
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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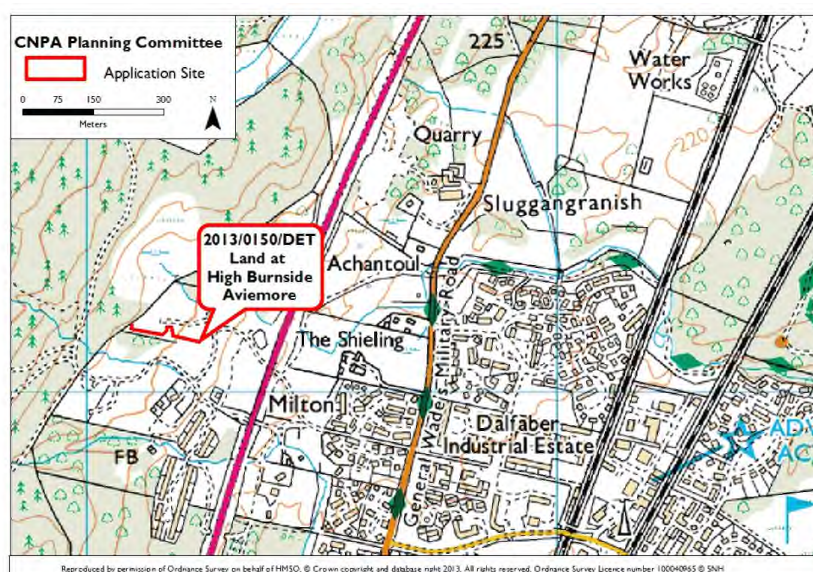
DEVELOPMENT PROPOSED: APPLICATION UNDER SECTION 42 TO VARY CONDITION REGARDING BOUNDARY TREATMENT TO THE REAR FENCE OF PLOTS 11 – 15. TO REPLACE EXISTING 0.9 METRE HIGH POST AND WIRE FENCE WITH 1.8 METRE HIGH TIMBER SCREEN FENCE AT LAND AT Highburnside, Aviemore

REFERENCE: 2013/0150/DET

APPLICANT: AVIEMORE AND HIGHLAND DEVELOPMENTS LTD., STONEYFIELD BUSINESS PARK, INVERNESS, C/O BRACEWELL STIRLING CONSULTING

DATE CALLED-IN: 20 MAY 2013

RECOMMENDATION: APPROVE WITH CONDITIONS



Grid Reference E 289169 N 814125

Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. This application is made under Section 42 to vary the condition regarding the boundary treatment to the rear fence of plots 11 to 15, to replace the existing 0.9 metre high post and wire fence with a 1.8 metre high timber screen fence at Highburnside, Aviemore. The development lies to the west of the A9 trunk road and the properties in question form part of the latest phase that has been constructed (Phase 3), lying to the west of the previous phase. The rear of the properties faces south and the boundaries are along the southern edge of the gardens, concealed from view from the A9 by the earlier phases of the development.
2. The application has been submitted following lengthy discussions between CNPA Enforcement and Planning Officers and the developer.
3. The proposed fence is to be constructed of rough sawn Redwood timber, with posts every 1.8 m and three rails on the internal (private garden) side. The application drawing shows pockets of planting against the fence in the open area beyond the gardens. This lies outwith the red line boundary of the application but is within the control of the applicant, who advises that it has previously been agreed as part of the original application.

Site History

4. Outline planning permission was granted by Highland Council in June 2004¹ for a housing development on the lands at Highburnside. Subsequently, CNPA approved the site masterplan and associated works in February 2006 (05/177/CP).
5. Planning permission was granted in 2011 for the erection of 10 villas on plot numbers 11 to 20 (Application No 2011/01217/DET). Condition 9 attached to this planning permission stated:-
'Front garden areas shall be maintained in an open plan format in perpetuity. Prior to the commencement of development details of all boundary treatments on the side and rear boundaries of individual plots shall be submitted for the agreement of CNPA acting as Planning Authority'.
The reason for this condition was 'In the interests of orderly development and visual amenity'.
6. The approved Phase 3 Site Layout Plan (3767/055) shows a 900 mm post and wire mesh fence (rabbit proof) along the garden boundaries that form the basis of the current application. A letter from the agent, Bracewell Stirling, dated 8th March 2012 shows revised planting and a post and wire fence.
7. Construction has been on going at the site since 2007 with Phase 3 (Plots 11 to 20) close to completion.
8. There have been ongoing issues regarding compliance with this and other conditions of development on this site. The CNPA Enforcement and Planning Officers have been in discussion with the developer and individual property owners with a view to achieving compliance and finding a resolution.

