

AGENDA ITEM 5

APPENDIX 2

2018/0183/MSC & 2018/0184/MSC

APPEAL DECISIONS

Decision by Frances M McChlery, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2127
- Site address: land to the north west and south of Dalfaber Farm, Dalfaber Drive, Aviemore, PH22 1SS
- Appeal by Reidhaven Estate against a failure by the Highland Council to determine an application
- Application for planning permission reference 14/03675/S42, dated 17 December 2014, to carry out the development without compliance with conditions numbered 1,12,13, and 22 imposed in the grant of planning permission reference PPA-001-2001 dated 9 March 2010, and corrected by letter dated 15 March 2010
- The development proposed: planning permission in principle for development of 83 houses with associated development
- Date of site visit by Reporter: 15 July 2015

Date of appeal decision: 21 March 2016

Decision

I allow the appeal and grant planning permission in principle in accordance with application PPA-001-2001 dated 9 March 2010 but without compliance with conditions numbered 1,12,13 and 22 as they were previously imposed, but still subject to the other conditions imposed, so far as they are still subsisting and capable of taking effect, and subject to the conditions imposed at the end of this notice.

Reasoning

1. This, along with appeal PPA-270-2126, is an appeal against the failure by the Highland Council ('HC') to issue a decision within the prescribed period in relation to two applications made under section 42 of the TCPA for permission to develop land without complying with conditions attached to a previous permission. In the case of this appeal the permission in question was a planning permission in principle ('PPIP') for up to 83 houses and related development; and, in the case of appeal PPA-270-2126, the permission was a PPIP for 10 serviced housing plots and related development. These permissions were originally granted on appeal by decision notices PPA-001-2000 and PPA-001-2001.

2. The applications made under section 42 were related to two applications made under section 59 for approval of matters specified in conditions. Those applications were called in by the Cairngorms National Park Authority ('CNPA') and were refused by that authority on

the grounds that they had not been made in time and that the PPP had consequently lapsed or was now incapable of being implemented.

3. In considering the applications under section 42 which are the subject of this appeal, HC noted that the CNPA had refused the applications for approval of matters specified in conditions on the grounds that the permissions in principle to which they related had lapsed. On that basis HC doubted whether it was appropriate for it to determine the applications under section 42 and, consequently, did not determine those applications within the prescribed period. Accordingly, the applications under section 42 are deemed to have been refused.

4. In the related appeals concerning the section 59 applications I have decided that the applications were made in time and I have granted approval of various matters, subject to the imposition of further conditions.

5. The issues before me in this appeal concerning the section 42 application are whether, having regard to the development plan and other material considerations, permission ought to be granted for development to take place without compliance with certain of the conditions attached to the permissions in principle. The same issues arise in appeal PPA-270-2126. In this case the conditions in question are conditions 1,12,13, and 22. Generally speaking, it is not appropriate in the context of an application under section 42 to re-visit the principle of development. The question is whether it is appropriate for the previously consented development to be implemented without complying with the conditions attached to the relevant permission. However, an application under section 42, if granted, results in a new planning permission.

6. In summary, the appellant's intentions for the appeal site are for 3 phases of housing development on identified plots arranged around a spine road, with a network of footpaths across the site. The overall strategy of the appellant, who are the landowners, has been to obtain planning permission for a development framework, including the infrastructure for the development area, and then transfer the project to developers for the implementation of the development.

7. Subject to the restriction imposed by section 42, I require to consider whether the permission sought would be acceptable in terms of the relevant policies of the current development plan. The development plan is the Cairngorms National Park Local Development Plan (2015) (CNPLDP), which was approved in March 2015. In the development plan the appeal site is allocated for housing development. The CNPA does not argue that the adjustments sought in this appeal would contravene any specific development plan policy. I agree that this is the case and find that the adjustments sought would be in overall accordance with the development plan, given that they seek to facilitate development on an allocated site.

Condition 1

8. The appellant seeks a new condition 1 with slightly modified terms. Condition 1 as it was originally imposed on the previous permission said

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

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

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

9. The appellant asks that the new version would include the words

“or alternatively, for a plot-by-plot approach condition 13 is adhered to;”

after the word “fencing” at the end of the first point. The intention behind this new wording would be to link condition 1 more clearly with condition 13, which provides for a scenario where the development would proceed on a plot by plot basis as opposed, for example, as a unified housing estate by a single developer.

10. In my view the principle behind the proposed change is acceptable. However, I consider that objective could be more clearly expressed by modifying the condition by adding the following wording instead of that suggested by the appellants

“or alternatively, in the event of the site being developed on a plot-by-plot basis, a design statement in accordance with the requirements of condition 13 and, prior to any individual house being built on a plot, details of the siting, design and appearance of that house;”

I have reflected my preferred approach in the conditions I impose at the end of this notice.

