
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: CONSULTATION RESPONSE TO ABERDEENSHIRE COUNCIL ON A PROPOSAL FOR THE REMOVAL OF AN OCCUPANCY RESTRICTION ON A SECTION 50 AGREEMENT RELATING TO PLANNING REF. NO. 01/095/0720 AT PRONY, GLEN GAIRN, BALLATER.

Prepared by: MARY GRIER, PLANNING OFFICER (DEVELOPMENT CONTROL)

Applicant : MR. BRYAN WRIGHT, PRONYBEG, GLENGAIRN, BALLATER, AB35 5XB.

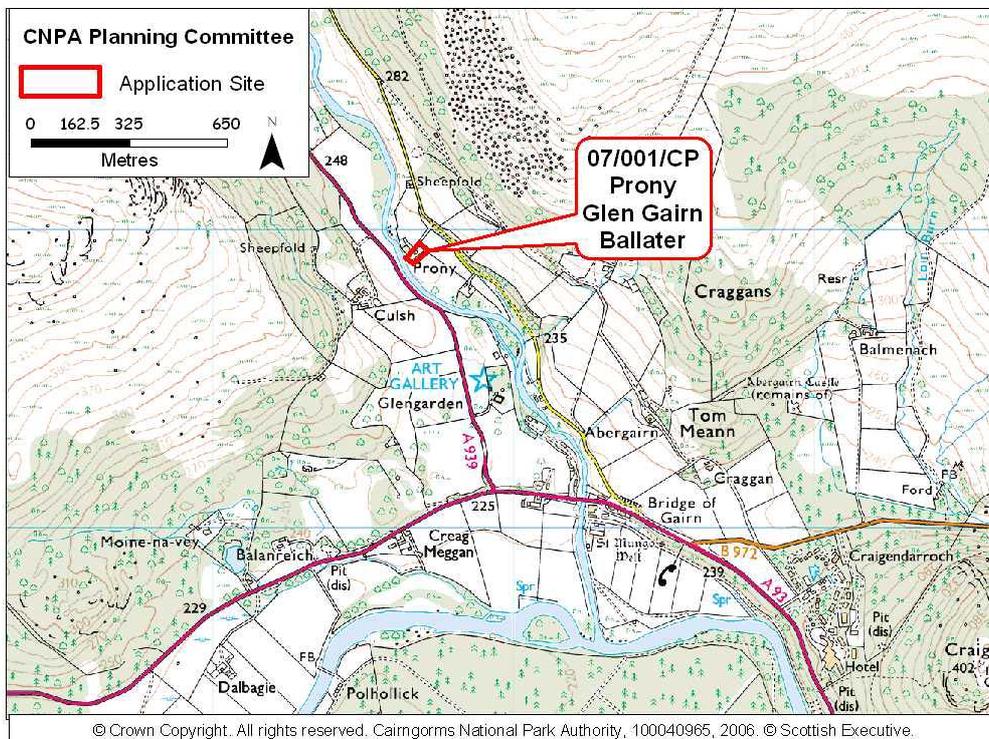


Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. A request has been made to Aberdeenshire Council by Mr. Bryan Wright of Pronybeg, Glen Gairn, Ballater for the removal of an occupancy restriction which was one of the clauses of a Section 50 Agreement¹ that the applicant entered into in connect with the granting of planning permission for his existing property (Pronybeg) under Aberdeenshire Council Planning Ref. No. 01/95/0720.
2. Planning permission was sought in 1995 for the erection of a new dwelling house on land adjacent to Prony Farmhouse. The location of the subject site and the associated farmhouse is at Glen Gairn, approximately 3 kilometres to the north west of Ballater. The property is accessed along a minor road which eventually terminates near the foot of Hill of Candacraig and Lary Hill. The minor road follows the route of the River Gairn and the properties which are the subject of the Section 50 Agreement are located close to the eastern bank of the river.



Fig. 2 : Prony Farmhouse (left) and the newer property, Pronybeg (right)

3. At the time of permission being sought for the new dwelling house in 1995, the agricultural landholding of which the proposed site formed part extended to approximately 675 acres and supported a flock of between 300 and 400 breeding ewes. Of the overall 675 acre landholding, 500 acres was leased from Dinnet Estate.

