
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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

DEVELOPMENT PROPOSED: ERECTION OF DWELLINGHOUSE, SITE AT MORVEN WAY, BALLATER (OUTLINE PLANNING PERMISSION)

REFERENCE: 04/260/CP

APPLICANT: MR M PIETRANEK, C/O MICHAEL RASMUSSEN ASSOCIATES, THE STUDIO, STATION SQUARE, ABOYNE, ABERDEENSHIRE, AB34 5HX

DATE CALLED-IN: 4 JUNE 2004



Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. This outline application is for the erection of a new house at the entrance to Morven Way (an existing residential development of 17 houses) which lies to the north-east of Ballater. The site is currently covered with trees and is part of a much larger woodland area which screens most of the housing in the Morven Way cul de sac from the "Pass of Ballater" road to the north side. There is a pavement along the frontage (east boundary) of the site, and housing feus exist across the road on the other side of Morven Way. There is another house feu to the south but the southern boundary of the application site is set back slightly from this garden boundary. To the west side of the site, the wooded slopes of Craigendarroch Hill rise, and to the north, across the "Pass of Ballater" there is more woodland. The site area is 0.0875Ha. and has a roughly triangular shape. Some informal footpaths which lead from Morven Way up and around Craigendarroch Hill, cross the site.
2. Initial plans did not specify the level of tree felling that would be required to allow the development, but following a request for further information, an indicative plan shows the close proximity of several mature trees to a potential house position. Following amendments, foul drainage is to be by a "Klargester Biodisk" mini sewage treatment plant which carries an outfall under the "Pass of Ballater" and discharges into the Ballater Burn in the woodland to the north. Although not shown, access will be directly from Morven Way.
3. In late January, the applicant's agent submitted some new information in support of the application. This information, which was not volunteered until this time, states that the applicant owns Monaltrie House which is situated to the south west and which is a Category "B" Listed Building. Under an existing planning permission and listed building consent, Phase 1 of restoration works at this building has been completed. However, a second phase is proposed which will involve the re-building of the north wing in order to restore its full 18th century appearance. It is stated that the present outline application for the house at Morven Way, which is on land that is in the control of the applicant, is vital to these further plans. The proceeds from the development of the proposed house site would provide enabling funding.

DEVELOPMENT PLAN CONTEXT

4. **In the Aberdeen and Aberdeenshire Structure Plan (NEST) 2001-2016, Policy 12, (House Building in the Countryside)**, states that there will be a presumption against new houses except for a new house which is essential to the efficient operation of an enterprise which is itself appropriate to the countryside. Within the Rural Housing Market Area, erection of a single new house within an existing cohesive

group of at least five houses may be permitted where the development provides a material improvement to local public infrastructure and which is accessible to local services by public transport, foot or bicycle. Local Plans are to define the exact nature of a 'cohesive group' using criteria such as landscape character and the existing pattern of development. **Policy 19 (Wildlife, Landscape and Land Resources)** states that development that would have an adverse effect on regional/local designations, such as Areas of Landscape Significance, Ancient Woodlands and species and habitats identified as Priorities in Local Biodiversity Action Plans will only be permitted where it can be demonstrated that any damaging impact is considered acceptable overall or there is a public interest which outweighs the conservation interest. In general terms, development will be sited to avoid adverse impacts on the biodiversity of a site, including its environmental quality, ecological status and viability. **Policy 20 (Built Heritage and Archaeology)** seeks to conserve and promote the valuable non-renewable resource of the built heritage of the North East. Enhancement, active use, conservation and access to built heritage should be encouraged wherever possible.

5. **In the Finalised Aberdeenshire Local Plan** there are a number of relevant planning policies. **Policy Hou\4 (New Housing in the Countryside)** states that the erection of a single new house in the Countryside will be approved, in principle, if; (a) it is for a full time worker in an enterprise which itself is appropriate to the Countryside; (b) the presence of that worker on-site is essential to the efficient operation of the enterprise; c) there is no suitable alternative to a new house e.g. through conversion of an existing building or properties for sale or rent in the area, which could fulfil the required function; d) the proposed house is within the immediate vicinity of the worker's place of employment; and e) it conforms with Appendix 1 (The Design of New Development in Aberdeenshire) **OR**, in the case of the Rural Housing Market Area part of the Countryside; (a) the site is within an existing cohesive group of at least five houses; (b) the site is accessible to local services by public transport, foot or bicycle; (c) the development provides a material improvement to local public infrastructure; and (d) it conforms to Appendix 2 (Single New houses in the Countryside - Cohesive Groups).
6. **Policy Env\3 (Other Recognised Nature Conservation Sites)** states that development that would have an adverse effect on other nature conservation sites such as an Ancient Long Established or Semi-Natural Woodland will be refused unless the developer proves its public benefits at a local level clearly outweigh the nature conservation value of the site and there is no suitable alternative site for the development. **Policy Env\4 (Biodiversity)**, indicates that development that would have an adverse effect on habitats or species protected under British or European Law, or identified as a priority in UK or Local Biodiversity Action Plans, or on other valuable habitats, will be refused unless the

