

2013/0073/MSC & 2013/0074/MSC

APPENDIX I

07/144/CP & 07/145/CP
Appeal Decisions

Directorate for Planning and Environmental Appeals

Telephone: 01324 696 452 F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Ms M Grier
Cairngorms National Park Authority
Albert Memorial Hall
Station Square
Ballater
Aberdeenshire
AB35 5QB

Your Ref: 07/145/CP

Our ref: PPA-001-2001

15 March 2010

Dear Ms Grier

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
PLANNING APPEAL: LAND NORTH WEST AND SOUTH OF FORMER
STEADINGS, DALFABER FARM, DALFABER, AVIEMORE**

I refer to the decision letter issued on 9 March 2010 in relation to the above appeal.

Please read this correction in conjunction with the decision letter, the fifth bullet point which states "The development proposed: should read "development of 83 houses" and not "ten (originally twenty) serviced housing plots".

The Reporter offers his apologies for any confusion caused.

Yours sincerely



Emma Brown

4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR
DX 557005 FALKIRK
www.scotland.gov.uk/Topics/Planning/Appeals



ENVIES FOR BY PEOPLE

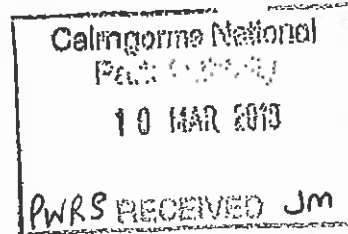
FOR THE PEOPLE

Directorate for Planning and Environmental Appeals

Telephone: 01324 696 452 F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Ms M Grier
Calrngorms National Park Authority
Albert Memorial Hall
Station Square
Ballater
Aberdeenshire
AB35 5QB



Your ref: 07/145/CP
Our ref: PPA-001-2001

9 March 2010

Dear Ms Grier

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
PLANNING APPEAL: LAND NORTH WEST AND SOUTH OF FORMER
STEADINGS, DALFABER FARM, DALFABER, AVIEMORE**

I enclose for your information a copy of the decision letter on this appeal.

The Reporter's decision is final, subject to the right of any aggrieved person to apply to the Court of Session within six weeks from the date of the decision conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application, the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act, or of the Tribunals and Inquiries Act 1992, or of any orders, regulations or rules made under these Acts.

Yours sincerely



PP EMMA BROWN

Enc

4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR
DX 557005 FALKIRK
www.scotland.gov.uk/Topics/Planning/Appeals



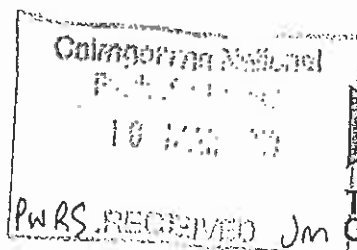
Directorate for Planning and Environmental Appeals

Appeal Decision Notice

T: 01324 696 400

F: 01324 696 444

E: dpea@scotland.gsi.gov.uk



The Scottish Government

Decision by William M H Patterson, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-001-2001
- Site address: North Dalfaber, Aviemore
- Appeal by Reidhaven Estates against the failure by the Cairngorms National Park Authority to notify a formal determination
- Application for planning permission in principle 07/145/CP dated 16 April 2007
- The development proposed: ten (originally twenty) serviced housing plots
- Application drawings: location plan; Indicative site layout A3583/L(-)21 Rev.G
- Date of unaccompanied site visit by Reporter: 3 February 2010

Date of appeal decision: 9 March 2010

Decision

I allow the appeal and grant planning permission in principle subject to the 23 conditions listed at the end of the decision notice. Attention is drawn to the four advisory notes which follow the conditions.

Reasoning

1. The appeal site is contiguous with and covered by a joint indicative layout for land to the north which is the subject of appeal PPA-001-2000. The National Park Authority called in the applications from the Highland Council, to which they had been submitted, and resolved to grant outline planning permission subject to conditions and conclusion of a section 75 agreement. The present appeal against non-determination was made in the light of perceived problems and delays in the conclusion of an agreement.
2. It is clear that some housing development on the land would accord with the terms of the development plan including the diagrammatic allocation for housing in North Aviemore, in the current Badenoch and Strathspey Local Plan Settlement Inset 6; though local objectors including Aviemore and Vicinity Community Council have maintained opposition to the proposal. The determining issues in this appeal are thus whether there is any feature of the site or the proposal which should outweigh the broad support from the development plan; and, if not, the extent to which contentious matters could be satisfactorily covered by conditions rather than requiring the negotiation and conclusion of a section 75 agreement.
3. It is evident at the site that, notwithstanding the views of numerous objectors, the indicative layout has been devised with great attention to minimising losses of woodland in



