

Agenda Item 8

Appendix 1

2022/0305/DET (NA-001-002)

Report to Scottish Ministers



Report to the Scottish Ministers

Town and Country Planning (Scotland) Act 1997

Report by David Buylla, a reporter appointed by the Scottish Ministers

- Case reference: NA-001-002
- Site Address: Nethy Bridge Station Yard, Nethy Bridge, Highland, PH25 3EP
- Application by AW Laing
- Application for planning permission, ref. 2022/0305/DET dated 14 September 2023
- The development proposed: erection of 21 dwellings
- Date of site visit: 20 December 2023
- Date of hearing session: 5 February 2024

Date of this report and recommendation: 30 April 2024

Recommendation

Refuse planning permission.

Background

1. This proposal seeks planning permission to redevelop the former Nethy Bridge railway station yard with 21 houses. The [site](#) lies within the settlement boundary at the western edge of the village and extends to approximately 0.95 hectares. It is an unused brownfield site, having been a railway yard until the 1960s. It is shown in the Scottish Environment Protection Agency's (SEPA's) flood maps as being at medium to high risk of flooding from the River Nethy, which lies on the opposite side of Station Road to the site.
2. The applicant commissioned a series of investigations into the site's flood risk. Having reviewed these, SEPA objected to the proposal on flood risk grounds. On 11 August 2023, the Cairngorms National Park Authority (CNPA) resolved to grant planning permission to the proposal. Due to the outstanding objection from SEPA, it was required to refer the matter to Scottish Ministers
3. On 19 October 2023, Scottish Ministers issued a direction under section 46 of the Town and Country Planning (Scotland) Act 1997 that the application be referred to them for determination in view of the proposal's potential conflict with national policy on flooding.
4. On 5 February I conducted a [virtual hearing session](#) to discuss the flood risk issue. This was attended by the applicant, SEPA, the CNPA, Nethy Bridge and Vicinity Community Council and a member of the public.
5. This report identifies the main issues for Ministers' consideration, my conclusions on those issues and my recommendation as to whether planning permission should be granted.

Environmental Impact Assessment

6. On 13 October 2022, the CNPA issued a [screening opinion](#) to the effect that the proposed development is not EIA development. Having regard to the criteria in schedule 3 to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, I concur with that opinion.

Policy context

7. The development plan for this case comprises National Planning Framework 4 (NPF4) and the Cairngorms Local Development Plan 2021 (the LDP) and its associated supplementary guidance.

8. Of particular relevance to this case are NPF4 policies 9, 16 and 22 and LDP policies 1, 3, 5 and 10

9. Other relevant policy and guidance documents include:

- The Supplementary Guidance that accompanies the LDP

The relevant issues for Ministers' consideration

10. Having considered all the evidence before me, my advice is that the main considerations for Ministers in deciding this application are:

- [The principle of development.](#)
- [Flood risk.](#)
- [Affordable housing and other benefits of the scheme.](#)

The main points for the applicant

- The applicant submitted a [hearing statement](#) and a [closing submission](#).
- The application site has been approved for residential development since 2005, with a live planning permission in place for six large homes. This is equal in vulnerability terms to the proposed residential use.
- SEPA withdrew its objection to that earlier proposal due to the expansive floodplain to the west, and the fact that the opposite riverbank is approximately 1.5 metres lower.
- The application site did not flood in the 1966, 1990, 2009 or 2023 events and the applicant is confident that this would remain the case in the future, with any flood waters confined to lower-lying land.
- The current planning application was lodged over four months prior to the adoption of NPF4 and is being required to comply with standards that did not apply at that time. In any event, the applicant considers the proposal is compliant with NPF4, particularly when considered 'in the round' – given the brownfield status of the site and the opportunity it would provide for much-needed affordable housing.

- THE CNPA's support for the proposal at committee was unanimous.

The main points for the planning authority

- Housing development within identified settlement boundaries is supported by LDP policy 1. In accordance with paragraph 1.4 of that policy, the proposal would provide modest two and three bedroom homes to meet local community needs. At least 25% would be affordable housing units as is expected by paragraph 1.5 of that policy.
- The authority has no concerns with the design of the proposal, which it is satisfied would meet the expectations of LDP policies 1 and 3. Amenity standards for existing and future residents would also satisfy the requirements of policy 3.
- Subject to a suitable landscaping scheme being completed and managed in the long term, the authority is content that the proposal would satisfy the requirements of LDP policies 3 and 5.
- The River Nethy, which forms part of the River Spey SAC is adjacent to the site. The Abernethy Forest SPA and Craigmore Wood SPA are also nearby. However, subject to appropriate mitigation measures being secured by planning conditions, there would be no threat to the integrity of these designated sites. Some on-site biodiversity enhancement could be expected from the proposed landscaping and SuDS pond. Overall, the authority is content that the proposal complies with the terms of policies 1, 3 and 4 of NPF 4 and policy 4 of the LDP.
- The authority is satisfied that the applicant's flood risk modelling demonstrates that the site is not at risk of flooding and therefore complies with LDP policy 10 and NPF4 policy 22.
- The authority is also satisfied that any matters that remain unresolved can be controlled or managed by planning conditions.

The main points for Nethy Bridge and Vicinity Community Council

- The community council submitted a [closing submission](#).
- The lack of affordable housing in the village is critical. Many homes are bought as second or retirement homes at prices local people cannot afford. As a result, local businesses are struggling to find staff to fill vacancies.
- The application site is brownfield. It is ideally located for village services and the bus route.
- The site has not flooded in living memory including within the memory of a 96 year old resident who died recently. If SEPA's flood maps were correct it would have been flooded on a regular basis. And many other properties (which lie at a lower level than the site) would also have been flooded. This has simply not occurred.

The main points for SEPA

- SEPA submitted a [hearing statement](#) and a [closing submission](#).