developer demonstrates; (a) that the public benefits at a local level clearly outweigh the value of the habitat for biodiversity conservation; (b) that the development will be sited and designed to minimise adverse impacts on the biodiversity of the site, including its environmental quality, ecological status and viability; and (c) that there will be no further fragmentation or isolation of habitats as a result of the development. Where there is evidence to suggest that a habitat or species of importance exists on the site, the developer may be required at his own expense to undertake a survey of the site's natural environment. Where possible, developers should incorporate existing habitats and identify suitable opportunities for creating and restoring habitats, wildlife corridors and enhancement schemes, using best practice.

7. The site lies within a wider **Area of Landscape Significance** designation. **Policy Env\5 (National Scenic Areas and Areas of Landscape Significance)** states that development within such an area will not be permitted where its scale, location or design will detract from the quality or character of the landscape, either in part or as a whole. Where acceptable in principle, development must conform to Appendix 1 (The Design of New Development in Aberdeenshire) and Appendix 5 (Landscape Design Guidance). In all cases the highest standards of design, in terms of location, scale, siting, aesthetics and landscaping, will be required.
8. **Policy Env\8 (Trees and Woodlands)** states that development that would cause the loss of, or serious damage to, trees or woodlands, which are either covered by an existing or proposed Tree Preservation Order or of significant ecological, recreational, historical, shelter or landscape value, will be refused unless; (a) its public benefits at the local level clearly outweigh the value of the habitat; (b) the development will be sited and designed to minimise adverse impacts on the biodiversity of the site, including its environmental quality, ecological status and viability; and (c) there will be no further fragmentation or isolation of habitats as a result of the development.
9. **Policy Env\18 (Listed Buildings)** encourages the protection, maintenance, enhancement, active use and conservation of Listed Buildings. In addition this policy states that where housing is proposed as enabling development, the applicant must show there are no opportunities for new housing development under other housing policies. Any enabling housing development must also comply with Policy Hou\4. **Policy Env\22 (Public Access)** states that development that would have an adverse effect on any existing or potential public access for walking, cycling or horse riding, will be refused unless; (a) it retains existing or potential public access while maintaining or enhancing its amenity value; or (b) it makes alternative access provision that must be no less attractive and is safe and convenient for public use.

10. Other relevant policies include **Policy Inf4 (Drainage and Water Standards)** - to ensure the adequacy of drainage facilities, and water supply; **Policy Gen\1 (Sustainability Principles)** - to ensure all new development is as sustainable as possible and that developers give increasing consideration to sustainability aspirations in their proposals; **Policy Gen\2 (The Layout, Siting and Design of New Development)** - to achieve high quality new development particularly of buildings, which respects the environment and provides a sense of place.

CONSULTATIONS

11. **Aberdeenshire Council's Roads Service** has no objection to the development, subject to some design details on visibility splays, surfacing of the access, and parking and turning space being provided within the site.
12. **Aberdeenshire Council's Natural Heritage Planning Officer** has commented that the area of ground is a semi-natural woodland area which forms the edge of Craigendarroch Hill. Part of the site lies within Craigendarroch SESA and the area generally is important for capercaillie and red squirrel. The site contains mature conifers with an understorey of birch. From an inspection of the plans and the site it would appear that some of the mature trees would have to be removed and others, although outwith the site boundary would lie within falling distance of a house, and therefore they would be at risk (because of their size and maturity). Although the smaller trees are not in themselves significant, they also contribute to the woodland setting. Adjacent to the site is a small wet area which again provides diverse habitat and which appears to drain through the site. In addition to concerns at the loss of trees and habitat there is also concern at the loss of the present open access to the adjacent wooded area through and adjacent to the site.
13. **The CNPA Natural Resources Group** has commented on the treed nature of the site, with the trees and understorey on the site as an extension of the semi-natural woodland to the west, and also across the B972 to the north. There are no designations on the site itself, but the woodland canopy is contiguous with the Craigendarroch SSSI adjacent to the west. The nearby SSSI is of importance to local biodiversity – including red squirrel, scottish crossbill and nesting wood warblers (one of the few North Scotland sites regularly used by these birds). They feel that whilst the tree felling to develop the site itself may not be largely significant to the overall wider woodland habitat, the pressure to remove other trees adjacent to the application site for health and safety reasons is likely to have a far greater impact on the overall habitat. This, plus the potential precedent for further development has the potential to negatively effect the integrity of the canopy and the suitability of this area for some species of particular interest, such as the red squirrel.

