

AGENDA ITEM 5

APPENDIX I

05/495/CP

**REPORTERS DECISION
GRANTING
OUTLINE CONSENT**

**SCOTTISH EXECUTIVE**

Development Department
Inquiry Reporters Unit

4 The Courtyard, Callendar Business Park
Callendar Road, FALKIRK FK1 1XR

DX 557005 FALKIRK

Telephone: 01324 696 «Ext»
Fax: 01324 696 444

http://www.scotland.gov.uk/planning_appeals/seiru

Your ref: AVIE0001/bwm/jew
Our ref: PPA/270/312

1 February 2005

Dear Sir,

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND SCHEDULE 4: APPEAL BY HIGHLAND AND AVIEMORE DEVELOPMENTS LTD: OUTLINE PLANNING PERMISSION FOR RESIDENTIAL DEVELOPMENT WITH AMENITY WOODLAND, ROADS, CYCLE-WAYS, AND ANCILLARY WORKS: LAND BOUNDED BY CRANNICK PARK, ROWAN PARK, AND CARR ROAD, CARRBRIDGE.

1. I refer to your client's appeal, which I have been appointed to determine. This is against the refusal by The Highland Council to grant outline planning permission for residential development with amenity woodland, roads, cycle-ways and ancillary works on land at the above location on the south east side of Carrbridge. I made an accompanied inspection of the appeal site and the surroundings on 10 January 2005 and I have considered the exchange of written submissions. For the reasons explained in this letter, I have decided that the appeal should be allowed.

FACTUAL BACKGROUND

2. The appeal site (precise extent not stated) is an extensive area of woodland (predominantly but not entirely commercial plantings) with open fields at its south west and north east extremities. The habitats in between include water-logged areas of woodland and clearings. The site extends from the east side of Main Street, south of the limit of development opposite the Landmark Forest Theme Park where it has a 90m frontage to the B9153. It extends around the south eastern side of the village. It finally presents a 350m frontage to Carr Road - at which point the site consists of level grazings. This is opposite Carr Place, a relatively isolated former local authority development of a dozen houses. To generalise, one could describe the overall topography as fairly level, but on close internal inspection it reveals several undulations interspersed with lightly flooded areas and bog as well as varied tree cover. A Sustrans cycle track used by foresters severs the eastern 30% of the site from the remainder. This route heads south east from Carr Cottages which lie near the inner (west) end of the frontage to Carr Road.

3. Apart from the outer main frontages to the B9153 and to Carr Road, the site can be entered at 3 other points from development roads within the village. Its south western part can be



1 February 2005

entered from the modern carriageway in Crannick Park, a development of 16 private houses. Its inner north western corner can be entered (only on foot) by an informal gap on Ellanwood Road, a post-war development of terraced houses. Much the same part of the site can also be entered where a short length of carriageway peters out on the north boundary. This comes off Carr Road to serve a development of about 17 private houses in Rowan Park, a cul de sac which mainly runs east west and defines much of the western part of the northern boundary of the site.

4. Your client's outline planning application is supported by a 1/1250 scale indicative layout plan and other drawings. It proposes 'housing/amenity woodland & formation of roads & cycle/footways with associated ancillary works'. The layout plan shows a single vehicular access to the B9153 at a point 145m south of the entrance to Crannick Park. The main spine road would serve 117 house plots, 24 of them for affordable units to the south of this road directly after it enters off the B9153, and another 4 'private plots' opposite. After passing through an undeveloped area about 140m deep, which accommodates overhead power lines, the spine road would then reach the main development area. This occupies something of a satellite location to the east of the main area of bog woodland and straddles the Sustrans track. This area would be served by a loop road and a total of 4 spur roads. Surviving woodland would enclose the development on its east and south sides and to a lesser extent on its west side clear of the bog woodland, while a substantial strip of new planting is shown alongside Carr Road opposite Carr Place. Apart from footpaths linking the development with Carr Road and Ellanwood Road, the other main feature shown is a row of 5 separate plots south of, and parallel to, Rowan Park. These are indicatively shown as being served by an extension of that existing cul de sac.

