
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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DEVELOPMENT PROPOSED: PLANNING APPLICATION UNDER SECTION 42 TO VARY CONDITION NUMBER 1 OF PLANNING PERMISSION 06/62/FULBS (CNPA 06/086/CP & 10/413/CP) TO EXTEND PERIOD OF APPROVAL BY 3 YEARS AT FORMER FILLING STATION, GRAMPIAN ROAD, AVIEMORE

REFERENCE: 2012/0050/DET

APPLICANT: ALISTAIR GRANT

DATE CALLED-IN: 2 MARCH 2012

RECOMMENDATION: APPROVE WITH CONDITIONS

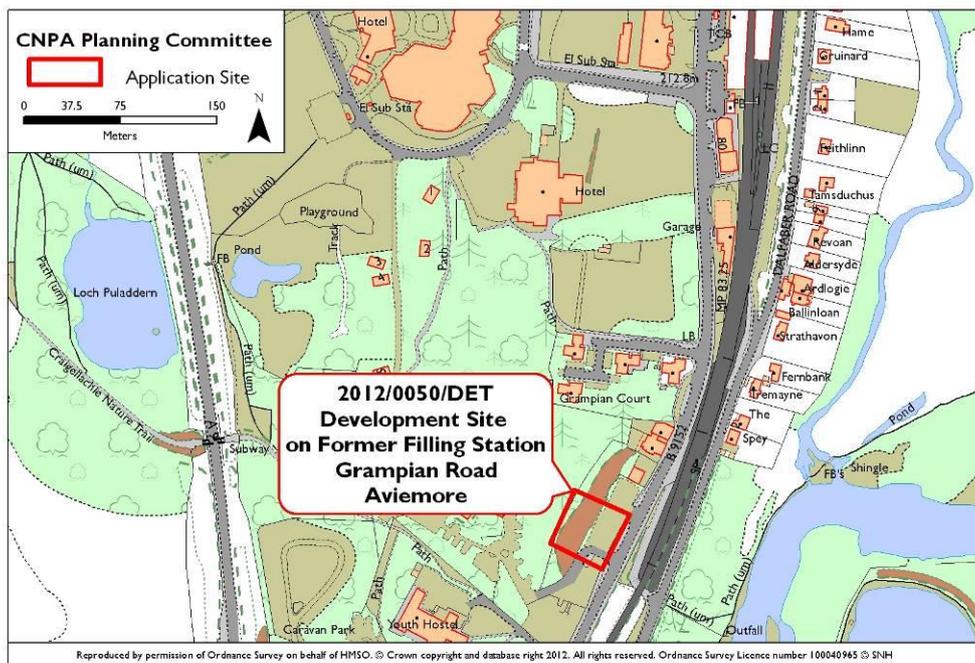


Fig. 1- Location Plan

SITE DESCRIPTION AND PROPOSAL

1. The application site is located on the former 'Osprey' Shell filling station on the west side of Grampian Road, Aviemore and comprises 0.2ha of vacant land left following the clearance of buildings. Planning permission (06/086/CP) was granted for the 'Erection of 8 Flats and Retail Development – approval of reserved matters' by the CNPA on 7 June 2006.
2. This application is made in respect of Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended and seeks to vary condition number 1 of that planning permission, extending the period of approval by 3 years. This standard time limit condition stated: *'the development hereby approved shall be commenced prior to 31 January 2011.'*

Section 42 applications

3. Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended, is a mechanism which allows for the submission of a planning application for the development of land without complying with, or varying conditions subject to which a previous planning permission was granted. Section 42 of the Act stipulates that in this type of application "the planning authority shall consider only the question of the conditions subject to which planning permission should be granted." Therefore in the context of this application, the only matter which is required to be considered is the appropriateness and acceptability of varying condition 1 extending the period of which development can commence.

APPLICANT'S JUSTIFICATION

4. The applicant seeks permission to have this condition altered to allow the commencement of development to be delayed for a further period of 3 years. This would allow for an opportunity to allow market conditions to improve and provide for better probability of a commercially successful development. A supporting letter is attached at the back of the report.



Fig. 2 & 3 – site from various perspectives showing open expanse

PLANNING HISTORY

5. The Shell Osprey filling station itself ceased trading approximately 13 years ago, the site has lain empty since that time. Outline planning permission (04/414/CP) for the erection of a retail unit and 8 flats on the site was

granted by the CNPA in January 2006. Following on from this, an application (06/086/CP) for the approval of reserved matters was approved in June 2006 with various conditions including a standard 5 year time limit. It is this latter application that is the subject of this further request. A previous extension to extend time limits (10/413/CP) for 15 months was granted on 13 January 2011. This would lapse in May 2012.

