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# CAIRNGORMS NATIONAL PARK AUTHORITY

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

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**DEVELOPMENT PROPOSED:** ERECTION OF DWELLING ON LAND 100M NORTHWEST OF BIRCH COTTAGE, DRUMUILLIE, BOAT OF GARTEN (IN OUTLINE)

**REFERENCE:** 07/414/CP

**APPLICANT:** MR ALEXANDER D GRANT

**DATE CALLED-IN:** 2 NOVEMBER 2007

**RECOMMENDATION:** REFUSE

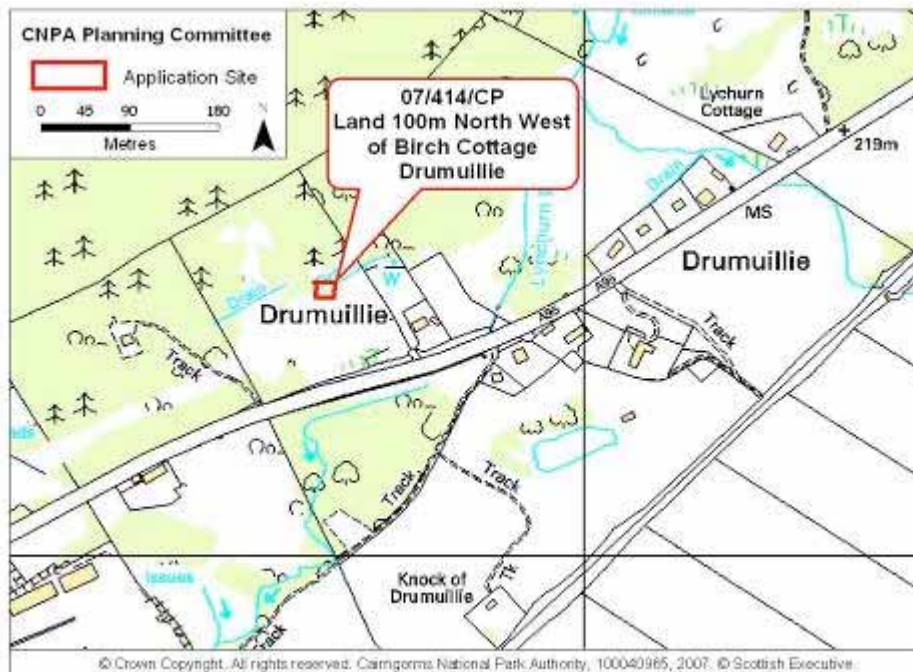


Fig. 1 - Location Plan

## INTRODUCTION

1. This planning application was presented to members of the Cairngorms National Park Authority (CNPA) Planning Committee on 7<sup>th</sup> March 2008. The application was deferred in order that clarification could be sought from the Trunk Roads Authority regarding their objection and in order to get further clarification from the applicant as to whether there is a clear land management justification for the proposal.

## SITE DESCRIPTION AND PROPOSAL

2. Outline planning permission is being sought for the erection of a dwellinghouse. The application site comprises a roughly rectangular area of ground approximately 180sqm (15m x 12m), located on land 100m northwest of Birch Cottage, Drumuillie. The surrounding land is claimed to be in the applicant's ownership and is delineated in blue on the submitted plan comprises croft land, known as Lot 5, which extends to approximately 3.1ha (Fig 2).



Fig. 2 – Photo taken looking north wards showing Lot 5.

3. The southern part of the applicant's land is currently being used as a grazing paddock for horses and sheep, with a caravan having been placed to the south east of the site, which it is claimed has been in position for sometime and is therefore considered to be exempt from any enforcement action, while the northern part, which is where the dwelling is proposed, is covered by trees, with only a small section within this woodland having been cleared. The location of the proposed dwelling is just inside this woodland on a flat ridge (Fig.3). The site has been partially excavated with a septic tank having been installed.

A building warrant for the septic tank has been applied for and approved by Highland Council. Access/egress to the new house would be taken from a shared access with Birch Cottage which leads onto the A95 which is a Trunk Road. (Fig 4)



Fig. 3 – Photo taken looking north west showing the track leading up to the woodland area at the back of the site. Arrow indicates the location of the proposed dwelling.



