

2013/0073/MSC & 2013/0074/MSC

## APPENDIX 3

Representations against original  
consultation period (2013)

## **35 Callart Road, Aviemore, Inverness-shire, PH22 1SR**

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

27/03/2013

**Application Nos : 13/00740MSC & 13/00741/MSC – Matters Specified In Conditions**

Dear Sir/Madam

I would like to make the following comments on the above applications.

### **13/00740/MSC**

1. The following documentation is missing :
  - Reporter Decisions PPA-001-2000 has not been included. This document is essential for anyone to make an informed assessment of the Matters Specified in Conditions.
  - Ramsay & Chalmers submitted a Drainage Impact Assessment dated 20/02/2013. The Appendices show no information
2. Condition 1 – Reporter Decision : The Reporters letter dated 11<sup>th</sup> March 2010 describing the reasoning for his decision (Planning Reference PPA-001-2000 Paragraph 3) clearly states that there are only 10 houses in the area covered under planning application 07/144/CP. Reidhaven as part of their site plan clearly show 11 houses.

Also the application form submitted to Highland Council does not show the number of houses they are considering to have built in that area of the site
3. Condition 4 – Reporters Decision : Section 148 of the Scottish Planning Policy states in part “The Scottish Government's control of woodland removal policy includes a presumption in favour of protecting woodland resources. Woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits. There is no public benefit to the removal of trees in this woodland.
4. Condition 8 – Reporters Decision : states that “The plan shall show (a) all existing paths, tracks and rights of way and areas currently outwith or excluded from statutory access rights” does not show a well-defined path at the north end of the site.
5. Condition 11 – Reporters Decision : states that “Phasing shall be undertaken generally in a North to South direction”. Reidhaven have decided to ignore this stipulation and are phasing it in an adhoc manner.

6. Condition 12 – Design Statement.

The design statement provides no information in regards to heights, materials, plot ratio, boundary treatments, and the incorporation of energy efficiency & sustainability measures. Furthermore some of the pictures in this document bear no resemblance to the site today, as some of the pictures are at least 8 years old.

It states that Reidhaven” has negotiated a simplified version of the legal procedure which will help purchasers”. Who was this negotiated with and what changes have been made that anyone else would have to do to gain planning permission for their house?

It says : “Identify the conditions to be discharged to develop the plot, design your house following the Design Guide set out in Part 3”. There is no part 3.

7. Condition 14 – Reporters Decision : states “No land raising, landscaping (bundling etc.) or solid boundary fences or walls shall be carried out or put in place below the level 208.55m AOD” The road at the North East end of the site crosses an area where the land drops below the 208.55m level as supplied in their Amended Site Layout Plan A0. As the area drops steeply down one side and steeply up the other side of the gully, land raising would need to be carried out to accommodate the layby as shown on their site plan.
8. Further to the above argument, should Highland Council require the access road to be widened, further land raising would be required below 208.55m to accommodate the increase width of the access road.
9. Condition 20 – Off Site Works. Reidhaven have not submitted any detailed plans or specifications in relation to:
- Improvement to the road junction at Corroul Road / Dalfaber Drive
  - Improvements to the junction of Dalfaber Drive / Grampian Road
  - Installation of half barriers at the Strathspey Railway crossing.

It is essential that these works be carried out before any on-site work is carried out.

**13/00741/MS**

10. The following documentation is missing :

- Reporter Decisions PPA-001-2001 has not been included. This document is essential for anyone to make an informed assessment of the Matters Specified in Conditions.
- Ramsay & Chalmers submitted a Drainage Impact Assessment dated 20/02/2013. The Appendices show no information.

11. A lot of the area to the east of the site lies on the indicative flood plain. Conditions should be laid down ensuring that the developer does nothing to alter the flood plain.

12. Condition 4 – Reporters Decision : This should be considered under Matters Specified in Conditions as there will be an impact on the existing woodland, as some of the plot encroach into the wooded area.

Furthermore, should Highland Council insist that the access road be widened then further encroachment into the woodland will occur.

13. Condition 10 – Reporters Decision: No proposals have been submitted regarding the path along the golf course boundary to link with the fisherman car park.

No detailed proposals have been submitted regarding the emergency entrance from Spey Avenue.

14. Condition 11 – Reporters Decision : In the southern end of the site the number of trees bordering the golf course is very thin in places and does not do enough to soften the visual impact of the houses nearest the golf course. On the eastern side of the site, there are virtually no trees at all, and should be increased.

15. Condition 23 – Reporters Decision : The condition of Dalfaber farmhouse has started to deteriorate and as such Reidhaven should submit plans detailing their proposals to integrate it into the site.

#### **Other Comments**

The road leading the Clubhouse has road calming measures in place. As there will be a large amount of traffic in the development, further road calming measures should be incorporated.

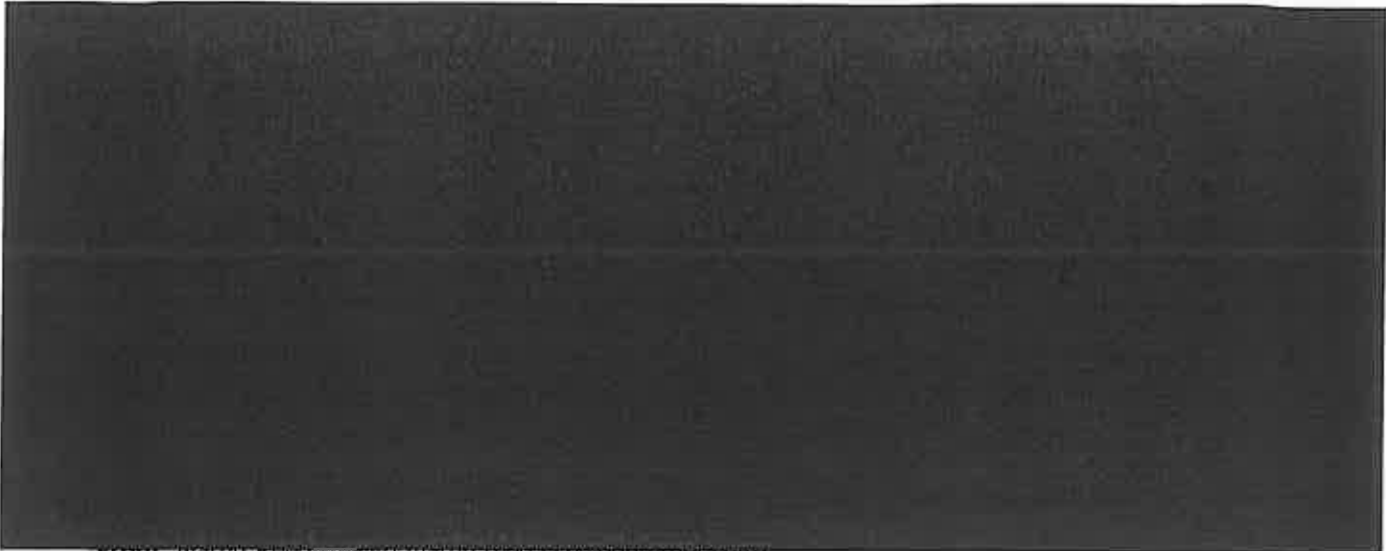
#### **Conclusion**

It is accepted that the whole site has planning permission in principle and that housing is to be built, but Reidhaven Estates have provided incomplete information or none at all, and therefore the application fails to meet the conditions laid down by the Reporter.

I therefore urge the CNPA Planning Committee to reject the proposals submitted by the applicant.

Yours Faithfully

Martin Reed.  
Chair  
Dalfaber Action Group.



**From:** Martin Reed [mailto:martin.reed537@btinternet.com]  
**Sent:** Friday, March 22, 2013 03:53 PM  
**To:** Don McKee  
**Cc:** Mary Grier  
**Subject:** Matter Specified in Conditions 2013/0074/MSC & 2013/0043/MSC

Dear Don

I would like to make the following complaints regarding the above:

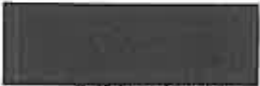
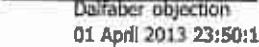
1. Proposal – these do not match what was put in the neighbour notifications, especially condition 4 (Landscaping Information re: Trees) as this is not listed on your site. Also the numbering of conditions for 2013/0074/MSC do not match that in the neighbour notification.
2. As it looks as though you are treating this as one application, and all the paperwork supplied by Reidhaven Estates is relating to the whole site, the neighbours who were informed about this, were only informed in part, thus not showing the full extent of the application. It is the opinion of Dalfaber Action Group that the neighbours should have been notified about the whole site.
3. As this notification is in relation to the the condltions laid down in the Reporters Decision, it is the opinion of Dalfaber Action Group that this important information should have been supplied with the application. By not having these important documents in the paperwork, it put the neighbours at a disadvantage in making comments relating to these Matters and the Conditions laid down by the Reporter.

On this basis, we therefore deem that the process is flawed and that the application should be resubmitted including all the missing necessary information and all neighbours bordering the site should be notified of the full application.

Regards

Martin Reed

Chair  
Dalfaber Action Group.

From:   
To:   
Subject: Dalfaber objection  
Date: 01 April 2013 23:50:17

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Badenoch & Strathspey Conservation Group  
Fiodhag, Nethybridge, Inverness-shire PH25 3DJ  
Tel 01479 821491  
Scottish Charity No. SC003846  
Email [info@bscg.org.uk](mailto:info@bscg.org.uk)

Mary Greir  
CNPA Ballatater

1 April 2013

Dear Mary

APPLICATIONS FOR APPROVAL OF MATTERS SPECIFIED IN CONDITIONS

REIDHAVEN ESTATE

REF. 2013/0073/MSC – LAND NORTH-WEST OF DALFABER FARM, DALFABER DRIVE,  
AVIEMORE

REF. 2013/0074/MSC – LAND NORTH-WEST & SOUTH OF FORMER STEADINGS, DALFABER  
FARM, DALFABER DRIVE, AVIEMORE

Badenoch & Strathspey Conservation Group (“BSCG”) is an unincorporated association and registered Scottish charity (number SC003846) established to stimulate public interest in, and care for, the beauty, history and character of Badenoch and Strathspey; to encourage active conservation of the area through wise use; to encourage high standards of planning and architecture in harmony with the environment.

BSCG objects to both applications, and has taken legal advice which supports its objections. Its objections relate to (a) protected species and biodiversity and (b) flaws in the procedures for handling these applications. BSCG wishes to speak at the planning meeting.

