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## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title:** Demolition of Redundant Quarry Accommodation and Erection of Dwellinghouse and Outbuilding (Outline), Blackmill Quarry, Ballintean, Nr, Kincaig (04/178/CP)

**Prepared by:** Neil Stewart (Planner, Development Control)



### Purpose

1. Members of the Committee will recall that this application was reported to the Committee on 18 June 2004 with a recommendation of refusal (Item 8, Paper 2). The Committee made the decision to approve the application, against this recommendation, subject to conditions of approval being brought back to the Committee for their approval. This report details the recommended terms and conditions of this approval.

### Background

2. A short summary of the proposal is required. The application is made in outline format and the applicant works for Forestry Commission Scotland with responsibility for Glenmore, Inshriach and Laggan forests. He has sought permission for the house on the basis of need, in relation to work purposes. The site lies in an area designated in the Local Plan as "Restricted Countryside", where there is no policy support for single houses associated with forestry enterprises. The site is located south of Feshiebridge approximately 5km south east of Kincaig, within the River Feshie Valley. The proposed house site is positioned to the south of Blackmill sand and gravel quarry where two buildings relating to this former quarry use stand.

## Appraisal

3. Following the decision of the Committee to approve the application, consultation has taken place with the National Park's legal advisers on what legally competent mechanisms could be employed to ensure that the house is built and occupied by a forester and that this is retained as such in perpetuity. The advice received states that it would be inappropriate to attempt to deal with the matter through the use of planning conditions. They would not be enforceable against successive proprietors of the property and the CNPA would wish to be able to control occupancy on an ongoing basis. A Section 75 Legal Agreement would be the appropriate and workable mechanism. However, since the forester is proposing to acquire the property in a personal capacity, restricting occupancy on the property, through a recorded Section 75 Legal Agreement, to someone working for the Forestry Commission and engaged in forestry activity puts very significant burdens on the title of the property and would probably breach guidance on reasonableness. As such, the legal advice suggests that it may only be appropriate to restrict the occupancy, through a recorded Section 75 Legal Agreement, to someone engaged in forestry work in the Badenoch and Strathspey area. This is more likely to be deemed to be reasonable than a condition which states that the property must only be occupied by someone working in the Forestry Commission.
4. This requirement has been put to the applicant. However, the applicant has stated that he is unable to agree to the suggested Section 75 at this stage. At the time of writing, the applicant has been unable to provide his written reasons but he hopes to have a letter submitted prior to the Committee deadline in order that it can be considered. However, I understand that he will be unable to secure a lender on the property, if such a restriction is put in place. The applicant hopes also to have evidence from lenders which will be presented to the Committee if received in time. Again at the time of writing, I am consulting on this with our legal advisers. **A conclusion on this, and our assessment of the applicant's further submissions will be presented verbally at the Committee. This will also result in a verbal recommendation on this particular matter.**
5. The Committee also raised the issue of the existing buildings and the quarry. In relation to the buildings, only one of the buildings lies within the application site. It is therefore only possible to impose a planning condition for its removal or upgrade. The second building, which is still used for storage of equipment, will remain in the ownership of the landowner. To get this removed would therefore require the co-operation of a third party and an additional clause in a Section 75 Legal Agreement. The landowner would require to be a signatory. The landowner has submitted a letter (copied with this paper) which raises concern about the suggestion of restricting occupancy of the property. The letter also confirms that the removal of this building is not within the power of the applicant and that it is still in use. She suggests that if it is to be removed, then she would wish a substantial subsidy to carry out the removal of the building and erect a new one elsewhere. There are no mechanisms open to the CNPA to provide assistance in this regard. My conclusion on this is that, without the agreement of the landowner it is not possible to secure the removal of this building.

6. As far as the quarry itself is concerned, its existence dates back to a planning permission granted in July 1976. This permission was granted subject to three conditions, none of which, however, provided a time limit on extraction. The landowner has confirmed that it is has not been in commercial use since about 1993 and that it is, to all extents, worked out. Highland Council have confirmed that in their 1997 Review of Mineral Sites, the quarry has been formally classified as “Dormant”. As such, no development consisting of the winning and working of minerals or involving the depositing of mineral waste may lawfully be carried out until a new application for planning conditions has been submitted and approved. The existence of the applicant’s house nearby would be taken into consideration at the time of this application.

## **Recommendation**

7. **A verbal recommendation on the requirement for a Section 75 Legal Agreement restricting occupancy will be made at the Committee.**
8. **That the Committee agree the following conditions of approval:**
  - i. A formal planning application and detailed plans indicating all matters relating to the siting, design and external appearance of all buildings, means of access thereto, means of enclosure and landscaping proposals shall be submitted for the prior approval of the Planning Authority within 3 years of the date of this consent and the development must be commenced within 5 years of the date of this permission or within 2 years from the date of final approval of all the foregoing Reserved Matters.

### **Reason:**

To comply with Section 59 of the Town and Country Planning (Scotland) Act, 1997

- ii. The development shall be of a traditional architecturally sympathetic design in respect of the building form, detail and finishing materials.

### **Reason:**

In the interests of visual amenity and to ensure the development is appropriate to its countryside location within the National Park.

- iii. The development shall be landscaped and maintained in accordance with a scheme which shall be submitted to and approved by the Planning Authority before development commences. The scheme shall include indications of all existing trees and landscaped areas on the land, and details of any to be retained, together with measures for their protection in the course of the development and shall indicate the siting, numbers, species and heights (at the time of planting) of all trees, shrubs and hedges to be planted and to the extent of any areas of earthmounding, and shall ensure:-
  - (a) Completion of the scheme during the planting season next following the completion of the development, or such other date as may be agreed in writing with the Planning Authority.

- (b) The maintenance of the landscaped areas in perpetuity in accordance with the detailed maintenance schedule/table. Any trees or shrubs removed, or which in the opinion of the Planning Authority, are dying, being severely damaged or becoming seriously diseased within three years of planting, shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

**Reason:**

To ensure the implementation of a satisfactory scheme of landscaping which will in due course improve the environmental quality of the development.

- iv. Prior to the commencement of development on site, it shall be demonstrated to the satisfaction of the Planning Authority that an adequate private water supply, in terms of quality and quantity, can be provided to meet the requirements of the development hereby approved.

**Reason:**

In the interests of public health.

- v. Prior to the commencement of development on site, it shall be demonstrated to the satisfaction of the Planning Authority that the development hereby approved can be served by an adequate means of foul drainage disposal, which complies with the Building Regulations.

**Reason:**

To ensure the site is adequately drained, in the interests of public health and to prevent pollution.

- vi. Prior to the occupation of the dwellinghouse hereby approved, the existing redundant building on the site, shall be removed. Alternatively, it shall be upgraded and re-used for ancillary domestic uses in association with the approved dwellinghouse, in accordance with details which shall be submitted for the approval of the Planning Authority, with the Reserved Matters application.

**Reason:**

In the interests of visual amenity and to improve the environmental quality of the area.

**Neil Stewart**

**12 July 2004**

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