the interior of the site. However, there has been much more compelling third party criticism of how the outer face of the development would affect the adjacent golf course, and implicitly beyond that the wider countryside of the National Park. The eastern edge of the site would contain the most closely spaced housing with least ground available for tree planting to soften a relatively hard and angular urban edge, especially in the square projection of the site south of Dalfaber farmhouse. Accordingly the indicative layout would not be an acceptable basis for development of the site of this appeal. In recognition of the need to make effective use of the overall site, and of the character of the prevailing birches as short-lived, easily regenerating pioneer trees, some encroachment of houses onto areas with existing trees could be compensated for by a more effective allocation of land for tree planting on the periphery, while reducing marginally if at all the total number of houses. These matters are thus amenable to conditions, and do not justify refusal of planning permission in principle.

4. There is also no compelling reason to suppose that there are significant flooding risks that have escaped the attention of professionals who have studied them and advised on protective measures; that a pleasant and useful network of offroad paths for a full range of users could not be achieved through the combined appeal sites; or that there are other fatal defects, such as impacts of traffic generation on existing residents and roads, which should rule out planning permission in principle.

5. The recent Planning Circular 1/2010 on *Planning Agreements* has continued the tenor of previous advice, that agreements should be sought only where conditions would not be appropriate and adequate. The appeal papers envisage a possible agreement covering a contribution to affordable housing; improvements to the level crossing of Dalfaber Drive over the private Aviemore to Boat of Garten steam railway; and improvements to the junction of Dalfaber Drive with the main north-south road in Aviemore, Gramplan Road. It is clear that the parties have not been close to agreement, so that it would not be sensible to issue an Intentions Notice on the basis that an agreement will be concluded in the near future. Accordingly it is essential to consider whether conditions would be an adequate and effective substitute.

6. The appeal papers include a figure apparently acceptable to both parties, for an affordable housing contribution from the rather higher number of houses that was earlier envisaged for the combined sites. Pro rata the figure would now be 22 dwellings. It is possible to set out a condition making the combined development conditional on the planning authority's being satisfied with arrangements to ensure such provision. It is not necessary or appropriate in this notice to set out whether or not such arrangements would involve a 'section 75' or other form of legal agreement. The same applies to arrangements for road improvements at Gramplan Road and just outside the combined development site at the junction of Corroul Road and Dalfaber Drive.

7. It also applies to safety measures at the currently open level crossing, with signals only, which the Office of Rail Regulation (ORR) has advised are necessary although the need for them has been disputed in the appeal. Some 93 houses to the east of the crossing would generate significant additional traffic, at a location where the ORR has recorded two contacts between trains and road vehicles in the recent past. The resistance to a burden on the development is on the basis that the rail traffic is small in number and



seasonal. However, perusal of a timetable on public display shows a pattern, much as would be expected of such a recreational railway, in which in the off-season there are weeks of inaction apart from a few trains for special days, peak and shoulder timetables and also special days with two engines in use. This variability and relative unpredictability would readily lead to complacency and casualness in local residents, which could catch them out. Despite warning signage, an unbarriered railway crossing in such an unusual location as the approach to a modern private housing estate could escape the attention of less alert visitors. It is also a matter of general knowledge that open railway crossings in the north of Scotland have, because of tragic incidents, become a greater safety concern than they were even a few years ago. Accordingly the requirement for provision of a barrier is a justified safety precaution properly related to the development, whether or not any party other than the developer can be persuaded to contribute to its cost.

8. Of other matters proposed for conditions in committee reports, the precise specification of accesses and related features would be more appropriately the subject of an advisory note rather than lengthy recitation, in conditions, of detailed requirements which may for some contexts be unduly prescriptive. Street naming to take account of local history and geography is desirable but not a matter sufficiently related to planning to warrant a condition of planning permission. Since the setting is on the edge of countryside and the woodland would retain something of a semi-rural character, street lighting is not so self-evidently necessary and appropriate that it should be required by condition. Conversely, conditions relating to the specification of off-road routes for non-motorised users need to provide more specific guidance than in the Authority's drafts, particularly so that nothing should be done to conflict with the aspiration, noted in the appeal papers, of completing an eastern orbital path for Aviemore; the route to the town centre along roads being indirect and in large part neither visually nor aurally pleasant. Dalfaber farmhouse makes an important contribution to the appearance and character of the area, and its integration into the overall development is important enough to justify a condition.