Fig. 4 Photo showing the access and junction with A.95 (T)

4. The applicant has based his justification for a new house on a land management justification. He has stated that he owns 5 sheep, 2 horses and 4 hens and a vegetable plot all of which require to be looked after daily. The applicant states

that the registered croft requires around two hours of work per day plus more if repairs or other unforeseen work is required to be done such as drainage. The applicant states that responsibilities on the croft include the feeding of livestock and maintaining the field. He further states that living on the croft would provide security to the animals, equipment and buildings as in the past they have had gates left open, stable door opened and horses removed by persons at night. The applicants state that it would also be beneficial for the welfare of the animals if he had a house on the site as he could nurse any sick animals. He further adds that he has a vegetable plot and intends to put in a new vegetable plot this year to make it more self sufficient.

## PLANNING HISTORY AND RELEVANT CONSIDERATIONS

5. The Committee is asked to note that, it was brought to the attention of the CNPA by Highland Council on 6 February 2008 that the applicant had sited a static caravan on the proposed site. The applicant and his wife currently reside in the static caravan permanently as they have sold their property in Boat of Garten. The static caravan is believed to have been connected to the Septic Tank on site. Two letters have been received by the residents of Locheil and Birch Cottage in Drumuillie in relation to the septic tank, which have been attached to the back of the report for your information only (APPENDIX 1). An application for planning permission for the temporary siting of a caravan; installation of septic tank and formation of new access has been submitted and has been Called in by the CNPA under reference 08/086/CP.
6. The applicant has previously applied for 2 separate outline planning permissions on Lot 7, which is closeby to the current application. One application was for the erection of a dwelling on the southern part of Lot 7 and another for the erection of a dwelling on the northern part of Lot 7. Both applications were refused by Highland Council on 9 September 1996 for the following reasons:
  - *The proposal would be contrary to the Housing in the Countryside Policies contained in the Final Draft with Modifications (3) Badenoch and Strathspey Local Plan, which indicates that a strong presumption will be maintained against the development of houses in (inter alia), the Drumuillie area except where required for land management or related reasons. The Plan Policy also presumes against development of further ad hoc clusters of houses in the countryside, the relationships of proposed dwellings to each other, and to existing dwellings, would result in the formation of such an ad hoc cluster.*
  - *The proposed development would help to consolidate existing scattered dwellings into a ribbon pattern of development which would be likely to be detrimental to road safety, by virtue of the increase in the use and number of individual accesses taking direct access to this busy trunk road*
  - *The applicant has failed to show that the land which would be required for the visibility splays from the proposed access is in his control.*

7. Subsequently the applicant appealed Highland Council's decision to refuse the erection of a dwelling on the southern half of Lot 7. The decision to refuse was upheld by the Scottish Executive Inquiry Reporters Unit (SEIRU) on 27 August 1997.
8. The following planning application is also considered to be material in the determination of the proposal. The application type and interpretation of Highland Council's planning policy by the Reporter are very pertinent to this planning application. The application related to outline planning permission for the erection of a dwellinghouse and the temporary siting of 2 caravans. The application was initially refused by Highland Council and subsequently the appeal was dismissed by SEIRU on 19th December 2006. The site was on a 19.4ha croft and was refused because the site was located outwith any defined settlement or housing group and no land management justification or related family purposes had been adequately demonstrated, and none of the listed policy exceptions applied.
9. In support of the appeal the applicants claimed that they had proved an operational need for the proposed house. An assessment was carried out by the Scottish Agricultural College on behalf of the applicants, which concluded that the croft will develop a long-term requirement for 0.43 labour units and that – in terms of operational efficiency and discharging the duties of livestock managers as well as fulfilling the cultural aspect of crofting – it was desirable to live on the unit.
10. The reporter decided that it was the needs of the holding itself rather than personal preference and circumstances which were the key determining factors. He concluded that although the required assessments had been undertaken by the Scottish Agricultural College and they had the support of the Corfters' Commission he was not convinced that a proper case has been made to justify an exception to policy in this case. He was concerned that to grant this appeal would allow for the possibility of a less stringent approach being taken in future as the land management justification was insufficient and this would be to the detriment of the countryside.
11. An application for a house on a croft on Lot 8 (04/152/CP) on the opposite side of the A95 was applied for and the application was supported with an appropriate land management justification. The CNPA approved the planning application subject to a Section 75 agreement.