¹ Highland Council ref. no. 03/00322/OUTBS.



Fig. 3: Proposed site layout plan

DEVELOPMENT PLAN CONTEXT

National policy

9. **Scottish Planning Policy² (SPP)** is the statement of the Scottish Government's policy on nationally important land use planning matters. Core Principles which the Scottish Government believe should underpin the modernised planning system are outlined at the outset of **SPP** and include:
- The constraints and requirements that planning imposes should be necessary and proportionate;
 - The system shouldallow issues of contention and controversy to be identified and tackled quickly and smoothly; and
 - There should be a clear focus on quality of outcomes, with due attention given to the sustainable use of land, good design and the protection and enhancement of the built and natural environment.

Strategic Policies

10. The strategic planning policies are embodied in the Cairngorms National Park Plan (2007). The policies are not detailed here, as the application is not considered to have any strategic implications.

Structure Plan Policy

11. The structure plan policies are embodied in the Highland Council Structure Plan (2001). The policies are not detailed here, as the application is not considered to have any implications at this level.

² February 2010

Local Plan Policy Cairngorms National Park Local Plan (2010)

12. The Cairngorms National Park Local Plan was formally adopted on 29th October 2010. The full text can be found at :
<http://www.cairngorms.co.uk/parkauthority/publications/results.php?publicationID=265>
13. The Local Plan contains a range of policies dealing with particular interests or types of development. These provide detailed guidance on the best places for development and the best ways to develop. The policies follow the three key themes of the Park Plan to provide a detailed policy framework for planning decisions:
 - Chapter 3 - Conserving and Enhancing the Park;
 - Chapter 4 - Living and Working in the Park;
 - Chapter 5 - Enjoying and Understanding the Park.
14. The following paragraphs list a range of policies that are appropriate to consider in the assessment of the current development proposal.
15. *Policy 6 – Landscape* : there will be a presumption against any development that does not complement and enhance the landscape character of the Park, and in particular the setting of the proposed development. Exceptions will only be made where any significant adverse effects on the landscape are clearly outweighed by social or economic benefits of national importance and all of the adverse effects on the setting of the proposed development have been minimised and mitigated through appropriate siting, layout, scale, design and construction.
16. *Policy 16 – Design Standards for New Development* : The design of all development is encouraged to :
 - Reflect and reinforce the traditional pattern and character of the surrounding area and reinforce the local vernacular and local distinctiveness, whilst encouraging innovation in design and materials;
 - Use materials and landscaping that will complement the setting of the development;
 - Demonstrate sustainable use of resources; and
 - Be in accordance with the design standards and palette of materials as set out in the Sustainable Design Guide.

Supplementary Planning Guidance

17. In addition to the adoption of the Cairngorms National Park Local Plan (2010) on 29th October 2010, a number of Supplementary Planning Guidance documents were also adopted, none of which are directly relevant to the current application.

Planning Legislation

18. The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011 details various categories of development that may be implemented by householders without an application for planning permission.
19. In the case of High Burnside, there is no condition restricting permitted development rights. Thus, whilst the boundary of the rear gardens is addressed by a planning condition, the residents still have permitted development rights in relation to development within their rear gardens. Under Class 3E, householders at Highburnside are able to erect, construct, maintain, improve or alter any gate, fence, wall or other means of enclosure **within** the curtilage of their dwellinghouse, unless it exceeds 2 metres in height
20. In addition, under Class 3A, residents at Highburnside can erect garden buildings covering up to 50% of the rear garden area, as long as the height of the eaves does not exceed 3 metres, the overall height does not exceed 4 metres and, within 1 metre of the boundary of the curtilage, no part exceeds 2.5 metres in height. There are no restrictions on the designs, materials, colours and finishes of such structures.

CONSULTATIONS

21. **Aviemore and Vicinity Community Council** was consulted on the proposal and advised that it is happy to support the application.

REPRESENTATIONS

22. The planning application was advertised in the Strathspey and Badenoch Herald on 23rd May 2013. No representations have been received in connection with the development proposal.