9. I have taken account of all the other matters in the written submissions, but there is nothing to indicate that planning permission in principle should not be granted, subject only to the following necessary and appropriate conditions.


W M H PATTERSON
Reporter



Conditions applying to Planning Permission in Principle following Appeal PPA-001-2001

1. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.

- The siting, design and external appearance of all buildings and other structures including all fencing
- The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities
- A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors
- Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS).

(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.)

2. The landscaping plan shall be coordinated with that for the adjacent area covered by planning application 07/144/CP (appeal decision PPA-001-2000) and shall include comprehensive details of all species (which should be of indigenous origin), planting location and numbers to be planted, as well as details of height and girth at time of planting and projected growth rates. *(Reason: In the interests of visual amenity and to maintain the character of existing vegetation in the area.)*

3. The landscaping of all communal areas within the proposed development shall be completed within one year of the commencement of works within the relevant phase. Any trees or shrubs that die or become seriously damaged or diseased within a period of five years from the time of planting shall be replaced with others of a similar size and species, suited to the climate of the area, within the next planting season. *(Reason: In the interests of visual amenity and to maintain the character of existing vegetation in the area.)*

4. The detailed landscaping plan shall be accompanied by an Arboricultural Method Statement and a full Tree Protection Plan which shall be prepared by an arboriculturalist in accordance with BS 5837:2005 - Trees in Relation to Construction. The Tree Protection Plan shall take account of all communal woodland and open space areas, as well as taking account of layouts, levels and building lines of individual plots. An Arboricultural Consultant shall be retained to undertake arboricultural site monitoring for the duration of the



construction. Monitoring shall take place at least once every month. *(Reason: In the interests of visual amenity and to maintain the character of existing vegetation in the area.)*

5. All submissions of details for individual house plots shall include a detailed landscaping plan, identifying all existing trees on the plot and identifying those proposed for retention. The felling of trees within individual plots shall not be undertaken without the prior written consent of the planning authority. *(Reason: In the interests of visual amenity and to maintain the character of existing vegetation in the area.)*

6. Any front garden areas designed as part of an 'open plan' layout shall be maintained in an open plan format in perpetuity. The details of all boundary treatments on the side and rear boundaries of individual plots shall be included in the material required under condition 1. *(Reason: In the interests of visual amenity.)*

7. All top soil stripped in the course of development shall be stored in mounds not exceeding 2.0 metres in height and shall be retained for subsequent landscaping reinstatement of the proposed development site. All top soil shall be stripped, handled, stored and re-spread in accordance to B.S. 3882:1994 Annex N. *(Reason: In the interests of visual amenity and to maintain the character of existing vegetation in the area.)*

8. The details required by condition 1 shall include a detailed plan of public access across the site (existing, during construction and upon completion). The plan shall show: (a) all existing paths, tracks and rights of way and any areas currently outwith or excluded from statutory access rights; (b) any areas proposed for exclusion from statutory access rights, for reasons of privacy, disturbance or curtilage, in relation to proposed buildings or structures; (c) all paths and tracks proposed for construction, for use by walkers, riders, cyclists, riders or those with physical disabilities; (d) any diversions of paths - temporary or permanent - proposed for the purposes of the development. *(Reason: to ensure that considerations both of privacy and of public access receive due consideration in the design, construction and use of the development.)*

9. A management and maintenance statement, to be binding during development and occupation of the site, shall be submitted and have the written approval of the planning authority before development of the site is begun. This statement shall cover any play areas, hard or soft landscaped areas, roads, footpaths and cycle links that are not intended for adoption by Highland Council. Details shall be included as to how the woodland and open space will be retained and managed in perpetuity allowing for public access and pathways through the site; and to show how paths for pedestrians and cyclists will link effectively with off-road walking and cycling routes outwith the site; in particular the layout and specification of paths shall be consistent with future completion, outwith the site, of an eastern orbital path for Aviemore. The surface of all pathways through the site intended to be available to pedal cycles, disabled persons' buggies and baby carriages, other than those intended for adoption by the roads authority, shall be of a material that is both permeable, in keeping with the woodland nature of the site, and permanently firm and smooth, satisfactorily drained and of appropriate breadth to allow passing. Paths intended only for recreational walking or horse-riding shall be of a less formal, permeable surface. The details of landscaping of the site and of paths within it, as required by condition 1, shall be accompanied by details of the management and maintenance statement. *(Reason: to*



ensure that specifications and surfaces are visually and ecologically appropriate; and that paths achieve their functional potential in enabling and encouraging walking and cycling in and around Avlemore, and so that local residents with disabilities should be able to enjoy local trips through woodland and open space.)