*A. Protected species and biodiversity*

It appears to BSCG that Cairngorms National Park Authority (“CNPA”), in determining these applications, has obligations relating to protected species and biodiversity:

- as a competent authority under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“the Habitats Regulations”) implementing Article

12 of Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna ("the Habitats Directive"); and

- as a public body under section 1 of the Nature Conservation (Scotland) Act 2004 ("the 2004 Act").

CNPA also has several policies in relation to protected species and biodiversity.

#### *A.1 The Habitats Directive and related guidance on European protected species*

Article 12(1) of the Habitats Directive obliges European Union member states to "take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting deterioration or destruction of breeding sites or resting places". The species listed in Annex IV are known as European protected species.

Regulation 39(1) of the Habitats Regulations, which transpose the UK's obligations under the Habitats Directive into domestic law, makes it an offence to damage or destroy a breeding site or resting place of a wild animal of a European protected species. Schedule 2 to the Habitats Regulations lists the European protected species of animal whose natural range includes any area in Great Britain, and includes all species of typical bat (*Vespertilionidae*), the common otter (*Lutra lutra*) and the wildcat (*Felis sylvestris*).

The role of planning authorities in relation to European protected species is set out in interim guidance given to local authorities by the Scottish Executive in October 2001 (before CNPA was established) entitled "European Protected Species, Development Sites and the Planning System". This is understood to remain in force, and is available on the Scottish Government website at <http://www.scotland.gov.uk/Publications/2001/10/10122/File-1>. It is understood that this guidance applies to CNPA in its capacity as a planning authority.

The guidance refers to regulation 3(4) of the Habitats Regulations, which requires every competent authority, in the exercise of any of their functions, to "have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions", and says this means that every planning decision taken in Scotland "must be reached in a manner which ensures that the provisions of the Habitats Directive are taken properly into account and that a breach of the Directive does not occur. This is a duty incumbent on [planning] authorities as a matter of Community law." (paragraph 27)



The guidance goes on to say, at paragraph 29:

*“It is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either will not impact adversely on any European protected species on the site or that, in its opinion, all three tests necessary for the eventual grant of a licence (under regulation 44 of the Habitats Regulations) are likely to be satisfied. To do otherwise would be to risk breaching the requirements of the Directive and Regulation 3(4).”*

The question of whether a regulation 44 licence is needed can only ever arise if a European protected species is on the site, so the first question that any planning authority has to address, in considering any planning application, is (as set out at paragraph 28):

*“Are European protected species present on the site for which planning permission has been sought?”*

The Scottish Executive, in May 2006, issued a letter to Heads of Planning in all planning authorities to remind them of their obligations under the Habitats Directive and bring to an end their reported use of suspensive planning conditions that required (for example) that a development should not commence until a survey had been undertaken to determine whether a European protected species is present. This letter is also available on the Scottish Government website at <http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/natural-heritage/letter16May2006>

The letter says that:

*“... to ensure that all decisions are compliant with the Habitats Directive and the Regulations and the [interim] Guidance, planning authorities should fully ascertain whether protected species are on site and what the implications of this might be before considering whether to approve an application or not.”*

#### A.2 The Nature Conservation (Scotland) Act 2004

Section 1(1) of the Nature Conservation (Scotland) Act 2004 (“the 2004 Act”) places a duty on every public body “ in exercising any functions, to further the conservation of

biodiversity so far as is consistent with the proper exercise of those functions”.

Section 1(2) of the 2004 Act provides that in complying with the duty under subsection (1) a body must have regard to: “(a) any strategy designated under section 2(1)...”.

Section 2 of the 2004 Act provides:

*“(1) The Scottish Ministers must designate as the Scottish Biodiversity Strategy one or more strategies for the conservation of biodiversity (whether prepared by them or by one or more other persons).*

...

*(4) Within one year of a strategy being so designated, the Scottish Ministers must publish, in such manner (including on the internet or by other electronic means) as they think fit, lists of—*

*(a) species of flora and fauna, and*

*(b) habitats,*

*considered by the Scottish Ministers to be of principal importance for the purpose mentioned in section 1(1).*

...”

The first Scottish Biodiversity Strategy was published in 2004, and the first Scottish Biodiversity List (“SBL”) was published in 2005. The latest version of the SBL is dated October 2012 and is available at

[http://www.scotland.gov.uk/Topics/Environment/Wildlife-](http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/16118/Biodiversitylist/SBL)

[Habitats/16118/Biodiversitylist/SBL](http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/16118/Biodiversitylist/SBL). As well as the wildcat and the otter, it includes the following 5 bat species (amongst others): Daubenton's Bat (*Myotis daubentonii*), Common Pipistrelle (*Pipistrellus pipistrellus*), Soprano Pipistrelle (*Pipistrellus pygmaeus*), Brown Long-eared Bat (*Plecotus auritus*) and Natterer's bat (*Myotis nattereri*).

### A.3 CNPA policy

CNPA has a policy on protected species (Policy 4) saying that development that would have an adverse effect on any European protected species will not be permitted unless the three tests necessary for the eventual grant of a regulation 44 licence are satisfied. Paragraph 3.30 of the Cairngorms National Park Local Plan 2010, on how Policy 4 will be

implemented, says:

***"If there is reason to believe that a European Protected Species or its breeding site or resting place may be present on a site, any such presence and any likely effects on the species shall be fully ascertained prior to the determination of the planning application."*** (emphasis added)

CNPA's Policy 5, on biodiversity, is relevant in relation to SBL species. It says:

***"Development that would have an adverse effect on habitats or species identified in the Cairngorms Local Biodiversity Action Plan, UK Biodiversity Action Plan, or by Scottish Ministers through the Scottish Biodiversity List, including any cumulative impact will only be permitted where:***

***a) the developer can demonstrate to the satisfaction of the planning authority, that the need and justification for the development outweighs the local, national or international contribution of the area of habitat or populations of species; and***

***b) significant harm or disturbance to the ecological functions, continuity and integrity of the habitats or species populations is avoided, or minimised where harm is unavoidable, and appropriate compensatory and/or management measures are provided and new habitats of commensurate or greater nature conservation value are created as appropriate to the site.***

***"Where there is evidence to indicate that a habitat or species may be present on, or adjacent to, a site, or could be adversely affected by the development, the developer will be required to undertake a comprehensive survey of the area's natural environment to assess the effect of the development on it."***

#### ***A.4 The applications and protected species***

There is evidence to suggest that wildcat, otter and the 5 above-named bat species may all be present on or close to both application sites, but it appears that no mammal survey has been conducted by the applicant, either at the outline planning permission stage or at this stage. At least no report of such a survey is available for members of the public to see. Without such a survey, it is not possible for CNPA to comply with its obligations under either the Habitats Regulations or the 2004 Act (or indeed its own policies), and it would therefore be unlawful for CNPA to approve either of these applications.

##### **A.4.1 Wildcat**

The attached spreadsheet ("Wildcat-5km") contains records held by the North East Scotland Biological Records Centre ("NESBReC") of wildcat sightings within a

5km radius of national grid reference NH 90518 13638.

There are 15 such sightings, including 2 in national grid square NH9013 (which covers both application areas), one of which, from 2009, was a "substantiated probable hybrid", indicating that wildcat are present in the area. Many of the other sightings within 5km are more recent.

#### A.4.2 Otters

The River Spey is nearby and there are some wet areas on the application sites where otters may find seasonal food. They also are known to prey on rabbits and shelter down rabbit burrows.

There is also potential for increased disturbance of otters near the Spey itself (i.e. away from the actual application sites) as homes could be occupied by people with pet dogs who are likely to walk by the Spey, as might other displaced dog walkers who will be less able to walk their dogs on the application sites once they are developed.

#### A.4.3 Bats

The attached spreadsheet ("Bat-5km") contains records held by NESBReC of bat sightings within a 5km radius of national grid reference NH 90518 13638.

This shows 4 bat species in the general area.

In addition a 5th species, Natterer's bat *Myotis nattereri* is at least possible in the area. The 2011 Atlas of Highland Land Mammals states for Natterer's bat: "Most likely to be seen in southern Highland near woodland and water .....probably under-recorded." This species has been reported roosting at Achantoul.

### B. Other Species

#### Badger

The CNPA has a duty towards protected species such as badgers. BSCG has recorded entrance holes to a badger sett on the sites. The holes are consistent with entrances to a badger sett in terms of location (on a slope, in birch woodland in freely draining soil), and in other features described by Roper 2010 like shape (an approximate D shape) and dimensions (30-50cms wide and 20cms high). Possible bedding was present at the entrance to one hole in March 2013.

The location of these holes probably best considered a subsidiary sett is such that it would be affected by both applications.

BSCG understands that a local farmer has known of a sett here for about 30 years. Local dog walkers knew of a dead badger that had been present in the proposal site, in the general vicinity of the holes, in about autumn 2012 that their dogs had been rolling in.

Previously a latrine had been reported by a reliable local observer. the CNPA ecologist, Dr David Hetherington, wrote (2008) "It is however clear that badgers do use the site proposed for development, at least for foraging, as there have been several sightings by local residents". Having not found any signs of current use of entrance holes the CNPA ecologist concluded at that time that this "indicates that this burrow is not currently used a [sic] badger sett".

However the observations on which this conclusion was based were limited. They appear not to take heed of SNH 2001 information that states that a sett in an occupied territory is classified as in current use "even if it is only used seasonally or occasionally by badgers" and is afforded "the same protection in law".

Given the location of the sett it could be adversely affected by both applications and a proposed new path. Referring to initial badger survey for developments, SNH (2001) indicate this "should identify the paths in such a way that the badgers have undeveloped corridors of suitable habitats to link with other setts and feeding areas outwith the site". The territory is the minimum area capable of supporting the badger social group (clan). Loss of territory may lead to a reduction in group size.

BSCG has recorded the devil's-bit scabious mining bee *Andrena marginata* on the proposal site. This bee that is listed on 7 European Red lists is proposed for inclusion in the new CNPA Nature Action Plan

### *C. C. Flaws in procedure*

#### *C..1 Failure by The Highland Council to notify CNPA of either application by statutory deadline*

These applications under regulation 12 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 ("the 2008 Regulations") were made to and advertised by The Highland Council ("THC") in the first place (refs. 13/00740/MSC and 13/00741/MSC respectively), notified by THC to CNPA under regulation 36(2) of the 2008 Regulations, and called in by CNPA under article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003.