11. In my decision in appeal PPA-001-2017 I have taken the view that the original application is capable of being interpreted as meaning that condition 13, which provides for the presentation of a design guide as opposed to the submission of the precise details of

every building, would operate as an alternative pathway for approvals. On that basis I have been able to proceed to consider the design guide approach under that approval. However, in my view it does not follow from my finding that the new wording sought here is unnecessary. In my view it would produce a newly worded permission where the intention of the decision maker is even clearer.

12. The second adjustment to the previous condition 1 which the appellant seeks is to add at the end of the condition the following wording

“Condition 13 allows a plot-by-plot approach in which case the site start made upon the infrastructure works will allow subsequent plot-by-plot MSC¹ applications to be competently made and considered in line with Section 59(4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.”

In addition the reason given at the end of the condition is proposed to be adjusted by including a specific reference to sub sections (1), (2), and (4) of Section 59.

13. I do not consider it appropriate to adopt the second amendment to condition 1 proposed by the appellant. In my view it is not valid to attempt to specify through a condition whether an application in the future has or has not been competently made. The timescales for submitting applications for MSC are set out in section 59(2) of the TCPA. Section 59(4) states that the PPIP lapses on the expiration of two years from the approval of the last of the MSC being obtained unless the development has begun before that date. The time when development is considered to have begun is set out in section 27. I appreciate that, if the site is developed on a plot-by-plot basis, it might be a considerable time before details of some of the individual approvals are submitted. If it is not possible to submit those details within the timescales envisaged under section 59(2), they could be submitted as new applications for detailed planning permission.

Condition 12

14. This condition was imposed to provide for the phasing of the whole development area comprising both North Dalfaber and South Dalfaber. It said

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

¹ MSC is used in this and the other appeals to refer to the phrase “matters submitted for consent” as provided for in section 59 (1) (b) and to mean the matters specified in the permission to require the approval of the planning authority before development can be begun.

*development**(Reason: to ensure an orderly sequence of development.)*

Here the appellant requests a new condition in the same terms but under the deletion of the words

“Phasing shall be undertaken generally in a north to south direction”

15. There is no evidence before me to indicate why a north to south phasing was considered necessary at the time when the PPIP was granted.

16. The appellant says that the north-south approach runs contrary to industry practice and would cause site management problems. They cite evidence drawn from their advisers' experience in the management of construction sites. They say that while construction starting from the north of the appeal sites (that is the whole development area) would not be impossible, it would pose difficulties in terms of construction methods as well as raise significant health and safety issues. The variation sought is necessary in order that a developer can better ensure the health and safety of both construction works and the public. The appellants' adviser's recommended means of developing the appeal sites reflects usual industry practice, which is essentially is to begin construction of the development from a point of entry near the public road, so that the first units to be completed would be adjacent to the road and subsequent development would progress away from it. There are a number of practical, amenity based, and regulatory advantages to this approach, such as

- the number of car journeys, and pedestrian access that members of the public accessing their completed houses would require to make through an operational construction site would be avoided or minimised;
- the areas of on-going construction activity could be contained so far as possible away, and beyond the completed, occupied units, thus supporting construction site control and the safeguarding of the public.
- containing and controlling construction areas and separating them from completed areas as much as possible should also help minimise any impact on residential amenity for purchasers of units completed in the first phases of the developments.

17. Concerns have also been raised by the CNPA and objectors about the use of the footpaths which will cross the development area during the construction period, alleging greater health and safety risks for walkers if there is deviation from building out the sites in a north to south direction. The appellant responds to this in saying that the issue of paths and connections in and around the appeal sites was considered in detail at the stage of granting planning permission in principle for the sites. The finalised layout for the path network which emerged from this process took health and safety implications into account amongst other factors.

18. In my view, construction close to existing housing will almost inevitably give rise to some disturbance. This will occur irrespective of the direction of phasing of the development. However, construction disturbance is also transitory and would rarely, if ever, justify the refusal of planning permission for a development. Good site practice and the regulatory framework for construction design and management should seek to minimise the impact on neighbouring dwellings and ensure public safety. There is no substantive evidence to suggest that the proposed change to the phasing arrangements would have any significant impact on the degree of disturbance that will be caused by the construction of this development. On the other hand there is clear evidence that there are a number of favourable considerations from the proposed change of approach. Accordingly I approve the change to the condition originally imposed.

Condition 13.

19. Condition 13 of the original permission said

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

Reason: for consistency of design principles in the whole development.

20. The appellant proposes a new version of this which adds to the end of the previous condition wording the text

“A plot-by-plot approach is competent in terms of Section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 with the proviso that the other MSCs set out at bullet points 2, 3 and 4 in Condition 1 have been approved by the Planning Authority and a lawful site start achieved.”

And then at the end of the reason the words

“and to ensure that the matters referred to are given full consideration and to accord with section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006”

21. The intention is the same as that for the adjustment sought to condition 1, namely, to secure concomitant clarification that there are valid alternative approaches to the implementation of the permission. The revised wording also seeks to maintain a correlation with the other MSC matters.

