
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 BOTHY AND
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

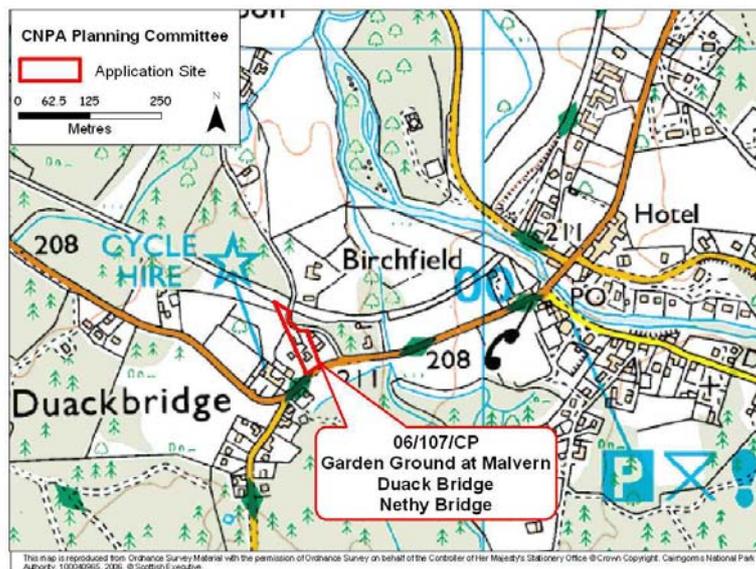


Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. Full permission is sought in this application for the demolition of a bothy and the erection of a dwelling house. 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 dwelling house, 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.
2. The external finish of the proposed dwelling house 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.
3. 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.

4. 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

5. 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."
6. The nature of the proposal has altered in the course of the application, with the current site layout³ clearly identifying a subdivision of the existing garden area, to effectively create two houses 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 is proposed 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

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.

³ Received 31st July 2006.

shared access is proposed to serve both plots, extending inward for approximately 8 metres from its junction with the public road. The access drive divides 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.

7. 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. Highland Council served an emergency Tree Preservation Order on the area, including on the subject site on 31 March 2006. Further details on this will be provided in subsequent sections of this report.



Fig. 5 : View towards rear of site



Fig. 6 : view from rear of site towards proposed house position & Malvern.

8. 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. 7 : Side elevation of Feorag Cottage, as viewed from garden ground of Malvern and position of proposed dwelling house.

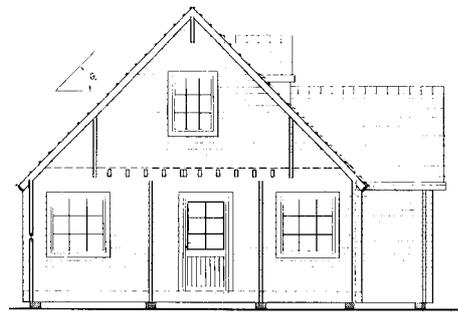
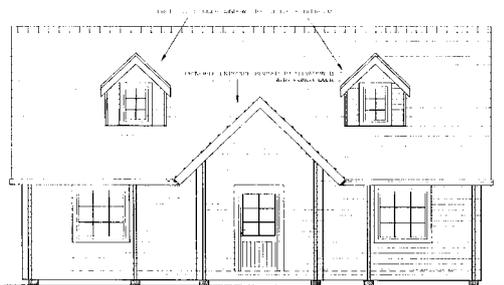
9. In addition to changes to the proposed site layout, alterations have also been made to the design of the proposed dwelling house in the course of the application. The overall design concept of both the original and currently proposed structure is based on a Finlodge 'kit build' package from Scandinavian 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.8 : Typical 'Finlodge 2' design



Fig. 9 : originally proposed design



Fig's 10 and 11 : Currently proposed 'Amended Finlodge 2' design

10. 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.
11. 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

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

a one and a half storey traditional dwelling house, with off white “traditional Scottish wet dash harling” under a slate roof.

