
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

Prepared by: ANDREW TAIT, PLANNING OFFICER (DEVELOPMENT MANAGEMENT)

DEVELOPMENT PROPOSED: ERECTION OF 72 HOUSES; FORMATION OF 5 HOUSE PLOTS; PROVISION OF PRIMARY SCHOOL SITE; ASSOCIATED AMENITY GROUND, ROADS AND FOOTWAYS (FULL PLANNING PERMISSION)

REFERENCE: 08/272/CP

APPLICANT: DAVALL DEVELOPMENTS

DATE CALLED-IN: 25 JULY 2008

RECOMMENDATION: REFUSAL

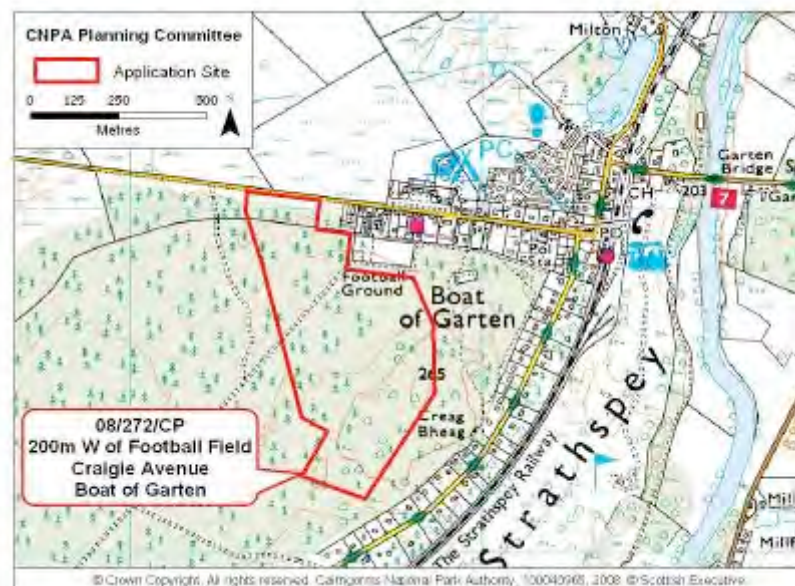


Fig. 1 - Location Plan

SITE DESCRIPTION, PROPOSAL AND PLANNING HISTORY

1. The site lies in a wooded area to the west of Boat of Garten and in an area directly to the south of the existing playing field and the Community Hall. Figure 1 illustrates the area of the application site. However, it is emphasised that the housing development takes up a small area of the red line as can be seen in figures 9 & 10. The applicants have been asked the reason for the red line extending to a much greater area than the development itself. They replied that this is for historic reasons and to include the area within the application as land that could, potentially be transferred to the community as amenity woodland.



Figure. 2- View towards site from A95

2. The key identifiable boundaries of the site are close to the settlement. The site access would be from the road and path which is National Cycle Route 7. The access point being immediately to the north of an existing parking/recycling area. The remaining identifiable boundaries are to the rear of existing residential properties at Cragie Avenue and the Community Hall and Car Park to the east. An area of woodland behind 31 and 32 Cragie Avenue is not subject to development (see photos 2-8).

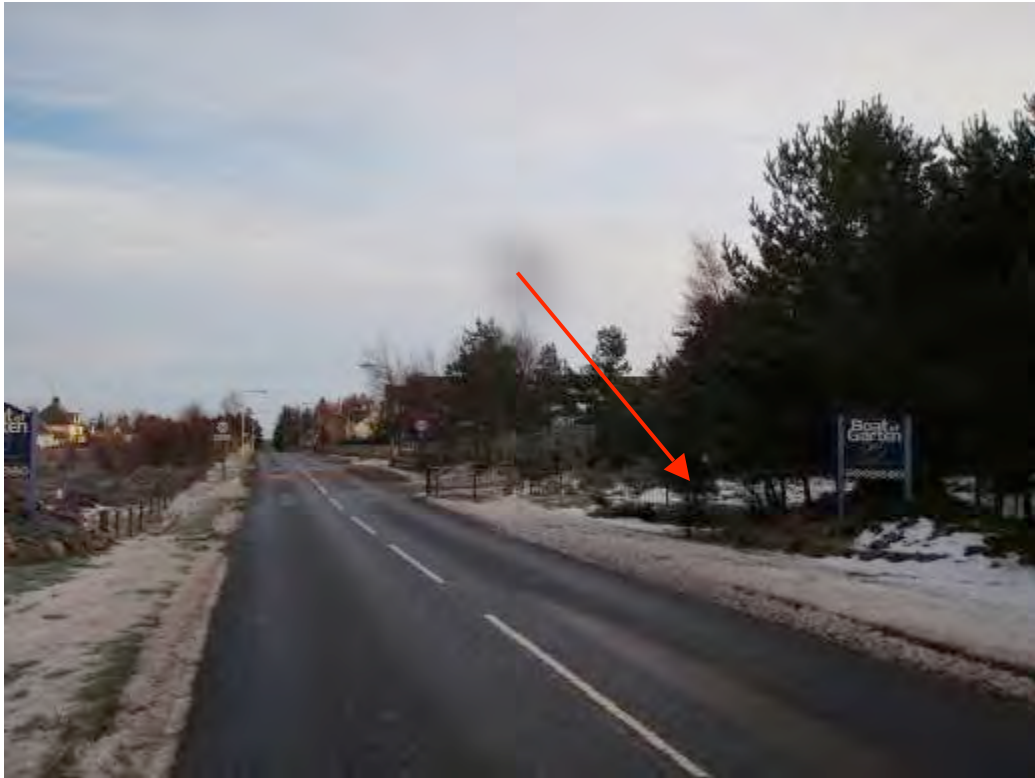


Figure. 3- Entrance to Boat of Garten from Deshar Road new access for the development indicated by arrow.



Figure. 4- Boat Community Hall site behind hall



Figure. 5- View of south east corner of site (along core path LBS 67) looking around what would be rear side boundaries of plots 1, 4 and 5.



Figure. 6- View looking across area indicated for school site (left side of photo), properties on right of photo are 31 & 32 Craigie Avenue with retained open area behind.



Figure. 7- General view looking across the site



Figure. 8- View of south west corner of area to be developed

3. One other identifiable boundary is a path (core path LBS 67) that leaves the corner of the Community Hall site out into the area of woodland and returns to Deshar Road to the west of the development site. The remaining boundaries are not easily identifiable on the ground with the development site extending seamlessly out into the woodland. The area of woodland proposed for actual development contains a number of undulating ridges that flow through the site, but there are no significant variations in topography. The woodland is of plantation origin but has a ground cover that appears typical of a scots pine woodland with heather and blaeberry present.
4. As can be noted from the front page of this report the application has rested with the CNPA since the summer of 2008. Additional environmental information was requested in 2008 and a report on the ecology and nature conservation issues at the site was received at the end of November 2010. The findings of the report have also prompted a revision to the design of the proposed development.
5. The revised layout being considered here effectively seeks full planning permission for 77 (the 2008 layout indicated 79) houses and associated infrastructure (including play area) at the site. Permission is also sought for a school site adjacent to the Community Centre. However, this is for the principle of a school use of the site and not for the detailed design of any particular school building (the existing primary school at Boat is at the junction of Deshar Road with the A 95).
6. A table giving a detailed breakdown of the housing proposed can be seen at figure 11. A total of 45 private units are proposed with 5 of these being discounted plots; 16 affordable houses for rent and 16 affordable houses for shared equity arrangement are also proposed. This equates to 42% of the development as being affordable.
7. The revised layout as seen at figure 10 has been dictated by what the applicant's consider to be the natural heritage constraints at the site. As can be seen there is a loop road through the development with three roads off this loop. The end of the road running past the school site terminates close to the boundary with the Community Hall. When the hall was given consent it was anticipated that a new loop road through the development site would allow the potential to link up with the community hall reducing traffic along Cragie Avenue. The houses proposed are either detached or semi detached in design. The major change from the original scheme is a dome shaped area of woodland to the west that is left free from development to the rear of plots 42-50 because of the concentration of squirrel dreys identified. A footpath link through this area is still indicated.
8. A range of detached and semi-detached house types are proposed the footprints of these can be seen in the table at figure 11. The house types proposed have been reproduced in appendix A of this report. The finishes for the houses would be slate 'lookalike concrete' tiles with a combination of timber boarding and dry dash roughcast render for the walls.

9. Foul drainage would be to the public sewer and water supply would be sourced from the public supply.



Figure. 9- Original layout submitted 2008



Figure. 10- Revised layout subject of this report showing dreys.