- The site lies within the functional floodplain as identified in SEPA's Flood Maps and is at medium to high risk of flooding from the River Nethy.
- NPF4 requires development to avoid areas at risk of flooding in a 1 in 200 year plus climate change event.
- Different methods can legitimately be used to carry out flood risk calculations for an ungauged catchment such as the River Nethy. However, a precautionary approach must always be applied, as the calculated probability of flooding is always a best estimate rather than a precise forecast.
- The applicant's flood risk assessment work presents a range of potential flooding scenarios, depending on which method is used to calculate flow. This work demonstrates the significant difference in predicted flood extent that arises with relatively minor changes in flow. This emphasises the importance of not assuming the lowest predicted flow.
- Historic flooding events in the locality also confirm the need to adopt a precautionary approach.
- SEPA is not satisfied that condition 12 in Appendix 1 to this report, which was agreed between the applicant and council, would ensure that the development avoided flood risk. In SEPA's view, such an approach would result in people and new property being put at risk of flooding, potentially with no means of escape, and could also (due to the proposed land raising) result in increased flood risk for existing local properties.

Other parties' cases

11. Mr James Fraser, a resident of the village is strongly in support of the proposal due to the severe shortage of affordable housing in the village. His family has lived in the village for many years and has never seen the site flooded.

Reporter's findings

The principle of development

12. The site is not allocated for development but is situated within the LDP-defined settlement boundary of Nethy Bridge, As such, the principle of residential development is supported by LDP policy 1.

13. NPF4 policy 16 f) only supports housing development on unallocated sites in limited circumstances. It first requires all proposals to be supported by an agreed timescale for build-out. The applicant has indicated its intention to develop the site over the short to medium term in order to address the pressing need it has identified (which the CNPA and community council appear to endorse) for smaller, lower-cost homes. In the circumstances, I am satisfied that this policy requirement is met.

14. Policy 16 f) then requires the proposal to be consistent with the plan spatial strategy and other relevant policies including local living and 20 minute neighbourhoods. No party has raised concerns with this issue. The site is situated within a larger village, which has a range of services and a bus route within a reasonable walking distance. Therefore, setting aside the question of flood risk, I find the proposal to meet this expectation. For similar

reasons, I am satisfied that it would meet the NPF4 policy 15 requirement to contribute to local living and 20 minute neighbourhoods.

15. The final relevant requirement of policy 16 f) is that the proposal represents a “smaller scale” opportunity within an existing settlement boundary. “Smaller scale” is not defined, but I am satisfied that, in the context of Nethy Bridge, this proposal can reasonably be described as such.

16. As a brownfield site, the principle of redevelopment can also draw support from NPF4 policy 9.

17. Taking all factors (other than flood risk, which I discuss below) into account, I find this site to be acceptable in principle for the proposed residential development.

Flood risk

18. Policy 22 (a) of NPF4 only supports development proposals on land that is “at risk of flooding or in a flood risk area” where one of four circumstances (set out in parts a) i to a) iv)) applies. That term is defined in the glossary to NPF4 as land which has an annual probability of being flooded of greater than 0.5% (in other words, in a 1 in 200 year return period event), which must include an appropriate allowance for climate change. The parties agree that the need to account for climate change when defining the flood risk area did not feature in Scottish Planning Policy (SPP), the predecessor to NPF4.

19. I agree with the parties that parts a) i and a) ii of the policy (which refer to essential infrastructure and water-compatible uses) are inapplicable to this proposal.

20. Referring to the extant planning permission on the application site for a visitor centre (including craft workshops, retail and cafeteria) and six large houses, the applicant argues that the proposed development of 21 smaller homes should be supported under part a) iii of the policy (redevelopment of an existing building or site for an equal or less vulnerable use).

21. Residential dwellings are identified in SEPA’s vulnerability guidance as “highly vulnerable”. However, SEPA rejects the applicant’s proposition that the existence of highly vulnerable uses within the extant permission for the application site would enable the proposal to benefit from policy 22 part a) iii.

22. Its principal argument is that the extant permission has not been implemented, so the existing use of the site is open land, which is a less sensitive use than that proposed. It also contends that, even if it were correct to have regard to the residential element of the extant redevelopment permission, the number of highly vulnerable receptors would increase significantly as a consequence of this proposal, so the proposal should be considered more vulnerable than the consented scheme.

23. I agree with SEPA that the starting point needs to be a comparison between the current land use (an apparently unused site) and that, which is now proposed. The extant permission was granted before the adoption of both elements of the current development plan, in accordance with which, the current proposal must (unless material considerations indicate otherwise) be determined. The existence of an extant planning permission for an alternative scheme is a material consideration, but due to the date of that permission and the significance of the flood risk issue, it is not one to which I consider significant weight should be given. And even if it were to be given significant weight, I agree with SEPA that, if this site were found to be “at risk of flooding or in a flood risk area”, then the proposed

significant increase in homes (and therefore residents) when compared with the extant permission, would prevent the proposal being supported by policy 22 a) iii.

24. Part a) iv of NPF4 policy 22 potentially supports the redevelopment of previously developed land (which the application site is – having been the station yard until the 1960s). However, I agree with SEPA that not all previously developed land qualifies for such support. It is stipulated “...where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long-term safety and resilience can be secured in accordance with relevant SEPA advice.”

25. SEPA’s view, with which I concur, is that policy 22 a) iv would allow a planning authority to allocate a previously developed site in an LDP where it considered that redevelopment was of such importance that it should be permitted, despite the identified flood risk and where, prior to allocation, it had worked with SEPA to ensure that the benefits it could deliver would be secured in a way that would minimise risk to future site occupiers and neighbours. SEPA states that the intention was to allow such allocated sites to proceed as an exception to the avoidance principle that is the confirmed first principle of NPF4 with regard to flood risk, so that development on key regeneration sites could be raised on stilts above flood levels so as to allow flood risk to be managed on site.

26. The applicant points out that its site is elevated above natural surrounding ground level, but I do not regard that as a relevant consideration to an assessment of the proposal against this part of the policy. The key question is not whether the site is elevated but whether the LDP has identified a need to bring it into positive use, which the parties agree it has not. There is also likely to be a material difference in terms of its interaction with floodwater, between a stilted development, where flood water could pass under buildings relatively unimpeded and one where the ground level of the entire site was raised above its surroundings.

