
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: AMENDED REPORT ON CALLED-IN PLANNING APPLICATION

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(DEVELOPMENT MANAGEMENT)

DEVELOPMENT PROPOSED: OUTLINE PERMISSION FOR THE ERECTION OF A DWELLING HOUSE AND THE ERECTION OF AN AGRICULTURAL BUILDING ON A SITE TO THE NORTH OF MAINS OF GLENCARVIE, STRATHDON.

REFERENCE: 07/360/CP

APPLICANT: MR. & MRS. TAYLOR

DATE CALLED-IN: 21ST SEPTEMBER 2007

RECOMMENDATION : APPROVE SUBJECT TO THE COMPLETION OF THE SECTION 75 LEGAL AGREEMENT PREVIOUSLY REQUIRED IN MAY 2008

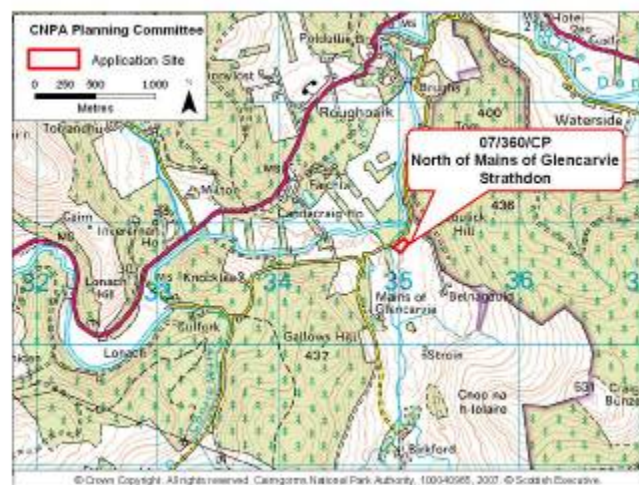


Fig. 1 - Location Plan

BACKGROUND TO THE AMENDED REPORT

1. An application for outline permission for the erection of a dwelling house and agricultural building on land located to the north of Mains of Glencarvie, Strathdon was brought before the CNPA Planning Committee for determination on 11th January 2008. The applicants, Mr. and Mrs Taylor, advanced a land management case based on Mr. Taylor's involvement in the operation of the 211 hectare family farm.¹ The proposed site area extends to approximately 4,000 square metres (1 acre) and lies adjacent to an unclassified public road. The land on which the site is proposed is part of an agricultural landholding which is in the ownership of the applicants family. The majority of the landholding extends in a relatively linear block to the south and includes groups of buildings at Stroin and Birkford. There is also a smaller fragmented section of the landholding a short distance to the north of the proposed site. The landholding consists of agricultural land and woodland, with Torr na Sithinn wood located in the centre of the farm unit.
2. The applicants currently live in Strathdon, approximately three miles from the farm. Mr. Taylor is the son of the landowner and is the third generation of the family to engage in agriculture on the landholding. A labour requirement report, prepared by the Scottish Agricultural College Farm Business Service, was submitted in support of the application. The report detailed that the 211 hectare farm consists of a mix of rotational grassland (61 hectares) and rough grazing (139.66 hectares).² A small herd of 28 suckler cows is out-wintered and a flock of 250 ewes are lambed indoors in March and April. The SAC report calculates that the total working hours required to operate the farm are 3,273 per annum. Based on the UK Agriculture Departments Standard Labour Unit of 1,900 hours per annum, the labour requirement for the farm is calculated as 1.72 labour units. In addition to including a summary of the activities undertaken and the hours devoted to each, the SAC report also emphasised that breeding livestock are kept on the farm and recommended in the interests of animal welfare and security, it would be desirable to have a stockman resident on the farm. Supporting documentation indicated that Robert Taylor (the applicant) is the primary worker on the farm, with his father, who is past retiring age, assisting at occasional, busy times of the year, such as at lambing time or during silage making. At present, the applicant travels between his existing home in Strathdon and the farm. The

¹ Please refer to paragraph 4 of this report for a summary of the case advanced.

² The remainder of the landholding comprises of 4.22 hectares of woodland, 2.12 hectares taken up by roads, yards and buildings and in addition there is also a 4 hectare field which is rented.

applicants advanced the case that the construction of a family home on the landholding would ensure that Mr. Taylor would be on hand for essential animal welfare at all times, regardless of weather conditions.

