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## CAIRNGORMS NATIONAL PARK AUTHORITY

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

**Prepared by: MARY GRIER, PLANNING OFFICER  
(DEVELOPMENT MANAGEMENT)**

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**DEVELOPMENT PROPOSED: REQUEST TO VARY THE TERMS OF A COMPLETED SECTION 75 LEGAL AGREEMENT ASSOCIATED WITH FULL PERMISSION FOR THE ERECTION OF A BUILDING FOR USE AS TEMPORARY ACCOMMODATION.**

**REFERENCE: 05/439/CP**

**APPLICANT: ANDREW AND CORDULA NASH,  
URLAMORE, TOMINTOUL, MORAY,  
AB37 9HD.**

**RECOMMENDATION : VARY THE TERMS OF THE SECTION  
75 LEGAL AGREEMENT**



**Fig. 1 - Location Plan**

## BACKGROUND

- I. This report has been prepared in response to a request from Mr. and Mrs. Nash of Urlamore Steading, Tomintoul, to vary the terms of the Section 75 legal agreement which they entered into in conjunction with the granting of full planning permission for the erection of a building for use as temporary accommodation for a period of two years. Two planning applications were submitted to Moray Council and 'called in' by the CNPA in October 2005. In the first application full planning permission was sought for the conversion of the existing water mill at Urlamore into a 4 bedroomed dwelling house and two 2 bedroomed self contained holidays lets (CNPA planning ref. no. 05/440/CP refers). Full planning permission was sought in the second associated application for the erection of a building for use as temporary accommodation (CNPA planning ref. no. 05/439/CP). The temporary accommodation unit was described as a 'cabin' having external walls finished in natural timber weatherboard under a slate effect tiled roof. A case was advanced that the temporary accommodation was required on the site for a period of two years to provide residential accommodation for the applicants during the construction and conversion of the steading / watermill.



Fig. 2 : Existing cabin accommodation, as viewed from the east

2. Both of the planning applications were determined at the CNPA planning committee in April 2006, with the committee resolving to grant full planning permission subject to a number of conditions, for the conversion project, and also resolving to grant planning permission for the temporary accommodation unit, subject to the applicants entering into a Section 75 legal agreement and subject to a number of conditions. The Section 75 legal agreement was concluded several months later and the decision notice was issued on January 18<sup>th</sup> 2007. The legal agreement included three obligations in respect of the temporary building : -
  - (1) That the cabin may only be occupied by the proprietors and by a dependent or dependents residing with them, and that the cabin may not be disposed separately from the site;
  - (2) That on the earlier of the completion of the conversion project or the expiry of a two year period commencing on the effective date, the proprietors shall cease to reside in and will refrain from using the cabin in

any manner, and shall remove the entire structure of the cabin from the site; and

- (3) Upon removal of the cabin from the site, the development site shall be restored to reasonable satisfaction, with the CNPA to issue a letter confirming satisfactory completion.
  
3. The 'effective date' referred to in the Section 75 legal agreement is 18<sup>th</sup> January 2007 i.e. the date of issue of the decision notice. Although work has been undertaken on the watermill, it has not progressed as quickly as the applicants originally anticipated and is not yet at the stage of completion, or indeed at a stage which would facilitate the applicants taking up residence in the permanent residential part of the building. Consequently Mr. and Mrs. Nash continue to reside in the temporary accommodation unit on the site and have requested that consideration be given to amending the terms of the Section 75 agreement, to extend the time period that the unit is allowed on site.

#### **The applicants case**

4. Mrs. Nash requested a meeting with the CNPA planning officer in January 2009 and acknowledged that under the existing terms of the Section 75 agreement the temporary accommodation unit would be in position on the site in contravention of the time limit stipulated in the Section 75 agreement. She undertook to immediately submit a written request to the CNPA to vary the terms of the legal agreement. Unfortunately due to some personal difficulties encountered by the proprietors there was a delay in this request coming forward, with the result that it was only received by the CNPA on 17<sup>th</sup> April 2009. In the intervening period, the CNPA's Planning Enforcement and Monitoring Officer also visited the site and discussed the status of the temporary accommodation unit with the applicants.



