

AGENDA ITEM 7

APPENDIX 2

2023/0007/DET

HABITATS REGULATIONS APPRAISAL

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Planning reference and proposal information	2021/0105/DET Erection of 23 self-catering apartments, shops, hotel and underground parking at land 80m south west of (formerly) Mountain Café, 111 Grampian Road, Aviemore, including connection to public sewerage and mains freshwater.
Appraised by	Nina Caudrey – Planning Officer (Development Planning and Environmental Advice)
Date	20 April 2022
Checked by	Hayley Wiswell – Conservation Officer
Date	26 April 2022

13 February 2023 Update

Application resubmitted - 2023/007/DET. Material change to design resulting in slight reduction in capacity (22 Self-catering apartments) A review of the HRA for Kinveachy Forest SPA (and other capercaillie woodlands) and the River Spey SAC has considered the current assessment to remain valid.

INFORMATION
European site details
Name of European site(s) potentially affected
<ol style="list-style-type: none"> 1. Kinveachy Forest SPA¹ 2. River Spey SAC
Qualifying interest(s)
<ol style="list-style-type: none"> 1. Breeding – capercaillie and Scottish crossbill 2. Atlantic salmon, fresh water pearl mussel, sea lamprey and otter
Conservation objectives for qualifying interests
<p>1. Kinveachy Forest SPA:</p> <p>To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> – Population of the species as a viable component of the site – Distribution of the species within site – Distribution and extent of habitats supporting the species – Structure, function and supporting processes of habitats supporting the species – No significant disturbance of the species <p>2. River Spey SAC:</p> <p>Conservation Objective 2. To ensure that the integrity of the River Spey SAC is restored by meeting objectives 2a, 2b, 2c for each qualifying feature (and 2d for freshwater pearl mussel):</p> <p>2b. Restore the distribution of freshwater pearl mussel throughout the site</p> <p>2c. Restore the habitats supporting freshwater pearl mussel within the site and availability of food</p>

¹ It is recognised that effects on capercaillie at any one of the Badenoch and Strathspey capercaillie SPAs or associated woodlands shown on the map in **Annex I** has the potential to affect the wider capercaillie metapopulation of Badenoch and Strathspey. Attention has been focused in this HRA on the woods likely to be used regularly for recreation by users of the proposed development site, which in this case are Kinvechie Forest SPA and the associated Boat of Garten, Loch Garten, Glenmore and Rothiemurchus woods (woods I, J, K, L, M, N and O on the map). Other capercaillie SPAs and woods were considered during the initial phase of the assessment (see **Annex I question 3**) but detectable effects were ruled out, so they have not been included in this HRA. If however the HRA had concluded an adverse effect on site integrity, or required mitigation, then all of the capercaillie SPAs in Badenoch and Strathspey would have been reassessed in relation to potential effects on the metapopulation.

2d. Restore the distribution and viability of freshwater pearl mussel host species and their supporting habitats

2a. Restore the population of freshwater pearl mussel as a viable component of the site

2b. Maintain the distribution of **sea lamprey** throughout the site

2c. Maintain the habitats supporting sea lamprey within the site and availability of food

2a. Maintain the population of sea lamprey as a viable component of the site

2b. Restore the distribution of **Atlantic salmon** throughout the site

2c. Restore the habitats supporting Atlantic salmon within the site and availability of food

2a. Restore the population of Atlantic salmon, including range of genetic types, as a viable component of the site

2b. Maintain the distribution of **otter** throughout the site

2c. Maintain the habitats supporting otter within the site and availability of food

2a. Maintain the population of otter as a viable component of the site

Conservation Objective I. To ensure that the qualifying features of the River Spey SAC are in favourable condition and make an appropriate contribution to achieving favourable conservation status

APPRAISAL

STAGE 1:

What is the plan or project?