27. Taking all matters into account, I conclude that part a) iv of the policy does not apply.

28. Therefore I find that none of the circumstances where policy 22 offers support to development proposals on land that is “at risk of flooding or in a flood risk area” are relevant to this proposal. As such, if the site falls within that description, its development in the manner that is proposed would be contrary to that policy.

29. LDP policy 10.2 takes a similar approach to NPF4. Among other things, it requires all development to be “free from Medium to High risk of flooding from all sources”. And, in common with NPF4, when carrying out such an assessment, it requires the predicted impacts of climate change to be taken into account.

30. In exceptional cases, where development is permitted in a Medium to High flood risk area, policy 10.2 states that water resilient materials and construction may be required. As such exceptional cases are not defined, I sought the parties’ views on what they might be.

31. The applicant suggested a development for a less or equally vulnerable use than the existing might qualify. The CNPA believes it would depend on it being demonstrated that vulnerability would be reduced as a consequence of appropriate mitigation measures that were acceptable to its flood risk team and SEPA. I note that the CNPA did not indicate that the appeal site was being treated as an exceptional case. However, Mr Fraser noted that the CNPA had recently taken such an approach at a site in Aviemore.

32. SEPA, in response to Mr Fraser’s comments on the Aviemore site, stated that that proposal involved moving to a less vulnerable use. It also pointed out that extensive work

was undertaken with SEPA to ensure that the proposal would not lead to an increase in flood risk elsewhere. Therefore, if that is an example of where an exception to the normal requirements of Policy 10.2 can be made, it is not comparable to the circumstances of the appeal proposal – where vulnerability is increasing and SEPA has concerns over the effect of developing this site on neighbouring occupiers' flood risk.

33. Taking all of the submissions into account, I am not persuaded that it has been demonstrated that this proposal should be regarded as an “exceptional case” under LDP policy 10.2. And even if it had been, as there is no such exception in NPF4 policy 22, which post-dates the LDP, it is quite possible that this provision of policy 10.2 would be found to be incompatible with policy 22 and therefore superseded by it.

34. Taking all factors into account, I conclude that, if the application site is found not to be “free from Medium to High risk of flooding from all sources” then the proposal would be contrary to LDP policy 10.2.

35. In light of the above policy conclusions, the key consideration when assessing whether, in respect of flood risk, the proposal is in accordance with the development plan, is the level of such risk that can reasonably be assigned to the application site.

36. The applicant acknowledges that the site lies within an area that is indicated in SEPA's Future Flood Maps as being at medium to high risk of flooding. However, it does not accept that this provides a realistic assessment of the likelihood that this site would flood.

37. The applicant also criticises SEPA's separate 10 year flood maps for indicating that properties in Mill Lane, a short way upstream of the site should flood every ten years when, in reality, they have not flooded in recent memory. SEPA acknowledges that there are uncertainties in its flood maps, as they rely on an assumption that the channel capacity for all watercourses is approximately equal to the Median Annual Maximum Flood (QMED), which in some cases can result in over, or under, estimation of the likely flood extent. For this reason they are used as part of the screening process when deciding whether to request a proposal-specific flood risk assessment. They are never used for decision making. And SEPA advises that the 1 in 10 years maps are affected to a much greater degree by this issue, meaning they are more prone to being overly pessimistic than the 1 in 200 year maps.

38. SEPA points out that its Future Flood Maps do not yet incorporate the latest climate change information and may therefore underplay the full extent of risk. However, it also accepts that these maps merely provide an indication of potential flood risk concern and confirmation of locations where further site-specific flood risk assessment will be required, rather than an absolute definition of where development can and cannot take place.

39. Such further assessment was carried out by the applicant's flood risk consultant and was verified by a second consultant. SEPA is satisfied with many aspects of this work including the hydraulic modelling. However, it has concerns with some of the approaches and assumptions that were made and concludes that it has not been demonstrated that the site is suitable for residential development, both in terms of risk to the site's future occupiers and also with regard to neighbouring occupiers.

40. The applicant's initial [flood risk assessment](#) (FRA) of March 2021 employed three different Flood Estimation Handbook (FEH) methods to predict river flows:

- FEH Rainfall-Runoff (R-R)

- ReFH2
- WINFAP 4 (a statistical method)

41. The FEH (R-R) and ReFH2 methods use rainfall data to estimate river peak flow, whereas the WINFAP approach relies on the statistical analysis of measured flows.

42. The table below from the applicant's FRA shows the predicted peak River Nethy flows for a variety of events from a 50% annual probability event to one with 0.5% annual probability. A 24% uplift was also applied to account for future climate change. It should be noted that the latest SEPA guidance calls for a 34% uplift to reflect the most up to date understanding of potential climate change effects.

Table 3.1: Summary of peak river flows for the various hydrology methods for the River Nethy

Annual Exceedance Probability (%)	Return period (years)	ReFH2	WINFAP	FEH R-R
50	2	51.7	37.9	50.7
1	100	132.2	83.5	134.7
0.5	200	147.5	93.3	153.3
0.5 + CC	200 + CC	182.9	115.7	190.1

CC – an allowance for future climate change

43. The applicant's consultant opted to use the WINFAP (statistical) approach because it believes this provides a better estimation of high flows in large catchments such as the River Nethy. It argues that ReFH2 and FEH R-R are appropriate for estimating flow within much smaller catchments, where there is limited gauging data. However, they are likely to produce a significant over estimate for larger catchments such as the River Nethy. The consultant advises that the rainfall runoff methodology assumes a rainfall event covers the entire catchment area, which the applicant believes is unrealistic when that catchment is as large as the River Nethy.

44. The consultant then built a hydraulic model of the River Nethy and associated floodplain to see how this would perform with the different flow estimates, and carried out sensitivity testing to see the likely effect of the Nethy Bridge, which lies just upstream of the site, being partially blocked. From this work it produced maps of the 1 in 200 year floodplain including an allowance for climate change in order to determine whether this would affect the application site.

