
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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(DEVELOPMENT CONTROL)

DEVELOPMENT PROPOSED: ERECTION OF DWELLINGHOUSE FOR SHORT TERM HOLIDAY LETTING, LAND AT LOCHAN GEAL, DALNAVERT, FESHIEBRIDGE, KINGUSSIE

REFERENCE: 03/023/CP

APPLICANT: MR. IAN FORRESTER, GREAT NORTH LODGES, TEMPERANCE, 2 DALFABER ROAD, AVIEMORE

DATE CALLED-IN: 26 SEPTEMBER 2003

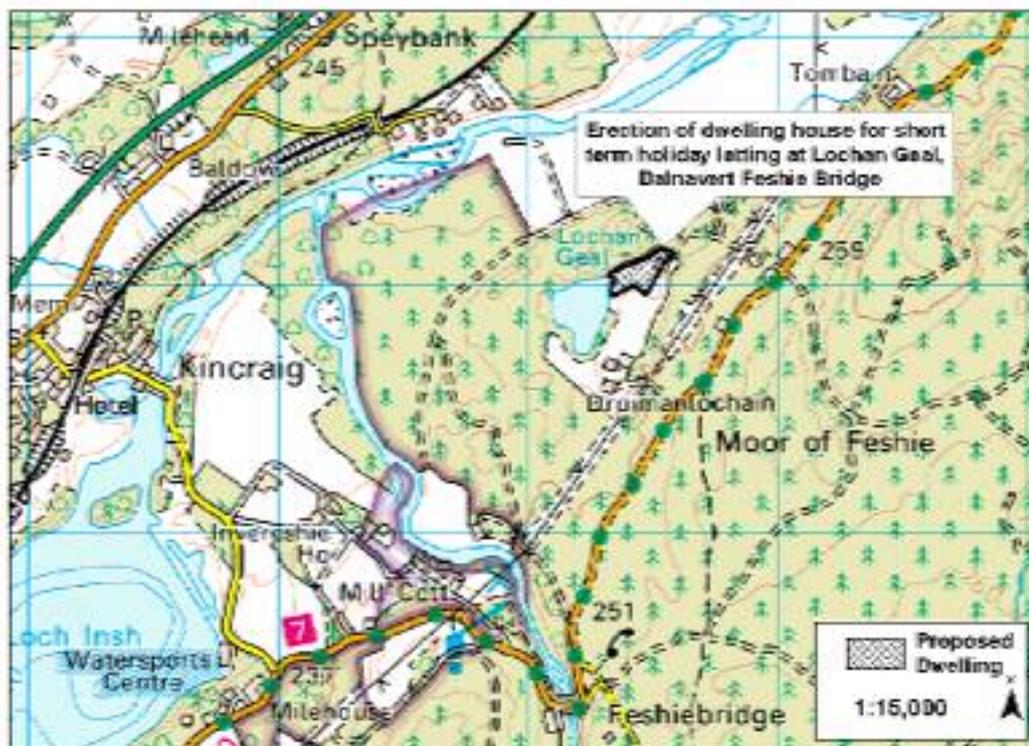


Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. This application is submitted in outline format, and proposes the erection of a dwellinghouse at a site which is located in a countryside area on land adjacent to a lochan ("Lochan Geal"), at Dalnavert, Feshiebridge (see Fig. 1 above). The site is positioned at the end of an unsurfaced forest track which leads westwards, through some cottages and a forested area, from the Kingussie/Inverdrue stretch of the B970. The area of ground delineated on the submitted drawings, comprises open grazing land bordering the shore of the lochan which is located to the south west side (see Fig. 2 below). The lochan and the site are enclosed on the north and west sides by coniferous woodland, and to the east and south sides the open grazing land rises up from the shoreline of the lochan. There is also a group of trees located within the boundaries of the site but on the shoreline. The access track, owned by Forest Enterprise, provides access to the Dalnavert Community Co-operative (a residential agricultural settlement) to its north-east, two residential properties to its south-west (Druim-Na-Coille, currently being extended, and Drumcluan) and an open area of ground to its north which formerly was used as a caravan site. Opposite the site, on the south-west side of the lochan, there is a tall birch tree, set against the background of the forest, which accommodates an abandoned osprey nest in its top branches.