¹ Section 50 Agreement is now referred to as a Section 75 Agreement in accordance with the provisions of the Town and Country Planning (Scotland) Act 1997.

4. Condition no. 2 of the planning permission for the new dwelling house stipulated that “The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture, as defined in Section 275 of the Town and Country (Planning) Scotland Act 1972, or in forestry, or a dependant of such a person residing with him or her, or a widow or widower of such a person.” The reason for the condition was due to the fact that the “site lies in a rural area where the Planning Authority considers that new residential development is inappropriate unless related to the essential needs of agriculture and forestry.”
5. In addition to the stipulated condition, the granting of planning permission was also contingent upon the applicant entering into the Section 50 Agreement restricting the occupancy of the new property,² and later in the course of the drafting of the agreement, the applicant was also required to agree to a restriction on the occupancy and subsequent sale of the existing dwelling house (Prony Farmhouse) on the landholding. The applicant had at that time expressed a wish that provision be made for use of Prony Farmhouse for short term holiday letting purposes, with a case being put forward that a holiday let could be very readily terminated and would not therefore hinder the occupancy restriction which sought to make that property “available for occupation for a person or persons solely or mainly employed.....in agriculture.” Despite correspondence indicating initial acceptance of this by Kincardine and Deeside District Council, the view of the District Planning Authority subsequently altered and Clause Three of the Section 50 Agreement pertaining to the existing farmhouse on the 675 acre landholding stated the following –

“By their signature hereto the said Developers hereby undertake that the existing farm dwellinghouse at Prony Farm, Glengairn, Ballater, shall only be available for occupation by a person or persons solely or mainly employed, or last employed in the locality in agriculture as defined by the said Section 275 of the Town and Country Planning (Scotland) Act 1972, or in forestry, or a dependant of such a person residing with him or her, or the widow or widower of such a person. Furthermore, the said dwellinghouse shall never be disposed separately from the said subjects more particularly described in and disposed by the said Disposition by James Malcolm Marcus Humprey with consent therementioned in favour of the Developers dated and recorded as aforesaid.”

² Clause 2 restricted the occupancy of the new dwelling house to persons solely or mainly employed or last employed in the locality of Prony Farm, or alternatively whose principal or main occupation is in agriculture or forestry; and it also stated that alternatively the property may be occupied by persons who may have retired from full time agricultural or forestry employment within the locality, or a widow or widower of such a person.

The applicants case

6. It is Clause Three of the Section 50 Agreement which Mr. Wright is now seeking to be released from by Aberdeenshire Council. Amongst the documentation submitted in support of his request, a report has been submitted by Watson Bell Consultants³ which sets out the background and justification for the request. As already detailed the agricultural landholding at Prony extended to 675 acres (of which 500 were leased from Dinnet Estate on a annual basis). Although not stated in the documentation, it is assumed that the operation of an agricultural unit of that size entailed the assistance of a number of employees at Prony, which accounts for the occupancy requirement and restriction on its sale separate from the landholding, as asserted in the Section 50 Agreement, in addition to the occupancy of the new dwelling house also being restricted.
7. The Watson Bell report documents the changing circumstances on the landholding since 1995, the most significant of which is the fact that the farm has contracted considerably in size, with the loss of the 500 acres of leased seasonal grazing. The landholding now consists of 80 acres of lowland grassland and 96 acres of rough grazing, which supports a flock of 40 breeding ewes, and any surplus grassland is let out seasonally. Watson Bell Consultants estimate that the “net contribution of the 40 ewes before labour costs is less than £1,000 per year and represents less than 30 Standard Man Days per annum.”
8. Reference is also made to the farming situation in the surrounding area, and a case is advanced that with the exception of some of the few remaining estate farming enterprises “farming businesses in Upper Deeside no longer have any full time employees other than family members.” A similar point is made in relation to forestry where it is stated that restructuring has resulted in forest management companies and contract labour taking over from in hand forest management. Consequently it is concluded that there is no unfulfilled demand for housing for either agricultural or forestry workers or their dependants in the area. The report from Watson Bell Consultants concludes that the continuing restriction on the use of the farmhouse, in addition to the restriction on the use of Pronybeg no longer makes economic or social sense and it is contended that it would “have a detrimental effect on the continuing viability of the remaining farm business.”

