
CAIRNGORMS NATIONAL PARK AUTHORITY

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

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

**DEVELOPMENT PROPOSED: OUTLINE PERMISSION FOR THE
ERECTION OF A DWELLING HOUSE ON
LAND 35 METRES SOUTH OF
KINAKYLE, DULNAIN BRIDGE,
GRANTOWN ON SPEY.**

REFERENCE: 07/443/CP

**APPLICANT: MR. & MRS. G.A. GRANT, KINAKYLE,
DULNAIN BRIDGE, GRANTOWN ON
SPEY.**

DATE CALLED-IN: 21ST SEPTEMBER 2007

RECOMMENDATION : APPROVE WITH CONDITIONS

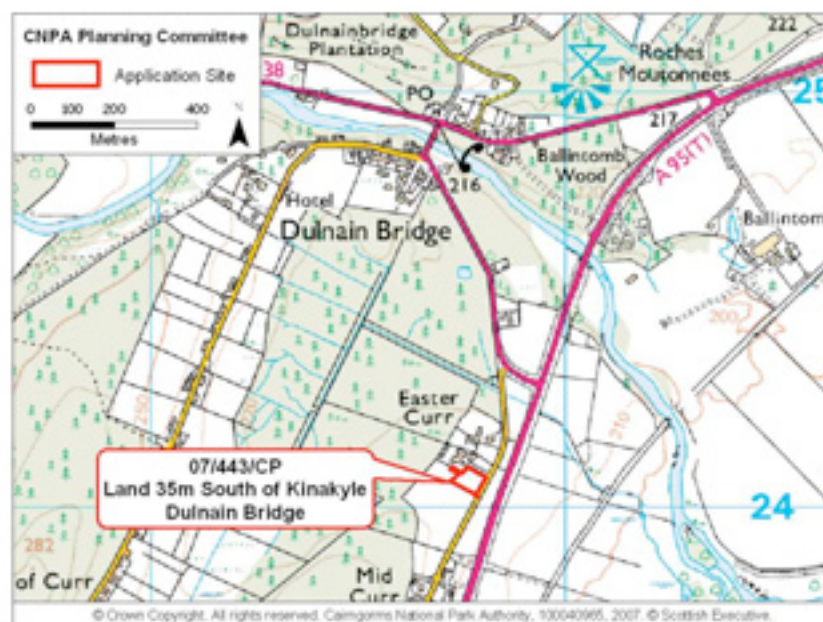


Fig. 1 - Location Plan

BACKGROUND TO THE AMENDED REPORT

1. An application for outline permission for the erection of a dwelling house on land 35 metres south of a property known as Kinakyle House, outside Dulnain Bridge was brought before the CNPA Planning Committee for determination on 8th February 2008. The site area extends to approximately 2,800 square metres (0.69 acres) and forms part of the 14.4 hectare landholding which is owned by the applicants, Mr. and Mrs. Grant. The applicants had advanced a case to warrant the development proposal being treated as an exception to the normal restriction on the granting of planning permission for a dwelling house in a Restricted Countryside Area. Mr. & Mrs. Grant are retiring from full time agricultural involvement on their landholding. Their son is returning to the area and will assume primary responsibility for the operation of the landholding at Kinakyle, and he and his fiancée will take up residence in the original farmhouse, which is to be vacated by the applicants. Mr. Grant will continue to assist his son on a part time basis in the operation of the landholding. The development proposal was considered to comply with planning policy on housing in Restricted Countryside Areas, as detailed in the Badenoch and Strathspey Local Plan.



Fig. 2 : Proposed site with Kinakyle House to the right

2. Based on an overall analysis of the proposal, including the aforementioned planning policy, as well as other planning considerations such as siting and landscape impact, access and servicing etc., it was recommended that planning permission be granted subject to the completion of a Section 75 legal agreement, and also subject to a number of conditions. The Planning Committee accepted the recommendation. For ease of reference a full copy of the original report is attached to the rear of this current report. The recommended Section 75 legal agreement required a restriction on “the occupancy of the new dwelling house to the applicants or any person employed (or last employed) in agricultural activity on the 14.4 ha. landholding on which it is proposed and restricting the sale of the proposed dwelling house separate from the landholding.” Mr. and Mrs. Grant had previously indicated their acceptance of a requirement to enter into the Section 75 legal agreement.