45. The conclusion of this assessment is that the application site would not be within the 1 in 200 year (plus climate change) floodplain.

46. SEPA accepts that, when estimating flow within a river channel, different approaches can legitimately be employed.

47. SEPA also accepts that the size of the River Nethy catchment (97.8 km²) is potentially suited to either the rainfall-derived or river flow techniques. However, where flow estimates differ significantly depending on which approach is taken (as the above table confirms they do in this instance), SEPA advises that a precautionary approach must be adopted rather than assuming that the level of flow (and consequent risk of the river channel being unable to contain that flow) will accord with the most optimistic forecast.

48. In this instance, the River Nethy itself is not gauged and the applicant's WINFAP analysis relied on gauge data from other rivers nearby. The applicant's consultant advised that this is not unusual, as the majority of rivers in Scotland are ungauged. It points out that an approach using statistical analysis of real flow data can draw upon decades of evidence

from 1500 monitoring stations across the country and can assign additional weight to data from local stations. In this instance, the Rivers Dulnain and Spey in the locality were studied, for which several decades of gauging data are available.

49. SEPA's view is that there will be higher uncertainty in estimating flows for an ungauged catchment such as this, than for one where gauging data is available. And even in a gauged catchment, as 200 years of data is not available, the requirement for extrapolation inevitably reduces the degree of confidence one can have in the data. It states that a study has found that standard techniques can significantly underestimate the steepness of growth curves, meaning flood flows for a 1 in 200 year event for example could be significantly underestimated.

50. The applicant notes that the picture obtained from its analysis of local gauging data is consistent with the anecdotal evidence it has obtained from local residents. While it accepts that neither source of data covers a 200 year period, this is compensated for by the fact that multiple data sources were included within its statistical analysis. The applicant accepts that the events that it studied were not 1 in 200 year events. However, it is confident that it can extrapolate from the studied events to predict the likely flow in such an event.

51. SEPA states that the guidance against the use of rainfall runoff methods applies to catchments exceeding 1000 km², far larger than the approximately 100 km² area of the Nethy catchment. Therefore, analyses that rely on rainfall runoff must be considered alongside any statistical analyses of flow data. The approach should be precautionary (but not overly conservative), as is expected by NPF4, bearing in mind that no methodology can provide more than a best estimate.

52. The applicant's analysis of the River Spey using the alternative methodologies was cited as evidence that rainfall runoff approaches were overly pessimistic. However, SEPA does not accept that useful conclusions can be drawn from the applicant's finding that the rainfall runoff method gives unrealistic results for the River Spey, as the catchment area of that river is over 1700 km², which significantly exceeds the maximum catchment size that is considered suitable for such methodology. The applicant's response is that it serves to demonstrate that, as catchment size increases, the applicability of the rainfall runoff method decreases.

53. My view is that, as the Spey catchment is over 17 times the size of the Nethy and nearly twice the size that the guidance advises is the maximum for the rainfall runoff methodology, no useful conclusions can be drawn from an application of that methodology to that catchment.

54. For the River Nethy, SEPA notes that, according to the applicant's statistical analysis of flow data from other rivers, flood water would reach the edge of the site but not enter, whereas, using a rainfall runoff model, the site would flood entirely. The applicant's analysis suggests that a difference in flow of only around 10% would determine whether the site was likely to be entirely flooded or to be narrowly avoided. Against that background, SEPA considers it reasonable to take a cautious approach before assuming that the most favourable outcome would be the most accurate.

55. SEPA also queries why the applicant's statistical analysis did not use gauging data from the River Feshie, given its relative proximity to the Nethy and the fact that it also drains the Cairngorms. SEPA states that this river is more hydrologically similar to the Nethy than the Dulnain and, from its analysis of rainfall radar, appears to experience similar weather patterns to the Nethy. SEPA notes from its own analysis of that catchment that there is a

much closer correlation in flow rates derived from the rainfall runoff and statistical analysis methodologies for the Feshie, which suggests the applicant's finding that the former approach produces unreliably pessimistic results for the Nethy should be treated with caution.

56. The applicant confirms that it did include the Feshie in its analysis. However, it believes the Feshie catchment is, in fact, less hydrologically similar to the Nethy than the Dulnain and also has gauged data for a shorter time period (around 30 years rather than approximately 70 years for the Dulnain). It is also around 20 kilometres away from the site whereas the Dulnain is approximately 5 kilometres away. The applicant notes that advice from the Environment Agency in England is that stations that are closer to a site should be given higher weighting.

57. SEPA states that hydrological similarity is the first factor that determines whether a catchment should be included in the pooling group for analysis (and maintains its view that the Feshie ranks higher in that regard than the Dulnain) but accepts that proximity to the site is also a consideration.

58. The River Avon has a significantly larger catchment than the Nethy (approximately 500 km²) but is still within the size range where the guidance indicates a rainfall runoff approach may be acceptable. SEPA's analysis of this river also produced similar results for the rainfall runoff and statistical analysis methods. Again, SEPA believes this suggests the use of rainfall runoff cannot simply be ruled out for a catchment such as the Nethy.

59. SEPA describes the records for the Dulnain station as odd, as peak flow levels in different events appear to be essentially identical. It postulates that, at times of high water level, the gauging station may be bypassing or perhaps upstream features such as flood plain storage capacity or the screening effect of a nearby bridge might be generating results that are peculiar to the location of the Dulnain station. Once again, it expresses concern that too much reliance should not be placed on the results from this source.

60. SEPA argues that, in order to test the plausibility of the estimates that each methodology produces, historical flood information can be taken into account. It notes that if one considers the 2009 event (one of several that were considered by the applicant and are discussed below) it can be observed that the flows that led to river levels that were observed in that event are more consistent with the return period that is derived from the rainfall runoff method than the statistical approach.