Fig. 2 – Looking South West towards Lochan Geal from access road

2. The proposal is to construct a house which is to be used for short term holiday letting purposes. Although the application is for outline planning permission, the applicant has indicated in his submissions, that the property would accommodate up to 10 guests with an average party size of 6 persons. The house would be one and a half storeys and it is proposed to cut the new

building into the west bank of an existing hillock and sculpt the land around it (see Fig. 3 below). The application forms state that the house would be finished in dressed logs and coloured profiled metal sheeting. A new access track of approximately 200m in length, from the end of the existing track, will be formed through the grazing land but following the tree line on the north side. Some new tree planting is also proposed within the site. A new septic tank with soakaway is proposed for drainage. The applicant has submitted that the proposal would contribute approximately £120,000 per annum to the local economy. It is also stated that the area of open grazing land between the actual house site not required for the proposed development, would be offered for lease, at a peppercorn rent for cattle grazing, or be planted with approximately 3-4 acres of native tree species.



Fig. 3 - Hillock looking North East from shoreline

3. The site has been the subject of several planning applications over the last few years. In 1997, an application for outline planning permission for the erection of a house, garage/workshop, storage shed and polytunnel, was submitted on the basis of supporting a landscape garden nursery business (BS/97/242). This application was refused by the Highland Council in January 1998. The reasons for refusal included, the proposed house would have increased the number of houses (over the Councils policy limit of four) served by an unadopted road, the application would have led to a precedent being set, and the applicant had failed to provide sufficient justification, for an occupational need for the house. In July 2002, the current applicant submitted an application for Full Planning Permission, for a house on the site, for short term holiday lets (02/0205/FULBS). This application was refused by the Highland Council in September 2002. The proposal was contrary to structure and local

plan policies, relating to the impact the development would have had on habitats or species (breeding site for ospreys), the development would have led to an additional property served by an unadopted road, and the development, by virtue of its location and type, would have been detrimental to local heritage and amenity. A subsequent appeal on this refusal was dismissed by the Scottish Executive Inquiry Reporters Unit in July 2003.

DEVELOPMENT PLAN CONTEXT

4. National Planning Policy Guideline 14 (Natural Heritage) states that the government's objectives for Scotland's natural heritage are to conserve, safeguard and where possible, enhance, the overall populations and natural ranges of native species and the quality and range of wildlife habitats and ecosystems, and the natural beauty and amenity of the countryside. In addition, it states that lochs, ponds, watercourses and wetlands are often both valuable landscape features and important habitats, and planning authorities should seek to safeguard their natural heritage value within the context of a wider framework of water catchment management. Scottish Planning Policy 3 (Planning for Housing) states that plans and proposals for residential development should seek to minimise adverse effects on natural heritage, including landscape character and biodiversity. Care should be taken to safeguard national and international natural heritage designations...and planning authorities should take care to safeguard the outstanding natural and cultural resources of existing National Parks. In addition, on housing in rural areas, it states that the aim should be to promote development that supports the rural economy and local services, promotes rural regeneration, embodies the principles of sustainable development, and enhances the rural environment.
5. In the approved Highland Structure Plan 2001, Policy G2 (Design for Sustainability) states that proposals will be assessed, particularly within designated areas, on the extent to which they comply with a set of criteria, These include, amongst other things; impact on resources (habitats, species, landscape, scenery, freshwater systems, cultural heritage and air quality); demonstration of sensitive siting and high quality design (including use of appropriate materials) in keeping with local character, and historic and natural environments; and contribution to the economic and social development of the community. Developments which are judged to be significantly detrimental in terms of these criteria shall not accord with the development plan.
6. Policy H8 (Access Arrangements for New and Existing Development) states that development proposals which involve new or improved access to serve more than 4 houses and/or to serve a development which would generate vehicular traffic equivalent to more than 4 houses shall be served by a road constructed to adoptive standards. The adopted road should normally serve all of the new development and any existing development. Policy T3 (Self Catering Tourist Accommodation) states that permission for tourist

