
CAIRNGORMS NATIONAL PARK AUTHORITY

DEVELOPMENT PROPOSED:

Request to discharge the Section 75 Legal Agreement associated with the planning permission 08/423/CP at Mullingaroch Steading, Street of Kincardine, Boat of Garten, PH24 3BY

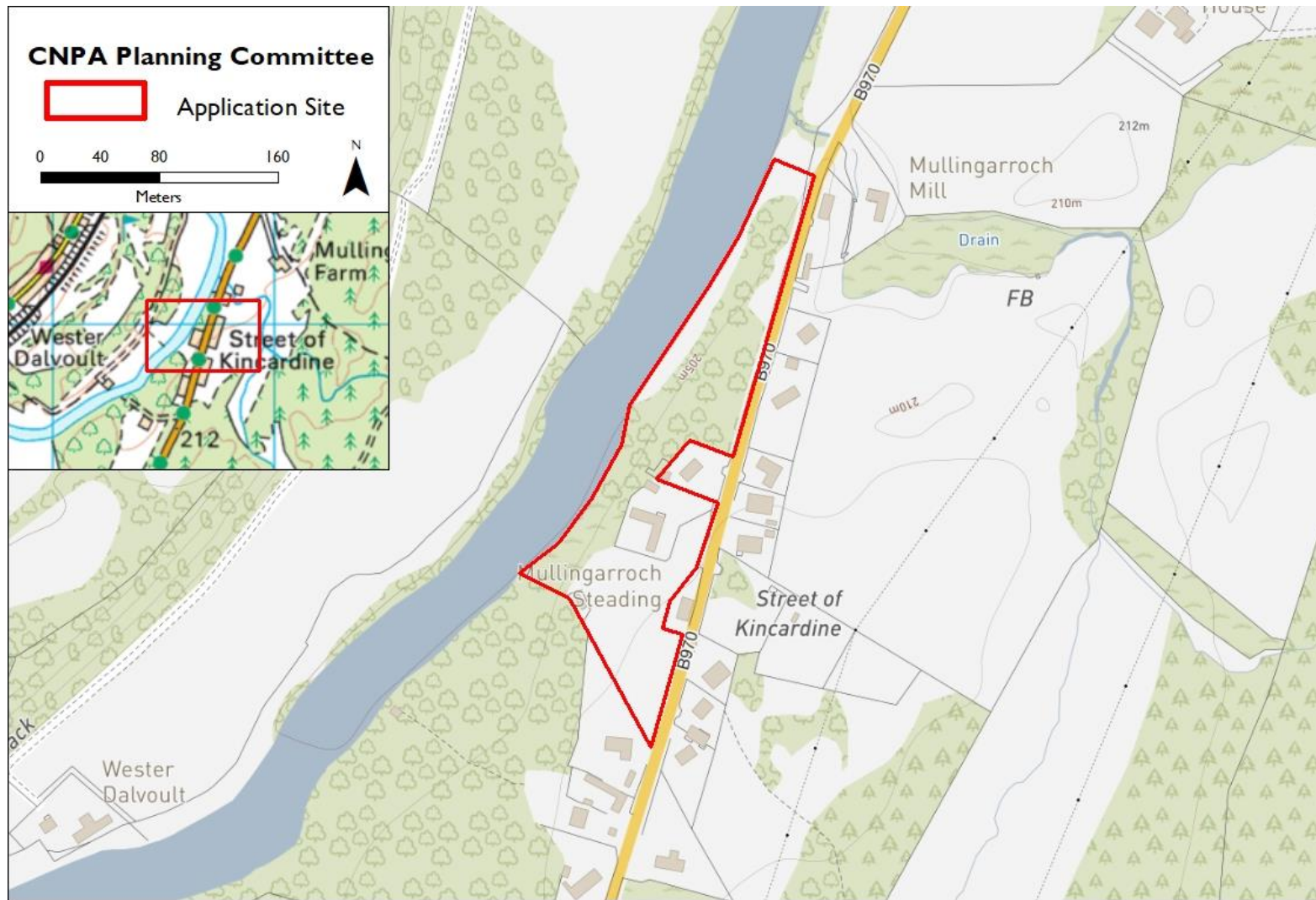
REFERENCE: 2021/0185/DET

APPLICANT: Mr and Mrs Fiona and Michael Morris

DATE CALLED-IN: 7 June 2021

RECOMMENDATION: Agree to discharge the S75 legal agreement

CASE OFFICER: Emma Bryce, Planning Manager



© Crown copyright and database rights 2021. Ordnance Survey Licence number 100040965

