

AGENDA ITEM 10

APPENDIX 4

I4/03675/S42

I4/03676/S42

HIGHLAND COUNCIL PLANNING COMMITTEE REPORTS

FORMAL RESPONSE TO REPORTER

APPELLANT'S RESPONSE TO HIGHLAND COUNCIL RESPONSE

THE HIGHLAND COUNCIL

**SOUTH PLANNING APPLICATIONS COMMITTEE
18 August 2015**

Agenda Item	7.1
Report No	PLS/064/15

**14/03675/S42 & 14/03676/S42: Reidhaven Estate
Land to the North West of Dalfaber Farm, Dalfaber Drive, Aviemore**

Report by Area Planning Manager - South

SUMMARY

Description : Section 42 applications to develop land without compliance with conditions previously attached to planning permissions in principle refs: 07/144/CP (PPA-001-2000) & 07/145/CP (PPA-001-2001)

Recommendation - That this report be submitted as the Council's response to the Reporter's procedure notice.

Ward : 21 - Badenoch and Strathspey

Development category : Major

Reason referred to Committee: The Reporter has issued a procedure notice requesting the Council's views on the planning merits of the applications.

1. PROPOSED DEVELOPMENT

- 1.1 Members will recall that a report was presented to the South Planning Applications Committee on 23 June 2015 relating to appeals which had been submitted in connection with the above applications which are for permission to develop land without compliance with: (1) conditions 1, 11, 12 and 21 previously attached to planning permission in principle (PIP) ref: 07/144/CP (PPA-001-2000) for the development of 10 serviced housing plots and (2) conditions 1, 12, 13 and 22 previously attached to PIP ref: 07/145/CP (PPA-001-2001) for the development of 83 houses. Members agreed that the report be submitted to the Directorate for Planning and Environmental Appeals (DPEA) as the Council's response to the appeals.
- 1.2 The report informed DPEA that the Council would, had it still been able to determine the S.42 applications, have refused them on the grounds that they were not competent.

- 1.3 The Reporter appointed to determine the appeals has now issued a procedure notice requesting further information. Specifically, the Reporter wishes to know (i) the views of both planning authorities on the merits of the applications if it is found that the applications were competent; and (ii) whether any further or different conditions should be imposed on the applications, or whether any planning obligations should be entered into.
- 1.4 Subject to approval from Members, the purpose of this report is to advise the Reporter of the Council's assessment of the planning merits of the applications and the Council's view on the need for additional conditions or planning obligations associated with them.
- 1.5 **Variations:** None.

2. **SITE DESCRIPTION AND PLANNING HISTORY**

- 2.1 The site description and detailed planning history is as set out in the June report, a copy of which is annexed to this report.

4. **PUBLIC PARTICIPATION**

- 4.1 Advertised: Schedule 3 Development. Expired 05/02/15
Representation deadline : 05/02/15

Timeous representations : 14/03675/S42 – 11 representations from 9 parties
14/03676/S42 – 15 representations from 12 parties

Late representations : None.

- 4.2 Material considerations raised are summarised as follows:

- The applications have previously be considered at appeal and variations should not be permitted;
- Approval may lead to piecemeal development of the scheme and compromise public safety;
- The affordable housing contribution should not change as there has been no reduction in the number of units proposed;
- Adverse impact on woodland.

- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam. Access to computers can be made available via Planning and Development Service offices.

5. **CONSULTATIONS**

- 5.1 **Historic Environment Team:** No objection as no variations are being sought to archaeological conditions.
- 5.2 **Contaminated Land:** No comment.
- 5.3 **Transport Planning:** No comments received.
- 5.4 **Housing:** No objection.

- 5.5 **Aviemore and Vicinity Community Council:** Objection. The applications are not competent. The variation to phasing will likely generate health and safety issues.
- 5.6 **CNPA:** It would be inappropriate to comment on the grounds that the applications are not competent.
- 5.7 **SNH:** No comment on basis that application falls below threshold for consultation.
- 5.8 **SEPA:** No objection as none of the conditions or variations relate to flood risk.
- 5.9 **Transport Scotland:** No objection.
- 5.10 **Scottish Water:** No response received.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Cairngorms National Park Local Development Plan 2015

Policy 1	New Housing Development
Policy 3	Sustainable Design
Policy 4	Natural Heritage
Policy 5	Landscape
Policy 9	Cultural Heritage
Policy 10	Resources
Policy 11	Developer Contributions

7. OTHER MATERIAL CONSIDERATIONS

7.1 Draft Development Plan

Not applicable.

7.2 Cairngorms National Park Draft Supplementary Guidance

SG1	New Housing Development
SG3	Sustainable Design
SG4	Natural Heritage
SG5	Landscape
SG9	Cultural Heritage
SG10	Resources
SG11	Developer Contributions

7.3 **Highland Council Supplementary Guidance**

Flood Risk & Drainage Impact Assessment

Highland Historic Environment Strategy

7.4 **Scottish Government Planning Policy and Guidance**

Scottish Planning Policy, June 2014.

8. **PLANNING APPRAISAL**

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

8.3 **Development Plan Policy Assessment**

Applications submitted under Section 42 of the Act are proposals to develop land without compliance with conditions attached to a previous permission. Accordingly, only the conditions subject to which planning permission should be granted are under consideration. The principle of development is already established. Nevertheless, Section 42 applications are still required to be determined in accordance with the development plan.

In relation to the variations sought, Policy 1:4 (New Housing Development – Contributions towards affordable housing provision) of the adopted local development plan is the only development plan policy consideration directly relevant to the determination of the application. The other variations sought which relate to procedural matters and the method in which development is to be carried out are not directly influenced by the development plan.