accommodation proposals will be granted only on the basis of the development not being used for permanent residential accommodation. This will be secured by means of an appropriate occupancy condition. The development must also comply with Policy G2. Finally, structure plan Policy N1 (Nature Conservation) states the new development should seek to minimise their impact on the nature conservation resource and enhance it wherever possible. Developments will be assessed for their effects on the interests of sites of local conservation importance and will be resisted where these are judged to be unreasonably detrimental.

7. Policy 2.2.9. (Tourism and Recreation) recognises the contribution to the economy of tourist related development. The priority is to ensure that broadening the range and quality of facilities and accommodation is balanced with protecting the area's exceptional scenic and heritage resources. Policy 2.2.10. (Tourism) encourages the development of tourist accommodation and facilities at suitable sites within or immediately adjoining communities. It also states that development potential in parts of the countryside is limited by amenity and servicing factors. Priority will be given to the expansion of existing facilities, proposals associated with agricultural diversification or use of redundant buildings in these areas which include the National Scenic Area. Elsewhere, development should be compatible with adjoining land uses, spare capacity in infrastructure and safeguards for local heritage and amenity. Proposals should either associate well with the prevailing patterns of building, or be well-absorbed visually by landform or trees. Finally, Policy 2.5.10. (Landscape Conservation) states that notwithstanding the Cairngorms National Scenic Area, the Council will seek to conserve areas of landscape importance including waterside land, open areas and scenic views particularly over open water from the main tourist routes.

CONSULTATIONS

8. The planning officers of the Highland Council, have stated, under delegated powers, that the application is, in effect, a resubmission of one previously refused by the Area Planning Committee and subsequently dismissed on appeal. The resubmission centres around the relocation of the house out of line of sight of an Osprey's nest. The status of the nest has been disputed by various parties but in the appeal decision the reporter did accept that it was a material consideration. The response goes on to state that the relocation of the proposed house means that there will be significant earthworks which does cause some concern. However, they admit that the site is well enclosed and not overlooked by other properties. Nonetheless, the Area Committee, in refusing the previous application had been concerned that the house, and the access, in itself, would represent a significant intrusion into the area that is otherwise unspoiled and of some character. This concern would remain, no matter where the house is positioned on the site.
9. In addition to this, they have stated that the local plan presumes against new houses in the countryside and structure plan policy presumes against developments, as in this instance, serving more than four houses with an

unadopted road. The Forest Authority, who own the access road, have indicated that they would be unwilling to have the road brought up to adoptable standards because it will ultimately be required to remove considerable quantities of timber. In addition, if the road was instead to be the subject of a maintenance/management agreement between all the parties using it, it would require all their approvals. These may not be forthcoming. Finally, they state that the local plan also contains policies which support tourism development. However, these policies point to consolidation and expansion of existing businesses within towns and villages and this proposal is clearly a sporadic development within the rural area and as such would not generally comply with policy. To conclude, they take the view that the various matters raised by the reporter in the previous appeal decision, have only partially been met and therefore they suggest that the application should be refused.

