
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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DEVELOPMENT PROPOSED: ERECTION OF DWELLING (OUTLINE), DEVELOPMENT SITE TO EAST OF LOCHBUIE CROFT, NEWTONMORE

REFERENCE: 06/280/CP

APPLICANT: MR D MACKENZIE, STRONE COTTAGE, NEWTONMORE

DATE CALLED-IN: 28 July 2006

RECOMMENDATION: REFUSAL

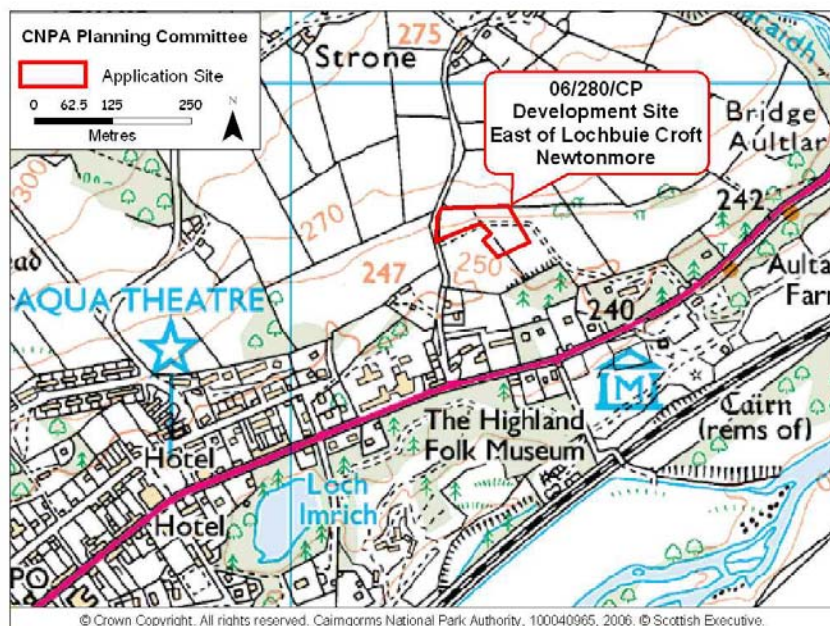


Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. This site is located to the north east of Newtonmore on the Strone Road (see fig 1) behind a detached house that has been constructed in the last 15 years and is now understood to be used as a care home. The site is separated from the edge of Newtonmore by a field, part of which is used for the storage of agricultural equipment.
2. The application is in outline form and seeks consent for a house. This site has a planning history, full consent being granted for a house in February 2001 on basically the same site, this was a renewal of an earlier permission from 1995. Because the site is essentially in open countryside outside of the settlement the earlier consents were subject to an agricultural occupancy condition which stated “ *That unless otherwise agreed in writing by the Planning Authority the occupation of the dwellinghouse hereby approved shall be restricted to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 277 of the Town & Country Planning (Scotland) Act 1997, or a dependant/spouse/partner of such a person residing with him or her, or a widow or widower of such a person*”.
3. An application was submitted in 2004 by another party to have this condition lifted. The application was called-in by the CNPA as the removal of the condition would essentially grant planning permission for an open market house in open countryside where a policy of restraint applied. This application was refused by the Planning Committee in February 2005 as it was located in an area where the development plan indicates against housing. Recently, on checking the history file at Highland Council it was noted that the occupancy condition had been lifted from the 2001 decision under delegated powers by means of a non-material variation letter in March 2005 (This letter forms part of applicant’s planning statement see appendices).



Fig. 2 shows site access left of existing driveway. Fig 3 shows site on similar level to existing house (care home) on left of photo.

