accommodation is not in my view incompatible with the 'Forestry / Restraint' land use allocation on the area of the site in which it is to be positioned. The area of garden space available for use by prospective occupants of the ancillary accommodation unit is the same as that of the existing dwelling house on the site and includes all of the land allocated as infill as well as the 'Forestry / Restraint' land area. In establishing a firm link to the existing property through the formal mechanism of a section 75 legal agreement and continuing to treat the overall site area as one entity, the development does not offend the planning policy applicable to the area and it would not set a precedent for sporadic residential development on Forestry / Restraint lands.

Section 75

48. As detailed in the previous report prepared for the planning committee on August 11th 2006 the mechanism by which the proposed residential unit would be secured as accommodation ancillary to the main dwelling house is by the applicants entry into a section 75 agreement. Such a mechanism would be entirely in accordance with the provisions of Section 75 of the Town and Country Planning (Scotland) Act 1997, which enables planning authorities to enter into agreements with any person with an interest in the land for the purpose of "restricting or regulating the development or use of the land" either permanently or during a prescribed period. It is indeed a mechanism which has been commonly used in a variety of situations, including instances of residential units proposed as ancillary accommodation to main dwelling houses.

Design Issues

49. Members will recall that the report previously presented to the Planning Committee in respect of the development proposal on this site raised concerns regarding siting and design issues. In terms of the proposed siting, reference was made to the necessity to remove semi mature trees in the vicinity of the proposed development location, as detailed in the report from Highland Council's Forestry Officer. The position of the proposed structure remains unaltered, although in an effort to address the concerns regarding the removal of the trees in close proximity, a suggestion has been made by the applicant and detailed on a revised site layout plan that efforts would be made to move the silver birch to the east of the structure by digger to a position adjacent to the lane. No supporting information from tree

specialists / horticulturists have been submitted to corroborate the feasibility of this and I do not consider that this proposal can be regarded as a significant mitigating factor.

50. Other general landscaping proposals have also been detailed on the site layout plan, including proposals to plant three new silver birch trees to the north west of the proposed structure, as well as proposals for various shrubs and trees along a portion of the north eastern boundary adjacent to the rear lane. The details on the plan have also been accompanied by a written submission detailing the species of existing planted areas within the garden, which are essentially shrubs and plants commonly associated with a domestic garden, including potentilla, azalea, oregano and rhododendron. Whilst such planting will undoubtedly be a pleasant garden feature for residents of the existing dwelling house and proposed ancillary accommodation unit, it is unlikely to assist in assimilating the structure into the landscape, minimise its visual impact (which will be more obtrusive than the existing bothy on the site) or assist in safeguarding or enhancing the residential amenity of neighbouring properties. The landscaping details submitted to date, in conjunction with the details of boundary treatment are therefore considered insufficient to overcome previously expressed siting concerns. However, I am confident that the matter could be resolved in a more satisfactory manner by the submission of a comprehensive landscaping plan, prepared by a suitably qualified horticulturist or landscape architect, providing details of appropriate screen planting along the site boundaries and at strategic locations within the site, with the latter being particularly necessary in order to compensate for the loss of the existing semi mature trees close to the location of the proposed dwelling unit. Such a plan would generally provide details of all species proposed to ensure that they are appropriate to the environment in which they are proposed both from an aesthetic point of view and in relation to climate conditions, precise numbers and location of each species and details of the height and girth at the time of planting, as well as overall expected growth rates. In the event that consideration is being given to the granting of planning permission for the proposed development, I recommend that a condition be included requiring the submission of a detailed landscaping plan.
51. The design of the proposed dwelling unit remains unaltered from the proposal previously presented to Members (refer to Fig. 13 and 14 of this report). As detailed in the earlier planning report on this proposal I accept that efforts have been made to modify the design concept from the original Scandinavian log cabin concept proposed and I also appreciate that the settlement of Nethybridge in particular has a long tradition of timber clad buildings. However, in most instances the existing timber clad buildings are located on individual sites, with their own road frontage, as