10. Scottish Natural Heritage (SNH) have stated that whilst the proposal does not affect any area designated for its nature conservation interests, "Lochan Geal", is noted for supporting two species of birds which are nationally scarce. These are breeding osprey and goldeneye. In relation to these, the visibility of the proposed house, in its revised position, as viewed from the osprey nest, will be partially screened by a group of existing mature trees near the loch side. Additionally, the proposal to erect the dwelling in a new cutting will further reduce the visibility of the proposed dwelling because the backdrop, as viewed from the osprey nest, will reduce the outline of the dwelling. The application also includes proposals to screen the proposed access track in order to reduce the visibility of vehicles using the track. Consequently, SNH have advised that the proposed development will not have a significant impact with respect to the osprey nest. In relation to goldeneye, it is stated that they are not regarded as being sensitive to disturbance from such developments and no impacts are anticipated. In addition, SNH have stated that the development lies within the Cairngorm Mountains National Scenic Area but on land located on farmland surrounded by mature woodland. It is also well away from public roads. They therefore state that the proposal would not have any significant impact on the features of the NSA. To conclude, SNH raises no objection to the development.
11. The Highland Council Building Standards Co-ordinator has advised that an inspection of the subsoil ground conditions has been carried out at the site and found to be suitable for soakaway purposes.
12. The Highland Council Area Roads and Community Works Manager has stated that the access road serving this site is of a poor standard and already serves more than four dwellings. In accordance with Council Policy, he is unable to recommend approval for this development until such time as the access road connecting the B970 public road has been upgraded to a standard suitable for adoption.
13. The Kincaig & Vicinity Community Council have considered the application and are of the opinion that the applicant has addressed the issues that led to it objecting to the previous application at this site. The proposed property, will

be out of sight of the other houses in the vicinity of “Lochan Geal” and they note that two nearby properties have been given planning permission for substantial extensions. They also state that the proposed development meets the criteria set out in Policy 2.2.10. of the local plan in respect of tourism. As such the Community Council therefore supports the application.

REPRESENTATIONS

14. The application was advertised on 25 September 2003, as a “Development not in Accordance with the Development Plan”. In total there have been 9 letters of representation received which raise objections to the proposal. In addition to this, there have been two submissions in support of the proposal. One is from the applicant and the other is from VisitScotland. The matters raised by the objectors are summarised as follows:-
15. *The proposal is contrary to national, structure plan and local plan policies, and the aims of the Cairngorms National Park, and it does not overcome the concerns raised in the previous appeal decision, in relation to the following matters:-*
 - *Proposal will still have an adverse impact on habitats and species (ospreys), through human disturbance.*
 - *Proposal will still have adverse local visual and landscape impacts.*
 - *Revised siting will require major land engineering contrary to the requirement for sensitive siting which is detrimental to the local character and natural environment.*
 - *Revised application can still not be justified in terms of bringing significant social and economic benefits to the area.*
 - *Proposal would still result in more than 4 houses being served by an unadopted road and the Forest Enterprise will not agree to upgrade to adoptable standards.*
 - *Tourism element is not outweighed by the detrimental impacts on local heritage and amenity.*
16. *In addition, there are other matters raised:-*
 - *The track is not in a good condition, particularly in winter and there are concerns relating to safety due to the potential increased levels of use.*
 - *Some private water supplies are drawn nearby and there are concerns about potential for contamination.*
 - *The servitude right of access mentioned by the applicant is for agriculture and domestic purposes only.*
 - *A recent planning permission at the nearby property of “Drumcluan”, is not for a second holiday home but is for ancillary accommodation (restricted by Section 75 Legal Agreement) in a converted steading.*
 - *The existing houses nearby do not detract from the natural tranquillity of the lochan because they are positioned well away.*