Regulation 36(2) of the 2008 Regulations provides: "Where an application is made under any of regulations 9 to 12 in respect of development situated in the area of [the Cairngorms National Park] Authority, the planning authority must within the period of five days beginning with the validation date, give notice of the application to that Authority."

The THC website says they received both applications on 26 February 2013 and validated them both on 1 March. The period of 5 days beginning with (i.e. including) 1 March ends on 5 March. The CNPA website contains documents saying notification of 13/00740/MSC was received on 6 March and of 13/00741/MSC on 7 March, so both notifications were late.

It is not possible to cure this flaw, so both applications are invalid. CNPA would be acting beyond its powers if it sought to determine applications that have not followed the correct procedure.

### *2. Failure by CNPA to provide sufficient information to the public*

It has been difficult for BSCG and other members of the public to obtain all the relevant information about these two applications, because it is scattered across the websites of three different public authorities: CNPA, THC and the Directorate for Planning and Environmental Appeals (DPEA). In its notifications to THC calling in the present applications, CNPA cited as a reason for call-in the fact that the applications for planning permission in principle had been determined on appeal by the DPEA. CNPA should therefore have ensured that information about the conditions imposed by the DPEA, specifying the matters to be approved, was made available on its own website to members of the public, rather than forcing them to search for it on the DPEA website.

### *3. Failure of applicant to carry out pre-application consultation*

The Planning etc. (Scotland) Act 2006 introduced a legal requirement for pre-application consultation where major developments are proposed. Major developments are defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 as including residential developments of over 50 dwellings or extending to over 2 hectares. Both proposals are therefore major developments.

The requirement for pre-application consultation relates only to applications for planning permission (including planning permission in principle), as opposed to applications for approval of matters specified in conditions. It came into force on 6 April 2009, after the corresponding applications for planning permission in principle had been made.

Given the level of opposition to those applications (including from the local community council), and the fact that both applications were refused by CNPA, it would have been not only in keeping with the spirit of the legislation, but also good practice, for the

applicant to undertake pre-application consultation in relation to both these major developments at this stage.

Unfortunately the opposite has happened. Both applications have been lodged less than 2 weeks before the corresponding planning permissions in principle were due to expire in terms of section 59(2) of the Town and Country Planning (Scotland) Act 1997 (as amended). It appears that the applications are lacking in detail in several respects, and have been lodged in haste to avoid the expiry of the corresponding planning permissions in principle.

In all the circumstances, the applicant should be advised to withdraw both applications, failing which the CNPA should refuse them both. The planning permissions in principle will therefore have expired. Given the scale of local opposition to the proposals, the applicant would be well advised, if they wish to pursue the proposal, to begin the whole process again, starting with a pre-application consultation during which the numerous issues raised by objectors may be addressed.

BSCG notes that many apparently relevant conditions specified by the Reporter are not referred to in the applications.

Yours etc

Gus Jones

(Convener)

From: John Nethercott  
Sent: Sun, 24 Mar 2013 15:30:01 +0000  
To: Planning  
Subject: Fw: Neighbour Notification, Dalfaber Woods.13/00740/MS  
Importance: Normal

----- Original Message -----

From: [REDACTED]  
To: [MaryGrier@cairngorms.co.uk](mailto:MaryGrier@cairngorms.co.uk)  
Sent: Saturday, March 23, 2013 9:44 PM  
Subject: Neighbour Notification, Dalfaber Woods.13/00740/MS

From: John Nethercott, 38 Callart Road, Aviemore. PH22 1PA

Dear Ms. Grier,

I refer to the recently received Neighbour Notification regarding the application by Messrs Reidhaven Estates to build in Dalfaber. I apologise for taking a while to respond, but it has taken me time to obtain the information I required.

I refer you to the Determinations written by the Scottish Reporters, viz. PPA-001-2000 Para 5 and PPA-001-2001 para 6 of the Reporter's Reasoning, where he wrote that he views:-  
> that there are elements in the respective Appeals where they should be viewed as a "combined development". This phrase appears more than once.

> In Para 2 of both sets of Conditions applying to Planning Permission in Principle in both Determinations appears the words that an element of the plan "shall be coordinated with that for the adjacent area covered .....".

> In para 11. of both sets of Conditions the Reporter informs "Before development is begun a detailed phasing plan for both development sites shall have been....."

On these bases, ie. that the Reporter insists that these two applications are a combined application, it can be argued that Neighbour Notifications for both applications, should be sent to all neighbours of the land. Sending me a Neighbour Notification for one site has broken the spirit of the Reporters intentions, and therefore should be seen as to have failed in the planning process.

This letter is sent to you without prejudice, and is not to be founded upon, without the writer's consent, in any Court proceedings which may arise.

Yours sincerely,

John Nethercott



**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** REF : 2013 0073 and 0074 MSC  
**Date:** 31 March 2013 09:40:53

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I would like to lodge my objection to the applications REF 2013 0073 and 0074 MSC.

Planning condition 1 cannot be met without proper up to date wildlife surveys.

Sharon Gould  
14 Corrou Road  
AVIEMORE  
PH22 1SS

# Comments for Planning Application 2013/0073/MSC

## Application Summary

Application Number: 2013/0073/MSC

Address: Land North West Of Dalfaber Farm Dalfaber Drive Aviemore

Proposal: Approval of Matters Specified in Conditions 1 (Plans & Particulars), 4 (Landscaping Information re: Trees), 8 (details required by Condition 1), 9 (Management & Maintenance Statement), 10 (details required by Condition 1), 11 (Phasing Plan), 12 (Detailed Design Statement), 14 (Contoured Site Plan), 16 (Construction Method Statement), 17 (Management & Maintenance Statement), 19 (Programme of Archaeological Work) of Planning Permission in Principle 07/144/CP

Case Officer: Mary Grier

## Customer Details

Name: Mrs Jennifer Lobban

Address: Pawprints Dalfaber Aviemore

## Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: It has been brought to my attention that two local residents Mr Christopher Roberts of 11 Corrou Road and Mr Ray Lambert of 3 Corrou Road independently of each other claimed to have seen a wildcat in the area of these applications. They were subsequently visited by Dr David Hetherington who using a photograph of an entirely different animal agreed that there was every likelihood that the animal they had seen was in fact a Scottish Wildcat, one of the worlds most endangered species.

I find it totally inconceivable that Dr Hetherington the CNPAs ecology adviser could have failed to mention these sightings. Serious consideration must be given to carrying out a full, up to date, ecological survey of the entire area paying particular attention to the potential presence of wildcats.

Pawprints  
Dalfaber  
Aviemore  
PH22 1QD

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

25 March 2013

Dear Sirs,

**Planning Application(s) Matters Specified in Conditions Land Northwest and South of former Dalfaber farm steadings 2013/0074/MSC & 2013/0073/MSC**

I wish to register my objection and make the following observations in respect to the above applications.

**Access**

The applicant proposes to widen the existing golf course access track and create raised pavements either side of the road bordering my property. Currently the access track is level with my garden and driveway. Should the proposed pavement to the north of the roadway be created this will inevitably result in the creation of a 'dam' effect and allow the accumulation of rain water run-off to collect within my property which slopes from north to south (back to front). This will create a ponding effect.

I would therefore submit that either the north side footpath should be deleted as, in effect, it serves no particular purpose or that the level of the road surface be lowered to allow the pavement to be constructed at a level no higher than that of my garden and drive.

The plans submitted include a roundabout at approximately the junction of the main access track and the track to Heather Cottage yet the much busier junction of the access track and Corrou Road or the junction of Corrou Road, the Time Share Development and Dalfaber Drive are deemed to be quite satisfactory without such construction.

I would suggest that the roundabout, as proposed, be deleted and potentially be relocated to the Corrou Road/Dalfaber Drive junction if, indeed, a roundabout is deemed necessary at all.

A previous application the CNPA, as planning authority, approved the construction of an upgraded access track serving the Spey Valley golf course but additionally insisted on the creation of traffic calming speed humps on the current access track. The present application has no such proposal despite the fact that the development will, inevitably, substantially increase the volume of traffic.

I would therefore suggest that a minimum of two substantial speed calming humps, similar in construction to those previously approved by the planning authority in the Lochan Mor, Aviemore development, be constructed between the Corrou Road entrance and the site of the proposed roundabout. Furthermore that similar traffic calming measures be carried out, at regular intervals, throughout the proposed development particularly on the long single track road to the northern part of the site (phase 4)

The access road to phase 4 passes through a deep gully which lies within the 1 in 200 year + 20% flood plain. The reporter clearly states "No land raising .....shall be carried out below the level of 208.55 AOD". This is clearly not possible without land raising or bridging of the area. Furthermore it is not practically possible to create a useable road through the gully, especially in winter conditions, due to the nature of the topography.

There is nothing in these proposals which details that Conditions 20 (a), (b) and (c) is to be satisfied. In fact this ultra-important section of the Reporters conditions is completely ignored by the applicant or has been dealt with behind closed doors without the prior knowledge or approval of the planning committee.

"The development shall not be begun before the following off-site works have been completed"

- (a) Improvements to the junction of Corrou Road and Dalfaber Drive
- (b) Improvements to the junction of Dalfaber Drive and Grampian Road
- (c) Installation of half barriers at the level crossing on Dalfaber Drive

I have serious concerns regarding the provision of an emergency, gated, access route. This narrow single track route will not provide adequate safe public access, as is required by statute, during an inevitable flood event and will lead to several houses being effectively marooned.

### **General Site**

The Reporter states (condition 11) that "the development shall be carried out in phases" both parts of the site to be considered "in conjunction".... "Phasing shall be undertaken generally in a north to south direction"

This application totally ignore the reporter's condition and the applicant proposes a suit themselves 'pick and mix' development strategy whereas the reporter clearly wished the phasing to be, using the developers phase numbering system to 4,3,1,2.

There is no indication from the applicant as to how they will satisfy condition 12 and 13 with regards to the consistency of design of either single plots (condition 12) or as a single entity (condition 13)

The applicant's design statement is fundamentally flawed, extremely brief and lacking in necessary detail. The supplied document fails completely to give any indication of " The siting, design and external appearance of all buildings and other structures including all

fencing” (condition 1). Particular attention should be given to the height and overall design of the buildings which is barely mentioned in the ‘Design Statement’

Extravagant claims are made within the document “ Reidhaven Estates have negotiated a simplified version of the legal procedure” I would point out that it would appear clear that this ‘negotiated simplified version’ has never been approved by the Planning Committee and it is perverse to claim that the scant details provided by the applicant in the design guide forms a basis whereby the CNPA Planning Committee can be assured of “consistency of design principles in the whole development” as required by the Reporter.