8.4 **Material Considerations**

The full details of the conditions which the appellant has sought to vary through the Section 42 applications are annexed to the report submitted to Committee in June, a copy of which is also attached to this report. In essence they are seeking the variation of four conditions that have been imposed on both applications the wording of which are practically identical. These are summarised as follows:

Condition 1 of PIP 07/144/CP (10 serviced plots) & PIP/07/145/CP (83 houses)

Condition 1 requires submission and approval of the following matters and states that no work shall begin until the written approval of the authority has been given:

- Siting, design and external appearance of all buildings etc;
- The location and specification of all roads and paths;
- A detailed landscaping plan including extensive tree planting and provision of wildlife corridors;
- Details of surface drainage of the site in accordance with SUDS.

The appellant is concerned that Condition 1 does not make it clear how individual plots would be permitted in terms of the MSCs process. Single plot development is the subject of Conditions 12 & 13 (discussed below) of the respective permissions and is therefore relevant to the interpretation of Condition 1. Condition 1 states no development shall begin until the siting, design and external appearance of all buildings etc has been approved. Whilst this is unlikely to be an issue for a single developer responsible for constructing the entire site, it does present obvious problems in, for example, enabling the roads infrastructure to be started in advance of details being approved for individual plots.

Condition 12 of PIP 07/144/CP & Condition 13 of PIP 07/145/CP

This condition states that in the event that any plots are developed on an individual basis, a detailed design statement is to be submitted for agreement with the planning authority prior to submission of any subsequent application on the individual plots.

The variation sought is to clarify that subject to approval of the other MSC requirements of Condition 1 (bullet points 2, 3 & 4) a lawful start of development can be made and it will be competent for a developer to submit further MSC applications for the siting, design and external appearance of houses (bullet point 1) on a plot by plot basis.

The Council does not know the intentions of the developer in terms of the number of plots across both sites which would be available to separate developers, but it is reasonable to conclude that it is highly unlikely that MSC applications would be submitted within the requisite timescales for the entire development before the timescale for implementing a lawful start on site had expired. The proposed variation would bring clarity to the process by enabling work to commence on site without necessarily having full details approved in advance for every plot on the development.

Condition 11 of PIP 07/144/CP & Condition 12 of PIP 07/145/CP

The above conditions require the developments to be carried out in phases and that no phase shall be started until the planning authority has certified that the previous phase has been “sufficiently” complete. Furthermore, phasing is required to be “undertaken generally in a north to south direction”. In relation to the smaller development for 10 serviced house plots (which is located at the northernmost part of the overall development site) it is difficult to see what relevance this condition has to this permission.

The appellant is seeking the variation of the above conditions by the deletion of the north to south requirement. The appellant has cited health & safety concerns and efficiency as the principal factors behind the request.

No information has been submitted which explains the reasoning behind imposing the original conditions. The origin of the conditions, in a slightly different wording, goes back to the original Park Authority committee report dated 24 July 2009 which recommended approval of both applications. The report and the related conditions do not appear to make any reference as to why a phased development, carried out in a north to south direction, is either necessary or desirable. Nor is there any explanation as to why phasing of the development is required.

Following the subsequent appeal to Scottish Ministers, the reasoning for imposing the phasing condition (the wording of which was essentially carried over from the earlier Park Authority report) was “to ensure an orderly sequence of development”.

A phasing requirement is often imposed on larger developments where it is necessary to ensure the adequate provision of essential infrastructure – for example, to ensure no works start on a particular area of a site before the relevant road is constructed, or sewerage infrastructure provided. In this case, there seems no legitimate planning reason to impose such a requirement. If the desire is to ensure that certain infrastructure works are completed to a specific standard before related house building takes place this should be clearly stated and conditioned on any subsequent MSC application(s) for the houses, or indeed on any subsequent detailed planning applications which are not bound by the PIP conditions, thus still ensuring effective control over development.

The present condition also prohibits works on another phase until the planning authority has certified that the previous phase is “sufficiently complete”, a term which is undefined and arguably vague.

A further difficulty arises from information in the appeal documentation and indeed the planning permissions themselves, indicating that at least some of the plots may be developed on a plot by plot basis. If this related to the entire site with PIP for 83 houses it is difficult to see how phasing could be reasonably managed or achieved without causing unnecessary delays elsewhere on the site, apparently with no reasoned justification.

The above observations find support in Circular 4/1998 ‘The Use of Conditions in Planning Permissions’ which states (para. 55 – Phasing): *“Conditions may also be imposed to ensure that development proceeds in a certain sequence where some circumstances of the proposal, for example the manner of infrastructure provision, makes this necessary. A condition delaying development over a substantial period is a severe restriction on the benefit of the permission granted. If land is available for a particular purpose, its commencement should not be delayed by condition because the authority have adopted a system of rationing the release of land for development”*.

Several objectors have commented that health and safety of future residents and other members of the public may be compromised in the event that the direction of development as specified in the condition is deleted. It has also been stated that this will lead to piecemeal development and delay overall completion of the development. It is difficult to add any substantive weight to these concerns. Regardless of how the development is implemented it will be the responsibility of those carrying out development to ensure full compliance with relevant health and safety legislation.

Condition 21 of PIP 07/144/CP & Condition 22 of PIP 07/145/CP

These conditions relate to the provision of affordable housing. The existing conditions require that no development begins until either (i) the planning authority has certified arrangements for the provision of a social landlord of not less than 22 dwellings across both sites or (ii) the planning authority has agreed to alternative arrangements for affordable housing provision.

The variation sought by the appellant is to delete reference to 22 dwellings and instead replace it with “a number of dwellings not less than 25% of the total number of dwellings to be built...”. The appellant has indicated that this would provide greater flexibility than stating an exact figure when the total number of dwellings to be built has still to be determined.