## DEVELOPMENT PLAN CONTEXT

12. **Highland Structure Plan (approved March 2001) Policy H3** states that housing will generally be within existing and planned new settlements. New housing in the open countryside will not be permitted unless it can be demonstrated that it is required for the management of land and related family purposes. This is to strengthen the role of the existing settlements and to

safeguard the character of the countryside for both residents and visitors. In areas where communities are experiencing difficulty in maintaining population and services some housing may be acceptable.

13. **Policy L4 Landscape Character**, states that the Council will have regard to the desirability of maintaining and enhancing present landscape character in the consideration of development proposals.
14. **Policy G2 Design for Sustainability**, lists a number of criteria on which proposed developments will be assessed. These include compatibility with service provision (water and sewerage, drainage, roads, schools, electricity); accessibility by public transport, cycling, walking and car; maximisation of energy efficiency in terms of location, layout and design (including the utilisation of renewable energy sources); and impacts on resources such as habitats, species, landscape and cultural heritage.
15. **Badenoch and Strathspey Local Plan (September 1997) Policy 2.1.2.3 for Restricted Countryside Areas**. This policy has a strong presumption against the development of new houses. Exceptions will only be made where a house is essential for the management of land, related family and occupational reasons. Restrictions on the subsequent occupancy of such houses will be enforced, and adherence to the principles of good siting and design will be required.
16. **Policy 2.1.2. (Housing in the Countryside)** states that single houses outwith recognised settlements will require to be, compatible with the scale and character of local buildings where appropriate, properly located in harmony with the landscape, and designed to a high standard with particular emphasis on proportions, roof pitch, fenestration and selection of materials.
17. **Policy 2.5.4. (Woodland and Trees)** protects existing trees and established woodland areas which are important landscape, wildlife and amenity features of the countryside.
18. **Highland Council's Development Plan Policy Guidelines (April 2003)** provides more detailed guidance on the interpretation of specific policies contained in the 1997 Local Plan, in light of the subsequently approved Structure Plan of 2001. This document states that new housing within the open countryside will be exceptional, and will only be permitted where it is required for the management of land or it is required for family purposes related to the management of land (retired farmers and their spouses). In certain areas, some housing in the countryside may be permitted to support the viability of rural communities experiencing difficulties in maintaining population and services. For justification based on croft management it is recognised that a degree of flexibility will be required, for example, in such circumstances it may not be possible to sustain full time employment and this will be taken into consideration. Any application for a house associated with crofting should be accompanied by confirmation from the Crofters Commission of the bona fides of the crofting application.



19. **Cairngorms National Park Plan (2007)** highlights the special qualities of the Cairngorms, stating that the "Cairngorms is widely recognised and valued as an outstanding environment which people enjoy in many different ways." It recognises that there is a wide diversity of landscape, land-uses, management and community priorities across different parts of the Park. In a section entitled 'Living and Working in the Park' the subject of '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. Reference is also made to the quality and design of new housing which is expected to meet high standards of water and energy efficiency and sustainable design and also to be consistent with or enhance the special qualities of the Park through careful design and siting.
20. The plan also seeks to ensure that development complements and enhances the landscape character of the Park. The Plan goes on to consider that new development in settlements and surrounding areas should complement and enhance the character, pattern and local identity of the built and historic environment.
21. The section known as 'Conserving and Enhancing the Park' explores Integrated Land Management and highlights the importance of farming and crofting. Strategic objectives for this section include encouraging the continued development of crofting where it provides opportunities for small-scale and part-time land management and production, in addition to the mainstream farming sector.

## CONSULTATIONS

22. **Scottish Environment Protection Agency (SEPA)** have no objection to the development so long as the proposal for foul drainage is acceptable, where the required minimum distances can be achieved.<sup>1</sup>
23. **The Crofters Commission** has advised that their records show the owner of the croft to be Mr Alexander D Grant. They state that, Mr Grant has been the owner of the croft since 1995 and since that time there have been no Decrofting Directions issued in respect of the croft. In conclusion the Commission support the building of croft housing to enable a crofter or owner of the croft to reside there and make best use of the land.
24. **Transport Scotland (Trunk Roads Network Management Directorate)** advise that planning permission be refused for the following reasons:

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<sup>1</sup> In the interests of protecting surface waters a minimum distance of 10 metres from a soakaway to a watercourse (including ditches and field drains) and 50 metres from soakaway to a well or abstraction is required. In the interests of protecting groundwater a minimum distance of 1 metre from the bottom of distribution pipes of a soakaway to the seasonally highest water table is required.