One similar on-going development site in Aviemore is the Tulloch development at High Burnside. Board Members will remember that this development was granted Planning Permission in Principle (originally Outline Planning Consent) for the entire development site but that individual phases of development return to the CNPA Planning Committee for consideration. Whereas in the case of this development the present application is the last that the Planning Committee will ever see of it. The detail design, including individual dwellings, will be dealt with solely by Planning Officials.

Given the ludicrously scant amount of information included the applicants design statement I would submit that proposals for each individual phase of development should be returned to the CNPA Planning Committee for consideration.

The southern part of the site detailed by the applicant contains one small play area in the central area of phase 2. There have been 6 previous housing developments to the south of the Aviemore to Boat of Garten railway line all of which are on land previously owned by the applicant and to date there is ONE tiny play area serving several hundred homes. The proposed play area is insufficient in size given the level of development and the proposal to, allegedly, build family homes. I would therefore submit that plots 29 through to 32 be deleted and the entire central area of this part of the site be given over to the provision a play area incorporating an informal ‘kick-about’ area and a dedicated ‘swing park’ to be provided by the developer in the form of Community Benefit.

With respect to the northern part of the site Scottish Planning Policy (section 148) clearly states that “woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits”. Clearly the development of private dwelling houses cannot be considered to provide any conceivable public benefit.

The site boundary, delineated by a dotted red line, goes through my property and furthermore appears to go through the middle of No1 Corrou Road. The site plan is therefore inaccurate. The site plan further inaccurately delineates the relationship between the curtilage of my property and that of No1 Corrou Road. The same site plan appears to show the pavement to the north side of the access road encroaching on to my property and that of No1 Corrou Road. There would also appear to be an inadequate stand-off between plots number 01 and 02 and the twin sewer line to and from the Dalfaber pumping station and the sewage works which is not delineated on any of the developer’s maps.

It would appear that in the provided maps there are several more inaccuracies and that the details used in preparation of the Design Statement are in some cases up to 10 years old.

Should the application be approved then there should be a Note to the Applicant limiting construction work to between the hours of Mon – Fri 08:00 to 19:00, Sat – 08:00 to 13:00 and not at all on Sundays and public holidays. The notice should clearly point out that breaching a Section 60 notice is an offence.

### **Conclusion**

Whilst it is accepted that there is extant Planning Permission in Principle covering both adjacent parts of this site the CNPA Planning Committee are, obviously, not legally bound to accept these proposals by the applicant.

The application is fundamentally flawed and inappropriate for what is the most prominent and highly visible site in the whole of the Aviemore settlement. Most importantly it fails to satisfy the conditions laid down by the Reporter as detailed above. The design of parts of the site in particular in phases 2, 3 and part of phase 1 is particularly regimented and does little other than to pay lip-service to the reporters decision. Serious consideration should be given to creating a less urban street scape more in keeping with the surroundings.

Note should be taken of the deliberate omission of the Scottish Government Reporters findings (12<sup>th</sup> March 2010) in the provided documentation which should form a material part of the Planning Committee's deliberation. The omission of these two important documents has additionally reduced the ability of members of the public to make an informed decision regarding these applications.

I therefore urge Members of the CNPA Planning Committee to reject these applications and to advise the applicant that a much higher standard of design and site layout is required on this sensitive site.

Yours faithfully,

Jennifer M Lobban



19 Corrou Road  
Aviemore PH22 1SS



> Subject:

>

> I object to the applications REF 20130073 and 0074 MSC and that planning condition 1 cannot be met without proper up to date wildlife surveys.

>

> Sent from my iPhone

> The information contained within this e-mail and in any attachments is confidential and may be privileged. If you are not the intended recipient, please destroy this message, delete any copies held on your systems and notify the sender immediately. If you have received this email in error, you should not retain, copy or use it for any purpose, nor disclose all or any part of its content to any other person. All messages passing through this gateway are checked for viruses but we strongly recommend that you check for viruses using your own virus scanner as Cairngorms National Park Authority will not take responsibility for any damage caused as a result of virus infection.

38 Callart Road,  
Aviemore,  
PH22 1SR

28. 03. 2013

Cairngorms National Park Authority  
Albert Memorial Square  
Ballater  
AB35 5QB

Dear Sirs,

**REF Planning Applications 13/00740/ MSC and 13/00741/ MSC**

I recognise that Reidhaven Estates have been given outline planning permission to build on Dalfaber woods, and associated nearby land. However, it is important that this is done while fully complying with all laws, regulations, Reporters' determinations and restrictions.

This has not been done properly, and I ask the CNPA to bear this in mind, and refuse to allow these two applications.

1. I note that Reidhaven have stated that they have "negotiated a simplified version for the planning procedure". This surely means that corners have been cut, corners which other members of the community would otherwise have to negotiate! What laws and regulations have been varied for the exclusive use of this organisation? With whom have they negotiated these variations?

Can we be certain that there has been no corruption involved in this negotiation of short cuts? The public will want to know.

2. The Reporter in his two determinations (PPA-001-2001 and PPA-001-2002) stated there must be:-

- > improvement to the road junction at Corrou Road/Dalraber Drive;
  - > improvements to the junction of Dalraber Drive and Grampian Road;
  - > installation of half-barriers at the Strathspey Railway crossing
- .....and these improvements "must be carried out before the development is begun".

This aspect of the plans must be rigorously observed for the protection of the public, as the Reporter pointed out. There must be clear plans for these improvements. These were not obvious in the applications.

The Reporter's conditions must be strictly adhered to.

3. Application 13/00740/ MSC shows Reidhaven plan 11 houses in this area. The Reporter in in Para 3 of Planning Appeal PPA-001-2001 refers to there being only 10 houses.



Reidhaven MUST be made to stick to what the Reporter determined. They must not be permitted to change their plans.

4. The Reporter stated that "phasing should be undertaken generally in a north/south direction." Reidhaven's plans do not reflect this.

5.

6. The applicant must abide by the Reporter's conditions.

5. The Reporter states "no phase should be commenced until the previous phase has been certified...as sufficiently complete".

Reidhaven do not appear to have reflected this condition in their planning as their development appears to grow on an essentially ad hoc basis.

Reidhaven appear to have ignored the Reporter's conditions, to which they must be made to adhere.

6, Condition 14 of the Reporter's determination for Planning Appeal Reference PPA- 001-2000 states there should be "No land raising, landscaping (bundling, etc)...below the level 208.55m AOD".

The road at the north eastern end of the site crosses an area where the land does drop below 208.55 AOD. It is seen that the applicants propose to build a layby right at the point where the land drops below the datum level.

Reidhaven, who have been allowed to negotiate changes to planning procedures, must not be permitted to negotiate changes to the Reporter's condition regarding land raising, etc.

I put these concerns about these applications before the CNPA committee, and on the basis of these I request that the Committee reject these proposals.

Yours sincerely

John Nethercott



**To:** Mary Grier  
**Subject:** Neighbour Notification, Dalfaber Woods.13/00740/MSC

**From:** John Nethercott, 38 Callart Road, Avlemore. PH22 1PA

Dear Ms. Grier,

I refer to the recently received Neighbour Notification regarding the application by Messrs Reidhaven Estates to build in Dalfaber. I apologise for taking a while to respond, but it has taken me time to obtain the information I required.

I refer you to the Determinations written by the Scottish Reporters, viz. PPA-001-2000 Para 5 and PPA-001-2001 para 6 of the Reporter's Reasoning, where he wrote that he views:-

> that there are elements in the respective Appeals where they should be viewed as a "combined development". This phrase appears more than once.

> In Para 2 of both sets of Conditions applying to Planning Permission in Principle in both Determinations appears the words that an element of the plan "shall be coordinated with that for the adjacent area covered .....".

> In para 11. of both sets of Conditions the Reporter Informs "Before development is begun a detailed phasing plan for both development sites shall have been....."

On these bases, ie. that the Reporter insists that these two applications are a combined application, it can be argued that Neighbour Notifications for both applications, should be sent to all neighbours of the land. Sending me a Neighbour Notification for one site has broken the spirit of the Reporters intentions, and therefore should be seen as to have failed in the planning process.

This letter is sent to you without prejudice, and is not to be founded upon, without the writer's consent, in any Court proceedings which may arise.

Yours sincerely,

John Nethercott

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** Application No. 2013/0073/MSC & 2013/0074/MSC  
**Date:** 01 April 2013 10:43:02

---

Dear Sir

We wish to address the planning committee regarding the above applications based on the objections listed in our letter. It is important that the board members have a fuller understanding of the issues raised in the objections and a greater understanding of the issues that the developer has failed to mention or understand in the Reporter decisions.

Regards

Martin Reed  
Chair  
Dalfaber Action Group.

-----Original Message-----

From: automailer@calrngorms.co.uk [mailto:automailer@calrngorms.co.uk]

Sent: 30 March 2013 22:49

To: Mail Manager

Subject: Website (www.calrngorms.co.uk) Contact Form

From: mrs irene spencer [REDACTED]

RE: PLANNING APPLICATION for houses WEST of DALFABER FARM - AVIEMORE

I object to this developement of the last open space in Dalfaber which is accessible to the public.

Local residents have previously reported the presence of wildcats to the Park Authority and I feel that it would be absolutely necessary that a complete up to date ecological survey is carried out prior to the Park Planning Committee considering these applications.

Also, the main route into Dalfaber is still only served by crossing the Steam Railway Line and the more traffic crossing it must increase the chance of another near miss or worse ( heaven forbid ) . The last mishap shut the road for a good while.. What happens if the Fire or Ambulance service need to attend an emergency here .

Yours faithfully

Irene Spencer (mrs)

20 Spey Avenue  
Dalfaber  
Aviemore  
PH22 1SP

Re:-

20 Spay Ave.

Planning App No.

AVICMORE

2013/0073

Califorms National  
Park Authority  
01 APR 2013

PH 22 ISP

24/03/2013

Dear Sir,

RECEIVED

Thanking you for the  
letter acknowledging my letter  
re planning application 2013/0073/MSC

I would like to address the  
committee on this matters on  
the grounds of loss of access  
to the rear of my property  
as stated in previous letter

Yours Faithfully

[Redacted Signature]

**From:**   
**To:**   
**Subject:** application 13/00740/msc  
**Date:** 25 March 2013 23:29:51

---

Sir,  
with regard to the above application.