Policy 1:4 (New Housing Development – Contribution to affordable housing) of the adopted local development plan states that the development of affordable housing required as a contribution on developments of 4 or more open market dwellings will generally be no more than 25% of the total number of units. Proposals for off-site contributions will be considered where assessments support this as a better way of meeting the housing needs of the community. The Park Authority draft supplementary guidance states that in relation to PIP applications, where the final layout and content of development is not known, a rate per house unit based on its location is likely to be used. This would then form the basis of a planning obligation.

8.5 **Other Considerations – not material**

A number of third parties have objected on the grounds that the applications are not competent. As the Reporter has specifically requested the views of the Council on the merits of the application (notwithstanding the validity issue) the objections on this ground are not relevant to this report.

It has been suggested that the development is not necessary. This is not a material consideration as the land has been allocated for development in the local development plan.

One objector has stated that the hammerheads shown on plan for the 10 serviced plots should be changed to turning circles to prevent further development. This layout is only indicative and the full details of the layout will only be determined through further applications.

8.6 **Matters to be secured by Section 75 Obligation**

The only matter that may require a Section 75 Obligation would be in connection with the affordable housing contribution. The Council considers that the Park Authority is best placed to advise the Reporter in this regard.

9. **CONCLUSIONS & RECOMMENDATIONS**

9.1 In relation to of the Reporter’s procedure notice, the recommended response is as follows:

Matter FWS 1: The merits of the application

Proposed variations to Conditions 1 & 11 of PIP 07/144/CP (10 serviced plots & Conditions 1 & 12 of PIP 07/145/PIP (83 houses)

In essence, the variations sought are to enable works to start on site before all the individual design details for each and every plot have been determined. Effective controls could still be imposed through subsequent conditions on MSCs, or indeed detailed planning applications, to ensure that no plots are developed in advance of supporting infrastructure, roads, drainage, water supply etc being in place.

The proposed variations are considered acceptable and avoid any ambiguity over the interpretation of the conditions and in particular when a lawful start on site can commence without the need for the siting, design and external appearance of the houses for all the plots to be agreed in advance.

Condition 12 of PIP/07/144/CP (10 serviced plots) & Condition 13 of PIP 07/145/CP (83 houses)

The variations sought are to enable development to progress without specifically requiring it to advance in a north to south direction. In the absence of any substantive information on the reasoning behind the imposition of the conditions in the first place, it is difficult to see the relevance of not only the requirement for the developments to be phased, but also that they are implemented in a north to south direction. The site for the 10 serviced house plots is already located in the northernmost part of the site and it is reasonable to suggest that the developer would have to have sufficient roads infrastructure in place to service this site. There seems to be no logic to require this site to be phased in connection with the adjoining site. The construction method and delivery on site is essentially a commercial decision for the developer taking into account economics, resources and market influences.

Should the Reporter be minded to grant permission it is recommended that rather than simply varied, this condition is deleted in its entirety from any subsequent permission.

Condition 21 of PIP/07/144/CP (10 serviced plots) & Condition 22 of PIP 07/145/CP (83 houses)

The appellant is seeking a variation to these conditions to delete the reference to the provision of 22 affordable houses across both sites and instead a requirement to provide no less than 25% of the total number of houses to be built. This seems reasonable given that final numbers have yet to be determined and reflects the figure provided for in the newly adopted local development plan. However, it is recommended that the Reporter is advised that the Park Authority is best placed to advise on whether this is acceptable.

Matter FWS 2: Further conditions and planning obligations

The Reporter has asked whether, in determining the applications, any further or different conditions should be imposed, and/or whether any planning obligations are required.

It is recommended that in response to the above matter the Reporter is advised that the remaining conditions imposed on the PIP applications should be replicated in any further permissions granted under Section 42. Furthermore, it is recommended that the Reporter is advised that the Park Authority are best placed to advise on whether any planning obligations are necessary. This is on the basis that the Council was not the Planning Authority involved with the previous applications and subsequent appeals and that the Park Authority is therefore the appropriate body to comment on this matter.

It is recommended that this report and the conclusions made above form the basis of the Council's response to the Reporter's procedure notice.

Signature: Allan J Todd
Designation: Area Planning Manager – South
Author: John Kelly
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 – P1705/D(-)01 Location plan & indicative layout
Plan 2 – P1705/D(-)01 Location plan & indicative layout

THE HIGHLAND COUNCIL

SOUTH PLANNING APPLICATIONS COMMITTEE

23 June 2015

Agenda Item	
Report No	PLS/050/15

14/03675/S42 & 14/03676/S42: Reidhaven Estate

Land to the North West of Dalfaber Farm, Dalfaber Drive, Aviemore

Joint Report by Area Planning Manager – South & Head of Corporate Governance

SUMMARY

Description: Section 42 applications to develop land without compliance with conditions previously attached to planning permissions in principle refs: 07/144/CP (PPA-001-2000) & 07/145/CP (PPA-001-2001)

Recommendation: That this report be submitted as the Council's response to the appeals lodged.

Ward: 21 - Badenoch and Strathspey

Development category: Major

Reason referred to Committee: Applications have been appealed on the grounds of non-determination

1. PROPOSED DEVELOPMENT

- 1.1 The applications are for permission to develop land without compliance with: (1) conditions 1, 11, 12 and 21 previously attached to planning permission in principle ref: 07/144/CP (PPA-001-2000) for the development of 10 serviced housing plots and (2) conditions 1, 12, 13 and 22 previously attached to planning permission in principle ref: 07/145/CP (PPA-001-2001) for the development of 83 houses (PIP).
- 1.2 The s42 applications seek to vary these conditions. The tables in the appendix to this report indicate the existing and the conditions proposed by the appellant.
- 1.3 This report and the Committee's views thereon will form the Council's response to the appeal lodged.
- 1.4 **Variations:** None.

