
CAIRNGORMS NATIONAL PARK AUTHORITY

DEVELOPMENT PROPOSED:	
2015/0317/DET Application under Section 42 for variation or non-compliance with conditions 4 (Haul Road), 7 (Landscaping) and 8 (Re-seeding of Plots) for Phase I Housing Development of 37 serviced plots and 18 affordable dwellings granted under Planning Permission Ref PPA-001-2013 at Land to North, East and West of Dunbarry Terrace and Kerrow Drive, Kingussie.	
REFERENCE:	2015/0317/DET & 2015/0316/DET
APPLICANT:	Davall Developments Ltd
DATE CALLED-IN:	28 September 2015
RECOMMENDATION:	APPROVE WITH CONDITIONS
OFFICER:	Gavin Miles, Head of Planning

Background

1. On 18 March 2016, the Planning Committee agreed to approve two applications at Kingussie. Application 2015/0317/DET was a Section 42 application that would create a new planning permission for the housing development. The Planning Committee agreed to approve subject to conditions, a direction on the duration of planning permission and a refreshed S75 agreement securing developer obligations. The Planning Committee report and minutes of the Planning Committee Meeting are attached as **Appendix 1 and 2**. The Planning Committee have been updated on the delays in the refresh of the S75 agreement which was more difficult and took longer to resolve than expected. A decision notice for the application has not yet been issued.
2. Application 2015/0316/DET was for a haul road associated with the development and was approved subject to conditions. The issue of consent was tied to the S42 application so the decision notice has not yet been issued.

Reviewing the Developer Obligations

3. The original planning permission for the development of up to 300 houses on the site at Kingussie was accompanied by a S75 legal agreement covering developer contributions (**Appendix 3**). The Reporters appeal decision PPA-001-2013 also referred to this S75 legal agreement.
4. The applicant had originally indicated they wanted to replicate the existing S75 agreement for simplicity. Following the 18 March 2016 Planning Committee meeting the CNPA started the process of reviewing the agreement with the applicants. There were two parts to this. Firstly, there was the refresh of the terms of the S75 agreement itself; whether it matched current planning policy, met the tests for planning obligations and could be justified on basis of the proposed development. Secondly, there are legal matters associated with legal agreements that most efficiently dealt with by the respective legal representatives of the relevant parties.
5. The original S75 legal agreement was pulled together between 2009 and 2010, prior the first Cairngorms National Park Local Plan and at a time when the CNPA used Aberdeenshire Council's planning gain team to negotiate developer contributions. Since then, development plans, government guidance on the use of what are now known as developer obligations and the circumstances of the area have all changed. The justification required for developer obligations is now much greater than was case when the original agreement was prepared.
6. The Scottish Government Circular 3/2012 sets out the tests for developer obligations as:
 - a) Necessary to make the proposed development acceptable in planning terms

- b) Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans
- c) Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area
- d) Fairly and reasonably relate in scale and kind to the proposed development
- e) Be reasonable in all other respects.

7. The original S75 agreement contained provisions for:

- a) Provision of affordable housing or commuted payment if it couldn't be provided on site
- b) Secondary School contribution
- c) Recycling facilities
- d) Two bus shelters
- e) Traffic signal junction at High St/King St
- f) Path and safety barrier improvements at Garraline Terrace
- g) 5 dog fouling bins on site
- h) A Community Care contribution of £2500 to the Community Council
- i) Transfer of land for playing field (the shinty pitch)
- j) Transfer of land for Gynack Burn land
- k) Transfer of land for a community woodland above West Terrace.

8. Officers have reviewed the need and justification for these contributions and consulted Highland Council where appropriate. The table below sets out the conclusions about what is reasonable to address the impacts of the development.

Original item	Conclusion
Provision of affordable housing or commuted payment if it couldn't be provided on site;	25% affordable housing continues to be required through planning policy
Secondary School contribution	Not required. School roll projections no longer justify a contribution, with any capacity issues beyond the confidence of the projections.
Recycling facilities	No longer required by Highland Council
Two bus shelters	Required by Highland Council
Traffic signal junction at High St/King St	Required by Highland Council
Path and safety improvements at Garraline Terrace	No longer required by Highland Council
5 dog fouling bins on site	No longer required by Highland Council
A Community Care of £2500 contribution to the Community Council	Not required. Not necessary to make the proposed development acceptable in planning terms.
Transfer of land for playing field	Not required.

Original item	Conclusion
(Shinty Pitch)	The playing field was previously offered to community bodies and refused. Community ownership is not necessary to make the proposed development acceptable in planning terms.
Transfer of land for Gynack Burn Land	This land was transferred.
Transfer of land for a community woodland above West Terrace	Not required. Community ownership is not necessary to make the proposed development acceptable in planning terms.