- The proposed development could result in an increase in the number and type of vehicles entering and leaving the traffic stream at a point where visibility is restricted thus creating interference with the safety and free flow of traffic on the trunk road;
- The development proposes to take access at a location where there has been a serious accident, thus the proposed development may result in increasing the likelihood of another accident at this location, consequently, creating interference with the safety and free flow of traffic on the trunk road.

25. **CNPA, Heritage and Land Management (HLM) Group** examined the proposal, particularly from a landscape perspective. It should be noted that **HLM's** comments are only provided assuming that a sufficient justification can be made under the land management criteria.

#### Impact upon trees and the woodland

26. The building would be located within a mature pine woodland and it is contiguous with the Ancient Woodland designation above the site. Several trees would need to be felled and this would clearly have an effect on the character of the woodland edge. Some work has been undertaken in the vicinity of the proposal but so far this has had no visual effect on the wider area because it is only visible from within the woodland.
27. It is quite likely that in addition to the direct effect of building the dwelling, indirect effects may require the removal of additional trees either now or in the near future. These might be to facilitate a garden area, increase light to the property or open up a particular view for example.

#### Landscape and Visual impact

28. Generally the other houses in the area are closer to the road and/or on the same level. Most of them are less than 30m from the road though there is one that is 60m. There is a small number to the south-west that are away from the road and higher up. However most of these are separated from the settlement by woodland and beyond the visual envelope for it.
29. This dwelling would clearly relate to the settlement of Drumullie, however there is a concern that its location, being further away and higher will mean a significant change in the general settlement pattern.

#### Possible mitigation

30. To avoid the negative effects listed above it would be possible to locate a dwelling lower down the slope, either close to the existing free standing lum or possibly close to the caravan. Either location would prevent damage to the



woodland edge and reinforce the existing building pattern which is a characteristic of the settlement.

31. **Boat of Garten and Vicinity Community Council** has no objection to the proposal.

## REPRESENTATIONS

32. The application has been advertised by Highland Council in the Strathspey and Badenoch Herald on the 31 October 2007 as a potential Departure from the Development Plan. Three letters of objection have been received, two of which are from the same objector (APPENDIX 2). In summary the issues raised, include:

- No notification for the septic tank and soak away which was installed in July 2007 was received;
- Infrequent agricultural activity on the 'croft' does not justify the request for a croft house;
- Increased use of the access off the A95; and
- Proposal contrary to development plan policies and granting planning permission could set a precedent in the area.

33. In response to these comments the septic tank and soak away are now the subject of a separate planning application (08/086/CP) which is being presented to committee today. The applicant has submitted a land management justification which is discussed later in the report to justify the house. As the A95 is a Trunk road, Transport Scotland has been consulted on the increase use of the access off the A95 and they recommend refusal of the proposal, for the reasons stated in Paragraph 24 of the report.

34. In addition, the applicant, a local individual and the constituency MSP have submitted comments of support for the application which is attached to this report (APPENDIX 3). In summary the issues raised include:

- There were three houses on Lot 5. Two houses were removed when the new road was constructed and a chimney remains on the ground from the other house.
- Granting planning permission would regularise the situation
- Wishing to build a house and live on his croft is a reasonable expectation and one crofters would see as a right
- The applicant is using his croft in an acceptable way and there is an operational need for him to live there.
- His family have been there for generations and the croft is part of the Drumuillie crofting township which is less active than it used to be.
- The applicant has children who would succeed him on this croft thus perpetuating the family association with Lot 5.
- They have lived in a caravan in this site for two years in all weathers

- The history of the site shows that it was acknowledged at the time when the A95 was constructed that a house would be built at this location.

35. In response, the presence of houses on the site is not considered an appropriate justification to accept further development in this area. Planning Permission is not granted to merely regularise the situation, but rather matters are considered against the relevant development plan policies and the retrospective nature of the proposal should not give it a preferential status. CNPA understand that the applicant is a crofter, however he has failed to supply sufficient justification to support a permanent presence on site. The CNPA have consulted Transport Scotland as the A95 is a Trunk Road and they have recommended that the planning application be refused.

## APPRIASAL

36. This appraisal section of the report will first consider the principles of the development proposed and how it 'fits' with planning policy and the aims of the Cairngorms National Park. The assessment will also consider issues such as general siting, visual impact and the road access.