Relevant summary details of proposal (including location, timing, methods, etc)

The proposal is for the erection of 23 self-catering apartments, shops, hotel, parking and associated infrastructure (including connection to public sewerage and mains freshwater). The site comprises land that previously had two dwellings and their associated gardens, which included mature trees. The dwellings, gardens and trees have now been cleared, leaving a brownfield site with a tree belt remaining along the Milton burn. The proposal involves built development across the majority of the site with a small proportion of space for landscape planting. The built footprint will be very close to the Milton burn, which becomes a tributary of the River Spey SAC on the opposite side of the main road adjoining the site (a distance of approximately 6m).

STAGE 2:

Is the plan or project directly connected with or necessary for the management of the European site for nature conservation?

No.

STAGE 3:

Is the plan or project (either alone or in-combination with other plans or projects) likely to have a significant effect on the site(s)?

1. Kinveachy Forest SPA

Capercaillie: yes, there is a risk of likely significant effects from the potential long term disturbance through increased human activity by the addition of the occupants of the proposed development, as explained within **Annex I**.

Scottish crossbill: no likely significant effects, as none of their habitat will be affected. Scottish crossbill are therefore not considered further in this assessment.

2. River Spey SAC

Yes: there is potential for a likely significant effect on all the qualifying interests due to change in water quality affecting the habitats relied upon by the qualifying interests and/or their prey/food, due potential for pollution during construction activity from sediment run off, particularly during the re-profiling and other works in close proximity to the Milton burn, which flows directly into the River Spey SAC approximately 6m downstream.

In addition, disturbance to otter could occur during construction and occupation through human activity, as otter are known to commute and forage along the Milton burn.

STAGE 4:

Undertake an Appropriate Assessment of the implications for the site(s) in view of the(ir) conservation objectives

1. Kinveachy Forest SPA

Distribution of the species within the site:

The distribution of capercaillie within the site will not be affected as additional use of woods (described in **Annex I**) is not likely to result in additional off path activity, therefore this conservation objective will be met.

Distribution and extent of habitats supporting the species; Structure, function and supporting processes of habitats supporting the species:

There will be no effect on the structure, function or supporting processes of the habitats supporting capercaillie as a result of the proposed development, therefore this conservation objective will be met.

No significant disturbance of the species

See **Annexes I-III** for detailed assessment. In summary, there would not be additional disturbance to capercaillie over and above what is already occurring through use of existing routes in woods I, J, K, L, M, N and O. Therefore this conservation objective can be met.

Population of the species as a viable component of the site:

As the other conservation objectives can be met, the population of capercaillie should not be affected and so this conservation objective will be met.

In conclusion, all conservation objectives can be met.

2. River Spey SAC

The proposed development has the **potential to prevent the conservation objectives being met for the River Spey SAC. This would occur due to:**

- **The very high risk of sediment release** entering the Milton burn that flows directly into the River Spey SAC **during construction work**, due to proximity of works alongside the Milton burn. This would affect the water quality relied upon by the qualifying species, and potentially smother habitats supporting the qualifying species and their food, therefore affecting distribution and population levels.

However, the **April 2022 Upland Developments and Envirocentre 'Laurel Bank, Aviemore Construction Environmental Management Plan'** incorporating an outline **Construction Method Statement, submitted to CNPA on 12 April 2022, should address the risk of sediment release** through appropriate pollution prevention and control measures, such that the pollution risk could be minimised. The Construction Environmental Management Plan also includes species protection measures that would **minimise the risk of disturbance to otter. The Construction Environmental Management Plan and Construction Method Statement would need to be secured by condition, should planning permission be granted.**

STAGE 5:

Can it be ascertained that there will not be an adverse effect on site integrity?

1. Kinveachy Forest SPA

Yes, as all conservation objectives are met it is possible to conclude that there will not be an adverse effect on site integrity.