opposed to their imposition in backland positions, to the rear of traditional detached stone built villas. I therefore continue to have concerns regarding the potentially incongruous visual relationship likely to be established between the existing dwelling and the proposed new structure. The fact that it would be ancillary accommodation as opposed to an independent dwelling house does not negate this. Despite the introduction of a traditional porch element and dormer windows in the roof space, the structure still retains some of the appearance of a log cabin which has not necessarily been designed to assimilate into the particular characteristics of its setting. Horizontal cladding, Georgian style windows of varying proportions, as well as its slightly raised finished floor level due to its position on foundation pads, all contribute to a structure which does not closely reflect the building traditions of the area.

52. However, the actual design of the proposed structure was not raised as a point of significant concern by Members at the meeting 11th August and the application was deferred for investigation of issues other than design. Consequently, in accordance with the motion passed by Members at that meeting, the only issues investigated further were the Section 75 agreement and general siting and landscaping issues.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

53. The proposed dwelling house is in relatively close proximity to a number of semi mature trees and construction and development in such close proximity would necessitate the loss of two mature trees which are in good condition and would therefore fail to conserve or enhance the natural heritage of the area at the present time. A commitment has however been expressed to the provision of new planting which could in the longer term enhance the natural heritage of the area.

Promote Sustainable Use of Natural Resources

54. The proposed design incorporates the extensive use of timber, although it is to be supplied by a kit manufacturer remote from the National Park, and the origins of the timber are therefore unknown.

Promote Understanding and Enjoyment of the Area

55. The proposed development does not make any contribution to this aim.

Promote Sustainable Economic and Social Development of the Area

56. The proposal does not make any particular contribution to this aim.

RECOMMENDATION

That Members of the Committee support a recommendation to:

Grant full permission for the demolition of a bothy and the erection of an ancillary dwelling unit on garden ground at Malvern, Duack Bridge, Nethy Bridge subject to the completion of a Section 75 legal agreement to restrict the use of the proposed structure to accommodation ancillary to the main dwelling house and restricting the sale of the structure separate from the main dwelling house; and subject to the following conditions : -

1. The development to which this permission relates must be begun within five years from the date of this permission.
2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, no house extension shall be formed, and no greenhouse, shed, garage or other structure shall be erected without the prior written consent of the Planning Authority.
3. Prior to the commencement of development, a detailed landscaping plan prepared by a suitably qualified landscape architect or horticulturist, which shall include (i) proposals for the planting of semi mature / mature trees and shrubs of indigenous species within and on the boundaries of the site and (ii) details of all other types of new boundary treatments proposed, shall be submitted for the agreement and written approval of the CNPA acting as Planning Authority. The landscaping shall be implemented and maintained in accordance with the approved plan. The plan shall include details of the siting, numbers, species (which shall be appropriate to the proposed setting) and heights (at the time of planting) of all trees, shrubs and hedges to be planted and shall ensure:-
 - (a) Completion of the scheme during the planting season next following the completion of the development, or such other date as may be agreed in writing with the CNPA acting as Planning Authority;
 - (b) the maintenance of the landscaped areas in perpetuity in accordance with the detailed maintenance schedule/table. Any trees or shrubs removed, or which in the opinion of the CNPA acting as Planning Authority, are dying, being severely damaged or becoming seriously diseased within three years of planting, shall be replaced by trees or shrubs of similar size and species to those originally required to be planted;