**Fig. 3 : On going work – interior of one of the holiday letting units**

5. In the correspondence dated 17<sup>th</sup> April 2009 Mrs. Nash alludes to the fact that the conversion project has taken far longer than originally anticipated, and is now over schedule and over budget. Due to budgeting difficulties in particular the project has had little work undertaken in recent months. To

date, the majority of the work has been directly undertaken by the applicants. Mr. and Mrs. Nash are currently making efforts to address the financial aspects of the development and then intend to employ contractors to finish the work as quickly as possible. Immediate efforts will be concentrated on the two holiday letting units. The proprietors hope to complete the commercial aspect of the development in order to commence trading during the summer season. In the meantime, Mr. and Mrs. Nash request that consideration be given to the 'cabin' being allowed to remain on site until those works are complete, as they state that they cannot currently afford to rent a residential property, as Mr. Nash will be overseeing the building work, while Mrs. Nash provides their income through employment elsewhere.

## SITE DESCRIPTION

- Members will be familiar with the site which is located at Urlamore, approximately 2 kilometres northwest of Tomintoul. The site occupies a prominent and elevated position, set above the B9136 (Bridge of Avon to Glenlivet road) and the river Avon. The existing temporary building is clearly visible from the A939, particularly on the downhill approach towards the Bridge of Avon. Access to the site is gained from an existing single carriage private road<sup>1</sup> off the B9136, with a relatively steep gradient. The road serves the temporary accommodation, the aforementioned water mill and an existing adjacent two storey farmhouse.



Fig. 2 : Existing watermill structure, as viewed from the approach.

- The existing 'cabin' accommodation is positioned to the north of the existing steading / watermill (approximately a 5 metre separation distance), adjacent to the eastern boundary of the site. The structure is positioned in a prominent location on some of the highest ground on the site. Ground levels on the site are highest towards the rear and side of the existing steading. There is a significant change in ground levels across the site, generally descending from east to west, as indicated on a previously submitted contoured site plan, which shows a fall of 3.20 metres in that area.

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<sup>1</sup> The access road to the site is denoted on maps as an Old Military Road.

## DEVELOPMENT PLAN CONTEXT

8. Planning application reference no's 05/439/CP and 05/440/CP were considered and determined in the context of the policies detailed below.

### **Moray Development Plan – Structure Plan**

9. Chapter Two of the Structure Plan deals with the Environment and the policies on Landscape are of particular relevance in this application. The subject site is within an designated Area of Great Landscape Value and the Structure Plan requires that any development proposals within such areas to incorporate best principles of siting and design. **Policy S/Env 3 : Scenic Designations** asserts that “areas of scenic quality will be protected from inappropriate development.”
10. On the subject of housing, the **Moray Structure Plan** operates a presumption in favour of housing in the countryside in rural areas in the south and east (**Policy S/H4**) in a number of circumstances, including situations that involve the re-use, replacement or rehabilitation of existing buildings. The **Structure Plan** also contains Development Control policies applicable to a proposal of this nature. **Policy L/IMP2 : Development in Rural Areas** requires that proposals are compatible in terms of character, amenity and design and integrate sensitively into the environment.
11. The **Moray Structure Plan** does not include specific policies on ‘temporary accommodation’ of the nature proposed in this application. It includes a policy on Residential Caravans, with section. 4.31 stating “whilst special arrangements may be made to accommodate temporary use of caravans, for full time residence, and travelling people, those for use as permanent homes do not normally provide a satisfactory living environment and are therefore not encouraged.” **Policy S/H6** relates to Residential Caravans only, where it is stated that “proposals to replace residential caravans, or to redevelop existing sites, will be encouraged.”

### **Moray Development Plan – Local Plan**

12. In terms of landscape issues, **Policy L/ENV 7** of the Local Plan requires that development proposals within Areas of Great Landscape Value will only be permitted where they incorporate high standards of siting and design and where they will not have a significant adverse effect on the landscape character of the area. Within such areas detailed proposals covering site layout, landscaping, boundary treatment, building design and material finishes are required with any planning application.
13. Similar to the Structure Plan, the **Local Plan** does not contain a specific policy in relation to ‘temporary accommodation’ units other than in the context of caravan accommodation. **Policy L/H10** states that no new residential caravan sites, except for a new caravan on the basis of temporary necessity, will be permitted. The policy stipulates that ‘temporary necessity’

will normally only apply to emergency situations where re-housing is urgently required as a result of unforeseen circumstances such as fire, flood or storm damage to a principal residence or “for a fixed time period relating to the on site construction of a new house.”

## CONSULTATIONS

14. The original application for the temporary ‘cabin’ accommodation at the site was assessed by a number of departments within Moray Council, including Transportation Services, Environmental Protection and the Environmental Health Manager, all of whom recommended the granting of planning permission.

