
CAIRNGORMS NATIONAL PARK AUTHORITY

MINUTES OF THE PLANNING COMMITTEE

held at The Cairngorm Hotel, Aviemore
on 17th September 2010 at 10.30am

PRESENT

Peter Argyle	Willie McKenna
Eric Baird	Eleanor Mackintosh
Stuart Black	Ian Mackintosh
Geva Blackett (Arrived late)	Anne MacLean
Duncan Bryden	Alastair MacLennan
Jaci Douglas	Fiona Murdoch
Lucy Grant	Andrew Rafferty
David Green	Gregor Rimell
Drew Hendry	Richard Stroud
Mary McCafferty	

IN ATTENDANCE:

Robert Grant	Pip Mackie
Don McKee	Andrew Tait

APOLOGIES:

Dave Fallows	Bob Kinnaird
Marcus Humphrey	Susan Walker

AGENDA ITEMS 1 & 2:

WELCOME AND APOLOGIES

1. The Convenor welcomed all present, especially to Fiona Murdoch who had returned to the Committee after an illness.
2. Apologies were received from the above Members and it was noted that Geva Blackett would be arriving late.

AGENDA ITEM 3:

MINUTES & MATTERS ARISING FROM THE PREVIOUS MEETING

3. The minutes of the previous meeting, 3rd September 2010, held at The Community Hall, Boat of Garten were approved.
4. There were no matters arising.

AGENDA ITEM 4:

DECLARATION OF INTEREST BY MEMBERS ON ANY ITEMS APPEARING ON THE AGENDA

5. David Green declared a direct interest in Item No. 9 (Paper 4; 10/186/CP) on the Agenda, due to one of the Applicants being the daughter of his PA, Margaret Smith, who is employed by the CNPA.
6. Lucy Grant declared an indirect interest in Item No. 9 (Paper 4; 10/186/CP) on the Agenda, due to a house belonging to relatives appearing in some of the photos included in the planning report.
7. Andrew Rafferty declared an indirect interest in Item No. 9 (Paper 4; 10/186/CP) on the Agenda, due to his brother's house appearing in some of the photos included in the planning report.

AGENDA ITEM 5: PLANNING APPLICATION CALL-IN DECISIONS (Oral Presentation, Robert Grant)

8. 10/298/CP - The decision was to call-in the application for the following reason :
 - This application relates to the retrospective change of use of a newly constructed machinery shed, partly to a bothy. The proposal raises a range of issues with regard to housing policy, precedent and landscape impacts. Consequently, the proposal raises issues of general significance for the aims of the Cairngorms National Park.
 9. 10/299/CP - No Call-in
 10. 10/300/CP - No Call-in
 11. 10/301/CP - No Call-in
 12. 10/302/CP - No Call-in
 13. 10/303/CP - No Call-in
 14. 10/304/CP - No Call-in
 15. 10/305/CP - No Call-in
 16. 10/306/CP - No Call-in
 17. 10/307/CP - No Call-in
 18. 10/308/CP - No Call-in
 19. 10/309/CP - No Call-in
 20. 10/310/CP - No Call-in
 21. 10/311/CP - No Call-in
 22. 10/312/CP - No Call-in
 23. 10/313/CP - No Call-in

 24. 10/314/CP - No Call-in
- Duncan Bryden informed Members for noting that the Applicant for the next application was a new ministerial appointed Board Member, due to take position in October 2010.

COMMENTING ON APPLICATIONS NOT CALLED-IN BY THE COMMITTEE

25. The Members wished to make comments to the Local Authorities on the following Planning Application No's 10/305/CP, 10/308/CP & 10/313/CP. The planning officers noted these comments and were delegated with the responsibility of whether or not to submit the comments to the Local Authorities.

AGENDA ITEM 6: REPORT ON CALLED-IN PLANNING APPLICATION (CONSIDERATION OF OUTSTANDING OBJECTIONS) FOR ERECTION OF 22 HOUSES AND CONSTRUCTION OF ACCESS ROAD AT LAND SOUTH EAST OF MILLSIDE HOUSE, MILTON, AVIEMORE (10/062/CP) (PAPER 1)