5. In response to consultations undertaken by planning officials, in summary the following positions were expressed: -

- The Carrbridge & Vicinity Community Council expressed concern about the addition of 117 houses to the present village stock of 403, and suggested phasing at a rate of 12 completions per year with affordable housing increased to 50%. Concern was also expressed about the inadequacy of the public water supply, especially in summer, and about the suitability of Carr Road and parts of Main Street as routes to school. Another concern related to tree felling for visibility at the site access and the associated visual impacts which would call for additional screening. No concern was attached to the incompatibility with the local plan since this was considered out of date, but assurances were sought about how the outer boundaries would be handled in the hope that impacts on wildlife could be minimised. The following points were added in a later response; (1) that permission should be withheld until the European Commission has completed its examination of an application affecting Nethy Bridge School Wood, and; (2) undeveloped amenity land should be gifted to the village, under the terms of a Section 75 Agreement.
- Scottish Natural Heritage expressed no objection, pointing out that the site carries no natural heritage designations, but the agency tabled very extensive comments, recommendations and suggestions covering aspects in respect of which natural heritage impacts could still be usefully mitigated.
- The Areas Roads & Community Works Manager raised no objection in principle, but specifically opposed the 5 plots immediately south of Rowan Park on account of the poor junction visibility on Carr Road. He recommended that; (1) all drainage should be designed to achieve a '1-in-200 year' standard of flood protection for both the development itself and all properties downstream, and; (2) that the 30 mph limit should be moved south of the site

(6) The inevitably car-dependent and unsustainable nature of the development, with additional traffic congestion in the southern part of Main Street, and possibly on the substandard Carr Road. In addition, the proposed cycling and walking routes would appear overly-dependent on conventional roads, including Carr Road with its many shortcomings.

(7) The development would isolate and enclose a large area of bog woodland which is an important habitat, the hydrological balance and integrity of which would be disturbed. The intrusion of a modern estate especially in the southern part of the site, with domestic pets etc, could threaten the attractiveness of surrounding woodland to species such as capercaillie, red squirrel, narrow-headed ants and badgers, the presence of the latter justifying a full Environmental Assessment. At least consideration should be given to the withdrawal of Permitted Development rights in the interests of natural heritage.

(8) Loss of privacy and outlook for properties in Rowan Park, where no woodland buffer is proposed and where further development pressure could be anticipated. It was claimed that there may be no right of access into this area from the north.

(9) Several additional points were made, i.e. about; (i) the undesirable loss of woodland of recreational and amenity value; (ii) the loss of an area used for the Boys Brigade Camp opposite Carr Place; (iii) the prejudice to existing proposals for a community woodland; (iv) the need for safeguards to ensure that a developer does not come back with further applications to develop amenity areas, and; (v) the case for more screen planting along the south side of Carr Road.

7. Outline planning permission was withheld for the following reasons: -

"1. The Adopted Badenoch and Strathspey Local Plan, by virtue of its age and allocation of housing land at the site or parts thereof, is both flawed and out of date. The proposed development would, therefore, represent a form or nature of development which would be detrimental to the character and appearance of Carrbridge.

2. The proposed development, by virtue of its scale, location and its potential effect on the character of the community of Carrbridge, is premature to the preparation of the Cairngorm National Park Local Plan."

8. The main development plan provisions mentioned in the written submissions are as follows: -

(1) From the Badenoch and Strathspey Local Plan (1997):

- Housing land allocations in this general location as shown on the proposal map and covered by proposals listed in the schedules at paragraphs 5.1.1 & 5.5.2 of the plan.
- Policy 5.5.3 seeks to protect significant groups of trees including one in the extreme south western part of the site.

(2) From the Highland Structure Plan (2001):

- Policy G2 "Design for Sustainability" lists 13 criteria against which applications will be assessed. These cover matters such as the adequacy of infrastructure, accessibility by travel modes other than the car, energy efficiency, protection from natural hazards and

incompatible adjoining uses, a preference for brownfield sites, impacts on amenity and on non-renewable resources such as mineral deposits and farmland, impacts on the natural and built heritage, sensitive positioning and materials, crime prevention, social inclusiveness and contributing to economic and social development of communities. The policy concludes "developments significantly detrimental to the terms of the above criteria will not accord with the structure plan".

CASE SUMMARIES

9. For the Appellant you point out that the application was refused against the advice of planning officials, and this enables support to be drawn from the terms of the relevant committee report. This is the second of two schemes for this general area, the earlier one having attempted to confirm by the terms of a planning permission the explicit provisions of the development plan as they apply to Carrbridge. It was only while that application was under consideration that practical difficulties emerged. It became clear that the better way of securing the intentions of the development plan would be by the submission of this second application. This has involved the redefinition of the area to be developed, leaving land safeguarded for environmental purposes.

10. It is significant that the scheme succeeded in resolving earlier objections by Scottish Natural Heritage and by roads officials. You have submitted extracts of the Badenoch and Strathspey Local Plan (1997) to demonstrate the way in which the proposal tries to deliver its provisions. These were established in the light of normal levels of public consultation. The limited variations now proposed have been triggered by information becoming available that had not been to hand when the local plan was drafted. The appeal proposal is the only solution that can reconcile the intentions of the local plan with the detailed characteristics of this location. Developers are entitled to look to local plans with confidence, and to take from them a clear vision of how an area is to be developed. The local plan is by no means out of date by present standards for such a rural area. The structure plan has introduced nothing to justify dropping this expansion of Carrbridge. Expansion in this direction has been a long understood intention.