22. For the same reasons given above in relation to the requested change to condition 1, I do not consider it appropriate to adopt the amendment to condition 13 proposed by the appellant. It seeks to declare the competency of an application yet to be made, which in my view would not be valid. As the development proposal moves forward, if the requisite applications cannot be made within the statutory time limits set by section 59, individual applications for planning permission can be made.

Condition 22

23. The suggested adjustment to condition 1 relates to the number of units across both sites which should be affordable housing units. This issue only arises in this and appeal PPA-270-2127. The original condition in this case said

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

(Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)”

24. The proposed new condition would delete the words “not less than 22 dwellings” and insert instead the words

“ a number of dwellings not less than 25% of the total number of dwellings to be built“.

25. The appellant’s argument for this is that this variation would remove the prescribed numerical requirement for affordable housing units and replace these with a fixed percentage (25%) of the total number of units constructed on the appeal sites. This would provide greater flexibility than an exact figure while the total number of houses to be constructed on the appeal sites is yet to be determined. A percentage would still provide a relatively precise means of calculation, so the condition would be clear and robust. The amended provision of 25% of the units would aligned with the targets for affordable housing both in Scottish planning policy (SPP) and the CNPA's Supplementary Guidance on Affordable Housing, Policy 19.

26. The CNPLDP affordable housing policy 1.4 says that the level of affordable housing required as a contribution on developments of 4 or more open market dwellings will generally be no more than 25% of the total number of units.

27. The CNPA defer to the views of HC, who do not object to the proposed change, but they observe that the number of dwellings proposed for the combined development site under the MSC applications is for a total of 74 new houses so that the provision of

affordable housing would be 18-19 houses under the revised terms proposed by the applicant, rather than the 22 originally set by the reporter. The CNPA agree that the number expressed as a percentage is more appropriate, and broadly complies with current LDP policy. However, they regard the proposed wording is too vague since the percentage relates to the 'total number of dwellings to be built'. The percentage should be based on the number of dwellings granted planning permission. To phrase it otherwise creates problems of compliance with circular 4/1998 because of difficulties of enforcement. In this case the number of dwellings to be built may change over time as a result of the plot by plot approach. In their view because of the difficulties of reaching an acceptable development on the site the overall number of houses which will eventually be built remains undetermined. The applicant's proposed changes to the condition do not provide certainty about the number of affordable units to be provided, nor the point at which they would be passed to a social landlord. In this regard, the explicit reference to affordable housing provided by a social landlord may be too restrictive. Affordable housing can be provided through a variety of other mechanisms. They suggest another approach and a revised condition. Because of the uncertainty they would prefer that the commitment to affordable housing is dealt with through a planning obligation.

28. The original figure for affordable housing of 22 units (referable to the anticipated output from the whole development site, including the appeal site) was based on the numbers of units proposed at PPIP stage. This was before an acceptable approach to the layout of plots had been developed. I consider that the revised figure of 25% of the units to be built, which is the formula based on the development plan, is a more flexible mechanism to accommodate updated circumstances, and would be in accordance with the development plan and national policy. I have modified the condition to provide additional flexibility as to the means by which the provision is made, by omitting the specific reference to a registered social landlord. I have also linked the provision with the numbers of units permitted in this consent, rather than built, because the plot by plot element of the development does provide a degree of uncertainty as to timing, and to the precise numbers which will be built eventually. The condition is based round the agreement with the planning authority of suitable provision, and in my view does provide the necessary certainty and enforceability. There is no need to supplement this with a planning obligation.

Other matters raised

29. The CNPA has said that they cannot fully consider the impact of the proposed development because there is insufficient information about the potential impact on certain natural heritage interests including European Protected Species. I consider that this issue is of limited relevance to the restricted issues before me in this appeal, but I have concluded in the other appeal decisions relating to this site that there is sufficient information about the potential impact on natural heritage interests to allow a conclusion to be drawn that the development can proceed.

30. In their representations the CNPA have promoted the view that as this is a new application process it is an opportunity to impose a new raft of conditions which in their view would lead to a more satisfactory development framework. Whilst that course of action is not closed to me in principle, I do not consider that it would be appropriate to follow it because that would be to consider a very different case from the matters that are before me in this appeal. I would require to have very detailed and persuasive arguments that the terms of original permission should be substantially changed. I do not consider that such arguments have been presented to me. I have followed the usual approach based on the terms of section 42, which is to grant a new planning permission based on the previous permission but modified where necessary by the outcome of this appeal.

31. The CNPA does not argue that the new conditions sought would contravene any of the development plan policies. These adjustments are to a PPIP that has been granted for a development which is on a site allocated for housing in the development plan and, in broad terms, do not represent substantial changes to that PPIP. I consider that the adjustments sought would be in overall accordance with the development plan. I have not identified any material considerations that would lead me to conclude that permission should be refused.

