
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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DEVELOPMENT PROPOSED: ERECTION OF DWELLINGHOUSE AND GARAGE, LAND BETWEEN LYNEBRECK AND EASTER LYNEBRECK, TOMINTOUL ROAD GRANTOWN ON SPEY (EXTENSION OF TIME LIMIT OF PREVIOUS APPLICATION)

REFERENCE: 04/126/CP

APPLICANT: MRS E O'BRIEN, EAST LYNEBRECK, TOMINTOUL, PH26 3NN

DATE CALLED-IN: 26TH MARCH, 2004

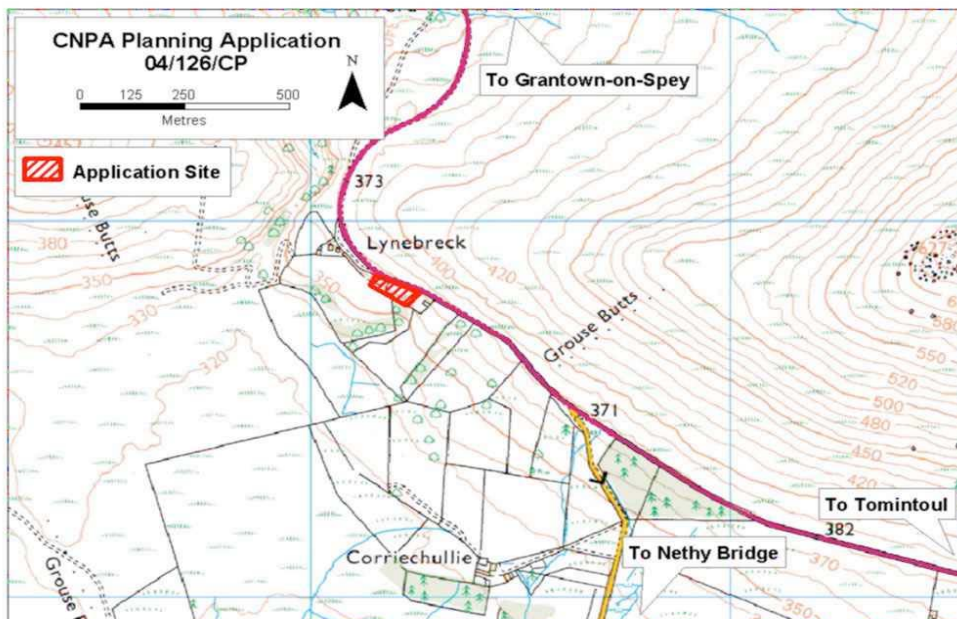


Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. The site is a steeply sloping area of ground immediately adjacent to the A939 road. It has a long frontage onto the public road, with the site access at the extreme north-western corner of the site. There is some birch scrub woodland and rough grazing on the site at present. The site is approximately 7 kilometres south east of Grantown, and is between a traditional stone built house at Lynebreck (to the west) and a modern detached house (Easter Lynebreck) to the east side (see Fig. 1). To the west side of the site access, the public road bends, and a steep bank exists on the north side of the road (the inside of the bend).
2. The proposal is for a new house with attached garage. The house is single storey, and is located within an area of scattered trees. Full planning permission was approved for a house on this site on the 28th June 1999, contrary to officer recommendation, to a different applicant. A number of significant planning conditions were attached to the consent, particularly relating to the site access – requiring further details to be submitted and approved prior to any operations commencing on the site. None of these conditions have been complied with to date.
3. This application is an unusual one, in that a full planning permission exists for a house and garage on this site (expires on 28 June of this year), and after nearly 5 years there have been no further details submitted to clarify how an acceptable access can be taken to the site. No operations have therefore commenced on site. At the end of the 5 year period the planning consent lapses. The applicant wishes to extend this period.

