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## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title:**                   **REPORT ON CALLED-IN PLANNING APPLICATION**

**Prepared by:**       **NEIL STEWART (PLANNING OFFICER, DEVELOPMENT CONTROL)**

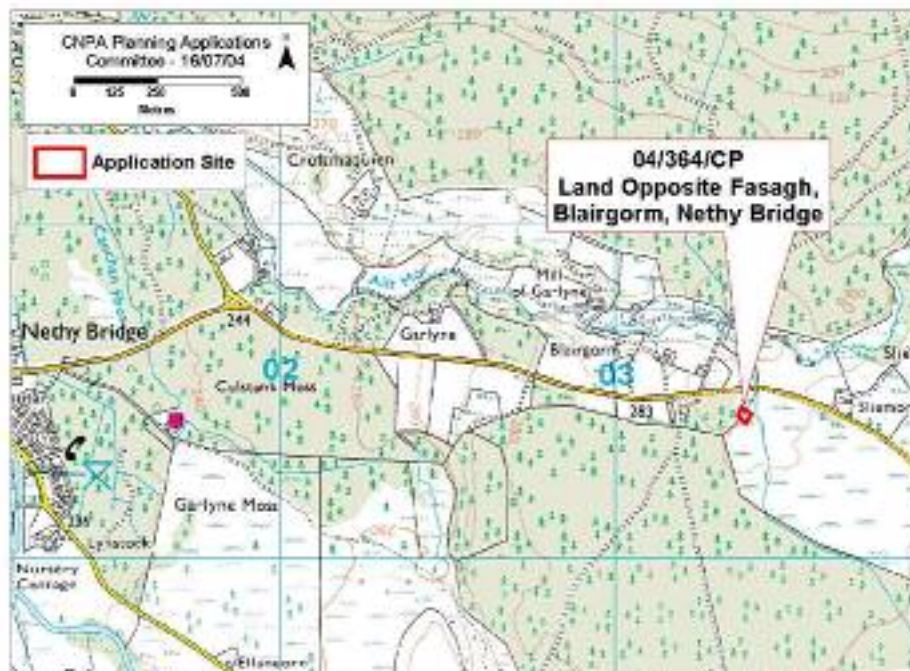
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**DEVELOPMENT PROPOSED:**   **ERECTION OF NEW DWELLINGHOUSE, AT LAND OPPOSITE FASGAGH, BLAIRGORM, NETHY BRIDGE (OUTLINE PLANNING PERMISSION)**

**REFERENCE:**                   **04/364/CP**

**APPLICANT:**                   **LORNA FRASER, 20 BRAID HILLS APPROACH, EDINBURGH, EH10 6JY**

**DATE CALLED-IN:**           **16 JULY 2004**



**Fig. 1 - Location Plan**

## SITE DESCRIPTION AND PROPOSAL

1. This outline planning application is submitted as a renewal of a lapsed planning consent for a new dwellinghouse which was originally granted permission by Highland Council in June 2000, (00/00029/OUTBS). This previous application was submitted by the landowner at that time and was also in outline format. It lapsed on 30 June 2003. It was recommended for refusal by Highland Council's Area Planning and Building Control Manager on the grounds that it contravened planning policy for this area (Restricted Countryside in the Local Plan). No land management justification was submitted. However, Highland Council's Badenoch and Strathspey Area Committee approved the application subject to planning conditions relating to design, landscaping and access provision.
2. The site lies on the edge of a mature pine woodland to the south of the "C" class public road which runs eastwards from Nethybridge and links to the A939 Tomintoul to Grantown-on-Spey road. It constitutes an area of open ground on the edge of a stand of trees, of 0.13hectares in size, with an access track of 0.05hectares which runs from the public road through the pine trees to the site. The site straddles the edge of the woodland and encroaches into an open area of heathland which extends eastwards along the south side of the road.
3. The current applicant purchased the site with her husband in April 2001. However, while working up plans for the detailed planning application, unfortunately, her husband was taken seriously ill and died in July 2002. As a result of this, and subsequent discrepancies that emerged between the actual site purchased, and the one that had been granted outline permission, the previous permission lapsed. Following the resolution of the land ownership and boundary issues, this new application has been submitted.
4. From an examination of the plan from June 2000, and the current application site plan, the 2 sites are not the same in shape or position. Whilst the sites are adjacent to each other and may even overlap, they do not constitute the same areas of ground.