4. This application is essentially based upon a detailed set of personal circumstances. As a result of a divorce settlement the applicant had to leave his marital home which the croft was operated from and received a cottage on the croft, considered as being in non-habitable condition where he now lives and operates his croft interests from. This house was in a poor state and required significant investment to bring it up to habitable standard. The intention is that any house constructed as a result of this permission would be sold off to service the debts incurred in the renovation of the cottage where Mr MacKenzie now operates the Croft from (this cottage is not tied to the Croft). The land which relates to the current application site has been de-crofted.
5. The indicative plan submitted shows the house being accessed from Strone Road at the side of the building now used as a care home. The access would run along the garden boundary of that property leading to the proposed dwelling behind. For drainage a new septic tank is proposed with surface water run-off to separate soakaways as per the earlier full consents from 1995 and 2001.

DEVELOPMENT PLAN CONTEXT

National Guidance

6. **Scottish Planning Policy 3 Planning for Housing 2003** notes that where possible, most housing requirements should be met within or adjacent to existing settlements. This prevents the sprawl and coalescence of settlements, makes efficient use of infrastructure and public services and helps to conserve natural heritage and rural amenity. The guidance goes on to note that in more remote areas, new housing outside of settlements may have a part to play in economic regeneration and environmental renewal.
7. **Scottish Planning Policy 15 Planning for Rural Development 2005** advances a more positive policy in respect of housing in the countryside, but recognises that such approaches should be dealt with through the Local Plan process.

Highland Structure Plan

8. **Highland Structure Plan (approved March 2001) Policy H3** 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 - including 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). **Policy H8 of the Plan Access Arrangements for New and Existing Developments** notes that development proposals which involve new or improved access to serve more than 4 houses and/or to serve a development which would generate vehicular traffic equivalent to more than 4 houses shall be served by a road constructed to adoptive standards. The adopted road shall normally serve all of the new development and any existing development.

Badenoch and Strathspey Local Plan 1997

9. On the inset map for the **Badenoch and Strathspey Local Plan** the site is shown in an area where the text of the plan under 8.5.6 considers that a presumption will be maintained against development of open land adjoining Newtonmore which is important for agriculture or crofting, or diversification of these activities; nature conservation, including the SSSI; recreation and amenity; or is otherwise liable to flooding. This will not apply to essential infrastructure which should, where appropriate, be routed or sited to take account of other uses, activities and local amenity.

Highland Council Housing in the Countryside Development Plan Policy Guideline 2006

10. **Highland Council have produced a new Planning Development Policy Guideline Housing in the Countryside (March 2006). The CNPA was not consulted on and has not adopted this guideline.** This document sets out the Council's approach to housing in the countryside, taking account of Structure Plan Policy and also more recently issued guidance on rural development. The guidance notes that **open countryside** is all land outside the boundaries of defined settlements and not closely related to any listed housing group. New housing within open countryside will be exceptional and will only be permitted, in accordance with national guidance and the approved Structure Plan policy, where it complies with the following requirements.
11. Land management or family purposes related to the management of the land (retired farmers and their spouses). Any proposal for new housing in the countryside associated with land management activities must demonstrate that a sequential approach to the identification of the need for that house has been followed. This means that applicants must be able to demonstrate that: there is no potential to use existing accommodation in the area; there are no existing permissions (not time expired) for dwellings that have not been taken up or developed; there is no evidence of houses or plots having been previously sold off from the farm holding; and there is no land on the farm holding that has been identified within an existing settlement. New housing will only be

regarded as essential where it is related to material planning considerations and meets the criteria specified. **The personal preferences or financial circumstances of any individuals involved are not material planning matters.** Applicants must provide evidence of existing land management activities to justify a new house, as detailed below.

Agriculture

12. Applicants must provide an independent statement of the level of need related to the management of land. The Council reserves the right to validate any consultant's report and the applicant will be charged for this validation. Justification will be judged against both a functional test (scale and nature of enterprise) and a financial test (viability of enterprise).