32. A motion for expenses have been made in this matter and I will deal with this in a separate letter.

Frances M McChlery
Reporter

Conditions

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

- The siting, design and external appearance of all buildings and other structures including all fencing, or alternatively, in the event of the site being developed on a plot-by-plot basis, a design statement in accordance with the requirements of condition 13 and, prior to any individual house being built on a plot, details of the siting, design and appearance of that house;
- The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities

- A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors
- Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS).

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

2. The landscaping plan shall be coordinated with that for the adjacent area covered by planning appeal PPA-270-2016 and shall include comprehensive details of all species (which should be of indigenous origin), planting location and numbers to be planted, as well as details of height and girth at time of planting and projected growth rates.

(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)

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

(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)

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

(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)

5. All submissions of details for individual house plots shall include a detailed landscaping plan, identifying all existing trees on the plot and identifying those proposed for retention. The felling of trees within individual plots shall not be undertaken without the prior written consent of the planning authority.

(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)

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

(Reason: in the interests of visual amenity.)

7. All top soil stripped in the course of development shall be stored in mounds not exceeding 2.0 metres in height and shall be retained for subsequent landscaping reinstatement of the proposed development site. All top soil shall be stripped, handled, stored and re-spread in accordance to B.S. 3882:1994 Annex N.

(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)

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

(Reason: to ensure that considerations both of privacy and of public access receive due consideration in the design, construction and use of the development.)

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

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

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

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

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

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

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

11. The details of landscaping shall include sufficient depth and density of trees on the eastern edges of the site, effectively to soften the visual impact of houses nearest to the boundary of the site with the Dalfaber golf course, including during seasons when the trees are bare of leaves. To that end the indicative layout drawing A3583/L(-)21 Rev.G previously submitted shall not be treated as definitive or final; and the number of 83 dwellings shall be treated as a maximum potential capacity and not as an entitlement.

(Reason: to avoid creating an impression of hard-edged, angular urban sprawl within the National Park, at a location highly visible from the adjacent golf course and from hills and mountains beyond it; and since the indicative layout gives rise to concern about the space available for effective edge landscaping.)

12. The development shall be carried out in phases, in conjunction with the adjacent development permitted under appeal decision PPA-270-2016. No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both appeal sites shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a south to north direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development.

(Reason: to ensure an orderly sequence of development.)

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

accordance with the agreed detail of the design statement.

(Reason: for consistency of design principles in the whole development.)

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

(Reason: for consistency of design principles in the whole development.)

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

(Reason: to ensure effective drainage of surface water and to avoid liability to flooding.)

16. SUDS proposals for any phase of development must be implemented and operational prior to the occupation of any dwelling within that phase of the development.

(Reason: to ensure effective drainage of surface water and to avoid liability to flooding.)

17. A detailed site specific construction method statement must be agreed in writing with the planning authority prior to the commencement of works on the site, and must be implemented in full during works on the site. The method statement must address the temporary measures proposed to deal with surface water run-off during construction and prior to the operation of the final SUDS.

(Reason: to ensure effective drainage of surface water and to avoid liability to flooding or runoff of polluted water during the construction period.)

18. A suitable management and maintenance statement shall be established in respect of any drainage measures that are not to be adopted by Highland Council or Scottish Water. Details of and evidence for the effectiveness of the maintenance proposals shall be submitted with the required details of SUDS.

(Reason: to ensure effective drainage of the site and to avoid liability to flooding.)

19. All public services for the development, including electrical, cable television and telephone cables, shall be located underground throughout the site. All such work shall be carried out prior to road surfacing and junction boxes shall be provided by the developer.

(Reason: in the interests of visual amenity.)

20. Prior to the commencement of development, a programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation, shall be submitted to and agreed in writing with the planning authority. All arrangements thereby approved shall be implemented by the developers at their expense in accordance with the approved timetable for investigation.

(Reason: to ensure the recording and where practicable preservation of any archaeological features or recoverable archaeological information, in the area affected by the development.)

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

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

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

22. The development shall not be begun before *either* the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision of affordable housing units amounting to not less than 25 % of the dwellings permitted on this site and the contiguous site of appeal decision PPA-270-2126; *or* the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing.

(Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)

23. Before the start of construction of houses on any phase containing or adjoining the curtilage of Dalfaber farmhouse, the planning authority shall have approved in writing detailed arrangements for the restoration of the building to residential use and its integration into the layout of the development at North Dalfaber, not later than simultaneously with that phase of the development.

(Reason: since leaving the building in a decaying state and unoccupied would detract from the amenity of future residents and visitors in the vicinity, and would be likely to lead to the loss of a significant traditional feature of the locality.)