26. Duncan Bryden informed Members that a letter had been received from the Agents for the application (DLA Piper), The letter had been received within the appropriate timescales. The Committee paused to read the letter.
27. Duncan Bryden informed Members that Janis Dick, Representee, had requested to address the Committee. The Committee agreed to the request.
28. Duncan Bryden informed Members that an official complaint had been lodged regarding 4 letters of representation on the application which had been received, but overlooked. He stated that the complaint had been dealt with through the proper procedures, an apology had been made and measures had now been put in place to ensure that this situation could not happen again.
29. Duncan Bryden clarified that the Committee were not to reassess the full application but to consider if the missed representations raised any new issues which had not previously been taken into account.
30. Andrew Tait presented a paper recommending that the Committee confirm the original resolution in accordance with the agreed minutes of the 25 June Planning Committee Meeting for the granting of the Erection of 22 Houses and Construction of Access Road on land SE of Millside House, subject to a Section 75 Legal Agreement for affordable housing and contribution to paths and a range of planning conditions. Andrew Tait stated that he had made the recommendation set out in the paper due to the fact that the four letters raised no additional material issues beyond those which were presented to and considered by the Planning Committee on 25 June 2010.
31. The Committee were invited to ask the Planning Officer points of clarification. No points were raised.
32. Janis Dick, Representee, addressed the Committee, apologised that John Grierson of Aviemore & Vicinity Community Council could not attend and provided a Powerpoint presentation in order for Members to see photographs / plans regarding her concerns.
33. The Committee were invited to ask questions of the speaker. No questions were asked.
34. Duncan Bryden thanked Mrs Dick.

35. The Committee discussed the application and the following points were raised:
- a) Clarification of the level of tree removal associated with the upgrading of the bridge to access plot 7.
 - b) Clarification that SEPA had looked, in depth, at the site and surrounding area and thoroughly assessed the flood risk. It was confirmed that SEPA had undertaken a thorough investigation of the site and had no objections.
 - c) Confirmation that a new school for Aviemore had recently been granted outline planning permission.
 - d) The need for tree protection measures to be in place prior to works starting on site.
 - e) Confirmation that consultation had taken place between the CNPA and Aviemore & Vicinity Community Council.
 - f) The Planning Gain associated with the development and confirmation that community consultation would be carried out.
 - g) How the site area (in hectares) was calculated. Clarification that it included the access track to plot 7.
 - h) The density of housing on the site and its comparison to other housing density in Aviemore, demonstrated by a presentation slide.
 - i) The need to safeguard access along the Aviemore Orbital Path.

- j) The community consultation undertaken by the Developer with the Community Council and neighbours to the site. It was clarified that the Developer was not obliged under the old planning regulations to carry out the consultation, but that an element of consultation had been carried out.
- k) The Planning Gain associated with other housing developments in Aviemore.
- l) Conditions in the approval requiring consultation with:
 - The Community on Planning Gain regarding Play space
 - An Access Specialist and Inclusive Cairngorms regarding the shared surfaces
- m) Concern about the potential for flooding at the site and the impact on existing properties.

36. Stuart Black proposed a Motion that the application be Refused on the basis that:
- the application was contrary to planning policy: under the existing Badenoch & Strathspey Local Plan the site was allocated for 12 dwellings not the 22 currently being proposed
 - The application was potentially contrary to Scottish Government policy due to the impact of the extensive engineering works that would be required to develop the site, particularly to overcome the issue of flooding.

37. The Motion was seconded by Lucy Grant.

38. Don McKee, Head of Development Management, highlighted that, given an earlier decision of the Committee to grant outline planning permission with no restriction on numbers, the reasons stated in the Motion for Refusal should have been raised at that time and at the previous Committee meeting in June when the current planning application was considered for determination. He advised that the proposal to revisit the entire decision would require legal advice to be obtained as the Committee had already taken a decision of substance on the application and no new material issues were being brought forward to the Committee. He stated that he would have strong concerns about refusing the application without obtaining legal advice, given that one of the reasons for Refusal (the number of houses allocated for the site in the Badenoch & Strathspey Local Plan) had not been raised at the previous Committee meeting or when outline planning permission was granted. Don McKee reiterated that the Committee were not to reassess the full application but to consider if the four representations which had been overlooked raised any new material issues which had not previously been taken into account.

39. Peter Argyle proposed an Amendment that the original resolution in accordance with the agreed minutes of the 25 June Planning Committee be confirmed.

40. The Amendment was seconded by Drew Hendry.

41. Don McKee advised that if the Committee were minded to move to a vote on the Motion and Amendment, he would recommend deferral of the application, in order for legal advice to be taken, given that a decision of substance had already been made on the application. The Committee's position would have to be clarified.
42. After the advice Members received from Don McKee, Lucy Grant withdrew her support as seconder to the Motion. There being no other seconder, the Motion fell.
43. The Committee confirmed the original resolution in accordance with the agreed minutes of the 25 June Planning Committee Meeting.