11. You emphasise that the relevant committee report contains a thorough analysis by planning officials of the ways in which the proposal conforms to the objectives, spirit and principle of the local plan. The report indicates the creative way in which the infrastructural and environmental issues (not foreseen in 1997) have been reconciled with the intentions of the local plan. You commend the entire approach of planning officials in this case, since local plans would never reach adoption if they were expected to resolve every variable factor before land allocations are finalised. It is remarkable that the author of the supportive committee report is the very same official who has been tasked with the resistance of this appeal.

12. Additionally you point out that the National Park Authority had been unaware of the supportive background circumstances, and that some of its assertions are factually incorrect. Some were based on speculative comments by individuals attending a public meeting - i.e. erroneous statements about the adequacy of the water supply and school capacity.

13. The planning authority has responded to the appeal by reviewing the background in non-contentious terms. It specifically agrees that the earlier application (which was withdrawn) was "in effect, entirely in compliance with the local plan in terms of the extent of the housing allocations contained within the plan" and an extract is produced to demonstrate this fact. The authority recognises that the subject application was submitted in order to overcome the concerns expressed by SNH and by roads officials. Its key differences are (1) the dropping of a through road connection

to Carr Road, but for the 5 plots off Rowan Park, and (2) the avoidance of the bog woodland by displacing the development footprint further out. It is only the latter aspect that caused the application to be advertised as a development plan departure. This resulted in a hearing and extensive deliberations.

14. On the face of it, the local plan is 7 years old, but it had obviously been in preparation for some years before adoption, the final draft having been prepared fully 10 years ago. The allocation south east of the village covered the area of bog woodland, but this habitat has since assumed greater importance. The original allocation was made in good faith but is clearly flawed in this light. This would not be repeated nowadays. The Highland Structure Plan was approved in 2001. It includes policies on sustainability (reference is made to its policy G2 as an example). The structure plan takes priority where there is any inconsistency with the local plan. Local residents argued very persuasively that they had not 'signed up' for the expansion envisaged in the local plan. That dates from a vanished age when insufficient weight was attached to natural heritage interests.

15. Such a scale of expansion would have a great impact on the local community, especially if it takes place over a short period. Officials had proposed careful phasing but there would be significant 'start up' disruption and the development would have a very tenuous link with the village in the shape of a long cul de sac. The footpath and other circulation proposals cannot rectify this distant relationship. The whole area would have its character transformed when preparatory tree felling and other site works take place. The high recreational value of this woodland would be lost almost at a stroke. The split of the village would be replicated at a social level, an issue which particularly concerned elected members. The allocation shown in the local plan was to be built out gradually. Although the number of proposed houses is not at odds with the scale of expansion proposed in the local plan, this type of development cannot be integrated into the village in the way originally contemplated. This is not to say that the local plan is out of date in respect of every other location in Badenoch and Strathspey.

16. The National Park Authority came into office in September 2003, and its intention was ~~always to bring forward a park-wide plan as soon as possible; this intention was also borne in mind~~ when the application was determined. A Notice of Intention to Prepare a Local Plan has been published since the application was refused. The National Park Authority wants to have in place a plan for which local communities are 'signed up'. Accordingly the associated exercise should be allowed to progress, with its associated public participation.

17. Had it not been for the designation of the National Park one might suppose that the council would by now have embarked on a review of the local plan. This would certainly have involved serious revision of the 1997 land allocations for Carrbridge. The existence of the National Park is itself a new material consideration. On this basis the Scottish Ministers should consider recalling } ?
jurisdiction in this appeal.

18. Carrbridge & Vicinity Community Council responded to the appeal by emphasising the extreme local concern over the scale of the proposed expansion, suggesting that the number and types of houses proposed are more weighted to the interests of the developer than those of the village. It is feared that the scheme will simply provide second homes and a base for commuters. The needs of the village would nevertheless be met by an annual limit on the number of houses, enabling the community to adjust. This also applies to the affordable housing element, because if this is all released early on, then local demand may be exceeded only for a mismatch of a different type to emerge later. This element should therefore be released gradually, through the lifetime of the development. Concern is also expressed about the flood risk and about whether the bog woodland

can be satisfactorily conserved. Although the appellant claims to have undertaken a hydrological survey of the site, no evidence of this has been seen. There remains concern that the development will create a flood risk not only within the site, but perhaps for existing development as well. At the very least, extensive planning conditions are called for.