Advisory notes

1. Notice of initiation of development

Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A

failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

2. Notice of completion of development

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

3. Road Construction Consent

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

4. Relevant guidance of local roads authority

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

Decision by Frances M McChlery, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2126
- Site address: land to the north west of Dalfaber Farm, Dalfaber Drive, Aviemore, PH22 1SS
- Appeal by Reidhaven Estate against a failure by the Highland Council to determine an application
- Application for planning permission reference 14/03676/S42, dated 17 December 2014, to carry out the development without compliance with conditions numbered 1,11,12, and 21 imposed in the grant of planning permission reference PPA-001-2000 dated 11 March 2010
- The development proposed: planning permission in principle for development of 10 serviced house plots with associated development
- Date of site visit by Reporter: 15 July 2015

Date of appeal decision: 21 March 2016

Decision

I allow the appeal and grant planning permission in principle in accordance with application PPA-001-2000 dated 11 March 2010 without compliance with conditions numbered 1,11,12, and 21 as they were previously imposed, but still subject to the other conditions imposed, so far as they are still subsisting and capable of taking effect, and subject to the conditions imposed at the end of this notice.

Reasoning

1. This, along with appeal PPA-270-2127, is an appeal against the failure by the Highland Council ('HC') to issue a decision within the prescribed period in relation to two applications made under section 42 of the TCPA for permission to develop land without complying with conditions attached to a previous permission. In the case of this appeal the permission in question was a planning permission in principle ('PPIP') for 10 serviced housing plots and related development; and, in the case of appeal PPA-270-2127, the permission was a PPIP for 83 serviced housing plots and related development. These permissions were originally granted on appeal by decision notices PPA-001-2000 and PPA-001-2001.

2. The applications made under section 42 were related to two applications made under section 59 for approval of matters specified in conditions. Those applications were called in by the Cairngorms National Park Authority ('CNPA') and were refused by that authority on

the grounds that they had not been made in time and that the PPP had consequently lapsed or was now incapable of being implemented.

3. In considering the applications under section 42 which are the subject of this appeal, HC noted that the CNPA had refused the applications for approval of matters specified in conditions on the grounds that the permissions in principle to which they related had lapsed. On that basis HC doubted whether it was appropriate for it to determine the applications under section 42 and, consequently, did not determine those applications within the prescribed period. Accordingly, the applications under section 42 are deemed to have been refused.

4. In the related appeals concerning the section 59 applications I have decided that the applications were made in time and I have granted approval of various matters, subject to the imposition of further conditions.

5. The issues before me in this appeal concerning the section 42 application are whether, having regard to the development plan and other material considerations, permission ought to be granted for development to take place without compliance with certain of the conditions attached to the permissions in principle. The same issues arise in appeal PPA-270-2127. In this case the conditions in question are conditions 1,11,12, and 21. Generally speaking, it is not appropriate in the context of an application under section 42 to re-visit the principle of development. The question is whether it is appropriate for the previously consented development to be implemented without complying with the conditions attached to the relevant permission. However, an application under section 42, if granted, results in a new planning permission.

6. In summary, the appellant's intentions for the appeal site are for 10 house plots surrounded by woodland, serviced by a spine road, with a network of footpaths across the site. The overall strategy of the appellant, who are the landowners, has been to obtain planning permission for a development framework, including the infrastructure for the development area, and then transfer the project to developers for the implementation of the development.

7. Subject to the restriction imposed by section 42, I require to consider whether the permission sought would be acceptable in terms of the relevant policies of the current development plan. The development plan is the Cairngorms National Park Local Development Plan (2015) (CNPLDP), which was approved in March 2015. In the development plan the appeal site is allocated for housing development. The CNPA does not argue that the adjustments sought in this appeal would contravene any specific development plan policy. I agree that this is the case and find that the adjustments sought would be in overall accordance with the development plan, given that they seek to facilitate development on an allocated site.

Condition 1

8. The appellant seeks a new condition 1 with slightly modified terms. Condition 1 as it was originally imposed on the previous permission said

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

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

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

9. The appellant asks that the new version would include the words

“or alternatively, for a plot-by-plot approach condition 12 is adhered to;”

after the word “fencing” at the end of the first point. The intention behind this new wording would be to link condition 1 more clearly with condition 12, which provides for a scenario where the development would proceed on a plot by plot basis as opposed, for example, as a unified housing estate by a single developer.

10. In my view the principle behind the proposed change is acceptable. However, I consider that objective could be more clearly expressed by modifying the condition by adding the following wording instead of that suggested by the appellants

“or alternatively, in the event of the site being developed on a plot-by-plot basis, a design statement in accordance with the requirements of condition 12 and, prior to any individual house being built on a plot, details of the siting, design and appearance of that house;”

I have reflected my preferred approach in the conditions I impose at the end of this notice.

11. In my decision in appeal PPA-001-2016 I have taken the view that the original application is capable of being interpreted as meaning that condition 12, which provides for the presentation of a design guide as opposed to the submission of the precise details of

every building, would operate as an alternative pathway for approvals. On that basis I have been able to proceed to consider the design guide approach under that approval. However, in my view it does not follow from my finding that the new wording sought here is unnecessary. In my view it would produce a newly worded permission where the intention of the decision maker is even clearer.