³ In the introductory section of the supporting documentation Watson Bell Consultants are described as an “independent firm of Agricultural Consultants and Land Agents operating throughout the North of Scotland advising clients on all land use related matters pertaining to planning regulations.”

9. In an effort to gain a more detailed understanding of the situation at Prony, I contacted Mr. Wright, who outlined the history on the landholding since the granting of the planning permission and signing of the Section 50 Agreement in 1996. The leasing of the 500 acres of land ceased approximately a year after the granting of planning permission and since that time the landholding has been its present size of 176 acres. Given the size of the landholding and the limited farming activity it has not supported full time workers for quite some time. Whilst the dwelling house which was the subject of the original planning application has been occupied, and continues to be occupied by Mr. Wright, the existing farmhouse has not had permanent occupation for almost nine years. It has been used periodically to provide accommodation on a temporary basis for occasional workers during lambing season, and it has also apparently been used for short term holiday purposes by family and friends. Other than over those short periods, the property has however remained vacant. Mr. Wright indicated in the telephone conversation that in the event of being released from Clause 3 of the Section 50 Agreement, it is not his intention to sell the property. Documentation submitted by Mr. Wright in support of the removal of the clause indicated that if successful he hopes that “the farmhouse could be put to a more useful purpose in accordance with to Policy EMP 9 of the Local Plan, in that it could provide accommodation for tourists. Alternatively it could be used to accommodate a family not engaged in agriculture or forestry.”

DEVELOPMENT PLAN CONTEXT

10. Section 3.18 of the **North East Scotland Together, Aberdeen and Aberdeenshire Structure Plan 2001 – 2016 (NEST)** directs development towards towns and villages and to meet market demand in existing settlements in preference to isolated development in the open countryside.
11. Policy 12 of **NEST**, entitled House Building in the Countryside Beyond the Green Belt states that there will be a presumption against house building in such areas except
- (a) rehabilitation or extension of an existing house; or
 - (b) replacement on the same site of the largely intact house; or
 - (c) a new house which is essential to the efficient operation of an enterprise, which is itself appropriate to the countryside.

Policy 12 also includes the caveat that “all such development must be of the highest quality particularly in terms of siting, scale, design and materials.

12. The **Aberdeenshire Local Plan** includes more detailed policies. The main policy applicable to the proposed development is **Policy Hou4 on New Housing in the Countryside including the Aberdeenshire Part of the Cairngorms National Park**, where it is stated that a single new house will be approved in principle if :
 - (a) it is for a full time worker in an enterprise which itself is appropriate to the Countryside;
 - (b) the presence of that worker on-site is essential to the efficient operation of that enterprise;
 - (c) there is no suitable alternative residential accommodation available;
 - (d) the proposed house is within the immediate vicinity of the worker's place of employment; AND
 - (e) it conforms with Appendix 1.

13. In terms of the justification of **Policy Hou4**, the primary aim of the policy is to support a long term sustainable pattern of development. It is intended to prevent sporadic development in the countryside and assist in directing new housing development into cohesive groups of housing. The Local Plan also states that in order to "ensure that any new house approved under Part 1 of this Policy is never sold on to a non-essential worker, developers may be required to enter into a Section 75 Agreement with the Council."

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

14. Although lying within 40 metres of the River Gairn, which is part of the River Dee SAC, the removal of the restrictive clause relating to the existing dwelling (Prony Farmhouse) would not have any impact on the natural heritage of the area. In addition it would not affect the cultural heritage of the area.

Promote Sustainable Use of Natural Resources

15. The nature of the proposal i.e. to be released from a restrictive occupancy clause does, not involve any construction and is not therefore applicable to this aim.

Promote Understanding and Enjoyment of the Area

16. As an existing dwelling house which has been part of the landscape of this area for a considerable period of time, the removal of a restrictive occupancy clause would have no direct bearing on this aim.

Promote Sustainable Economic and Social Development of the Area

17. Given that the house has been in existence for quite some time, it is likely to have benefited in the past, during its periods of occupancy, from various services such as school transport, refuse collection, fire and health etc. and any future use would give rise to a demand for a similar level of service provision. The location of the property also tends to promote reliance upon the private car.