Croft Land Management

13. It is recognised that a degree of flexibility will be required, for example, in such circumstances it may not be possible to sustain full time employment and this will be taken into consideration in the tests. Any application for a house associated with crofting should be on a registered croft or associated common grazing and accompanied by appropriate confirmation from the Crofters Commission of the bona fides of the crofting application. Regard should also be had to the history of the previous housing development on the croft and the density of development. Any new housing must support and respect the traditional settlement pattern, the better agricultural land of the croft and not compound sporadic suburban type development.

Draft National Park Policy

14. For information purposes only, **Draft Cairngorms National Park Plan: Priorities for Action 2007-2012** puts forward 7 priorities for the National Park. One of these is "Conserving and Enhancing the Park's Biodiversity and Landscapes". Work within this priority includes enhancing the Park's landscapes, identifying and enhancing habitat networks, enhancing the condition of designated sites within networks, and protecting biodiversity. Another priority is "Making Housing Affordable and Sustainable". Work within this priority includes increasing supply and accessibility, promoting effective co-ordination and co-operation, and improving the quality and sustainability of design. **Please note the Draft Park Plan is not a land use development plan and carries no material weight at this stage.**
15. Again, for information purposes only, **the CNPA Consultative Draft Local Plan**, locates the site in a General Policy 1 Area. General Policy 1 indicates that development will be permitted if it is unlikely to have a significant adverse effect on the aims of the National Park or any of its special qualities. Where it is concluded that there would be adverse effects on the aims of the National Park, or any of its special qualities, or public health or amenity from a development, it will only be permitted

where it is considered that these would be outweighed by social or economic benefits of national importance or of importance to the aims of the National Park and where appropriate measures are taken to minimise and mitigate the adverse effects of the development.

16. **Policy 4 (Landscape)** advises that development that is likely to have an adverse impact on the special landscape qualities of the National Park, including: landscape character; scenic qualities; natural beauty; amenity; historic landscape elements; cultural components; or wild land character, will not be permitted.
17. The site is located outside of the village development boundary of the CNPA Draft Local Plan. **Policy 39 (Proposals for Housing Outwith Defined Settlements)** states that outwith established settlement boundaries proposals for new houses will be favourably considered where the proposal complies with at least one of three criteria. These are; the applicant has lived and/or worked in the area for at least 3 years, and is currently un-/inadequately housed; the proposal can be justified as essential to house worker(s) for long term economic activity which is specific to that locality, with a full reasoned case why housing elsewhere is not suitable – occupancy conditions will be required; or the proposal is for a new house which will be linked by a section 75 agreement to the active management of a crofting/agricultural unit or other land-based industry based in the specific locality. In each case, the application must be for a single house for permanent occupation and must either join an existing group of at least three houses; or be sited to complement the existing pattern and character of development.

CONSULTATIONS

18. **SEPA** comment that if the proposal is to utilise a private system within or close to the boundary of settlements served by public sewer then SEPA is likely to object to this, therefore please consult SEPA again highlighting this issue. If a public Sewer system does not exist then, in a planning context, the proposals for foul drainage are acceptable provided appropriate minimum distances from watercourses abstraction points can be achieved. There is no objection in principle to surface water soakaways being used.
19. Regulatory advice has been provided by **SEPA** direct to the applicant.
20. **Highland Council Area Roads and Community Works Manager** notes that access to the site is taken via a section of Strone Road that is unadopted and of a poor standard. The road already serves in excess of four dwellings and in accordance with Council policy the Area Roads Manager is unable to recommend approval of this or any similar application until such time as the road has been upgraded to a standard suitable for adoption.

REPRESENTATIONS

21. The applicant's agent has produced a comprehensive planning statement that is attached at the back of this report. This statement illustrates the background of the application and the personal circumstances of the applicant. The applicant has incurred significant debts as a result of renovating the cottage and needs the sale of the application site to clear these debts and to allow him to continue working on the land. The statement offers the inducement that the applicant would be willing to tie the renovated croft house to the croft holding should the Planning Committee be willing to grant the permission being sought. The Planning Statement also offers indicative proposals for a house design showing that a house of traditional scale and form can be accommodated at the site.