12. The second adjustment to the previous condition 1 which the appellant seeks is to add at the end of the condition the following wording

“ Condition 12 allows a plot-by-plot approach in which case the site start made upon the infrastructure works will allow subsequent plot-by-plot MSC¹ applications to be competently made and considered in line with Section 59(4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.”

In addition the reason given at the end of the condition is proposed to be adjusted by including a specific reference to sub sections (1), (2), & (4) of Section 59.

13. I do not consider it appropriate to adopt the second amendment to condition 1 proposed by the appellant. In my view it is not valid to attempt to specify through a condition whether an application in the future had or had not been competently made. The timescales for submitting applications for MSC are set out in section 59(2) of the TCPA. Section 59(4) states that the PPIP lapses on the expiration of two years from the approval of the last of the MSC being obtained unless the development has begun before that date. The time when development is considered to have begun is set out in section 27. I appreciate that, if the site is developed on a plot-by-plot basis, it might be a considerable time before details of some of the individual approvals are submitted. If it is not possible to submit those details within the timescales envisaged under section 59(2), they could be submitted as new applications for detailed planning permission.

Condition 11

14. This condition was imposed to provide for the phasing of the whole development area comprising both North Dalfaber and South Dalfaber. It said

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

¹ MSC is used in this and the other appeals to refer to the phrase “matters submitted for consent” as provided for in section 59 (1) (b) and to mean the matters specified in the permission to require the approval of the planning authority before development can be begun.

*development**(Reason: to ensure an orderly sequence of development.)*

Here the appellant requests a new condition in the same terms but under the deletion of the words

“Phasing shall be undertaken generally in a north to south direction”

15. There is no evidence before me to indicate why a north-to-south phasing was considered necessary when the PPIP was granted.

16. The appellant says that the north-south approach runs contrary to industry practice and would cause site management problems. They cite evidence drawn from their advisers' experience in the management of construction sites. They say that while construction starting from the north of the appeal sites (that is the whole development area) would not be impossible, it would pose difficulties in terms of construction methods as well as raise significant health and safety issues. The variation sought is necessary in order that a developer can better ensure the health and safety of both construction works and the public. The appellant's advisers' recommended means of developing the appeal sites reflects usual industry practice, which is essentially is to begin construction of the development from a point of entry near the public road, so that the first units to be completed would be adjacent to the road and subsequent development would progress away from it. There are a number of practical, amenity based, and regulatory advantages to this approach, such as

- the number of car journeys, and pedestrian access that members of the public accessing their completed houses would require to make through an operational construction site would be avoided or minimised;
- the areas of on-going construction activity could be contained so far as possible away, and beyond the completed, occupied units, thus supporting construction site control and the safeguarding of the public.
- containing and controlling construction areas and separating them from completed areas as much as possible should also help minimise any impact on residential amenity for purchasers of units completed in the first phases of the developments.

17. Concerns have also been raised by the CNPA and objectors about the use of the footpaths which will cross the development area during the construction period, alleging greater health and safety risks for walkers if there is deviation from building out the sites in a north to south direction. The appellant responds to this in saying that the issue of paths and connections in and around the appeal sites was considered in detail at the stage of granting planning permission in principle for the sites. The finalised layout for the path network which emerged from this process took health and safety implications into account amongst other factors.

18. In my view, construction close to existing housing will almost inevitably give rise to some disturbance. This will occur irrespective of the direction of phasing of the development. However, construction disturbance is also transitory and would rarely, if ever, justify the refusal of planning permission for a development. Good site practice and the regulatory framework for construction design and management should seek to minimise the impact on neighbouring dwellings and ensure public safety. There is no substantive evidence to suggest that the proposed change to the phasing arrangements would have any significant impact on the degree of disturbance that will be caused by the construction of this development. On the other hand there is clear evidence that there are a number of favourable considerations from the proposed change of approach. Accordingly I approve the change to the condition originally imposed.

Condition 12.

19. Condition 12 of the original permission said

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

Reason: for consistency of design principles in the whole development.

20. The appellant proposes a new version of this which adds to the end of the previous condition wording the text

“A plot-by-plot approach is competent in terms of Section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 with the proviso that the other MSCs set out at bullet points 2, 3 and 4 in Condition 1 have been approved by the Planning Authority and a lawful site start achieved.”

And then at the end of the reason the words

“and to ensure that the matters referred to are given full consideration and to accord with section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006”

21. The intention is the same as that for the adjustment sought to condition 1, namely, to secure concomitant clarification that there are valid alternative approaches to the implementation of the permission. The revised wording also seeks to maintain a correlation with the other MSC matters.

22. For the same reasons given above in relation to the requested change to condition 1, I do not consider it appropriate to adopt the amendment to condition 12 proposed by the appellant. It seeks to declare the competency of an application yet to be made, which in my view would not be valid. As the development proposal moves forward, if the requisite applications cannot be made within the statutory time limits set by section 59, individual applications for planning permission can be made.