2. River Spey SAC

Provided the below condition is applied to planning permission (should permission be granted), then the conservation objectives will be met and there will not be an adverse effect on site integrity:

Condition: The Upland Developments and Envirocentre 'Laurel Bank, Aviemore Construction Environmental Management Plan' including the outline Construction Method Statement dated April 2022, as submitted to CNPA on 12 April 2022, is agreed in writing with CNPA prior to any works commencing on site, and thereafter implemented in full, in particular the pollution prevention and control measures to prevent sediment entering the Milton burn and the measures to avoid disturbance to otter.

Reason: To ensure pollution does not enter the River Spey SAC and avoid disturbance to SAC otter, and so avoid an adverse effect on site integrity.

Annex I

Laurel Bank: 2021/0105/DET Erection of 23 self-catering apartments, shops, hotel and underground parking land 80M south west of (formerly) Mountain Café, 111 Grampian Road, Aviemore

NOTE: This assessment considers the effects of additional visitors to the area staying at the proposed tourist accommodation. **The assessment would need to be reconsidered should the proposed tourist accommodation be changed at any point to include a residential element.** This is because residents have a different pattern of behaviour over time compared to short stay visitors (ie residents are more likely to explore off path, identify and create new routes over time, compared to people visiting the area for a short period of time).

Q1. Is the proposed development likely to change levels of human activity or patterns of recreation around the proposed development/associated settlement?

Q1: This and Q2 are included as screening questions to filter out any developments that aren't likely to have changed levels or patterns of recreation.

Yes, there would be an increase in the level of human activity (but not patterns of recreation).

The proposed development includes 23 self catering units with 2 beds each, so 4 people per unit, resulting in 92 extra people; plus a 83 bed hotel, which assuming two people per room would result in an extra 166 people; equalling around 270 additional people staying at the proposed development.

The existing population of Aviemore was estimated to be around 3,800 people in 2020 (based on National Records of Scotland 2019 mid-year estimate of the population).

In the planning system, there is consent for additional residential units, as listed in **Annex II**. Using the 2.07 occupancy rate applied for the LDP (in the absence of a robust alternative), this would amount to an additional 609 people, giving a potential population of around 4,410.

The residential elements of the proposed development are aimed at the tourism market. They would provide hotel and self catering accommodation for around 270 people, assuming maximum occupation.

Adding an additional 270 people to the existing Aviemore population (assuming full occupancy year round, which is unlikely given the seasonal fluctuating nature of tourism in the National Park) would increase the current population* by around 7%. This would be a moderate increase in the potential number of people using existing paths and routes, should all the visitors use them (which not all visitors will).

*based on occupancy of existing properties, not including consented but not yet built

The potential population of Aviemore (ie baseline existing population plus consented but not yet built) would increase the baseline existing population by around 16% to 4,410 people. Adding 270 people from the proposed development to this would result in an increase in the potential population of a further 6%.

Consideration therefore needs to be given as to whether the addition of the proposed development on top of the potential population is likely to result in changes in the levels or patterns of human activity and recreation.

While the addition of 270 to the existing or potential populations **will likely result in an increase in the levels of human activity**, this needs to be put into context of existing levels of use by other visitors, as well as residents.

The Aviemore and Glenmore area hosts 1,000,000 visitors a year (<https://www.visitaviemore.com/aviemore-community/>). In the absence of more detailed figures, this would result in around an additional 2,740 people visiting the area each day (assuming that the 1 million visitors are spread evenly over 365 days of the year, which they are not as the tourist season is skewed to summer between June and September <https://cairngorms.co.uk/wp-content/uploads/2016/06/160620VisitorInfrastructureandInformationFINAL.pdf>). In this context, the addition of an extra 270 people would be a moderate addition to the usual levels of use.

There are a number of existing promoted and well used paths and routes in Aviemore and the surrounding area, as seen in the figure overleaf (taken from the Aviemore Paths leaflet https://www.visitaviemore.com/wp-content/uploads/2013/09/CNPA.Paper_.1911.Aviemore-Paths.pdf). There are also informal un-promoted but well used routes that connect with formal paths and roads. Visitors staying at the proposed development (marked by the black star in the below figure) are likely to use the promoted paths, due to information being available about them.

