
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: APPLICATION FOR VARIATION OF A SECTION 75 AGREEMENT

Prepared by: BRUCE LUFFMAN: PLANNING MONITORING & ENFORCEMENT OFFICER (DEVELOPMENT MANAGEMENT)

VARIATION PROPOSED: TO VARY THE WORDING OF THE AGREEMENT

REFERENCE: 04/152/CP

APPLICANT: MR & MRS. MACGEOCH
LOT 8, DRUMULLIE, BOAT OF GARTEN

DATE CALLED-IN: 26 MARCH 2004

RECOMMENDATION: APPROVE REVISED WORDING

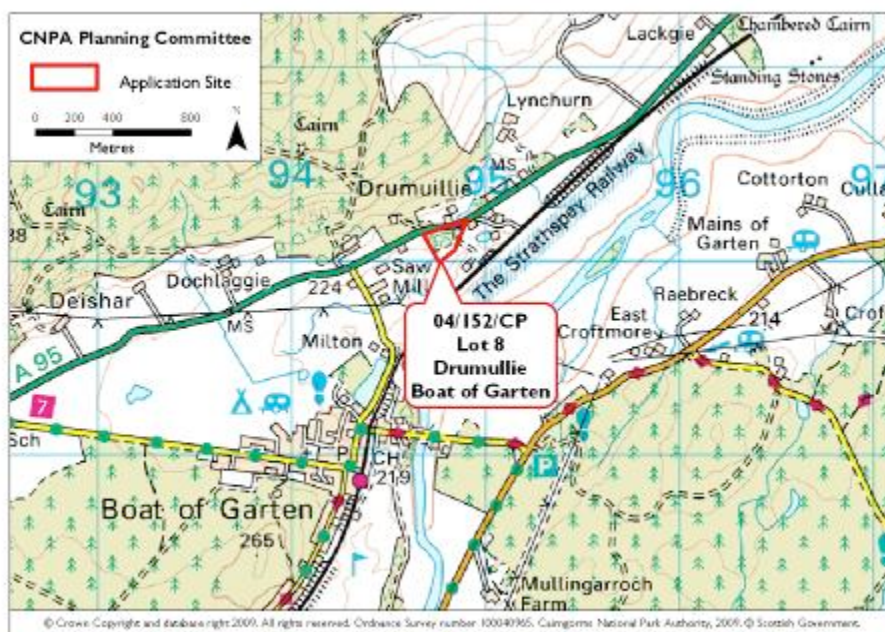


Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. The site to which this paper relates is located on the south side of the A95 on croft land, within the loose grouping of houses and buildings known as Drumuillie which lies to the north of Boat of Garten. The croft extends to approximately 2.12ha (5.24 acres) and was formerly part of a larger croft. The croft is bounded by the A95 to the north, an access track and rising agricultural land to the south and rough uncultivated ground which extends towards the Drumuillie Saw Mill to the west.
2. The proposal is a formal request by the applicant to the CNPA to vary the wording of the Section 75 which was required as part of the decision made by the Committee on 3rd December 2004 to grant full planning permission for a house and one produce growing house on this site.

REPRESENTATIONS

3. A letter from the applicants' solicitor sets out the applicants' case for the need to change the wording of the Section 75 legal agreement and requests that the Committee 'soften' the obligation in that legal agreement.
4. The letter from the applicants' solicitor is attached to the report.

APPRAISAL

5. The site was purchased in 2003 with the intention of building a new house; farming the croft and establishing a horticultural business on the croft.
6. Planning permission was granted on 3rd December 2004 by the Committee for a house to be built on this site with a requirement for a Section 75 agreement to bind the house to the croft and the horticultural business.
7. The planning paper submitted on 3rd December 2004 reflected the proposal from the applicants for the need for a new house in the countryside because they wished to establish a horticultural business under polytunnels on the croft. This proposal was supportable in principle in terms of the economic development of this part of the Park. The Crofters Commission supported the application on the basis that the new horticultural business required intensive husbandry, daily inspections and security of the produce.