## DEVELOPMENT PLAN CONTEXT

5. In the **Highland Structure Plan (approved March 2001), Policy H3 (Housing in the Countryside)** states that 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 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); and impact on natural resources (including habitats, species, landscape and scenery).

6. The site lies within the area covered by **Policy 2.1.2.3 for Restricted Countryside Areas** in the **Badenoch and Strathspey Local Plan (September 1997)**. This policy has a strong presumption against the development of new houses. 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 site lies close to a **Dispersed Communities Policy Area (Policy 2.1.2.4)** which lies to the north of the public road (approximately 60m away), where new housing will normally be acceptable subject to detailed siting and design. The site is also shown as being within an **Amenity Woodland** area in the Local Plan. **Policy 2.5.3. (Forestry)** encourages the development of forestry in association with an Indicative Forestry Strategy and with the agreement of the landowner. **Policy 2.5.4. (Woodlands and Trees)** protects existing trees and established woodland areas including small groups of trees or individual granny pines which are important landscape, wildlife and amenity features of the countryside. Generally, development should not be sited within 20m of the trunks of large or mature trees.
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).

## CONSULTATIONS

8. The local Community Council were consulted by Highland Council, but no comments have been received.
9. Highland Council Planning Officers (under delegated powers) have commented, that there is a material difference between the site boundary approved under the 00/0029/OUTBS. They state that the site lies in restricted countryside. However land on the opposite (north) side of the public road is within one of the so called "dispersed communities" which is subject to Housing Policy 2.1.2.4 of the Badenoch and Strathspey Local Plan. Members of the Area Committee took note of the existence of a house a little way to the west (approx.120m) and on the south side of the road, and considered that the true point of transition between the dispersed community and the open countryside on the south side of the road occurred at the transition from this older pine woodland to the unimproved moorland beyond.

On that basis, Members regarded this as a reasonable “stretching” of the dispersed community boundary. In addition, subsequent to this decision, the officers state that the Area Committee has stretched the boundaries to the dispersed community even more significantly in an easterly direction by approving further development at Sliemore which lies on the north side of the public road approximately half a kilometre further to the east. The officers conclude that for these reasons, plus the personal circumstances of the case, a reasonable case could be made for approving the development.

10. The CNPA’s Natural Resources Group have stated that the adjacent field to the east which has a heather dominated sward is being managed for breeding birds through an agri-environment scheme and that the stand of pines has a modified understorey dominated by agricultural grasses and ruderals. They state that there are no significant natural resource features on the site. Providing waste water treatment meets current environmental standards, they state there should be no significant impact on neighbouring land.

## REPRESENTATIONS

11. The application was advertised by Highland Council as a “Development Contrary to the Development Plan”. No letters of objection have been received.
12. The applicant has submitted two letters in support of her application. One of the letters received provides the background to the application and the reasons for the delays in following through with an application for full permission on the site. It also emphasises the importance of the site to the applicant and her daughters due to the personal circumstances surrounding the development. The second letter raises the matter of access and the fact that, following the approval of the previous outline permission, the previous owner of the site formed the required access track to the plot. It is stated that this had been a condition of the outline permission and therefore it is suggested that this constituted a start on site which keeps the original permission implementable.
13. Copies of these letters are attached for the Committee’s consideration. **There has been a formal request for a representative of the applicant to address the Committee. This request is from the applicant’s brother-in-law (John Donald). There are no objectors in this case.**

