
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON PROPOSED SECTION 75
AGREEMENT

Prepared by: DON MCKEE HEAD OF PLANNING

DEVELOPMENT PROPOSED: DEMOLITION OF REDUNDANT
QUARRY ACCOMMODATION AND
ERECTION OF DWELLINGHOUSE AND
OUTBUILDING (OUTLINE), BLACKMILL
QUARRY, BALLINTEAN, NR. KINCRAIG

REFERENCE: 04/178/CP

APPLICANT: NEIL MCINNES, 27 CASTLEHILL
GARDENS, CRADLEHALL, INVERNESS,
IV2 5DJ

DATE CALLED-IN: 8 APRIL 2004



Fig. 1 - Location Plan

LOCATION OF SITE AND CNPA CONSIDERATION OF THIS APPLICATION TO DATE

1. The site to which this outline application relates is located in a countryside area to the south of Feshiebridge approximately 5km south east of Kincaig within the River Feshie valley (see Fig 1).
2. The applicant works for Forestry Commission Scotland. He is the local forester for Glenmore, Inchriach and Laggan although he also has responsibility for other forest areas nearer to Inverness. He currently lives in Inverness and commutes on a daily basis. He has sought permission for this house on the basis of need for work purposes and the Committee accepted the principle when resolving to grant outline planning permission at the meeting on 18th June 2004 subject to the conditions of approval being brought back to a subsequent meeting.
3. A report on the terms of approval was considered by the Committee on 16th July 2004 and it was resolved to defer consideration to allow planning officials to engage in further discussions with lenders and bring back a further report with the terms of a Section 75 Agreement (restricting occupancy to land based employees) and an update on mortgage availability.
4. The development plan context is restated below to illustrate the policy basis for restricting occupation of properties when granting permission as an exception to normally restrictive policies.

DEVELOPMENT PLAN CONTEXT

5. **Highland Structure Plan Policy H3 (Housing in the Countryside)** states that new housing will generally be within existing and planned new settlements. New housing in the open countryside will not be permitted unless it can be demonstrated that it is required for the management of land and related family purposes. **Policy L4 (Landscape Character)**, states that the Council will have regard to the desirability of maintaining and enhancing the present landscape character in the consideration of development proposals. **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); impact on resources including habitats, landscape, scenery etc.
6. **The Badenoch and Strathspey Local Plan Policy 2.1.2.3 for Restricted Countryside Areas**, has a strong presumption against the development of houses in all sensitive areas. Exceptions will only be made where a house is essential for the management of land, related family and occupational reasons. Restrictions on the subsequent occupancy of such houses will be enforced, and adherence to the principles of good siting and design will be required. The clause on design contained within **Policy 2.1.2 (Housing in the Countryside)** states that single houses outwith recognised settlements will require to be

(amongst other things), compatible with the scale and character of local buildings where appropriate, and properly located in harmony with the landscape.

7. 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. This document states that new housing within the open countryside will be exceptional, and will only be permitted (in accordance with National Guidance and the approved Structure Plan policy) where, amongst other specific circumstances, it is required for the management of land, or it is required for family purposes related to the management of land (retired farmers and their spouses). It also considers that there is no justification for housing in the countryside associated with forestry enterprises.

SECTION 75 AGREEMENT

8. Members will recollect that the CNPA solicitors recommended the use of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 as the means of securing a long term mechanism for controlling the occupancy of the property.
9. There has been reference by some to the Scottish Executive Draft SPP on Rural Development that raised the possibility of not requiring such restrictions. Our solicitors point out that this is purely a draft consultation document that could be subject to alteration: it should therefore be viewed in this context. Subsequent discussions with officials from the Executive have confirmed that this is the case and decisions should continue be taken in accordance with the development plan.
10. At the meeting on 16th July members had considerable discussion on the terms of a Section 75 Agreement and consensus appeared to focus on restricting occupation to persons engaged in land based activity within a specified area, but "casting the net" as wide as possible in terms of definitions to enhance the potential for lending institutions making a mortgage available for such properties.
11. The CNPA solicitors were accordingly instructed to draft an agreement restricting occupation of the property to persons engaged in land based industry within (in this case) the Badenoch and Strathspey area. They were also asked to incorporate mechanisms for addressing the situation should the approved occupier retire or be made redundant.
12. A copy of a draft Section 75 Agreement is attached for members' consideration. Discussion so far has been between your officials and our solicitors. It was not felt appropriate at this juncture to discuss the content of the S75 with the applicant as the Committee has to be happy with the terms in the first instance.

13. The draft agreement envisages restricting occupation of the property to persons engaged in “land based activity”. The definition in Clause One includes forestry, agriculture, gamekeeping and outdoor activities in the leisure and tourism sector or any other such land based activity as accepted by CNPA in writing. As drafted, this embraces a wide range of activity and, without prejudice to the generality, allows for CNPA to include other activities not specifically mentioned. This is a much wider definition than the forestry case that is behind this particular application.
14. Clause One also defines the area in this instance as “the area known as Badenoch and Strathspey which comes within the boundary of the National Park Area”. In addition to widening the definition of the occupancy restriction, the geographical net has therefore been defined to embrace the majority of the population within the Park. If this S75 format is accepted as a template any future cases could have the geographical area altered to reflect the area concerned.
15. Clause Two of the draft agreement restricts occupation as defined in Clause One, but contains a proviso which effectively allows the CNPA, without prejudice to future application of the terms of the agreement, to modify or vary these terms if the occupier’s employment status changes e.g. retirement or redundancy.
16. Clauses One and Two contain the essence of the agreement. The other clauses are of a standard procedural nature.

MORTGAGE AVAILABILITY

17. The general issue of mortgage availability is still being pursued as contacts are being sought at a level where corporate policy is set by lenders. This process will be made easier if approaches can be made on the basis of a form of S75 that the CNPA has accepted. Having said that, no lender so far has ruled out the provision of a mortgage in these circumstances, but most have indicated the need to discuss the particular circumstances of each case in detail. This involves not only the terms of the restriction that will be in the S75, but the personal financial situation of the applicant in terms of savings, salary, price paid for/enhanced value of site etc.
18. In this instance the applicant has been given contact details for the relevant Cheltenham and Gloucester area office who have verbally indicated a flexible approach and who have historically provided mortgages for self build where occupancy is restricted by legal agreement.
19. At the end of the day planning permission has been sought on the basis of a set of distinct circumstances put forward by the applicant. These circumstances have led to the resolution of the Committee to grant a planning permission restricting occupancy via a Section 75 Agreement. Given the unusual nature of the situation any mortgage will therefore reflect these circumstances. Any further progress will be reported to the meeting.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage

20. With the Section 75 Agreement restricting occupancy, the proposal will not have any significant adverse impacts on the natural and cultural heritage of the immediate area.

Promote Sustainable Use of Natural Resources

21. There are no positive implications in terms of this aim.

Promote Understanding and Enjoyment of the Area

22. Again there are no positive implications in terms of this aim.

Promote Sustainable Economic and Social Development of the Area

23. In resolving to accept the principle of this development, members took into account the nature of the applicant's employment and the manner in which it is linked to this particular area. With a Section 75 Agreement in place to secure this situation over the long term it can be argued that the proposal will contribute to this aim.

RECOMMENDATION

That Members of the Committee support a recommendation to:

Grant outline planning permission for demolition of redundant quarry accommodation and erection of dwellinghouse and outbuilding, Blackmill Quarry, Ballintean, Nr. Kincaig subject to the applicant entering into a Section 75 Agreement as appended to this report and to the conditions contained in the report to the 16th July meeting.

9 August 2004

Don Mckee

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