APPRAISAL

Principle

22. The primary issue here is with regard to the principle of the development proposed by this outline application set against the adopted policy context and the site history. Other more technical issues relating to highways and drainage follow this principle discussion.
23. In terms of principle, the policy starting point is clear on all fronts that this site is essentially an area where there is a strong presumption against residential development unless there is a land management (agricultural) or (crofting) justification for allowing otherwise. The site has received two earlier permissions from Highland Council but these have expired. The last permission was granted in 2001 with an agricultural occupancy condition as set out in paragraph 2 of this report. The earlier application was also subject to such a condition. The assessment from Highland Council Planning Committee was clear in that the site was outside of the settlement of Newtonmore so consent was granted on the basis of the agricultural occupancy condition, although it was recognised at the time that no great justification was made on agricultural grounds the committee were mindful of the previous consent so granted permission in 2001 on the basis of the restrictive condition.
24. A later application to remove the occupancy condition was called-in by the CNPA and refused as there was no justification for the removal and recognition was made that a positive decision would have resulted in a house in an area where there is a strong presumption against. This application was made by another party with the landowner (current applicant) notified by the applicant in accordance with the regulations. Subsequently, a few weeks after the CNPA decision to refuse the condition, it was lifted from the 2001 approval under delegated powers

by means of a non-material variation letter from Highland Council which is attached at the back of the report as part of the applicant's representations.

25. In my mind, the principle issue is very clear with this proposal, all of planning policy indicates against the scheme and the planning history of previous consents on the site is now largely historic and provides only limited material weight for departing from a policy of restraint, this position is further strengthened considering that an unfettered permission is being sought by this application. The fact that Highland Council chose to delete the occupancy condition from the 2001 is considered as an expectation to justify an open permission in this instance. Highland Council's PDET Committee took a decision in 2004 not to apply occupancy conditions to planning consents because of the difficulty in applicant's obtaining mortgages. However, the CNPA's position is clear and has been consistent in that where a land based management case is being made, a Section 75 Agreement, or occupancy condition is applied restricting the occupancy of the house to the land management activity being used as the justification for the house. Several permissions have been granted by the CNPA on this basis and it appears that applicants have been able to gain mortgages.
26. The site is close to the village of Newtonmore. Upholding the policy of restraint is particularly important close to the boundaries of settlements because the rural setting of existing towns and villages must be carefully protected to limit the spread of development into open countryside and prevent the coalescence of settlements and ribbon development. The proximity of the site to the settlement also diminishes any special justification for a need to live at this particular site as opposed to within the settlement of Newtonmore where there is an existing housing stock that can be accessed through the open market. In any case, it is clear that the applicant is applying for an unrestricted house permission at this site. A case is put forward as highlighted in the representation section of the report based upon the personal circumstances of the applicant but these can be given only very limited weight. The applicant is a crofter and it is argued that an open permission on this site will help the applicant to clear his debts in relation to a property that he has renovated and runs the croft from. It is not that there is a land management requirement for a house to manage the croft from but there is a financial requirement for the applicant to clear his debt to allow him to run the Croft. This is clearly a personal circumstance and not a land management one. Some potential house designs are put forward in the planning statement all of which are of a traditional character and may be appropriate to the site. The applicant and agent are to be applauded for these considered designs, but this is an outline application that considers the principle of the development proposed only, and not the design of any building (this would be the subject of a future reserved matters application should this outline scheme be approved).

27. The Cairngorms National Park Local Plan is the proper arena for any decision about this site in relation to housing and any ad-hoc decision on the basis of an individual application would contribute to undermining that process. Any positive decision would also set a precedent and make it more difficult to resist other similar proposals in the vicinity and further undermining the Local Plan process for the area which is the appropriate vehicle for taking decisions about where housing should be located.