2. SITE DESCRIPTION

- 2.1 The sites lie on either side of the clubhouse area of the “Spey Valley” golf course on the north-eastern edge of Aviemore’s built up area. The northmost site is an area of birch woodland, with a limited number of clearings, bounded by existing housing developments at Corrou Road and Dalfaber Park to the south and north-west respectively, and the golf course to the east; the southmost site is bounded by the Corrou Road housing to the north-west, timeshare development to the south, and other parts of the golf course to the east. Both sites are near-level, with limited undulation in places.

3. PLANNING HISTORY

- 3.1 The PIP applications were lodged with the Council in 2007 but were called in by the Cairngorms National Park Authority (Park Authority) for determination. When the Park Authority failed to determine the applications within the statutory timescale, the applicant appealed the PIP applications on the grounds of non-determination. The appeals were upheld and the sites were granted planning permission in principle, subject to conditions, in March 2010. (Appeal Refs: PPA-001-2000 & PPA-001-2001).
- 3.2 Applications for the approval of matters specified in the conditions attached to the PIPs (MSC applications) were lodged by the applicant with the Council and these applications were called in by the Cairngorms National Park Authority (the Park Authority). On 19 February 2015 the Park Authority refused the MSC applications on the grounds that the PIPs had lapsed. The applicant has now appealed the Park Authority’s refusal of the MSC applications.
- 3.3 As set out above, the applicant also submitted two planning applications in September 2014 to vary the conditions on the original PIPs. These applications were validated in December 2014. It was expected that these planning applications would be called in by the Park Authority given their “ownership” of the original planning permissions. However the Park Authority declined to call in the planning applications, as was their right, and it therefore fell to the Council to determine them in line with the planning protocol adopted for determining planning applications within the National Park. Given the legal issues associated with the determination of the MSC applications referred to above (and discussed in more detail in section 4 below), it was considered sensible and appropriate to await the outcome of the Park Authority’s determination of the applications (and the consideration of the various implications thereof) before coming to a view on how best to deal with the s42 applications. This was duly done, however, the applicant has now appealed the Council’s failure to determine the s42 applications within two months of validation.

4. LEGAL CONTEXT

- 4.1 Unlike most applications that are subject to appeals on the grounds of non-determination, these appeals (and the appeals of the Park Authority's refusal of the related MSC applications) include a legal debate on the status of the PIPs.

Whether or not the PIPs have lapsed is material to determining the competency of the MSC and s42 applications. This matter will be determined by the Reporter as part of the appeal processes.

- 4.2 Section 59 of the Town and Country Planning (Scotland) Act 1997 sets out the requirements to be met by applicants when applying for approval of matters specified in conditions attached to PIPs. If these requirements are not met then a PIP will lapse. In summary, the appellant is of the view that the PIPs have not lapsed because they believe that they have satisfied the requirement to apply for approval of all reserved matters before the statutory time period expired (the appellant has Counsel's opinion that supports this position). If the Reporter agrees with the appellant that the PIPs have not lapsed then it is likely that she will proceed to assess the MSC applications against the development plan and other material considerations and then determine whether they should be granted or refused. If the Reporter agrees that the PIPs have not lapsed but proceeds to refuse the MSC applications, it is the Council's understanding of section 59 that the appellant would have one final opportunity to apply for approval of all matters specified in the conditions attached to the PIPs.

- 4.3 If the Reporter agrees that the PIPs have not lapsed, it is likely that the s42 applications would also be assessed and determined by the Reporter. In the interests of continuity, it is suggested that the Park Authority should take the lead in responding to the appeal of the s42 applications. The reasons in support of this position are that: both the PIPs and the MSC applications were called in by the Park Authority; and, if granted, the s42 applications will result in new planning permissions for Major developments within the National Park.

- 4.4 Contrary to the position taken by the appellant, the Park Authority is of the view that the PIPs have lapsed (and has legal advice that supports this position). The Park Authority refused the MSC applications on "legal" grounds; namely that the PIPs had lapsed and therefore it was not competent to determine the MSC applications following an assessment against the development plan and other material considerations. If the Reporter agrees with the Park Authority that the PIPs have lapsed then it is unlikely that she will proceed to assess the MSC applications against the development plan and other material considerations as the applications will be deemed to have been incompetently lodged. In this scenario, it is likely that the s42 applications will also be ruled to have been lodged incompetently and the appeal of the non-determination of the s42 applications would also fail.

- 4.5 For Members' information, representations have been received on the s42 applications and these have been forwarded to the Reporter for her consideration. Those parties making representations will be invited to make further representations on the appeal and will have the opportunity to play an active role in the appeals process.

5. CONCLUSION

- 5.1 Whether or not the Council agrees with the Park Authority's interpretation of section 59 of the Act, the Park Authority's decision to refuse the MSC applications on the grounds that the PIPs had lapsed cannot be ignored. In responding to the Directorate for Planning and Environmental Appeals, it is considered appropriate that the Council acknowledge that the appellant and the Park Authority disagree on the status of the PIPs but that the Council considers itself bound by the Park Authority's decision on the MSC applications. The Council would, had it been still able to determine the s42 applications, be refusing these on the grounds that they were incompetent.
- 5.2 Unlike the Council, the Reporter has the ability to come to her own decision on whether or not the PIPs have lapsed. If she favours the appellant's interpretation of section 59 of the Act, it is suggested that the Council's position should be that the Reporter request the Park Authority to take the lead in assessing the s42 applications against the development plan and other material considerations.