Condition 21

23. The suggested adjustment to condition 1 relates to the number of units across both sites which should be affordable housing units. This issue only arises in this and appeal PPA-270-2127. The original condition in this case said

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

(Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)”

24. The proposed new condition would delete the words “not less than 22 dwellings” and insert instead the words

“ a number of dwellings not less than 25% of the total number of dwellings to be built“.

25. The appellant’s argument for this is that this variation would remove the prescribed numerical requirement for affordable housing units and replace these with a fixed percentage (25%) of the total number of units constructed on the appeal sites. This would provide greater flexibility than an exact figure while the total number of houses to be constructed on the appeal sites is yet to be determined. A percentage would still provide a relatively precise means of calculation, so the condition would be clear and robust. The amended provision of 25% of the units would aligned with the targets for affordable housing both in Scottish Planning Policy (SPP) and the CNPA's Supplementary Guidance on Affordable Housing, Policy 19.

26. The CNPLDP affordable housing policy 1.4 says that the level of affordable housing required as a contribution on developments of 4 or more open market dwellings will generally be no more than 25% of the total number of units.

27. The CNPA defer to the views of HC, who do not object to the proposed change, but they observe that the number of dwellings proposed for the combined development site under the MSC applications is for a total of 74 houses, so that the provision of affordable

housing would be 18 or 19 houses under the revised terms proposed by the applicant, rather than the 22 originally set by the reporter. The CNPA agree that the number expressed as a percentage is more appropriate, and broadly complies with current LDP policy. However, they regard the proposed wording as too vague, since the percentage relates to the 'total number of dwellings to be built'. The percentage should be based on the number of dwellings granted planning permission at the outset. To phrase it otherwise creates problems of compliance with circular 4/1998 because of difficulties of enforcement. In this case the number of dwellings to be built may change over time as a result of the plot by plot approach. In their view, because of the difficulties of reaching an acceptable development on the site, the overall number of houses which will eventually be built remains undetermined. The applicant's proposed changes to the condition do not provide certainty about the number of affordable units to be provided, nor the point at which they would be passed to a social landlord. In this regard, the explicit reference to affordable housing provided by a social landlord may be too restrictive. Affordable housing can be provided through a variety of other mechanisms. They suggest another approach and a revised condition. Because of the uncertainty they would prefer that the commitment to affordable housing is dealt with through a planning obligation.

28. The original figure for affordable housing of 22 units (referable to the anticipated output from the whole development site, including the appeal site) was based on the numbers of units proposed at PPIP stage. This was before an acceptable approach to the layout of plots had been developed. I consider that the revised figure of 25% of the units to be built, which is the formula based on the development plan, is a more flexible mechanism to accommodate updated circumstances, and would be in accordance with the development plan and national policy. I have modified the condition to provide additional flexibility as to the means by which the provision is made, by omitting the specific reference to a registered social landlord. I have also linked the provision with the numbers of units permitted in this consent, rather than built, because the plot by plot element of the development does provide a degree of uncertainty as to timing, and to the precise numbers which will be built eventually. The condition is based round the agreement with the planning authority of suitable provision, and in my view does provide the necessary certainty and enforceability. There is no need to supplement this with a planning obligation.

Other matters raised

29. The CNPA has said that they cannot fully consider the impact of the proposed development because there is insufficient information about the potential impact on certain natural heritage interests including European Protected Species. I consider that this issue is of limited relevance to the restricted issues before me in this appeal, but I have concluded in the other appeal decisions relating to this site that there is sufficient information about the potential impact on natural heritage interests to allow a conclusion to be drawn that the development can proceed.

30. In their representations the CNPA have promoted the view that as this is a new application process it is an opportunity to impose a new raft of conditions which in their view would lead to a more satisfactory development framework. Whilst that course of action is not closed to me in principle, I do not consider that it would be appropriate to follow it because that would be to consider a very different case from the matters that are before me in this appeal. I would require to have very detailed and persuasive arguments that the terms of original permission should be substantially changed. I do not consider that such arguments have been presented to me. I have followed the usual approach based on the terms of section 42, which is to grant a new planning permission based on the previous permission but modified where necessary by the outcome of this appeal.

31. The CNPA does not argue that the new conditions sought would contravene any of the development plan policies. These adjustments are to a PPIP that has been granted for a development which is on a site allocated for housing in the development plan and, in broad terms, do not represent substantial changes to that PPIP. I consider that the adjustments sought would be in overall accordance with the development plan. I have not identified any material considerations that would lead me to conclude that permission should be refused.

32. A motion for expenses has been made in this appeal and I will deal with this in a separate letter.

Frances M McChlery
Reporter

Conditions

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

- The siting, design and external appearance of all buildings and other structures including all fencing, or alternatively, in the event of the site being developed on a plot-by-plot basis, a design statement in accordance with the requirements of condition 12 and, prior to any individual house being built on a plot, details of the siting, design and appearance of that house;
- The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities
- A detailed landscaping plan, including extensive peripheral tree planting, and

proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors

- Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS).