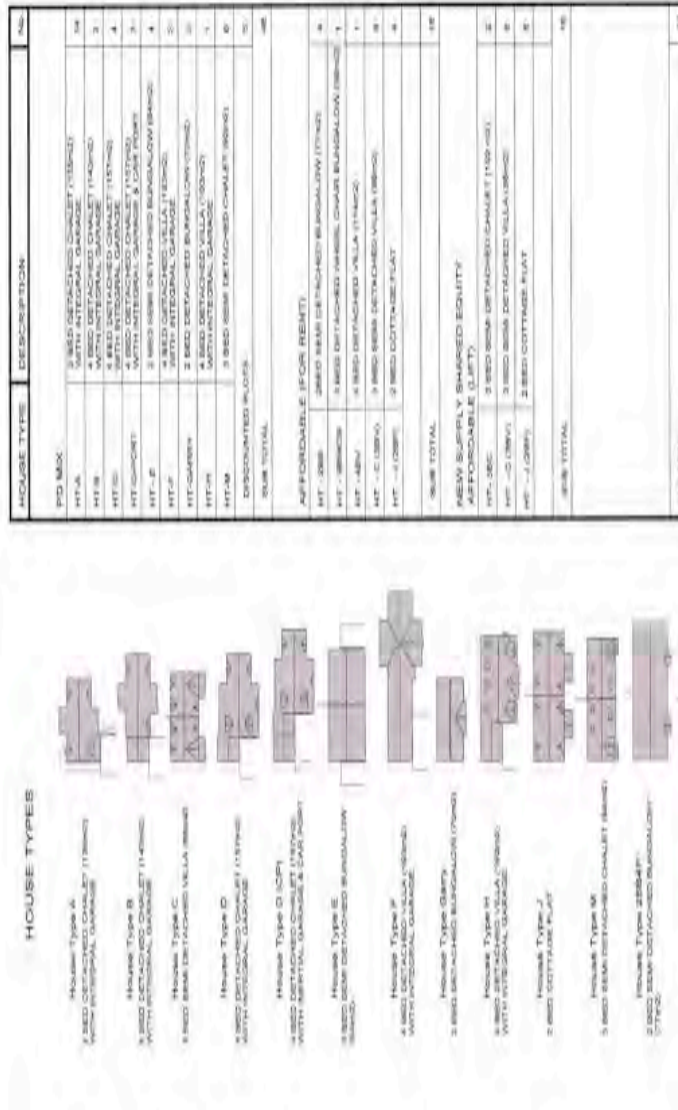


Figure. 11- Table showing breakdown of house types

THE APPLICANT’S ECOLOGICAL REPORT

- The plans to be considered have been informed by an ecological report that has been prepared on behalf of the applicants by specialist consultants (MBEC) and will be referred to as MBEC Report in this document.

11. The Report notes that a number of surveys for capercaillie have been carried out at the site. The 2009 survey found no sightings or signs of capercaillie on or within the vicinity of the proposed development site. The Report goes on to note that Scottish Natural Heritage's original response on the proposal was that it would be likely to have a significant effect on capercaillie in the SPA,s (Special Protection Areas) at Kinveachy, Abernethy, Craigmore and Cairngorms. The proposal was considered to risk adversely affecting the SPA integrity. However, mitigation by condition was considered by SNH to reduce capercaillie disturbance to a level where it would be unlikely to cause a negative effect on capercaillie within the Boat of Garten Wood and any knock-on impact to the maintenance and distribution of the SPA populations. The site itself is considered as an important stepping stone between the SPAs.
12. Because of concerns about potential disturbance to capercaillie a draft mitigation plan has been produced as part of the report which includes signage at key entrance points to the woods and improvement of woodland habitat by thinning of trees in certain areas. Other measures include pushing trees over on one track and discouraging use of this track to create a core of relatively undisturbed plantation. A path around the edge of the development is also proposed to encourage dog walkers to use this track while keeping dogs on a lead. A copy of this plan is attached together with extracts of the MCEC report at Appendix A.
13. The report also focuses on a number of other species and in particular a detailed section on red squirrel with thermal camera imaging being used to carry out a survey of dreys. The revised plans have been designed to avoid the area with the highest concentration of dreys and the dreys have been rated from 1-5 with dreys given a rating of 4 or 5 considered to be the freshest dreys. The majority of dreys were recorded as being between the 2 and 4 rating. Wood ants are also surveyed for but viewed as a limited issue at this site. There is one wood ant nest within the proposed development site, it may be possible to avoid disturbance of this one nest but if judged necessary it could be translocated.

SITE PLANNING HISTORY

14. The site has a considerable planning history, it being part of a much larger allocation contained in the 1997 Badenoch and Strathspey Local Plan for housing, a school and commercial uses. An outline application was submitted in 2002 before the Park came into being. This application was amended in 2005 but was not determined by Highland Council Planning Committee. The CNPA objected directly to Highland Council that the proposal would have an adverse effect on the woodland as a valuable natural resource and habitat and as an integral part of the setting of the village. The applicants appealed against Highland Council's failure to determine the proposal and a Scottish Government Reporter refused the proposal 2006.

15. The Reporter accepted that the application was broadly compatible with the 1997 Badenoch and Strathspey Local Plan. The key concern for the Reporter was the potential disturbance to capercaillie as a European protected species. The Reporter was of the opinion that “there would be inevitable consequences for the movement of capercaillie within Boat of Garten Wood. The frequency of occupation (in woodland beyond the development area) is likely to diminish”. The Reporter recognised that Boat of Garten Wood has a nationally significant population of capercaillie. The Reporter also recognised that SNH were objecting to the proposal.
16. While generally compatible with the Badenoch and Strathspey Local Plan the Reporter found there to be serious friction between the proposal and Highland Structure Plan Policy G2 ‘Design for Sustainability’ and a range of national planning guidance including the aims of the National Park. While concerns were raised about the nature, scale and visual impact of the development the Reporter did not find against the proposal on these counts. His main concern and key reason for rejecting the application related to the potential disturbance of capercaillie. Reference was also made to NPPG 14 (superseded Scottish Government Guidance) where that document indicated that conservation of natural heritage will be a key objective in any national park and that woodlands of natural heritage value should be retained.

DEVELOPMENT PLAN CONTEXT

National policy

17. **Scottish Planning Policy¹ (SPP)** is the statement of the Scottish Government’s policy on nationally important land use planning matters. It supersedes a variety of previous Scottish Planning Policy documents and National Planning Policy Guidance. Core Principles which the Scottish Government believe should underpin the modernised planning system are outlined at the outset of **SPP** and include:
 - The constraints and requirements that planning imposes should be necessary and proportionate;
 - The system shouldallow issues of contention and controversy to be identified and tackled quickly and smoothly; and
 - There should be a clear focus on quality of outcomes, with due attention given to the sustainable use of land, good design and the protection and enhancement of the built and natural environment.
18. **SPP** emphasises the key part that development management plays in the planning system, highlighting that it should “operate in support of the Government’s central purpose of increasing sustainable economic growth.” Para. 33 focuses on the topic of Sustainable Economic Growth and advises

¹ February 2010

that increasing sustainable economic growth is the overarching purpose of the Scottish Government. It is advised that “the planning system should proactively support development that will contribute to sustainable economic growth and to high quality sustainable places.” Planning authorities are encouraged to take a positive approach to development, recognising and responding to economic and financial conditions in considering proposals that would contribute to economic growth.

19. Under the general heading of Sustainable Development, it is stated that the fundamental principle is that development integrates economic, social and environmental objectives, and that the “aim is to achieve the right development in the right place.”
20. As a replacement for a variety of previous planning policy documents the new **Scottish Planning Policy** includes ‘subject policies’, of which many are applicable to the proposed development. Topics include economic development, rural development, and landscape and natural heritage. The following paragraphs provide a brief summary of the general thrust of each of the subject policies.
21. Economic development: Planning authorities are encouraged to respond to the diverse needs and locational requirements of different sectors and to take a flexible approach to ensure that changing circumstances can be accommodated. The benefits of high environmental quality are also recognised and planning authorities are therefore required to ensure that new development safeguards and enhances an area’s environmental quality and where relevant, also promote and support opportunities for environmental enhancement and regeneration.
22. Housing: **SPP** highlights the Scottish Government commitment to increasing the supply of new homes. The planning system is expected to enable the development of well designed, energy efficient, good quality housing in sustainable locations. The subject of ‘Affordable Housing’ is discussed and it is defined “broadly as housing of a reasonable quality that is affordable to people on modest incomes” and that it may take the form of social rented accommodation, mid-market rented accommodation, shared ownership, shared equity, discounted low cost home ownership, or low cost housing without subsidy. **SPP** advises that the need for affordable housing should be met, where possible, within the housing market area where it has arisen.
23. Rural development: Para. 92 of **Scottish Planning Policy** states in relation to rural development that the “aim should be to enable development in all rural areas which supports prosperous and sustainable communities whilst protecting and enhancing environmental quality.” All new development is required to respond to the specific local character of the location, fit in the landscape and seek to achieve high design and environmental standards.
24. Landscape and natural heritage: The **Scottish Planning Policy** document recognises the value and importance of Scotland’s landscape and natural heritage. It is accepted that landscape is constantly changing and the aim is to

facilitate positive change whilst maintaining and enhancing distinctive character. As different landscapes have different capacities to accommodate new development, the siting and design of development should be informed by landscape character. There is also an acknowledgement that the protection of the landscape and natural heritage may sometimes impose constraints on development, but the potential for conflict can be minimised and the potential for enhancement maximised through careful siting and design.

