
CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DECISION

- Title:** REQUEST TO VARY TERMS OF PROPOSED SECTION 75 AGREEMENT /PLANNING OBLIGATION FOR 10/106/CP LAGGAN No.1 CROFT, KINGUSSIE.
- Prepared by:** BRUCE LUFFMAN
PLANNING MONITORING & ENFORCEMENT OFFICER
- Purpose:** To seek Members' agreement to consider the request from the applicant to revise the terms of the proposed Section 75 Agreement/Planning Obligation for 10/106/CP Kingussie Croft, Kingussie.

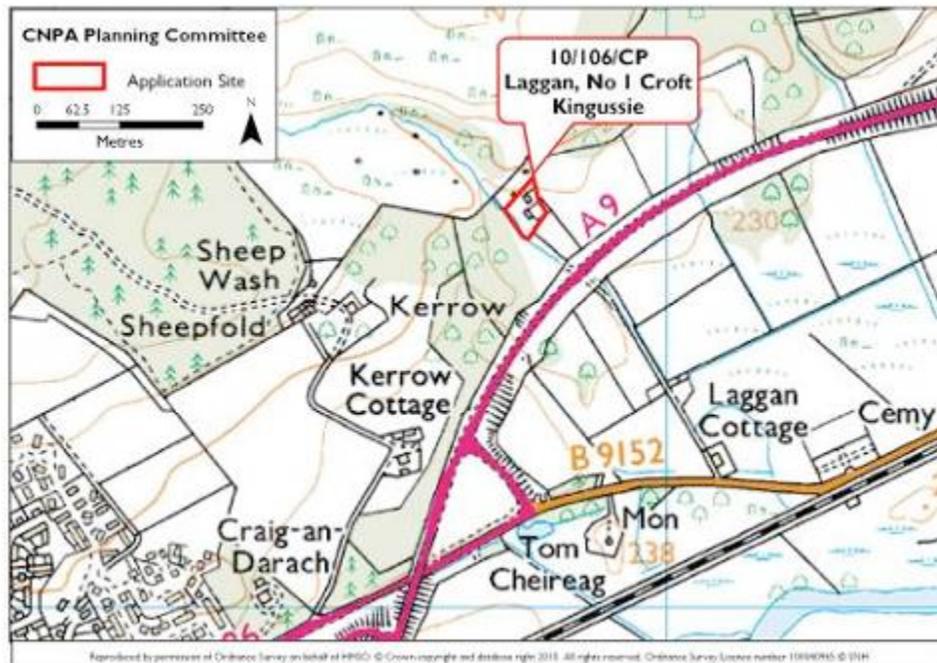


Fig. 1 - Location Plan

RECOMMENDATION

That Members of the Planning Committee agree:

Revision of the terms of the existing Section 75 Agreement/Planning Obligation for I0/I06/CP Laggan No.1 Croft, Kingussie as set out in Para 18 of this report.

Background

1. Section 75 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act, makes provision for a planning authority to enter into an agreement with any person with an interest that enables them to bind land for the purpose of restricting or regulating the development or use of that land.
2. These used to be called Section 75 Agreements, but under the Planning etc. (Scotland) Act 2006, they are now to be referred to as Planning Obligations.
3. Scottish Government advice is that, where planning permission cannot be granted without some form of restriction or regulation, the planning authority should consider whether this can be achieved by the use of a planning condition on the permission. A planning obligation should only be necessary where successors in title must be bound by its requirements. They are not to be imposed, but voluntarily entered into.
4. Over the last few years CNPA has on occasion used Section 75 Agreements/Planning Obligations to secure contributions to offsite road infrastructure and payment or provision of affordable housing. For the most part though, they have been used where a need case has been made for a new house to support a croft, farm or other rural business and there is a requirement to retain the house for the purpose for which permission was sought and granted. In such cases the Section 75 Agreement/Planning Obligation has restricted the occupancy of the house to someone engaged in that particular business and to prevent it from being disposed of separately from the business i.e. a tie.
5. It is important to note that the vast majority of housing granted planning permission in the Park is not subject to this type of Section 75 Agreement/Planning Obligation: it is only in the very specific circumstances described above. This is now reflected in Policy 22 'Housing Development outside Settlements' in the Cairngorms National Park Local Plan.
6. We have previously taken legal advice on our use of Section 75 Agreement/Planning Obligations and been advised that it is appropriate and in line with Scottish Government Guidance.