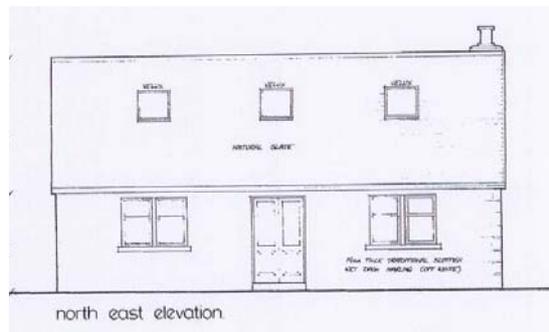


Fig. 12 : Dwelling house permitted in 1992

DEVELOPMENT PLAN CONTEXT

12. The **Highland Structure Plan 2001** states that policies for “housing development aim to steer demand to appropriate locations within existing settlements.” **Policy G2 (Design for Sustainability)**, lists a number of criteria on which proposed developments will be assessed. These include service provision (water and sewerage, drainage, roads, schools electricity); accessibility by public transport, cycling, walking and car; energy efficiency in terms of location, layout and design (including the utilisation of renewable energy sources); use of brownfield sites, existing buildings and recycled materials; demonstration of sensitive siting and high quality design; contribution to the economic and social development of the community; and the impact on resources such as habitats, species, landscape, scenery and freshwater systems.
13. Settlement policy objectives are discussed in more detail in the **Badenoch and Strathspey Local Plan 1997**, where the attractiveness of smaller settlement centres for house building is identified. It is stated that although a balanced population structure and good mix of accommodation would help to consolidate a basic range of services and facilities in such centres, “inappropriate scale or siting of development must be controlled.”
14. The Local Plan sets out the development principles relating to Nethybridge and two objectives of particular relevance to the current proposal are to “ensure that new development maintains a scale and form compatible with the village character and reflects the ‘street’ layout” and also to “protect the village setting, notably the adjoining semi-natural woodlands, open land and river edges.” Under the heading of Development Factors it is emphasised that the main objectives are to avoid over-development within the existing village and retain its character, including important open spaces. Reference is also made to the need to reinforce the existing ‘street form’ based on the established roads, and it is also advised as a priority that “provision

must be made to secure substantial core woodland areas” describing them as being valuable for amenity, recreation and wildlife which would help to integrate future development within the wider village setting.

15. 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.

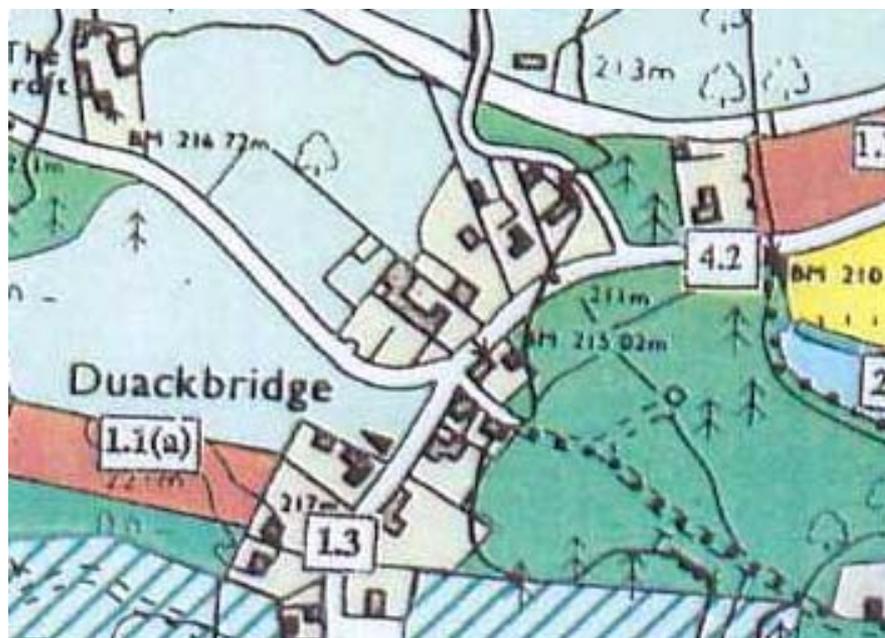


Fig. 13 : Extract from Badenoch and Strathspey Local Plan (1997) – Settlement Map 4, Nethy Bridge.

