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## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title:** REPORT ON CALLED-IN PLANNING APPLICATION

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

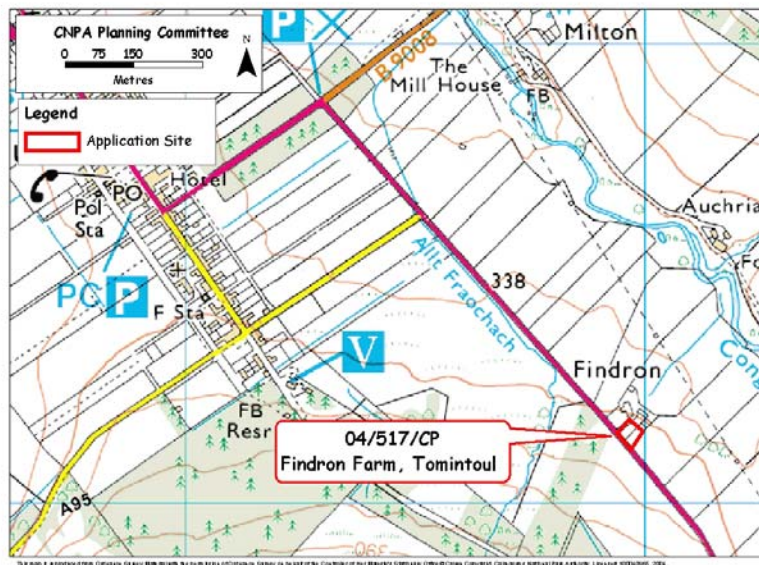
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**DEVELOPMENT PROPOSED:** FULL PLANNING PERMISSION  
ERECTION OF NEW DWELLINGHOUSE,  
FINDRON FARM, TOMINTOUL,  
BALLINDALLOCH

**REFERENCE:** 04/517/CP

**APPLICANT:** W & E TURNER, PER MRS T.  
BOARDMAN, PINNACLE DESIGN,  
ESTACARNY, CULTS DRIVE,  
TOMINTOUL

**DATE CALLED-IN:** 5 NOVEMBER 2004



**Fig. 1 - Location Plan**

## BACKGROUND

1. Members of the Planning Committee will recall that this application was considered at the Committee meeting held in Ballater on 22 April 2005 (Planning Paper 10). For ease, the report which the Committee previously considered is attached for reference and it is my intention to provide a short update on the current position and give a further recommendation.
2. By way of a reminder, the application is for full planning permission for the erection of a new dwellinghouse with garage within the boundaries of the farmhouse and associated farm buildings at Findron Farm, which is located adjacent to the A939 Tomintoul to Lecht Road, approximately 1 km to the south east of Tomintoul. The house is initially proposed to provide self-catering accommodation for visitors, as a supplementary business to the farming enterprise. However, in addition, the house will revert to permanent residential use to accommodate the applicants when they retire from the farm.
3. The recommendation provided in April and the decision of the Committee at that time was to approve the application, subject to the completion of a Section 75 Legal Agreement which restricted the use of the dwellinghouse for self-catering holiday purposes only; and/or restricted occupancy of the dwellinghouse to a retired farmworker at Findron Farm; and prevented disposal of the dwellinghouse separately from the farm unit at Findron Farm.
4. At the time, the applicants expressed concern about the requirement for a Section 75 and this was contained in a late letter of representation which was circulated and considered by the Committee. This letter is also attached to the back of the original report.
5. Following the decision, and the start of procedures to complete the S75, the applicants, through their agent submitted a letter (**copied for the Committee's consideration**) which states that they feel that they cannot enter into the agreement. They therefore wish the application to be re-considered by the Committee, without the restrictions.

## APPRAISAL

6. The previous report outlined that in this area of Moray, due to a need to sustain and encourage regeneration of rural communities, a more flexible and enabling housing policy is applicable. **Moray Local Plan Policy S/H4 (House Building in the Countryside)** therefore carries a presumption in favour of house building on well located and designed sites in the open countryside of this part of the Park. While acknowledging this support in principle, it was felt in this instance, essentially because of the aims of the Park and to be consistent with

other developments, that it was appropriate to seek, with the Committee's agreement, the restrictions that we did.