I live at 20 Spey Ave the proposed development runs along the side of my property.


If, as I understand, there is to be an emergency access road, gated or with barriers to run along the side of my house, I will be unable to access my back garden along the lane as at present. I need regular access along the lane with my caravan, and also a trailer.

One of the main reasons for buying our house was because we would be able to use our rear garden for this.

That being the case, I would like to object to this application on the grounds of loss of access to my property.

I would also point out that several of my neighbours along the present right of way lane will be similarly inconvenienced by this.

William Spencer  
20 Spey Ave  
Aviemore  
PH22 1SP



27 Spey Avenue  
Aviemore  
PH221SP



Sent: 01 April 2013 21:14  
To: Planning  
Subject: planning application REF 2013 0073 and 0074 MSC

Dear Sir/Madam,

we would like to object to the planning application REF 2013 0073 and 0074 MSC and believe that planning condition 1 cannot be met without proper up to date wildlife surveys. This is an important area for wildlife in which we have spotted deer, badgers, rabbits and several species of bird - all of which will be disturbed with this development. This is also a very popular area for local people to walk their dogs. Does Aviemore really need (what will essentially be) MORE holiday homes...?!

Yours sincerely,  
Lindsey and Adam Alexander  
(Spey Avenue)

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received this email in error, you should not retain, copy or use it for any purpose, nor disclose all or any part of its content to any other person. All messages passing through this gateway are checked for viruses but we strongly recommend that you check for viruses using your own virus scanner as Cairngorms National Park Authority will not take responsibility for any damage caused as a result of virus infection.

# Application Comments for 13/00740/MSC

## Application Summary

Application Number: 13/00740/MSC

Address: Land North West Of Dalfaber Farm Dalfaber Drive Aviemore

Proposal: Approval of Matters Specified in Conditions 1 (Plans & Particulars), 4 (Landscaping Information re: Trees), 8 (details required by Condition 1), 9 (Management & Maintenance Statement), 10 (details required by Condition 1), 11 (Phasing Plan), 12 (Detailed Design Statement), 14 (Contoured Site Plan), 16 (Construction Method Statement), 17 (Management & Maintenance Statement), 19 (Programme of Archaeological Work) of Planning permission in Principle 07/144/CP

Case Officer: Andrew McCracken

## Customer Details

Name: Miss Deziree Wilson

Address: 27 Corrou Road Aviemore Inverness-shire

## Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: We would like to object to the proposed plans to build on this site.

This is one of the few remaining areas of native birch forest left in Aviemore and as such we believe it should be protected. Areas of native forest such as this enhance Aviemore as a tourist destination and residential area and in a National Park this is of paramount importance.

The existence of this forest and the quietude it offers was one of the main attractions for us when we bought our house in Corrou Road, adjacent to the proposed plot. Prolonged building work here would significantly disrupt our lives as one of us works from home and requires quietness to do so.

Additionally, the proximity of new houses to us would dramatically alter the setting of our property, making it a much less desirable place to live, in our opinion. Certainly, we will consider moving house if planning permission is given for this site, although I suspect we would find it more difficult to sell our home as a result.

As you can gather, we would object to this planning application in the strongest terms, as residents who would be directly and detrimentally affected by building work.

-----Original Message-----

From: Roderick Andean [REDACTED]  
Sent: 01 April 2013 23:01  
To: Planning  
Subject: Objection to REF 2013 0073 and 0074 MSC

Dear Sir/Madam

I would like to object to the proposal to build houses in the area of birch woodland in the Dalfaber area of Aviemore (REF 2013 0073 and 0074).

There is no need for the development of yet more houses when taking account of the recent consent for the An Camas Mor development. The An Camas Mor development was supposed to reduce the need for further medium to large scale development in and around Aviemore.

The area identified for housing provides an excellent green area within the village to help break existing housing developments. It provides a good area for people to exercise thus leading to individual and community wellbeing. It also provides an excellent wildlife haven and acts as a wildlife corridor between areas of open space and woodland either side of the dalfaber area.

Many thanks

Rod Andean  
Aviemore

Rod Andean  
Ar-Dachaldh  
The Shelling  
Aviemore  
PH22 1QD

Sent from my iPhone

# Comments for Planning Application 2013/0074/MSC

## Application Summary

Application Number: 2013/0074/MSC

Address: Land North West And South Of Former Steadings Dalfaber Farm Dalfaber Drive  
Aviemore

Proposal: Approval of Matters Specified in Conditions 1 (Plans & Particulars), 8 (details required by Condition 1), 9 (Management & Maintenance Statement), 10 (details required by Condition 1), 12 (Phasing Plan), 13 (Detailed Design Statement), 15 (Site Plan), 17 (Construction Method Statement), 18 (Management & Maintenance Statement), 20 (Programme of Archaeological Work) of Planning Permission in Principle 07/145/CP.

Case Officer: Mary Grier

## Customer Details

Name: Mr Mark Chadwick

Address: 27 Corroul Road Aviemore

## Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I would like to object to this application on the same grounds as per my objection to the similar application referenced 07/144/CP.

I would also like to add that I don't believe that proper wildlife surveys have been carried out for this application and that this should be considered as a matter of urgency.

## **35 Callart Road, Aviemore, Inverness-shire, PH22 1SR**

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

27/03/2013

**Application Nos : 13/00740MSC & 13/00741/MSC – Matters Specified In Conditions**

Dear Sir/Madam

I would like to make the following comments on the above applications.

**13/00740/MSC**

1. The following documentation is missing :

- Reporter Decisions PPA-001-2000 has not been included. This document is essential for anyone to make an informed assessment of the Matters Specified in Conditions.
- Ramsay & Chalmers submitted a Drainage Impact Assessment dated 20/02/2013. The Appendices show no information

2. Condition 1 – Reporter Decision : The Reporters letter dated 11<sup>th</sup> March 2010 describing the reasoning for his decision (Planning Reference PPA-001-2000 Paragraph 3) clearly states that there are only 10 houses in the area covered under planning application 07/144/CP. Reidhaven as part of their site plan clearly show 11 houses.

Also the application form submitted to Highland Council does not show the number of houses they are considering to have built in that area of the site

3. Condition 4 – Reporters Decision : Section 148 of the Scottish Planning Policy states In part “The Scottish Government's control of woodland removal policy includes a presumption in favour of protecting woodland resources. Woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits. There is no public benefit to the removal of trees in this woodland.
4. Condition 8 – Reporters Decision : states that “The plan shall show (a) all existing paths, tracks and rights of way and areas currently outwith or excluded from statutory access rights” does not show a well-defined path at the north end of the site.
5. Condition 11 – Reporters Decision : states that “Phasing shall be undertaken generally in a North to South direction”. Reidhaven have decided to ignore this stipulation and are phasing it in an adhoc manner.

6. Condition 12 – Design Statement.

The design statement provides no information is regards to heights, materials, plot ratio, boundary treatments, and the incorporation of energy efficiency & sustainability measures. Furthermore some of the pictures in this document bear no resemblance to the site today, as some of the pictures are at least 8 years old.

It states that Reidhaven” has negotiated a simplified version of the legal procedure which will help purchasers”. Who was this negotiated with and what changes have been made that anyone else would have to do to gain planning permission for their house?

It says : “Identify the conditions to be discharged to develop the plot, design your house following the Design Guide set out in Part 3”. There is no part 3.

7. Condition 14 – Reporters Decision : states “No land raising, landscaping (bundling etc.) or solid boundary fences or walls shall be carried out or put in place below the level 208.55m AOD” The road at the North East end of the site crosses an area where the land drops below the 208.55m level as supplied in their Amended Site Layout Plan A0. As the area drops steeply down one side and steeply up the other side of the gully, land raising would need to be carried out to accommodate the layby as shown on their site plan.

8. Further to the above argument, should Highland Council require the access road to be widened, further land raising would be required below 208.55m to accommodate the increase width of the access road.

9. Condition 20 – Off Site Works. Reidhaven have not submitted any detailed plans or specifications in relation to:

- Improvement to the road junction at Corrou Road / Dalfaber Drive
- Improvements to the junction of Dalfaber Drive / Grampian Road
- Installation of half barriers at the Strathspey Railway crossing.

It is essential that these works be carried out before any on-site work is carried out.

13/00741/MSC

10. The following documentation is missing :

- Reporter Decisions PPA-001-2001 has not been included. This document is essential for anyone to make an Informed assessment of the Matters Specified in Conditions.
- Ramsay & Chalmers submitted a Drainage Impact Assessment dated 20/02/2013. The Appendices show no information.

11. A lot of the area to the east of the site lies on the indicative flood plain. Conditions should be laid down ensuring that the developer does nothing to alter the flood plain.

12. Condition 4 – Reporters Decision : This should be considered under Matters Specified in Conditions as there will be an impact on the existing woodland, as some of the plot encroach into the wooded area.

Furthermore, should Highland Council insist that the access road be widened then further encroachment into the woodland will occur.

13. Condition 10 – Reporters Decision: No proposals have been submitted regarding the path along the golf course boundary to link with the fisherman car park.

No detailed proposals have been submitted regarding the emergency entrance from Spey Avenue.

14. Condition 11 – Reporters Decision : In the southern end of the site the number of trees bordering the golf course is very thin in places and does not do enough to soften the visual impact of the houses nearest the golf course. On the eastern side of the site, there are virtually no trees at all, and should be increased.

15. Condition 23 – Reporters Decision : The condition of Dalfaber farmhouse has started to deteriorate and as such Reidhaven should submit plans detailing their proposals to integrate it into the site.

#### **Other Comments**

The road leading the Clubhouse has road calming measures in place. As there will be a large amount of traffic in the development, further road calming measures should be incorporated.

#### **Conclusion**

It is accepted that the whole site has planning permission in principle and that housing is to be built, but Reidhaven Estates have provided incomplete information or none at all, and therefore the application fails to meet the conditions laid down by the Reporter.

I therefore urge the CNPA Planning Committee to reject the proposals submitted by the applicant.

Yours Faithfully

Martin Reed.  
Chair  
Dalfaber Action Group.