8. In coming to a decision, the Committee was supportive of the principle of the establishment of a new commercial agricultural enterprise which could support the need for a new house in the countryside. During discussion by the Committee, concern was expressed about the quality of the business plan and the viability of the proposed business to support that need for a new house.
9. Condition 2 of the Decision Notice, dated 22nd September 2005, required the growing houses to be constructed and the horticultural business to commence before the construction of the dwelling house. This condition reflected the Committee's requirement to see a commitment to the business by the applicants. The applicants complied with this condition.
10. Mr. MacGeoch, at the time of the application, was working part time for the Crofters Commission and it was his declared intention that the working of the croft and the new horticultural business would be full time. The subsequent Section 75 agreement that was completed on 16th June 2005 required the house to be **“occupied by someone engaged solely or mainly engaged in crofting work on the Croft, and also solely or mainly engaged in the horticultural business conducted on the Croft.”**
11. As the Committee may wish to note from the attached letter from their solicitor, the applicants are asking the Committee to change the wording of the Section 75 from **“solely and mainly”** to a wording that is less onerous in its compliance with the conditions of occupancy of the house. The applicants are not asking for the Section 75 to be set-aside but for a change of emphasis on the occupancy condition.
12. The reasons given by the applicants for this change are predicated on three points. The first reason relates to the poor economic performance of the horticultural business to provide sufficient income for the family or full time work for Mr. MacGeoch. The second reason relates to the need for the applicants to be in full time and gainful employment outside of the croft and the third reason relates to the financial circumstances that the applicants find themselves which requires the sale of the property and croft on the open market.
13. Our own Local Plan in its 2nd Modification version is as follows:

“Developments for other new housing outside settlements will be permitted where:

 - a) - the accommodation is for a worker in an occupation appropriate to the rural location; and
 - the presence of the worker on site is essential in order to provide 24-hour supervision of the rural business; and
 - there is no suitable alternative residential accommodation available including reuse and conversion of other buildings on site; and

- the proposed dwelling is within the immediate vicinity of the worker's place of employment; or

b) The dwelling is for a retiring farmer or crofter, on land managed by them for at least the previous ten years or for a person retiring from other rural businesses, where their previous accommodation is required for the new main operator of the farm, croft or rural business. Where relevant such proposals will be secured through planning condition or legal agreement;"

14. Therefore we are dealing with a house which would not ordinarily be granted consent, without the rural enterprise justification. This requires the house to remain connected to the rural enterprise, and not be sold to a non-essential worker. This is always going to have an impact on the open market value of the house and, because the rural enterprise justification has been made during the application process, the applicants accept that the house is to be inextricably linked to the rural enterprise, and cannot be compared to open market houses.
15. In this case, the applicants are accepting that there is a continuing need to maintain the Section 75 agreement but are looking for the Committee to make the wording of the legal agreement less onerous so that a person not solely or mainly engaged in crofting or horticulture as their main income can purchase the property.
16. Highland Council's Development Plan Policy Guidelines (April 2003) provides more detailed guidance on the interpretation of specific policies contained in the 1997 Local Plan, in the light of the subsequently approved Structure Plan of 2001. For justification based on croft management it is recognised that a degree of flexibility will be required, for example, in such circumstances it may not be possible to sustain full time employment and this will be taken into consideration so long as there is confirmation from the Crofters Commission that the application is a bona fide crofting application.
17. The first condition of the Section 75 agreement provides for a provision that should the applicants cease to be involved 'solely or mainly' in the croft work and the horticultural business, then the CNPA can modify or vary the agreement. Condition 4 of the Decision Notice dated 22nd September 2005 states that if the horticultural business indicates no demonstrable plan for the future of the operation, then within 6 months, the growing houses shall be removed and the land restored to its former woodland use.
18. Given the undertaking by the applicants in their solicitor's letter that they do not seek to remove the Section 75 and its requirement to tie the house to the whole croft and the horticultural business, I would recommend a variation of the wording of the Section 75 agreement.

IMPLICATIONS FOR THE AIMS OF THE PARK

19. The aims of the National Park are maintained within this recommended change of wording.

RECOMMENDATION

That Members of the Committee support a recommendation to:

Change the wording of the first condition of the Section 75 agreement signed by Mr. & Mrs. MacGeoch from:

“The Proprietor, for herself and her successors in title hereby undertakes that the residential property once erected may only be occupied by someone engaged solely and mainly in crofting work on the Croft, and also solely and mainly engaged in the horticultural business conducted on the Croft. The property may also be occupied by a dependent of such a person residing with him or her. In the event that the applicants 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,” to:

“The Applicants, for themselves and their successors in title hereby undertake that the residential property erected on the croft of Lot 8 may only be occupied by someone engaged or last engaged full or part time (sufficient to demonstrate a substantive contribution to the occupant’s gainful employment) in crofting work on Lot 8 (that being work of an agricultural and horticultural nature), or by a dependant of such a person residing with him or her, or by the widow or widower of such person. The term “agricultural” (includes horticulture) shall be construed according to the definition set out in section 277(1) of the Town & Country Planning (Scotland) Act 1997. In the event that the applicants or their successors 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.

Bruce Luffman
26th November 2009
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