## REPRESENTATIONS

15. No representations were received in respect of the temporary accommodation in the course of the planning application in 2005.

## APPRAISAL

16. As outlined in paragraph 2 of this report the Section 75 legal agreement included three obligations. Mr. and Mrs. Nash as proprietors and occupants of the property have complied with the occupancy restrictions (obligation 1) and are now requesting that the terms of obligation 2 be varied to allow the temporary accommodation unit to remain on the site for an extended period, in order to facilitate their continued habitation of the structure as the construction work on the holiday letting element of the permitted conversion of the steading / watermill nears completion. Although the applicants intend to complete the holiday letting aspect of the development as soon as possible, in order to commence operations and generate income, it has not been possible at the time of preparing this report to establish a definitive timescale for completion. This is dependent upon the resolution of certain financial matters, which are currently being considered by a lending institution. In light of the fact that this issue remains to be resolved (with Mrs. Nash indicating in correspondence on 14<sup>th</sup> May that they hope to have a decision from the lending institution prior to the CNPA’s planning committee meeting on 29<sup>th</sup> May 2009) and also allowing a reasonable period within which the completion of the holiday lets would be likely, I am of the view that an amendment to obligation 2 of the Section 75 agreement, to allow the cabin accommodation to remain in place on the site for a further period of approximately six months, is acceptable.
17. I recommend that the Section 75 agreement is amended to require that no later than November 30<sup>th</sup> 2009, the proprietors shall cease to reside in and will refrain from using the cabin in any manner whatsoever, and shall remove the entire structure of the cabin, together with all goods, gear, machinery, equipment, furnishings and fittings from the development site. Obligation 3 of the legal agreement would also continue to remain in effect whereby upon

removal of the cabin structure, the site is required to be restored to a reasonable standard which would be to the satisfaction of the CNPA.

18. In facilitating the retention of the cabin on the site until November 30<sup>th</sup> 2009, it would allow the proprietors with the opportunity to complete the holiday letting element of the conversion project and facilitate the commencement of trading. The completion and operation of the holiday letting units would be consistent with the aims of the National Park, particularly in terms of enhancing the cultural heritage of the area through the conversion and restoration of a building which was previously in a poor and rapidly deteriorating state, and it would also provide new tourist accommodation in the area, which would be of benefit in terms of economic development. Although not a planning issue, I am also aware that it would be of assistance to the proprietors personal circumstances, in that the commencement of operations at the holiday letting element of the development would result in a new income stream, which would be of benefit to them in the completion of the remainder of the project and / or financing any alternative accommodation arrangements which may become necessary after the expiry of the period that the cabin could remain on site.

## **IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK**

### **Conserve and Enhance the Natural and Cultural Heritage of the Area**

19. The presence of the existing temporary accommodation unit on this prominent and elevated site does not have any positive implications for this aim. In the event of it remaining on the site in the long term it could be considered to have an adverse effect on the cultural heritage of the area by virtue of its impact on the setting of the adjacent traditional steading. However, the impacts of the retention of the unit on the site for a further and final limited period would be tolerable.

### **Promote Sustainable Use of Natural Resource**

20. The source of the materials for the temporary accommodation structure is not known and it is not therefore possible to comment on compliance with this aim.

### **Promote Understanding and Enjoyment of the Area**

21. The development does not assist in promoting the understanding or enjoyment of the area and due to its prominent siting, adverse visual impact and effect on the visual qualities and traditional character of the steading could be considered to detract from the enjoyment of the area by the general public in the event that it was to remain in place in the long term.

### **Promote Sustainable Economic and Social Development of the Area**

22. The development does not make any direct positive contribution to the promotion of sustainable economic or social development in the area. However, it is recognised that the temporary existence of the 'cabin' on the site is linked to the applicants programme of works to facilitate the



completion of the holiday letting units in the steading / watermill and it may therefore be considered to contribute indirectly towards promoting the economic and social development of the area.

## RECOMMENDATION

That Members of the Committee support a recommendation to : **amend the terms of the Section 75 legal agreement (para. 2.2, Obligations regarding the Temporary Building) to facilitate the retention of the temporary accommodation unit at Urlamore, Tomintoul, Ballindalloch, for a further and final period, until November 30<sup>th</sup> 2009.**

**Mary Grier**  
**19 May 2009**

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