## **35 Callart Road, Aviemore, Inverness-shire, PH22 1SR**

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

01/04/2013

**Application Nos : 13/00740MSC & 13/00741/MSC – Matters Specified In Conditions**

Dear Sir/Madam

I would like to make the following comments on the above applications.

### **13/00740/MSC**

1. The following documentation is missing :

- Reporter Decisions PPA-001-2000 has not been included. This document is essential for anyone to make an informed assessment of the Matters Specified in Conditions.
- Ramsay & Chalmers submitted a Drainage Impact Assessment dated 20/02/2013. The Appendices show no information

2. Condition 1 – Reporter Decision : The Reporters letter dated 11<sup>th</sup> March 2010 describing the reasoning for his decision (Planning Reference PPA-001-2000 Paragraph 3) clearly states that there are only 10 houses in the area covered under planning application 07/144/CP. Reidhaven as part of their site plan clearly show 11 houses.

Also the application form submitted to Highland Council does not show the number of houses they are considering to have built in that area of the site

3. Condition 4 – Reporters Decision : Section 148 of the Scottish Planning Policy states in part “The Scottish Government's control of woodland removal policy includes a presumption in favour of protecting woodland resources. Woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits. There is no public benefit to the removal of trees in this woodland.
4. Condition 8 – Reporters Decision : states that “The plan shall show (a) all existing paths, tracks and rights of way and areas currently outwith or excluded from statutory access rights” does not show a well-defined path at the north end of the site.
5. Condition 11 – Reporters Decision : states that “Phasing shall be undertaken generally in a North to South direction”. Reidhaven have decided to ignore this stipulation and are phasing it in an adhoc manner.



6. Condition 12 – Design Statement.

The design statement provides no information is regards to heights, materials, plot ratio, boundary treatments, and the incorporation of energy efficiency & sustainability measures. Furthermore some of the pictures in this document bear no resemblance to the site today, as some of the pictures are at least 8 years old.

It states that Reidhaven” has negotiated a simplified version of the legal procedure which will help purchasers”. Who was this negotiated with and what changes have been made that anyone else would have to do to gain planning permission for their house?

It says : “Identify the conditions to be discharged to develop the plot, design your house following the Design Guide set out in Part 3”. There is no part 3.

Overall this document is very weak in substance and meaning and should be treated with caution.

7. Condition 14 – Reporters Decision : states “No land raising, landscaping (bundling etc.) or solid boundary fences or walls shall be carried out or put in place below the level 208.55m AOD” The road at the North East end of the site crosses an area where the land drops below the 208.55m level as supplied in their Amended Site Layout Plan A0. As the area drops steeply down one side and steeply up the other side of the gully, land raising would need to be carried out to accommodate the layby as shown on their site plan.
8. Further to the above argument, should Highland Council require the access road to be widened, further land raising would be required below 208.55m to accommodate the increase width of the access road.
9. Condition 20 – Off Site Works. Reidhaven have not submitted any detailed plans or specifications in relation to:
- Improvement to the road junction at Corroul Road / Dalfaber Drive
  - Improvements to the junction of Dalfaber Drive / Grampian Road
  - Installation of half barriers at the Strathspey Railway crossing.

It is essential that these works be carried out before any on-site work is carried out.

**13/00741/MS**

10. The following documentation is missing :

- Reporter Decisions PPA-001-2001 has not been included. This document is essential for anyone to make an informed assessment of the Matters Specified in Conditions.
- Ramsay & Chalmers submitted a Drainage Impact Assessment dated 20/02/2013. The Appendices show no information.

11. A lot of the area to the east of the site lies on the indicative flood plain. Conditions should be laid down ensuring that the developer does nothing to alter the flood plain.

12. Condition 4 – Reporters Decision : This should be considered under Matters Specified in Conditions as there will be an impact on the existing woodland, as some of the plot encroach into the wooded area.

Furthermore, should Highland Council insist that the access road be widened then further encroachment into the woodland will occur.

13. Condition 10 – Reporters Decision: No proposals have been submitted regarding the path along the golf course boundary to link with the fisherman car park.

No detailed proposals have been submitted regarding the emergency entrance from Spey Avenue.

14. Condition 11 – Reporters Decision : In the southern end of the site the number of trees bordering the golf course is very thin in places and does not do enough to soften the visual impact of the houses nearest the golf course. On the eastern side of the site, there are virtually no trees at all, and should be increased.

15. Condition 23 – Reporters Decision : The condition of Dalfaber farmhouse has started to deteriorate and as such Reidhaven should submit plans detailing their proposals to integrate it into the site.

#### **Other Comments**

The road leading the Clubhouse has road calming measures in place. As there will be a large amount of traffic in the development, further road calming measures should be incorporated.

#### **Conclusion**

It is accepted that the whole site has planning permission in principle and that housing is to be built, but Reidhaven Estates have provided incomplete information or none at all, and therefore the application fails to meet the conditions laid down by the Reporter.

I therefore urge the CNPA Planning Committee to reject the proposals submitted by the applicant.

Yours Faithfully

Cathie Reed.

# Comments for Planning Application 2013/0074/MSC

## Application Summary

Application Number: 2013/0074/MSC

Address: Land North West And South Of Former Steadings Dalfaber Farm Dalfaber Drive  
Aviemore

Proposal: Approval of Matters Specified in Conditions 1 (Plans & Particulars), 8 (details required by Condition 1), 9 (Management & Maintenance Statement), 10 (details required by Condition 1), 12 (Phasing Plan), 13 (Detailed Design Statement), 15 (Site Plan), 17 (Construction Method Statement), 18 (Management & Maintenance Statement), 20 (Programme of Archaeological Work) of Planning Permission in Principle 07/145/CP.

Case Officer: Mary Grier

## Customer Details

Name: mr Joe Kirby

Address: 15 drummond road aviemore

## Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: After taking time to look over all of this material I've come to the conclusion I would like to object to the development for the following reasons. Currently there is another development in the pipeline less than 500 metres away at the golf course, secondly we live in a national park what is it with all the house building spoiling our lovely countryside which forgive me if I'm wrong but isn't that one of the primary reasons of a national park to protect it? Also with the extra housing it won't be affordable it will probably end up supposed 2nd homes that lay empty or become holiday homes so again I ask you what is the sense in building it? Aviemore has a small health centre and a new school with more of these housing proposals being flung up this will already put a strain on the building and make it harder and harder for doctors and residents to get to use them. I ask that the CNPA look at this proposal and realise that it will affect the people who live round here with the 2 projects on going at the same time, the dog walkers that regularly use that path way and make a common sense choice and knock it back.

# Comments for Planning Application 2013/0074/MSC

## Application Summary

Application Number: 2013/0074/MSC

Address: Land North West And South Of Former Steadings Dalfaber Farm Dalfaber Drive  
Aviemore

Proposal: Approval of Matters Specified in Conditions 1 (Plans & Particulars), 8 (details required by Condition 1), 9 (Management & Maintenance Statement), 10 (details required by Condition 1), 12 (Phasing Plan), 13 (Detailed Design Statement), 15 (Site Plan), 17 (Construction Method Statement), 18 (Management & Maintenance Statement), 20 (Programme of Archaeological Work) of Planning Permission in Principle 07/145/CP.

Case Officer: Mary Grier

## Customer Details

Name: Mrs Alice Marten

Address: 90 Corrou Road Aviemore

## Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I object to this application.

The so called Design Statement contains no details whatsoever of the design of the proposed buildings and is deliberately vague.

The application is not consistent with the decision of the Scottish Government reporter in a number of ways.

No mention is made of the barrier level crossing on Dalfaber Drive, or the roundabout at Grampian Road or the upgraded junction with Corrou Road.

The traffic speed on the access road from Corrou Road needs to be controlled by speed humps as it is at present.

The Phasing of the development, as proposed, is wrong according to the Reporters decision.

The layout of houses remains urban sprawl as mentioned by the Reporter previously.

There are insufficient play areas

In phase 4 we should not be removing any trees to provide private housing

The emergency route is unfit for purpose.

There are insufficient details of paths.

Phase 2 does not have sufficient tree planting, has too many houses and not enough play areas.

The planning committee and not planning officials should decide on each phase in detail.

# Comments for Planning Application 2013/0074/MSC

## Application Summary

Application Number: 2013/0074/MSC

Address: Land North West And South Of Former Steadings Dalfaber Farm Dalfaber Drive  
Aviemore

Proposal: Approval of Matters Specified in Conditions 1 (Plans & Particulars), 8 (details required by Condition 1), 9 (Management & Maintenance Statement), 10 (details required by Condition 1), 12 (Phasing Plan), 13 (Detailed Design Statement), 15 (Site Plan), 17 (Construction Method Statement), 18 (Management & Maintenance Statement), 20 (Programme of Archaeological Work) of Planning Permission in Principle 07/145/CP.

Case Officer: Mary Grier

## Customer Details

Name: Mrs Susie Taylor

Address: 23 Callart rd, Aviemore

## Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:Hi,I just want to make an official objection to the Reidhaven north Dalfaber plans,that have been submitted.This type of housing is not needed in Aviemore.The land that they want to destroy,by building these homes on,is used constantly by dog walkers,its used by gorgeous little deers,buzzards,squirrels,bats and other wildlife.Aviemore doesnt have the infrastructure to support more people in this area,in regards to schools,dentists,doctors,sewage works,and even more importantly JOBS!!!!

# Comments for Planning Application 2013/0074/MSC

## Application Summary

Application Number: 2013/0074/MSC

Address: Land North West And South Of Former Steadings Dalfaber Farm Dalfaber Drive  
Aviemore

Proposal: Approval of Matters Specified in Conditions 1 (Plans & Particulars), 8 (details required by Condition 1), 9 (Management & Maintenance Statement), 10 (details required by Condition 1), 12 (Phasing Plan), 13 (Detailed Design Statement), 15 (Site Plan), 17 (Construction Method Statement), 18 (Management & Maintenance Statement), 20 (Programme of Archaeological Work) of Planning Permission in Principle 07/145/CP.

Case Officer: Mary Grier

## Customer Details

Name: Miss Deziree Wilson

Address: 27 Corrou Road Aviemore

## Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I would like to object to this application on the same grounds as per my objection to the similar application referenced 07/144/CP.

I would also like to add that I don't believe that proper wildlife surveys have been carried out for this application and that this should be considered as a matter of urgency.