There is no reason to believe that visitors staying at the proposed development would undertake a different pattern of recreation to existing users of paths and routes in Aviemore and the surrounding area.

Aviemore Paths

This leaflet has been developed in partnership with Aviemore and Vicinity Community Council and the Aviemore Business Association.

Aviemore Orbital

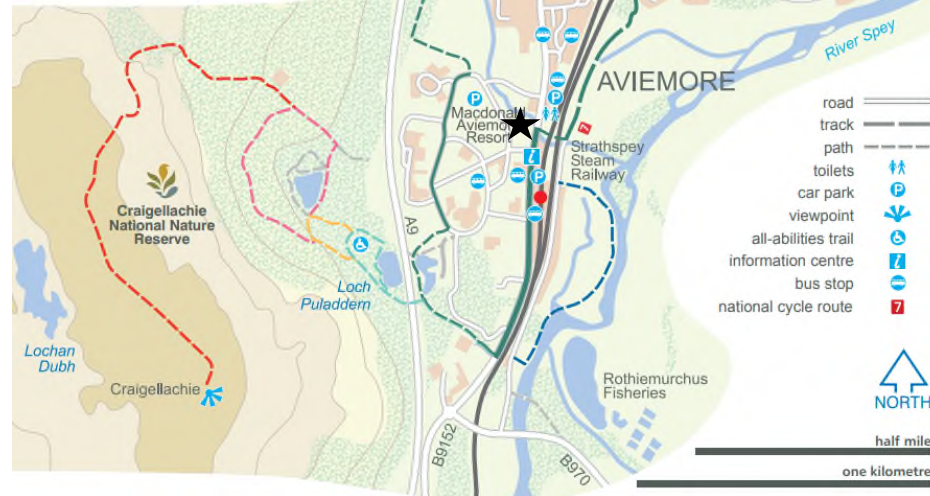
A rich and varied trail taking in Milton Woods and some of Aviemore's hidden heritage.

Distance: 3¼ miles (6km)

Approximate time: 2 hours

Start: Village centre

Terrain: Pavements and minor roads, surfaced paths with some steep sections.



Q2. Are capercaillie woods significantly more accessible from this development site than from other parts of the associated settlement?

Q2: This is included to ensure the effect of otherwise small-scale development sites particularly close to capercaillie woods are adequately considered. Evidence from settlements in Strathspey where houses are adjacent to woodlands indicates that networks of

No. The closest entry point to a known capercaillie wood (**Kinveachy Forest, wood I** on the Badenoch and Strathspey capercaillie woodlands map in **Annex III**, part of the **Kinveachy Forest SPA** for capercaillie and Scottish crossbill) is approximately 2km from the proposed development along either public roads/footpaths or the Aviemore Orbital route and then public roads/footpaths through Milton of Burnside. As this is some distance from the proposed development, and makes use of existing routes, the proposed development site is not more accessible than from other parts of Aviemore.

