
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

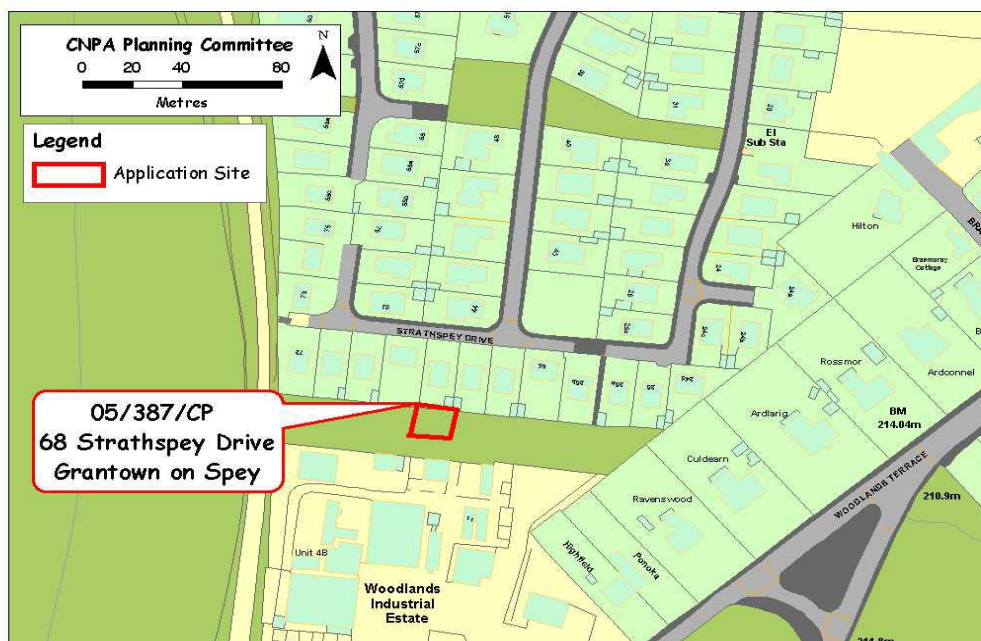
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(DEVELOPMENT CONTROL)

DEVELOPMENT PROPOSED: FULL PLANNING PERMISSION FOR CHANGE OF USE OF WOODLAND AREA TO GARDEN CURTILAGE, 68 STRATHSPEY DRIVE, GRANTOWN-ON-SPEY

REFERENCE: 05/387/CP

APPLICANT: MARK BISSETT, 68 STRATHSPEY DRIVE, GRANTOWN-ON-SPEY, PH26 3EY

DATE CALLED-IN: 9 SEPTEMBER 2005



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Fig. 1. Site Location Plan

SITE DESCRIPTION AND PROPOSAL

1. The site to which this application relates is located to the rear (south) side of an existing single storey bungalow at 68 Strathspey Drive, Grantown-on-Spey. The land constitutes part of a woodland area which runs in an east/west direction and separates the houses on Strathspey Drive at this location from the Woodlands Industrial Estate lying to the south. The strip of woodland is approximately 20m in depth and consists of a mixed coniferous and deciduous treed area.



Fig. 2. Garden area already partly formed – looking southwards

2. The proposal is to formally incorporate an area of this woodland into the garden curtilage of the house by fencing off an area the width of the house plot and extending approximately 12 metres into the woodland (already partly carried out) (see Fig. 2 above). The title deeds of the property do confirm that the woodland area, which is the subject of the application, does belong to the owner of the house (the applicant). Each house owner adjacent to the woodland owns the strip of woodland behind their plot. However the deeds also confirm that it shall be *“laid out as grass and trees and kept as a public amenity area and shall remain unbuilt upon in all time coming”*. It also states that the owners shall *“be responsible for keeping the same in a neat and tidy condition.”*
3. In July 2005, it was brought to the attention of Highland Council that the applicant had commenced the construction of a fence to enclose the application site within his formal garden area. Subsequently, the application to formally change the use of the woodland area to garden ground was submitted by the applicant and no further work has been carried out. The partly completed ranch style fence (1.8m in height)

remains in place. As I understand it, no trees were felled within the area, although some apparently blew over and have therefore been removed. Three trees remain standing within the proposed site.

4. The applicant received planning permission from Highland Council in December 2004 for a sizeable rear extension to his house. The CNPA did not call-in this application, nor did we make comments. The extension, now completed extends into the existing rear garden area of the property.