DEVELOPMENT PLAN CONTEXT

4. **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); impact on resources including habitats, landscape and scenery etc.
5. **The Badenoch and Strathspey Local Plan (September 1997) Policy 2.1.2.3 (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 current application site lies within the Restricted Countryside policy area, and no local land management need case was noted at the time of the application in 1998. **Policy 2.1.2.5, (Housing Groups)**, indicates that there is a strong presumption against development of ad hoc clusters of houses in the countryside. In exceptional cases there may be limited opportunities to consolidate or round off certain housing groups. Such applications must show what arrangements are intended to screen or enhance the amenity and appearance of the group, and indicate proposed measures to remedy any existing access or infrastructure problems. No landscaping or enhancement proposals were submitted with the original application. In **Policy 2.4.8. (Water Catchment Areas)**, it states that the Council will safeguard water catchment areas as shown on the Proposals Map from development, land use changes or other activities likely to prejudice existing or future supplies.

6. 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).
7. In **National Planning Circular 4/98, (The Use of Conditions in Planning Permission)**, there is advice about applications to extend the period of a planning consent beyond the standard 5 year period. In Paragraph 52 it is stated that the planning authority can require further information, if needed, and as a general rule such applications should be refused only where:-
 - a) there has been some material change in planning circumstances since the original permission was granted (eg a change in some relevant planning policy for the area, or in relevant road considerations or the issue by the government of a new planning policy which is material to the renewal application);
 - b) there is likely to be continued failure to begin the development and this will contribute unacceptably to uncertainty about the future pattern of development in the area; or
 - c) the application is premature because the permission still has a reasonable time to run.

CONSULTATIONS

8. On the previous application **SEPA** had no objection provided that the subsoil was sufficiently permeable for a soakaway, and the soakaway was located at least 50 m from any well. A Building Control Officer inspected test pits at

that time and confirmed that the subsoil conditions were suitable for use as a means of effluent disposal.

9. On the original application it was considered that the existing private water supply serving the adjacent house was satisfactory, and there was no objection from the **Highland Council's Protective Services Officer, (Environmental Health)** provided there was an agreement reached with the adjacent owner (now the applicant).
10. **Highland Council's Archaeology Unit** stated, at the time of the previous application, that the site is in an area where buried archaeology could be affected. Any finds or features revealed by the works should be identified and, if necessary, recorded before destruction. They required a condition to this effect, if the application was approved.
11. **Highland Council's Area Roads and Transport Manager** advised, in 1998, that a number of conditions should be attached to any planning consent. As the access is on a road bend, and at the entrance to a sloping site, there were conditions about visibility splays and construction (radii, width, gradients, surfacing), and about car parking on the site (at least two spaces and a turning area). The existing trees on the site should be preserved to ensure that there will be no distraction or dazzle to drivers on the A939, and the house and access should not come within 20m of the road edge to avoid any undermining of the road banks. Roadside fences required to be set back at least 2 metres from the road edge. Details of the access and parking arrangements had to be submitted prior to the commencement of any work on the house. **The Area Roads Manager** has been re-consulted and he confirms that the same conditions would be required. He supports the recommendation of the Planning Officers at the time of this previous application, that the considerable engineering works would result in the formation of a large and prominent embankment which would be detrimental to the rural character and amenity of the area. He also notes that considerable engineering works would be required on the north side of the public road in order to provide the appropriate visibility splays.

REPRESENTATIONS

12. At the time of writing, no representations have been received.

APPRAISAL

13. The main issue initially is whether the planning authority should consider extending the life of the planning consent for a new house on this site. Significant planning conditions have not been complied with in the 5 year time period from the date of the original planning consent. No operations have commenced on the site to keep the planning consent 'live', and indeed the planning conditions make clear that development of the house may not commence until significant details on the site access have been drawn up,

assessed and approved. The applicant was advised of the necessity to comply with these requirements prior to the expiry of the planning consent. From a conversation with the applicant, however, it is my understanding that, since she resides in the house immediately adjacent to the site, in order to retain the amenity of her property and the surrounding area, she purchased the site, in order to protect it from development. It is understood that she has no intention of implementing the permission by erecting the house or constructing the access. She does, however, wish to retain the development value of the site as an investment for the future. With this in mind, she sought advice from Highland Council Planning Officers in 2002 on how best to retain the permission. At that time the Planning Officers advised that if she was not going to comply with the roads conditions and then start works on the site, she should apply to extend the life of the permission, by submitting an application to renew, early in 2004.