7. As Members are aware there have, however, been concerns expressed with regard to difficulty in obtaining a mortgage on a property that is restricted in the manner described in Para 4 above. For the last year or so we have been in discussions with Scottish Government and Council for Mortgage Lenders as well as specific lending institutions and our legal advisers to find a mechanism that will allow the terms of a Section 75 Agreement/Planning Obligation to remain, but a mortgage to be obtained. Members have been periodically updated on progress and in the meantime have had to respond to specific requests to vary or waive Section 75 Agreement/Planning Obligations.
8. Since February 2011 a person against whom a planning obligation is enforceable has been able to apply to the planning authority seeking their agreement for its modification or discharge. There is now a right of appeal to the Scottish Ministers if the planning authority does not agree or if it fails to give notice of a decision within 2 months.
9. The discussions with Scottish Government have focused on the use of Section 75 Agreement/Planning Obligations across the country as their use is not restricted to the National Park. At a meeting in March 2011 between Scottish Government, Heads of Planning Scotland and Council for Mortgage Lenders it was accepted that the small number of circumstances where we have been using them was appropriate and several other authorities had a similar practice. It was agreed that the use of a cascade mechanism, such as has been used in England in some cases, would form an appropriate basis for addressing the issue of ability to secure a mortgage. Further discussions are still taking place on the specific form of a template that could be used throughout Scotland whilst allowing for local circumstances. In essence, in the event of default on a mortgage, the restriction on occupancy would be progressively widened over a period of (probably) 12 weeks until it could eventually be sold unencumbered on the open market.
10. A further report will be brought to Members in the near future once the work with Scottish Government and others has been concluded. This will seek the agreement of the Planning Committee to a comprehensive approach to the use of Section 75 Agreements/Planning Obligations.
11. Members will be aware from the report of 1st April Planning Committee of an issue that has been raised with regard to VAT. CNPA staff have liaised with the technical department of HM Revenue and Customs (HMRC) to clarify matters. A new house is normally zero rated for VAT, but this does not apply if the Section 75 Agreement/Planning Obligation prohibits its separate disposal. The HMRC issue is with separate disposal and not with separate use. A Section 75 Agreement/Planning Obligation which contains an occupancy restriction would not prohibit the zero rating of a new house.

12. Although personal financial circumstances are not a material planning consideration it is considered that in certain instances the impact of VAT on the affordability of housing for individuals is relevant in the broader sense.
13. If a case has been made by an individual for a house outside a settlement in order to work a croft, farm or small business then it was accepted by the Planning Committee on 1st April 2011 that it is sufficient to restrict the occupancy to reflect this case via the Section 75 Agreement/Planning Obligation and not to restrict the disposal. In other words the property has to be occupied by someone engaged in the business that gave rise to the need, but its disposal is not linked to that business.

10/I06/CP Erection of a House at Laggan No. 1 Croft, Kingussie

14. The Planning Committee on 15th October 2010 resolved to grant planning permission in principle for this house. A report from the Scottish Agricultural College (SAC), demonstrated that there was a land management need which resulted in a Section 75 Agreement tying the house to the croft and occupancy to persons engaged in work on the croft.
15. The registered croft has a 23 ha (57 acres) landholding split either side of the A9 and is worked by the applicant and her daughter. The applicant was happy to enter into a Section 75/Planning Obligation agreement with the CNPA.
16. The applicant has now written (**Appendix I**) requesting a change in the terms of the Section 75 Agreement/Planning Obligation because she would be unable to reclaim the VAT on the new house which would normally be zero-rated by the HMRC.
17. Within the context of the Planning Committee decision on 1st April, this request in itself is considered to be reasonable. In the meantime we have been considering the issue reflected in Para 13 above and the likelihood that there will soon be agreement with Scottish Government and others on the use of a cascade mechanism in the event of default on a mortgage.
18. This is an application by an individual on the basis of a land management need and the affordability dimension referred to in the preceding section of this report is relevant. In the circumstances it is therefore recommended that the terms of a Section 75 Agreement/Planning Obligation be revised to the effect that the disposal of the house is not restricted, but occupancy remain restricted to persons engaged in work on the croft as described by the applicant, and with a 12 week cascade mechanism for disposal of the house in event of default on a mortgage. The precise terms of steps in the cascade to be agreed by the Head Planner in consultation with the Convener/Vice-Convener of the Planning Committee.

RECOMMENDATION

That Members of the Planning Committee agree to a revision of the terms of the proposed Section 75 Agreement/Planning Obligation for I0/I06/CP Laggan No.1 Croft, Kingussie as set out in Para 18 of this report.

Bruce Luffman
planning@cairngorms.co.uk
17th April 2011

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