DEVELOPMENT PLAN CONTEXT

5. In the **Highland Council Structure Plan 2001, Policy G2 (Design for Sustainability)** states that proposed developments will be assessed on the extent to which they, amongst other things, impact on habitats, species, landscape, scenery etc. **Policy F5 (Amenity Woodlands)** expresses support for the maintenance and expansion of amenity woodlands throughout Highland, including provisions through the Council's Community Woodland Plan. **Policy L4 (Landscape Character)** states that regard will be had to the desirability of maintaining and enhancing present landscape character in the consideration of development proposals.
6. The site lies within the settlement envelope of Grantown-on-Spey within the **Badenoch and Strathspey Local Plan**. The area of woodland is designated within the Local Plan as "**Amenity Woodland**". The relating **Policy 3.5.3. (Amenity Woodlands)** mainly talks about the mature woodlands adjoining Grantown-on-Spey but in its last sentence it states that there will be a strict presumption against any further encroachment of building within the woodlands, in order to safeguard their integrity in the wider public interest. **Policy 3.5.5. (Other Trees)** states that consideration will be given to the placing of Tree Preservation Orders where other trees important to the character or visual structure of the town come under the threat of felling.
7. For information purposes only, in the **CNPA Consultative Draft Local Plan, Policy 4 (Landscape)** states that development that is likely to have an adverse impact on the special landscape qualities of the National Park including: landscape character; scenic qualities; natural beauty; amenity; historic landscape elements; cultural components; or wild land character of parts of the National Park, will not be permitted. In the Grantown-on-Spey settlement statement, the site is shown under **Policy E1 (Environment)**. This policy states that a number of sites within Grantown-on-Spey have been zoned to protect them from development; general landscaping works and environmental improvements should be carried out within the village.

CONSULTATIONS

8. **Grantown-on-Spey and Vicinity Community Council** have raised a concern that the proposal would set a precedent for other properties.
9. **Highland Council's Forestry Officer** has made comments about the impact of the proposal on the trees and the amenity woodland. He believes that the creation of a fenced private garden in the middle of the woodland will change the character of the woodland and is contrary to the present identified use as amenity. Permission for change of use may also set a precedent for other residents to apply for change of use and further erode the existing woodland character and public amenity.
10. He states that fencing and gardening activities, such as cementing in posts and the creation and maintenance of lawns and planting beds adversely impact upon the root structure of trees. In future years or under different ownership, the remaining and adjacent trees may be seen as incompatible with the enjoyment of the garden, with pressure being exerted to fell these trees. The felling of trees within garden ground does not require permission under the Forestry Act 1967.
11. He also states that it is recognised that the woodland is dense in places and access is presently not well defined. This is partly due to the physical age of the woodland and partly to lack of management. However, the intention for this area is as an amenity area, and improved management of the woodland could provide this if the need is proven. The woodland presently acts as a noise and visual screen separating Strathspey Drive from the Woodlands Industrial Estate. This function would be eroded by the creation of private gardens and the subsequent narrowing of the existing woodland.
12. To conclude, the forestry officer states that following instruction from Highland Councils Area Planning and Building Control Manager, and with the agreement of the Local Highland Council Member and the Chair of the Area Planning Committee, an Emergency Tree Preservation Order has been served on the entire east/west strip of woodland at this location. The notice was given on interested parties on 16 December 2005 and the period for making representations was 28 days. Following consideration of representations, a decision will be made whether to confirm the Order and this will be forwarded to the Highland Council's Local Area Committee in due course.
13. **The CNPA Outdoor Access Officer** has stated that the area in question forms part of a buffer zone between the housing development of Strathspey Drive and the Industrial Estate. It comprises trees, grass and rough scrubland. There is no evidence of the amenity area being used in a public capacity for recreation or passage. Access to the site is very limited – at the east end it is hemmed in by the curtilages of adjoining properties, and at the west end by the steep bank of the former railway line which is now a path. To the south it is enclosed by

the Industrial Estate. The single access point between 25b and 25a Strathspey Drive is blocked by a fence. From the point of view of public access, the site is considered to be of negligible interest.