<p><i>informal paths and trails have developed within the woods linking back gardens with formal path networks and other popular local destinations (eg primary schools). Such paths are likely to be used by visitors.</i></p>	
<p>If Q1 & Q2 = No, conclusion is no significant disturbance to capercaillie and assessment ends here If Q1 or Q2 = Yes, continue to Q3</p>	
<p>Q3. Which capercaillie woods are likely to be used regularly for recreation by users of the development site at detectable levels? (list all)</p> <p><i>Q3: This is included to identify which capercaillie woods are likely to be used for recreation by users of non-housing development sites at levels that would be detectable. The answer will be assessed using professional judgement based on knowledge of existing patterns of recreation around settlements and in the local area, the relative appeal of the capercaillie woods concerned compared to other recreational opportunities in the area, the volume of recreational visits likely to be generated by the development site, and informed by national survey data (eg on the distances people travel for recreational visits).</i></p>	<p>None at detectable levels.</p> <p>The closest entry point to a known capercaillie wood (Kinveachy Forest, wood I on the map in Annex III and part of the Kinveachy Forest SPA) is approximately 2km from the proposed development, located at Milton of Burnside as described in question 2. The tracks and paths in Kinveachy are well used by residents of Burnside for recreation including dog walking, as well as by other residents of Aviemore and other people from the wider area.</p> <p>Due to the distance between the proposed development and the entry point to Kinveachy, it is unlikely that a significant proportion of visitors staying at the proposed development would recreate in Kinveachy, as they are more likely to use other closer and promoted routes, and/or visit other promoted visitor locations in the area surrounding Aviemore, such as Glenmore, Loch Garten and Rothiemurchus.</p> <p>In recent years Kinveachy has become known for downhill biking, with illicit route creation causing disturbance in sensitive capercaillie areas. However, the proportion of people staying at the proposed development who might visit Kinveachy and who would be equipped, inclined and capable of doing the downhill biking routes that are causing existing disturbance issues in the wood would be very small. Visitors are also more likely to use existing downhill routes than create new ones, as they are unlikely to stay long enough to identify potential new routes and create them.</p> <p>It is reasonable to expect people staying at the proposed development to also visit other areas popular for recreation/with visitor amenities, such as Boat of Garten, Loch Garten, and Glenmore and Rothiemurchus – all of which are also locations of capercaillie woods (woods J, K, L, M, N and O in Annex III, which are part of Garten Woods SPA and Abernethy Forest SPA). However, it is very unlikely that all the people staying at the proposed development would go to the same place at the same time – they are more likely to disperse spatially and also temporally. These areas are already well used and so the level of additional activity caused by people visiting from the proposed development would be undetectable compared to existing levels of use.</p> <p>Therefore any additional disturbance in capercaillie woods from people staying at the proposed</p>

	development would be minimal (compared to existing levels of use), on existing paths and routes, and in well used areas of existing disturbance. Therefore the additional use of the woods by people staying at the proposed development as identified above would not be at detectable levels.
Continue to Q4	
<p>Q4. Are residents / users of this development site predicted to undertake any off path recreational activities in any of the woods identified at Q3 at detectable levels?</p> <p><i>Q4: This is included because any off path recreational use in capercaillie woods will result in significant disturbance and require mitigation.</i></p>	<p>No. There is no reason to believe that people staying in the proposed development would not follow existing patterns of behaviour and use existing paths and tracks for recreation and dog walking.</p>
<p>If Q4 = No for any woods, continue to Q5</p> <p>If Q4 = Yes for any woods, mitigation is needed. Note and continue to Q5.</p>	
<p>Q5: Are each of the woods identified at Q3 already established locations for recreation?</p> <p><i>Q5: This is included because if users of the development site are likely to access previously infrequently-visited capercaillie woods, or parts of these woods, for recreation, significant disturbance is likely and mitigation is needed. This will be answered on the basis of professional knowledge.</i></p>	<p>Yes. See answers to questions 1, 2 and 3.</p>
<p>If Q5 = No for any woods, mitigation is needed. Note and continue to Q6.</p> <p>If Q5 = Yes for any woods, continue to Q6</p>	
<p>Q6: For each of the woods identified at Q3, are users of the development site predicted to have different temporal patterns of recreational use to any existing visitors, or to undertake a different profile of activities? (eg. more dog walking, or early morning</p>	<p>No. The woods are all already well used at a variety times of day for walking, running and cycling, as well as dog walking, by both residents and visitors to Aviemore and the wider area. Visitors staying at the proposed development are unlikely to undertake a different temporal pattern or profile of activities compared to existing use.</p>

use)

Q6: This is included because some types of recreation are particularly disturbing to capercaillie; and increased levels of these types of recreation will cause significant disturbance and require mitigation. This will be answered on the basis of professional knowledge on existing patterns of recreational use and whether each location is sufficiently close and/or convenient in relation to the development site and patterns of travel from there, to be used by users of the development for different recreational activities or at different times of day. For example, capercaillie woods with safe routes for dogs that are located close to development sites are likely to be used for early morning &/or after work dog walking.

