



# Committee report

## **Development proposed:**

Application to discharge Section 75 Agreement associated with planning permission reference 07/414/CP at land 100m north west of Birch Cottage, Drumuillie.

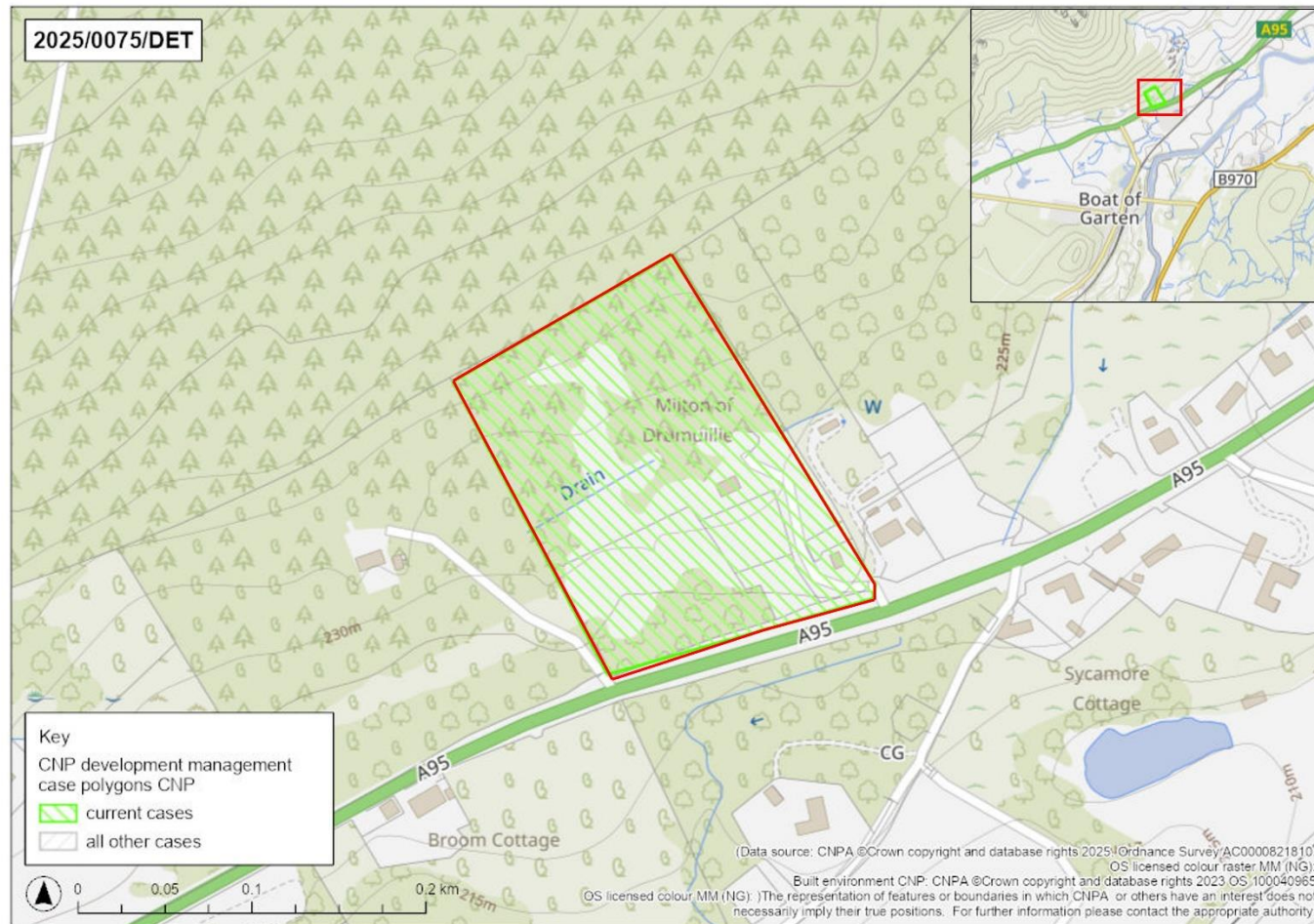
**Reference:** 2025/0075/DET

**Applicant:** Alexander Donald Grant

**Date called-in:** 24 March 2025

**Recommendation:** Agree to discharge the Section 75 Agreement

**Case officer:** Emma Bryce, Planning Manager (DM)



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## Site description, proposal and history