REPRESENTATIONS

14. Three letters of representation have been received. The points raised are summarised below.

a. William and Fiona Sutherland, 76 Strathspey Drive, Grantown-on-Spey:

- Area is designated “public open amenity area” and is planted with trees which act as a sound barrier to noise from the Industrial Estate and encourages wildlife.
- Applicant has cut down number of trees and endangered more by burying them in soil removed from foundations of his house extension.
- Although the applicant owns the land, he is responsible for the maintenance of it and there are title deed restrictions which he has contravened.
- There is a precedent being set.

b. Mr. & Mrs. G.J. Haywood, 75 Strathspey Drive, Grantown-on-Spey: (2 letters)

- In the original planning approval for the Strathspey Drive development, this area was required for “Screen Planting” between the houses and the industrial estate.
- Proposal sets a precedent for others.
- Trees already removed at the application site have exposed the industrial site when viewed from their elevated bungalow.
- Because of noise, there is a need to retain the screening because of the late night working in units on the industrial estate.
- Screen planting acts as wind break.
- The tree belt is a habitat for wildlife, including red squirrels and this tree belt is an important corridor.
- They would never have bought their house if they knew that this tree belt would be removed.
- Any trees removed should be replaced with heavy standards and the spoil stacked around other trees should be removed.

15. **The applicant** has submitted two letters in support, and in response to the representees/consultees. The letters state:

- Reasons why the applicant wishes to extend his garden area and confirmation that he owns the land in question.

- An explanation for tree removal (did not cut down) and the placing of earth in the woodland (prepared to remove if required).
 - He wishes to enclose the garden with the fence to keep his children safe not to keep people out.
 - Other properties have thinned out trees and kept the grass neat and tidy – in effect increasing their garden areas.
 - Public access to the woodland area is difficult.
 - The TPO provides the tree protection now and the fence does not impact on the character of the woodland.
 - Willingness to replant trees within the area if required to reduce perceived gap in the trees.
 - The fence does not impact on the use of the area by squirrels.
 - Representees' houses are not directly affected.
 - Disputes the requirement in title deeds to retain a fence between the existing garden and the woodland.
16. Copies of all letters are attached for the Committee's consideration. **The applicant (Mr. Bisset) and one of the objectors (Mr. Haywood) have requested to address the Committee.**

APPRAISAL

17. Firstly, it is important to clarify the legal situation regarding this piece of land and its status in planning terms. The woodland strip between the houses at Strathspey Drive and the Industrial Estate at this location was required as screen planting between the two potentially conflicting uses, at the time of the original planning approvals for the houses in the 1970s. It is my understanding that the Council, while requiring its provision, did not agree to take on responsibility for its continued maintenance. Hence, the developer at that time (McLeod Building Ltd.), carried out the planting, but in disposing of the properties and concluding the title deeds, ensured that the owners of the houses took ownership of the strip of ground immediately behind their property and had responsibility for its continued upkeep. Nevertheless, in order to ensure that the area fulfilled the purpose for which it was required (screen planting), the title deeds also stipulated that it remain as a "*public amenity area*" (rather than formalised garden ground) and that it should remain "*unbuilt upon*". This is the **legal status of the land** and therefore any concern about the applicant breaching the terms of his title deeds by erecting a fence and enclosing a formal area of the woodland for garden area, is a civil one. This said though, in relation to land use planning status, the proposal does constitute a formal change of use of this woodland area to domestic curtilage.
18. The change of use proposal has come about essentially because of the construction of the sizeable extension to the rear of the applicants house. This was granted by Highland Council, under delegated powers, but has meant that a significant amount of the existing rear garden area has been taken up. The fact that this previous proposal

has resulted in the perceived need for the current proposal does not though mean that it is necessarily acceptable. In planning terms, the reference to "*public amenity area*" is not defined but it is fair to say that there would be an expectation that so called areas should be retained for the purposes of public use and because of their general amenity value in terms of screening, separation of land uses, and the character and visual appearance of the locality. Policy 3.5.3. (Amenity Woodlands) in the Grantown-on-Spey settlement statement in the Badenoch and Strathspey Local Plan (which covers this area of woodland) infers this when it states "*there will be a strict presumption against any further encroachment of building within the woodlands, in order to safeguard their integrity in the wider public interest.*" **Nevertheless, I feel it is only appropriate that a close examination of what the area of ground actually now represents, is required to inform a decision on whether this change of use proposal is acceptable in planning terms. The issues therefore relate to the impact of the proposal on public access in the area, the impact on the visual amenity and character of the area, and the precedent that the proposal may set.**