61. A number of historic flood / high rainfall events were referred to by both parties.

62. The "[Great Floods](#)" of 1829 were documented in great detail at the time. While acknowledging that one cannot assign a return period based on anecdotal evidence, SEPA believes the detailed account of that flood, which caused widespread damage across the area, provides a helpful indicator of what could happen in the sort of event that NPF4 and LDP policy requires the land use planning system to take into account when determining the suitability of a proposed development site.

63. SEPA acknowledges the applicant's observation that a contributor to the severity of flooding in Nethy Bridge during the 1829 event was the washing away of a sawmill upstream, which became wedged in the bridge. Sawmills are no longer found within the catchment so I agree with the applicant that such an event would not reoccur in a similarly intense event.

64. However, I also accept SEPA's submission that, being a multi-arch bridge rather than one with a single large span, the bridge within the village remains a potential source of blockage and therefore a potential contributor to an increased flooding effect. SEPA points out that, upstream of the site, there is riparian woodland. During storm conditions, material from the woodland could be carried downstream with the potential to create a damming effect at the bridge and consequent over-topping of the channel. I note that the applicant's sensitivity testing to estimate the effect of bridge obstruction only modelled a 10% obstruction, which I agree with SEPA is not particularly conservative.

65. I also agree with SEPA that the intensity of the flows described in the account of the 1829 floods suggests a significant degree of flooding could have been possible even if the bridge had not become blocked. However, the absence of any measurable data from that event prevents me from drawing any firm conclusions.

66. I agree with the applicant that the village has changed quite significantly since 1829. The construction of new buildings and the upgrading of roads will have altered the path of any floodwater through the village. I also agree that it is significant that the railway, of which the site forms a part, came to the village after the 1829 flood and was presumably engineered to take account of what was then a relatively recent event. However, I agree with SEPA that flood risk analyses which utilise the rainfall runoff method and show the site to be at risk of flooding, take this historical land raising into account.

67. The site already lies above the level of the adjoining land and it is proposed to increase its level further in order to ensure finished floor levels are above the 1 in 200 year plus climate change level. Such factors are likely to reduce the likelihood of the site itself being flooded, even in an event as severe as that in 1829. However, in accordance with NPF4 policy 22, thought must be given to the potential that a development might increase the flood risk for others.

68. There is existing residential development to the immediate east (upstream) of the site, which could potentially be placed at greater risk of flooding by the adjoining downstream land being at a higher level. The appellant believes the size of the site in relation to the floodplain means ample space would remain for floodwater to flow around it, thereby avoiding a significant increase in flood risk to those upstream. While I accept that there are extensive lower-lying fields further downstream, the possibility of this proposal causing any increased risk of flooding of existing properties is a factor that must be taken into account.

69. Other flood events in the locality that are identified in SEPA's Observed Flood Event database include 1799 and 1838 events, where contemporary reports suggest the force of flood water in the Nethy was sufficient to destroy bridges, and an event in 1880, which was referred to by the parties at the hearing session, where flood levels were recorded as reaching the girders of the railway bridge. For that latter event, there is no evidence that it caused any flooding of the village and the applicant believes that, at that time, the railway bridge (which has since been removed) would have represented the bottleneck in the River Nethy. As with the 1829 event, these events provide no empirical data to assist in the determination of this case. However, they are illustrative of the potential for the Nethy and other local watercourses to be affected by significant events, the intensity of which may exceed any in living memory.

70. In an event in 1966, the River Spey experienced its second highest water flow in 69 years. The application site was in use as a coal yard at that time and a local resident whose family knew the operators of that business, confirms that it did not flood. The applicant also

confirms that his building business at that time received no requests to carry out flood-related property repairs in connection with that event.

71. The applicant points out that, using the statistical method, the 1966 event would equate to a 1 in 50 year event when applied to the Dulnain, whereas using the rainfall runoff methodology, it would be identified as a 1 in 5 year event – a finding that is inconsistent with the experience of local residents for whom this event, while not leading to flooding of the village, was one of the most significant in living memory.

72. SEPA's response is that the Spey behaves very differently to its tributaries including the Nethy, so the fact that the 1966 event had significant effects on flooding from the Spey but not on smaller catchment rivers such as the Nethy is not unexpected. This is consistent with the applicant's observation that the 1966 event was primarily driven by snow melt, which had a particularly large effect on the Spey, given its large catchment.

73. My conclusion on the 1966 event is that its significance (in return period terms) for the Nethy cannot be assumed to be the same as was experienced by the Spey due to differences between the two river catchments in terms of the quantity of the input to the system and the response of that system to the input. As such, it adds little to the consideration of this issue.

74. An event in 1990 produced the highest water flow recorded on the Spey, but again no flooding within Nethy Bridge. My thoughts on this event are the same as for that in 1966.

75. In September 2009 there was a further event, which was captured in a [video recording](#). This shows a substantial flow of water within the River Nethy that is being contained within the channel. The applicant's analysis suggests that this was around a 1 in 20 year event and it believes the observed water levels were consistent with what its statistical analysis model would predict for an event of that magnitude.

76. SEPA believes that rather than estimate a return period first (as the applicant did using catchment daily averaged rainfall, which SEPA believes may have been incorrectly interpreted), a better approach would have been to take the observed water level from the video and calculate from the model, what flow would have been required to produce that level. The applicant could then have compared the return period estimated for these flows from each method (rainfall runoff and statistical analysis), with rainfall data and measured flow rates from nearby gauged watercourses at the time of the event, to gain an impression of the accuracy of the estimations derived from each method.

77. Using that approach, SEPA's calculations suggest a return period for this event of less than 10 years, which matches rainfall runoff estimates of flood flows for an event of that return period. SEPA argues that this demonstrates that the rainfall runoff approach may better represent the Nethy catchment than statistical analysis. These findings, which the applicant did not challenge, suggest to me that caution must be exercised before concluding that rainfall runoff methods for flow calculation in the Nethy (which would identify the site as lying within an area at medium to high risk of flooding) are overly pessimistic.