19. The Woodland Trust suggests that, although the existing woodland is not included in the SNH Inventory of Ancient Woodlands, it contains features that could be associated with an ancient woodland and it may have been excluded from the inventory in error. In any case the southern part of the site abuts an area of woodland that is included as being of 'ancient or semi-natural origin'. This juxtaposition would be detrimental to the biodiversity of this woodland. That was part of the reasoning for the local plan excluding the southern part of the site from the expansion area. Very little of Scotland's ancient woodland is properly protected, despite the supportive policy background to be found in National Planning Policy Guideline 14, PAN 60, the Nature Conservation (Scotland) Act 2004 and various other documents including the UK Biodiversity Action Plan and the Nature Conservation (Natural Habitats & c) Regulations 1994. The Invertebrate Conservation Trust ('Buglife') adds, in summary, that the site should be protected from development since it supports colonies of Narrow-Headed Ant and Cousin German Moth. This area is believed to support 1% of the UK population of the former, and the loss would therefore be of national significance.

20. Individual objectors specifically responding to the appeal also found on the designation of the Cairngorms National Park and on the prospect of a park-wide plan emerging. They also point to the range of protected species frequenting this and neighbouring woodland. Some suggest that the application is being brought to appeal precisely to head off the tighter policy regime likely to result from the park-wide plan. Some point out that whatever degree of local acquiescence accompanied the adoption of the local plan, as it stands this plan does not reflect the views of the community today. Most argue that Carrbridge cannot cope with this scale of development - whether environmentally, socially or in respect of public services (especially water supply). Some suggest that objectors are in the majority locally, and several argue that the scale of the proposal, should it proceed at all, should be cut by 50%. Even this scale of expansion should be phased over 5 years. One objector opposes any enlarging of communities in the Cairngorms National Park, favouring carefully sited new settlements instead.

21. Attention is also drawn to a recent initiative involving the formation of a local limited company set up with the aim of enhancing the village, and which is planning to negotiate the release of sites for affordable housing. It is pointed out that young local adults tend not to command high wages if they remain employed locally, and that they face enormous challenges finding any sort of accommodation in which to bring up young families. Smaller affordable housing schemes which respect the character of the community are preferred. This sort of approach stands in marked contrast to the appellant's attempt to push through this proposal in defiance of local opinion. The appellant has attached insufficient importance to; (1) the need to integrate the development with the community, and; (2) the vulnerable natural habitats and wildlife in this area. Several argue that affordable housing for locals is certainly needed but not as part of a large speculative scheme. Exception is taken to the extremely peripheral site proposed for the affordable dwellings, and to the overall layout which could lead to demands for a vehicular link to Carr Road.

22. Several objectors are concerned about the flood risk and about the effect of the development on site hydrology. They have seen no evidence of attempts to assess these impacts, but evidence elsewhere in the village suggests that development would be accompanied by additional 'puddling' when the water table rises.

In addition the residents of Rowan Park refer to the way in which their immediate environment would be affected, but have been at pains to avoid 'NIMBY' arguments, relying instead on wider community issues. Mrs Mary Scanlon MSP has written expressing support for constituents in Rowan Park, particularly their points that the National Park Authority should now determine local planning policy for the area, and the fact that the above local initiative is under way to secure properly integrated affordable housing. Mr Fergus Ewing MSP has also written in support of the case for more affordable housing, pointing out that the above local initiative should be allowed to gather pace. It is important to ensure that genuinely affordable housing emerges and that safeguards are in place to prevent it migrating into mainstream housing, particularly the second home market. Concern is also expressed about the size of the development, as well as doubts that it would represent an effective way of providing affordable housing for locals. On a point of detail Sustrans wishes to see National Cycle Route 7 maintained through the development as a path of 3m minimum width with lighting in a landscaped corridor.

CONCLUSIONS

24. Section 25 of the Act requires the determination in this case to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The most relevant parts of the development plan are summarised at paragraph 8 above. In this light from my site inspection and the written submissions, I consider the determining issues to be:-

1. Whether the development would be consistent with the above provisions of the development plan.
2. In the event of serious friction arising in the above connection, whether material considerations nevertheless justify exceptional approval.

