

Agenda Item 8

Appendix 2

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

Decision letter

E: Planning.Decisions@gov.scot

Colin Armstrong Architects (on behalf of AW Laing)
Lyle House, Pavilion 1
Fairways Business Park
Inverness
IV2 6AA

By email only to:
andrew@colinarmstrong.com

Our ref: NA-001-002
The Highland Council ref: 22/04176/FUL
Cairngorms National Park Authority ref: 2022/0305/DET

5 November 2024

Dear Andrew Lilley

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
ERECTION OF 21no DWELLINGS AT NETHYBRIDGE STATION YARD,
STATION ROAD, NETHY BRIDGE, HIGHLAND, PH25 3EP (“the proposed
development”)**

1. This letter contains the Scottish Ministers’ decision on the above planning application submitted to The Highland Council (“the Council”) by Colin Armstrong Architects on behalf of AW Laing (“the Applicant”) on 14 September 2022 and considered by Cairngorms National Park Authority (“the Authority”) following their call-in (Authority reference: 2022/0305/DET).
2. The application was called in for the Scottish Ministers’ determination on 19 October 2023 by direction under section 46 of the Town and Country Planning (Scotland) Act 1997 in view of the proposed development’s potential conflict with national policy on flooding.
3. The application was considered by means of written submissions, a site visit on 20 December 2023, and a virtual hearing session on 5 February 2024 by a Reporter appointed by the Scottish Ministers for that purpose.
4. The final report with the Reporter’s recommendation was issued to the Scottish Ministers of 30 April 2024. A copy of the Reporter’s report (“the report”) is enclosed.

All references to paragraph and chapter numbers, unless otherwise stated, are to those in the report.

5. Following the submission of the Reporter's report, the Scottish Ministers issued a procedure notice which sought comments from the Applicant, the Scottish Environment Protection Agency ("SEPA") and the Authority in relation to the flood risk to neighbouring properties and land from the proposed land raising on the proposed development site. Each of those parties were given an opportunity to comment on the further information received.

Reporter's recommendation and the Scottish Ministers' Decision

6. The Reporter has recommended that planning permission should be refused. The Scottish Ministers have carefully considered all of the evidence presented including the Reporter's findings and conclusions in the report. The Scottish Ministers disagree with the Reporter's conclusion and recommendation, as explained in this decision letter, and approve planning permission for the proposed development, subject to the conditions as set out in Appendix 1.

Legal and Development Plan Context

7. Under the terms of section 25 of the Town and Country Planning (Scotland) Act 1997 ('the Planning Act') the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

8. The Scottish Ministers agree with the Reporter that the development plan for this case comprises National Planning Framework 4 ("NPF4", 2023) and the Cairngorms Local Development Plan 2021 ("LDP") and its associated statutory supplementary guidance (paragraph 7).

9. The Scottish Ministers agree with the Reporter's identification of other relevant policy and guidance documents (paragraph 9).

Main Issues

10. The Scottish Ministers agree with the Reporter that the main considerations for a decision on this application are the principle of development, flood risk, and affordable housing and other benefits of the scheme (paragraph 10).

The Principle of Development

11. The Scottish Ministers agree with the Reporter that, although the site is not allocated for development, it is situated within the LDP-defined settlement boundary of Nethy Bridge, and therefore the principle of residential development is supported by LDP Policy 1 (paragraph 12). The Scottish Ministers also agree with the Reporter that, as the site is brownfield, the principle of redevelopment is supported by NPF4 Policy 9 (paragraph 16).

12. The Scottish Ministers agree with the Reporter that the proposed development meets the requirements of NPF4 Policy 16 (f), in respect of the site not

being allocated for housing, but that it meets the limited circumstances criteria of the policy. The Scottish Ministers also agree with the Reporter that the proposed development meets the requirements of NPF4 Policy 15 to contribute to local living and 20-minute neighbourhoods (paragraphs 13 – 15).

13. Therefore, the Scottish Ministers agree with the Reporter that the site is acceptable in principle for the proposed development (paragraph 17).

Flood Risk

14. The Scottish Ministers agree with the Reporter's interpretation of the applicability of NPF4 Policy 22 to the proposed development. The Scottish Ministers accept their conclusion 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 the proposed development (paragraphs 18 – 28).

15. The Scottish Ministers agree with the Reporter's interpretation of the applicability of LDP Policy 10.2 to the proposed development and that it has not been demonstrated that this proposal should be regarded as an exceptional case under the policy. The Scottish Ministers also agree with the Reporter's assessment that, if the proposed development 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 (paragraphs 29 – 34).

16. Therefore, the Scottish Ministers agree with the Reporter that the key consideration when assessing whether, in respect of flood risk, the proposed development is in accordance with the development plan, is the level of such risk that can reasonably be assigned to the application site (paragraph 35).

17. The Reporter notes that the proposed development site lies above the level of the adjoining land and that 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. The Reporter also notes, and the Scottish Ministers agree, that such factors are likely to reduce the likelihood of the site itself being flooded, but to be in accordance with NPF4 Policy 22, thought must be given to the potential that a development might increase the flood risk for others (paragraph 67).

18. In considering the flood risk analyses submitted by both the Applicant and SEPA (paragraphs 36 – 81), the Reporter is not persuaded, and the Scottish Ministers agree, that the proposed development site's categorisation as being at medium to high risk of flooding is overly pessimistic. The Scottish Ministers note that the Reporter has applied a precautionary approach in coming to this view (paragraph 82).

19. Therefore, the Scottish Ministers agree with the Reporter's assessment and conclusion that, as the proposed development 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 (paragraph 83).