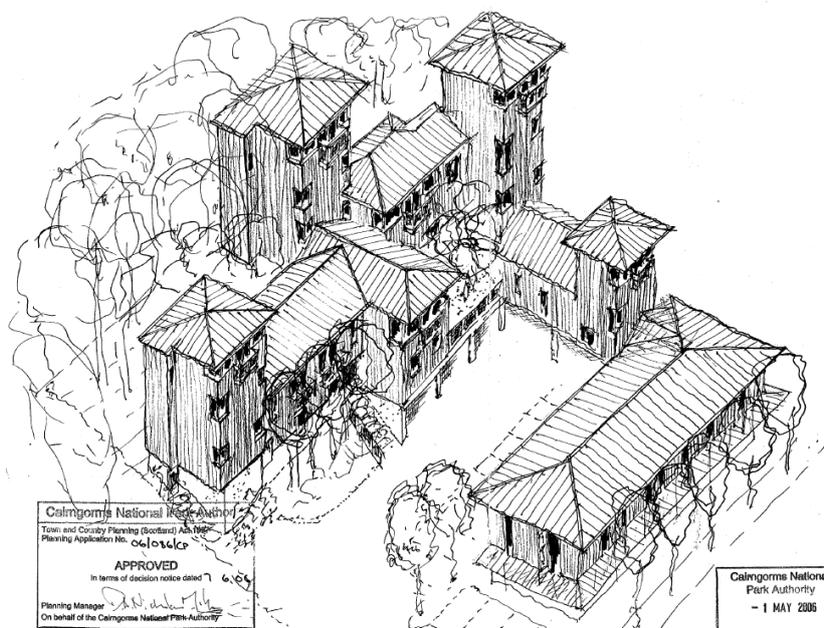


Fig. 3 – Development Proposals

DEVELOPMENT PLAN CONTEXT

National Policy

6. **Scottish Planning Policy (2010)** provides the core principles for decision making and sets out the key priorities for the planning system. The primary objectives are; to set the land use framework for promoting sustainable economic growth; to encourage and facilitate development while protecting natural heritage and the built environment. The SPP also it refers to the use of conditions and planning agreements in allowing development to proceed effectively.
7. Scottish Government planning **Circular 4/1998 - The use of conditions in planning permissions** states that conditions can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The guidance establishes that conditions should meet the following six tests, requiring that they be: necessary, relevant to planning, relevant to the development, enforceable, precise and reasonable in all other respects.

8. The Circular goes on make reference (para 46) to Time-limits. Any grant of planning permission (apart from permissions granted in principle) should, under section 58 of the 1997 Act, be made subject to a condition imposing a time-limit within which the development authorised must be started. The section originally specified a period of five years from the date of the permission; this has now been reduced to 3 years.
9. The Circular also deals with the 'Renewal of permissions before expiry of time-limits' in para. 52. This states that developers who delay the start of development are likely to want their permission renewed, as the time-limit for implementation approaches. Under Article 5 of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 applications for such renewals may be made simply, referring to the existing planning permission, although the planning authority have power subsequently to require further information, if needed. As a general rule, such applications should be refused only where:
 - a. there has been some material change in planning circumstances since the original permission was granted (eg a change in some relevant planning policy for the area, or in relevant road considerations or the issue by the Government of a new planning policy which is material to the renewal application);
 - b. there is likely to be continued failure to begin the development and this will contribute unacceptably to uncertainty about the future pattern of development in the area; or
 - c. the application is premature because the permission still has a reasonable time to run.

Strategic Policy

Cairngorms National Park Plan (2007)

10. The **Cairngorms National Park Plan** sets out strategic priorities for the Park under three headings – (i) conserving and enhancing the Park; (ii) living and working in the Park; and (iii) enjoying and understanding the park.
11. In a section entitled '**Living and working in the Park,**' housing is explored. The Plan refers to the need to ensure greater access to affordable and good quality housing in order to help create and maintain sustainable communities as one of the key challenges in the National Park.

Structure Plan

Highland Structure Plan (2001)

12. In general the Structure Plan Strategies aims to steer demand for housing development to appropriate locations within settlements.

13. **Policy G2 (Design for Sustainability)** states that developments will be assessed on the extent to which they, amongst other things; are accessible by public transport, cycling and walking as well as by car; maximise energy efficiency in terms of location, layout and design; make use of brownfield sites; demonstrate sensitive siting and high quality design; promote varied, lively and well-used environments; and contribute to the economic and social development of the community.
14. **Policy R1 (Shopping Hierarchy)** states that development proposals that consolidate the shopping hierarchy and enhance the role of individual settlements as shopping centres will be supported.
15. **Policy R5 (Town Centre Shopping)** advises that retail development in town centres will generally be encouraged. Development proposals which are judged to undermine the vitality and viability of existing town centres will be resisted.