9. The three outstanding issues are the affordable housing, bus shelter provision and pedestrian crossing upgrade can each be clearly linked to the development proposal. Each of these issues can be addressed through legal agreement. However, with some changes, officers consider that the desired outcomes can be achieved through planning conditions. This is a preferable route for all planning consents, making the permission simpler. In this case, the S75 agreement has also become a barrier to the consent that has led to the delays of the past year on a key site in the Local Development Plan.
10. The three proposed additional conditions that are set out to address these issues are important. The first, covering affordable housing, now requires a minimum of 25% of the units of the site to be affordable housing. There is no longer a provision for a commuted sum payment instead of providing affordable housing on the site. The second condition provides for the new bus shelters to the Highland Council's specification. The third condition provides for the upgrade of the pedestrian crossing at King Street and A86 Trunk Road/High Street junction to Transport Scotland's specification. The three proposed conditions are:

I: Affordable Housing

No development shall commence on Phases 2 and 3 until a scheme for the provision of affordable housing units, comprising a minimum of 25% of all housing units approved on the whole site, has been submitted to and approved in writing by the Cairngorms National Park Authority acting as Planning Authority in consultation with the Highland Council acting as Housing Authority.

This scheme shall include details of the type, tenure and location of the affordable housing; delivery mechanism(s); contractual arrangements; timetable for delivery; and measures for retention as affordable housing. The affordable housing units shall thereafter be constructed and retained in accordance with those approved details.

Reason: To ensure that adequate affordable housing provision of 25% is made in accordance with Policy I: New Housing Development of the Cairngorms National Park Local Development Plan 2015.

2: Bus Shelters

No development in connection with any phase of the development shall commence until a scheme for the delivery of two bus shelters has been submitted to and approved in writing by the Cairngorms National Park Authority acting as Planning Authority in consultation with the Highland Council Public Transport Team. The design and specification of the shelters shall meet the requirements of the Highland Council Public Transport Team as Roads Authority.

The scheme shall include details of the designs, locations, associated groundworks/site works, and timetable for delivery. The scheme shall also reflect the requirement for the shelters to be located: (1) outside number 2 High Street, Kingussie of full bus stop design and (2) at a location near number 112 High Street, Kingussie of cantilever design.

The shelters shall thereafter be installed and retained in accordance with those approved details.

Reason: To promote and facilitate the use of public transport and sustainable travel in accordance with Policy 3: Sustainable Design of the Cairngorms National Park Local Development Plan 2015.

3: Pedestrian Crossing

Details of the design, location, maintenance details and responsibilities, for a signal controlled pedestrian crossing at King Street, Kingussie, to be incorporated into the A86 trunk road traffic lights at the junction of the A86 and King Street shall be submitted to and approved by the Cairngorms National Park Authority acting as Planning Authority in consultation with Transport Scotland prior to the occupation of 40 units on the site. No more than 40 units shall be occupied until that pedestrian crossing as approved is implemented.

The pedestrian crossing shall be maintained thereafter in accordance with those approved details until the conclusion of the approved maintenance period when it shall then be maintained by Transport Scotland.

Reason: In order to provide for a safer route to schools in the light of the increased pedestrian footfall to be generated by the development and to promote and facilitate the use of sustainable travel in accordance with Policy 3: Sustainable Design of the Cairngorms National Park Local Development Plan 2015.

CONCLUSION

11. Officers continue to recommend approval of the application on the basis that the Planning Committee agreed in March 2016, but without the need for a S75

agreement. The proposed development is on a site that is part of the long term housing land supply for Badenoch and Strathspey in the Cairngorms National Park Local Development Plan. It is also the only significant area of land at Kingussie where new housing could be built. Approval of the application will move the development of a first phase of housing, including affordable housing, a step closer.

RECOMMENDATION

That Members of the Committee support a recommendation to GRANT planning permission for this application under Section 42 for variation or non-compliance with conditions 4 (Haul Road), 7 (Landscaping) and 8 (Re-seeding of Plots) for Phase I Housing Development of 37 serviced plots and 18 affordable dwellings granted under Planning Permission PPA-001-2013 at Land to North and East and West of Dunbarry Terrace and Kerrow Drive, Kingussie subject to:

The Direction and Conditions agreed at Planning Committee on 18 March 2016 (as listed in Appendix 1 and amended as detailed in the Minutes attached in Appendix 2) together with the additional three conditions detailed in paragraph 10 of this report. An additional informative, as follows, is also recommended providing guidance relating to the controlled pedestrian crossing:

- I. With reference to the required details for the controlled pedestrian crossing in Condition 8, the developer is advised to contact Transport Scotland.