
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REQUEST FOR REMOVAL OF SECTION 75 AGREEMENT

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HEAD OF PLANNING

DEVELOPMENT WITH S75: ERECTION OF CROFT HOUSE, LAND 50 METRES SOUTH WEST OF GRIANAN, STRONE ROAD, NEWTONMORE

REFERENCE: 06/485/CP

APPLICANT: ALISTER DONALD MACKENZIE

ORIGINAL DECISION: 9 FEBRUARY 2007

RECOMMENDATION: AGREE TO REMOVE SECTION 75 AGREEMENT IN THESE SPECIFIC CIRCUMSTANCES IN EXCHANGE FOR A PERSONAL UNDERTAKING, AND WORK FOR A RESOLUTION TO ACCESS TO LENDING FOR CROFT AND SIMILAR HOUSES

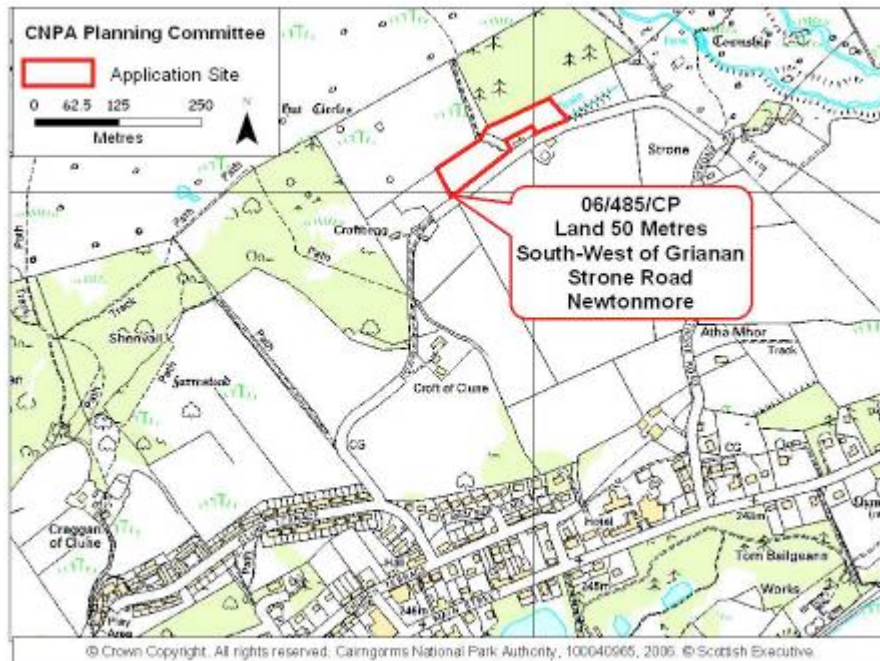


Fig. 1 - Location Plan

PURPOSE OF REPORT

1. Following the decision of the Planning Committee on 30 April 2010 to defer consideration and deferral at the applicants' request on 14 May 2010, this paper is to allow Members to continue to consider a request to remove the Section 75 Agreement that restricts the occupancy of the new house and ties it to the croft. The request is from the applicant and his father, who are both signatories to the Agreement, and the applicant's partner who was witness to their signatures. The letter of request and supporting information were attached to the report to the meeting on 30 April.

BACKGROUND

2. The site lies to the north of Newtonmore on the Strone Road which forms a loop through croft lands to the north of the settlement (see Fig 1).
3. The site was an open field adjacent to an existing cottage known as Grianan and on the other side of the road from a tourist accommodation business. The field slopes down gently towards the road where an existing agricultural access has been utilised as the access for the house.



Fig 2 view of site prior to development from Strone Road with Grianan in background

4. The application for outline planning permission (06/485/CP) was considered by the Planning Committee on 9 February 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 had support from the Crofters Commission. It was considered that there was sufficient crofting justification and the Committee resolved to grant out line planning permission subject to completion of a Section 75 Agreement

ensuring that the house is occupied by a person working the croft and which does not permit the house to be disposed of separately from the croft.

5. A Section 75 Agreement to that effect was completed and registered in the Land Register in October 2007 and outline planning permission issued on 29 October 2007. The applicant had a crofting tenancy of 1.36 hectare of the croft, but his father is the proprietor of a much larger area that included the tenancy. The applicant's portion of the larger croft became a croft in its own right in 2005, but is still owned by his father. It was therefore necessary for both parties to sign the Section 75 Agreement.
6. The detailed application for approval of reserved matters (07/469/CP, THC Ref 07/00322/REMBS) was not called in by CNPA and was approved by The Highland Council on 20 March 2008.
7. A smaller area for the house and garden was decrofted by the Crofters' Commission in June 2009 following a request from the initial intended mortgage lender. It is understood that this is common practice both for the Crofters' Commission and lenders. Construction commenced on the house in summer 2009. It was after this that the applicant encountered difficulties in obtaining a mortgage which eventually led to the formal approach to CNPA and much of the detail of this along with the rationale for having a Section 75 Agreement were contained in the report to 30 April Planning Committee. Further information in support of the applicants' request was in a letter from Fergus Ewing MSP that was given to Members for the 14 May meeting.