Local Plan Policy

Cairngorms National Park Local Plan

16. **Policy 11 The Local and Wider Cultural Heritage of the Park** development should protect, conserve and enhance the cultural heritage of the area.
17. **Policy 16 Design Standards for Development** requires that all development minimises the effects of climate change, reflects the local vernacular and uses materials and landscaping that compliments its setting.
18. **Policy 20 Housing Development within Settlement Boundaries** will be considered favourably on allocated sites identified within the proposals maps.
19. **Policy 26 Retail Development** promotes favourable consideration of proposals which support local economic development where such a proposal consolidates or compliments the traditional high street and its viability and vitality.

CONSULTATIONS

20. **Aviemore and Vicinity Community Council** have been consulted but no response has been received.
21. **Highland Council Contaminated Land Unit** note the former use of the site as a filling station and request conditions are transposed into any new planning permission.

REPRESENTATIONS

22. The application was advertised in the Badenoch and Strathspey Herald on 29 February 2012. No representations have been received.

APPRAISAL

23. In determining this planning application regard is to be had to the development plan and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. Crucially as this is an application made under Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended, the matter on which the Planning Committee are being asked to decide is very specific, concerning only the time limit stipulated in condition no. 1 of the original planning permission (CNPA ref. no. 06/086/CP) and whether or not to allow the time period in which development can commence be extended by a further period of 3 years. It should be noted that the CNPA has previously granted a time limit extension to this permission, previously for 15 months.
24. The principle of a mixed retail and residential development on the site has already been accepted through the granting of planning permission by the CNPA in January 2006. Various matters including planning policy compliance, trees, access and the design, scale and massing of the building were all explored in the course of the previous application on the site. The principle of the development continues to remain acceptable. This current application is essentially a procedural issue to extend the period in which development can commence. The applicant highlights that the ongoing economic downturn and difficult market conditions are sufficient justification to allow for the continuation of the time limit to the existing planning permission 06/086/CP.
25. When considering the appropriateness of altering a condition, the discretion of the planning authority is typically limited to assessing the necessity of the condition and considering it in line with the guidance contained within Scottish Government Planning Circular 4/1998 - The use of conditions in planning permissions. As highlighted above in paragraphs 5 – 8 when considering Section 42 applications such as this the Circular recognises that frequently developers may wish to delay the start of development and are likely to want their permission renewed, as the time-limit for implementation approaches. It goes on to say that such applications should be refused only in limited instances where planning policy has changed or whether there is likely to be continued failure to begin the development or if the application is premature.
26. It is clear that the applicant's circumstances appropriately demonstrate that a degree of flexibility in the time limit to commence the proposed development is acceptable and results from current economic conditions. The terms of the circular set out clear and explicit guidance as to the nature of allowing for

extra time, it is considered that no material changes to planning policy or technical reasons exist, and the application has been made timely. There are no technical constraints or concerns about the possibility of the proposed development stalling indefinitely or the application being made prematurely.

27. The comments from Highland Council Land Contamination Unit are acknowledged and a condition ensuring that the suspensive conditions of the extant permissions are still valid and applicable is suggested as a grant of any permission arising from this application. There are no other factors or considerations that would require the request to vary condition 1, extending the time limit, to be refused.
28. To conclude, the proposal does not raise any significant implications for the terms of the extant planning permissions, planning policy or have any other technical constraints. It is considered that this development would continue to provide both social and economic benefits to Aviemore, as well as a quality urban and architectural design solution. It is therefore recommended that permission be granted for the alteration of condition 1 extending the time limit for a further 3 years.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

29. The development would improve the urban townscape in this location and therefore enhance the cultural built heritage of the area. The development aims to retain as many trees on site as possible with various protection measures put in place to preserve locally important specimens.

Promote Sustainable Use of Natural Resources

30. The use of timber cladding promotes the sustainable use of renewable materials. The design of the building would allow for energy conservation and solar gain from the south. Being of a high density, it makes efficient use of available brownfield land and being located within a settlement it also presents opportunities to minimise car travel.

Promote Understanding and Enjoyment of the Area

31. The proposal does not have any implications for this aim.

Promote Sustainable Economic and Social Development of the Area

32. The development provides positive implications in terms of this aim. The provision of retail space in a location close to the commercial core is unlikely to impact on the vitality and viability of existing shops and could add to the general economic resilience of Aviemore.

RECOMMENDATION

33. That Members of the Committee support a recommendation to vary condition number 1 of planning permission 06/62/FULBS (CNPA 06/086/CP & 10/413/CP) to extend period of approval by 3 years at former filling station, Grampian Road, Aviemore subject to the following condition:

- I. This approval relates solely to the variation to condition 1 extending the period of time by a further period of 3 years from the date of this permission. Nothing contained in this shall be deemed to affect or vary the conditions imposed on the extant planning permissions 04/414/CP, and 06/086/CP.

Reason: To ensure the conditions imposed by the previous applications are still applicable.

Andrew Tait
19 April 2012

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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.