25. **Scottish Planning Policy** concludes with a section entitled 'Outcomes' in which it is stated that the "planning system should be outcome focused, supporting the creation of high quality, accessible and sustainable places through new development, regeneration and the protection and enhancement of natural heritage and historic environmental assets."

26. **Scottish Government Planning Advice Notes (PAN)**
PAN 67 deals with the subject of **Housing Quality** and recognises the fact that many people want to live in a place that has a distinct identity, "rather than one that could be anywhere." **PAN 67** advises that all development has the potential to contribute to a sense of neighbourhood and also highlights the fact that "thoughtlessly chosen standard house types and inappropriate materials look disconcertingly out of place." In a detailed section on layout, it also urges developers to think about the qualities and characteristics of places and not consider sites in isolation. The Government's recently published policy on **Designing Streets (2010)** is a key policy document and was based on earlier guidance 'Designing Places'. The guidance notes that in the more recent past vehicle movement has often dominated design resulting in many streets being out of context with their location. The aim of the guidance is to reverse this trend back to the creation of successful places through good street design. The six qualities of successful places forming key considerations for street design are firstly distinctiveness, in that street design should respond to the local context. The second quality relates to a safe and pleasant environment where streets should be safe and attractive places. The third quality considers that streets should be easy to move around for all users and connect well to existing movement networks. The fourth quality is that places should be welcoming with street layout and detail encouraging positive interaction for all members of the community. Adaptability is the fifth quality in that street networks should be designed to accommodate future adaptation. The final quality is that places should be resource efficient with street design considering orientation, the integration of sustainable drainage and use attractive durable materials that can be easily maintained. In terms of street structure the guidance considers that the street hierarchy should consider pedestrians first and private motor vehicles last.

Strategic Policies

Cairngorms National Park Plan (2007)

27. The Cairngorms National Park Plan sets out the vision for the park for the next 25 years. The plan sets out the strategic aims that provide the long term framework for managing the National Park and working towards the 25 year vision. Under the heading of 'conserving and enhancing the special

qualities' strategic objectives for landscape, built and historic environment include maintaining and enhancing the distinctive landscapes across the Park, ensuring that development complements and enhances the landscape character of the Park, and ensuring that new development in settlements and surrounding areas and the management of public spaces complements and enhances the character, pattern and local identity of the built and historic environment.

28. Under the heading of 'Living and Working in the Park' the Plan advises that sustainable development means that the resources and special qualities of the national park are used and enjoyed by current generations in such a way that future generations can continue to use and enjoy them. Section 5.2.4 of the Plan focuses on housing and highlights the need to ensure greater access to affordable and good quality housing in order to help create and maintain sustainable communities. The Plan advises that the quality and design of all new housing should meet high standards of water and energy efficiency and sustainable design and be consistent with or enhance the special qualities of the Park through careful design and siting.
29. The National Park Plan includes a number of strategic objectives in relation to housing, including
 - Increasing the accessibility of rented and owned housing to meet the needs of communities throughout the Park;
 - Promote effective co-ordination and co-operation between all public and private organisations involved in housing provision in the Park and communities living there; and
 - Improve the physical quality, energy efficiency and sustainable design of housing.

Structure Plan Policy

Highland Council Structure Plan (2001)

30. **Highland Council Structure Plan** is founded on the principles of sustainable development, which are expressed as –
 - Supporting the viability of communities;
 - Developing a prosperous and vibrant local economy; and
 - Safeguarding and enhancing the natural and built environment.

A variety of detailed policies emanate from the principles.

31. The following provides a brief summary of the policies applicable to a development of this nature. **Policy NI – Nature Conservation** advises that new developments should seek to minimise their impact on the nature conservation resource and enhance it wherever possible. The Plan refers to the socio-economic benefits of the nature conservation resource and advises that it should be optimised by a high level and standard of interpretation and understanding wherever possible.
32. The Structure Plan also includes a section on biodiversity, defining it as “natural richness and diversity of nature – the range of habitats and species

and the uniqueness of each and every organism.” Biodiversity is not the same as natural heritage, but is one of the key functional components. As a key part of the natural heritage of an area it is important to protect, and where possible enhance biodiversity and to monitor any change.

33. Section 2.4 of the Plan concentrates on the subject of landscape, stating that “no other attribute of Highland arguably defines more the intrinsic character and nature of the area than its landscape.” Similar to national policy guidance, there is a recognition that landscape is not a static feature and that the protection and enhancement of landscape and scenery must be positively addressed. **Policy L4 Landscape Character** states that “the Council will have regard to the desirability of maintaining and enhancing present landscape character in the consideration of development proposals.”
34. **Policy G2 (Design for Sustainability)** states that developments will be assessed on the extent to which they, amongst other things make use of brownfield sites, existing buildings and recycled materials; are accessible by public transport, cycling and walking as well as car; are compatible with service provision; demonstrate sensitive siting and high quality design in keeping with local character and historic and natural environments; and contribute to the economic and social development of the community.

Local Plan Policy

Cairngorms National Park Local Plan (2010)

35. The Cairngorms National Park Local Plan was formally adopted on 29th October 2010. The full text can be found at : <http://www.cairngorms.co.uk/parkauthority/publications/results.php?publicationID=265>
36. The Local Plan contains a range of policies dealing with particular interests or types of development. These provide detailed guidance on the best places for development and the best ways to develop. The policies follow the three key themes of the Park Plan to provide a detailed policy framework for planning decisions:
- Chapter 3 - Conserving and Enhancing the Park;
 - Chapter 4 - Living and Working in the Park;
 - Chapter 5 - Enjoying and Understanding the Park.
37. Policies are not cross referenced and applicants are expected to ensure that proposals comply with all policies that are relevant. The site-specific proposals of the Local Plan are provided on a settlement by settlement basis in Chapter 6. These proposals, when combined with other policies, are intended to meet the sustainable development needs of the Park for the Local Plan’s lifetime. The following paragraphs list a range of policies that are appropriate to consider in the assessment of the current development proposal.
38. *Policy I Natura 2000 Sites*: development likely to have a significant effect on a Natural 2000 site will be subject to an appropriate assessment in accordance with the Conservation (Natural Habitats, &c.) Regulations 1994. Where an

assessment is unable to ascertain that a development will not adversely affect the integrity of the site, the development will only be permitted where: a) there are no alternative solutions; and b) there are imperative reasons of overriding public interest, including those of a social or economic nature. Where the site has been designated for a European priority habitat or species, development will only be permitted where the reasons of overriding public interest relate to human health, public safety, beneficial consequences of primary importance for the environment or other reasons subject to the opinion of the European Commission (via Scottish Ministers).

39. Policy 2- National Natural Heritage Designations: development that would adversely affect the Cairngorms National Park, a Site of Special Scientific Interest, National Nature Reserve or National Scenic Area will only be permitted where it has been demonstrated that: a) the objectives of designation and overall integrity of the designated area would not be compromised; or b) any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social or economic benefits of national importance and mitigated by the provision of features of commensurate or greater importance to those that are lost.
40. Policy 4 Protected Species: development which would have an adverse effect on any European Protected Species will not be permitted unless there are imperative reasons of overriding interest, including public health or public safety; there is no satisfactory alternative solution; and the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range. The policy is intended to ensure that the effects of development proposals on protected species are fully considered by the planning authority. Developers will be required to undertake any necessary surveys for species at their own cost and to the satisfaction of Scottish Natural Heritage and the planning authority.
41. Policy 5 – Biodiversity : development that would have an adverse effect on habitats and species identified in the Cairngorms Biodiversity Action Plan, UK Biodiversity Action Plan, or by Scottish Ministers through the Scottish Biodiversity List, will only be permitted where
 - (a) The developer can demonstrate that the need and justification for the development outweighs the local, national and international contribution of the area of habitat or population 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.
42. Policy 6 – Landscape: there will be a presumption against any development that does not complement and enhance the landscape character of the Park, and in particular the setting of the proposed development. Exceptions will only

be made where any significant adverse effects on the landscape are clearly outweighed by social or economic benefits of national importance and all of the adverse effects on the setting of the proposed development have been minimised and mitigated through appropriate siting, layout, scale, design and construction.