78. And if, as SEPA believes, the flow rate produced by the 2009 event was not, in return period terms, a significant event for the Nethy (and this appears to be accepted by the applicant), then the absence of any flooding of the site is an expected outcome.

79. An event in October 2023 was also referred to. This caused significant flooding from the Spey in Aviemore but no flooding in Nethy Bridge. However, as with the 1966 and 1990 events, this appears to confirm SEPA's belief that the Spey behaves very differently to its

tributaries rather than that Nethy Bridge is unlikely to experience flooding during a significant event. SEPA calculates the October 2023 event to have been a 1 in 25 year event in respect of the Spey, but only a 1 in 5 year event for the Feshie.

80. Attention needs to be paid to the accounts of local residents who have several decades of local knowledge and who state that the application site has never flooded. One example is the recently deceased father of a local resident who lived in the village for 96 years and, according to his son, never recounted any occasion of the application site having flooded.

81. These accounts are valuable as they reflect actual experience rather than potential outcomes of modelling, over which there will always be differences of opinion. However, it must also be borne in mind that NPF4 and LDP policy requires the avoidance principle to be applied to flooding events which have an annual probability of only 0.5% (a 1 in 200 year event) . And then a further allowance has to be made to reflect the likelihood that, in the future, climate change will worsen the risk and severity of flooding. As such, even a demonstrable absence of flooding of the site over the past 100 years provides little reassurance that the site would not flood in a 1 in 200 year event, even without accounting for the future implications of climate change.

82. Taking all of the evidence into account, I am not persuaded that the site's categorisation as being at medium to high risk of flooding is overly pessimistic. Both the applicant and SEPA have undertaken high quality analyses of the flood risk issue. However, applying a precautionary approach, which I feel is essential given the implications of a residential development being flooded, and is consistent with NPF4, I find SEPA's evidence to be more convincing.

83. As I conclude that the site is "at risk of flooding or in a flood risk area" and is not "free from Medium to High risk of flooding from all sources" its development in the manner that is proposed would be contrary to NPF4 policy 22 and LDP policy 10.2.

Affordable housing and other benefits of the scheme

84. The parties are generally in agreement that the desirability of Nethy Bridge for retirement homes and second homes has increased property prices to levels that are not affordable to many local people.

85. The proposed houses would generally be at the more modest end of the size range. That in itself is unlikely to make them affordable to local people given the above-mentioned demand pressures. However, the CNPA is satisfied that it would satisfy the expectations of LDP policy 1.2 a), which expects all housing proposals to meet the requirements for the settlement as outlined in the LDP's Community Information section. For Nethy Bridge, this indicates an objective to provide housing that meets local needs, particularly affordable housing.

86. In accordance with LDP policy 1.5, 25% of the total could be subject to a condition requiring them only to be occupied in accordance with an approved Affordable Housing Delivery Plan. This would be an important benefit for the town, to which positive weight should be given in the planning balance.

Other matters for Ministers' consideration

87. The Speyside Way passes through the application site, close to its eastern boundary, on the line of the former railway. The applicant proposes to divert this temporarily

to the west of the site during the construction period before providing a new alignment along the proposed access road, with appropriate signage provided at all times to direct path users. The CNPA's outdoor access officer has no objections to these arrangements and I find no reason to disagree. Proposed condition 14 would deal with this issue.

88. NPF4 policy 1 requires decision makers, when considering all development proposals, to give significant weight to the climate and nature crises. Development of the appeal site for residential purposes (it being accessible to facilities and employment opportunities by walking, cycling and public transport and there being no likely harm to nature conservation issues) would be consistent with these expectations.

89. NPF4 policy 3 requires proposals to contribute to biodiversity enhancement, proportionate to the scale of the development. The proposals would incorporate bat and bird boxes and landscaped area that ought to offer better biodiversity than is provided by the site at present. I am satisfied that this would be sufficient to meet the expectations of this policy.

90. Due to their proximity to the site, it is necessary to consider whether the proposal is likely to have a significant effect on the River Spey Special Area of Conservation (SAC), the Abernethy Forest Special Protection Area (SPA) and the Craigmore Wood SPA.

91. The CNPA concluded that there would be potential impacts to all three Natura sites from pollution, disturbance during the construction period and long-term disturbance as a consequence of increased recreation activity in sensitive locations by residents. Consequently it undertook [an appropriate assessment](#) of the likely effect this would have on the integrity of the Natura sites.

92. For the Abernethy Forest SPA and the Craigmore Wood SPA, it was concluded that there would be no threat to site integrity, as the increased recreational use of those sites as a consequence of the proposal would be insignificant in comparison with existing levels of activity.

93. For the River Spey SAC, the concern was with the proximity of the River Nethy, which drains into the Spey and the potential for there to be a pollution pathway from the site. The CNPA's conclusion was that, subject to an approved pollution prevention plan being followed, the integrity of the SAC would not be harmed. Proposed condition 5 would secure this.

94. NatureScot agrees with the conclusions of the CNPA's assessment and I find no reason to disagree.

95. As the competent authority under the Habitats Regulations 1994, Scottish Ministers will need to undertake their own appropriate assessment if they are minded to grant planning permission. I find the CNPA's appropriate assessment to provide a sound basis for Ministers' own assessment.

Conclusions and recommendation

96. For the reasons set out above, I conclude that the proposed development does not accord overall with the relevant provisions of the development plan. The provision of 25% of the proposed units as affordable housing is a material consideration that weighs in favour of the proposal. However, given that my conclusions on the development plan arise from flood risk concerns and the attendant risk to public safety, my view is that this benefit is not one to which significant weight should be given.

97. Therefore I recommend that planning permission is refused.

98. If Ministers disagree with the above recommendation and are minded to grant planning permission than I recommend that this is subject to an appropriate assessment concluding there would be no harm to the integrity of any Natura site and to the conditions listed in Appendix 1.

David Buylła
Principal Reporter

Appendix 1: Recommended conditions

1. The development to which this permission relates must begin no later than the expiration of 3 years beginning with the date on which this permission is granted. If development has not begun at the expiration of this period, the planning permission lapses.