14. **Scottish Water** has advised that a public water supply is available but that there are no public sewers in the vicinity.
15. **SEPA** initially noted that the Building Regulations state that groundwater below an infiltration system must be at least 1m below the bottom of the soakaway distribution pipes and that the seasonally highest level of the water table should be determined for the infiltration area. From the agents percolation tests and letters from neighbours, they stated that it was not clear whether a soakaway could be constructed in accordance with Building Regulations and consequently whether the proposed development could be provided with a satisfactory means of foul drainage disposal. **Aberdeenshire Council's Building Control Officer** for the area, advised that the porosity tests carried out appeared somewhat ambiguous and did not appear to comply with the Building Regulations. The history of standing water on the site would suggest that a soakaway system may not be appropriate. There is a need to demonstrate satisfactory drainage prior to the issuing of any Building Warrant. As a result of these concerns, the applicants have proposed a "Biodisk" mini sewage treatment plant, which provides an appropriate level of treatment to allow a discharge to a watercourse. It is proposed that this will discharge to the burn to the north of the site. **SEPA** have now confirmed that the burn does have sufficient dilution to permit them to consent a discharge of treated effluent from this proposed house to the burn.

REPRESENTATIONS

16. 11 letters of representation have been received and these are attached to the report.
17. The main reasons for objection cover the loss of trees, including attractive mature trees on the site which should be protected to retain the amenity of the area and the sound and visual buffer for the adjacent housing; the loss of access along the existing footpath into the woodland; the loss of the only unfenced boundary to the Craigendarroch Hill (affecting deer and the red squirrel); and the encroachment into a valuable wildlife habitat. Local residents are also concerned that the site has poor drainage and is claimed to be swampy even in dry periods. Trees other than on the application site itself would be under pressure to be removed or felled, and the movement of local wildlife would be affected by such creeping incremental development.
18. Residents at Morven Way indicated that, initially, the application proposed connection to the public sewage system, but that this does not exist and drainage would have to be via a septic tank and soakaway system. (Sewage disposal for existing Morven Way residents is via a communally owned sewage treatment plant, other than for 4 houses which have their own septic tanks and soakaways.) It is thought that the application site may contain the soakaway for

West Lodge, and for some road run-off. Drainage implications from the roads and from the site itself, feature in many objections.

19. Some objectors have raised the issue of the existing access onto the B972, where it is claimed that there have been near accidents with fast moving traffic.
20. One objector has referred to the woodland strategy for Aberdeenshire, which indicates the retention of the treed area in terms of its relationship with an area of woodland important for nature conservation and public access.
21. The Residents Association objections reflects all the objections on safety, amenity, access for walkers, the drainage proposals and the poor drainage on the site, and the proximity of an important SSSI.
22. One objector wishes to draw attention to legal burdens on the site, which it is stated might be burdensome enough to preclude development. The letter refers to possible rights of access to the site for installing, and thereafter inspecting, maintaining and repairing soakaways.

APPRAISAL

23. The considerations for this development are the principle of the development on this site, and secondly the physical implications of a new house and its associated infrastructure on the site and the surrounding area.
24. In policy terms this an application for a new house in the countryside, and both the Structure Plan and the Local Plan indicate a presumption against the principle of such a development unless there are particular circumstances. The applicant has not put forward any occupational need case for a house on this site, that would accord with Policy 12 of the Structure Plan or Policy Hou\4 of the Local Plan.
25. However, these policies do provide an exception, of allowing houses in the Rural Housing Market Area where it would be within a cohesive group of at least 5 existing houses. The applicant feels that the site should be considered acceptable in terms of this aspect of the policies. The locational criteria and definition of what constitutes 'within a cohesive group' is set out within the Local Plan, (Appendix 2). To summarise, for a site to be considered in terms of this policy, it should;
 - (a) demonstrate a clear "connectedness" with the group, through built form or mature landscape features, in its pattern of development;
 - (b) be an infill site with development on at least three sides, or where development is on two sides only, on at least one other side there would require to be a mature landscape feature;