25. On the first issue I find that 100% consistency with the development plan is obviously out of reach. The earlier application, which was withdrawn, proposed a development footprint that would have matched the local plan allocations, and the appeal proposal is an attempt to circumvent the practical difficulties that emerged while delivering the general scale of development envisaged. According to the Area Planning and Building Control Manager this is "the best strategic direction for expansion of the village" taking account of several factors including - in summary - the absence of any obvious alternative expansion option. I consider the SNH and roads objections to the earlier scheme to be sound, and in the above light I agree that the inconsistency with the local plan allocations does not represent a fatal difficulty. I agree with the advice given to elected members, in so far as this application would deliver the local plan allocations as closely as possible. I incidentally accept that local plan policy 5.5.3 does not present fatal difficulty either. Although it strictly covers all trees in the parcels it covers, its authors would surely have had in mind the mature group well back from the access junction in the south of the site. I see no reason why this group cannot be safeguarded. Drawing these matters together, I conclude that there are limited areas of friction with the local plan, but that the proposal is as compatible with the local plan as it reasonably can be.

26. I do not consider that policy G2 in the Highland Structure Plan poses serious difficulty for the appeal. It escaped mention in the report to elected members and on the refusal notice. This completely new issue was introduced only when the appeal was a month old. These facts limit the weight that I can attach to this policy. However, it is impossible to identify whether each of its criteria is of equal weight, or which are the most important. They are expressed as a general basket of tests without any indication that each and everyone must be passed. The council's consultation

replies reveal no infrastructural objections, nor transport criticisms, nor any concerns about flood risks (although I agree that the water table calls for careful handling). No alternative brownfield opportunities are in play and I can only entertain the site at appeal. SNH did not object, and most of the amenity issues can in my view be resolved at the detailed stage. The structure plan is not site-specific, and my attention has been drawn to no provisions in this plan demanding urgent reappraisal of the housing land supply equation in Carrbridge.

27. I therefore judge that the first determining issue does not obstruct the appeal to any significant degree. It is true that there are limited inconsistencies with the development plan, but elected members were correctly advised that these are tolerable in the circumstances. Accordingly, I need only address the second determining issue (material considerations) in the interests of completeness. Common sense in any case demands that I address the principal additional matters that parties have relied upon.

28. To my mind the principal material considerations are as follows - in no particular order; (1) the balance of the policy background, and the onset of a new policy regime in the Cairngorms National Park; (2) the extent to which the site can contribute affordable housing, as opposed to any other option; (3) housing need and the case for phasing; (4) habitat and wildlife impacts; (5) design and layout, plus impacts on the character of Carrbridge, including the approach from the south; (6) infrastructural matters including surface water behaviour and access considerations, and; (7) the direction and weight of local public opinion.

29. On the first of these matters I cannot attach significant weight to the prospect of a new development plan for the whole Cairngorms National Park emerging in the near future. There is no clear indication when this might occur. The Area Planning and Building Control Manager describes this exercise as "overdue". The intention to prepare a plan for the National Park has only recently been advertised. In trying to distance itself from the extant local plan the council has pointed out that this took several years before it could be adopted. There is no indication when even the most tentative consultative draft plan for the National Park might emerge. One can only speculate on its contents as well as on the extent to which they may vary as the statutory procedure unfolds.

Reference has been made to the Habitats Directive and the associated Regulations but there is no indication that the views summarised at paragraph 19 above are based on detailed site surveys by their authors. Neither body was among the original objectors. The Woodland Trust disclosed in October 2004 that the appeal had been very recently brought to its attention. In any case the site is huge for the amount of development proposed, and there is ample scope within its boundaries for valid concerns of this nature to be addressed at the detailed stage. The balance of the policy background, over and above the development plan, accordingly cannot be allowed to obstruct the grant of outline planning permission, suitably conditioned.

30. On the second material consideration, I have been presented with no hard or detailed evidence of any other affordable housing initiative for specific sites in Carrbridge. Reference has been made to the recently formed local company "Carr-Bridge Ahead" which hopes to negotiate the purchase of suitable sites for affordable housing. This situation does not present me with a tangible alternative, far less any time-scale in which it might be brought to fruition. In contrast, the appeal proposal indicatively suggests affordable housing near the access point. The practicalities of developing such a large site imply that this component would be among the earliest to be built. I do not imagine that very many local young adults would appreciate me discarding the presently proposed affordable units while this other young and still emerging initiative gradually matures and comes forward with specific projects. One of the directors of "Carr-Bridge Ahead" writing in October 2004 has described this as a "fledgling" company. I am therefore convinced that the most

February 2005

promising vehicle for the early local provision of affordable units would be the conditional success of this appeal. I hope that the two agendas are not mutually exclusive. I would have had considerable difficulty accepting this scale of development without a significant affordable housing component. I recognise that the indicatively chosen location for the affordable units is unorthodox but at least it is on a bus route. In any event this is an outline application and there can be no question of me approving the detailed layout in this letter.

