

## CAIRNGORMS NATIONAL PARK AUTHORITY

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### DEVELOPMENT PROPOSED:

Application under S75A of the Town and Country Planning (Scotland) Act 1997 to request the discharge of the legal agreement associated with the planning permission reference 06/336/CP at Laggan Country Hotel Newtonmore Highland PH20 IBS

**REFERENCE:** 2023/0081/DET

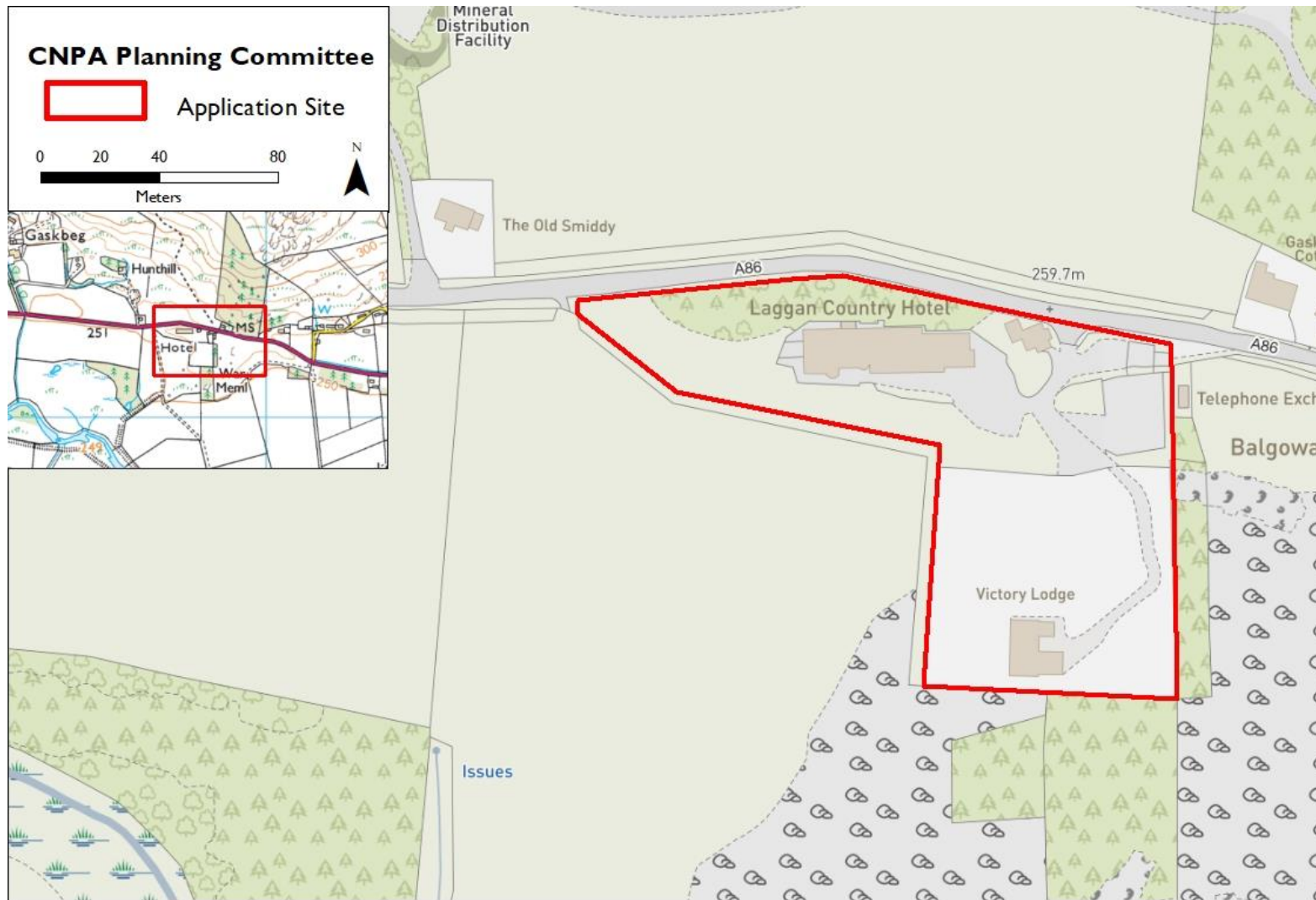
**APPLICANT:** Ms Carly Flockhart

**DATE CALLED-IN:** 9 February 2023

**RECOMMENDATION:** Agree to discharge the S75 legal agreement

**CASE OFFICER:** Emma Bryce - Planning Manager (Development Management)

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## **SITE DESCRIPTION, PROPOSAL AND HISTORY**

### **Site Description**

1. The property to which the application relates is a single dwelling house that lies within the grounds of the Laggan Hotel. The hotel is located off the A86, approximately a mile east of Laggan Village. Planning permission was granted for the dwelling in 2009 on the basis of a business need case in that it was required for the owner of the hotel to live in separate accommodation as the hotel was running at capacity. Permission was granted subject to the applicant agreeing to a Section 75 Agreement restricting the occupancy of the dwelling to ensure it would not be sold off separate to the hotel.