6. RECOMMENDATION

It is recommended that this report be submitted to the Directorate for Planning and Environmental Appeals as the Council's response to the appeals lodged on the grounds of non-determination of the s42 applications.

Signature: Allan J Todd & Stewart D Fraser
Designation: Area Planning Manager - South & Head of Corporate Governance
Background Papers: Documents referred to in report and in case file.

Appendix

(1) 07/144/CP (PPA-001-2000) - 10 serviced plots

	Existing Condition	Proposed Condition (Revisals Shown)
1	<p>Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.</p> <ul style="list-style-type: none"> • The siting, design and external appearance of all buildings and other structures including all fencing • The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities • A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors • Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS). <p>(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.)</p>	<p>1. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.</p> <ul style="list-style-type: none"> • The siting, design and external appearance of all buildings and other structures including all fencing; <u>or</u> • <u>alternatively, for a plot-by-plot approach condition 12 is adhered to;</u> • The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities; • A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors; • Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS). <p><u>Condition 12 allows a plot-by-plot approach in which case the site start made upon the infrastructure works will allow subsequent plot-by-plot MSC applications to be competently made and considered in line with Section 59(4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.</u></p> <p>(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by</p>

11	<p>The development shall be carried out in phases, in conjunction with the adjacent development permitted under application 07/145/CP (appeal decision PPA-001-2001). No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites (applications 07/144/CP and 07/145/CP) shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a north to south direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development. (Reason: to ensure an orderly sequence of development.)</p>	<p>the Planning etc. (Scotland) Act 2006)</p> <p>The development shall be carried out in phases, in conjunction with the adjacent development permitted under application 07/145/CP (appeal decision PPA-001-2001). No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites (applications 07/144/CP and 07/145/CP) shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a north to south direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development. (Reason: to ensure an orderly sequence of development.)</p>
12	<p>In the event that any plots within the development are proposed to be developed on an individual basis, a detailed design statement shall be submitted for the written agreement of the planning authority, prior to the submission of any subsequent application on the individual plots. The design statement shall include design guidance (including sample house type illustrations where appropriate) and shall cover details of height, materials, plot ratio, boundary treatments, the incorporation of energy efficiency and sustainability measures, and landscape and ecology guidance. All subsequent applications shall be in accordance with the agreed detail of the design statement. (Reason: for consistency of design principles in the whole development.) [nb This is condition 13 on the other consent]</p>	<p>In the event that any plots within the development are proposed to be developed on an individual basis, a detailed design statement shall be submitted for the written agreement of the planning authority, prior to the submission of any subsequent application on the individual plots. The design statement shall include design guidance (including sample house type illustrations where appropriate) and shall cover details of height, materials, plot ratio, boundary treatments, the incorporation of energy efficiency and sustainability measures, and landscape and ecology guidance. All subsequent applications shall be in accordance with the agreed detail of the design statement. <u>A plot-by-plot approach is competent in terms of Section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 with the proviso that the other MSCs set out at bullet points 2, 3 and 4 in Condition 1 have</u></p>

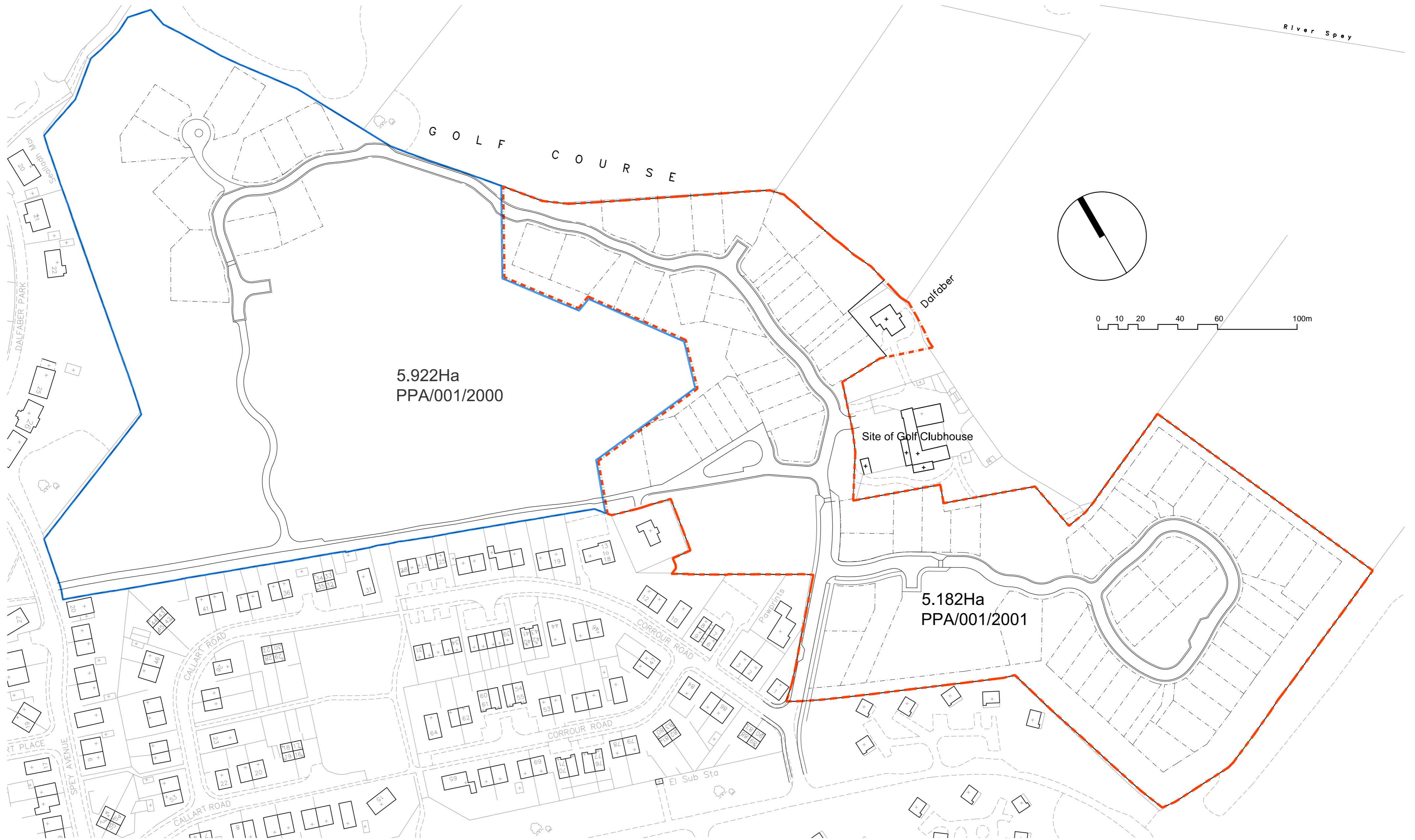
		<p><u>been approved by the Planning Authority and a lawful site start achieved.</u></p> <p>(Reason: for consistency of design principles in the whole development; <u>and to ensure to ensure that the matters referred to are given full consideration and to accord with section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006)</u></p>
21	<p>The development shall not be begun before either the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision to a registered social landlord of not less than 22 dwellings on this site together with the contiguous site of appeal decision PPA-001-2001 (application 07/145/CP); or the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing. (Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)</p>	<p>The development shall not be begun before either the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision to a registered social landlord of not less than 22 dwellings <u>a number of dwellings not less than 25% of the total number of dwellings to be built</u> on this site together with the contiguous site of appeal decision PPA-001-2001 (application 07/145/CP); or the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing. (Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)</p>