16. **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.

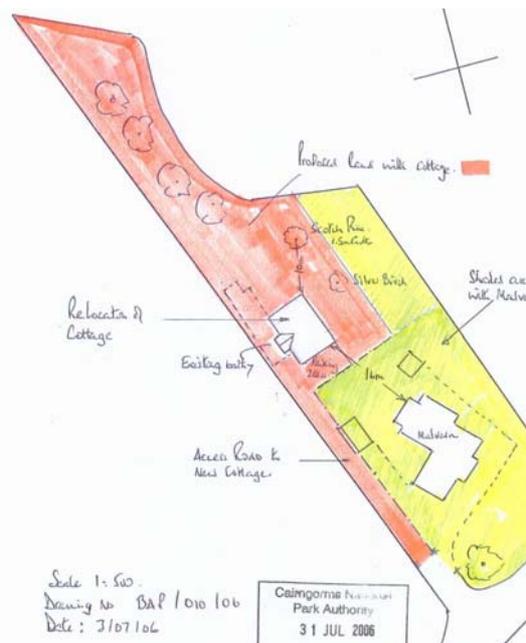


Fig. 14 : Proposed site layout plan

17. **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.
18. 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.

Tree Preservation Order

19. 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,

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."

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). A report is due to be presented to the Badenoch and Strathspey Area Committee of Highland Council on 7th August 2006, on order to confirm the Tree Preservation Order. The CNPA Planning Committee will be updated verbally on the status of the TPO at the forthcoming meeting of 11th August 2006.

20. 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

21. 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.
22. 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.
23. 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.

24. 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.
25. 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.
26. 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.
27. 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.

28. 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

29. 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.
30. 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

31. 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

⁶ Received 25th April 2006.

previous years, anyone gardening in the area already has the potential to be very close to Feorag Cottage and its garden.

32. 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.
33. 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.

APPRAISAL

34. 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.

Forestry / Restraint Allocation

35. Paragraphs 13 to 19 of this report detail the relevant development plan policies applicable to this proposal. The proposed dwelling house is substantially located within an area identified as Forestry / Restraint and the majority of the plot which has been identified in connection with that dwelling is also within that particular land use area. 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

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.

safeguarding of such areas from sporadic development in the interests protecting the woodland setting of the village.

36. Various submissions made by the applicant in the course of this application have sought to make a case diminishing the significance of the land use allocations and the specific distinction made between two parts of the garden area and suggesting that the entire area should be allocated as 'infill.' I accept the applicants point that the original feu associated with Malvern included the bothy. However, 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 allocations relating to the site were clearly intended as such and are entirely justifiable.



Fig. 15 : Existing vegetation in the vicinity of the bothy

Other permissions in the vicinity

37. 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

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.

development proposal on that neighbouring site which justified the granting of planning permission.

38. 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.
39. 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.”

Opportunity to overcome planning concerns

40. 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 this current proposal is a departure from the provisions of the current Local Plan. In an effort to overcome the proposals non compliance with the Local Plan, to explore whether or not some justification for the proposal could be advanced, and also address concerns regarding the impact of the structure on existing trees within the garden area, a letter was issued by the CNPA planning officer on May 26th 2006⁹. It queried the status of the proposed structure (ancillary accommodation to the main dwelling house or independent new dwelling house) and requested where the former was the case, agreement to enter into a section 75 agreement restricting the use of the residential unit to ancillary accommodation. Details were also requested of any other means considered for the provision of additional / ancillary accommodation on the site. In an effort to overcome the issue of non compatibility with the

⁹ Appendix 1 – CNPA letter requesting further information, dated May 26th 2006.

Forestry / Restraint land use allocation, as well as overcoming concerns regarding the impact of a development on existing trees in close proximity to the original location and taking into account the need to protect the privacy and residential amenity of existing properties in the vicinity, revisions were required to the site layout plan to show the proposed structure relocated southwards to the area of the site designated as 'infill.' In addition, reference was made to the inappropriate nature of the Scandinavian / swiss chalet type of structure proposed and a revised design was requested.