### **Proposal**

2. The drawings and documents associated with this application are listed below and are available on the Cairngorms National Park Authority website unless noted otherwise:

<http://www.eplanningcnpa.co.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=RQ48SESI0BY00>

<b>Title</b>	<b>Drawing Number</b>	<b>Date on Plan*</b>	<b>Date Received</b>
<b>Supporting information</b>			<b>09/02/2023</b>
<b>Supporting information</b>			<b>09/02/2023</b>

\*Where no specific day of month has been provided on the plan, the system defaults to the 1<sup>st</sup> of the month.

3. The application requests the discharge the Section 75 Legal Agreement that relates to the planning permission granted on 10 June 2009, reference number 06/336/CP for the erection of a dwelling at Laggan Country Hotel, Laggan. The legal agreement restricts the occupation of the dwelling and holds two elements, the first stating that:
4. *“The applicants for themselves and their successors in title, hereby undertake that the development once erected, may only be occupied by someone engaged solely or mainly in the operation of the hotel business which is based on the site and by a dependant of such person residing with him or her. In the event that such work for any reason whatsoever, the National Park Authority may determine that some or all of the conditions, restrictions, obligations and other contained within this agreement may be modified, varied or discharged...”*
5. The second element goes on to state: *“The applicants for themselves or their successors in title, undertake that the development, once erected on site may not be disposed of separately from the remainder of the site.”*
6. The applicant purchased the hotel several years ago and the dwelling was purchased as part of the overall sale. The dwelling has remained uninhabited

since it was built and only recently was legally completed. The current owners of the hotel have never resided in it. It has been their intention that it would provide an annex to the existing hotel given its location and its shared access. They are now proposing to use it as holiday accommodation for small groups of visitors, subsidiary to the hotel. The hotel is popular with tour groups and the dwelling would offer accommodation for drivers and tour guides also.

## History

7. Planning permission was granted for a dwelling within the grounds of the hotel on 10 June 2009 following the Planning Committee's agreement to approve the application on 1 June 2007. The application was subject to the conclusion of a legal agreement limiting the occupancy of the house. At that time, the application was determined under the policies of the Badenoch and Strathspey Local Plan 1997, the Highland Structure Plan 2001 and Highland Council's Development Plan Policy Guidelines (April 2003 and March 2006).

## DEVELOPMENT PLAN CONTEXT

### Policies

<b>National Policy</b>	National Planning Framework 4 (NPF4) Scotland 2045	
POLICY 9	Brownfield, Vacant and Derelict Land, and Empty Buildings	X
POLICY 17	Rural Homes	X
POLICY 26	Business and Industry	X
POLICY 29	Rural Development	X
POLICY 30	Tourism	X
<b>Strategic Policy</b>	Cairngorms National Park Partnership Plan 2022 - 2027	
<b>Local Plan Policy</b>	Cairngorms National Park Local Development Plan (2021) Those policies relevant to the assessment of this application are marked with a cross	
POLICY 1	NEW HOUSING DEVELOPMENT	<b>X</b>
POLICY 2	SUPPORTING ECONOMIC GROWTH	<b>X</b>
POLICY 3	DESIGN AND PLACEMAKING	
POLICY 4	NATURAL HERITAGE	
POLICY 5	LANDSCAPE	
POLICY 6	THE SITING AND DESIGN OF DIGITAL COMMUNICATIONS EQUIPMENT	
POLICY 7	RENEWABLE ENERGY	
POLICY 8	OPEN SPACE, SPORT AND RECREATION	
POLICY 9	CULTURAL HERITAGE	
POLICY 10	RESOURCES	
POLICY 11	DEVELOPER OBLIGATIONS	

8. All new development proposals require to be assessed in relation to policies contained in the adopted Local Development Plan. The full wording of policies

can be found at: <https://cairngorms.co.uk/wp-content/uploads/2020/11/CNPA-LDP-2020-as-Modified-for-web.pdf>

## **Planning Guidance**

9. Supplementary guidance also forms part of the Local Development Plan and provides more details about how to comply with the policies. Guidance that is relevant to this application is marked with a cross.