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

2. The landscaping plan shall be coordinated with that for the adjacent area referred to as South Dalfaber and covered by planning appeal reference PPA-270-2127 and shall include comprehensive details of all species (which should be of indigenous origin), planting location and numbers to be planted, as well as details of height and girth at time of planting and projected growth rates.

(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)

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

(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)

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

(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)

5. All submissions of details for individual house plots shall include a detailed landscaping plan, identifying all existing trees on the plot and identifying those proposed for retention.

The felling of trees within individual plots shall not be undertaken without the prior written consent of the planning authority.

(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)

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

(Reason: in the interests of visual amenity.)

7. All top soil stripped in the course of development shall be stored in mounds not exceeding 2.0 metres in height and shall be retained for subsequent landscaping reinstatement of the proposed development site. All top soil shall be stripped, handled, stored and re-spread in accordance to B.S. 3882:1994 Annex N.

(Reason: in the interests of visual amenity and to maintain the character of existing vegetation in the area.)

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

(Reason: to ensure that considerations both of privacy and of public access receive due consideration in the design, construction and use of the development.)

9. A management and maintenance statement, to be binding during development and occupation of the site, shall be submitted and have the written approval of the planning authority before development of the site is begun. This statement shall cover any play areas, hard or soft landscaped areas, roads, footpaths and cycle links that are not intended for adoption by Highland Council. Details shall be included as to how the woodland and open space will be retained and managed in perpetuity allowing for public access and pathways through the site; and to show how paths for pedestrians and cyclists will link

effectively with off-road walking and cycling routes outwith the site; in particular the layout and specification of paths shall be consistent with future completion, outwith the site, of an eastern orbital path for Aviemore. The surface of all pathways through the site intended to be available to pedal cycles, disabled persons' buggies and baby carriages, other than those intended for adoption by the roads authority, shall be of a material that is both permeable, in keeping with the woodland nature of the site, and permanently firm and smooth, satisfactorily drained and of appropriate breadth to allow passing. Paths intended only for recreational walking or horse-riding shall be of a less formal, permeable surface. The details of landscaping of the site and of paths within it, as required by condition 1, shall be accompanied by details of the management and maintenance statement.

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

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

- (a) detailed proposals to extend the path identified along the golf course boundary to the northern end of the site in order to cross the gully to link with Fisherman's Car Park drive;
- (b) detailed proposals regarding width, specification, and provision of vehicular barriers (such that they are not obstacles to the passage of disabled persons' buggies, baby carriages or pedal cycles) associated with the proposed emergency access route from Spey Avenue, to ensure that the only form of vehicular access is for emergency access only and that it shall otherwise be retained as an informal access route for non vehicular movement;
- (c) provision of appropriately located refuse bin collection points.

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

11. The development shall be carried out in phases, in conjunction with the adjacent development permitted under appeal decision PPA-270-2127. No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a south to north direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the

development.

(Reason: to ensure an orderly sequence of development.)

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

(Reason: for consistency of design principles in the whole development.)

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

(Reason: for consistency of design principles in the whole development.)

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

(Reason: to ensure effective drainage of surface water and to avoid liability to flooding.)

15. SUDS proposals for any phase of development must be implemented and operational prior to the occupation of any dwelling within that phase of the development.

(Reason: to ensure effective drainage of surface water and to avoid liability to flooding.)

16. A detailed site specific construction method statement must be agreed in writing with the planning authority prior to the commencement of works on the site, and must be implemented in full during works on the site. The method statement must address the temporary measures proposed to deal with surface water run-off during construction and prior to the operation of the final SUDS.

(Reason: to ensure effective drainage of surface water and to avoid liability to flooding or

runoff of polluted water during the construction period.)

17. A suitable management and maintenance statement shall be established in respect of any drainage measures that are not to be adopted by Highland Council or Scottish Water. Details of and evidence for the effectiveness of the maintenance proposals shall be submitted with the required details of SUDS.

(Reason: to ensure effective drainage of the site and to avoid liability to flooding.)

18. All public services for the development, including electrical, cable television and telephone cables, shall be located underground throughout the site. All such work shall be carried out prior to road surfacing and junction boxes shall be provided by the developer.

(Reason: in the interests of visual amenity.)

19. Prior to the commencement of development, a programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation, shall be submitted to and agreed in writing with the planning authority. All arrangements thereby approved shall be implemented by the developers at their expense in accordance with the approved timetable for investigation.

(Reason: to ensure the recording and where practicable preservation of any archaeological features or recoverable archaeological information, in the area affected by the development.)

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

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

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

21. The development shall not be begun before *either* the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision of affordable housing units amounting to not less than 25 % of the dwellings permitted on this site and the contiguous site of appeal decision PPA-270-2127; *or* the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing.

(Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)

Advisory notes

1. Notice of initiation of development

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

2. Notice of completion of development

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

3. Road Construction Consent

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

4. Relevant guidance of local roads authority

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