THE APPLICANTS CASE FOR AMENDMENTS TO THE REQUIRED SECTION 75 LEGAL AGREEMENT

3. Further to the resolution of the CNPA Planning Committee in February 2008 to grant planning permission subject to a number of conditions and also subject to the completion of the Section 75 legal agreement, Ledingham Chalmers (solicitors) drafted the required legal agreement on behalf of the CNPA. The applicants considered the terms of the agreement and their solicitor subsequently indicated that the applicants are unable to sign the agreement in its present form.



Fig. 3 : Overall landholding, with site of proposed new dwelling house identified by cross hatching

4. The main point of concern is that the currently drafted legal agreement requires that the proposed new dwelling house to be linked to the entire 14.4 hectare landholding which includes the existing residential property and its garden area. As referred to earlier in this report the applicants intend to reside in the new dwelling house, and the existing residential property will be occupied by their son and his fiancée. In the course of the initial application assessment Mr. and Mrs. Grant alluded to the younger couple's potential future plans to refurbish and operate a bed and breakfast establishment from the existing residential property, whilst also assuming responsibility for working the landholding (with some assistance from Mr. Grant senior). The circumstances of the intended occupancy of the existing residential property (for example whether it would arise as a result of inheritance, rent or purchase) were not detailed. Having regard to the family relationships, the fact that the landholding is to be worked by both the residents of the existing and new residential properties, the written assertion by the applicants that the new dwelling house would be for their "own use in retirement and then become the property of Martin Grant" (i.e. the applicants son) and that the landholding map provided initially included the existing dwelling house, it was understood that the

applicants were willing to enter into the Section 75 legal agreement which as well as restricting the occupancy of the new dwelling house would also restrict its subsequent sale separate from the entire 14.4 hectare landholding, which encompassed all the existing structures, including agricultural buildings and the existing dwelling house.

5. Having considered the implications of the drafted Section 75 legal agreement, the applicants are now requesting that it be amended to exclude the existing residential property and its associated garden area, which comprises a total land area of approximately 0.47 acres (0.193 hectares). In a letter submitted to the Cairngorms National Park Authority on May 1st details have been provided to justify the request. It is intended to transfer the ownership of the existing residential property (Kinakyle House) and garden area to the applicants son and his partner. In order for the younger couple to proceed with their business plan to operate the property as a guest house, they require a mortgage to raise funds for essential repairs and alterations, with opportunities to raise a mortgage being hindered in the event of Kinakyle House being burdened as part of the Section 75 legal agreement. At present the property is free of any burdens, having been de-crofted in 1992 in order to satisfy building society requirements at the time of a mortgage being secured on Kinakyle House.



Fig. 4 : Kinakyle House and garden area which are proposed for exclusion from the remainder of the landholding.

APPRAISAL

6. The report originally presented to Committee in February 2008 outlined relevant planning policies relating to housing in countryside areas, from national level guidance through to the **Highland Structure Plan 2001** and the **Badenoch and Strathspey Local Plan (1997)**. **Policy H3** of the Structure Plan states that housing will generally be within existing and planned new settlements and that new housing outwith this will not be permitted unless it can be demonstrated that it is required for the management of land and related family purposes. In terms of Local Plan policy the land is within an area identified as a Restricted Countryside Area and section 2.1.2.3 of the Plan reconfirms the sentiments of the Structure Plan policy stating that a “strong

presumption will be maintained against the development of houses” in such areas. Exceptions will only be made where a “house is essential for the management of land, related family and occupational reasons.”

7. The principle of a dwelling house at the proposed location was previously accepted and considered compliant with planning policy. The applicants involvement to date in land management activities on the family landholding and their commitment to continued land management activities (to be taken on by the applicants son, with the continued although decreasing involvement of Mr. Grant snr.) have not altered since the original presentation of the case. Existing planning policy allows for the provision of a new dwelling house to accommodate retiring land managers. The applicants’ case meets those requirements, where the new dwelling house is intended to become the retirement home of Mr. and Mrs. Grant. The only change requested to the nature of the Section 75 legal agreement is the tying of the new dwelling house to a smaller area of landholding, excluding Kinakyle House and its associated garden area, in order to avoid the imposition of a burden on the currently unencumbered existing property. The applicants remain willing to enter into a Section 75 legal agreement to restrict the occupancy of the new dwelling house and are also to restrict the sale of that property separate from the remainder of the landholding, which totals approximately 14.2 hectares.
8. Having considered the case put forward by the applicants to amend the terms of the required Section 75 legal agreement, it is my view that the altered terms are of minor significance and would continue to achieve the same required outcome of ensuring that the new dwelling house is only ever occupied by persons employed (or last employed) in land management activities on the remaining 14.2 hectare landholding.

