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## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title:** REQUEST FOR REMOVAL OF SECTION 75 AGREEMENT

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(DEVELOPMENT MANAGEMENT)

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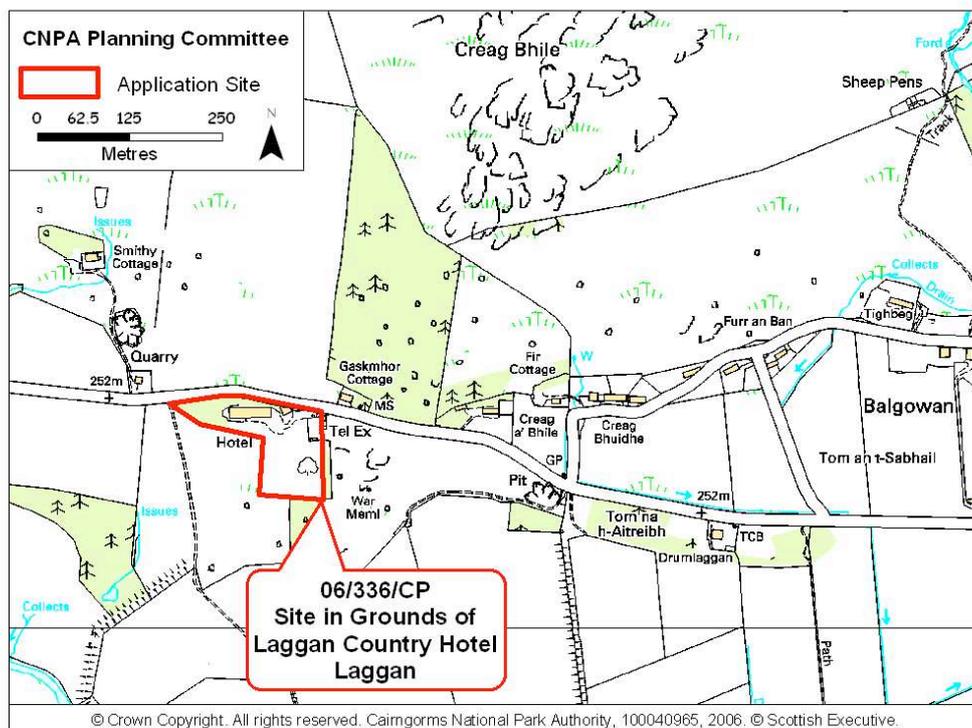
**DEVELOPMENT WITH S75:** ERECTION OF DWELLING AT LAGGAN COUNTRY HOTEL

**REFERENCE:** 06/336/CP

**APPLICANT:** MR D HUISMAN

**ORIGINAL DECISION:** 1 JUNE 2007

**RECOMMENDATION:** REFUSE REQUEST TO REMOVE SECTION 75 AGREEMENT



**Fig. 1 - Location Plan**

## PURPOSE OF REPORT

1. This paper is to allow Members to consider a request to remove a Section 75 Legal Agreement on a house, now in an advanced stage of construction that was approved previously by the CNPA.

## BACKGROUND

2. The site of this house lies within the grounds of the Laggan Country Hotel approximately 1.5 kilometres to the east of Laggan Village (see fig.1).
3. The site was open undulating ground with trees to the west dividing the site from a Memorial. The site has wide views over the strath to the west. The house is currently under construction (see fig.2).



**Fig 2 recent (June 2010) view of house (right of photo) from A86**

4. The application for full planning permission (06/336/CP) was considered by the CNPA Planning Committee on 1 June 2007. The site is located in an area of Restricted Countryside in the existing Badenoch & Strathspey Local Plan 1997 where there is a presumption against new housing other than for management of land, related family and occupational reasons. The Highland Structure Plan 2001 and Highland Council's Development Plan Policy Guidelines (April 2003 and March 2006) reinforced this position. The application was put forward on a business need case in that separate residential accommodation was required for the applicant and his family who

were, and still are, residing in temporary accommodation at the site. The family wanted separate accommodation. Part of the justification for a house also pointed out that when the Hotel was running at capacity, often as a result of coach tours there was no living accommodation available within the Hotel. The case was accepted by the CNPA and in effect an exception to planning policy was allowed based upon the applicant voluntarily signing a Section 75 Legal Agreement restricting the occupancy of the house and ensuring that it should not be sold separately from the Hotel.