Reason: to accord with Section 58 of the Town and Country Planning (Scotland) Act 1997.

2. No development shall commence on site until a fully detailed landscaping scheme detailing both hard and soft landscaping proposals and the future maintenance and management of the proposed scheme has been submitted to and approved in writing by the planning authority. This shall include, but not be limited to, hard landscaping material specification, soft landscaping plant and tree species and planting specifications and details of footways.

Thereafter the development shall be implemented in accordance with those approved details not later than the expiry of the next planting season following commencement of the development or within such time as approved by the planning authority and shall be maintained in accordance with the approved maintenance and management scheme.

Reason: to ensure the long-term retention of an appropriate landscaping setting, enhanced biodiversity and to ensure the development will not have an adverse impact on the landscape setting or ecological quality of the development in accordance with Policy 3: Biodiversity and Policy 4: Natural Places of NPF4 and Policy 4: Natural Heritage and Policy 5: Landscape of the Cairngorms National Park Local Development Plan 2021.

3. No development shall commence until pre-construction surveys are carried out by a suitably qualified ecologist for breeding birds (if works are to be undertaken during the breeding bird season of March to August - inclusive) and for reptiles. The results, together with any associated Species Protection Plans shall be submitted to and approved in writing by the planning authority.

Thereafter all breeding bird and reptile mitigation measures shall be implemented in accordance with any approved species protection plans and overseen by a suitably qualified Ecological Clerk of Works.

Reason: to determine the effects of the proposals on the ecology of the site and to inform mitigation measures for protected species during construction works in accordance with Policy 3: Biodiversity and Policy 4: Natural places of NPF4 and Policy 4: Natural Heritage of the Cairngorms National Park Authority Local Development Plan 2021.

4. No development shall commence on site until an otter survey has been undertaken by a suitably qualified ecologist to include a 200 metre buffer from the site boundary and 200 metres upstream and 200 metres downstream on the River Nethy to confirm the otter resting site and identify any others. Survey should follow good practice (Standing advice for planning consultations – Otters, NatureScot) with the survey results used to inform a Species Protection Plan (SPP) setting out mitigation measures appropriate to the results, all to be submitted to and approved in writing by the planning authority prior to works commencing on site. Development shall not proceed other than in strict accordance with any such SPP.

Reason: to ensure there is no adverse impact on European Protected Species or upon Natura sites, in accordance with Policy 3: Biodiversity and Policy 4: Natural places of NPF4

and Policy 4: Natural Heritage of the Cairngorms National Park Local Development Plan 2021.

5. No development shall commence on site until a Pollution Prevention Plan (PPP) to ensure the risk of pollution from sediment or other pollutants (fuels/oil, etc.) that may be released during construction from entering the River Nethy, has been submitted to and agreed in writing by the planning authority. Development shall not proceed other than in strict accordance with the approved PPP.

Reason: to protect the water environment and the integrity of the River Spey SAC in accordance with Policy 3: Biodiversity and Policy 4: Natural places of NPF4 and Policy 4: Natural Heritage of the Cairngorms National Park Local Development Plan 2021.

6. No development shall commence on site until a Construction Method Statement (CMS) and programme of works has been submitted to and approved in writing by the planning authority. The CMS shall include, but not be limited to:

- a) The approach to site preparation, soils management, restoration and reinstatement;
- b) Construction stage of SuDs;
- c) Reference to the pre-construction ecology checks and subsequent species protection plans if required;
- d) Reference to the Pollution Prevention Plan;
- e) A programme of works.

The construction of the development shall thereafter be implemented in accordance with the approved details.

Reason: to ensure that work on site proceeds without damage to the environment in accordance with Policy 3: Biodiversity and Policy 4: Natural places of NPF4 and Policy 4: Natural Heritage and Policy 10: Resources of the Cairngorms National Park Local Development Plan 2021.

7. No development shall commence on site until a Traffic Management Scheme has been submitted to and approved in writing by the planning authority. The scheme shall include but is not limited to the following:

- a) Details of a 20 mph Speed Limit Traffic Regulation Order (either permanently or for a temporary period until the village wide 20 mph speed limit is implemented by the Highland Council) on Station Road (the C1139), on the approach to the development to ensure the required visibility splays are delivered (as indicated on Access Layout Drawing No. 1004 Rev C);
- b) Design details for the provision of a new pedestrian link alongside Station Road (the C1139) between the development site and existing roadside footways within the main village;
- c) Details of timings to reflect the need to minimise residential disturbance during construction;

- d) All necessary statutory processes to change the 20 mph Speed Limit Traffic Regulation Order for Nethy Bridge (village wide) to accommodate this new street be fully completed before completion of the last residential unit within the development site.

Thereafter no development shall commence on site until the approved scheme is implemented and maintained in accordance with the approved details.

Reason: to ensure there are no adverse impacts on the road network in relation to road safety and that construction traffic associated with the development causes minimum disruption to residents in accordance with Policy 13: Sustainable Transport and Policy 15: Local Living and 20 minute neighbourhood of NPF4 and Policy 3: Design and Placemaking of the Cairngorms National Park Local Development Plan 2021.

8. No development shall commence on site until a dust mitigation scheme designed to protect neighbouring properties from dust arising from this development is submitted to and approved in writing by the planning authority.

Thereafter the development shall progress in accordance with the approved dust mitigation scheme and all approved mitigation measures shall be in place prior to the commencement of operations or as otherwise may be agreed in writing by the planning authority.

Reason: to ensure the development during its construction does not adversely impact on the amenity of occupiers of neighbouring land in accordance with Policy 3: Design and Placemaking of the Cairngorms National Park Local Development Plan 2021.