### Site description

1. The site relates to a former croft which lies on the north side of the A95 at Drumuillie. The site is made up of two plots known as Lot 5 and Lot 7. These plots of land are divided by a grouping of houses, including a property known as Birch Cottage which fronts the main road. Lot 5 lies to the west of Birch Cottage and a dwelling house has been built on this plot. Lot 7 remains as grassland and lies to east of Birch Cottage. The ground rises gently away from the main road.

### 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=S2H06USI0CP00>

Title	Drawing number	Date on plan*	Date received
Supporting Information	N/A	N/A	25/03/2025
Supporting Information	N/A	N/A	26/03/2025

\*Where no specific day of month has been provided on the plan, the system defaults to the first of the month.

3. This application requests the discharge of the Section 75 Agreement that relates to the planning permission reference 07/414/CP which was granted consent on 14 October 2010 for the erection of a dwelling (in outline) at Land 100m Northwest of Birch Cottage, Drumuillie, Boat of Garten. The Section 75 Agreement related to the construction of the dwelling on Lot 5, however, imposed restrictions over the site as a whole, which includes the undeveloped Lot 7. The legal agreement required the dwelling on Lot 5 not to be disposed separately from the wider site, and it was to be occupied only by someone engaged in crofting work on the site and their dependants.



4. At the time of entering into the Section 75 Agreement, both lots were registered as a croft. However, part of Lot 7 has now been decrofted under a Decrofting Direction dated 10 May 2024. This is subject to conditions that, as a first change of use, the land must be used, let or disposed of as a site for a dwelling house.
5. The owner of the site has been granted planning permission for the erection of a dwelling house on the decrofted part of Lot 7 and now wishes to sell the land separately from the wider site. The Section 75 Agreement, however, restricts them from doing so.

## History

6. The following gives a summary of the relevant planning history for the site:
  - a) 07/414/CP – Erection of Dwelling (outline) at Land 100m Northwest of Birch Cottage, Drumuillie, Boat of Garten granted consent on 14 October 2010 subject to a Section 75 Agreement restricting the occupancy of the dwelling on the landholding and the restriction of the sale of the dwelling separate from the landholding.
  - b) 2024/01677/PIP (The Highland Council reference) – Erection of house at Land 35m of Birch Cottage, Drumuillie, Boat of Garten granted consent on 2 December 2024.

## Development plan context

### Policies

National policy	<b>National Planning Framework 4 (NPF4) Scotland 2045</b> (Policies relevant to the assessment of this application are marked with a cross (x))	
Policy 1	Tackling the climate and nature crises	
Policy 2	Climate mitigation and adaptation	
Policy 3	Biodiversity	
Policy 4	Natural places	
Policy 5	Soils	
Policy 6	Forestry, woodland and trees	
Policy 7	Historic assets and places	



Policy 8	Green belts	
Policy 9	Brownfield, vacant and derelict land, and empty buildings	
Policy 11	Energy	
Policy 12	Zero waste	
Policy 13	Sustainable transport	
Policy 14	Design, quality and place	
Policy 15	Local living and 20 minute neighbourhoods	
Policy 16	Quality homes	
Policy 17	Rural homes	X
Policy 18	Infrastructure first	
Policy 19	Heating and cooling	
Policy 20	Blue and green infrastructure	
Policy 21	Play, recreation and sport	
Policy 22	Flood risk and water management	
Policy 23	Health and safety	
Policy 24	Digital infrastructure	
Policy 25	Community wealth building	
Policy 26	Business and industry	
Policy 27	City, town, local and commercial centres	
Policy 28	Retail	
Policy 29	Rural development	
Policy 30	Tourism	
Policy 31	Culture and creativity	
Policy 32	Aquaculture	
Policy 33	Minerals	