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** RE: Objection to REF 2013 0073 and 0074 MSC  
**Date:** 05 April 2013 10:53:30

---

-----Original Message-----

**From:** Roderick Andean [REDACTED]  
**Sent:** 01 April 2013 23:01  
**To:** Planning  
**Subject:** Objection to REF 2013 0073 and 0074 MSC

Dear Sir/Madam

I would like to object to the proposal to build houses in the area of birch woodland in the Dalfaber area of Aviemore (REF 2013 0073 and 0074).

There is no need for the development of yet more houses when taking account of the recent consent for the An Camas Mor development. The An Camas Mor development was supposed to reduce the need for further medium to large scale development in and around Aviemore.


The area identified for housing provides an excellent green area within the village to help break existing housing developments. It provides a good area for people to exercise thus leading to individual and community wellbeing. It also provides an excellent wildlife haven and acts as a wildlife corridor between areas of open space and woodland either side of the dalfaber area.

Many thanks

Rod Andean  
Aviemore

Rod Andean  
Ar-Dachaidh  
The Shelling  
Aviemore  
PH22 1QD

Sent from my iPhone



73 Dalnabay  
Aviemore  
PH22 1RG

Keith Banthorpe



**Sent:** 30 March 2013 17:35  
**To:** Planning  
**Subject:** Planning Applications ref 2013 0073 and 0074

I object to the above applications on the basis that insufficient consideration has been taken to the effect that this development will have on the wildlife and that planning condition 1 cannot be met without proper up to date wildlife surveys.

Keith Banthorpe



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**From:**

**To:**

**Subject:**

**Date:**

REF2013 0073 & 0074 MSC

30 March 2013 20:09:27

---

Dear Sir

I refer to the above development at Dalfaber.

I am concerned that it appears that the correct procedures and in particular that the planning condition 1 cannot be complied with without the proper wildlife surveys being carried out. The proposed development was always intended to be a compromise between preserving the natural woodland and wildlife environment and the desires of the developer. Failure to carry out the basic surveys is therefore a major omission by the developer and as such the application should not be approved until the surveys have been undertaken and properly evaluated to ensure that the development meets the criteria or not.

On a further point I note that the developer has proposed a double hammerhead at the end of the present development. A double hammerhead has only one meaning and that is the developer will at sometime in the future seek to extend the development into the remaining woodlands. The developer should be reminded that planning if ultimately approved was given on the basis that it was a compromise between its wishes and those of the community. Therefore the double hammerhead must be replaced by a turning circle.

I am objecting to the proposals as they have been presented.

Regards

Nigel Beaney

26 Dalfaber Park

Aviemore

Sent from my iPad

MR. MRS S. C. BENT  
36 CALLART ROAD

RECEIVED 7 FEB 1963 DALTARA

AUGMORE

PH 22 15R

REF NO 13/00740/MSC

Dear Sir this is  
a letter of objection for the above  
mentioned REF NO. to build a twenty  
plot housing scheme.

I have lived in Aviemore for thirty  
eight years and seen it double if  
not treble in population with  
houses going up all over green  
belt and woodland areas. With  
this one it is just another nail  
in the coffin. The birth wood is  
a haven for a family of roe deer  
which we feed all year round the  
bird life including lark, insects  
rabbit, butterfly, moths will now  
be moved on until the next

housing schemes get built so  
much for conservation. It will  
now mean we would have to  
jump in our car to take the  
dog for walks which means  
more harmful fumes going in  
to the atmosphere. A lot of people  
walk their dogs it is  
a vital walk for everyone.  
The houses that will be built  
will be big houses or holiday homes  
which will be too expensive for  
locals because it is right next to  
a champion golf course so that  
should tell you something.  
Amenity is becoming too big there  
is not enough shopping places  
the road structure cannot cope  
during the ski season and during  
summer sometime you end up  
with traffic jams or long

getting out of Ballisber drive to the  
main road junction can take as  
much as five to ten minutes  
please find a place in your  
hearts that this development  
cannot go ahead and should not  
go ahead please save this last  
piece of birch woodland for the  
local people of Ballisber and  
Ariemore for families to walk  
their dogs and for the sake of  
all the wild life that live in  
the woods.

yours sincerely



From: [REDACTED]  
To: [REDACTED]  
Subject: Dalfaber objection  
Date: 01 April 2013 23:50:17

---

Badenoch & Strathspey Conservation Group  
Fiodhag, Nethybridge, Inverness-shire PH25 3DJ

[REDACTED]  
Scottish Charity No. SC003846  
[REDACTED]

Mary Greir  
CNPA Ballatater

1 April 2013

Dear Mary

APPLICATIONS FOR APPROVAL OF MATTERS SPECIFIED IN CONDITIONS  
REIDHAVEN ESTATE

REF. 2013/0073/MSC – LAND NORTH-WEST OF DALFABER FARM, DALFABER DRIVE,  
AVIEMORE

REF. 2013/0074/MSC – LAND NORTH-WEST & SOUTH OF FORMER STEADINGS, DALFABER  
FARM, DALFABER DRIVE, AVIEMORE

Badenoch & Strathspey Conservation Group (“BSCG”) is an unincorporated association and registered Scottish charity (number SC003846) established to stimulate public interest in, and care for, the beauty, history and character of Badenoch and Strathspey; to encourage active conservation of the area through wise use; to encourage high standards of planning and architecture in harmony with the environment.

BSCG objects to both applications, and has taken legal advice which supports its objections. Its objections relate to (a) protected species and biodiversity and (b) flaws in the procedures for handling these applications. BSCG wishes to speak at the planning meeting.

*A. Protected species and biodiversity*

It appears to BSCG that Cairngorms National Park Authority (“CNPA”), in determining these applications, has obligations relating to protected species and biodiversity:

- as a competent authority under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“the Habitats Regulations”) implementing Article

12 of Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna ("the Habitats Directive"); and

- as a public body under section 1 of the Nature Conservation (Scotland) Act 2004 ("the 2004 Act").

CNPA also has several policies in relation to protected species and biodiversity.

#### *A.1 The Habitats Directive and related guidance on European protected species*

Article 12(1) of the Habitats Directive obliges European Union member states to "take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting deterioration or destruction of breeding sites or resting places". The species listed in Annex IV are known as European protected species.

Regulation 39(1) of the Habitats Regulations, which transpose the UK's obligations under the Habitats Directive into domestic law, makes it an offence to damage or destroy a breeding site or resting place of a wild animal of a European protected species. Schedule 2 to the Habitats Regulations lists the European protected species of animal whose natural range includes any area in Great Britain, and includes all species of typical bat (*Vespertilionidae*), the common otter (*Lutra lutra*) and the wildcat (*Felis sylvestris*).

The role of planning authorities in relation to European protected species is set out in interim guidance given to local authorities by the Scottish Executive in October 2001 (before CNPA was established) entitled "European Protected Species, Development Sites and the Planning System". This is understood to remain in force, and is available on the Scottish Government website at <http://www.scotland.gov.uk/Publications/2001/10/10122/File-1>. It is understood that this guidance applies to CNPA in its capacity as a planning authority.

The guidance refers to regulation 3(4) of the Habitats Regulations, which requires every competent authority, in the exercise of any of their functions, to "have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions", and says this means that every planning decision taken in Scotland "must be reached in a manner which ensures that the provisions of the Habitats Directive are taken properly into account and that a breach of the Directive does not occur. This is a duty incumbent on [planning] authorities as a matter of Community law." (paragraph 27)

The guidance goes on to say, at paragraph 29:

*"It is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either will not impact adversely on any European protected species on the site or that, in its opinion, all three tests necessary for the eventual grant of a licence [under regulation 44 of the Habitats Regulations] are likely to be satisfied. To do otherwise would be to risk breaching the requirements of the Directive and Regulation 3(4)."*

The question of whether a regulation 44 licence is needed can only ever arise if a European protected species is on the site, so the first question that any planning authority has to address, in considering any planning application, is (as set out at paragraph 28):

*"Are European protected species present on the site for which planning permission has been sought?"*

The Scottish Executive, in May 2006, issued a letter to Heads of Planning in all planning authorities to remind them of their obligations under the Habitats Directive and bring to an end their reported use of suspensive planning conditions that required (for example) that a development should not commence until a survey had been undertaken to determine whether a European protected species is present. This letter is also available on the Scottish Government website at <http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/natural-heritage/letter16May2006>

The letter says that:

*"... to ensure that all decisions are compliant with the Habitats Directive and the Regulations and the [interim] Guidance, planning authorities should fully ascertain whether protected species are on site and what the implications of this might be before considering whether to approve an application or not."*

#### A.2 The Nature Conservation (Scotland) Act 2004

Section 1(1) of the Nature Conservation (Scotland) Act 2004 ("the 2004 Act") places a duty on every public body "in exercising any functions, to further the conservation of



biodiversity so far as is consistent with the proper exercise of those functions”.

Section 1(2) of the 2004 Act provides that in complying with the duty under subsection (1) a body must have regard to: “(a) any strategy designated under section 2(1)...”.

Section 2 of the 2004 Act provides:

*“(1) The Scottish Ministers must designate as the Scottish Biodiversity Strategy one or more strategies for the conservation of biodiversity (whether prepared by them or by one or more other persons).*

...

*(4) Within one year of a strategy being so designated, the Scottish Ministers must publish, in such manner (including on the internet or by other electronic means) as they think fit, lists of—*

*(a) species of flora and fauna, and*

*(b) habitats,*

*considered by the Scottish Ministers to be of principal importance for the purpose mentioned in section 1(1).*

...”

The first Scottish Biodiversity Strategy was published in 2004, and the first Scottish Biodiversity List (“SBL”) was published in 2005. The latest version of the SBL is dated October 2012 and is available at

[http://www.scotland.gov.uk/Topics/Environment/Wildlife-](http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/16118/Biodiversitylist/SBL)

[Habitats/16118/Biodiversitylist/SBL](http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/16118/Biodiversitylist/SBL). As well as the wildcat and the otter, it includes the following 5 bat species (amongst others): Daubenton's Bat (*Myotis daubentonii*), Common Pipistrelle (*Pipistrellus pipistrellus*), Soprano Pipistrelle (*Pipistrellus pygmaeus*), Brown Long-eared Bat (*Plecotus auritus*) and Natterer's bat (*Myotis nattereri*).