10. The details required by condition 1 shall include in particular the following:

(a) detailed proposals to extend the path identified along the golf course boundary to the northern end of the site in order to cross the gully to link with Fisherman's Car Park drive;

(b) detailed proposals regarding width, specification, and provision of vehicular barriers (such that they are not obstacles to the passage of disabled persons' buggies, baby carriages or pedal cycles) associated with the proposed emergency access route from Spey Avenue, to ensure that the only form of vehicular access is for emergency access only and that it shall otherwise be retained as an informal access route for non vehicular movement;

(c) provision of appropriately located refuse bin collection points.

(Reason: to ensure that these matters receive appropriate attention.)

11. The details of landscaping shall include sufficient depth and density of trees on the eastern edges of the site, effectively to soften the visual impact of houses nearest to the boundary of the site with the Dalraber golf course, including during seasons when the trees are bare of leaves. To that end the indicative layout drawing A3583/L(-)21 Rev.G shall not be treated as definitive or final; and the number of 83 dwellings shall be treated as a maximum potential capacity and not as an entitlement. *(Reason: to avoid creating an impression of hard-edged, angular urban sprawl within the National Park, at a location highly visible from the adjacent golf course and from hills and mountains beyond it; and since the indicative layout gives rise to concern about the space available for effective edge landscaping.)*

12. The development shall be carried out in phases, in conjunction with the adjacent development permitted under application 07/144/CP (appeal decision PPA-001-2000). No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites (applications 07/144/CP and 07/145/CP) shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a north to south direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development. *(Reason: to ensure an orderly sequence of development.)*

13. In the event that any plots within the development are proposed to be developed on an individual basis, a detailed design statement shall be submitted for the written agreement of the planning authority, prior to the submission of any subsequent application on the individual plots. The design statement shall include design guidance (including sample house type illustrations where appropriate) and shall cover details of height, materials, plot ratio, boundary treatments, the incorporation of energy efficiency and sustainability



measures, and landscape and ecology guidance. All subsequent applications shall be in accordance with the agreed detail of the design statement. *(Reason: for consistency of design principles in the whole development.)*

14. Where development is to be undertaken as a single entity, a detailed design statement, addressing all of the matters as set out in the foregoing condition, shall be submitted as part of any future application for approval of details. *(Reason: for consistency of design principles in the whole development.)*

15. A contoured site plan indicating existing ground levels and all proposed finished floor levels shall be included in the detailed proposals for the site. No land raising, landscaping (bundling etc.) or solid boundary fences or walls shall be carried out or put in place below the level of 208.55m AOD. Finished floor levels shall be set at least 600mm above the design water level i.e. at not less than 209.15m AOD. Any infiltration basin shall not be located below the 208.55 metre contour. *(Reason: to ensure effective drainage of surface water and to avoid liability to flooding.)*

16. SUDS proposals for any phase of development must be implemented and operational prior to the occupation of any dwelling within that phase of the development. *(Reason: to ensure effective drainage of surface water and to avoid liability to flooding.)*

17. A detailed site specific construction method statement must be agreed in writing with the planning authority prior to the commencement of works on the site, and must be implemented in full during works on the site. The method statement must address the temporary measures proposed to deal with surface water run-off during construction and prior to the operation of the final SUDS. *(Reason: to ensure effective drainage of surface water and to avoid liability to flooding or runoff of polluted water during the construction period.)*

18. A suitable management and maintenance statement shall be established in respect of any drainage measures that are not to be adopted by Highland Council or Scottish Water. Details of and evidence for the effectiveness of the maintenance proposals shall be submitted with the required details of SUDS. *(Reason: to ensure effective drainage of the site and to avoid liability to flooding.)*

19. All public services for the development, including electrical, cable television and telephone cables, shall be located underground throughout the site. All such work shall be carried out prior to road surfacing and junction boxes shall be provided by the developer. *(Reason: in the interests of visual amenity.)*

20. Prior to the commencement of development, a programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation, shall be submitted to and agreed in writing with the planning authority. All arrangements thereby approved shall be implemented by the developers at their expense in accordance with the approved timetable for investigation. *(Reason: to ensure the recording and where practicable preservation of any archaeological features or recoverable archaeological information, in the area affected by the development.)*



21. The development shall not be begun before the following off-site works have been carried out in accordance with detailed plans and specifications approved in writing by the planning authority, or the planning authority has certified in writing its satisfaction with commitments, legally binding all relevant parties, to a programme of works in accordance with such details:-

- (a) Improvements to the junction of Corrou Road and Dalfaber Drive, in which the convenience and safety of pedestrians and cyclists shall have priority over the convenience of drivers;
- (b) Improvements to the junction of Dalfaber Drive and Gramplan Road;
- (c) the installation of half barriers at the crossing of Dalfaber Drive over the Avlemore - Boat of Garten private railway.