Impact on Access

19. By extending formal garden ground and creating an enclosure, the proposal would effectively reduce the amount of space available for general access use of the woodland at this location. It would leave a strip of approximately 8m in width between the new garden boundary and the Industrial Estate boundary (less than half the width of the woodland strip). The proposal therefore could potentially impact on the ability of the woodland area to provide a satisfactory environment for public access, **if that was what existed at present.**

20. However, the woodland area is not easily accessible by a member of the public. As stated by the applicant and confirmed by the CNPA Outdoor Access Officer, and my site visits, the area of trees is hemmed in by the domestic curtilages of the houses and by the Industrial Estate. Where it does adjoin an area that is not "built upon" at the west end adjacent to the former railway line, there is a steep, embankment which is overgrown and is fenced off. There is however a footpath between house numbers 25a and 25b Strathspey Drive which provides a route into the woodland (although it is currently closed off by a fence) and which was put in at the time of the original development. As I understand it, this remains as a public access ie. not within any private house ownership, and it was constructed to allow public access at that time to the woodland area. Despite the fact it has been fenced off, it could still, at some point, provide a public route into the area but there is no linking route to elsewhere. If opened up, any person who wishes to enter the woodland area here would have to exit here as well. From an examination of the layout of the surrounding area, there are other routes which provide access links. In particular there is a footpath link with steps from the west end of Strathspey Drive, up the embankment

and onto the former railway line which is now a public footpath route. This link provides the permeable non-vehicular route from the residential development to existing established footpath networks at this location.

21. The CNPA Outdoor Access Officer has concluded that public access to and through the woodland area, is of negligible importance. While it would appear that there was an intention to provide public access into the area at the time of the original development, the current on site situation is one where public access is significantly limited. Bearing in mind the position and status of the woodland at present, and the existence of alternative routes nearby, it is highly unlikely that a purposeful and meaningful access link will be created through this area in the future. **My conclusion therefore is that the granting of permission for the change of use to garden area, at this location, would not significantly impact on any established or future public access use of the woodland area.**

Impact on Visual Amenity and Character of Woodland

22. The general access use of the woodland at present is covered above. From this, it seems clear that the main purpose of the woodland at this location is that of a physical and visual buffer between the houses and the Industrial Estate. The importance of this function for the area is emphasised by the fact that Highland Council have now served an Emergency Tree Preservation Order on the entire woodland strip. While this remains to be formally confirmed, the reason given for its imposition is *"The trees are recognised as being an important feature of the locality as well as offering screening between the housing and industrial estate. The Order will allow the Council to protect the trees as well as encouraging appropriate management."*
23. From my site visits, it is clear that trees which have been lost on the site have created a visual gap in what is now a fairly densely planted woodland. However, the TPO now serves the purpose of providing the protection for the remaining trees on the site (there are 3). This can be supplemented by planning conditions on a planning permission. The applicant has agreed to carry out some further tree planting within the area which he wishes for his extended garden area, in order to replace those that have been lost. While I agree that trees within formal garden areas are more likely to come under pressure for removal, the TPO will not permit any further ad-hoc removal of trees and will also ensure appropriate maintenance. The retention of trees and the requirement to carry out new tree planting will retain the integrity of the woodland as a wildlife zone. **In my view therefore, provided replacement trees are planted and retained, the main purpose of the woodland as an area of screen planting and wildlife corridor would not be affected by its status as formal garden ground, nor would the aims of the Policy 3.5.3. be undermined.**