41. In a response to the query on whether or not any other means was considered for the provision of additional / ancillary accommodation, the applicant stated that due to her age, she would find it "very stressful to have builders in and out of the house constructing extra accommodation." A further response on this matter¹⁰ from the applicant's son stated that "an extension to the main house, Malvern, would not be suitable as it would detract from the overall style of the house." It was also clearly stated in that communication that "it has always been intended that the cottage be ancillary accommodation to Malvern."
42. In terms of the section 75 agreement¹¹ the applicant, Mrs. Park, initially indicated her willingness to enter into such an agreement. However, as the application progressed through a series of changes, including the currently proposed subdivision of the existing garden ground and the consequent treatment of the proposed structure as an independent dwelling house and not ancillary accommodation, consent to enter into a section 75 agreement was withdrawn, with correspondence from the applicant referring to a meeting with her solicitor "who strongly advised not to enter into that type of Agreement."

On site meeting

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

¹⁰ Received in CNPA office on 7th June 2006.

¹¹ It was indicated to the applicant that the section 75 agreement would be likely to restrict the use of the structure to accommodation ancillary to the main dwelling house and restrict the sale of the structure separate from the main dwelling house

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.

Amended Proposals

44. Amendments to the proposal were first submitted in draft form by fax on 29th June 2006¹² and 6th July 2006, with finalised house plans and site layout plans submitted on 31st July 2006, which do not reflect the agreement previously reached on site. In a letter accompanying the submission of 6th July 2006 reference was made to the permission approved on site in 1992, stating that “at that time it was acceptable in planning terms and its location did not compromise the existing amenity enjoyed by the parent property.” In conjunction with this, as referred to in earlier sections of this report, further correspondence from the applicant also declined entry into the section 75 agreement restricting the structure to use as ancillary accommodation.

45. The final site layout plan clearly shows a subdivision of the existing Malvern garden area, with the proposed dwelling house located on a distinct plot, the majority of which is within the Forestry / Restraint area. Given that the applicant is unwilling to enter into a section 75 agreement restricting the residential unit to ancillary accommodation to Malvern, it can only be treated as a proposal for a new dwelling house within a restricted area. As referred to earlier, the final report from the Forestry Division of Highland Council clearly states that the proposed location of the development would necessitate the removal of two adjacent trees, a birch and a scots pine, both of which are described as semi mature and in good health. Whilst the trees are outwith the area of ground on which a Tree Preservation Order is to be confirmed by Highland Council on Monday 7th August 2006, I do not feel that this alone can be taken as an indication of the acceptability of felling trees within Forestry / Restraint land use allocation. Indeed there are vast tracts of land surrounding Nethybridge and other communities within this area of the National Park which are similarly identified as Forestry / Restraint lands and which do not have the benefit of Tree Preservation Orders. To consider granting planning permission for a development within such an area (where it is the specific objective to safeguard such areas from sporadic development and thereby maintain the wooded character of the settlement edges) would result in the felling of semi mature trees, purely to facilitate the personal preference of the applicant in relation to the position of a dwelling unit. In addition to the loss of trees in this Forestry / Restraint area, the proposal for a dwelling house in this area is unjustified with the case advanced for the unit failing to offer any legitimate planning grounds on which to treat the

¹² Proposed layout identified the footprint of the structure largely within the ‘infill’ area of the site, but haphazardly positioned relative to the existing dwelling house, site boundaries or general pattern of development in the vicinity.

proposal as an exception to the Local Plan policies applicable to the area. The granting of planning permission for a dwelling house in this situation would set a precedent for development within restricted settlement edges and which would cumulatively lead to the erosion of the character of settlements.

46. As has been demonstrated in previous sections of this report, the opportunity does exist 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. The acceptance of a case for the provision of a detached structure to fulfil her new living requirements should not however be taken to imply an acceptance of the need for a dwelling house on a subdivided plot within the Forestry / Restraint area.
47. Although the description of the development proposal does not refer to a subdivision, the most recent site layout plan, in conjunction with the applicants decline of entry into a section 75 agreement to link the proposed structure to the main dwelling house as ancillary accommodation, can only be read as a subdivision of the existing plot. With reference to the issue of the section 75 agreement, I feel that it is relevant to point out that 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

48. In addition to non compliance with planning policy, as well as the proven necessity to remove semi mature trees in the vicinity of the proposed development location, the actual design aspects of the proposal are also of concern. 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 have concerns regarding the overall visual relationship likely to be established and once again the precedent likely to be set in considering the granting of planning permission for the proposed dwelling house. 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 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 fails to reflect the building traditions of the area.