## Principle and Policy

37. One of the key issues to assess in this application is the principle of a dwelling house on this site in relation to the development plan polices. Highland Council's Development Plan Policy Guidelines 2003 recognises that for a justification to be based on croft management it is accepted that a degree of flexibility will be required, for example, in such circumstances it may not be possible to sustain full time employment and this will be taken into account. It also says that any application for a house should be a registered croft or associated common grazing and be accompanied by appropriate confirmation from the Crofters Commission of the bona fides of the crofting application. As noted in the consultation sections of this report, the Crofters Commission has expressed general support for applications of this nature. However, the proposed development is identified in the Local Plan as in an area of Restricted Countryside where there is a strong presumption against residential development unless there is a land management (agricultural or crofting) justification for allowing otherwise. The policy is based on the premise that there should be protection in the countryside from sporadic development and to that end permit development only where a clear justification exists.

38. The Crofter Commission state that the applicant is the registered croft owner and the applicant has stated that it would be his personal preference to live on the croft. However, the **CNPA** is not asked to look at his personal preference, it is asked to decide whether in planning policy terms there is a sufficient land management justification, allowing for some degree of flexibility as the applicants is a registered crofter, for a house on the site to manage this croft. The **CNPA** has previously supported croft house proposals in Restricted Countryside areas,(example 04/152/CP) where there is a justified management case put forward by the applicant. In light of this and in the interest of consistency in the

assessment of planning applications of this nature, the applicant was asked to submit further details to verify the justification for a dwelling on this site. Information specifically requested by the **CNPA** included:

- Confirmation of overall size of croft and landholding map;
- Numbers and species of livestock;
- Any existing accommodation on the landholding;
- Confirmation on the agreement to enter into a Section 75 legal agreement, restricting the occupancy of the proposed dwelling, and;
- Any previous planning permissions within the landholding (Lot 5 and Lot 7)

39. The applicant has submitted some of the information which was requested. A map showing the landholding has been supplied, the number and species of livestock have been confirmed. The applicant has said that the existing accommodation on the landholding comprises two stables, one hay shed, tool shed and caravan store. The applicant has said that there are no previous planning permissions on the site but there is a history on the Lot, which included the siting of 3 dwellings which have been removed. The applicant has said that he is agreeable to an occupancy restriction being imposed if planning permission is approved, in the standard way, by a Section 75 legal agreement.

40. For the presumption against new housing development to be overcome, a sufficient land management justification must be demonstrated. Policy H3 of the Highland Structure Plan refers to a house being required for the management of land and Policy 2.1.2.3 for Restricted Countryside Areas in the Badenoch and Strathspey Local Plan allows for the possibility of exceptions only where a house is essential for that purpose. The justification which has been provided stated that the total number of stock on the croft comprises 5 sheep, 2 horses and 4 hens and the applicant has stated that the typical hours worked on the croft per day is two. In terms of man hours and the level of economic dependency these are insufficient to support the need for a house on land management grounds. It is therefore considered that, despite the **Crofters Commission** general support for croft housing, an insufficient justification has been demonstrated to comply with the terms of the Restricted Countryside Areas policy.

41. Apparently the applicant sold his former house in nearby Boat of Garten in the expectation that he could then build a new house on the croft. Boat of Garten is less than 10 miles from the croft and therefore the applicant was living within the 10 mile radius the Crofting Commission requires crofters to reside within not to be considered an absentee crofter. Living this distance from the croft would also mean he could carry out the management requirements of the croft, without a permanent on-site presence. The croft is located in the Restricted Countryside Area where there is a strong presumption against residential development unless there is a land management (agricultural or crofting) justification for allowing otherwise.

42. It is also important to note, previous planning applications determined by Highland Council in the nearby Lot 7 where refused for the reasons stated in

paragraph 5. A proposal on the other side of the A95 at Lot 8 was only granted by the CNPA subject to a Section 75, following submission of an appropriate land management justification and an application for a house on a considerably larger croft was refused by the Scottish Government reporter for reasons stated in paragraph 9.