- (c) be of a size (or shape) sympathetic to the character of the group;
 - (d) be an appropriate addition to the group, without creating ribbon development; and
 - (e) not adversely impact on existing landscape features or areas of importance to local biodiversity.
26. The interpretation of this policy and the design guidance has been tested at Appeal elsewhere in Aberdeenshire and an emphasis has been put on the words “within an existing group”. One appeal decision states that the strategy outlined in the policy is “clearly to allow some consolidation of cohesive groups”. This site, whilst it has housing development on two sides, would in fact extend the housing land beyond the present boundaries of the existing group of houses, and it does not lie ‘within’ the cohesive group. It does not represent infill development. The policy guidance does allow for significant landscape features to help define a third boundary to provide a setting for a new site, but this development would significantly impact on landscape features and an area important to local biodiversity (see paragraphs 30 & 31 below) in order to artificially create a new development site associated with, but not within, the existing Morven Way group of houses.
27. In addition, for new housing in the countryside within a group, to be acceptable, there has to also be a demonstrable improvement to local community infrastructure. The Local Plan advises that this should be, wherever possible, agreed with the local community. No proposal for infrastructure improvements has been submitted. My conclusion is that the development does not comply with Policy Hou\4, Appendix 2 in terms of cohesive groups in the countryside.
28. Within the last month, the agents have stated that another reason for accepting the proposal should be on the basis of creating enabling funds for carrying out further restoration proposals to the applicant’s Category “B” Listed Monaltrie House. It is stated that the applicant, in line with Policy ENV\18 of the Local Plan, would be prepared to consider a Section 75 Legal Agreement tying the proceeds from the sale of the proposed house plot to the restoration work. The full restoration of this Listed Building is certainly something to support in terms of the cultural heritage of this part of the Park. However, there are two issues in relation to this.
29. Firstly, in order to be acceptable in terms of Policy ENV\18, it is necessary to have an “enabling” development that is, itself, compliant with Policy Hou\4. As stated above, the proposed house site is not considered to be acceptable in terms of Policy Hou\4. Secondly, any departure from Policy Hou\4, would require to be considered on the basis of fully detailed submissions on costs of the restoration works, existing and proposed funding capacities, and cross funding phasing arrangements. There would also require to be a concurrent planning and listed building consent application for the restoration works which,

in itself, was deemed to be acceptable. The applicant has submitted an indicative drawing of proposals for the restoration of the north wing of Monaltrie House but there is no planning or listed building consent application. There are no detailed submissions in place which clearly demonstrate that the proposed house plot should be considered for approval on an enabling basis, against the terms of current policy.

30. The letters of objection and some of the consultation responses present issues concerned with the physical development of the site. The site does contain significant mature trees – 3 Scots Pine and 3 Larch, aged between 150 to 200 years old, a Sycamore tree of younger age (about 40 years old), and other scattered, largely birch, trees across the site. In addition there are other important mature trees, (Scots Pine and Norway Spruce), on the boundary of the site (tree trunks just outside the boundary but having root systems and canopies extending into the site). The submitted site plan indicates a house in a position under parts of the canopies of the oldest trees on the site. In order to physically construct and provide space for the house (which will need light into windows), future garaging, a driveway, parking and turning space within the site, visibility splays, and areas for services and useable garden space, a considerable area of ground would either require trees to be felled directly, or there would be pressure for further tree felling, on health and safety grounds in the future. The triangular shape of the site and the disposition of the most important tree features on and adjacent to the site, make the practicality of developing the site and retaining any of the principal trees on the site almost impossible. The conclusion is therefore that the existing treed character of the site will be significantly and detrimentally affected by the proposed development.
31. The site provides an edge to a mature semi-natural woodland area, which is also within a much wider Ancient Woodland Inventory. It is also on the edge of the Craigendarroch SSSI. The consultees have expressed concern about the impact the development will have on the woodland habitat. The site is part of the wider woodland habitat in the area which carries importance for biodiversity, and protected species, such as red squirrel and capercaillie, have been recorded in the vicinity. Nature conservation Policies 9 (Wildlife, Landscape and Land Resources) of the Structure Plan, and ENV\3 (Other Recognised Nature Conservation Sites), ENV\4 (Biodiversity) and ENV\8 (Trees and Woodlands) of the Local Plan, seek to preserve the biodiversity, ecological, recreational, and landscape value of such sites. There are no public benefits that accrue from the development that would outweigh the value of the habitat, and the development will result in adverse impacts in this respect. Included in this, may be the potential for adverse affects from the drainage proposals, on the Ballater Burn which is a tributary of the River Dee. The loss of the trees will also impact on the quality and character of the landscape value of the immediate area. As such, the development is viewed as being contrary

to the nature conservation policies and Policy ENV5 (Areas of Landscape Significance) of the Local Plan.