(Reason: In the interests of public safety and to cope with traffic generated by the development.)

22. The development shall not be begun before either the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision to a registered social landlord of not less than 22 dwellings on this site together with the contiguous site of appeal decision PPA-001-2000 (application 07/144/CP); or the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing. *(Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)*

23. Before the start of construction of houses on any phase containing or adjoining the curtilage of Dalfaber farmhouse, the planning authority shall have approved in writing detailed arrangements for the restoration of the building to residential use and its integration into the layout of the development at North Dalfaber, not later than simultaneously with that phase of the development. *(Reason: since leaving the building in a decaying state and unoccupied would detract from the amenity of future residents and visitors in the vicinity, and would be likely to lead to the loss of a significant traditional feature of the locality.)*

Advisory notes

1. Notice of Initiation of development

Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.



2. Notice of completion of development

As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.

3. Road Construction Consent

Road Construction Consent is required in respect of all roads-related works intended for adoption by the roads authority.

4. Relevant guidance of local roads authority

In the design of roads, accesses and paths intended for adoption, and of residential accesses and parking, account should be taken of relevant guidance published by the appropriate roads authority.

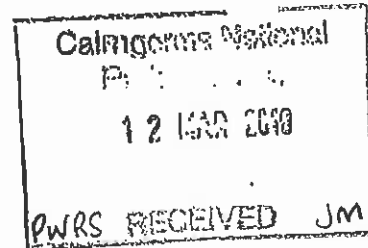


Directorate for Planning and Environmental Appeals

Telephone: 01324 696400 F: 01324 696444
E: dpea@scotland.gsi.gov.uk



Mary Grier
Cairngorms National Park Authority
Albert Memorial Hall
Station Square
Ballater
Aberdeenshire
AB35 5QB



Your Ref :07/0144/CP

Our ref: PPA-001-2000

11 March 2010

Dear Ms Grier

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
PLANNING PERMISSION APPEAL: LAND NORTH WEST OF DALFABER
FARM, DALFABER DRIVE, AVIEMORE**

I enclose for your information a copy of the decision letter on this appeal.

The Reporter's decision is final, subject to the right of any aggrieved person to apply to the Court of Session within six weeks from the date of the decision conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application, the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act, or of the Tribunals and Inquiries Act 1992, or of any orders, regulations or rules made under these Acts.

Yours faithfully



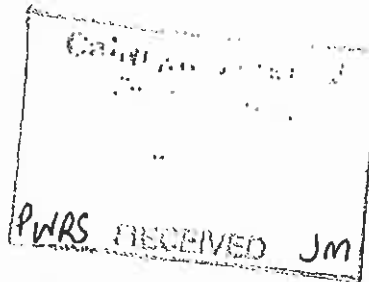
EMMA BROWN

4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR
DX 557005 FALKIRK
www.scotland.gov.uk/Topics/Planning/Appeals



Directorate for Planning and Environmental Appeals
Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by William M H Patterson, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-001-2000
- Site address: North Dalfaber, Aviemore
- Appeal by Reidhaven Estates against the failure by the Cairngorms National Park Authority to notify a formal determination
- Application for planning permission in principle 07/144/CP dated 16 April 2007
- The development proposed: ten (originally twenty) serviced housing plots
- Application drawings: location plan; indicative site layout A3583/L(-)21 Rev.G
- Date of unaccompanied site visit by Reporter: 3 February 2010

Date of appeal decision: 11 March 2010

Decision

I allow the appeal and grant planning permission in principle subject to the 21 conditions listed at the end of the decision notice. Attention is also drawn to the four advisory notes which follow the conditions.