14. In 1998 the Highland Council Planning Officers recommended refusal for 5 reasons. These included; the development would be contrary to housing in the countryside policies, (Policies 2.1.2.3 and 2.1.2.5 of the Local Plan); the formation of the access would result in the formation of a large and prominent embankment which would be detrimental to the rural character and amenity of the area; the design of the building would be considered to have a suburban appearance and character, detrimental to the amenity of the area and contrary to the principles of good siting and design of housing in the countryside; and the proposal would establish a precedent for other such undesirable developments in the countryside and in the water catchment area. However, following a Committee site visit, and subject to an agreed amended house design, the decision of the Badenoch and Strathspey Area Committee was to grant full planning permission.
15. In June 1999 the permission was issued after agreement on the slightly amended house design. In addition to the standard 5 years to commence the development, the conditions covered – details of the access and parking to be submitted prior to the commencement of any building operations; specific construction and design of the access; construction of visibility splays prior to any commencement of operations; surfacing of access prior to commencement of operations, the provision of roadside fencing; the protection of trees; the recording of any archaeological features; the roofing to be of grey slate like appearance and details of roughcasting to be submitted for approval; and no building, parking or manoeuvring areas to be within 20metres of public road edge.
16. The current applicant (Mrs O'Brien) is different from the applicant that was granted planning consent in 1999 (Mr Grant), but she appears to have been associated with the application site since at least December 2001. At the time of the original planning application, the applicant, Mr Grant, was able to indicate that he had control over the land needed to carry out the necessary road improvements required by the Roads Authority beyond the application site boundaries. The current application documentation indicates that Mrs. O'Brien owns the site but not necessarily the land outwith the site which would be required for meeting some of the access improvement conditions.

Under the legislation, when applicants apply to renew an existing permission, neighbour notification is not required. However, the drawings seem to indicate that all surrounding land is still owned by Mr. Grant, the previous applicant. The current applicant, Mrs O'Brien is aware of all the planning conditions but she may have to enter into a Section 75 Legal Agreement with the adjoining landowner and the CNPA, in order to secure the access standards requirements.

17. It is not possible to make a favourable recommendation on the plans that exist at present. The principle of the erection of a new house here, is clearly contrary to Development Plan policies – both in the Structure Plan and the Local Plan. However if the principle of the development of a new house is to be accepted on the basis that a previous application remained “live” at the time when the renewal application was submitted, then the details of the proposal require to be examined.
18. The details of the access caused some concern with the original application, and because the details required by the conditions have not been submitted for approval, it is still not certain that the access can be designed and constructed in a manner that will satisfy the planning authority and the roads authority. Also it is not certain that the new applicant would be able to carry out the necessary works envisaged outside the site boundaries, necessary to provide the full visibility splays essential for road safety standards. This is an A Class road, where standards of road safety and access design must be high. Significant engineering works to remove roadside banks and to build up the site access to the necessary levels and gradients will have a significant affect on the local landscape, and may also impact on some of the trees on the application site. The applicants were asked to submit further details of the works that were required in the planning conditions – relating to the site access. However, because it would appear that she does not want to implement the permission, these have not been submitted.
19. The house design itself is not of a particularly high standard, even although some changes were made in 1998/9. The plans suggest that the L-shaped building is to be located almost on a level site (only a 600mm difference in ground level from front to back), but the site is largely sloping ground and either significant excavation of the plot will be necessary, or some considerable under-building will be required – adding to the prominence of the building in the landscape. The walls are specified to be roughcast (type not detailed as yet) and the roof clad with slate grey tiles (tiles not specified as yet). There are no plans indicating any landscaping of the site. There are also no plans indicating the existing trees on the site, especially around the house location, or indicating where any existing trees may be affected by driveway and access works.
20. National Planning Circular 4/98 indicates that a renewal of an unimplemented consent is not automatic, and a planning authority can refuse consent for a number of reasons (see paragraph 7 above). Two major considerations are relevant here, firstly the adoption of the 2001 Highland Structure Plan, and secondly the establishment of the Cairngorms National Park Authority. The

2001 Structure Plan and the 2003 guidance on housing policies clearly indicate that a new house on this site would be a significant departure from policy, as it was when originally considered in 1998. In addition, the creation of the Cairngorms National Park Authority has established a new planning body, which has special aims for the new wider area of the National Park. The application must be assessed on its planning merits, ie the policies of the development plans, but the establishment of the National Park and the aims to which it is working, must also be considered as a material change in the planning circumstances.