If Q6 = yes for any woods, mitigation is needed. Note and continue to Q7

If Q6 = No for any woods, continue to Q7

Q7: For each of the woods identified at Q3, could the predicted level of use by residents / users of the development site significantly increase overall levels of recreational use?

Q7: This is included because a significant increase in recreational use could result in significant disturbance to capercaillie, even in situations where the capercaillie wood is already popular for recreation, and no changes to current recreational patterns / activities or off path activities are predicted. The answer was assessed on the basis of professional judgement of current levels of use and whether the increase is likely to be more than approximately 10%.

No. There would not be a detectable or significant increase in human activity in **Kinveachy Forest** or the capercaillie woodlands associated with Boat of Garten, Loch Garten, and Glenmore and Rothiemurchus (**woods I, J, K, L, M, N and O in Annex III**).

If Q4-7 = No for all woods, conclusion is no significant disturbance to capercaillie and assessment ends here

If Q4, 5, 6 and/or 7 = Yes for any woods, mitigation is needed

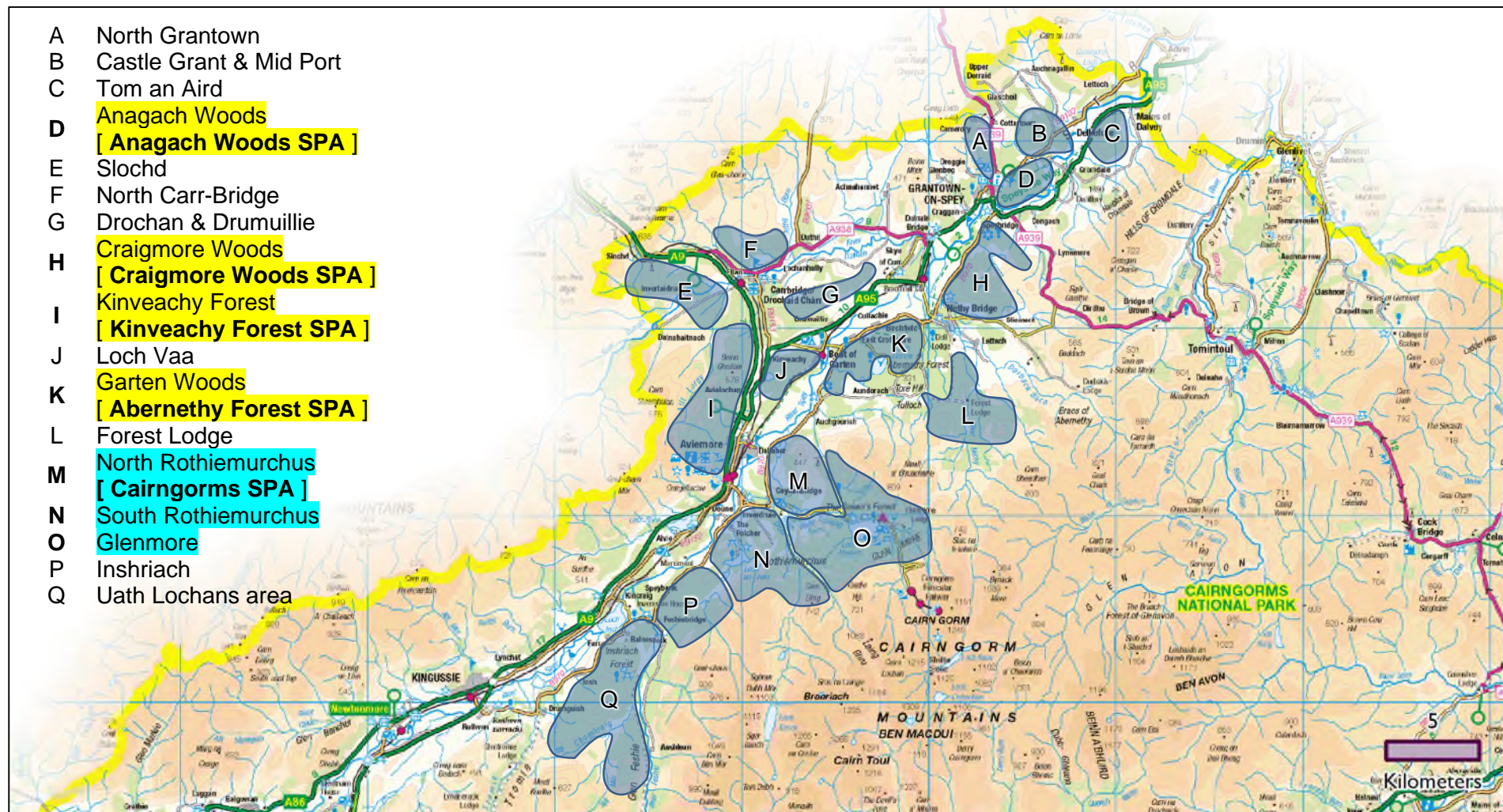
Conclusion: Is mitigation needed as a consequence of this development site in relation to each wood listed at Q3?	None required.
Reasons mitigation needed:	n/a