Highways Issues

28. The negative response to the application from the Area Roads Manager is noted in paragraph 20. This is due to the four house rule being broken where any road that serves more than four dwellings must be upgraded to adoptable standard. The Area Roads Manager objected to the previous application but it was decided to approve the application on the basis that there had been a previous consent with the applicant arguing that the matter of the adoption of the road should have been dealt with earlier at a time when other developments were approved. Given that, in principle, my recommendation is that the Planning Committee should resist the application I can see no reason why the four house rule should be relaxed. Policy H8 of the Highland Structure Plan is clear and does not support this proposal. The fact that there are already more than four houses being accessed from the site is perhaps a sign of failure to resolve this issue in the past, but not a reason for compounding the existing situation by allowing another house on this road which is not up to the standard required by the Area Roads Manager.

Drainage Issues

29. SEPA have not objected to the application, but pointing out that if the site is served by the public sewer network it should be connected with that network. Previous decisions have shown that the site is not served by the public sewer network and have been accepted on the basis of a septic tank solution to foul drainage given adequate ground conditions.

CONCLUSION

30. The policy basis for this decision is clear cut in that the proposal is located in an area not allocated for housing by the Badenoch and Strathspey Local Plan. While I have sympathy with the personal circumstances of the applicant planning guidance is clear in that such matters can only be accorded **very limited weight as material considerations in the determination of planning applications**. The applicant has a house which he can operate the Croft from so in practical terms the land has a house that the land can be managed from. It is the applicant's personal financial circumstances that are fuelling the need for this application rather than the need for the Croft to have a house from which it can be managed. This must be weighed

against an adopted policy which shows the application as being in an area of restraint for housing, and where the CNPA have already effectively refused an application for an open market house by refusing to lift the condition on the earlier consent. The policy and previous decision weighs very heavily in favour of a recommendation of refusal. No land management case is being made for this particular site. However, should members wish to approve the scheme I would recommend that as part of approving this application the Committee resolve to ensure that the renovated cottage where the applicant now resides is tied to the Croft that he works. This would ensure that the benefits being offered by the applicant's planning statement are secured and make some contribution towards the aims of the Park.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

31. The character of the Park landscape and cultural heritage would change with a proliferation of rural dwellings unrelated to local land management. Also sporadic housing developments around the edges of settlements can detract from the character of the settlements, and cause difficulties for future **planned** expansions to these communities.

Promote Sustainable Use of Natural Resources

32. Not relevant to this outline application

Promote Understanding and Enjoyment of the Area

33. Not relevant to this application

Promote Sustainable Economic and Social Development of the Area Not

34. The application is clearly contrary to policy and based upon the personal financial circumstances of the applicant as opposed to the economic and social development of the area. Any need to live near to the site can be more than adequately accommodated by existing and future planned housing stock in the area.

RECOMMENDATION

35. That Members of the Committee support a recommendation to: **REFUSE** Outline Planning Permission for the erection of a dwelling east of Lochbuie Croft, Newtonmore for the following reasons:
- I. That the proposal is contrary to the Highland Structure Plan 2003, Policy H3 for Housing in the Countryside, which aims to protect the general countryside from sporadic, non-essential housing developments. The application is not based upon any land management justification. If approved, the proposal would encourage other isolated and sporadic developments in the countryside to the detriment of the natural and cultural heritage of the Cairngorms National Park.
 - II. That the proposal is contrary to Policy 8.5.6 of the Badenoch and Strathspey Local Plan 1997 which maintains a presumption against the development of open land adjoining Newtonmore. The proposal would set a precedent encouraging the unplanned, ad-hoc development of housing, undermining the Local Plan process in an area where restrictive policy applies.
 - III. The proposal would result in more than 4 houses being accessed from a road that is not constructed to the Council's adoptive standards. This directly conflicts with Policy H8 of the Highland Structure Plan 2003.

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16 October 2006

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.