(2) 07/145/CP (PPA-001-2001) - 83 houses

	Existing Condition	Proposed Condition (Revisals Shown)
1	<p>Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.</p> <ul style="list-style-type: none"> • The siting, design and external appearance of all buildings and other structures including all fencing • The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities • A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors • Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS). <p>(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.)</p>	<p>1. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.</p> <ul style="list-style-type: none"> • The siting, design and external appearance of all buildings and other structures including all fencing; <u>or</u> • <u>alternatively, for a plot-by-plot approach condition 12 is adhered to;</u> • The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities; • A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors; • Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS). <p><u>Condition 12 allows a plot-by-plot approach in which case the site start made upon the infrastructure works will allow subsequent plot-by-plot MSC applications to be competently made and considered in line with Section 59(4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.</u></p> <p>(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006)</p>
12	The development shall be carried out in	The development shall be carried out

	<p>phases, in conjunction with the adjacent development permitted under application 07/145/CP (appeal decision PPA-001-2000). No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites (applications 07/144/CP and 07/145/CP) shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a north to south direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development. (Reason: to ensure an orderly sequence of development.)</p>	<p>in phases, in conjunction with the adjacent development permitted under application 07/145/CP (appeal decision PPA-001-2000). No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites (applications 07/144/CP and 07/145/CP) shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a north to south direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development. (Reason: to ensure an orderly sequence of development.)</p>
13	<p>In the event that any plots within the development are proposed to be developed on an individual basis, a detailed design statement shall be submitted for the written agreement of the planning authority, prior to the submission of any subsequent application on the individual plots. The design statement shall include design guidance (including sample house type illustrations where appropriate) and shall cover details of height, materials, plot ratio, boundary treatments, the incorporation of energy efficiency and sustainability measures, and landscape and ecology guidance. All subsequent applications shall be in accordance with the agreed detail of the design statement. (Reason: for consistency of design principles in the whole development.) [nb This is condition 12 on the other consent]</p>	<p>In the event that any plots within the development are proposed to be developed on an individual basis, a detailed design statement shall be submitted for the written agreement of the planning authority, prior to the submission of any subsequent application on the individual plots. The design statement shall include design guidance (including sample house type illustrations where appropriate) and shall cover details of height, materials, plot ratio, boundary treatments, the incorporation of energy efficiency and sustainability measures, and landscape and ecology guidance. All subsequent applications shall be in accordance with the agreed detail of the design statement. <u>A plot-by-plot approach is competent in terms of Section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 with the proviso that the other MSCs set out at bullet points 2, 3 and 4 in Condition 1 have been approved by the Planning Authority and a lawful site start</u></p>

		<p><u>achieved.</u> (Reason: for consistency of design principles in the whole development; <u>and to ensure to ensure that the matters referred to are given full consideration and to accord with section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006</u>)</p>
22	<p>The development shall not be begun before either the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision to a registered social landlord of not less than 22 dwellings on this site together with the contiguous site of appeal decision PPA-001-2000 (application 07/144/CP); or the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing. (Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)</p>	<p>The development shall not be begun before either the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision to a registered social landlord of not less than 22 dwellings <u>a number of dwellings not less than 25% of the total number of dwellings to be built</u> on this site together with the contiguous site of appeal decision PPA-001-2000 (application 07/144/CP); or the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing. (Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)</p>



**Residential Development, Dalfaber, Aviemore
REIDHAVEN ESTATES**

SITE 1 - LOCATION PLAN + INDICATIVE LAYOUT

Scale: 1:1250 (A2)