3. Based on the case initially presented in the planning application the development proposal was considered to comply with planning policy, in particular **Policy Hou/4** of the Aberdeenshire Local Plan on **New Housing in the Countryside including the Aberdeenshire part of the Cairngorms National Park**. Based on an overall analysis of the proposal, including the aforementioned planning policy, as well as other planning considerations such as siting and landscape impact, access and servicing etc., it was recommended that planning permission be granted subject to the completion of a Section 75 legal agreement, and also subject to a number of conditions. The Planning Committee accepted the recommendation at the planning determination meeting of 11th January 2008. For ease of reference please see Appendix 1 for a full copy of the original report.
4. The recommended Section 75 legal agreement required that the occupancy of the new dwelling house would be restricted "to the applicants or any person employed (or last employed) in agricultural activity on the 211 ha. landholding on which it is proposed and restricting the sale of the proposed dwelling house separate from the landholding, and also to ensure the payment of development contributions in respect of planning gain." In a letter to the CNPA planning office on 7th November 2007 Mr. Taylor stated that he was "willing to enter into a Section 75 legal agreement or occupancy condition to tie the house to the farm in perpetuity."
5. Following the resolution of the CNPA Planning Committee to grant outline planning permission subject to the completion of the above detailed Section 75 agreement, the applicants considered the terms of the drafted agreement and indicated that they were unable to sign it in that form. Correspondence from the applicants dated 6th April 2008 and 9th April 2008 (Appendix 3) provided the background to their concerns at that time. Essentially the applicants main point of concern related to a requirement that the proposed dwelling house be tied specifically to the acreage of the 211 hectare landholding. The applicants expressed concern that any future change in circumstances, such as the sale of any portion of the landholding, however small, would be a breach of the terms of the agreement. Although they have expressly stated that there is no intention to sell any ground at the moment, reference was

made to a hypothetical situation which might occur in the future, for example if a portion of the hill ground was sold to the Forestry Commission. The point was also made that the sale of such land would not affect the labour need and work required on the farm. Mr. and Mrs. Taylor also made reference in their submissions in April 2008 to family circumstances, where the applicants sibling may inherit some of the landholding at some time in the future, but the farm business would remain albeit with altered acreage.

6. In their correspondence in April 2008 the applicants indicated that they were willing to "sign a Section 75 to tie the house to this farm" but they requested that consideration is given to revisions to the terms of the agreement "so that the occupancy of the house is tied to the farm business of Birkford, Belnagauld" and "not to the current specific acreage of the farm business."
7. Given that the applicants do not own the landholding (as it is in the ownership of Mr. Taylor's parents) and that details were also provided of other siblings who may eventually inherit portions of the landholding, the applicants request for an alternative form of wording in the required Section 75 agreement which would not prohibit potential future changes in the ownership of the landholding was considered reasonable. The thrust of the amended wording was considered to continue to achieve compliance with the aspirations of the applicable planning policy, as well as being consistent with restrictions imposed through Section 75 agreements in other applications determined by the Cairngorms National Park Authority, particularly where the case for a dwelling house was directly linked to either a landholding or a business. Consequently the overall recommendation to the Planning Committee in May 2008 was to "grant outline permission for the erection of a dwelling house and the erection of an agricultural building on a site to the north of Mains of Glencarvie, Strathdon, subject to completion of a S75 Legal Agreement which restricts the occupancy of the new dwelling house to the applicants or any person employed (or last employed) in the farm business of Birkford and Belnagauld and restricting the sale of the proposed dwelling house separate from that farm business, and also to ensure the payment of development contributions in respect of planning gain." The CNPA Planning Committee accepted the recommendation and Ledingham Chalmers, solicitors acting on behalf of the CNPA, began the process of drafting the revised agreement.

THE APPLICANTS CASE FOR AMENDMENTS TO THE REQUIRED SECTION 75 LEGAL AGREEMENT

8. This planning paper is being brought before the CNPA Planning Committee for re-consideration for the third time at the request of the applicants. A representation has been received from NFU Scotland (Appendix 3) on behalf of the applicants, Mr. and Mrs. Taylor, requesting that the terms of the suggested Section 75 agreement be reconsidered. It is the contention of NFU Scotland, in their submission to the CNPA in November 2008 that "the condition detailed at section 5.1 of the minute of agreement titled 'Obligations in relation to Disposal of the Development' if continued to be insisted upon will not allow the development to proceed." The reason advanced by NFU Scotland for this statement is "that the farm is owned by Mr. Taylor's father but the finance for the building of the house is to be provided by Mr. and Mrs. Taylor" and in order to ensure security of tenure of the house to the applicants and their family "it is important that the house is not an asset of the farm business." NFU Scotland request that the clause at Section 5.1 of the drafted Section 75 legal agreement i.e. restricting the sale of the dwelling house separate from the business at Birkford and Belnagauld, be removed entirely. The correspondence from NFU Scotland also states that they believe that the requirement detailed in Section 4.1 of the drafted agreement which restricts the occupancy of the development offers sufficient protection to ensure that Policy 12 of North East Scotland Together, Aberdeen and Aberdeenshire Structure Plan 2001 – 2016 (NEST).