### Access and Roads Issues

43. The recommendation of refusal from Transport Scotland is detailed in paragraph 24. Their response supports the objections raised from neighbouring properties, on the concerns about the increased traffic flow the proposed development would have on the trunk road, where there has been a serious accident. The members of the planning committee had deferred this application at a previous planning committee and had asked specifically for clarification to be sought from Transport Scotland regarding their objection to the planning application.
44. Transport Scotland has provided a response detailing their reasoning for the recommendation of refusal. The additional response states *"when considering the suitability of an access to serve a development, this is based on the requirements of the Design Manual for Roads and Bridges (DMRB), Volume 6 TD 41/95 and TD 42/95 combined with recorded accident statistics. The DMRB provides the minimum geometric and visibility requirements expected in relative to the design speed of the Trunk Road, in this case 60 mph, against which Transport Scotland compares 'on site' measurements to determine the level of compliance with standards. In circumstances that the existing visibility does not meet these requirements then consideration is given to the extent of works required by the applicant to meet the standard. As an example should it transpire that with minor alteration visibility is achievable then Transport Scotland would recommend to the Planning Authority that a condition be attached to reflect this, the same goes for the geometric layout of the access. In conclusion it was considered that the restrictions to visibility could not reasonably be overcome and combined with the accident history and improvements required to the general access arrangement the application is recommend for refusal on the basis that the intensification in use of the existing access would be detrimental to the safe and free flow of traffic on the Trunk Road."*
45. Transport Scotland have also attached a copy of the site report written by the Operating Company, BEAR Scotland Ltd, which identifies the visibility shortfall and concerns regarding the accident history and includes the photos taken during the site visit. (APPENDIX 4).
46. The Committee should note, if approval is deemed appropriate, the refusal recommendation from Transport Scotland would mean the application would require to be notified to the Scottish Government for a final decision.

## **Landscape Impact**

47. As proposed this development would mean intruding into woodland, and the removal of several trees, which would create a visual impact and weaken the settlement pattern of Drumullie. The HLM Group, as suggested in paragraph 21, have identified possible steps which could be taken to mitigate any negative impact the proposal would have on the landscape. However, doing this would not remove the fundamental policy and trunk roads objections. Moving the house closer to the road would also create ribbon development.

## **Conclusion**

48. There has been a lack of an appropriate land management justification provided by the applicant for the erection of a dwelling on this site, and also a recommendation of refusal by **Transport Scotland** on the basis of traffic safety on the A95. Therefore, the proposal is recommended for refusal.

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

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

49. Although there are no natural heritage designations, a new unjustified dwelling house on this site, together with the formation of its access, will have negative impacts on the character and quality of this part of the rural landscape of the National Park and would potentially set a precedent for additional development which could further erode the character of the area. It would not therefore promote the conservation or enhancement of the natural heritage of the area.

### **Promote Sustainable Use of Natural Resources**

50. This is an outline planning application, therefore, details of the proposed new building have not been provided. It is not therefore possible to assess compliance with this aim.

### **Promote Understanding and Enjoyment**

51. Not relevant to this application.

### **Promote Sustainable Economic and Social Development**

52. The development proposal represents a dwelling house in the countryside, which has not been sufficiently justified as being necessary for land management purposes, therefore it does not demonstrate a sustainable form of economic development within the park

## RECOMMENDATION

It is recommended to the Members of the Committee that the application for Outline Planning Permission for erection of a dwelling house, on land 100m northwest of Birch Cottage, Drumuillie, Boat of Garten be **REFUSED** for the following reasons:

1. The proposed development is contrary to Regional and Local Planning Policy as contained in Highland Structure Plan Policy H3 (Housing in the Countryside), Development Plan Policy Guidelines 2003 and the Badenoch and Strathspey Local Plan Policy 2.1.2.3. (Restricted Countryside Areas), all of which restrict new houses in the countryside unless there are particular circumstances and special needs in relation to land management. It has not been sufficiently demonstrated that the proposed dwelling is required for the purposes of land management. If approved, the development would set a precedent for further unjustified development of this nature and would encourage the sporadic siting of other residential developments in similar rural locations, all to the detriment of the character of the countryside and the amenity of this part of the National Park.
2. The proposed development will result in the intensification in use of the existing access which would be detrimental to the safe and free flow of traffic on the A95 Trunk Road, at a point where visibility is restricted and where there has been a serious road traffic accident in the past.

**Derek Manson**  
**8<sup>th</sup> September 2009**  
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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.

# APPENDIX 1



# APPENDIX 2

# APPENDIX 3

# APPENDIX 4