## APPRAISAL

14. The applicant has stated that the actual area of land in question has remained, physically, the same throughout the entire process. This may be the case as far as the boundaries of what was to be sold is concerned but the plot of land which gained the original outline planning permission, in June 2000, is materially different. Following several discussions and letters of correspondence, the applicant was advised in February 2003 by the planning officers of Highland Council that, due to the proposed changes in the

boundaries, a new planning application was required. Clarification was sought from the applicant about the material differences between the sites at that time but Highland Council have no record of any further contact until August 2003, by which time the previous outline application had lapsed (30 June 2003). While the change in the boundaries to the site are relevant, the main consideration is that this new application, due to the circumstances, was submitted almost one year after the previous outline permission had lapsed.

15. The existence of the previous permission, albeit lapsed, is a consideration but we are required to assess the proposal in the light of the proposed development details, current planning policies for the area and any material change in planning circumstances. In policy terms the site remains clearly within an area where there is a presumption against any new houses, except in very specific circumstances. The proposal is not for any person associated with land management in the area or any associated reason, and therefore the application cannot be supported either in terms of the Structure Plan or Local Plan policies. In 2000, at the time of the original planning application on this site, the Area Planning Manager's recommendation to the Area Committee was for the refusal of planning permission on these policy grounds.
16. The Statutory Plans are quite clear in respect of the policies and the policy boundaries for this area. Policy areas cannot be redefined by individual planning decisions. While Highland Council's Badenoch and Strathspey Area Committee has agreed to other individual developments in the area which effectively extend the "Dispersed Community" policy designation on the north side of the public road, it is not deemed appropriate to challenge this statutory local plan designation through the approval of another individual application for a house outwith the designation. This is especially so where the previous approved application has lapsed. The proper mechanism for a review of the potential for further housing in this area is through the process of the preparation of the CNPA Local Plan. It is submitted that a redefinition of the current "Dispersed Community" area into woodland on the south side of the road and encroaching into open heathland, through sporadic individual developments, is not good planning, and raises expectations for other speculative proposals. Any further development in this Restricted Countryside Area in the meantime, should only be considered on the basis of a special need for the long-term management of the immediate land.
17. The applicants second letter of representation suggests that the original outline permission could be considered to be still implementable because of the formation of the access track to the plot which was a condition of this previous permission. It is not clear exactly when the formation of this track took place but the applicant has stated that it followed the issuing of the permission in 2000. However, the condition relating to this, specifically states:-

*"That a further application shall be submitted to the local planning authority, together with detailed plans to include:-*

*..detailed layout of the site as a whole, site levels existing and proposed, including provision for car parking, **details of accesses**, and details of all fences, walls and hedges.*

*These are RESERVED MATTERS to this outline application and no work on the site shall commence until the written approval of the Highland Council, as Planning Authority has been given.*

While there are other conditions specifying the technical requirements for the access which had also to be formed prior to the commencement of operations, it is clear from the condition above, that because the application was granted in outline only, a further Reserved Matters application, detailing the access construction, and other matters, was required to be submitted for approval before works commenced. There is no evidence of any such planning application being submitted. As such, it is not possible to accept the fact that because a form of access has been created (perhaps technically unauthorised), this constitutes a start of development which keeps the previous outline permission open. An outline permission can only be kept extant by the submission, for formal approval, of any Reserved Matter within three years of the date of original permission.