43. Policy 16 Design Standards for New Development: design of all development will seek where appropriate to: a) minimise effect on climate change; b) reflect and reinforce the traditional pattern and character of the surrounding area and reinforce the local vernacular and distinctiveness, whilst encouraging innovation in design and materials; c) use material and landscaping that will complement the setting of the development; d) demonstrate sustainable use of resources; e) enable storage and segregation of recyclable materials; f) reduce need to travel; g) protect neighbouring amenity; h) accord with Sustainable Design Guide. All proposals to be accompanied by a design statement.
44. Policy 19 – Contributions to Affordable Housing: The affordable housing policy is intended to ensure the delivery of a wide range of housing options to a wide range of households in the Park. Policy 19 requires that developments of three or more dwellings will be required to incorporate a proportion of the total number of units as affordable. Developments solely for affordable housing will be considered favourably.
45. Policy 20 – Housing Developments within Settlements: Settlement boundaries have been identified indicating to the extent to which settlements may grow. Policy expects new housing development to be within the boundaries of settlements. Housing proposals within these settlement boundaries will be considered favourably where the development: a) occurs within an allocated site identified within the proposals' maps; or b) is compatible with existing and adjacent land uses, and comprises infilling, conversion, small scale development, the use of derelict or under used land or the redevelopment of land. Proposals should reinforce and enhance the character of the settlement and incorporate adequate amenity space and access.

SITE SPECIFIC PLANNING POLICY AND HISTORY

46. The settlement proposals section of the CNP Local Plan identifies a hierarchy of settlements including strategic, intermediate and rural settlements. The introduction to the settlement proposals notes that the majority of development and provision of facilities should be provided within strategic settlements.
47. The plan identifies three key proposal types including housing and goes onto note that settlement boundaries are identified, outwith which it is expected that proposals will require justification for their selected location. Housing sites are proposed where strategic sites have been identified and

development of these sites must comply with the policies of the Local Plan and any specific requirements for the site noted in the proposal text.

48. Boat of Garten is identified as an intermediate settlement in the settlement hierarchy. The village services currently include a school, shops, post office, hotel, other tourist facilities including the steam railway and a new community centre. The housing site proposed by this application is not allocated on the proposals map. A corner of the site subject to the application is allocated as BG/CI: Site to west of village and immediately west of the new village hall, is to be retained in order to support the community and would be appropriate for a new school and/or other uses which support the economic development of the settlement and its sustainable community. Any proposal must take account of the high environmental sensitivity of its context. The design of any development will retain as much of the existing woodland of the site as possible.
49. **CNP Supplementary Planning Guidance** The CNPA has produced a range of supplementary planning guidance that is a material consideration in the determination of the proposal. The most relevant guidance is contained within '**Natural Heritage**' guidance which sets out a range of principles with key Principle 1 considering that development should result in no net loss of natural heritage. Principle 2 considers that where loss or damage to natural heritage interest is unavoidable then this must be minimised as far as possible. Principle 3 sets out that if loss or damage is unavoidable then it will be fully mitigated on the development site and moving on from this Principle 4 considers that if on site mitigation is not possible a combination of on site mitigation and off site compensation would be required. Principle 5 considers aspects of financial compensation will be required to benefit the natural heritage of the National Park. The document sets out the level of information required dependent upon the nature of the sites in terms of designations and species.
50. The **Sustainable Design Guide** sets out a checklist summary that is to be considered in the determination of applications. This covers such issues as to whether a development conserves and enhances the character of the Park in terms of layout, scale, proportions, materials, construction and finishing as well as considering landscaping and cultural heritage. The guidance also considers whether resources are being used efficiently in terms of energy, water treatment, flooding, surface water run-off and waste recycling. The guidance goes on to consider issues of accessibility and flexibility of design and amenity space as well as access to community facilities. Policy 19 of the CNP Local Plan. Policy 19 of the CNP Local Plan.
51. Guidance has also been produced on **Affordable Housing** and sets out how proposals will be assessed in terms of their contribution which flows from.



Figure. 12- CNP Local Plan Proposals Map for Boat of Garten site to west of BG/CI (in yellow)

Department of Planning and Environmental Appeals Report into the CNP Deposit Plan (Modifications) October 2008.

52. The Scottish Government Reporters considered that the CNPA allocation of housing land supply in the Park was over-generous and recommended that this be reduced. The Reporters noted that the deposit plan identified a 5.8 ha site fronting onto Deshar Road on the western edge of the settlement as BG/HI for 70 housing units. The Reporters go on to note that the site contains and is affected by important natural heritage interests and recommended that BG/HI be removed from the plan.
53. The Reporters expressed concern that the SNH advice may underestimate the importance of Boat of Garten Wood for capercaillie by a significant margin. This is because current, peer reviewed evidence indicates that a multiplier which doubles the number of cocks at the site is used, whereas objectors and the RSPB would use a multiplier of 4. This would increase the representative population of capercaillie in the woods to 1.2% which is nationally important.
54. In conclusion, the Reporters considered that the allocation could make a contribution to the effective land supply and also noted that development in the village had been limited so an allocation could be considered appropriate in principle but there was no evidence that it was essential in the face of what was considered to be an over-supply of housing land. However, they held serious concerns about the impact of the allocation for capercaillie as one of Scotland's most threatened species. The Reporters also agree that that the site would have a significantly negative landscape impact on the landscape character of Boat of Garten. The Reporters conclude that while the site can

make a contribution towards housing supply given the environmental constraints, the CNPA would need to show an overwhelming need for the housing at the site. The Reporters concluded that this has not been satisfied and while accepting that safeguards can be put in place to secure an appropriate standard of development the shortcomings were of such overriding significance that the allocation of BG/HI should not proceed.

55. The CNPA removed allocation BG/HI, this being approved by members of the Planning Committee on the basis that a working group be set up including members of the community to look at housing issues in Boat of Garten, including other potential sites. The group held an inaugural meeting on 19th October 2010 where a range of issues were discussed (detailed note available on request). An update of the status of the current application was given by CNPA. It was made clear that CNPA was awaiting further information from the applicant (who was not represented at the meeting) and that deadlines would need to be set in the near future so that the application could be determined. There was preliminary discussion of some possible other sites for housing in and around Boat but the estate representatives said they were not prepared to consider alternatives sites in any significant way until the current application had been determined. The group agreed that this was appropriate and there was no desire to meet again in advance of the planning determination. The terms of reference for the group can be found at the front of Appendix B.

CONSULTATIONS

56. **Boat of Garten and Vicinity Community Council** has responded to the application and a full copy of their representations are attached in appendix C of this report. For completeness their responses to the original version of the application are also included.
57. The **Community Council** express support for the application because they consider it to be consistent with the newly adopted Local Plan and not inconsistent with the findings of the Local Inquiry. The village's need for affordable housing is pressing and has the support of the village. It is also considered that the need to protect the site for environmental purposes has been overstated. The Community Council has considered the amended plans and mitigation measures put forward and consider that the development should proceed.
58. **Highland Council Area Roads** has no objection to the proposal subject to a number of planning conditions relating to access to lorry parking area to be taken from new access road and access directly onto Deshar Road to be closed off. It is also recommended that access to the new village hall is taken from the new development and access to the village hall from Cragie Avenue to be by emergency vehicle purposes only. Suitable pedestrian and cycle links between the new development and existing path network. Bus shelters on Deshar Road near to the main access point for the development and consideration to be given as to whether the development can contribute to service costs for the local bus service. A range of standard conditions are recommended with regard to visibility splays and access gradients.

59. **Highland Council Archaeology** comments that the site lies within a wider area where significant archaeological remains are recorded and there is a moderate to high potential for the survival of further features. Consequently, it is recommended that an archaeological survey/work condition is attached to any planning consent.
60. **Highland Council Education** has responded that Deshar Road Primary School has a working capacity of 47. The roll has fallen dramatically over the last decade to 31 today. Forecasts are that the roll will continue to fall until bottoming out at 24. This is based upon a modest rate of future housebuilding at 3 per year. Current indications are that a build rate of 23 per year would mean that the school roll would stay within capacity. It is appropriate to retain the community use allocation which includes a potential school site as identified in the Local Plan for 5 years or until such time as the review of education provision in Badenoch and Strathspey is complete. The impact of the proposed development upon Granttown Grammar school can be contained within current capacity.
61. **Highland Council Housing** support the planning application in principle which will provide much needed affordable housing in Boat of Garten. An increase in the number of rented properties as part of the provision would be supported as this would tackle the need in the area. No response on the revised proposal has been received at the time of writing any response will be reported at planning committee.
62. **Scottish Water** currently has an application that is being dealt with by the CNPA. The proposal would result in the upgrading of the waste water treatment facility to ensure capacity for the development. In terms of water supply there is capacity for the development although there may be a requirement for the developer to carry out works on the local network to ensure that there is no loss of service to existing customers.
63. **Scottish Natural Heritage (SNH)** (full comments in appendix B of this report) objects to the proposal as currently submitted because the development has the potential to cause disturbance to capercaillie using the adjacent woodland. This could have a significant effect on capercaillie populations in several nearby SPAs (Kinveachy Forest, Craigmore Wood, Abernethy and Cairngorms SPAs). The mitigation plan submitted is not sufficient to avoid these significant effects and has not been agreed by the parties required to implement it successfully. SNH recognise that the developer has responded to comments provided on the first version of the plan and are understood to be amending their plan. SNH consider that it could be possible to agree works which would address their concerns.
64. SNH's advice therefore is that this proposal is likely to have a significant effect on the qualifying interests of the above noted SPAs. The CNPA are required to provide an appropriate assessment in the light of the implications of the proposal and the SPA qualifying interests. Should the CNPA wish to grant planning permission for the development as it stands when there is an

outstanding objection from SNH in relation to a European conservation interest, the CNPA would be required to notify Scottish Ministers of their intention to grant planning permission.