Date: 10 Sept. 2014

Dwg No: P1705/ D(-) 01

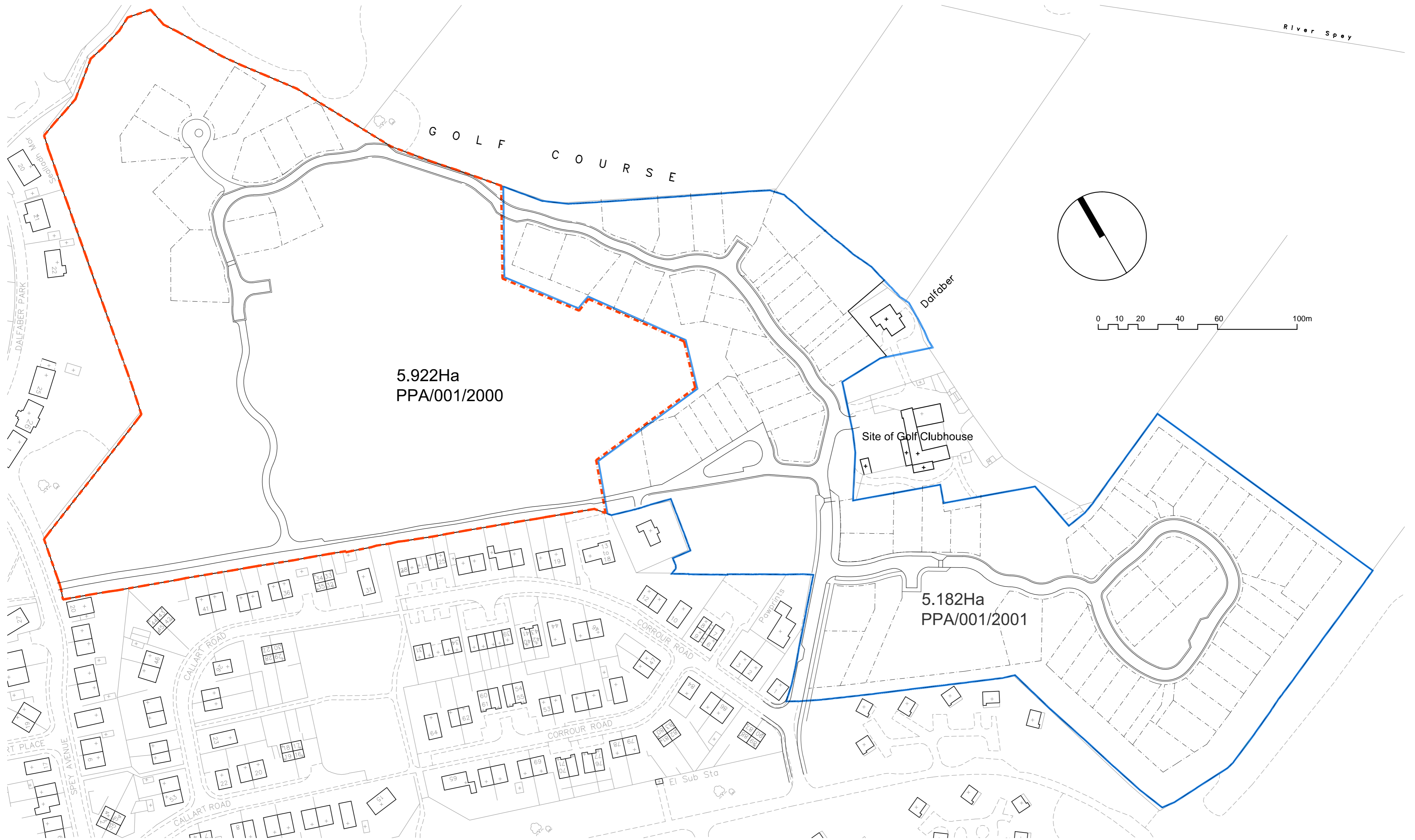
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5.922Ha
PPA/001/2000

5.182Ha
PPA/001/2001

Site of Golf Clubhouse

Dalfer

**Residential Development, Dalfer, Aviemore
REIDHAVEN ESTATES**

SITE 2 - LOCATION PLAN + INDICATIVE LAYOUT

Scale: 1:1250 (A2)
Date: 01 March 2013
Dwg No: P1705/ D(-) 02

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Deirdre Straw

From: Karen Lyons <Karen.Lyons@highland.gov.uk>
Sent: 20 August 2015 11:04
To: Marie.Buchanan@scot.gov.uk
Cc: Neil Collar (Broodies Solicitors) (neil.collar@broodies.com); Planning
Subject: PPA-270-2130 & 2131 - Dalfaber, Aviemore [OFFICIAL]
Attachments: PLS_064_15 Report.pdf

Categories: Appeal

Security Classification: OFFICIAL

Dear Marie

In response to the Reporter's Procedure Notice of 22 July 2015, I now enclose the case officer's report that was presented to the Council South Planning Applications Committee on 19 August 2015. Following discussion, the Committee agreed that the Reporter be advised that the Committee members:

- Agreed with the recommendation in the Report that the proposed variation to Conditions 1 & 11 of PIP/07/144/CP (10 serviced plots) & Conditions 1 & 12 of PIP/07/145/CP (83 houses) be allowed.
- Disagreed with the recommendation in the Report that the proposed variation to Condition 12 of PIP/07/144/CP (10 serviced plots) & Condition 13 of PIP/07/145/CP (83 houses) be allowed.
- Disagreed with the recommendation in the Report that the proposed variation to Condition 21 of PIP/07/144/CP (10 serviced plots) & Condition 22 of PIP/07/145/CP (83 houses) be allowed.

In relation to the two recommendations in the Report with which the Committee disagreed, members of the Committee did not consider themselves sufficiently familiar with the background to the imposition of those conditions and felt that the CNPA was better placed to comment on the variations sought.