Reasoning

1. The appeal site is contiguous with and covered by a joint indicative layout for land to the south which is the subject of appeal PPA-001-2001. The National Park Authority called in the applications from the Highland Council, to which they had been submitted, and resolved to grant outline planning permission subject to conditions and conclusion of a section 75 agreement. The present appeal against non-determination was made in the light of perceived problems and delays in the conclusion of an agreement.
2. It is clear that some housing development on the land would accord with the terms of the development plan including the diagrammatic allocation for housing in North Aviemore, in the current Badenoch and Strathspey Local Plan Settlement Inset 6; though local objectors including Aviemore and Vicinity Community Council have maintained opposition to the proposal. The determining issues in this appeal are thus whether there is any feature of the site or the proposal which should outweigh the broad support from the development plan; and, if not, the extent to which contentious matters could be satisfactorily covered by conditions rather than requiring the negotiation and conclusion of a section 75 agreement.
3. Although the apprehensions of objectors about effects on the attractive woodland with open glades and clumps of trees are understandable, from the indicative scheme and



the thorough way in which impacts on this character have been assessed by the National Park Authority it is evident that commendable care has been taken in fitting in the proposed houses and vehicular access with minimal loss of trees. The ten houses of application 07/144/CP could, as represented in the indicative scheme, be set within enough peripheral tree cover to ensure that they would not form a raw or intrusive urban edge next to the golf course which lies between the site and the Spey. There is also no compelling reason to suppose that there are significant flooding risks that have escaped the attention of professionals who have studied them and advised on protective measures; that a pleasant and useful network of offroad paths for a full range of users could not be achieved through the combined appeal sites; or that there are other fatal defects, such as impacts of traffic generation on existing residents and roads, which should rule out planning permission in principle.

4. The recent Planning Circular 1/2010 on *Planning Agreements* has continued the tenor of previous advice, that agreements should be sought only where conditions would not be appropriate and adequate. The appeal papers envisage a possible agreement covering a contribution to affordable housing; improvements to the level crossing of Dalfaber Drive over the private Aviemore to Boat of Garten steam railway; and improvements to the junction of Dalfaber Drive with the main north-south road in Aviemore, Grampian Road. It is clear that the parties have not been close to agreement, so that it would not be sensible to issue an Intentions Notice on the basis that an agreement will be concluded in the near future. Accordingly it is essential to consider whether conditions would be an adequate and effective substitute.

5. The appeal papers include a figure apparently acceptable to both parties, for an affordable housing contribution from the rather higher number of houses that was earlier envisaged for the combined sites. Pro rata the figure would now be 22 dwellings. It is possible to set out a condition making the combined development conditional on the planning authority's being satisfied with arrangements to ensure such provision. It is not necessary or appropriate in this notice to set out whether or not such arrangements would involve a 'section 75' or other form of legal agreement. The same applies to arrangements for road improvements at Grampian Road and just outside the combined development site at the junction of Corroul Road and Dalfaber Drive.

6. It also applies to safety measures at the currently open level crossing, with signals only, which the Office of Rail Regulation (ORR) has advised are necessary although the need for them has been disputed in the appeal. Some 93 houses to the east of the crossing would generate significant additional traffic, at a location where the ORR has recorded two contacts between trains and road vehicles in the recent past. The resistance to a burden on the development is on the basis that the rail traffic is small in number and seasonal. However, perusal of a timetable on public display shows a pattern, much as would be expected of such a recreational railway, in which in the off-season there are weeks of inaction apart from a few trains for special days, peak and shoulder timetables and also special days with two engines in use. This variability and relative unpredictability would readily lead to complacency and casualness in local residents, which could catch them out. Despite warning signage, an unbarriered railway crossing in such an unusual location as the approach to a modern private housing estate could escape the attention of less alert visitors. It is also a matter of general knowledge that open railway crossings in



the north of Scotland have, because of tragic incidents, become a greater safety concern than they were even a few years ago. Accordingly the requirement for provision of a barrier is a justified safety precaution properly related to the development, whether or not any party other than the developer can be persuaded to contribute to its cost.

7. Of other matters proposed for conditions in committee reports, the precise specification of accesses and related features would be more appropriately the subject of an advisory note rather than lengthy recitation, in conditions, of detailed requirements which may for some contexts be unduly prescriptive. Street naming to take account of local history and geography is desirable but not a matter sufficiently related to planning to warrant a condition of planning permission. Since the setting is on the edge of countryside and the woodland would retain something of a semi-rural character, street lighting is not so self-evidently necessary and appropriate that it should be required by condition. Conversely, conditions relating to the specification of off-road routes for non-motorised users need to provide more specific guidance than in the Authority's drafts, particularly so that nothing should be done to conflict with the aspiration, noted in the appeal papers, of completing an eastern orbital path for Aviemore; the route to the town centre along roads being indirect and in large part neither visually nor aurally pleasant.