5. Construction works for the house were noticed by the CNPA in Spring 2009 and the applicant advised to stop work. The applicant had not signed the Section 75 Agreement at that stage so no planning decision notice had been issued by the CNPA for the house. The agreement was signed in May 2009 allowing the release the decision notice and construction to continue.
6. The legal agreement held two elements the first held that ***'the applicant's and their successors in title, hereby undertake that the development, once erected, may only be occupied by someone engaged solely or mainly in the operation of the hotel business which is based on the site and by a dependant of such person residing with him or her. In the event that the applicant or their successors in title cease to be engaged in such work for any reason whatsoever, the National Park Authority may determine that some of all of the conditions, restrictions, obligations and others contained within this agreement may be modified, varied or discharged'***. The second element of the agreement held that ***'the applicants, for themselves and their successors in title, undertake that the development, once erected on site may not be disposed of separately from the remainder of the site'***.
7. A request was made by a planning agent on June 9 acting on behalf of the applicant (Mr Huisman) for the Section 75 Agreement to be removed from the house. This e-mail is attached at the back of this report. The e-mail requests that the agreement is set aside based upon the financial circumstances of the applicant. This, in particular, relates to the difficulties in gaining finance to finish the property. The e-mail comments that over 30 separate financial institutions have been approached and none are prepared to provide a mortgage facility for a development that is subject to a Section 75 Agreement. The e-mail recognises that neither the CNPA nor the applicant could have foreseen the unprecedented change in economic conditions which results in the legal agreement being impractical in relation to the development. A letter from the Bank of Scotland is also attached. The point is also made that without the ability to finish the house Mr Huisman and his family are still living in temporary chalet accommodation at the site. It is understood that the temporary accommodation is resulting in health problems for the family.

## CURRENT SITUATION AND APPRAISAL

8. As previously highlighted the CNPA has met with the Council of Mortgage lenders and since a previous case involving the lifting of a Section 75 Agreement was put before the Committee has also met the Scottish Government's Chief Planner along with other rural authorities to discuss this issue. This process is still ongoing but it is hoped that a common approach will be achieved amongst planning authorities.
9. With regard to this particular request, and as already mentioned, the site is in an area where new housing would not normally be permitted without a special justification. The justification was based upon the business need of the hotel enterprise and effectively the need for an operator's accommodation. Consequently, because the approval was exceptional it was subject to the legal agreement ensuring that the house was to be used by operators of the hotel and not sold off separately.
10. The request being made here is based upon the impracticality of the agreement because its presence prevents Mr Huisman from gaining funds to finish the house. A request was made of the agent for further information regarding whether a mortgage or business loan was being sought. Mr Huisman confirms that both mortgages and business loans have been investigated as a way of financing the house completion. Evidence of the numbers of institutions approached and their responses was also requested. This resulted in a letter dated 30 April 2010 from the Bank of Scotland which sets out that the Bank is unable to lend on a property with a Section 75 Agreement because it represents a restriction in the event of an enforced sale of the property. The letter is attached at the back of this report. No evidence has been provided of responses from other lenders.
11. The financial circumstances of a particular applicant are not a material planning consideration, but the ability to provide houses in rural areas where a specific case has been made is a material consideration. It is also a material consideration that where houses have been provided on a specific need case they should be retained for that need, otherwise the rationale for making the original decision and the policy are undermined.
12. While being sympathetic to the particular circumstances of the applicant and his family it is crucial to stress that the any decision being made is a planning decision and not a decision based upon the financial circumstances of an individual. Planning law dictates that decisions should be made in line with the development plan unless material considerations indicate otherwise. No operational argument is being made in practical planning terms that the house is no longer required for the management of the hotel. Given that financial circumstances are not a material consideration only limited weight can be carried by this argument when balanced against the restrictive housing policy criteria of the development plan for this location. It is also the case that the new CNPA Local Plan policy would not support such development without restriction along the lines of that applied by the legal agreement, so no weight

can be gained from this new policy regime in terms of supporting the removal of the agreement.

13. The argument is put forward by the agent that there is no other physical location for a further house at the site which would mitigate against the house under construction being sold off. However, the site where the temporary accommodation is situated at the entrance to the hotel could, potentially provide a site for a house and there is no guarantee that an unrestricted house that would result from the lifting of the agreement would not be sold off separately from the hotel.
14. This particular case differs significantly from the Section 75 Agreement on a croft house at Newtonmore that was lifted by the Planning Committee recently on a one-off basis. The key difference being that the previous case was for a crofting related family house based upon the special needs of crofting and its long standing relationship with the heritage and management of parts of the area. In addition a substantial amount of information was presented in support of that case. This current case was based upon an exception to policy to provide operator's accommodation for a full time business, enabling the efficient running of the hotel and allowing it to run at or near to full capacity. Lifting the agreement and allowing the potential for the house to be sold off could undermine the efficient operation of the hotel.

## RECOMMENDATION

15. Overall, there are no material considerations that would justify making a recommendation against the development plan provisions. Consequently, the recommendation is that Members of the Committee **REFUSE** the request to remove the Section 75 Agreement from Planning Permission 06/336/CP for the erection of a dwelling at Laggan Country Hotel.

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