- *From a scientific viewpoint, SNH have not properly considered the full range of disturbance issues and the relevant information on osprey behaviour and ecology.*
 - *The existence of ospreys provide significant financial benefits to an area.*
 - *The applicant has made some misrepresentations in relation to the terms of the appeal decision letter.*
 - *There is no maintenance agreement with the Dalnavert Community Co-operative for the access road.*
17. The matters raised in the submissions, in support of the application, are summarised below.
18. *The reasons why the applicant feels the proposal complies with the aims of the National Park include:-*
- *There are 22 houses in the area of the site, and it is surrounded by a commercial forest and therefore, although undeniably beautiful, it is not remote or wild or naturally occurring.*
 - *The building's position has been relocated and there are intentions to sympathetically landscape the site.*
 - *The construction of 5 star quality accommodation will be a sustainable use of the beautiful location.*
 - *The property will be extremely high quality in terms of design and class of accommodation and will be used approximately 90% of the year.*
 - *By providing this accommodation, it will promote the enjoyment of the area to many more individuals.*
 - *Other properties nearby have been granted permissions for holiday related developments and they will not be affected by the proposal.*
 - *There are no footpaths or rights of way in the area and the site is not seen from any public or private road.*
 - *The development is extremely crucial to the company's ongoing survival.*
 - *The implications of a refusal will be extremely serious to a small yet important business which has strived and succeeded in raising the standard of customer service and customer satisfaction in the area.*
 - *The development will bring a substantial short and long term financial gain to the local area of approximately £120,000 per annum.*
 - *The proposal has been revised to overcome the previous concerns of SNH, The Community Council and the Scottish Executive Appeal Reporter in relation to the buildings position, size and the sensitive way in which earthworks and landscaping will be carried out.*
 - *The proposal complies with local plan policy on tourism.*
19. In addition to the above submissions from the applicant, VisitScotland have stated that the applicant has several years of experience in the provision of high quality self-catering accommodation and that they are keen to encourage a greater provision, particularly in the Highlands. High quality accommodation attracts high spending clients with resulting benefits to the local economy. They also state that the applicant has a thoroughly professional approach to his customers and has worked with VisitScotland on

promoting self-catering accommodation in Scotland. They therefore enthusiastically endorse the application.

20. Copies of all representations and supporting statements are attached for Members consideration. The applicant has also asked that copies of his company's promotional brochure are circulated to the Committee. These are also enclosed with this report.
21. **In line with the Committee's standing orders, the applicant and four of the objectors have submitted requests to address the Committee.**

APPRAISAL

22. This application has attracted a degree of local interest, and in a similar way to the previous application, it has raised several planning issues. These issues require assessment in order to form a recommendation on the proposal.
23. Policy G2 of the Highland Structure Plan sets out wide ranging criteria which any new development requires to comply with in order to be acceptable. Not all are relevant to this case, but the ones which are, require to be examined.
24. With regard to the first relevant criterion, in terms of the impact of the proposal on the habitats and species of this part of the National Park, which is also part of the Cairngorm NSA, the applicant has revised his proposals from the previous unsuccessful application. Although only indicative (the application is submitted in outline only) the revision, which involves a relocation of the house position, has been proposed to try and overcome the impact the development would have on the breeding site for ospreys located across the lochan. At the time of the previous application, SNH stated that the proposed development would have had a significant impact on this locally important site, leading to the probable loss of the osprey breeding nest. Although there was dispute about the status of the nest (it has not been used for several years), the precautionary principle was applied and the appeal reporter agreed with this approach. Since the appeal dismissal, the applicant has negotiated a revision to the position of the house with SNH. This new position has moved the house further away from the nest and into a cutting in the hillock. The line of visibility between the two is now also partially screened by a group of existing mature trees at the lochside. Also included as part of the new proposals, is further tree planting to screen the access track. SNH have now stated that they have no objections to the proposal. They believe the revisions will now mean that the development will not have a significant impact with respect to the osprey nest or any other habitat or species in the area.
25. Several of the representees remain concerned about the impact the development will have on the natural habitats and species in the area, and in particular the impact of increased human activity on the ospreys. There would seem to be no doubt that the development has the potential to increase human activity at this tranquil location which could lead to disturbance to important

species. However, SNH have not raised any objections to the new proposal with respect to this issue, and therefore, I feel it is not possible to maintain an objection to the development in relation to nature conservation, provided the house is located as shown, in respect of Highland Structure Plan Policy N1 or this part of Policy G2.