8. I have taken account of all the other matters in the written submissions, but there is nothing to indicate that planning permission in principle should not be granted, subject only the following necessary and appropriate conditions.



W M H PATTERSON
Reporter



Conditions applying to Planning Permission in Principle following Appeal PPA-001-2000

1. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.

- The siting, design and external appearance of all buildings and other structures including all fencing
- The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities
- A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors
- Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS).

(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.)

2. The landscaping plan shall be coordinated with that for the adjacent area covered by planning application 07/145/CP (appeal decision PPA-001-2001) and shall include comprehensive details of all species (which should be of indigenous origin), planting location and numbers to be planted, as well as details of height and girth at time of planting and projected growth rates. *(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)*

3. The landscaping of all communal areas within the proposed development shall be completed within one year of the commencement of works within the relevant phase. Any trees or shrubs that die or become seriously damaged or diseased within a period of five years from the time of planting shall be replaced with others of a similar size and species, suited to the climate of the area, within the next planting season. *(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)*

4. The detailed landscaping plan shall be accompanied by an Arboricultural Method Statement and a full Tree Protection Plan which shall be prepared by an arboriculturalist in accordance with BS 5837:2005 - Trees in Relation to Construction. The Tree Protection Plan shall take account of all communal woodland and open space areas, as well as taking account of layouts, levels and building lines of individual plots. An Arboricultural Consultant shall be retained to undertake arboricultural site monitoring for the duration of the

construction. Monitoring shall take place at least once every month. *(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)*

5. All submissions of details for individual house plots shall include a detailed landscaping plan, identifying all existing trees on the plot and identifying those proposed for retention. The felling of trees within individual plots shall not be undertaken without the prior written consent of the planning authority. *(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)*

6. Any front garden areas designed as part of an 'open plan' layout shall be maintained in an open plan format in perpetuity. The details of all boundary treatments on the side and rear boundaries of individual plots shall be included in the material required under condition 1. *(Reason: in the interests of visual amenity.)*

7. All top soil stripped in the course of development shall be stored in mounds not exceeding 2.0 metres in height and shall be retained for subsequent landscaping reinstatement of the proposed development site. All top soil shall be stripped, handled, stored and re-spread in accordance to B.S. 3882:1994 Annex N. *(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)*

8. The details required by condition 1 shall include a detailed plan of public access across the site (existing, during construction and upon completion). The plan shall show: (a) all existing paths, tracks and rights of way and any areas currently outwith or excluded from statutory access rights; (b) any areas proposed for exclusion from statutory access rights, for reasons of privacy, disturbance or curtilage, in relation to proposed buildings or structures; (c) all paths and tracks proposed for construction, for use by walkers, riders, cyclists, riders or those with physical disabilities; (d) any diversions of paths - temporary or permanent - proposed for the purposes of the development. *(Reason: to ensure that considerations both of privacy and of public access receive due consideration in the design, construction and use of the development.)*

9. A management and maintenance statement, to be binding during development and occupation of the site, shall be submitted and have the written approval of the planning authority before development of the site is begun. This statement shall cover any play areas, hard or soft landscaped areas, roads, footpaths and cycle links that are not intended for adoption by Highland Council. Details shall be included as to how the woodland and open space will be retained and managed in perpetuity allowing for public access and pathways through the site; and to show how paths for pedestrians and cyclists will link effectively with off-road walking and cycling routes outwith the site; In particular the layout and specification of paths shall be consistent with future completion, outwith the site, of an eastern orbital path for Aviemore. The surface of all pathways through the site intended to be available to pedal cycles, disabled persons' buggies and baby carriages, other than those intended for adoption by the roads authority, shall be of a material that is both permeable, in keeping with the woodland nature of the site, and permanently firm and smooth, satisfactorily drained and of appropriate breadth to allow passing. Paths intended only for recreational walking or horse-riding shall be of a less formal, permeable surface. The details of landscaping of the site and of paths within it, as required by condition 1, shall be accompanied by details of the management and maintenance statement. *(Reason: to*



ensure that specifications and surfaces are visually and ecologically appropriate; and that paths achieve their functional potential in enabling and encouraging walking and cycling in and around Aviemore, and so that local residents with disabilities should be able to enjoy local trips through woodland and open space.)

10. The details required by condition 1 shall include in particular the following:

(a) detailed proposals to extend the path identified along the golf course boundary to the northern end of the site in order to cross the gully to link with Fisherman's Car Park drive;

(b) detailed proposals regarding width, specification, and provision of vehicular barriers (such that they are not obstacles to the passage of disabled persons' buggies, baby carriages or pedal cycles) associated with the proposed emergency access route from Spey Avenue, to ensure that the only form of vehicular access is for emergency access only and that it shall otherwise be retained as an informal access route for non vehicular movement;

(c) provision of appropriately located refuse bin collection points.