Conclusion

18. The foregoing sections of this report have provided the background to the property owners request to Aberdeenshire Council for the removal of Clause 3 of the Section 50 Agreement, as well as providing details of the current planning policy context which will be key to the decision by Aberdeenshire Council. It is important to bear in mind that the entire process is a legal one and is not a planning determination. In this context, the CNPA does not actually have a remit and the consultation has been initiated by Aberdeenshire Council as a courtesy rather than a mandatory requirement. Consequently the conclusions of this report derive primarily from an assessment of the impact of the potential removal of Clause 3 of the Section 50 Agreement on the aims of the National Park, with reference of course to current planning policy and in particular examining whether or not the removal of the relevant clause would set a precedent for unjustified dwelling houses in the countryside, particularly within the Aberdeenshire area of the Cairngorms National Park.
19. Although I have not had the benefit of a full examination of the planning file relating to the permission granted for a new dwelling on the landholding (the property now known as Pronybeg, Mr. Wright's current home) in 1995, it is my understanding from the selection of documents provided in the course of the consultation from Aberdeenshire Council, as well as information provided by Mr. Wright in a telephone conversation, that the size of the landholding at the time of the granting of planning permission, as well as the level of agricultural activity undertaken and the workforce in place, justified two dwelling houses on the overall holding - the existing Prony Farmhouse and the new dwelling. The granting of planning permission, subject to entry into a Section 50 Agreement, which included clauses restricting the occupancy of both properties and also restricting the sale of the existing farmhouse separate from the landholding, was an appropriate mechanism at that time to ensure an adequate supply of accommodation commensurate with the size of the landholding and the scale of activity on it at that time, and in so doing justifying two dwelling houses in this area. It is an approach which would also be consistent with the current policy, as detailed in paragraph. 12 of this report (**Policy Hou/4 - New Housing in the Countryside including the Aberdeenshire Part of the Cairngorms National Park**).

20. Circumstances on the landholding have however altered over the years, with it reduced in size to such an extent that it can only support a worker on a part time basis. It is clear that the availability of the two properties for the provision of accommodation for persons engaged in agriculture on the landholding is no longer required. Although Clause 3 of the legal agreement is also sufficiently flexible to allow occupation of Prony Farmhouse by persons employed in, or last employed in agriculture or forestry in the wider locality, a case has been advanced in the consultants report that there is no unfulfilled demand for housing from either of those employment sectors in the area.
21. In accepting such an argument, one must then question the resultant situation at Prony Farmhouse. The reality of the situation is that the property is liable to lie uninhabited for the majority of the time, with the potential consequence that it could eventually fall into a state of disrepair. The alternative, subject to the restrictions of Clause 3 being removed, is that the property could be more effectively utilised, perhaps being used as tourist accommodation or as permanent accommodation for persons not employed, or last employed, in agriculture or forestry in the area, both suggestions of which emanated from the owner.
22. The effect of the removal of Clause 3 on the aims of the Cairngorms National Park would in my view be negligible, and this is borne out in paragraphs 14 – 17 of this report where an assessment of the impact on each of the individual aims has been undertaken. The fact that that the house has been in existence for a significant period of time, has established itself as part of the built environment of this rural area, and is already serviced by necessary infrastructure all indicates that the matter of occupancy has little or no bearing on the aims of the National Park in this instance.
23. Having regard to the case advanced i.e. the significant reduction in the size of the landholding and its inability to support employees and the consequent lack of demand for on site accommodation, in support of the request for release from Clause 3 of the Section 50 Agreement, it is my view that the specifics of this case justify strong consideration being given to the lifting of the restrictive clause relating to the original farmhouse. Due to the specific circumstances of this case I do not consider that any potential removal of the relevant clause would set a precedent for the development of unjustified dwelling houses in the countryside, in the Aberdeenshire part of the Cairngorms National Park.

24. In conclusion I recommend that the Planning Committee of the **CNPA** do not oppose the request from the owner of Prony Farmhouse and Pronybeg to be released from Clause 3 of the Section 50 Agreement and that such a view is conveyed to Aberdeenshire Council in order to assist that Local Authority in deliberations on this legal process. In addition, having regard to the intentions expressed by the property owner to utilise the farmhouse either for the provision of tourist accommodation or to provide it as a residence for a family not involved in agriculture or forestry, and having regard to the aims of the Cairngorms National Park, in particular the fourth aim, Members may wish to consider suggesting that Aberdeenshire Council explore the possibility of imposing a new clause requiring the property to be utilised for either of those purposes.

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1st March 2007

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