APPRAISAL

9. The report originally presented to Committee in January 2008 outlined relevant planning policies relating to housing in the countryside, from national level guidance through to the **North East Scotland Together, Aberdeen and Aberdeenshire Structure Plan 2001 – 2016 (NEST)** and the **Aberdeenshire Local Plan. Policy 12** of NEST deals with House Building in the Countryside Beyond the Green Belt and indicates that there will be a presumption against house building except in three circumstances, one of which is the construction of a new house which is essential to the efficient operation of an enterprise, which is itself appropriate to the countryside. Within the Local Plan **Policy Hou\4 on New Housing in the Countryside including the Aberdeenshire part of the Cairngorms National Park** states that a single new house will be approved in principle if
 - (a) it is for a full time worker in an enterprise which itself is appropriate to the countryside;
 - (b) the presence of that worker on-site is essential to the efficient operation of that enterprise;

- (c) there is no suitable alternative residential accommodation available;
- (d) the proposed house is within the vicinity of the worker's place of employment; and
- (e) it conforms with Appendix 1 (The Design of New Development in Aberdeenshire).

The aim of the policy is to support a long term sustainable pattern of development and prevent sporadic development in the countryside. The Plan aims to ensure that any new house approved under Policy Hou\4 is never sold to a non essential worker, and as a result indicates that developers would be required to enter into a Section 75 agreement. The Plan does not however stipulate the specifics of the legal agreement.

10. Reports previously presented in connection with this planning application have acknowledged that a case has been made by the applicants to demonstrate the compliance of the proposal with the provisions of **Policy Hou\4**, with details being provided in the form of an SAC assessment to confirm that Mr. Taylor's presence on the site is essential for the operation of the business at Birkford and Belnagauld. In addition it is accepted that the proposed dwelling house would be located in the immediate vicinity of the area in which the business is being operated.
11. Based on circumstances detailed in the above paragraph the principle of a dwelling house in this location has been accepted in the two previous instances in which the CNPA Planning Committee considered the proposal. The general thrust of the policy on **'New Housing in the Countryside including the Aberdeenshire Part of the Cairngorms National Park'** as detailed in the Aberdeenshire Local Plan is similar to the planning policies applicable in other areas of the National Park, where the general policy thrust is to prevent sporadic development by restricting new housing in countryside areas, except to those that have a proven need to live in such an area. For example, in the Highland Council area of the National Park, the Badenoch and Strathspey Local Plan identifies large swathes of the rural area as 'Restricted Countryside' with the associated policy 2.1.2.3 stating that a presumption will be maintained against the development of houses, with exceptions only being made where a house is essential for the management of land, related family and occupational reasons. The CNPA has assumed the role of planning authority on many applications in such policy areas and to date applicants have been required to enter into Section 75 agreements, with the content of the agreements consisting of a two strand approach, firstly including a clause to restrict the

occupancy of the dwelling to those employed (or last employed) on the landholding on which the case has been made that residing there is essential for the management of the land, and secondly restricting the sale of the dwelling separate from that landholding.³ In other instances in both the Aberdeenshire and Highland areas of the Park for example, where a case has been made for a dwelling house based on it being necessary for the operation of a business, Section 75 legal agreements incorporating a similar two strand approach have also been required. In those instances, the legal agreements have included a restriction on the occupancy of the relevant dwelling house as well as restricting the sale of the dwelling separate from the business which has justified its acceptance.⁴

12. In the case of the current situation regarding the development proposal at Mains of Glencarvie, it is my view that the only issue to be explored in this planning report relates to the content of the Section 75 agreement. As already outlined the principle of the dwelling house and the need for it etc. has been accepted **subject to the required Section 75 legal agreement being completed.** The contents of the required legal agreement were intended to achieve the aspirations of the planning policy in relation to new housing in the countryside, which as already stated is to support a long term sustainable pattern of development and ensure that any new house approved remains available for an essential worker in the relevant enterprise. The two strand approach that has been required to date by the CNPA in Section 75 agreements, in the context of either applications for dwelling houses on agricultural landholdings or associated with other businesses, would achieve this and as references 4 and 5 in the foregoing paragraph demonstrates, is an approach which has been applied consistently across the

³ Examples of applications on which the CNPA Planning Committee have resolved to grant planning permission subject to Section 75 legal agreements restricting the sale of dwelling houses separate from the landholding which has been used to justify the proposal include 06/388/CP – land to the north east of the Old Schoolhouse, Carrbridge in which outline planning permission was granted for a dwelling house; and 07/443/CP – land at Kinakyle, Dulnain Bridge, in which outline planning permission was granted for a dwelling house.