31. Turning to the scale of the affordable housing element I am hindered by the absence of clear and quantified evidence of local housing need. I nevertheless accept that there is a strong case for insisting on the inclusion of a proportion affordable units. This is because; (1) a great many parties concur on the matter; (2) the report to elected members specifically addresses its phasing; (3) there are several references to the mechanisms involved, and; (4) there are repeated references to a well known housing association which I assume has been positively involved in discussions. However, no local needs survey has been produced to inform me of how high the affordable housing component might reasonably be pitched. Relying on the 24 affordable units volunteered I consider this 20% (approx.) level to be not out of the ordinary. I have no reliable basis for pitching it differently, far less at 50% as several have suggested. Many reasonable people would prefer a higher level and I frankly join them. I have seriously considered insisting on additional affordable units in later phases. However, I must proceed on the best evidence available, not on preferences or instincts. I trust that provision in later years will be assisted by the new initiative discussed at the beginning of the previous paragraph.

32. Turning to the third consideration listed at paragraph 28, I note that the committee report advises that the local housing market would sustain 39 house completions over the period 2004-2007. From the language used I assume that this excludes the affordable units. It follows that the remaining 93 units would match current completion rates for about 6 years (ignoring the tendency of supply itself to induce a degree of mobile demand). This pace is precisely what the Area Planning & Building Control Manager had in mind in the planning conditions attached to the committee report. This seems a reasonable way to proceed, helping the community to adjust in stages and meeting some of the concerns that have been expressed.

33. The fourth consideration (habitat and wildlife impacts) was an insufficient basis for SNH to sustain its earlier objection. The application responds to the agency's earlier concerns. The Royal Society for the Protection of Birds indicates that its concerns could be largely mitigated if attention is given to open space provision, with the footpath network avoiding the most sensitive areas, and with appropriate signage. I recognise the validity of concerns about indirect impacts on wildlife in the woodland round. However with the scale of the site and the outline nature of the application, there are extensive opportunities for mitigation at reserved matters stage. I am not sure that these issues would have been very different had the proposal adhered to the precise allocations in the local plan. Partly for the same reasons, I do not accept that the character of the village would necessarily be harmed in any serious way provided details are addressed with sensitivity and subject to phasing. I share concerns about potential visual impacts at the southern village entrance, and agree that additional planting is required to create a frontage that, in time, would amount substantially to a continuation of woodland further south. With suitable conditions, this sort of concern can be addressed at reserved matters stage. This paragraph had addressed the fifth consideration in addition.

34. In relation to the sixth material consideration I have searched in vain through all the papers for evidence of serious infrastructural problems. There is of course the substandard geometry of Carr Road, and the poor junction visibility at Rowan Park. However these matters can be addressed

by conditions, and can be partly handled at reserved matters stage depending on whether satisfactory junction visibility can be negotiated. I see a case for only very limited development (say a couple of houses) in that part of the site in order to help secure the provision of major footpath links around the bog woodland, unless of course 5 plots can be justified in the light of improved junction visibility. With uncomplicated consultation responses coming from the Education Service and from Scottish Water, I am in no position to support objectors' concerns about school capacity and the adequacy of the water supply. As for the flood risk, S.E.P.A. observes that that site lies outwith the indicative limits of flooding for the River Dulnain, but suggests that the behaviour of surface water within the site may merit further study. From my site inspection I agree with that position. Given the size of the site I am unconvinced that this further study is a pre-requisite of outline permission being granted. Some hydrological work has reportedly been undertaken but I have not seen details. Although some reasonable concerns have been expressed, I do not find that infrastructural issues should stand in the way of the appeal.

35. It is asking much to suggest that I should discard an adopted local plan, even one that is 7-8 years old. However, I cannot ignore the weight of local public opinion - the seventh material consideration. A total of 28 village households lodged timeous responses to the application, and another 6 followed before it was determined. Of these 34 approximately 60% live adjacent to or - in my estimation - within a stone's throw of the site, 8 of them in Rowan Park and whose particular anxieties are understandable. Nevertheless, ignoring all such distinctions, it emerges that concerns have been expressed by about 8.5% of all households within Carrbridge. This percentage assumes that all 403 houses (a total reported by the community council) are main residences, which is unlikely given the second-home market hereabouts. Nevertheless, even if this percentage were doubled or trebled it would hardly represent overwhelming evidence of a groundswell of local opposition. Whatever additional evidence may exist, being restricted to evidence actually submitted I conclude that this material consideration cannot overpower my other reasoning. This conclusion is supported by the carefully measured and constructive terms of the community council's responses.

36. Drawing together all these matters (from paragraphs 24 - 35 above) I conclude that the ~~proposal does not offend the development plan to any serious degree.~~ In other words the limited inconsistencies that arise are tolerable in the circumstances. This was the view reasonably taken by the Area Planning and Building Control Manager. Furthermore material considerations, which I have explored largely in the interests of completeness, do not stand in the way of the appeal.