Fig 3 House substantially completed Feb 2010

CURRENT SITUATION AND APPRAISAL

8. As highlighted at the meeting on 30 April, CNPA staff met with the Council for Mortgage Lenders and discussed the issues surrounding Section 75s and lending in such cases. It is clear that the current lending environment is constrained, with the industry consolidating into a few large lenders with increasingly standardised products leading to less capacity for bespoke solutions for unusual circumstances such as croft houses.
9. It now appears that lenders will not only not lend on a property under crofting tenure (hence the decrofting of the site of the house), but will not lend on any association with a croft i.e. if the decrofted house is tied to land that is still under crofting tenure.
10. The lender's main concern is that they should have the ability to sell the property on the open market if there is a default on the mortgage payments and they have to take possession. The Section 75 as it stands does not allow for this and at the meeting with lenders they suggested consideration of a cascade in such situations that would allow the property to be sold to steadily widening categories of people until it could be sold on the open market at 20 weeks if no purchaser had been found.
11. In the event that a property is sold on the open market in this situation the lender would take what was owed and pass the remainder back to the owner.
12. CNPA staff and lawyers have been working with lenders to find a revised form of Section 75 Agreement that will address their concerns and could be used to benefit not only this case, but other similar ones in the future. We have also been considering how to address any uplift in value as a result of a house being sold on the open market and how that could be fairly apportioned. We have been working on a draft form of Section 75 Agreement that will take account of all of these points.
13. It became clear that the issue is of wider importance and any solution could be applied elsewhere in rural Scotland. To this end the Scottish Government Chief Planner has instigated a discussion involving Council for Mortgage Lenders, the two National Park Authorities and a selection of other rural authorities. A meeting will take place in June and anything that comes out of this process will be brought before the Planning Committee for consideration so a policy approach can be established.
14. In the meantime, we have this specific request and the applicants and local MSP are urging the CNPA to remove the Section 75 Agreement as the builder has submitted his demand for his outstanding payment. We have been working with CNPA solicitors and HBOS to develop a format of agreement for this specific case that would have a form of cascade, no tie whatsoever to a specific croft, and no provision for securing a proportion of uplift in value if it were sold on the open market. Work to date is attached (**Appendix 1**) and a solution appears to be possible, but it is not quite finalised and has not been discussed with the applicants as we have been awaiting final confirmation

from lenders it is acceptable. The agreement of the applicants would be necessary as an Agreement cannot be imposed.

15. When the case was first considered on 30 April the applicants offered a personal undertaking in exchange for removal of the Section 75 Agreement. CNPA solicitors have prepared a draft of such an undertaking and this is also attached. (**Appendix 2**)
16. As a decision is required the options available to the Planning Committee are:
 - i) Refuse the request;
 - ii) Revise the Section 75 Agreement in line with the format in Appendix 1;
 - iii) Remove the Section 75 in exchange for a personal undertaking as in Appendix 2;
 - iv) Remove the Section 75 completely leaving the house unfettered by any obligation.
17. There is always a concern regarding precedent when taking a decision on a single case in isolation, particularly when there are other potentially similar cases that could follow. Since its inception the CNPA has approved 19 applications where a Section 75 Agreement has been required to secure the ongoing occupation of a house for the purposes for which planning permission was sought at the outset. Only 11 of these are croft or farm houses. This is the only case as far as we are aware of a croft house which has been constructed and then encountered this particular problem with lenders. At the meeting on 30 April Members were expressing some sympathy for the situation that the applicants find themselves in: hence the first deferral.
18. Although the financial circumstances of an applicant are not a material planning consideration, the ability to provide houses in rural areas where a need has been justified in accordance with policy is a material consideration. This permission was granted because Members considered there was a need for the house. There is a wider issue here which, as has been highlighted, we are continuing to address. The applicant and the local MSP have given utmost assurances regarding the intention to live in the house and work the croft.
19. Given that there appears to be a potential solution to the wider issue in sight and this could then be applied to any future cases, there is an argument that in acceding to this request because of the particular circumstances Members will not create a precedent. The options available to Members are set out in paragraph 16 above. Although there may be more progress on the revised Section 75 Agreement by the time of the meeting, at the time of writing it is recommended that, in this single instance, Members agree to remove the Section 75 Agreement in exchange for a personal undertaking offered by the applicant.
20. In doing so, it is imperative that we continue to work hard with Scottish Government, lenders and other authorities to find a solution that can be accepted by all involved so we can continue to support thriving rural communities with policies that allow a wide range of affordable housing

including provision for those working on crofts, farms or other land based activity.

RECOMMENDATION

21. That Members of the Committee agree to the request for removal of the Section 75 Agreement in this specific case because of the unusual circumstances in exchange for a formal personal undertaking signed by the applicants.
22. That Members of the Committee agree to CNPA working with Scottish Government, mortgage lenders and others to resolve issues in relation to Section 75 Agreements and funding for croft and similar houses and report back to the Planning Committee with the outcome of this process as soon as possible.

Don McKee

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26 April 2010

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