⁴ Examples of applications on which the CNPA Planning Committee have resolved to grant planning permission subject to Section 75 legal agreements restricting the sale of dwelling houses separate to the businesses which have been used to justify the proposal include 07/374/CP – Inver Hotel, Craithie, Ballater in which full planning permission was granted for a dwelling house and 4 holiday lodges; 06/259/CP – Goodbrand and Ross, Corgarff, Strathdon where full planning permission was sought for the erection of a dwelling house; 05/342/CP – Craggan Mill, Grantown on Spey in which full planning permission was granted for the erection of a dwelling house; and 06/336/CP – Laggan County Hotel, Laggan in which planning permission was sought for a dwelling in the grounds of the hotel.

National Park area regardless of the Local Authority area in which the application is proposed. I am therefore of the view that there is a need to maintain this consistent approach across the Park area in relation to the use of Section 75 legal agreements and their contents.

13. In this current application, the applicants are now requesting that the Section 75 agreement that they would be required to enter into would include only one clause, only restricting the occupancy of the dwelling house, where "the occupancy would be restricted to the applicants or any person employed (or last employed) in the farm business in at Birkford and Belnagauld" While I accept that the applicants at the current time plan to maintain the proposed dwelling house as their long term permanent residence, I feel that it is nonetheless necessary to point out potential hypothetical situations which could occur in relation to the stated occupancy condition. References in the clause to 'the last employed' are essentially intended to facilitate a retiring worker on the landholding. However, the clause could also be complied with by a person other than a retiree, last employed, even for a short period of time, in the farm business. Given that the content of the Section 75 legal agreement required by the applicants would only include a restriction on the occupancy of the proposed new dwelling house, it is possible that the property could be sold in the future to such a person who would fulfil the requirement of employment (even for a very short period) in the farm business. The omission of the second aspect of the normally required clause i.e. restricting the sale of the dwelling separate from the farm business⁵ would increase the potential for a hypothetical situation such as that suggested above to occur and would diminish the certainty of the property remaining available for use as the residence of an essential worker in the enterprise, thus potentially perpetuating the need for further housing to be provided in the vicinity of the farm enterprise to accommodate essential workers at some stage in the future.
14. In addition to the potential direct implications of the removal of the clause restricting the sale of the dwelling house separate from the 'farm business at Birkford and Belnagauld,' the weakening of the nature of the clause required in connection with a proposal of this nature in a Section 75 legal agreement would also set a precedent for other similar planning

⁵ The exact nature of the 'farm business at Birkford and Belnagauld' has not been specifically defined and is only referred to in general terms in the context of the Section 75 agreement.

applications in the National Park in the future, and also raises issues regarding the consistency of past CNPA planning decisions.⁶ On the basis of all of the foregoing concerns and on the assumption that it is the intention of the CNPA Planning Committee to continue to utilise the mechanism of Section 75 Legal Agreements to regulate developments, I find it necessary to take the view that a two strand approach, involving a restriction on occupancy and also restricting the sale of a residence separate from either the landholding or business, should continue to be maintained. This would thereby continue to ensure that any dwelling house permitted on the basis of meeting exceptional circumstances (such as it being essential for the efficient operation of a farm or other enterprise), continues to remain linked to the landholding or enterprise and occupied in perpetuity by an essential worker. It is an approach which is also consistent with planning recommendations made by officials and accepted by the CNPA Planning Committee in the past on a variety of applications across the entire National Park.

15. In the event that Members do not wish to accept the recommendation of this report, there are essentially two options which would be open for consideration in this process of determination – (a) acceptance of the applicants request to omit any clause that would restrict the sale of the proposed dwelling house separate from the farm business at Birkford and Belnagauld and the effective granting of planning permission subject to a less restrictive Section 75 legal agreement than that imposed in similar instances on applications previously dealt with by the CNPA; or (b) a refusal of planning permission on the basis that the applicants rejection of the required form of Section 75 legal agreement would hinder the ability to ensure that the proposed dwelling house is retained as accommodation for an essential worker involved in the farm enterprise, would set a precedent for dwelling houses proposed in the future in similar locations, and would also be inconsistent with earlier decisions of the CNPA acting as Planning Authority.