<b>Strategic policy</b>	<b>Cairngorms National Park Partnership Plan 2022 – 2027</b>	
<b>Local plan policy</b>	<b>Cairngorms National Park Local Development Plan (2021)</b> (Policies relevant to the assessment of this application are marked with a cross (x))	
Policy 1	New housing development	X
Policy 2	Supporting economic growth	X
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	

7. All new development proposals require to be assessed in relation to policies contained in the adopted Development Plan which comprises National Planning Framework 4 (NPF4) and the Cairngorms National Park Local Development Plan 2021. The full wording of policies can be found at:

<https://www.gov.scot/publications/national-planning-framework-4/documents/>

and at:

<https://cairngorms.co.uk/wp-content/uploads/2021/03/CNPA-LDP-2021-web.pdf>



## Planning guidance

8. 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 (x).

Policy 1	Housing supplementary guidance	X
Policy 2	Supporting economic growth non-statutory guidance	X
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 non-statutory 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 obligations supplementary guidance	

## Consultations

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

## Representations

10. There were no representations received for this application.

## Appraisal

11. The applicant is seeking to discharge the Section 75 Agreement which restricts the dwelling on Lot 5 being disposed separately from the wider site which includes Lot 7. It also restricts the occupation of the house on Lot 5 to someone engaged in crofting work on the site and their dependants.
12. In assessing an application for the discharge of a Section 75 Agreement the Planning Authority must consider the intent of the imposition of the legal agreement at the time the planning consent was granted and whether the removal of this control would be acceptable in planning terms at the current time. NPF4 and 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 advice or guidance issued in respect of occupancy restrictions from the Scottish Government.

### **Planning Policy and Context**

13. The application was originally determined under policies within the Badenoch and Strathspey Local Plan 1997 which stated that there would be a strong presumption against the development of houses in such areas. Exceptions would only be made where “a house was essential for the management of land, related family and occupational reasons”. Following the submission of a business case and the removal of an objection from the Trunk Roads Authority the planning authority approved the application subject to the aforementioned Section 75 Agreement.
14. Since this planning permission was granted there has been significant change to both national planning policy and local development plan policies. Following the Scottish Government’s position of discouraging occupancy restrictions imposed through planning agreements, policy has evolved to reflect this change. Current policy is now contained within National Planning Framework 4 and the Cairngorms Local Development Plan 2021. Policies at both a national and local level provide support for a dwelling house in this location. NPF4 Policy 17: Rural homes supports new homes in rural areas where they are suitably scaled, sited and designed to be in keeping with the character of the area and it is demonstrated to be necessary to support the sustainable management of a rural business or croft and there is an essential need for a worker to live permanently at or near their place of work. Policies in the adopted Local Development plan also support rural housing. Policy 1.2: Housing development in existing rural groups and Policy 1.3: Other housing in the countryside would both be relevant if the proposal was the subject of a current application for planning permission. Notwithstanding that Policy 1.3 requires an operational business need in the rural locality, there is no requirement for any conditions or burdens that would limit the occupancy of the dwelling house should the justification for it be acceptable.

### **Conclusion**

15. The applicants have submitted a reasoned justification for seeking the discharge of the of the occupancy restriction on the land known as Lots 5 and 7. They have built





and reside in a dwelling on Lot 5. Drumuillie is characterised by a low density grouping of houses and the house built on Lot 5 has integrated into the surrounding built form and spatial character in accordance with the relevant local plan policies. Part of Lot 7 has now been decrofted with a condition requiring as a first change of use, that the land must be used, let or disposed of as a site for a dwelling house. Planning permission has now been granted under current national and local policies for a dwelling on the part of Lot 7 that has now been decrofted without the requirement for an occupancy restriction.

### **Recommendation**

**That members of the committee agree the request to discharge the section 75 Legal Agreement associated with the planning permission 07/414/CP at land 100m north west of Birch Cottage, Drumuillie for the following reasons:**

- a) The discharge of the Section 75 Agreement would not prejudice any farming of the existing croft within the area;**
- b) The Section 75 Agreement would not be required to control the occupation of the dwelling under current development plan policies.**