Annex II – information on planning applications with consent but not yet built

The number of people per application site has, unless otherwise stated, been calculated using the 2.07 person occupancy figure used for the LDP assessment as explained in the answer to question 1 of this document:

- **GRAMPIAN ROAD NEAR ACHANTOUL 3 people based on number of guest beds per the approved floor plan:** 20/03708/FUL Conversion of garage annex to form guest bedroom accommodation, Carn Mhor Guest House, The Sheiling, Aviemore, PH22 1QD
- **INVERDRUIE 13 people:** 2016/0158/DET Erection of 6 dwellings, upgrade current access point and a new access track formed; private drainage (shared treatment plant and soakaway), Land 175M SE Of Heatherbank, Rothiemurchus, Aviemore
- **SOUTH END OUTSIDE AVIEMORE 2 people:** 20/04360/FUL Demolition of garage and replacement with double garage with granny flat, Kinmundy, Grampian Road, Aviemore, PH22 1RH
- **SOUTH END OF AVIEMORE LA TAVERNA 8 people based on 4 double beds in each unit as per the approved floor plan:** 19/00846/FUL Construction of 4no. units for holiday letting, High Range Motel, 19 Grampian Road, Aviemore, PH22 1PT
- **NEXT TO HAPPY HAGGIS 56 people:** 2019/0363/DET, Erection of three blocks of flats (27 units) with associated parking and access, Development Site On Former Filling Station Grampian Road Aviemore Highland
- **NEAR HOSPITAL 34 people:** 2019/0298/DET, Spey House Phase 2 - Development of 14 no dwellings including 6no terraced houses, 4no bungalows and 4no cottage flats, Land 20M South East of Spey House, Cairngorm Technology Park, Dalfaber Drive, Aviemore
- **Part of H1 in LDP: 193 people:** Applications associated with 2018/0184/MSC Satisfy the Conditions of Planning Permission PPA-270-2126 for residential units, Land North West Of Dalfaber Farm, Dalfaber Drive, Aviemore
- **PART OF H2 in LDP: 79 people:** 2016/0224/DET Proposed 30 flats and 8 terraced units, Land 30M West Of 31 Allt Mor, Aviemore
- **PART OF AHR MI in LDP:** 33 units of the 140 already built, so for the remaining units it will be **221 people:** 05/306/CP Erection of 140 dwellings, construction of roads and services and landscaping, Horse Field (Land North Of Scandinavian Village), Aviemore

Annex III – Badenoch and Strathspey capercaillie woods map



Capercaillie woodland in Badenoch and Strathspey.

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