65. **Scottish Environmental Protection Agency (SEPA)** has no objection to the proposal on potential flood risk grounds and SEPA has no objection to the foul drainage aspect of the proposal as this is to the mains sewer. The Drainage Impact Assessment is considered generally acceptable.
66. **CNPA Strategic Land Use Ecology- Capercaillie (full comments attached in appendix B):** An appropriate assessment has been carried out under the requirements of the Conservation (Natural Habitats, &c) Regulations 1994. Given the conclusions of the appropriate assessment the site at Boat of Garten Woods is very important for capercaillie in the Strathspey and consequently Scottish population. From the consultation with the UK Capercaillie Biodiversity Action Group there is agreement that the proposal for housing would be detrimental to the population on site due to an increase in disturbance from recreational use. The mitigation proposals are considered inadequate and largely unenforceable with potential conflicts with access legislation. The Strategic Land Use Directorate also considers that any mitigation is unlikely to pass the tests required to maintain the conservation objectives of the four nearby SPA's.
67. Approximately 50% of the capercaillie population is found within SPA's and the remainder in non-designated sites like Boat of Garten Woods. Habitat suitable for the bird is heavily fragmented into comparatively small areas of forest. None of the capercaillie populations in these individual woodlands have the capability to be self-sustaining in the long term. Boat of Garten Woods hosts a significant population of capercaillie which is a qualifying interest on four nearby SPAs. Due to the proximity of the forests of Strathspey and the known dispersal distances of capercaillie, the birds using this area have to be considered as one ecological unit or meta-population. The Boat of Garten Woods function as a vital 'stepping stone' by facilitating bird movement between these SPAs. Evidence suggests that Boat Wood supports 1% of the UK population and could potentially be eligible for SPA status.
68. The wider Boat Wood is known to contain a lek, which is approximately 1000 metres from the development site. Much of the woodland is used as a suitable brood rearing habitat and wintering habitat. The proposed development site itself appears to be little used by capercaillie, which is almost certainly a result of disturbance on and near the site. Records from 1994 to 2010 show that the bird was widely recorded through much of the woods but generally avoided the tracks. Evidence from dropping surveys shows that there is an extensive area avoided by the birds close to the existing houses.
69. There is a growing body of evidence that capercaillie are adversely affected by disturbance from human recreational activities and this knowledge has increased in recent years. Capercaillie have been shown to avoid habitat

close to tracks which may reduce overall carrying capacity in forests. Dogs off-lead in the breeding season have been suggested as one of the most significant issues for capercaillie in Scotland. Dogs off-lead can have a greater impact than humans by flushing birds further away from paths, limiting the amount of available habitat. This can potentially separate chicks from hens resulting in a number of problems.

70. The current levels of disturbance at Boat woods are having an impact on the capercaillie population using the area. The mitigation proposals put forward largely rely upon blocking and reducing the quality of footpaths as well as signage to encourage people to use footpaths away from the core area used by the birds. This does not address the use of the larger area of woods for feeding habitat and brood rearing. In addition the success of the mitigation relies upon changing the behaviour of dog walkers and their pets.
71. **CNPA Strategic Land Use: Ecology - Red Squirrel:** It is noted that red squirrels are one of a number of species protected by the Wildlife and Countryside Act and it is an offence to intentionally kill, injure or take a red squirrel. It is also an offence to damage, destroy or obstruct access to any structure or place which a red squirrel uses for protection; it is also an offence to disturb a red squirrel while it is occupying a structure or place which it uses for protection. The red squirrel is a UK Biodiversity Action Plan species, a Cairngorms Local Biodiversity Action Plan species and a priority in the National Park Plan. It is important to note that there is no legal mechanism to deal with red squirrels and development, although this is currently being brought to the parliament as part of the Wildlife and Natural Environment Bill.
72. The MBEC Ecological Report submitted indicates that during a survey in 2009 49 dreys were present within the survey area including a 50 m buffer around the development site. During a survey in 2008 -27 dreys were recorded. The report states that there are up to 6 squirrels within the area. Dr Mel Tonkin (Saving Scotland's Red Squirrels) suggests there are probably 12-13 adult squirrels within the area making it a valuable red squirrel habitat.
73. The submitted report indicates that reasonable precautions (by mitigation) would be used to allow felling of trees with dreys present but still prevent an incidence of wildlife crime. The report recommends that surveying and monitoring of dreys is to be undertaken by thermal imaging cameras. While recognising that this can be of great benefit to surveying and monitoring animals more research is needed to refine such techniques. A key issue is that red squirrels are not static and can change their drey on a frequent and even daily basis. There also concerns about how the thickness of the drey can affect the heat signature and the length of time a squirrel needs to be absent from a drey before it can be classified as unused. SNH guidelines indicate that a drey can only be deemed un-functionable as a place of protection or shelter if daylight can be seen through the structure.
74. It is suggested that dreys could be surveyed post felling to identify which dreys were being occupied. Again there are clear benefits to this technology

but it does not address the fact that a drey is protected whether occupied or not. Indeed Dr Mel Tonkin has found that a squirrel may not use a drey for weeks or months at a time before returning to use it.

75. To prevent disturbance to a squirrel drey the standard guidelines state that felling should not occur within 30 metres of the drey, increasing to 50 metres during the breeding season if the drey is suspected to be a maternity drey. Connectivity must be maintained between functioning dreys. To ensure compliance with the Wildlife and Countryside Act the layout submitted is not acceptable. In addition the survey is dated 2009 the situation at the site could now have changed as the surveys of 2008 and 2009 indicate that there were 22 more squirrels recorded on the site within a year.
76. **CNPA Strategic Land Use: Ecology- Plants**
Badenoch and Strathspey Conservation Group (BSCG) have written an objection stating that creeping ladies tresses are present within the proposed development site. MBEC have countered the argument by stating that no creeping ladies tresses are present on site. BSCG have submitted a further report in December with photographic evidence of this species being recorded within the site. Due to the close timing restraints and severe weather conditions it has not been possible for a CNPA Ecologist to investigate these claims on site. The photographic evidence puts doubt on the MBEC survey and statement that no creeping ladies tresses are present on site. As it has not been possible for a CNPA Ecologist to survey the site it is recommended that the precautionary principle is adopted and that creeping ladies tresses may be present on site. This is a nationally scarce species and if this application proposal was approved it is recommended that a full flora survey of the site would be required to determine the true botanical value of this site and establish what mitigation is required.
77. **CNPA Strategic Land Use: Ecology-Invertebrates**
Five Scottish wood ant *Formica aquilonia* nests of were recorded by MBEC on a survey during September 2009. One being within the proposed development site and the other 4 within 50m of the development boundary. Scottish wood ant is listed on the Scottish Biodiversity list. The Scottish Biodiversity is a list of flora, fauna and habitats that Scottish Ministers considered to be of principal importance for biodiversity conservation. The list was produced to fulfil requirements of The Nature Conservation (Scotland) Act 2004.
78. BSCG have reported records of Slender ground hopper and two slug species (ash-grey slug and lemon slug) with the proposed development site. MBEC has investigated these sightings and state that the habitat of the proposed development is unsuitable for slender ground hopper and that the slug species are classified as scarce by the Conchological Society of Great Britain & Ireland, however, MBEC state that this species is unlikely to be present on site.
79. This site is of high ecological value for a number of species including invertebrates, demonstrated by the presence of Scottish wood ant and the

debated presence of ash-grey slug, lemon slug and slender ground hopper. If this application proposal was approved it is recommended that an invertebrate survey would be required and suitable mitigation implemented for any species of conservation concern present.