**AGENDA ITEM 7:
REPORT ON CALLED-IN PLANNING APPLICATION FOR AMENDMENT TO
HOUSE TYPES ON PLOTS 4-10,21,25,26 BY INSTALLATION OF MASONRY
CHIMNEYS AND MINOR CHANGES TO HOUSE DETAILS
AT LAND AT HIGH BURNSIDE, AVIEMORE
(10/272/CP) (PAPER 2)**

44. Robert Grant presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
45. The Committee were invited to ask the Planning Officer points of clarification. No points were raised.
46. The Committee discussed the application and the following points were raised:
 - a) The proposed design of house type 'Cruachan' including steps to access the dwelling and concern that the dwelling did not have a level access. The Planning Officials agreed this issue would be raised with the Developer prior to construction.
47. The Committee agreed to approve the application subject to the conditions stated in the report.

**AGENDA ITEM 8:
REPORT ON CALLED-IN PLANNING APPLICATION FOR ERECTION OF
NEW HOUSE FOR HOLIDAY LETTING
AT LAND 100M SE OF RHUARDEN, CROFTRONAN, BOAT OF GARTEN
(10/187/CP) (PAPER 3)**

48. Duncan Bryden informed Members that Hamish Jack, Applicant and Ron Laing, Agent, were available to answer any questions Members may have.
49. Robert Grant presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.

50. The Committee were invited to ask the Planning Officer points of clarification, the following was raised:
 - a) Confirmation that the power line indicated on the site plan was due to be removed as part of the Beaully to Denny approval. The Planning Officer confirmed that it was due to be removed.
51. The Committee were invited to ask questions of the speaker. No questions were asked.
52. The Committee agreed to approve the application subject to the conditions stated in the report.

**AGENDA ITEM 9:
REPORT ON CALLED-IN PLANNING APPLICATION FOR ERECTION OF
HOUSE
AT LAND 285M NORTH WEST OF AILANBEG LODGE, NETHY BRIDGE
(10/186/CP) (PAPER 4)**

53. David Green declared an interest and left the room.
54. Duncan Bryden informed Members that a letter of support had been received from the Applicant, the letter had been received within the appropriate timescales. The Committee paused to read the letter.
55. Duncan Bryden informed Members that Karen Smith, Applicant, had requested to address the Committee. The Committee agreed to the request. It was also noted that Ron Laing, Agent, was available to answer any questions Members may have.
56. Due to Mary Grier being on annual leave, Don McKee presented a paper recommending that the Committee refuse the application for the reasons stated in the report.
57. The Committee were invited to ask the Head of Development Management points of clarification, the following were raised:
 - a) Members requested an update on the progress being made with the Scottish Government and Heads of Planning regarding Section 75 Legal Agreements (S75). Don McKee advised that the process still had a little way to go, but it was looking as if the CNPA position is one for which there was some consensus amongst planning authorities. If this is the case, when discussions are concluded with Scottish Government and lenders, the next steps would be to seek Members' agreement to guidance setting out the circumstances in which a S75 would be sought and details of the cascade arrangements that lenders will require. He advised that the CNPA had hoped to have a firm package, before approaching applicants with S75 information.

- b) The existing number of houses in the vicinity of the site and clarification if this constituted a housing group. It was confirmed that under planning policy it was not considered to be a housing group and some of the existing houses may have been granted contrary to policy. It was also stated that the Development Plan Officer had been consulted regarding the interpretation of the housing group policy in this instance.
- c) The visual impact of the proposed dwelling when viewed from walking routes as well as roads.
- d) The role of the Scottish Agricultural College (SAC) or an independent assessor when assessing land management needs for applications of this type.
- e) Clarification of the Scottish Governments position regarding S75 Agreements.

58. Karen Smith, Applicant, addressed the Committee.

59. The Committee were invited to ask questions of the speaker and the following points were raised:

- a) Clarification of where her Uncle lived, who also helped to run the landholding.
- b) The Applicants willingness to obtain an independent land management assessment for the landholding.
- c) Clarification of the division of labour between the crofts and the farm, even though they are operated as one unit.
- d) Recent adverse weather conditions having increased impacts on managing livestock.
- e) The possibility of obtaining a mortgage if secured on the landholding.
- f) The Applicants' willingness to enter into a S75 Agreement.

60. Eric Baird proposed a Motion to Defer the application to allow the applicants to commission and submit a report by an independent expert, such as Scottish Agricultural College, to demonstrate if there is a land management need for the house.

61. Richard Stroud seconded the Motion.

62. Geva Blackett arrived at the meeting.

63. The Committee discussed the application and the following points were raised:

- a) The possibility of approving the application subject to a S75 and the provision of an independent land management report.
- b) The application complying with Policy 22 in the CNP Local Plan.
- c) The importance of encouraging young people into the agricultural industry.
- d) Scottish Planning Policy being interpreted into CNP Local Plan Policy.
- e) The importance of setting the context of how planning policies are interpreted in the assessment of planning applications.