As required by the Procedure Notice, I confirm having copied in the appellant's solicitor and the CNPA to this response.

Kind regards

Karen

Karen Lyons

Principal Solicitor (Planning)

Corporate Development Service

The Highland Council

Tel: 01463 702194

Fax: 01463 702198

Email: karen.lyons@highland.gov.uk

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Mura h-eil na beachdan a tha air an cur an cèill sa phost-d seo a' buntainn ri gnothachas Chomhairle na Gàidhealtachd, 's ann leis an neach fhèin a chuir air falbh e a tha iad, is chan eil iad an-còmhnaidh a' riochdachadh beachdan na Comhairle, no buidhnean buntainneach, agus chan eil am post-d seo na phàirt de chunradh sam bith mura h-eil sin air innse.

**Listening * Open * Valuing * Improving * Supporting * Partnering * Delivering
Èisteachd * Fosgailte * Luach * Leasachadh * Taic * Com-pàirteachas * Libhrigeadh**

Deirdre Straw

From: Neil Collar (Brodies Solicitors) <neil.collar@brodies.com>
Sent: 26 August 2015 10:02
To: Christine.Brown@scot.gov.uk
Cc: Karen Lyons; Jane Shepherd; Planning; Peter Ferguson
Subject: RE: PPA-270-2126 - Application Under Section 42 To Vary Conditions 1,11,12, And 21 On Permission Reference Ppa/001/2000 For Planning Permission In Principle For Development Of 10 Serviced Plots [BRO-D.FID3137388]
Attachments: 29237870_2.pdf
Categories: Appeal

CONFIDENTIAL MESSAGE - INTENDED RECIPIENT ONLY

Christine

I attach the Appellant's comments on The Highland Council's e-mail dated 20 August 2015.

Regards

Neil

Neil Collar
Partner/ Head of Planning Law
On behalf of Brodies LLP
Edinburgh, UK
<http://www.brodies.com>

Direct Line +44(0) 131 656 0125
Mobile +44(0) 7977.182114

<mailto:Neil.Collar@brodies.com>

-----Original Message-----

From: DPEA [<mailto:Christine.Brown@scot.gov.uk>]
Sent: 25 August 2015 16:01
To: Neil Collar (Brodies Solicitors)
Subject: PPA-270-2126 - Application Under Section 42 To Vary Conditions 1,11,12, And 21 On Permission Reference Ppa/001/2000 For Planning Permission In Principle For Development Of 10 Serviced Plots

Mr Collar

Please find attached a document related to the case: PPA-270-2126 - Application Under Section 42 To Vary Conditions 1,11,12, And 21 On Permission Reference Ppa/001/2000 For Planning Permission In Principle For Development Of 10 Serviced Plots

Regards,

Christine Brown



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PPA-270-2126/ PPA-270-2127

VARIATION OF PLANNING CONDITIONS

APPELLANT'S RESPONSE TO THE HIGHLAND

COUNCIL

1 Introduction

1.1 This is the response by Reidhaven Estate (“the Appellant”) to the submission by The Highland Council dated 20 August 2015 in response to the procedure notice.

2 Matter FWS 1: The merits of the application.

2.1 **Proposed variations to Conditions 1 & 11 of PIP 07/144/CP (10 serviced plots & Conditions 1 & 12 of PIP 07/145/PIP (83 houses)** – the Appellant notes that the Report by Area Planning Manager – South recommends that the proposed variations are considered acceptable. The Committee agreed. The Appellant welcomes this acknowledgement that, on the planning merits, the appeals should be granted in relation to these conditions.

2.2 **Condition 12 of PIP/07/144/CP (10 serviced plots) & Condition 13 of PIP 07/145/CP (83 houses)** - the Report recommends that rather than simply varied, this condition is deleted in its entirety from any subsequent permission. That is acceptable to the Appellant, and is within the Reporter’s powers in dealing with these appeals.

2.3 **Condition 21 of PIP/07/144/CP (10 serviced plots) & Condition 22 of PIP 07/145/CP (83 houses)** – the Appellant welcomes the conclusion in the Report that this seems reasonable given that final numbers have yet to be determined and reflects the figure provided for in the newly adopted local development plan.

2.4 The Council submission states that the members of the Committee disagreed with the recommendations on the final 2 matters. It also states that the members did not consider themselves sufficiently familiar with the background to the imposition of those conditions and felt that the CNPA was better placed to comment on the variations sought.

2.5 The Appellant notes that no reason has been provided by the Committee for disagreeing with the recommendation. It is contradictory for the Committee to both disagree, and indicate that they are not sufficiently familiar with the background. In particular, the Report contains a very clear analysis of the direction of development issue arising from Condition 12/ Condition 13, and it is unreasonable for the Committee not to provide a clear explanation for disagreeing with the recommendation.

2.6 The Appellant submits that the Reporter should give substantial weight to the recommendations contained in the Report, despite the Committee not accepting some of those recommendations. The Report was prepared by an experienced planning officer and is therefore an expert planning opinion which should be given substantial weight. In contrast, the Committee has failed to provide an explanation for not accepting the expert recommendations.

3 Matter FWS 2: Further conditions and planning obligations.

- 3.1 The Report recommends that the Reporter is advised that the remaining conditions imposed on the PIP applications should be replicated in any further permissions granted under Section 42. That is acceptable to the Appellant.
- 3.2 It is also recommends that the Park Authority are best placed to advise on whether any planning obligations are necessary. The Appellant awaits the submission by the Park Authority, but notes that no planning obligation was considered necessary when the permissions when they were granted at appeal by the reporter. The appeals were granted because CNPA were unable to martial various 3rd party Section 75 signatories and considered planning conditions an acceptable alternative.