80. **CNPA Strategic Land Use: Ecology- Mammals**
No mammal species (other than red squirrels) of conservation concern were recorded by MBEC during various surveys. Therefore they are not considered further.
81. **CNPA Strategic Land Use: Landscape:** notes that the site is important in terms of its contribution to the local landscape character, it is also noted that the Reporter in the Local Plan Inquiry concluded that the development of this site would have a significantly negative impact on the character of Boat of Garten. Since the Local Plan Inquiry the layout of the development has been modified and the Landscape Officer considers that it would be possible for some housing to be accommodated without significant adverse effects. However, it is crucial that the siting and design of the development is of a high quality; that the layout, design and landscaping create a distinctive identity and high amenity value for residents and visitors to the area together with an internal character which builds upon the prevailing characteristic of settlement within woodland. The development should also create strong sense of arrival from the west.
82. Substantial areas of woodland should be retained permeating through the development from the west. This will help to break up the extent of built development and provide landscape connectivity. The dome of woodland that enters the site from the west is important and should be continued along with a connecting footpath and continue through to the road linking up with areas of woodland around the school site.
83. In conclusion there is some scope for housing development without significant adverse landscape effects. However, it will only be possible for this development to complement and enhance the landscape character and setting of the village if major efforts are made to secure a high quality design solution. It is advised that the applicants make some minor revisions to the proposal to take account of the issues raised.
84. **CNPA Outdoor Access Officer Comments:** Firstly, any mitigation proposal would not deter everybody from accessing certain parts of the wood and at best changes in behaviour are achieved through cooperation rather than physical obstruction. Based on the premise that the main issue to manage here is dogs off leads, it is considered that that the mitigation proposals are not sufficient to influence patterns of behaviour because:
- the proposals are not backed up with sufficient evidence on current patterns and levels of use;
 - the proposals do not address issues across the woodland in a coherent way; and

- consideration has not been given to whether elements of the proposals are likely to contravene the Land Reform (Scotland) Act 2003.
85. Turning to the first point there is there is a clear lack of evidence in the proposals on the current patterns of use in the woodland. It is a fact that there are considerable amounts of informal paths close the development site, as evidenced in the first round of public consultation on the Core Paths Plan, and it would appear that the only solution being presented is to block these paths with pseudo wind blow. Our concern would be that without further measures in the form of attractive alternatives and signage the mere action of blocking these informal paths will result in another path developing close by. This is an assumption based on evidence from studies in to dog walker motivations which identified off lead and close to home access opportunities as being the primary motivations. Given that the existing dog walking population will be moved into the wood by the development itself and that there will be a proportion of dog owners in the development it is highly likely that there will be a proliferation of informal paths radiating out from the development. The mitigation measures as they stand don't adequately address this risk.
86. On point two, if it is accepted that the whole of the woodland is valuable to Capercaillie during their lifecycle, then to focus efforts on a refuge without employing measures to modify behaviour in the rest of the wood would seem counterproductive. We would expect a mitigation proposal to look at access across the whole wood which would include the development of a more attractive suite of paths closer to Boat of Garten. Included in such a proposal would be a clear signage plan showing locations of signs on all entry points promoting understanding of the need to manage the woods for Capercaillie and requesting certain behaviour and a suite of soft measures such as education and peer pressure. Early indications from other sites would seem to demonstrate that it is a combination of measures that work e.g. signage as well as a ranger presence. There would need to be some form of monitoring to ensure that the plan is working.
87. On the final point, it is not apparent that the developer has considered whether the felling of trees across the track, marked in green in figure three of the proposals, will contravene section 14 of the Land Reform (Scotland) Act 2003. Section 14 states that the owner of land where access rights apply shall not for the main purpose of preventing or deterring access, permit the growth of trees or vegetation or carry out an operation that obstructs those rights. It is entirely possible to rationalise tracks and paths on any given land holding for a legitimate land management practice but it is our view that the loss of the track marked in green, and to an extent the track marked in blue, has not been adequately compensated for in the rest of the proposals.
88. In addition, and complementing point one above, until the developer fully addresses the needs of those accessing the woods, the mere act of felling trees may result in informal paths being created in the immediate vicinity of the development and therefore not result in a reduction in the levels of use.

89. Finally, any planned tree or juniper scrub planting would take a number of years to establish and therefore may still not prevent the proliferation of informal paths. Likewise, fencing during the interim period would be a potentially lethal alternative for the capercaillie.
90. **CNPA Housing Officer** comments that the developer has had discussions with the community on the project over a prolonged period of time and changes to the layout have been made following these discussions. At the time of consultation on the original application Highland Council indicated a waiting list for Boat of Garten of 182 applications. A mix of low cost and rent allows opportunity to access both types of housing.
91. On the amended proposal the Housing Officer questions whether low cost ownership is actually affordable given recent experience and questions whether a greater ratio of rent to low cost could be provided. But given current budget constraints 50:50 may be acceptable to Highland Council. The project is unlikely to receive Scottish government funding for 3 or 4 years.

REPRESENTATIONS

92. The original proposal was advertised in the Badenoch and Strathspey Herald in July 2008.
93. A number of individual representations have been submitted as a result of the amended plans. However, given the limited changes to the layout the developer was not required to re-notify neighbours. The comments made on the original scheme were very much about the principle of the proposal and are a relevant consideration on this amended scheme also, the original representations are also included.
94. Representations are included as appendix D and in summary raise the following issues:
95. **Royal Society for the Protection of Birds** object to the proposal based upon concerns revolving around capercaillie and the potential effects on the designated Special Protection Areas at Abernethy, Kinveachy and Craigmore.
96. The **Cairngorms Campaign** has objected to the application by e-mail based upon habitat and species protection concerns.
97. The **Scottish Campaign for National Parks** object to the application because of concerns over capercaillie.
98. **Buglife** raise concerns about loss of pine woodland, lack of information and concerns about invertebrates.
99. The **Boat of Garten Community Hall** objected for one reason in that when the community Hall was built it was intended that any development

would link up with the hall. While there is a road shown this road terminates to the south of the hall when it should terminate with the car park.

100. The **Badenoch and Strathspey Conservation Group** has submitted a number of representations focusing on the natural heritage value of the site. Individual letters raise a wide range of concerns relating to species protection, landscape and visual impact, effects on tourism, over-development, will foster second homes and result in increased carbon emissions and that the proposals conflict with all 4 park aims.

APPRAISAL

Introduction

101. Firstly, this section will consider the principle of development at the site and then focus on five key areas (natural heritage, affordable housing, school site, landscape/design and technical issues) or material considerations before focusing on the crucial issue of how the proposal performs against the aims of the Park. Particular reference will be made to the National Parks (Scotland) Act 2000 and the duty of the Park Authority under Section 9 (6) of the Act to give greater weight to the first aim to conserve and enhance in cases where there is a conflict.

Principle of Development at the Site

102. The site is the subject of a complex policy situation that has been rehearsed in the development plan section of this report. The site had been included in the Deposit CNP Local Plan with a specific housing allocation which this application, in broad terms, reflects. While recognising that there may be a need for housing in the village the allocation was recommended for removal from the Local Plan by the Local Plan Inquiry Reporters at the end of 2009. The CNPA accepted this recommendation and removed the allocation from the Local Plan. It is important to stress that the allocation was removed in the face of what was considered by the Reporters to be an over allocation of housing land in the Park and in this case a sensitive site for natural heritage. There is a recognition by the applicants and the Community Council that the site does not benefit from a housing allocation. However, the case is made that the site is within the defined boundary of the settlement and by implication the proposal could be considered under Policy 20 'Housing Development Within Settlements'. The policy considers that a) any development can be favourably considered where it occurs within an allocated site; or b) is compatible with existing and adjacent land uses, and comprises infilling, conversion, small scale development or re-development of land. Clearly, the proposal does not comply with either criteria. Given the analysis in this paragraph the only conclusion is that the proposal is found to be contrary to the housing policies of the CNP Local Plan. The Reporter's recommendation of the removal of the allocation was accepted by the CNPA because of natural heritage concerns which are considered in the next section of the report. Given the above, the starting point must be that the proposal is contrary to the housing provisions of the recently adopted Local

Plan and as such should only be approved if 'other' material considerations are of such weight to justify departing from this stance.

Natural Heritage and Outdoor Access Issues

103. As 'other' material considerations the natural heritage concerns at the site are crucial to determining the environmental impact of the proposal and how this accords with the protective environmental policies of the CNP Local Plan. Outdoor Access (other than vehicular) is dealt with in this section because of the interaction between access (in the form of recreation) and potential capercaillie disturbance.

Capercaillie

104. When the application was submitted in 2008 a number of natural heritage issues were identified. At this time further environmental information was requested of the applicants. The key information related to capercaillie, red squirrels together with a general ecological overview of the site. This report was received at the end of December 2010 enabling this long standing application to be finally brought forward for determination.
105. In broad terms the issue surrounding capercaillie relates to two distinct sets of issues. Firstly, capercaillie are a species that is protected by the highest levels of European conservation legislation. Their habitat has been protected in this instance by a number of SPA designations at Kinveachy, Abernethy, Craigmore Wood and Cairngorms. Scottish Natural Heritage has provided advice in relation to the effect of the development upon these sites. It is an important factor that with regard to SPA's consideration of development proposals that lie outside of the designated areas must be considered where those development proposals could have an effect upon those designated areas. Where the 'likely' effect on those designations is significant the planning authority (CNPA) has a duty to prepare an appropriate assessment setting out the implications of the development for those Special Protection Areas.
106. In this instance SNH has objected to the application because they believe that the mitigation being put forward is not sufficient to prevent disturbance to the capercaillie population in Boat of Garten Woods with consequential knock-on effects to a number of SPAs for which capercaillie are a qualifying interest. This is a clear steer that the development proposal as it stands is not acceptable, although SNH do recognise that appropriate mitigation could, in principle, be agreed. However, at this point if the CNPA wished to grant permission in the face of this objection the application would have to be referred to Scottish Ministers.
107. The second part of this issue relates to the capercaillie population at Boat of Garten Wood. This issue falls for the consideration of the CNPA as does the requirement to prepare an appropriate assessment for the implications of the proposal on the 4 SPAs set out above. An assessment has been prepared by CNPA Strategic Land Use Directorate staff.