9. No development shall commence on site until a scheme to deal with potential contamination has been submitted to and agreed in writing by the planning authority. The scheme shall include:

- a) the nature, extent and type of contamination on site and identification of pollutant linkages and assessment of risk (i.e. a land contamination investigation and risk assessment), the scope and method of which shall be submitted to and agreed in writing by the planning authority, and undertaken in accordance with PAN 33 (2000) and British Standard BS 10175:2011+A2:2017 Investigation of Potentially Contaminated Sites - Code of Practice;
- b) the measures required to treat/remove contamination (remedial strategy) including a method statement, programme of works, and proposed verification plan to ensure that the site is fit for the uses proposed;
- c) measures to deal with contamination during construction works;
- d) in the event that remedial action is required, a validation report that will validate and verify the completion of the agreed decontamination measures;
- e) in the event that monitoring is required, monitoring statements shall be submitted at agreed intervals for such time period as is considered appropriate by the planning authority. No development shall commence until written confirmation has been received that the scheme has been implemented, completed and, if required, monitoring measurements are in place, all to the satisfaction of the planning authority.

Reason - to ensure that the site is suitable for redevelopment, given the nature of previous uses/processes on the site.

10. No development shall commence on site until full details of the final detailed drainage design (Drainage Impact Assessment), written in accordance with *The Highland Council's Supplementary Guidance: Flood Risk and Drainage Impact Assessment* and undertaken by a suitably experienced engineer are submitted to and approved in writing by the planning authority.

Thereafter the approved drainage scheme shall be implemented and maintained in accordance with the approved details in full, prior to the occupation of any dwellings within the development.

Reason: to ensure that satisfactory arrangements for the disposal of surface water are provided in accordance with Policy 3: Sustainable Design and Policy 10: Resources of the Cairngorms National Park Local Development Plan 2021.

11. No development shall commence on site until an Affordable Housing Delivery Plan (AHDP) that details how a minimum of 25% of the units on site will be delivered as affordable housing has been submitted to and approved in writing by the planning authority. The units within the development that are included within the AHDP shall not be occupied at any time other than as affordable housing in accordance with the AHDP.

Reason: to ensure the delivery of affordable housing is provided in accordance with Policy 16: Quality Homes and Policy 17: Rural homes of NPF4 and Policy 1: New Housing Development of the Cairngorms National Park Local Development Plan 2021.

12. Site levels and finished floor levels must be no lower than those provided in the Proposed Roads Layout Sheet 1 of 2 and 2 of 2, 124871-PC- 1002 Rev B and – 1003 Rev B. For clarity, the levels should be no less than 600 mm above the design flood levels based on the Rainfall-runoff method +CC, as shown in cross sections A, B and C of the Envirocentre, 'Flood Risk Supporting Information' Statement (EnviroCentre Ltd, June 2023).

Reason: to reduce the vulnerability of the development and its risk of flooding in accordance with Policy 22: Flood Risk and water management of the National Planning Framework 4 and Policy 10: Resources of the Cairngorms National Park Local Development Plan 2021.

13. No unit shall be constructed on site until details of the provision of bat and bird boxes throughout the site have been submitted to and approved in writing by the planning authority. Thereafter the development shall be implemented in accordance with those approved details. The boxes shall then be maintained and retained in situ.

Reason: to ensure the provision of enhanced opportunities for bird and bat roosting in accordance with Policy 3: Biodiversity and Policy 4: Natural places of NPF4 and Policy 4: Natural Heritage of the Cairngorms National Park Local Development Plan 2021.

14. Development shall not commence until a diversion scheme for the Speyside Way has been submitted to and approved in writing by the planning authority. Such a scheme shall be based upon the "Speyside Way Diversion Strategy" drawing Rt14_D_90_105, dated January 2023. Measures be put in place to divert the route of the Speyside Way during the construction phases prior to commencement of each phase and the approved final diversion arrangements shall be put in place prior to first occupation of the final house in the development, in accordance with the details that were agreed in writing by the planning authority.

Reason: to ensure that the Speyside Way remains accessible during the construction period and subsequently.

Appendix 2: Application drawings

Title	Drawing Number	Date on Plan*	Date Received
PLANS			
Plan – Location Plan	002	01/09/22	03/10/22
Plan - Site Layout Plan	124871/1001	10/05/22	26/05/23
Plan - Site Layout - 21 Units	Rt14_D_90_104	01/06/22	10/02/23
Plan - Proposed Site Cross Sections	124871/8001	06/09/22	26/05/23
Plan - Detached Elevations/Plans	1690 BT1_00_100	01/08/22	03/02/23
Plan - Semi Detached Elevations/Plans	1690 BT2_00_100	01/08/22	03/02/23
Plan - Detached Garage Details	1690 BT1_00_100		16/01/23
Plan - Proposed Roads Layout 1/2	124871-PC-1002	09/05/22	26/05/23
Plan - Proposed Roads Layout 2/2	124871-PC-1003	05/09/22	26/05/23
Plan - Access Layout	124871-PC-1004	09/05/22	06/03/23
Plan - Roads Longitudinal Sections 1/2	124871/1005	10/05/22	03/10/22

Plan - Typical Road Construction Details	124871-PC-1015	09/05/22	06/03/23
Plan - Proposed Drainage Layout 1/2	124871/2001	11/05/22	06/03/23
Plan - Proposed Drainage Layout 2/2	124871/2002	11/05/22	06/03/23
Plan - Typical Drainage Construction Details 1/2	124871-PC-2015	09/05/22	06/03/23
Plan - Typical Drainage Construction Details 2/2	124871-PC-2016	09/05/22	06/03/23
Plan - Speyside Way Diversion Strategy	1690 Rt14_D_90_104	01/01/23	02/02/23
Plan - Roads Longitudinal Sections 2/2	124871/1006	10/05/22	06/03/23
SUPPORTING DOCUMENTATION			
Other - Drainage Impact Assessment		01/09/22	03/10/22
Other - Flood Risk Assessment		01/03/21	18/10/22
Other - Protected Species Scoping Survey		31/01/21	16/01/23
Other - Content, Design And Location Fingerposts			02/02/23
Other - Intermediate Waymarking			02/02/23

*Where no specific day of month has been provided on the plan, the system defaults to the 1st of the month.