49. Despite the fact that dormer windows may have been incorporated into the design in an effort to resemble architectural features prevalent in the area, as opposed to the originally proposed windows and balcony feature in the upper gable, the orientation and proximity of the proposed structure to other properties in the vicinity (only 3 metres from the western boundary of the site) would suggest that the provision of upper floor accommodation served by windows potentially having extensive views over neighbouring properties is inappropriate. In addition, as a dwelling house in its own right, as opposed to ancillary accommodation, the proposed structure is shown on the site layout plan as being 16 metres from Malvern. This fails to comply with standard separation distances between dwelling houses as stipulated in the **Development Plan Policy Guidelines**. Furthermore, given that the separation distances between the proposed structure and existing trees in the vicinity has been overestimated, as referred to in the final consultation response from Highland Council's Forestry Officer, it is possible that the same inaccuracy and overestimation applies to the separation distance indicated the existing and proposed properties.

Visual Impact

50. Finally from a visual perspective, despite the fact that the dwelling house is proposed to be positioned in the rear garden area of Malvern, this would be unlikely to result in a there only being negligible visibility of the structure. The construction of the proposed access drive alongside the western site boundary, to serve the dwelling house and associated site area would necessitate the loss of existing vegetation in the front garden area of Malvern, thereby opening up views of the rear of the site. The structure would also have a high degree of visibility from the laneway running to the east of the property, particularly with the felling of the semi mature trees in this area of the site leading to an exposure of the garden area. A further point of visibility would be from a south westerly direction, on the B970 approach to Nethybridge, where there are at present relatively open views towards the rear garden of Malvern.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

51. 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. In addition, the nature of the proposed dwelling, which has evolved from a Scandinavian style kit home, taken in conjunction with its backland position, fails to establish an appropriate spatial or visual relationship with the traditional character of properties and pattern of development in the vicinity and would not therefore assist in conserving or enhancing the cultural heritage of the area.

Promote Sustainable Use of Natural Resources

52. 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

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

Promote Sustainable Economic and Social Development of the Area

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

RECOMMENDATION

That Members of the Committee support a recommendation to:

Refuse full permission for the demolition of a bothy and the erection of a dwelling house on garden ground at Malvern, Duack Bridge, Nethy Bridge for the following reasons :

1. The proposed development is on an area of land which is allocated in the Badenoch and Strathspey Local Plan (1997) as an area of Forestry / Restraint, in which it is an objective of the Plan to safeguard such areas from sporadic development, in the interests of protecting the character of the settlement edges of Nethybridge. The proposed development which represents the formation of a new dwelling house and creation of an associated plot area, is a form of sporadic development, in a backland position on the edge of the settlement and it would therefore detract from the character of the settlement edge, would set a precedent for further sporadic development of this nature and would militate against the achievement of the planning principles governing lands allocated as Forestry / Restraint.

2. The proposed development by reason of its proposed location would necessitate the removal of two semi mature trees in the vicinity and in addition to their removal contributing to the increased visual prominence of a building in this location, their loss would also be contrary to the planning principles applicable to lands allocated as Forestry / Restraint, which aim to maintain the importance of the community's setting and nature conservation aspects of the area. The development therefore fails to comply with the first aim of the Cairngorms National Park which requires the conservation and enhancement of the natural heritage of the area.
3. The proposed development by reason of its backland position, siting and design fails to take account of the general pattern of development and the traditional architectural design and character of properties in the immediate vicinity. It would therefore represent a visually inappropriate feature within its proposed setting, would set a precedent for further haphazard backland development of this nature, and would promote uncertainty about the standards of siting and design required within the National Park.

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.

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7th August 2006

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.