APPRAISAL

23. There are a number of issues to be addressed in considering this application:-

The aim of the original condition

24. The reason for the condition was 'In the interests of orderly development and visual amenity'. The question is therefore what the impact will be on the housing development as a whole and the visual amenity of the rear gardens in question, by substituting a 1.8 m timber screen fence for the previously approved 0.9 m post and wire fence.

25. As explained above, permitted development rights have not been removed from the properties. Thus, while the planning permission for the development specifies that a 900 mm post and wire mesh fence (rabbit proof) should be provided along the rear garden boundaries, householders are able to erect fences or walls within their gardens under their permitted development rights. The design, materials, colours and finishes of such interior fences or walls are not controlled.
26. In addition, ancillary garden buildings can be erected covering up to 50% of the rear garden area, up to 2.5 metres high within 1 metre of the boundary and up to 4 metres elsewhere. Again, there are no restrictions on the designs, materials, colours and finishes of such structures.
27. This is in addition to other features that are typically found in rear gardens, including children's play equipment and lines full of washing, which do not constitute development. Similarly, householders may plant hedges along the boundaries and it may be anticipated that some of these will be fast growing conifers, rather than appropriate native species.
28. Thus, as the housing development matures over time, the appearance of the rear gardens will not be uniform and in some cases may not be considered to be particularly attractive.

The impact of the original condition

29. Having established that the requirement for a post and wire fence along the rear garden boundaries is unlikely to be a means to secure orderly development and visual amenity, it is then appropriate to consider the impact of the condition. The norm for any householder is to require and expect some privacy and security in their rear garden area. A 900 mm post and wire fence does not achieve this. The garden area is open to view and children and pets are more difficult (in some cases impossible) to contain, affecting the overall enjoyment of the garden.
30. As a result, householders in the earlier phases of the development are already finding their own solutions to the problem, including erecting fences in contravention of the planning restrictions, which are being considered by the CNPA Enforcement and Monitoring Officer and will be the subject of a separate report to the Planning Committee on the 16th August.

The assessment of the current application

31. The value of the current application is that it would create a continuous and uniform boundary treatment, which I would argue would be more in the interests of orderly development and visual amenity than the post and wire fence previously approved. It would also provide screening and security to enable householders to enjoy their gardens however they choose.

CONCLUSION

32. It is considered that the timber fence will be more likely to serve to help blend the housing development against the periphery of the woodland area than using wire mesh fences for the gardens, which will not serve to screen the contents. Furthermore, the fence will provide privacy and security for residents in their rear gardens, thereby contributing to the longer term sustainability of the development.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

33. It is considered that the proposal along with associated landscaping will help conserve and enhance the natural and cultural heritage of the area in visual terms.

Promote Sustainable Use of Natural Resources

34. The timber screen fence will be constructed from natural materials.

Promote Understanding and Enjoyment of the Area

35. The proposal will not detract from or contribute to this aim.

Promote Sustainable Economic and Social Development of the Area

36. The proposal will not detract from or contribute to this aim.

RECOMMENDATION

That Members of the Committee support a recommendation to vary condition regarding boundary treatment to the rear fence of plots 11 – 15 to replace existing 0.9 metre high post and wire fence with 1.8 metre high timber screen fence at land at Highburnside, Aviemore, as follows:-

1. The fence shall be constructed from locally grown and sourced timber, treated in accordance with BS 1722-7:2006 and BS EN 599-1:2009. The fence shall not be stained or painted. A sample of the proposed material shall be submitted for the consideration and written approval of the Cairngorms National Park Authority acting as Planning Authority.

Reason : In the interests of the sustainable use of resources and to minimise the visual impact of the fencing on the local environment.

- 2 Detailed proposals for planting (including maintenance) along the public side of the fence shall be submitted for the consideration and written approval of the Planning Authority prior to the erection of the fence. The approved planting scheme shall be implemented during the first planting season following the erection of the fence.

Reason: To further minimise the visual impact of the fencing in the interests of visual amenity.

Fiona Murphy

4th July 2013

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The map on the first page of this report has been produced to aid in the statutory process of dealing with planning applications. The map is to help identify the site and its surroundings and to aid Planning Officers, Committee Members and the Public in the determination of the proposal. Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Cairngorms National Park Authority and other Copyright holders. This permission must be granted in advance.