32. Finally, the existence of the informal footpaths which cross the site has been raised by representees and consultees. While there are no Rights of Way designations, these paths have been formed naturally by obvious desire lines by users wishing to climb or circumvent Craigendarroch Hill. The submitted site plan does leave a strip of land to the south of the proposed house plot boundary where an alternative route could be formed. However, there are no proposals shown for this. Policy ENV22 of the Local Plan requires existing public access for recreational purposes to be retained and maintained in terms of their amenity value. It is suggested that the proposal fails to comply with this policy. A house on the site, and any boundary fences to create privacy, would significantly affect the quality and character of these informal routes.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

33. The proposal would develop a site where there would be a significant visual and physical impact on the local natural heritage with the loss or damage to mature trees and associated ecosystems. A case for “enabling” development to help restore the cultural heritage of the applicant’s nearby listed building has not been satisfactorily made and at this stage cannot outweigh the impact of the development on the natural heritage of the area.

Promote Sustainable Use of Natural Resources

34. The development does not promote the sustainable use of natural resources. The loss of habitat and mature trees is negative in terms of this aim.

Promote Understanding and Enjoyment of the Area

35. There would be loss of semi-natural woodland and existing informal public access to the woodlands. New footpaths could be created, but they may impinge on neighbour privacy. The quality of new paths would be reduced by the loss of the natural character of the area and the proximity of houses.

Promote Sustainable Economic and Social Development of the Area

36. There are no benefits to the economic and social development of the Morven Way or Ballater community. A new house on this site has no benefit to local sustainable development, and its implementation requires the removal of natural features of local significance to wildlife and the local community.

RECOMMENDATION

That Members of the Committee support a recommendation to:

Refuse Outline Planning permission for the Erection of a Dwellinghouse adjacent to Morven Way, Ballater, for the following reasons :-

1. The proposed development is contrary to Aberdeen and Aberdeenshire Structure Plan 2001-2016 (NEST) Policy 12 (House Building in the Countryside Beyond the Green Belt) and Finalised Aberdeenshire Local Plan Policy Hou\4 (New Housing in the Countryside), both of which restrict new houses in the countryside unless particular circumstances are clearly identified in development plans or there are special needs. Neither of these exclusions apply in this instance.
2. The proposal is contrary to the Finalised Aberdeenshire Local Plan, Policy Hou\4 (New Housing in the Countryside) and Appendix 2 (Single New Houses in the Countryside-Cohesive Groups). The proposed development represents an extension to the existing group of houses into an established woodland area, and along the B972, which would adversely impact on landscape features and areas of importance to local biodiversity all to the detriment of this part of the local countryside. No material improvement to local public infrastructure has been demonstrated and the development would set a precedent for other similar developments in the local and wider countryside.
3. The development would involve the significant loss of a number of mature trees which form an important woodland edge for an area of semi-natural woodland and an important landscape feature which is designated as Ancient Woodland, and is within an Area of Landscape Significance. The development would also have an adverse impact on the biodiversity and ecological value, status and viability of the site which lies adjacent to the Craigendarroch SSSI. These adverse impacts are not outweighed by any public benefits. As such, the development is contrary to Aberdeen and Aberdeenshire Structure Plan 2001-2016 (NEST) Policy 19 (Wildlife, Landscape and Land Resources) and Finalised Aberdeenshire Local Plan Policies Env\3 (Other Recognised Nature Conservation Sites), Env\4 (Biodiversity), Env\5 (National Scenic Areas and Areas of Landscape Significance) and Env\8 (Trees and Woodlands), all of which seek to conserve the character of the area and the significant natural features within these areas. In this respect the development is also deemed to be

negative in terms of the first aim of the Cairngorms National Park which is to conserve and enhance the natural and cultural heritage of the area.

4. The development would have an adverse effect on existing informal walking routes which cross the site and allow public access to and around Craigendarroch Hill. Alternative routes are unlikely to maintain or enhance the amenity value of public access in the area. As such, the development is contrary to Finalised Aberdeenshire Local Plan Policy Env\22 (Public Access) and in this respect is deemed to have negative implications for the third aim of the Cairngorms National Park which is to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public.

Neil Stewart
21 February 2005
planning@cairngorms.co.uk