37. Turning to detailed controls I therefore adopt planning conditions substantially along the lines of those put to elected members, subject to a little refinement and adjustment.

38. Reference has been made to the possible use of a Section 75 Agreement to cover matters such as; (1) the handing over to the community or some other agency of amenity land; (2) the abandonment of surviving land allocations on this side of the village; (3) the provision of affordable housing in accordance with council criteria; (4) the longer term provision of additional affordable housing if it proves necessary; (5) a council commitment to a Compulsory Purchase Order for any necessary off-site works that the developer cannot otherwise secure - with the developer bearing associated council costs. I address these points in the next paragraph.

39. Circular 12/1996 has escaped mention but I must keep it in sharp focus. It expects planning conditions rather than legal agreements to be used "wherever possible" and indicates that suspensive conditions can often be used to the same effect. In my experience such an approach can readily deal with point (1) in the foregoing paragraph. Point (2) will be achieved in practice by any responsible planning authority keeping in mind the reasoning in this decision letter. Point (3) above is in my

experience routinely covered by planning conditions. Point (4) cannot be insisted upon - being based upon fortune telling of a hopelessly open-ended nature, and because such an approach would involve the re-definition of the substance of the permission applied for. Point (5) can obviously be achieved by a council resolution independently of this decision, if necessary. It is no basis for delaying the outcome. I am therefore certain that a Section 75 Agreement is unnecessary, even had this precise approach been in all respects appropriate. The fact that I have seen no draft, far less a legally secure conditional agreement, is therefore not the source of practical difficulty that it could have been.

40. There is one final point. The suggestion by the council that Scottish Ministers should recall jurisdiction in this appeal was incidentally ventured when the appeal was almost a month old. By that time the choice of procedure had already been given very careful consideration. It has remained for me to discharge the terms of my Minute of Appointment.

41. I have taken account of all the other matters raised but find none that outweigh the considerations on which my decision is based.

DECISION

42. In exercise of the powers delegated to me I therefore allow the appeal and in response to your client's application dated 5 August 2003 (council ref 03/292/OUTBS) I hereby grant outline planning permission for the development specified there, subject to the following conditions: -

1. Before any development commences written approval shall be obtained from the planning authority for the details of the siting, design and external appearance of all buildings, the means of access thereto, and the landscaping of the site including means of enclosure and boundary treatments, all footpaths and cycle-ways, play areas and other amenity areas, hereinafter called "the reserved matters".

2. Plans and particulars of all reserved matters shall be submitted for the consideration of the planning authority ~~within 3 years hereof, within 6 months from the date on which an earlier application for approval of reserved matters is refused or within 6 months from the date on which an appeal against refusal is dismissed, whichever is the latest. That is provided that only one such application shall be made after the 3 year period referred to has expired. No work shall commence prior to written approval of all reserved matters.~~

3. The development shall commence within 5 years hereof or within two years from the date of approval by the planning authority of the last of the reserved matters to be approved.

REASONS (1-3): In accordance with section 59 of the Act.

4. The reserved matters required by conditions 1 and 2 above shall comply with the following points including additional details where indicated: -

- A full landscaping scheme for the entire site including details of; (1) how retained natural habitats are to be protected; (2) outer perimeter fencing and details of how access or trespass into surrounding woodland is to be limited in a way that will limit additional wildlife impacts outside the site; (3) tree planting on the B9153 to the rear of visibility splays, designed to extend the wooded frontage from the south across the site entrance as far as practical; (4) footpath links and a tree belt immediately south of Carr Road along the lines indicated in drawing No 2467-005 Revision A but with an

area of enclosed open space on Carr Road opposite Carr Place, and; (5) a management scheme - with the option of ownership being transferred to an appropriate body by agreement - covering the aftercare of all landscaped areas, retained natural habitats etc. and how these are to be maintained and managed in perpetuity.

- A hydrological study of the site indicating how the behaviour and levels of all surface and ground water are to be regulated and maintained in perpetuity, in a way that will; (1) avoid any variation of surface or ground water levels that would be detrimental to existing natural habitats or; (2) avoid exacerbating flood risks within the site and on any neighbouring or downstream property. In the light of this study, which shall be used to inform the final layout, all dwelling houses will be designed to at least a 1-in-200 year level of flood protection, except with the prior written agreement of the planning authority in consultation with SEPA.

- A detailed survey of the entire site - to establish the presence of Badger setts, Wood Ant nests, and the habitats of any other species of notified natural heritage interest. This survey shall specify all mitigation measures. In the event of any conflict emerging, the outcome of this survey shall over-ride all other detailed considerations.