AMENDED RECOMMENDATION

That Members of the Committee support a recommendation to:

Grant outline permission for the erection of a dwelling house on land 35 metres south of Kinakyle, Dulnain Bridge, Grantown on Spey, subject to the completion of a Section 75 Legal Agreement which restricts the occupancy of the new dwelling house to the applicants or any person employed (or last employed) in agricultural activity on the associated portion of the landholding on which it is proposed and restricting the sale of the proposed dwelling house separate from the associated portion of the landholding, and also subject to the following conditions :

1. A formal planning application and detailed plans indicating all matters relating to the siting, design and external appearance of all buildings

shall be submitted for the prior approval of the Planning Authority within 3 years of the date of this consent and the development must be commenced within 5 years of the date of this permission or within 2 years from the date of final approval of all the foregoing Reserved Matters.

2. The proposed dwelling house shall be designed in accordance with the traditional vernacular architecture of the area and shall be a maximum of 1 _ storeys in design, and shall incorporate the use of external materials that visually compliment existing properties in the wider area.
3. An application for approval of reserved matters shall be accompanied by a detailed landscaping plan and a maintenance plan for the proposed site and the associated landholding, which shall include
 - (i) proposals for the planting of semi mature trees and shrubs of indigenous species on the boundaries of the overall area;
 - (ii) details of all other types of new boundary treatments proposed; and
 - (iii) details of all surface treatments.

The landscaping and maintenance programme shall be implemented and maintained in accordance with the approved plan. The plan shall include details of the siting, numbers, species (which shall be appropriate to the proposed setting) and heights (at the time of planting) of all trees, shrubs and hedges to be planted and shall ensure:-

- (a) Completion of the scheme during the planting season next following the completion of the development, or such other date as may be agreed in writing with the Planning Authority;
 - (b) The maintenance of the landscaped areas in perpetuity in accordance with the detailed maintenance schedule/table. Any trees or shrubs removed, or which in the opinion of the Planning Authority, are dying, being severely damaged or becoming seriously diseased within three years of planting, shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.
4. Prior to any other works starting in connection with the proposed development, the works listed in the following paragraphs shall be completed and approved by the Cairngorms National Park Authority acting as Planning Authority, in consultation with the Area Roads and Community Works division of Highland Council : -
 - (a) the existing access shall be upgraded and generally formalised to the satisfaction of the Planning Authority in consultation with the Roads Authority. Construction for the first 6 metres measured from the nearside edge of the public road shall consist of 40mm thick Close Graded Wearing Course on 60mm Dense Basecourse on 350mm thick Type 1 sub base; all on a sound formation. Thereafter construction shall consist of

350mm thick well bound Type 1 sub base on a sound formation. The same standards apply to the construction of proposed new access;

- (b) visibility splays shall be provided and maintained on each side of the existing access and the proposed new access. These splays are the triangles of ground bounded by the first 2.5 metres along the centreline of the access road (the X dimension) and the nearside edge of the main road (the y dimension) measured in each direction from the intersection of the access road with the main road. In a westerly direction y shall measure at least 90 metres and in an easterly direction at least 60 metres;
 - (c) within the visibility splays of each of the existing and proposed entrances nothing shall obscure visibility between a driver's eye height of 1.0 metres positioned at the x dimension and an object height of 1.0 metres anywhere along the y dimension;
 - (d) parking and manoeuvring space for at least 2 no. cars shall be provided within the curtilage of the property such that all vehicles may enter and leave the site independently in forward gear;
 - (e) any gates that are provided shall open into the property and shall be set back at least 6 metres from the nearside edge of the public road;
 - (f) the property shall be free from the effects of a 1 in 200 years flood event;
 - (g) no water shall discharge on to the public road.
5. The private foul drainage system shall be designed to ensure the protection of surface waters and groundwater, by ensuring that all minimum distances as set out by SEPA are adhered to.
6. All public services for the development, including electrical, cable television and telephone cables, shall be located underground throughout the site.
7. The water supply to serve the proposed development shall be adequate and suitable for human consumption.

Advice note :

- 1. Prior to any work of excavation or surfacing starting within 2 metres of the public road edge, a road opening permit shall be obtained from the Roads Authority.
- 2. As referred to in condition no. 5 of this permission the following are the minimum distances acceptable - 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.

Mary Grier
22 May 2008

planning@cairngorms.co.uk

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.