64. As consideration of the application had entered into Members discussion, Duncan Bryden thanked Karen Smith and Ron Laing and they returned to their seats.
65. The Committee continued to discuss the application and the following points were raised:
- a) The pattern of development in the area according with that of crofting communities.
 - b) The existing number of dwellings in the local area and their residential status.
 - c) The need to comply with planning policy, the significance of the new CNP Local Plan and the risks of taking decisions on an ad hoc basis.
 - d) The Applicant having made a robust case, in person, for approving the application without the need for an independent land management report and the cost implications associated with obtaining such a report.
 - e) The CNP Local Plan only being approved a month ago and the extraordinary potential decision to set it aside and how this would be perceived.
 - f) The existing Badenoch & Strathspey Local Plan and the CNP Local Plan both requiring a satisfactory independent land management report prior to any approval.
 - g) The fact that in other cases applicants have submitted the independent assessment in advance of applications coming before Committee.
 - h) Clarification of the Affordable Housing, part of Policy 22 (CNP Local Plan).
 - i) The need for the Applicant to live on the croft due to enhanced animal welfare regulations.
 - j) Scottish Planning Policy supporting rural business and sustainable forms of development.
66. Don McKee stressed the importance of looking at the CNP Local Plan as a whole and not to “cherry pick” policies which may be interpreted to be supporting applications whilst ignoring those policies which don’t.
67. Mary McCafferty proposed an Amendment that Planning Permission in Principle is granted subject to:
- a) The applicants to commission and submit a report by an independent expert, such as Scottish Agricultural College, to demonstrate if there is a land management need for the house. If the report states that the house is required then the Head of Development Management is delegated to issue the decision notice. If the report states otherwise the application is to be referred back to the Planning Committee for further consideration and determination.
 - b) A Section 75 Agreement tying the house to the farm and occupancy to persons who are engaged in work on the farm.
68. Alastair MacLennan seconded the Amendment.

69. The vote was as follows:

	MOTION	AMENDMENT	ABSTAIN
Peter Argyle	√		
Eric Baird	√		
Stuart Black		√	
Geva Blackett			√
Duncan Bryden	√		
Jaci Douglas		√	
Lucy Grant	√		
Drew Hendry		√	
Mary McCafferty		√	
Willie McKenna		√	
Eleanor Mackintosh		√	
Ian Mackintosh		√	
Anne MacLean		√	
Alastair MacLennan		√	
Fiona Murdoch	√		
Andrew Rafferty		√	
Gregor Rimell	√		
Richard Stroud	√		
TOTAL	7	10	1

70. The Committee agreed to approve the application subject to:

- a) The applicants to commission and submit a report by an independent expert, such as Scottish Agricultural College, to demonstrate if there is a land management need for the house. If the report states that the house is required then the Head of Development Management is delegated to issue the decision notice. If the report states otherwise the application is to be referred back to the Planning Committee for further consideration and determination.
- b) A Section 75 Agreement tying the house to the farm and occupancy to persons who are engaged in work on the farm.
- c) The details of the conditions to be attached to the Planning Permission in Principle being brought back to Planning Committee for approval.

**AGENDA ITEM 10:
ANY OTHER BUSINESS**

71. Duncan Bryden advised that Don McKee had feedback regarding the Crown Estate's plans for development in Tomintoul.
72. Don McKee advised that Hamish Trench, Director of Sustainable Land Use, and Karen Major, Development Plan Officer, had recently met with the Crown Estate and raised the Committee's concern that the piecemeal approach to development could be to potentially avoid Affordable Housing provision. Don McKee stated that the Crown Estate had confirmed that they intended to sell the plots, subject to the recent planning applications, for self build developments and were not trying to avoid Affordable Housing provision. The Crown Estate stated that they had not been aware that CNP Local Plan Policy was now being applied to planning applications in the CNP area.
73. Don McKee informed Members that at the meeting it had been agreed that a 'light touch' masterplan including community consultation would be the most appropriate way forward for Tomintoul. This process was due to start in 2011, with the Crown Estate providing most of the funding and the CNPA a smaller portion.
74. Don McKee advised members that Moray Council were now using the CNP Local Plan to determine planning applications and the recent applications by the Crown Estate would be assessed against it. He also confirmed that Moray Council had a Service Level Agreement with the Aberdeenshire Council Planning Gain Department and they would be seeking contributions for the recent applications in line with this agreement.
75. Don McKee stated that Hamish Trench would email Members with more details regarding this matter.

**AGENDA ITEM 11:
DATE OF NEXT MEETING**

76. Friday 1st October 2010 at Mar Lodge, Braemar.
77. Committee Members are requested to ensure that any Apologies for this meeting are submitted to the Planning Office in Ballater.
78. The meeting concluded at 1.00pm.