SITE DESCRIPTION, PROPOSAL AND HISTORY

Site Description

1. The land and property that relate to this application are located south of Mullingaroch Croft House at Street of Kincardine. The site measures 0.183ha and is located on the registered croft of Mullingaroch. The original Planning Committee report on the application that was approved and implemented is available at [Planning Committee Paper 2, 6 March 2009](#).

Proposal

2. The documents associated with this application are listed below and are available on the Cairngorms National Park Authority website unless noted otherwise:
<http://www.eplanningnpa.co.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=QTY6TSI0BY00>

Title	Drawing Number	Date on Plan*	Date Received
Supporting Information			25/05/2021
Supporting Information			31/05/2021

*Where no specific day of month has been provided on the plan, the system defaults to the 1st of the month.

3. This application requests the discharge the Section 75 Legal Agreement that relates to the planning permission granted on 8 July 2009, reference number 08/423/CP for the erection of a house at Land at Mullingaroch Croft, Street of Kincardine, Boat of Garten. The legal agreement restricts the occupation of the dwelling to “a person(s) mainly employed on the registered croft unit (Code 438/0007) at Mullingaroch and Croftnagarn Croft, or a dependant of such a person residing with him or her, or a widow or widower of such a person.”.
4. The applicant inherited Mullingaroch and Croftnagarn crofts and following the grant of planning permission (subject to the Section 75 Agreement restricting the occupancy of the house) in 2009 on this site, has actively farmed both crofts. They have met all responsibilities and have built up a successful crofting business with a Blackface ewes and flock of commercial laying hens.
5. The application to discharge the Section 75 Agreement has been accompanied by a statement from the applicant stating their reasons:
 - a) They are getting older and will not always be physically capable of working the land themselves. The house is fully future proofed and is where they intend to continue to live, so selling the croft is not an option.
 - b) They wish to be able to provide a potential tenancy opportunity in the future for the croft lands, if they become physically unable to work the land themselves.
 - c) They wish to have the capacity to re-mortgage should they require to do so in the future without the penalties associated with the Section 75 Agreement.

- d) They wish to simplify the legal process of disposing of their estate for their heirs as they have no children of their own thus preventing a natural succession on the croft.

History

6. Planning permission was granted for a single story, 4 bedroomed dwelling in an L-shaped configuration by the Cairngorms National Park Authority on 8 July 2009, following a the Planning Committee's agreement to approve the application on 6 March 2009 subject to conclusion of a legal agreement limiting the occupancy of the house. At that time, the application was determined under the policies of the Badenoch and Strathspey Local Plan 1997, the Highland Structure Plan 2001, with regard to the objectives of the Cairngorms National Park Partnership Plan 2007.

DEVELOPMENT PLAN CONTEXT

Policies

National Policy	Scottish Planning Policy 2014	
Strategic Policy	Cairngorms National Park Partnership Plan 2017 - 2022	
Local Plan Policy	Cairngorms National Park Local Development Plan (2021) Those policies relevant to the assessment of this application are marked with a cross	
POLICY 1	NEW HOUSING DEVELOPMENT	X
POLICY 2	SUPPORTING ECONOMIC GROWTH	X
POLICY 3	SUSTAINABLE DESIGN	
POLICY 4	NATURAL HERITAGE	
POLICY 5	LANDSCAPE	
POLICY 6	THE SITING AND DESIGN OF DIGITAL COMMUNICATIONS EQUIPMENT	
POLICY 7	RENEWABLE ENERGY	
POLICY 8	SPORT AND RECREATION	
POLICY 9	CULTURAL HERITAGE	
POLICY 10	RESOURCES	
POLICY 11	DEVELOPER CONTRIBUTIONS	

7. All new development proposals require to be assessed in relation to policies contained in the adopted Local Development Plan. The full wording of policies can be found at: <https://cairngorms.co.uk/wp-content/uploads/2020/11/CNPA-LDP-2020-as-Modified-for-web.pdf>

Planning Guidance

8. Supplementary guidance also forms part of the Local Development Plan and provides more details about how to comply with the policies. Guidance that is relevant to this application is marked with a cross.