(Reason: to ensure that these matters receive appropriate attention.)

11. The development shall be carried out in phases, in conjunction with the adjacent development permitted under application 07/145/CP (appeal decision PPA-001-2001). No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites (applications 07/144/CP and 07/145/CP) shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a north to south direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development. *(Reason: to ensure an orderly sequence of development.)*

12. In the event that any plots within the development are proposed to be developed on an individual basis, a detailed design statement shall be submitted for the written agreement of the planning authority, prior to the submission of any subsequent application on the individual plots. The design statement shall include design guidance (including sample house type illustrations where appropriate) and shall cover details of height, materials, plot ratio, boundary treatments, the incorporation of energy efficiency and sustainability measures, and landscape and ecology guidance. All subsequent applications shall be in accordance with the agreed detail of the design statement. *(Reason: for consistency of design principles in the whole development.)*

13. Where development is to be undertaken as a single entity, a detailed design statement, addressing all of the matters as set out in the foregoing condition, shall be submitted as part of any future application for approval of details. *(Reason: for consistency of design principles in the whole development.)*

14. A contoured site plan indicating existing ground levels and all proposed finished floor levels shall be included in the detailed proposals for the site. No land raising, landscaping

(bundling etc.) or solid boundary fences or walls shall be carried out or put in place below the level of 208.55m AOD. Finished floor levels shall be set at least 600mm above the design water level i.e. at not less than 209.15m AOD. Any infiltration basin shall not be located below the 208.55 metre contour. *(Reason: to ensure effective drainage of surface water and to avoid liability to flooding.)*

15. SUDS proposals for any phase of development must be implemented and operational prior to the occupation of any dwelling within that phase of the development. *(Reason: to ensure effective drainage of surface water and to avoid liability to flooding.)*

16. A detailed site specific construction method statement must be agreed in writing with the planning authority prior to the commencement of works on the site, and must be implemented in full during works on the site. The method statement must address the temporary measures proposed to deal with surface water run-off during construction and prior to the operation of the final SUDS. *(Reason: to ensure effective drainage of surface water and to avoid liability to flooding or runoff of polluted water during the construction period.)*

17. A suitable management and maintenance statement shall be established in respect of any drainage measures that are not to be adopted by Highland Council or Scottish Water. Details of and evidence for the effectiveness of the maintenance proposals shall be submitted with the required details of SUDS. *(Reason: to ensure effective drainage of the site and to avoid liability to flooding.)*

18. All public services for the development, including electrical, cable television and telephone cables, shall be located underground throughout the site. All such work shall be carried out prior to road surfacing and junction boxes shall be provided by the developer. *(Reason: in the interests of visual amenity.)*

19. Prior to the commencement of development, a programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation, shall be submitted to and agreed in writing with the planning authority. All arrangements thereby approved shall be implemented by the developers at their expense in accordance with the approved timetable for investigation. *(Reason: to ensure the recording and where practicable preservation of any archaeological features or recoverable archaeological information, in the area affected by the development.)*

20. The development shall not be begun before the following off-site works have been carried out in accordance with detailed plans and specifications approved in writing by the planning authority, or the planning authority has certified in writing its satisfaction with commitments, legally binding all relevant parties, to a programme of works in accordance with such details:-

(a) improvements to the junction of Corroul Road and Dalfaber Drive, in which the convenience and safety of pedestrians and cyclists shall have priority over the convenience of drivers;

- (b) improvements to the junction of Dalfaber Drive and Grampian Road;
- (c) the installation of half barriers at the crossing of Dalfaber Drive over the Avlemore - Boat of Garten private railway.

(Reason: in the interests of public safety and to cope with traffic generated by the development.)

21. The development shall not be begun before *either* the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision to a registered social landlord of not less than 22 dwellings on this site together with the contiguous site of appeal decision PPA-001-2001 (application 07/145/CP); *or* the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing. *(Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)*

Advisory notes

1. Notice of Initiation of development

Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

2. Notice of completion of development

As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.

3. Road Construction Consent

Road Construction Consent is required in respect of all roads-related works intended for adoption by the roads authority.

4. Relevant guidance of local roads authority

In the design of roads; accesses and paths intended for adoption, and of residential accesses and parking, account should be taken of relevant guidance published by the appropriate roads authority.