Further Procedure

20. Following receipt of the Reporter's report, the Scottish Ministers sought further information from the Applicant, Authority and SEPA to enable a fuller assessment of the proposed development. The procedure notice, issued on 22 July 2024, sought further evidence on the flood risk to neighbouring properties and land from the proposed land raising on the development site.

21. The Authority did not offer any further information.

22. The Applicant instructed Envirocentre to undertake additional flood modelling. This exercise predicted a fall in flood levels to at least 15 neighbouring properties, with a nominal increase in flood level to one house. The Applicant noted that the result of this exercise demonstrates beyond reasonable doubt that even in a flood event of the magnitude predicted by SEPA (estimated by Envirocentre to be a 1:1000-year event), there would be a significant reduction in flood risk to the overwhelming majority of existing adjacent properties.

23. SEPA noted that the results of the additional modelling provided by the Applicant indicates that areas adjacent to the northern part of the site, including properties in Broomhill Court, see a reduction in flood levels. They noted that there is however an increase in flood levels in the south, to a property adjacent to the site entrance and to Station Road. SEPA noted that they accept the findings of the further assessment submitted by the Applicant in terms of flood risk to neighbouring properties and land.

24. The Scottish Ministers consider that findings of the further procedure demonstrates that there would be a significant reduction in flood risk to the overwhelming majority of existing adjacent properties.

Affordable Housing And Other Benefits Of The Scheme

25. The Scottish Ministers agree with the Reporter's assessment that, as 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, the proposed development delivering at least 25% of the units as affordable housing would be a benefit to which positive weight should be given in the planning balance. Therefore, the Scottish Ministers agree with the Reporter that the proposed development should be subject to compliance with a condition to implement an Affordable Housing Delivery Plan (paragraphs 84 – 86).

Other Matters

The Speyside Way

26. The Scottish Ministers agree with the Reporter on the proposed arrangements for the Speyside Way during and after construction of the proposed development, subject to compliance with a condition to implement a diversion scheme (paragraph 87).

Climate and Nature Crises

27. The Reporter notes, and the Scottish Ministers agree, that development of the site for residential purposes would be consistent with the expectations of NPF4 Policy 1 (paragraph 88).

Biodiversity Enhancement

28. The Reporter is satisfied, and the Scottish Ministers agree, that the biodiversity enhancement measures proposed at the site are sufficient to meet the expectations of NPF4 Policy 3 (paragraph 89).

The Conservation (Natural Habitats, &c.) Regulations 1994 ('the Habitats Regulations')

29. The Reporter advises that, and the Scottish Ministers agree, as the competent authority under the Habitats Regulations, the Scottish Ministers would need to undertake their own Appropriate Assessments of the likely effects the proposed development would have on the integrity of three Natura sites if they are minded to approve planning permission (paragraph 95).

30. Assessment is required because of the potential impacts to the Abernethy Forest Special Protection Area (SPA), the Craigmore Wood SPA and the River Spey Special Area of Conservation (SAC) from pollution, disturbance during the construction period, and long-term disturbance as a consequence of increased recreation activity in sensitive locations by residents.

31. The Reporter also advises that, and the Scottish Ministers agree, the Authority's Appropriate Assessments provide a sound basis for their own assessment (paragraph 95).

32. Consequently, the Scottish Ministers have undertaken Appropriate Assessments, as part of the Habitats Regulations Appraisal (HRA) process, of the implications for the Natura sites in view of their conservation objectives.

33. In agreement with the Authority's HRA and the Reporter, the Scottish Ministers have concluded that the proposed development will not adversely affect the integrity of the Abernethy Forest SPA and the Craigmore Wood SPA.

34. In agreement with the Authority's HRA and the Reporter, the Scottish Ministers have concluded that the proposed development will not adversely affect the integrity of the River Spey SAC, subject to compliance with a condition to implement a Pollution Prevention Plan.

Conditions

35. The Scottish Ministers agree with the planning conditions as proposed by the Reporter.

Overall Conclusion

36. The Reporter concludes that the proposed development does not accord overall with the relevant provisions of the development plan. They state that while the provision of 25% of the proposed units as affordable housing is a material consideration that weighs in favour of the proposal, because their conclusions on the development plan arise from flood risk concerns and the attendant risk to public safety, their view is that the benefit of providing affordable housing is not one to which significant weight should be given.

37. The Scottish Ministers agree with the Reporter that the proposed development does not accord overall with the relevant provisions of the development plan. However, they disagree with the Reporter that the benefit of providing affordable housing is not one to which significant weight should be given (paragraph 96).

38. The Scottish Ministers also give significant weight to the redevelopment of the brownfield site on the basis that the finished floor levels of the new houses can be designed to be above a 1 in 200-year plus climate change flood level.

39. When considered alongside the outcome of the further procedure, the Scottish Ministers assess that these benefits are sufficient to outweigh the disbenefits of the potential harm from flood risk to property and people.

40. Therefore, the Scottish Ministers consider that the potential benefits of the proposal are material considerations which justify a departure from flood risk policy in NPF4 and the LDP and that the balance is in favour of approving planning permission for the proposed development.

Formal Decision

41. Accordingly, for the reasons given above, the Scottish Ministers hereby approve planning permission for the proposed development subject to the conditions as set out in Appendix 1.

Right to Challenge

42. The decision of the Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If such an appeal is made, 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 requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

43. A copy of this letter and the Reporter's report has been sent to the Authority. Those parties who lodged representations will also be informed of the decision.

Yours sincerely

J-B

Jamie Barnes
Planning Decisions

Appendix 1: 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.