Policy 1	New Housing Development Non-Statutory Guidance (2015)	X
Policy 2	Supporting Economic Growth Non-Statutory Guidance	X
Policy 3	Sustainable Design Non-Statutory Guidance (2015)	
Policy 4	Natural Heritage Supplementary Guidance	
Policy 5	Landscape Non-Statutory Guidance	
Policy 7	Renewable Energy Supplementary Guidance	
Policy 8	Sport and Recreation Non-Statutory Guidance	
Policy 9	Cultural Heritage Non-Statutory Guidance	
Policy 10	Resources Non-Statutory Guidance	
Policy 11	Developer Contributions Supplementary Guidance (2015)	

CONSULTATIONS

9. No consultations were deemed necessary for the determination of this application.

APPRAISAL

10. The applicant seeks to discharge the Section 75 Legal Agreement that limits the occupancy of the dwelling house to someone working the croft land. The agreement includes the provision that if there is a change to planning or other circumstances of the site which appears to any party to the Agreement or to their successors in title to render any of the conditions, restrictions, obligations and others contained in the Agreement no longer relevant, the parties or their successors in title should consider whether the said conditions should be modified, varied or discharged.
11. In assessing such applications the Planning Authority must consider the intent of the imposition of the legal agreement at the time of the consent being issued and whether the removal of this control would be acceptable in planning terms at the current time. Adopted Local Development Plan policies and any other material considerations that would warrant review of the Agreement should be considered, in this instance in relation to housing and economic development, and any advice or guidance issued in respect of occupancy restrictions from the Scottish Government or through Scottish Planning Policy.

PLANNING POLICY CONTEXT

12. The application was originally determined under the policies of the Badenoch and Strathspey Local Plan 1997, the Highland Structure Plan 2001, and with regard to the objectives of the Cairngorms National Park Partnership Plan 2007. The application was considered to comply with planning policy and provided a clear land management justification for the house. The Highland Structure Plan required that in the location of the house: “approvals granted on the basis of land management will be subject to an occupancy condition.”
13. Since the planning permission was granted there have been significant changes to the adopted planning policy in the National Park. Current adopted planning policies are

now contained within the Cairngorms National Park Local Development Plan 2021 and relevant supplementary guidance. There are a number of policies in the adopted LDP under which a house in this location could have been justified now. Policy I.2, Housing development in existing rural groups and Policy I.3, Other housing in countryside, would both be relevant if an application was made today. Although Policy I.3 of the adopted LDP would require an operational business need to justify a house, there is no requirement for any conditions or burdens that limit the occupancy of that house if the justification is accepted.

14. Scottish Planning Policy (2014) provides the national policy context in which the LDP was prepared sets out the Scottish Governments position on housing in rural areas and discourages the use of occupancy restrictions on new houses.

CONCLUSION

15. The applicants have established a successful enterprise on the croft while living in the house granted planning permission. They have provided a reasoned justification for seeking the discharge of the occupancy restriction on their property. The dwelling has now been on site for a number of years and has integrated into the surrounding, existing built form and spatial pattern of Street of Kincardine and is in accordance with development plan policies. If the application were to be considered at this point in time, it would be expected to be approved under the policies of the adopted LDP without the requirement for an occupancy restriction.

RECOMMENDATION

That Members of the Committee support a recommendation to agree the request to discharge the Section 75 Legal Agreement associated with the planning permission 08/423/CP at Mullingaroch Steading, Street of Kincardine, Boat of Garten, PH24 3BY for the following reasons:

- a) **The discharge of the Section 75 agreement would not prejudice the farming of the croft within the area.**
- b) **The Section 75 agreement would not be required to control the occupation of the dwelling under current adopted LDP policies.**

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.