108. While Boat of Garten Wood is not designated as a SPA it hosts a significant proportion of the population which are a qualifying interest on four nearby SPAs. The relationship between Boat Wood and the four SPAs is crucial as the area acts as a vital stepping stone between the SPAs which is an important factor when considered against the fragmented nature of Scottish forests.
109. Based upon the appropriate assessment concerns are expressed regarding increased disturbance to the population from the housing development itself and increased use of the woods by occupiers of the houses. Natural heritage officers consider that there is increasing evidence that capercaillie are adversely affected by disturbance resulting from human recreational activity with dogs off-leash being a particular problem. The site for the application to the west of the school contains a number of informal paths that are used by visitors and locals and dog walkers in particular. This results in concern that if development is extended in this area similar paths to those on the development site further into the woodland would be formed on the same basis as the existing paths encroaching further into the capercaillie's territory.
110. Mitigation proposals have been put forward which include signage, tree felling over a particular track and felling trees at the side of certain tracks to mitigate against people leaving the tracks. Concerns are raised that any obstructions could be in breach of the Land Reform (Scotland) Act 2003 potentially resulting in complaints to the CNPA about access being restricted (one representation already raises this as an issue). CNPA has a duty to uphold access rights. In addition, concerns are raised that the measures put forward are not based on a full and clear understanding of the existing patterns of use in the woods. There is a danger that more informal tracks would be formed to circumvent any physical measures put in place.
111. The Strategic Land Use Directorate has raised serious concerns that the proposal would be detrimental to the capercaillie population due to increased disturbance from recreational use. In addition the proposals for mitigation raise concern in terms of how they would be enforced, this relates particularly to the need to change the behaviour of dog walkers and pets.
112. Capercaillie are subject to the highest level of conservation protection and are a species that is subject of Policy I Natura 2000 sites of the CNP Local Plan. This policy considers that where development is likely to have a significant effect on a Natura site there must be no alternative solutions and there should be imperative reasons of overriding public interests, including those of social or economic nature for development to proceed. Again, it is important to emphasise that the CNPA has allocated substantial land elsewhere within the Housing Market Area and there may be alternative options to consider for Boat of Garten as part of the new Local Development Plan Process. This leaves the proposal in conflict with Policy I on the basis of the CNPA's appropriate assessment and comments from Strategic Land Use. A similar approach applies with Policy 4 Protected Species of the CNP Local Plan when considering the population at Boat

Wood regardless of the SPA concerns. Criteria b) of the policy stipulate the need to consider alternative solutions.

113. There is a great weight placed upon the protection of capercaillie and the mitigation proposals put forward (while recognising that they could be altered) lack credibility when considered against the comments of SNH and CNPA officers in relation to natural heritage and outdoor access. It is important to focus on the importance of this species and its relationship with the first aim of the Park. A Scottish Government Reporter has rejected an earlier application on this site raising concern that introducing development (albeit to a larger area than proposed here) would result in the displacement of capercaillie further into Boat of Garten Wood. Reporters at the Local Plan Inquiry on this site considered there to be reasonable scientific doubt about the effect that the allocation of housing would have upon capercaillie and recommended that the allocation be removed. The evidence put forward by the MBEC Report and in particular the limited understanding of the current recreational use of the area casts very significant doubt on the effectiveness or legality of the mitigation put forward.
114. On another site within the Cairngorms National Park some 5 years ago where a proposal for a house potentially involving pony trekking into an adjacent SPA was proposed a Scottish Government Reporter opined in rejecting the application 'that absolutely no increased risk to capercaillie can be tolerated'. The cautious approach of Scottish Government Reporters, taken together with the natural heritage consultee responses raise considerable doubt about this proposal which could not be considered to accord with the first aim or any of the protective environmental policy that flows from it. This all adds significant weight to the recommended course of resisting this application.

Red Squirrel

115. Issues regarding red squirrels have been a prominent concern in the consideration of this application. Specialist consultants carried out detailed surveys including using up to date thermal imaging technologies to identify which dreys are occupied.
116. The surveys undertaken have provided a good level of information and the revised plans have been designed to protect the greatest concentration of dreys on the site in the dome of woodland that enters the site from the west. It is to be noted that from the CNPA Strategic Land Use response there is currently no licensing mechanism under the Wildlife and Countryside Act to allow the felling of trees with dreys in them. Nonetheless, and despite proposals for mitigation this is what the application effectively proposes for a limited number of trees with dreys. Disturbance to dreys in trees that are not to be felled cannot be ruled out. The new Wildlife and Environment Bill with the Scottish Parliament may result in a licensing scheme and the applicant's consultants are of the view that works would not be carried out on the site until this issue has been resolved. This may be the case, but at this time there is no licensing scheme for removing dreys for development purposes and the Park has a duty under the Nature Conservation (Scotland)

Act 2004 to protect such species, this would logically extend to not encouraging actions that may offend the Wildlife and Countryside Act.

117. Aside from any concerns about offending the provisions of the Wildlife and Countryside Act squirrels are a UK Biodiversity Action Plan species and are a material planning consideration. What is clear from the CNPA Strategic Land Use response is that the site is important as a red squirrel habitat and that the development should be resisted on such grounds. The proposal is in conflict with Policy 5 'Biodiversity' of the CNP Local Plan which seeks to protect UK Biodiversity Action Plan Species.
118. A number of other natural heritage issues are raised by objectors and considered by the CNPA Ecologist. Should the application be considered for approval further surveys for invertebrates and plants may be required.

Affordable Housing

119. The Community Council articulate well a need for affordable housing at Boat of Garten and this is not disputed given the evidence put forward by the Community Council, and Housing Officers from both Highland Council and the CNPA. Where proposals are based on public funding affordable housing is required by CNP Policy Local Plan Policy 19 on the basis of between 25 and 40% of the units proposed. It is important to note that housing developments elsewhere in the housing market area would be subject to this policy and be expected to deliver a considerable amount of affordable housing within the housing market area. Taken in isolation the proposal represents a figure of 42% (rounded up) which is actually in excess of the affordable requirement and in isolation this is to be welcomed. Five discounted plots are also proposed.
120. Some issues have been raised around whether a 50:50 split between rented and low cost should be biased in favour of rented accommodation but no firm steer has been provided and the Community Council support the application as is. This support is particularly focused around the provision of new development to ensure the school role remains viable. Should the application be approved a Section 75 Agreement would be required to secure it. There is the possibility that small amendments to the ratio between low cost and rented could be addressed during this process.

School Site

121. The application includes an area given over for a new primary school site and this corner of the site is allocated for a community use as BG/CI by the CNP Local Plan being retained in order to support the community and would be appropriate for a new school and/or other uses which support the economic development of the settlement and its sustainable community. The proposal, in broad terms, is consistent with the Local Plan on this element. However, the allocation in the CNP Local Plan covers a wider area including ground to the side of 31 and 32 Cragie Avenue. The application does not include this area. Despite this, the school element of application is consistent with the allocation in principle.

122. Particular concern is raised by the Community Council that development is required to maintain the school role. However, the response from Highland Council Education makes no mention of any particular plans for the existing school at this point in time. Highland Council simply request that the allocation for a community use (potentially including school) is retained in the Local Plan for 5 years or until such time as there has been a review of educational services in Badenoch and Strathspey.

Housing Design and Landscape Issues

123. The Reporters recognised the sensitivity of this site when considering the allocation as part of the Local Plan Inquiry. Indeed, the site was considered so sensitive in environmental terms that it was recommended for removal from the plan. Notwithstanding the previously discussed natural heritage issues this precautionary stance makes it clear that any development at this site would have to be of a very high standard.
124. Over the past decade the Scottish Government has produced considerable design guidance in the form of Designing Places and Designing Streets and the quality of development is emphasised throughout Scottish Government Planning Policy. The National Park Plan and Local Plan accord with this guidance with an emphasis upon quality flowing through the Local Plan and Supplementary Planning Guidance on Sustainable Design. For instance, elements of the previously quoted Local Plan policy 20 consider that development should 'reinforce and enhance the character of the settlement'. Policy 16 Design Standards for New Development considers that development will seek to 'reflect and reinforce the traditional pattern and character of the surrounding area and reinforce the local vernacular and local distinctiveness'.
125. The layout of the development as it stands is similar to a number of developments that have been completed in the area in the last decade. It is based upon a road layout which meanders through the development allowing access to a number of plots, the majority of which contain detached houses with little relationship between the house and the street. This is unlike neighbouring development on Cragie Avenue for instance that adopts a simple street based approach. Admittedly, the proposal adopts a home zone type approach but the low density meandering layout is more typical of previous 'housing estate' type developments than the kind of development being fostered by Scottish Government design guidance or the more traditional pattern of development evident close to the site. Consequently, it is not possible to equate the development as according with government guidance or with the policies of the National Park Plan and Local Plan which seek to conserve and enhance the traditional character and pattern of development in the area.
126. In terms of landscape character this is a sensitive site as recognised by the CNPA Landscape Officer and Scottish Government Reporter. However, notwithstanding the previous discussions on natural heritage there is considered to be scope for development at the site. The strip of trees along Deshar Road are very important in retaining the woodland setting of the

village and a band of trees incorporating the existing path is shown as being retained. This helps to prevent any adverse visual impact from a development set behind in the woodland. However, the effects upon landscape character are a different matter and it would appear from the plans that clear felling is proposed for much of the site. This is at odds with a situation where if development is to conserve and enhance the landscape in accordance with Policy 6 Landscape of the CNP Plan it should be introduced into the 'woodland' setting rather than removing a section of woodland which removes that existing character before introducing the development. Consequently, the proposal does not comply with Policy 6 Landscape.