Policy 1	Housing Statutory Guidance	<b>X</b>
Policy 2	Supporting Economic Growth Non-Statutory Guidance	<b>X</b>
Policy 3	Design and Placemaking Non-Statutory Guidance	
Policy 4	Natural Heritage Non-Statutory Guidance	
Policy 5	Landscape Non-Statutory Guidance	
Policy 7	Renewable Energy Supplementary Guidance	
Policy 8	Open Space, Sport and Recreation Non-Statutory Guidance	
Policy 9	Cultural Heritage Non-Statutory Guidance	
Policy 10	Resources Non-Statutory Guidance	
Policy 11	Developer Contributions Supplementary Guidance	

## **CONSULTATIONS**

10. No consultations were deemed necessary for the determination of this application.

## **APPRAISAL**

11. The applicant seeks to discharge the Section 75 Legal Agreement that limits the occupancy of the dwelling house to someone who is solely or mainly engaged in the operation of the hotel. The agreement includes the provision that if there is a change to planning or other circumstances of the site which appears to any party to the Agreement or to their successors in title to render any of the conditions, restrictions, obligations and others contained in the Agreement no longer relevant, the parties or their successors in title should consider whether the said conditions should be modified, varied or discharged.
12. In assessing such applications, the Planning Authority must consider the intent of the imposition of the legal agreement at the time of the consent being issued and whether the removal of this control would be acceptable in planning terms at the current time. Adopted Local Development Plan policies and any other material considerations that would warrant review of the Agreement should be considered, in this instance in relation to housing and economic development, and any advice or guidance issued in respect of occupancy restrictions from the Scottish Government or through the Fourth National Planning Framework (NPF4).

## PLANNING POLICY CONTEXT

13. The application was originally determined under the policies of the Badenoch and Strathspey Local Plan 1997, the Highland Structure Plan 2001 and Highland Council's Development Plan Policy Guidelines (April 2003 and March 2006). Policy presumed against new housing in the countryside other than for the management of land, related or occupational reasons. The application was considered to comply with planning policy in that it would provide separate accommodation for the owner of the hotel and their family. The hotel was often at capacity and therefore there was no living accommodation for the owner, who was residing in temporary accommodation. The business case put forward in support of the application was accepted the house. The Highland Structure Plan however, required that in terms of the location of the house: "approvals granted on the basis of land management will be subject to an occupancy condition."
14. Since the planning permission was granted there have been significant changes to the adopted planning policy in the National Park. Current adopted planning policies are now contained within the Cairngorms National Park Local Development Plan 2021 and relevant supplementary guidance. There are a number of policies in the adopted LDP under which a house in this location could have been justified now. Policy 1.2, Housing development in existing rural groups and Policy 1.3, Other housing in countryside, would both be relevant if an application was made today. Although Policy 1.3 of the adopted LDP would require an operational business need to justify a house, there is no requirement for any conditions or burdens that limit the occupancy of that house if the justification is accepted.
15. Scottish Planning Policy (2014) provides the national policy context in which the LDP was prepared sets out the Scottish Governments position on housing in rural areas and discourages the use of occupancy restrictions on new houses.

## CONCLUSION

16. The applicants have taken on a well-established hotel and 'inherited' the house when they purchased the business. They never had any intention of living in it and have provided a reasoned justification for seeking the discharge of the occupancy restriction on this dwelling house on the basis that it would provide overspill accommodation for the hotel. The house is within the grounds of the hotel and shares a common access and as such is considered to integrate with the existing business in accordance with development plan policies. If the application were to be considered at this point in time, it would be expected to be approved under the policies of the adopted LDP without the requirement for an occupancy restriction. The discharge of the S75 agreement does not itself confer any right to use the property as a short term let property or as ancillary hotel accommodation, but means that it would be possible if necessary changes of use and licences were obtained.

## RECOMMENDATION

**That Members of the Committee support a recommendation to agree to the request to discharge the Section 75 Legal Agreement associated with the planning permission reference 06/336/CP at Laggan Country Hotel Newtonmore Highland PH20 IBS for the following reasons/subject to the following conditions:**

- a) The discharge of the Section 75 agreement would not prejudice the hotel business based on the site;**
- b) The Section 75 agreement would not be required to control the occupation of the dwelling under current adopted LDP policies.**

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.