7. The reasons for the applicant's not wishing to agree to the S75 are stated in the letters of 20 April and 24 May and relate to concerns about the ability to continue to work the farm in the future because of the burden of having the new house "tied" to the farm.
8. The matter of new houses in countryside areas of the Park continues to be one which raises issues of significance to the aims of the Park. However, in determining planning applications, the terms of development plan policies, especially quite recent extant policies (the Moray Local Plan is dated 2000) are the baseline for making determinations. The National Park's imminent Local Plan will define the Park's policy on houses in the countryside but until this is in place, weight must be given to the current policies. In this case, we have to consider the sustainability of continuing to require the restrictions on occupancy at a possible appeal.
9. In considering this, I am conscious of legal advice given on a recent application for the formation of a new dwellinghouse by subdivision and extension at Coulnakyle Cottage, Nethybridge. Advice given at that time (June 2005) was that to impose occupancy restrictions, in that instance, would have been difficult to sustain because there was no sound policy basis contained in the statutory Highland Development Plans, despite the fact that the Park's aims would be considered to be a material consideration. While it was emphasised at that time that this advice did not restrict the decision options available to the Committee, this application was subsequently approved without the occupancy condition.
10. In a similar way, I feel there are 3 options available to the Committee. The first is to continue to grant permission, subject to the restrictions. This would lead to an impasse but allow the applicant to appeal against non-determination. The second is to refuse permission using the aims of the Park. Again the applicant could then appeal this decision. The third option is to grant permission without any restrictions, as requested by the applicants. I do not feel that the applicant's request to consider a maximum time period (5 or 10 years) for the restrictions to last, would be appropriate. This would prejudge the situation and policy position prevailing at the end of the time period. The proper mechanism is for the applicants to apply to remove the conditions, and the appropriateness of this would be determined at that time.
11. While the first two options would allow the proposal and perhaps the aims of the Park to be tested at appeal, I am not significantly convinced that a strong justification can be made which would allow a robust defence of the case. The reason is that the current extant housing policy contained within the Moray Local Plan 2000 is openly in favour of such developments and the design for the house negotiated and the

site, being adjacent to existing farm buildings, is acceptable in siting and design terms. Indeed, it is also the case that there have been several applications for houses in this “less restrictive” part of Moray which the CNPA has not called-in because the principle is established in the policy. The reasons for calling this one included the fact that the proposal, being also for self-catering holiday accommodation also related to tourism. Part of the reason for proposing to restrict occupancy previously related to the fact that **Policy L/ED16 (Tourist Facilities) of the Moray Local Plan** states that developments built as holiday accommodation should be retained for that purpose. However, this policy refers, in the main, to developments such hotels, caravans, chalets and timeshare developments and that it would be necessary to control these in areas where new development would otherwise be unacceptable. In this instance, it is still the intention of the applicants to offer self-catering accommodation for several years before they retire, but if they had applied for a house without any reference to tourism proposals, it is likely that they would be in compliance with **Housing Policy S/H4 (House Building in the Countryside)**.

12. To conclude, with the Committee’s agreement, it is felt that there were reasons for requiring the imposition of the restrictions previously agreed. However, the applicants have reviewed their position and do not feel that they can enter into the S75 agreement. The options open to the Committee are stated above. However, after careful consideration of our position, on the basis of purely statutory planning policy grounds, my recommendation is to now pursue the third option which is to grant full planning permission, without any restrictions, but subject to the conditions stated below.

## RECOMMENDATION

13. That Members of the Committee support a recommendation to:

**Grant Full Planning Permission for the Erection of a New Dwellinghouse, at Findron Farm, Tomintoul, subject to the following conditions:-**

1. The development to which this permission relates must be begun within five years from the date of this permission.
2. That if significant unsuspected contamination is found on the site, all work shall cease until an appropriate investigation to determine the nature, extent and potential impacts of the contamination has been undertaken and a remediation method statement agreed with the Cairngorms National Park Authority acting as Planning Authority, in consultation with Moray Council’s Contaminated Land Officer.
3. That notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, no house

extension shall be formed, and no greenhouse, shed or garage erected without the prior written permission of the Cairngorms National Park Authority, acting as Planning Authority.

4. That notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, no fences or walling shall be erected on the site without the prior written permission of the Cairngorms National Park Authority acting as Planning Authority.
5. That in the first planting season following completion of the house hereby approved, a minimum of 5 trees, shall be planted within the site. In addition, the hedging as shown on the approved site layout drawing number F-04A, shall be planted along the boundaries. Prior to the commencement of work on site, exact details of the trees and hedge planting, including siting, numbers, species (which shall be native), and heights (at time of planting), shall be submitted for the further written approval of the Cairngorms National Park Authority, acting as Planning Authority. Any trees and hedging removed, or which in the opinion of the Cairngorms National Park Authority, are dying, being severely damaged or becoming seriously diseased within three years of planting, shall be replaced by trees and hedging of similar size and species to those originally required to be planted.
6. Prior to the commencement of the wall rendering works, a sample panel, approximately 1 metre square, of the wet harling shall be prepared on site for the inspection and further written approval of the Cairngorms National Park Authority, acting as Planning Authority.
7. Prior to the commencement of works on site, specific details of all proposed new windows, which shall be timber framed and closely resemble traditional sash and case units, shall be submitted for the further written approval of the Cairngorms National Park Authority, acting as Planning Authority.
8. Prior to the commencement of works on site, exact details and specifications of the stain colour(s) for all external timber finishes (including the porch, garage and house doors, and window frames) shall be submitted for the further written approval of the Cairngorms National Park Authority, acting as Planning Authority.
9. That unless otherwise agreed in writing with the Cairngorms National Park Authority, acting as Planning Authority, following consultation with Moray Council's Environmental Health Manager, the house hereby approved, shall be served by the public water supply.
10. That unless otherwise agreed in writing with the Cairngorms National Park Authority, acting as Planning Authority, following consultation with Moray Council's Transportation Manager, no boundary fences, hedges, or walls over 1.0m in height and fronting onto the public road shall be sited within 2.5m of the edge of the carriageway.

11. That parking and manoeuvring space for a minimum of two cars shall be formed and maintained within the curtilage of the house hereby approved.

**Neil Stewart**  
**22 August 2005**

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