- Development shall be held back from the B9153 by at least 40m and it shall be laid out to improve its linkage with existing development to a greater degree than shown in drawing No 2467-005 Revision A, with convenient pedestrian access from the southern part of the development being provided through Crannick Park.

- A detailed phasing scheme for the entire development together with the staged provision of infrastructure and landscaping etc. The development shall in any case proceed generally from the south west to the north east. Except for the 24 affordable units indicatively shown in the south western part of the site and which shall be among the earliest completions, the development shall not exceed a rate of 15 houses completions in any calendar year.

REASON: All these matters deserve additional highly focused attention having regard to the sensitivity of the site and its particular juxtaposition with existing development.

shall not exceed 117 h

- 5. The development shall not exceed 117 dwellings served by an adoptable road system accessed only from the B9153 as indicatively shown on drawing No 2467-005 Revision A. That layout shown on that drawing is of indicative value only. Except for this indicative guidance this drawing does not form part and parcel of this permission.

- 6. Not more than two houses shall be accessed by Rowan Park, unless there is submitted for the prior approval of the planning authority detailed guarantees that junction visibility will be brought up to an acceptable standard before any new houses so accessed are completed. In that case the maximum number of houses to be so accessed may increase to a maximum of 5.

- 7. Not less than 24 dwellings, among the earliest to be completed, shall consist of 'affordable housing' as defined in the glossary of Scottish Planning Policy 3 - 'Planning for Housing' and to the satisfaction of the planning authority in the light of its own criteria for the provision of affordable housing. Precise details of the mechanisms for providing all these units, with arrangements for retaining these units within this 'social' sector shall be submitted

for the approval of the planning authority concurrently with reserved matters. No development whatsoever shall commence prior to the written approval by the planning authority of the details required by this condition.

8. No dwelling shall be occupied prior to the following matters being completed: -

- The relocation south of the site access of the existing 30 m.p.h. limit together with a corresponding extension of street lighting on the B9153.
- The provision of visibility splays (free of all obstructions higher than 1m above road channel level) measuring 4.5m x 90m northwards and 4.5m x 120m southward along the B9153 from the centre line of the access road. The latter dimension may be reviewed with the written agreement of the planning authority after the 30 m.p.h. limit has been extended depending on the precise position chosen.

9. No dwelling south west of the overhead power lines shall be occupied prior to the completion of: -

- Currently proposed traffic calming measures, in the form of footway widening in front of Kinchyle House on Main Street, and;
- A convenient footpath link from the development area south west of the overhead power lines via Crannick Park to Main Street.

10. No dwelling between the overhead power lines and national cycle route No 7 south of Carr Road shall be occupied prior to the completion of the above measures required in condition no 9 together with the completion of the footpath links from Ellanwood Road as follows; (1) across the bog woodland roughly parallel to the power lines, and (2) over the northern part of the site to link with Carr Road and national cycle route No 7 near the indicatively shown plot 10.

11. No dwelling north east of national cycle route No 7 shall be occupied before traffic-calming and pedestrian safety measures on Carr Road have been completed in accordance with a detailed scheme to be submitted for the prior written approval of the planning authority. This scheme shall be submitted concurrently with details of the reserved matters required by conditions 1 and 2.

12. All roads and footpaths except for that part of national cycle route No 7 within the site and the footpath indicatively shown south of plots 27 -35 shall be to a standard suitable for adoption by the highway authority. Each individual dwelling will be progressively served by satisfactory vehicular and pedestrian access respectively linking it with existing roads and footpaths in the village, and no dwelling shall be occupied until the provision of this infrastructure has reached a stage considered acceptable to the planning authority in accordance with phasing proposals submitted in response to condition 4 (final bullet).

REASONS (5 -12): The development is acceptable on no other basis, in the interests of visual amenity, adequate road and pedestrian safety, suitably gradual integration with the community, and the need to pay proper attention to hydrological and natural heritage impacts as well as to the future management and safeguarding of natural habitats within and adjoining the site.

B.W.Muir Esq.

PPA/270/312

| February 2005

43. This decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks of the date of this letter, as conferred by sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

44. A copy of this letter has been sent to The Highland Council. Copies have also been sent to the Cairngorms National Park Authority, to Scottish Natural Heritage and to the Carrbridge and Vicinity Community Council. Additionally copies are being sent to all other organisations and individuals who responded to the planning application or to the appeal including Mrs Mary Scanlon MSP and Mr Fergus Ewing MSP.

Yours faithfully



PHILIP G HUTCHINSON
Reporter