- (c) No trees on the site (other than the scots pine and silver birch identified to the east of the proposed structure) shall be uprooted or damaged. All other trees on the site shall only be felled, lopped or topped with the prior written approval of the Cairngorms National Park Authority acting as Planning Authority.
4. No development shall commence on the site until a scheme (prepared in accordance with section 7, BS59837, the Tree Protection Plan) for the retention and protection of all existing semi mature trees, other than the identified scots pine and silver birch to the east of the proposed structure, has been submitted for the agreement of the Cairngorms National Park Authority acting as Planning Authority, in consultation with the Forestry Section of Highland Council.
 5. Prior to the commencement of development revised drawings shall be submitted for the written agreement of the Cairngorms National Park Authority acting as Planning Authority to show an external finish of vertical timber boarding, all external doors of a design incorporating vertically lined timber and all windows resembling centre bar casement units of appropriate proportions.
 6. All public services for the development including electrical, communal television and telephone cables, shall be undergrounded throughout the site.
 7. Prior to any other works commencing in connection with the proposed development the following works shall be completed and approved by the Cairngorms National Park Authority acting as Planning Authority, in consultation with the Roads Authority : -
 - (i) the existing access shall be modified to the satisfaction of the Roads Authority and shall incorporate a service bay arrangement. Construction for at least the first 6 metres from the nearside 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) A minimum verge width of 1 metre shall be provided at the rear of the service bay;
 - (iii) the gradient of the access shall not exceed 5% for the first 5 metres and thereafter shall not exceed 10%.
 8. Visibility splays shall be provided and maintained on each side of the access. These splays are the triangles of ground bounded by the first 2.5 metres along the centreline of the access road (the x dimension) and the nearside edge of the main road (the y dimension) measured in each direction from the intersection with the access road. In an easterly direction y shall measure 90 metres and in a westerly direction approximately 60 metres.

9. Within the visibility splays nothing shall obscure visibility between a driver's eye height of 1.0 metres positioned at the x dimension and an object height of 1.0 metre anywhere along the y dimension.
10. Any gates that are provided shall be set back at least 3.5 metres from the rear edge of the service bay. The gates shall be located so that when an open position they shall remain clear of the service bay.
11. Parking and manoeuvring space for at least 2 no. cars shall be provided within the curtilage of both the new and existing properties such that all vehicles may enter and leave the site independently in forward gear.
12. Measures shall be put in place to minimise surface water discharge onto the public road and such measures shall be to the satisfaction of the CNPA acting as Planning Authority, in consultation with Highland Council. A totally separate drainage system will be required with the surface water discharging to a suitable outlet.

Advice notes :

- Prior to any work of excavation or surfacing starting within 2 metres of the public road edge a road opening permit shall be obtained from the Roads Authority.
- In order to achieve the required visibility, particularly in a western direction, at the junction of the entrance bay and the public road, the removal or lowering of walls and fence lines and cutting back of roadside vegetation will be necessary.
- Scottish Water have advised that the applicant must make a separate application to Scottish Water Planning and Development Team for permission to connect to the public wastewater system and / or water network at the appropriate time. Please note that the granting of planning consent does not guarantee a connection to Scottish Water's assets.
- Scottish Water require in the event that the connection to the public sewer / watermain requires to be laid through land outwith the applicant's ownership, that the applicant must provide evidence of formal approval from the affected landowners through whose ground the connection to the public wastewater system / water main must pass. This must be done at the time of making an application to Scottish Water.
- Scottish Water advise that although there is capacity in the public sewer network system to accommodate the development at the present time and that there is also adequate water supply at the present time, connections to the public sewer / water main are dependant on spare capacity at the time of application for connections.

Determination Background :

The application was called in by the CNPA Planning Committee at its meeting of 7th April 2006. Further to the receipt of the majority of initial consultation responses, a detailed letter requesting amendments and further information on a number of aspects of the proposal was issued to the applicant on 26th May 2006. Partial responses were received over the following weeks and an on site meeting was held on 26th June 2006 at the request of the applicant to discuss the proposal. The final amendments which the applicant wished to put forward for consideration were received by the CNPA on 31st July 2006. The application was first considered by the CNPA Planning Committee at the meeting of August 11th 2006 and determination was deferred to allow further investigation of various issues. The information in respect of those issued was submitted to the planning office of the CNPA on 22nd August 2006 and 30th August 2006.

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1st September 2006

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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 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.