### A.3 CNPA policy

CNPA has a policy on protected species (Policy 4) saying that development that would have an adverse effect on any European protected species will not be permitted unless the three tests necessary for the eventual grant of a regulation 44 licence are satisfied. Paragraph 3.30 of the Cairngorms National Park Local Plan 2010, on how Policy 4 will be

implemented, says:

***"If there is reason to believe that a European Protected Species or its breeding site or resting place may be present on a site, any such presence and any likely effects on the species shall be fully ascertained prior to the determination of the planning application."*** (emphasis added)

CNPA's Policy 5, on biodiversity, is relevant in relation to SBL species. It says:

***"Development that would have an adverse effect on habitats or species identified in the Cairngorms Local Biodiversity Action Plan, UK Biodiversity Action Plan, or by Scottish Ministers through the Scottish Biodiversity List, including any cumulative impact will only be permitted where:***

***a) the developer can demonstrate to the satisfaction of the planning authority, that the need and justification for the development outweighs the local, national or international contribution of the area of habitat or populations of species; and***

***b) significant harm or disturbance to the ecological functions, continuity and integrity of the habitats or species populations is avoided, or minimised where harm is unavoidable, and appropriate compensatory and/or management measures are provided and new habitats of commensurate or greater nature conservation value are created as appropriate to the site.***

***"Where there is evidence to indicate that a habitat or species may be present on, or adjacent to, a site, or could be adversely affected by the development, the developer will be required to undertake a comprehensive survey of the area's natural environment to assess the effect of the development on it."***

#### **A.4 The applications and protected species**

There is evidence to suggest that wildcat, otter and the 5 above-named bat species may all be present on or close to both application sites, but it appears that no mammal survey has been conducted by the applicant, either at the outline planning permission stage or at this stage. At least no report of such a survey is available for members of the public to see. Without such a survey, it is not possible for CNPA to comply with its obligations under either the Habitats Regulations or the 2004 Act (or indeed its own policies), and it would therefore be unlawful for CNPA to approve either of these applications.

##### **A.4.1 Wildcat**

The attached spreadsheet ("Wildcat-5km") contains records held by the North East Scotland Biological Records Centre ("NESBReC") of wildcat sightings within a

5km radius of national grid reference NH 90518 13638.

There are 15 such sightings, including 2 in national grid square NH9013 (which covers both application areas), one of which, from 2009, was a "substantiated probable hybrid", indicating that wildcat are present in the area. Many of the other sightings within 5km are more recent.

#### A.4.2 Otters

The River Spey is nearby and there are some wet areas on the application sites where otters may find seasonal food. They also are known to prey on rabbits and shelter down rabbit burrows.

There is also potential for increased disturbance of otters near the Spey itself (i.e. away from the actual application sites) as homes could be occupied by people with pet dogs who are likely to walk by the Spey, as might other displaced dog walkers who will be less able to walk their dogs on the application sites once they are developed.

#### A.4.3 Bats

The attached spreadsheet ("Bat-5km") contains records held by NESBReC of bat sightings within a 5km radius of national grid reference NH 90518 13638.

This shows 4 bat species in the general area.

In addition a 5th species, Natterer's bat *Myotis nattereri* is at least possible in the area. The 2011 Atlas of Highland Land Mammals states for Natterer's bat: "Most likely to be seen in southern Highland near woodland and water .....probably under-recorded." This species has been reported roosting at Achantoul.

### B. Other Species

#### Badger

The CNPA has a duty towards protected species such as badgers. BSCG has recorded entrance holes to a badger sett on the sites. The holes are consistent with entrances to a badger sett in terms of location (on a slope, in birch woodland in freely draining soil), and in other features described by Roper 2010 like shape (an approximate D shape) and dimensions (30-50cms wide and 20cms high). Possible bedding was present at the entrance to one hole in March 2013.

The location of these holes probably best considered a subsidiary sett is such that it would be affected by both applications.

BSCG understands that a local farmer has known of a sett here for about 30 years. Local dog walkers knew of a dead badger that had been present in the proposal site, in the general vicinity of the holes, in about autumn 2012 that their dogs had been rolling in.

Previously a latrine had been reported by a reliable local observer. the CNPA ecologist, Dr David Hetherington, wrote (2008) "It is however clear that badgers do use the site proposed for development, at least for foraging, as there have been several sightings by local residents". Having not found any signs of current use of entrance holes the CNPA ecologist concluded at that time that this "indicates that this burrow is not currently used a [sic] badger sett".

However the observations on which this conclusion was based were limited. They appear not to take heed of SNH 2001 information that states that a sett in an occupied territory is classified as in current use "even if it is only used seasonally or occasionally by badgers" and is afforded "the same protection in law".

Given the location of the sett it could be adversely affected by both applications and a proposed new path. Referring to initial badger survey for developments, SNH (2001) indicate this "should identify the paths in such a way that the badgers have undeveloped corridors of suitable habitats to link with other setts and feeding areas outwith the site". The territory is the minimum area capable of supporting the badger social group (clan). Loss of territory may lead to a reduction in group size.

BSCG has recorded the devil's-bit scabious mining bee *Andrena marginata* on the proposal site. This bee that is listed on 7 European Red lists is proposed for inclusion in the new CNPA Nature Action Plan

### *C. C. Flaws in procedure*

#### *C..1 Failure by The Highland Council to notify CNPA of either application by statutory deadline*

These applications under regulation 12 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 ("the 2008 Regulations") were made to and advertised by The Highland Council ("THC") in the first place (refs. 13/00740/MSC and 13/00741/MSC respectively), notified by THC to CNPA under regulation 36(2) of the 2008 Regulations, and called in by CNPA under article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003.

Regulation 36(2) of the 2008 Regulations provides: "Where an application is made under any of regulations 9 to 12 in respect of development situated in the area of [the Cairngorms National Park] Authority, the planning authority must within the period of five days beginning with the validation date, give notice of the application to that Authority."

The THC website says they received both applications on 26 February 2013 and validated them both on 1 March. The period of 5 days beginning with (i.e. including) 1 March ends on 5 March. The CNPA website contains documents saying notification of 13/00740/MS was received on 6 March and of 13/00741/MS on 7 March, so both notifications were late.

It is not possible to cure this flaw, so both applications are invalid. CNPA would be acting beyond its powers if it sought to determine applications that have not followed the correct procedure.

### *2. Failure by CNPA to provide sufficient information to the public*

It has been difficult for BSCG and other members of the public to obtain all the relevant information about these two applications, because it is scattered across the websites of three different public authorities: CNPA, THC and the Directorate for Planning and Environmental Appeals (DPEA). In its notifications to THC calling in the present applications, CNPA cited as a reason for call-in the fact that the applications for planning permission in principle had been determined on appeal by the DPEA. CNPA should therefore have ensured that information about the conditions imposed by the DPEA, specifying the matters to be approved, was made available on its own website to members of the public, rather than forcing them to search for it on the DPEA website.

### *3. Failure of applicant to carry out pre-application consultation*

The Planning etc. (Scotland) Act 2006 introduced a legal requirement for pre-application consultation where major developments are proposed. Major developments are defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 as including residential developments of over 50 dwellings or extending to over 2 hectares. Both proposals are therefore major developments.

The requirement for pre-application consultation relates only to applications for planning permission (including planning permission in principle), as opposed to applications for approval of matters specified in conditions. It came into force on 6 April 2009, after the corresponding applications for planning permission in principle had been made.

Given the level of opposition to those applications (including from the local community council), and the fact that both applications were refused by CNPA, it would have been not only in keeping with the spirit of the legislation, but also good practice, for the

applicant to undertake pre-application consultation in relation to both these major developments at this stage.

Unfortunately the opposite has happened. Both applications have been lodged less than 2 weeks before the corresponding planning permissions in principle were due to expire in terms of section 59(2) of the Town and Country Planning (Scotland) Act 1997 (as amended). It appears that the applications are lacking in detail in several respects, and have been lodged in haste to avoid the expiry of the corresponding planning permissions in principle.

In all the circumstances, the applicant should be advised to withdraw both applications, failing which the CNPA should refuse them both. The planning permissions in principle will therefore have expired. Given the scale of local opposition to the proposals, the applicant would be well advised, if they wish to pursue the proposal, to begin the whole process again, starting with a pre-application consultation during which the numerous issues raised by objectors may be addressed.

BSCG notes that many apparently relevant conditions specified by the Reporter are not referred to in the applications.

Yours etc

Gus Jones

(Convener)

# Application Comments for 13/00740/MSC

## Application Summary

Application Number: 13/00740/MSC

Address: Land North West Of Dalfaber Farm Dalfaber Drive Aviemore

Proposal: Approval of Matters Specified in Conditions 1 (Plans & Particulars), 4 (Landscaping Information re: Trees), 8 (details required by Condition 1), 9 (Management & Maintenance Statement), 10 (details required by Condition 1), 11 (Phasing Plan), 12 (Detailed Design Statement), 14 (Contoured Site Plan), 16 (Construction Method Statement), 17 (Management & Maintenance Statement), 19 (Programme of Archaeological Work) of Planning permission in Principle 07/144/CP

Case Officer: Andrew McCracken

## Customer Details

Name: Mr Mark Chadwick

Address: 27 Corrou Road Aviemore Inverness-shire

## Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: We would like to object to the proposed plans to build on this site.

This is one of the few remaining areas of native birch forest left in Aviemore and as such we believe it should be protected. Areas of native forest such as this enhance Aviemore as a tourist destination and residential area and in a National Park this is of paramount importance.

The existence of this forest and the quietude it offers was one of the main attractions for us when we bought our house in Corrou Road, adjacent to the proposed plot. Prolonged building work here would significantly disrupt our lives as one of us works from home and requires quietness to do so.

Additionally, the proximity of new houses to us would dramatically alter the setting of our property, making it a much less desirable place to live, in our opinion. Certainly, we will consider moving house if planning permission is given for this site, although I suspect we would find it more difficult to sell our home as a result.

As you can gather, we would object to this planning application in the strongest terms, as residents who would be directly and detrimentally affected by building work.



My address is 16 Spey Avenue, Aviemore, PH221SP

> My postcode is PH22 1SP

>

> Kind regards,

> Melanie Clouston

>> -----Original Message-----

>> From: Melanie Clouston

>> Sent: 30 March 2013 19:07

>> To: Planning

>> Subject: Objection to planning ref 2013 0073 and 0074 MSC

>>

>> To whom It may concern,

>>

>> I object to the planning application REF 2013 0073 and 0074 MSC and that planning condition 1 cannot be met without proper up to date wildlife surveys.

>>

>> Kind regards

>> Melanie clouston

>>

>> Sent from my iPad

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