18. In locational terms the site for the new house is set on the edge of a stand of mature trees. These large trees will provide some landscape context and setting for the development but a house would be quite easily seen from the public road particularly from approaches from the east. Part of the site does constitute a cleared area within these trees, but there is no indication of what, if any, further tree felling may be required. The woodland in this location is subject to Policy 2.5.4. (Woodlands and Trees) in the Local Plan where protection is given to existing trees and established woodland areas which are deemed to be important landscape, wildlife and amenity features and where development should generally be outwith 20m of the trunks of large or mature trees. If this policy was strictly adhered to, it is difficult to see how some additional tree felling could be avoided. Further tree removal would increase the landscape impact of the development contrary to planning policy.
19. As far as drainage is concerned, there is no evidence of percolation tests having been carried out and therefore it is not known if the ground is suitable for a soakaway system. If the Committee are minded to approve the proposal, against recommendation, then it would be necessary to require that percolation tests are carried out and that the results are submitted and agreed with SEPA and Highland Council's Building Control Service, prior to the issuing of the permission.
20. To conclude, habitation in this locality is mostly concentrated in a dispersed pattern to the north of the public road as it extends eastwards from Nethybridge. This is acknowledged in the Local Plan which has identified an area for a dispersed community. Any new housing should be directed to suitable sites within nearby settlements or this dispersed community area, leaving the more open moorland and woodland areas free from unjustified development. The public road does form a logical and clear edge between the more intensively used land on the north side, and the woodland and heather moorland to the south of the road. While there is obvious sympathy for the circumstances that have resulted in this further application being required, there is a requirement under Section 25 of the Town and Country Planning

(Scotland) Act 1997 to determine planning applications in accordance with the development plan, unless material circumstances indicate otherwise. In this instance, the fact that there was a planner recommendation of refusal before, the previous permission has now lapsed, planning policy remains restrictive to this type of development in this area, and the site now lies within the National Park provides clear reasons for resisting the proposal.

## **IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK**

### **Conserve and Enhance the Natural and Cultural Heritage of the Area**

21. Any new housing in this locality would be better located in established settlements or in the area identified in the Local Plan for limited new developments a short distance to the north of here, rather than in a sporadic manner in the landscape close to where there are recognised wildlife interests. There may also be some tree felling required.

### **Promote Sustainable Use of Natural Resources**

22. The potential for tree felling is negative in terms of this aim. Nevertheless this is an outline application and therefore there is insufficient detail at this stage to assess further implications.

### **Promote Understanding and Enjoyment of the Area**

23. Not relevant to this application.

### **Promote Sustainable Economic and Social Development of the Area**

24. The applicant's present address is Edinburgh, and it is not clear if the house is for a permanent residence for the applicant who will live and work in the area. Individual houses in the countryside bring extra servicing costs for the resident and the community unless the occupants are needed specifically in that location for land management operations. For example, to service the site for refuse collection, postal services, school transport etc will be less sustainable than if the new house was within a settlement or other small community.

## RECOMMENDATION

That Members of the Committee support a recommendation to:

### **Refuse Outline Planning Permission for the Dwellinghouse, on land at Fasgagh, Blairgorm, for the following reasons:-**

1. That the development is contrary to the Highland Structure Plan, 2001, Policy H3 for Housing in the Countryside, which aims to protect the general countryside from sporadic, non-essential housing developments. The applicant has not demonstrated that the proposal for the new house is required for or related to any land management in this area. If approved, the proposal would encourage other isolated and sporadic developments in the countryside to the detriment of the character of the countryside and the amenity of this part of the National Park area.
2. That the proposal is contrary to the Badenoch and Strathspey Local Plan, 1997, Policy 2.1.2.3 covering Restricted Countryside Areas, where there is a strong presumption against the development of houses, other than for exceptional circumstances. The proposed development fails to meet any of the exceptional circumstances, and if approved would encourage other visible sporadic developments along minor rural roads, all to the detriment of the character of the countryside and the amenity of this part of the National Park area.
3. That the proposed development, on land detached from other houses or a local settlement and in a location which will be visible and may involve some mature tree felling, is considered to be detrimental to the quality and character of the local landscape. As such, the development would be contrary to Policies L4 (Landscape Character) and G2 (Design for Sustainability) of the Highland Structure Plan 2001, Policy 2.5.4.(Woodlands and Trees) of the Badenoch and Strathspey Local Plan 1997, and to the National Park's aim to conserve and enhance the natural heritage of the area.

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**9 November 2004**

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