24. Some of the concern raised by representees and Highland Council's Forestry Officer relate to the change in character of the woodland that formalising a garden area and enclosing it within a fence would create. I agree that the fence that has been partly erected is not sympathetic to the "natural character" of the woodland but due to its height and distance to roads, as a "sundry minor operation" (Part 2, Class 7(1) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992), it appears to fall within the realms of Permitted Development ie. it would not require planning permission. However, there is some case law, which suggests that if a change of use of land is found to be unacceptable, then a means of enclosure, even if it is permitted development in its own right, can be removed through enforcement because it facilitates the unacceptable change of use. The applicant remains concerned for the security of his young children if no means of enclosure is permitted but he has agreed to the lowering of the fence for a temporary period and its eventual complete removal when a more natural means of enclosure is of a sufficient height eg. hedge planting.
25. The other concern in this respect is the prospect of the construction of sheds, greenhouses or other types of domestic garden buildings within the new garden area. Again I agree that this would change the character of the woodland area. However, Permitted Development Rights, in respect of such structures can be removed by planning condition and I feel that this would serve this purpose sufficiently. The applicant proposes to lay grass within the area. Again, it could be argued that mown grass could change the character of this natural woodland area. However, two houses, either end of Strathspey Drive at this location, already cut the grass around the trees in the areas behind their plots. Indeed, a requirement of the occupier's title deeds is that there is on-going maintenance of the woodland area. The TPO would also require on-going maintenance. I do not therefore see this as a significant planning concern.
26. **In my view, subject to conditions on the fence, and the removal of permitted development rights for domestic garden buildings, I do not see that the granting of a formal change of use to garden area would significantly adversely affect the character or appearance of this particular part of the woodland.**

Precedent

27. The final consideration is that of precedent. The arrangement of houses and their rear gardens on this part of Strathspey Drive mean that the granting of a formal change of use to garden area at one property would act as a precedent for others to do the same. In **recommending approval** of the application, I am fully aware of this. However, my view is that the precedent is one which sets the acceptable parameters for anyone else wishing to do the same, **but only at this location**, ie. no permanent fencing, no garden buildings,

and no tree removal. The integrity, character and purpose of the woodland in the wider area would therefore be maintained.

Conclusion

28. **To conclude, the concerns raised by the representees and some of the consultees are understandable. The fact that the applicant has already started to implement the change of use cannot be condoned. However, taking all the factors above into account, I can find no significant planning reason for resisting the proposal in this instance. I believe the situation here is particular to this location and that the granting of permission, subject to planning conditions, in this instance, does not prejudice the current status, use and purpose of the area of woodland in question.**

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

29. The woodland strip here does play an important role in providing a visual and physical buffer between two potentially conflicting land uses. It also provides a wildlife corridor. However, the TPO protects the general ad-hoc removal of trees in the area and the requirement to replace trees that have been lost on this site will retain the integrity and character of the area, even if within a formal garden area. I do not believe there are negative implications for this aim.

Promote Sustainable Use of Natural Resources

30. Replacement tree planting will off-set any negative implication for this aim.

Promote Understanding and Enjoyment of the Area

31. The area of woodland is not used for general public access and there is no through route linking the area with other public areas. Even if it is argued that public access is important at this location, the proposal would still allow a route through between the new boundary and the industrial estate boundary.

Promote Sustainable Economic and Social Development of the Area

32. There are no implications for this aim.

RECOMMENDATION

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

Grant Full Planning Permission for Change of Use of Woodland Area to Garden Curtilage, 68 Strathspey Drive, Grantown-on-Spey, subject to the following conditions;

1. That unless otherwise agreed in writing with the CNPA acting as Planning Authority, from the date of this permission, no trees on the site, shall be felled, uprooted, lopped, or topped.
2. That within 2 months of the date of this permission, a minimum of three trees, of a height, species and variety, to be agreed in writing with the CNPA acting as Planning Authority, shall be planted within the approved site. These trees shall thereafter be retained, and shall not be felled, uprooted, lopped, or topped, without the prior written approval of the CNPA acting as Planning Authority.
3. That within 2 months of the date of this permission, a hedge of a height, species and variety to be agreed in writing with the CNPA acting as Planning Authority, shall be planted as the means of enclosure for the approved garden area.
4. That within 2 months of the date of this permission, the existing timber fence shall be lowered to a maximum height of 1m and shall be treated with a suitable dark-stained timber preservative to the satisfaction of the CNPA acting as Planning Authority. Thereafter, the 1m fence hereby permitted, shall be completely removed within 1 year of the date of this permission, unless an alternative time period is otherwise agreed in writing with the CNPA acting as Planning Authority.
5. That notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, no greenhouse, shed, garage or other domestic garden building shall be erected within the approved garden area without the prior written consent of the CNPA acting as Planning Authority.
6. That notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, no fences or walls shall be erected within or around the approved garden area without the prior written consent of the CNPA acting as Planning Authority.
7. That within 2 months of the date of this permission, the excavated material which has been placed in and around the bases of trees in the area of ground to the rear (south) of the approved garden boundary shall be removed and the ground reinstated to its original natural condition.

Neil Stewart
6 February 2006

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