

# **AGENDA ITEM 9**

## **APPENDIX 2**

**2023/0081/DET**

**LEGAL AGREEMENT**  
**S75**

MINUTE OF AGREEMENT

between

**CAIRNGORMS NATIONAL PARK AUTHORITY**, established by and acting under the National Parks (Scotland) Act 2000 and the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 as Planning Authority in terms of Article 7(3) of the 2003 Order and Section 46 of the Town and Country Planning (Scotland) Act 1997 and having a place of business at Albert Memorial Hall, Station Square, Ballater (who and whose successors are hereinafter referred to as "the National Park Authority")

and

**DAVID HUISMAN and JANET HUISMAN**, spouses, residing together formerly at Knock Castle, Skelmorie Road, Largs, and now at Laggan Country Hotel, Laggan, Newtonmore, and their successor in title to the Site (hereinafter defined) ("the Proprietors")

and

**ABBEY NATIONAL PLC** incorporated under the Companies Acts ( Company Number 02294747) and having its Registered Office at Abbey National House, 2 Triton Square, Regent's Place, London, NW1 3AN ("the Security Holder")

CONSIDERING THAT:

- (i) The National Park Authority has responsibility for determining planning applications within the National Park area in terms of Article 7 of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 and Section 46 of the Town and Country Planning (Scotland) Act 1997.
- (ii) The National Park Authority is entitled in terms of Section 75 of the 1997 Act to enter into an agreement with any person interested in their area (in so far as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be described by the agreement.

- (iii) The Proprietors are the heritable proprietors of ALL and WHOLE the subjects at the Laggan Country Hotel in the County of Newtonmore being the subjects registered in the Land Register of Scotland under Title Number INV7508 ("the Site").
- (iv) The Applicants are the proprietors of and operate a hotel business known as the Laggan Country Hotel which is situated on that area of ground forming part of the Site.
- (v) The Applicants have submitted a planning application to Highland Council ("the Council"), having a place of business at 100 High Street, Kingussie, PH21 1HY (under the Council's reference 06/00228/FULBS and Cairngorms National Park Authority's reference 06/336/CP) for planning permission for the erection of a dwelling on the Site (hereinafter referred to as "the Development") and the said planning application was called in by the National Park Authority in terms of its powers under Article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 which makes reference to Section 46 of the Town and Country Planning (Scotland) Act 1997.
- (vi) The planning application proposes that the Applicants are to construct a dwellinghouse to the south of the said Hotel within the Site.
- (vii) The National Park Authority has resolved to grant full planning permission for the Development subject to certain conditions and has requested that certain other matters pertaining to the Development be regulated in a written Agreement between the parties under the provisions of Section 75 of the Town and Country Planning (Scotland) Act 1997 for the purposes of restricting or regulating the Development or use of the Site.
- (viii) The Applicants granted a Standard Security over the Site in favour of the Heritable Creditor and the Heritable Creditor consents to the Applicants entering into this Agreement.

- (ix) The Applicants and the Heritable Creditor have agreed to enter into such Agreement with the National Park Authority.

NOW THEREFORE the National Park Authority and the Applicants, and the Heritable Creditor DO HEREBY AGREE as follows:

(One) Preliminary Matters

On recording or registration of this Agreement, the National Park Authority shall forthwith issue to the Applicants the Decision Notice in respect of approval of the application. This Agreement shall not come into effect until the date the Decision Notice is implemented. The word "implemented" shall be taken in the context of this Clause to mean the carrying out of a material operation as defined in Section 27(4) of the Act.

(Two) Restriction on Occupancy of the Development

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 a person residing with him or her. In the event that the Applicants or their successors in title cease to be engaged in such work for any reason whatsoever, the National Park Authority may determine that some or all of the conditions, restrictions, obligations and others contained in this Agreement may be modified, varied or discharged.

(Three) Obligations in relation to Disposal of the Development

The Applicants, for themselves and their successors in title, undertake that the Development, once erected on the Site, may not be disposed separately from the remainder of the Site.

(Four) Obligations in relation to Securities

In the event of any loan secured over the Site and any property built thereon being called up by the lender, the Applicants or their successor in title are under an obligation to give written notification to the National Park Authority of this event.

(Five) Discharge

In the event that the planning permission granted by the Decision Notice is revoked or in any way falls prior to commencement of the erection of the Development, then these presents shall fall and be deemed *pro non scripto* and the National Park Authority shall forthwith grant a Discharge of this Agreement.

In the event of a change to the 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 this Agreement no longer relevant, the parties or their successors in title shall consider whether the said conditions, restrictions, obligations and others should be modified, varied or discharged.

In considering any such modification, variation or discharge, both parties will be required to act reasonably having regard to said changed circumstances. Any variation shall be effective as from the date of recording of the relevant Deed of Variation in the relative Register of Sasines or Land Register and this Agreement shall be deemed to be amended with effect from such date. The Applicants shall reimburse the National Park Authority in respect of all reasonable legal expenses incurred by the National Park Authority in connection with such further agreement.

**(Six)      Arbitration**

Any dispute arising between the parties hereto as to the interpretation or application of this Agreement, or any part of it, shall be referred for the purpose of arbitration to an Arbitrator to be mutually agreed by the parties, and failing agreement appointed by the Sheriff of Grampian, Highland and Islands at Inverness, and the decision of the Arbitrator, including any award of expenses, shall be final and binding on the parties, and failing such award the cost of any such arbitration shall be borne equally by the parties.

**(Seven)    Legal Expenses**

The Applicants agree to reimburse the National Park Authority in respect of all reasonable legal expenses incurred by them in connection with the negotiation, drafting, adjustment, conclusion and registration of this Agreement.

**(Eight)    Validity of Provisions**

Each of the provisions of this Agreement is agreed independently of the others and in the event that any of them are held to be or become invalid or unenforceable for any reason, then the remaining provisions shall continue in full force and effect.

**(Nine)     Burdens**

The terms and conditions of this Agreement are created real and preferable burdens upon and affecting the Site and binding on the Proprietors of the Site from time to time and as such are appointed to be recorded or otherwise to be validly referred to in terms of law in all future conveyances, Dispositions and other deeds relating to the Site.

(Ten) Jurisdiction

This Agreement shall be governed and construed in accordance with the laws of Scotland.

(Eleven) Consent to Registration

The parties hereto consent to registration hereof for preservation and execution as well as for publication: IN WITNESS WHEREOF these presents are subscribed by David Huisman and Janet Huisman at Newtonmore on 18th February 2008 before Helen McCrone 77 Auchmanoch Avenue, Glasgow, for and on behalf of Abbey Commercial Mortgages at Harrow on 7th May 2009 by Lisa White in the presence of Ray Sullivan both authorised signatories by authority of the Directors for the said Abbey and for and on behalf of Cairngorms National Park Authority at Grantown on Spey on 14th May 2009 by Elizabeth Jane Hope, Chief Executive and Authorised Signatory before Margaret Smith, 14 The Square, Grantown on Spey.

[Redacted]

WITNESS

[Redacted]

CN 2008

[Redacted]

WITNESS

[Redacted]

[Redacted]

[Redacted]

}  
Authorised  
Signatories

... OF THE BOARD OF DIRECTORS

ANb2000/180