21. In most cases, applications for a renewal of a permission, especially one where it is the first renewal, would be relatively straight forward. Material circumstances do not generally change significantly within the five year period of a permission. However, in this instance, as described above, they have changed. The recommendation is therefore one of refusal, principally on policy grounds relating to lack of need for a house for land management purposes and landscape impact, but also on the lack of clarity still, 5 years on, of how an adequate and acceptable access for the site can be constructed or even achieved. There are also uncertainties about how the house will sit on the slope and how it will impact on existing trees. In addition, there are uncertainties about the design and materials for the proposed house, and how the site will be landscaped if developed.
22. The applicant has advised that she does not want to have a house on the site but wishes to retain her investment for the future. Investment opportunities are not a material planning consideration. In planning terms, at this time, the only way to ensure that the site is not developed in an inappropriate and unjustified way, which is contrary to planning policy, is to refuse this application to extend the life of the previous permission.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

23. Although there are no natural heritage designations, a new house and garage of the design proposed and the formation of its access, on this elevated and prominent site, will have negative impacts on the character and quality of this part of the rural landscape of the National Park. It will therefore not promote this aim.

Promote Sustainable Use of Natural Resources

24. In 1998/9 this issue was not a consideration, and the proposal does not appear to make any concessions to the use of natural resources in the design and/or construction of the new house. The construction works for the house and the access may affect some of the existing trees.

Promote Understanding and Enjoyment of the Area

25. The proposal does nothing to promote this aim of the National Park. An extension of time to be able to implement the existing plans will more likely have a negative effect, and promote uncertainty and confusion about the quality standards operated by the National Park, in such a prominent and visible location.

Promote Sustainable Economic and Social Development of the Area

26. Located in open countryside, at some distance from a settlement and any community/educational/retail facilities, the proposal does not satisfy this aim.

RECOMMENDATION

27. That Members of the Committee support a recommendation to:

REFUSE Planning Permission to Extend the Time Limit for Full Planning Permission (BS/98/46) for a Dwellinghouse and Garage at Land Between Lynebreck and Easter Lynebreck, Tomintoul Road, Grantown on Spey, for the following reasons,

- i. The proposed development is contrary to the Highland Structure Plan (2001) Policy H3 (Housing in the Countryside) and Badenoch and Strathspey Local Plan (1997) Policy 2.1.2.3 (Restricted Countryside Areas). These policies state a strong presumption against the development of houses in the Restricted Countryside except where a house is essential for the management of land, and related family and occupational reasons. No such justification has been put forward in this instance.
- ii. The proposed development is contrary to Highland Structure Plan (2001) Policy L4 (Landscape Character) and Badenoch and Strathspey Local Plan (1997) Policy 2.1.2.5. (Housing Groups). These indicate a strong presumption against development of further ad-hoc clusters of houses in the countryside and state that consideration of development proposals will have regard to the desirability of maintaining and enhancing landscape character. The application site is in an elevated, open countryside location within the Cairngorms National Park, and it represents a presently undeveloped gap between two existing dwellings, which is important as a setting for these dwellings and as a visual barrier. If approved the house and its access, which would require the formation of a large prominent embankment, would be detrimental to the rural character and amenity of the area and would create an

extremely prominent precedent for unsympathetically designed and landscaped new developments in the National Park.

- iii. It has not been demonstrated that a safe and sensitively designed access onto the A Class road, with the required vehicle gradients and visibility sight lines, can be achieved and designed for the development, without the necessity for significant engineering works within the application site and along the public road which would add to the physical impact of the proposed development in the landscape.

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