127. From the discussion in this section of the report purely on landscape and design it is the case that some housing development could be accommodated at the site. However, this would require some revisions to the proposal. The Scottish Government through design policy has long been seeking a step change in terms of the layout and design of new development. The National Park with such sensitive landscapes should be at the forefront of this step change and is seeking to be so with the adoption of the Local Plan and a range of Supplementary Planning Guidance. The proposal as it stands with regard to layout, housing design and landscaping is not considered to achieve the standards being sought by the Scottish Government and the National Park Authority.

Technical Issues

128. SEPA has no objection to the proposal on flooding or drainage grounds although planning conditions would be required to ensure SUDS provision on site.
129. There is a foul drainage capacity problem in the village and the Park currently holds an application for the upgrading of capacity for additional development. However, this is subject to the outcome of this application. Scottish Water has confirmed that the project could be re-routed to provide capacity works to address the existing problem at the village should this proposal not be successful.
130. In terms of highways and roads the majority of the requirements can be dealt with via planning conditions although further discussion would have to take place regarding potential bus shelters off-site and contributions towards bus services. One area of concern however relates to the boundary of the site with the Community Hall. Permission was granted for the Community Hall on the basis that if any development was put forward on the neighbouring site this would allow access from that development to the Community Hall reducing the need for traffic to access the hall from Cragie Avenue. A road terminates from the development on the southern (rear) elevation of the community hall but this does not provide clear and straightforward access to the hall car park. While this could be remedied by revisions to the layout proposed at this point in time it results in a reason for resisting the application in its current form.

Assessment of the Proposal Against the Aims of the Cairngorms National Park and its Statutory Context.

131. The overall case for recommending development must be considered in a collective way taking account of all four aims of the National Park. However, this proposal results in substantial friction between the first aim to conserve and enhance the natural and cultural heritage and the fourth aim of promoting sustainable economic and social development. It is argued that there is an overwhelming need for the housing. However, the CNPA has allocated a significant amount of land for housing elsewhere in the housing market area and further options for Boat of Garten can still be explored. There are elements of the proposal that could contribute to the second aim if any development is well linked to the Community Hall and potential new school site. However, there is little information as to how the development itself in terms of materials and energy consumption would perform against this aim. The proposal causes some friction with the third aim to promote understanding and enjoyment as alluded to by the CNPA Access Officer in that some of the mitigation measures proposed to prevent disturbance to capercaillie could, in themselves lead to access problems.
132. Given the emphasis and level of concern placed upon species of international and national importance as well as concerns about landscape and whether the proposal complements the character of the village this is a case where the first aim to conserve and enhance is in conflict with the fourth aim. With this in mind the approach to be followed is clearly set out in Section 9 (6) of the National Parks (Scotland) Act 2000. This states that 'if in relation to any matter, it appears to the authority that there is a conflict between the National Park aim set out in section 1 (a) and other National Park aims, the authority must give greater weight to the aim set out in section 1 (a)' (the first aim). The level of friction between the first and the fourth aim is significant in this case given the consistent concerns of previous Scottish Government Reporters that have considered the site (and the capercaillie disturbance issue) and from the responses of consultees and CNPA officers. Consequently, there is no alternative but to make a clear recommendation that this application be refused.

Conclusion

133. Given the arguments set out in this report the proposal causes a number of serious concerns with regard to natural and cultural heritage and the detailed policies that cascade from the first aim of the National Park. The Community Council considers there to be an overwhelming need for affordable housing and at no point does this report refute a serious need for such housing in Boat of Garten. However, there is a very strong body of evidence against this proposal. The site is not allocated in the Local Plan and is put forward in the face of substantial housing allocations being made elsewhere in the area, it offends a number of protective environmental policies of the plan and causes substantial friction between the first and fourth aims. This results in a clear recommendation for refusal of the application.

RECOMMENDATION

134. That Members of the Committee support a recommendation to **REFUSE** Full Planning Permission for the erection of 72 houses; formation of 5 house plots; provision of primary school site; associated amenity ground, roads and footways for the following reasons:

Principle of Development

1. The proposal would result in a significant housing development on a site not identified as part of the Housing Land Requirement for the Cairngorms National Park Local Plan (2010) and is contrary to Section 5.2.4 of the Cairngorms National Park Plan and Policy 20 Housing Development within Settlements of the Cairngorms National Park Local Plan.
2. **Natural Heritage Impacts (Capercaillie)**
The proposal including mitigation proposed fails to demonstrate that it would not result in unacceptable detriment to Kinveachy, Craigmore, Cairngorms and Abernethy SPA's and to the capercaillie population at Boat of Garten Wood. As a Schedule 1 European Protected Species capercaillie should be afforded the highest levels of protection in line with the precautionary principle. The proposal is therefore contrary to paras 125, 129, 132, 134 and 135 of Scottish Planning Policy, Section 5.1 Conserving and Enhancing of the Cairngorms National Park Plan 'Biodiversity', Highland Structure Plan Policies N1 Nature Conservation, G2 Design for Sustainability, Policies 1 Natura 2000 Sites, 2 National Natural Heritage Designations and 4 Protected Species of the Cairngorms National Park Local Plan (2010) and to CNP Supplementary Planning Guidance 'Natural Heritage'.
3. **Red squirrel**
The proposal would result in unacceptable impacts upon the red squirrel population in Boat of Garten Woods when the CNPA has a duty under the Nature Conservation (Scotland) Act 2004 to further conservation of biodiversity. Red squirrel is a UK Biodiversity Action Plan and Cairngorms Local Biodiversity Action Plan Species and is afforded protection under the Wildlife and Countryside Act 1981. The proposal is therefore contrary to Paras 142-145 of Scottish Planning Policy, Policy N1 Nature Conservation, G2 Design for Sustainability of the Highland Structure Plan, Section 5.1 Conserving and Enhancing 'Biodiversity' of the Cairngorms National Park Plan, Policies 2 National Natural Heritage Designations, 5 Biodiversity of the Cairngorms National Park Local Plan (2010) and Supplementary Planning Guidance 'Natural Heritage'
4. **Layout, Landscape and Housing Design**
The proposed development fails to adequately respond to the characteristics of the site and fails to reflect its unique setting on the woodland periphery of a traditional Highland village. The proposed development, by reason of the current design proposals would also

fail to adequately contribute to create a distinct identity and contribute to a sense of neighbourhood. The development would therefore be contrary to paragraphs 77-79 of Scottish Planning Policy, Planning Advice Notes on Designing Places, Designing Streets and Housing Quality, Policies L4 Landscape and G2 Design for Sustainability of the Highland Structure Plan, Policies 2 National Natural Heritage Designations, 20 Housing Development Within Settlements, 6 Landscape and 16 Design Standards for New Development of the Cairngorms National Park Local Plan (2010) which requires developments to reinforce and enhance the character of the settlement and conserve and enhance the landscape. It would also fail to accord with the strategic objectives for landscape, built and historic environment as detailed in the Cairngorms National Park Plan Section 5.1, which requires developments to complement and enhance the landscape character of the Park and complement and enhance the character, pattern and local identity of the built and historic environment.

5. Lack of vehicle access to village hall.

The development fails to provide a satisfactory vehicle linkage to Boat of Garten Community Hall contrary to the advice of Highland Council Roads Department and Policy 20 Housing Development Within Settlements of the CNP Local Plan which considers that proposals should accommodate within the development site appropriate access arrangements.

6. National Parks Act 2000

The proposal is contrary to the first and third aims of the Cairngorms National Park a set out in Section 1 of the National Parks Act (Scotland) 2000. Notwithstanding the contribution that the proposal may make to the fourth aim by the provision of affordable housing this does not outweigh the conflicts with the first aim which requires the National Park Authority to carry out its duty under section 9 (6) of the Act to give greater weight to the first aim (to conserve and enhance the natural and cultural heritage). The proposal is therefore contrary to the provisions of the National Park Plan 2007.

Andrew Tait

planning@cairngorms.co.uk

23 December 2010

The map on the first page of this report has been produced to aid in the statutory process of dealing with planning applications. The map is to help identify the site and its surroundings and to aid Planning Officers, Committee Members and the Public in the determination of the proposal. Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Cairngorms National Park Authority and other Copyright holders. This permission must be granted in advance.