26. The second relevant criterion in Policy G2, relates to sensitive siting and high quality design in keeping with local character and historic and natural environments. Although the reporter, at the time of the previous appeal, stated that the visual impact of the proposal on the wider landscape and scenery of the NSA would be limited and confined to the lochanside, he also stated that, *“due to the undeveloped nature of the lochanside and its immediate environs, the proposal would in terms of its siting, scale and use, radically alter the undisturbed natural character of Lochan Geal.”* The revised position, although further from the lochside, will involve extensive engineering site works to cut the building and its access and parking/turning area into the slope. At the time of the previous appeal, this alternative position for the house, was raised by SNH to overcome the issue of the osprey nest. However, the applicant, in his appeal statement, stated that; *“This alternative would be higher (and therefore less inconspicuous) and would necessitate large-scale earthmoving, which apart from cost implications would have a detrimental effect on the natural appearance of the area. These problems cause concern because the business is tourist-orientated and clients are selective. They wish to stay in accommodation which fits naturally into the countryside, rather than having been forced into the landscape as a result of an engineering operation.”* The reporter, although not determining the application on this alternative position, concurred with this view and agreed that the alternative location, due to the required site works, would be significantly detrimental to the natural appearance of the area.
27. The applicants have now submitted the proposal with this alternative location. I agree with the reporter’s findings and with the Highland Council’s Planning Officers views on this matter. The very natural and tranquil character of the location would be significantly disrupted by the introduction of a sizeable building (accommodation for up to 10 guests) cut into a natural slope. The development, due to its siting, scale and use, would still, radically and detrimentally alter the natural quality and appearance of the area. As such the proposal fails to comply with NPPG14 which aims to safeguard the landscape and habitats of lochs and ponds, and SPP3 which stresses the need for residential development to safeguard the natural resources of designated areas, such as NSAs and National Parks. It also fails to comply with Highland Structure Plan Policy G2, and Badenoch and Strathspey Local Plan Policy 2.5.10, in relation to its insensitive siting on waterside land.
28. The third relevant criterion in Policy G2 relates to the potential for the proposal to contribute to the economic and social development of the community. At the time of the previous appeal, the reporter stated that whilst the proposal would bring short-term economic benefits to the area during the construction phase, he considered that any long-term benefits would be marginal and that there was no evidence of rural regeneration being an issue in

the locality. Indeed he also found that, as the proposal was for a tourist facility and was not required to assist in the provision of job opportunities in an area of depopulation, the social benefit to the community of the proposal was neither a prime nor an overriding consideration. The current proposal does not differ in these terms from the previous one.

29. The applicant has this time, submitted in support, a financial statement. This envisages that the new property would generate a total spend of approximately £120,000 per annum, in the local economy. VisitScotland also supports the proposal because of the high spending clients that this quality of accommodation attracts. There may well be benefits to the local economy but one of the reasons for the area being a magnet for tourists is because of the undoubted quality of the natural environment and its status as part of the National Park. While tourism policies in the structure and local plans, generally recognise and support tourist activities because of the contribution they make to the economy, they also seek to ensure that the provision of new facilities and accommodation is balanced with protecting the area's exceptional scenic and heritage resources. In this instance, as stated in paragraphs 26 and 27 above, the proposal fails to comply with structure plan Policy G2 in terms of its detrimental effect on the quality and character of the natural landscape of the area. It also therefore fails to comply with Policy 2.2.10. which only encourages the development of tourist accommodation at suitable sites within or immediately adjoining communities, where it is compatible with adjoining land uses and where it safeguards local heritage and amenity. Although, the promotion of the economic and social development of the area's communities is an aim of the National Park, it is not outweighed by the aim of conserving and enhancing the natural heritage of the area. In addition, although the proposal is for a commercial use it is, in form, a large dwellinghouse and will be read as such in the landscape. Two further points of planning significance arise from this. Firstly, as a proposal for a dwellinghouse, it would clearly fail to gain support from established policies relating to houses in the countryside. Secondly, the rationale for constructing "5 star quality accommodation.....in a beautiful location.", as described by the applicant, and endorsed by VisitScotland, is one which may make commercial sense but would be an unfortunate precedent in planning terms.
30. The final determining consideration requiring assessment is that of access. The access from the public road, is a private one, owned by Forest Enterprise and shared by several other properties. This issue was also raised at the previous appeal decision and it has also been raised by representees. The relevant planning policy is found in the Highland Structure Plan at Policy H8. It states that development proposals which involve new or improved access to serve more than 4 houses shall be served by a road constructed to adoptive standards. The Area Roads and Community Works Manager has recommended refusal until such time as the access road is upgraded to a suitable standard for adoption.
31. The applicant has stated that he has a formal agreement with Forest Enterprise on the repair of the access road, and is willing to enter into negotiations with the principal road users to set up a road maintenance agreement, as permitted