RECOMMENDATION

That Members of the Committee support a recommendation to:

⁶ CNPA Planning Ref. No. 06/270/CP – full planning permission for the erection of a dwelling house on land to the rear of Hillcrest, Nethybridge Road, Boat of Garten, was refused planning permission in March 2008, primarily due to the fact that the applicants were unable to enter into the required Section 75 agreement which was intended to restrict the sale of the new dwelling house separate from the existing dwelling on the landholding.

Maintain their previous resolution of May 2008 granting planning permission subject to the completion of a Section 75 Legal Agreement to restrict the occupancy of the new dwelling house to the applicants or any person employed (or last employed) in the farm business at Birkford and Belnagauld and restricting the sale of the proposed dwelling house separate from the farm business, and also to ensure the payment of development contributions in respect of planning gain, and subject to the schedule of conditions previously recommended and detailed hereunder –

1. A formal planning application and detailed plans indicating all matters relating to the siting, design and external appearance of all buildings shall be submitted for the prior approval of the Planning Authority within 3 years of the date of this consent and the development must be commenced within 5 years of the date of this permission or within 2 years from the date of final approval of all the foregoing Reserved Matters.
2. The proposed dwelling house shall be designed in accordance with the traditional vernacular architecture of the area and shall be a maximum of 1 ½ storeys in design, and shall incorporate the use of external materials that visually compliment existing properties in the wider area.
3. An application for approval of reserved matters shall be accompanied by a detailed landscaping plan and a maintenance plan for the proposed site and the associated landholding, which shall include
 - (i) proposals for the planting of semi mature trees and shrubs of indigenous species on the boundaries of the overall area;
 - (ii) details of all other types of new boundary treatments proposed; and
 - (iii) details of all surface treatments.The landscaping and maintenance programme 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 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 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.
4. A detailed site layout plan submitted as part of an application for approval of reserved matters shall demonstrate compliance with the following requirements –
- (a) The access located as shown on indicative site plan drawings submitted as part of the application for outline permission;
 - (b) The provision of off street parking in accordance with Aberdeenshire Council's Car Parking standards, and surfaced in hardstanding materials;
 - (c) The formation of visibility splays, measuring 2.4 metres by 90 metres, either side of the proposed vehicular access and thereafter shall be kept free from all permanent obstructions above the adjacent carriageway level; and
 - (d) the provision of a suitable vehicle turning area, measuring not less than 7.6 metres x 7.6 metres, within the site to enable all vehicle movements onto or from the public road to be carried out in a forward gear.
5. The access with the public road shall not be surfaced with loose material and shall be fully paved for at least the first 5 metres.
6. Adequate provision shall be made for internal surface water drainage in order to ensure that surface water does not run from the site onto the public road and vice versa.
7. Prior to the first occupation of the proposed dwelling house, the water supply shall be improved by the installation of appropriate treatment and satisfactory samples to demonstrate this improvement shall be submitted for the written agreement of the Cairngorms National Park Authority acting as Planning Authority, in consultation with the Environmental Health section of Aberdeenshire Council.
8. An application for approval of reserved matters shall include details of the quantity of the private water supply.

9. All public services for the development, including electrical, cable television and telephone cables, shall be located underground throughout the site.
10. The private foul drainage system shall be designed to ensure the protection of surface waters and groundwater, by ensuring that all minimum distances as set out by SEPA are adhered to.
11. An application for approval of reserved matters shall be accompanied by detailed surface water drainage proposals for the agricultural building, which should include the adoption of a Sustainable Urban Drainage System.
12. Where the agricultural building is intended to house animals, the development shall adhere to the following requirements –
 - (i) no part of the slurry storage tank, or any effluent tank, channels, pipes or reception pit shall be situated within 10 metres of any inland or coastal waters;
 - (ii) the base of the slurry storage tank, the base and walls of any effluent tank, channels or reception pit and the walls of any pipes shall be impermeable; and
 - (iii) the capacity of this new structure, together with the existing storage capacity, should provide at least 6 months storage, unless otherwise agreed with SEPA.

Advice notes :

1. All works within the limits of the public road shall be carried out in accordance with the requirements of Transportation and Infrastructure, and application should be made for a Road Opening Permit prior to the commencement of the works. For information and application forms, please telephone (01569) 768455.
2. With reference to condition no. 7 of this permission, the water supply at present does not comply with the Private Water Supplies (Scotland) Regulations 2006 by reason of the presence of coliform bacteria and low pH.
3. As referred to in condition no. 10 of this permission the following are the minimum distances acceptable - 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.

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19 December 2008

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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.