in the Highland Council's "Road Guidelines for New Developments". However, the Forest Authority, who own the access road, have indicated that they would be unwilling to have the road brought up to an adoptive standard because it will be required for the removal of considerable quantities of timber. Without the owners' agreement to upgrade, it will not be possible to have an adopted road serving the proposed development or any of the other existing houses, which amount to more than 4 properties. A management agreement on maintenance would involve the agreement of all parties and it would appear from some of the letters of representation that agreement may be difficult to achieve. This said, the reporter did not give any weight to the facility for a management agreement in the Council's Roads Guidelines. He stated that this was a subordinate consideration, relative to the policy situation. I therefore do not find that the revised proposal has overcome this concern which was raised by the Highland Council and the reporter at the time of the previous appeal dismissal. The proposal remains contrary to structure plan Policy H8 in this regard.

32. To conclude, despite the attempts of the applicant to overcome the concerns raised by the previous proposal, the application remains contrary to national regional and local plan policy, and is in conflict with the aims of the National Park.

RECOMMENDATION

That Members of the Committee support a recommendation to:

Refuse Outline Planning Permission for the Erection of Dwellinghouse for Short Term Holiday Letting, at Land at Lochan Geal, Dalnavert, Feshie Bridge, for the following reasons:-

- i) The proposal represents the introduction of a new sizeable dwellinghouse for short term holiday lets on a site located close to an existing lochan in a countryside area. Due to its scale, use and siting, which would involve extensive earthmoving works, it will significantly and detrimentally affect the undisturbed natural quality, character, appearance and amenity of this part of the Cairngorms National Scenic Area and the Cairngorms National Park. As such, the proposal is contrary to the aims of the Cairngorms National Park, and the terms of national, regional and local planning policy, as contained in NPPG14 (Natural Heritage), SPP3 (Planning for Housing), Highland Council Structure Plan Policy G2 (Design for Sustainability) and Badenoch and Strathspey Local Plan Policy 2.5.10. (Landscape Conservation), all of which aim to safeguard the natural resources and landscapes of designated areas such as National Scenic Areas and National Parks.
- ii) The proposal fails to comply with Highland Council Structure Plan Policy T3 (Self Catering Tourist Accommodation) and Badenoch and Strathspey Local Plan Policies 2.2.9. (Tourism and Recreation) and 2.2.10. (Tourism), all of which encourage the development of tourist related facilities and accommodation but only where it complies with all other policies, and the

site is within or immediately adjoining a community, is compatible with adjoining land uses and where it safeguards local heritage and amenity. In this instance, the proposal represents a sporadic development within a rural area, which due to its location and type, will adversely affect the amenity of the surrounding natural environment.

- iii) The proposal is contrary to Highland Council Structure Plan Policy H8 (Access Arrangements for New and Existing Development), which requires that development proposals involving new or improved access, where that access serves more than 4 houses, shall be served by a road constructed to an adoptive standard. In this instance, the access road serves more than 4 properties and it is not of adopted status. There are no proposals for the road to be upgraded to adoptive standards.

Neil Stewart
9 December 2003

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