

# AGENDA ITEM 9

## APPENDIX 3

2013/0073/MSC

2013/0074/MSC

# PLANNING REPORT (FEBRUARY 2015) MINUTES & DECISION NOTICES

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**CAIRNGORMS NATIONAL PARK AUTHORITY**

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**Title: REPORT ON CALLED-IN PLANNING APPLICATION**

**Prepared by: SIMON HARRISON  
HEAD OF PLANNING**

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**DEVELOPMENT PROPOSED:** Approval of Matters Specified in Conditions 1 (plans & particulars), 4 (landscaping information re-trees), 8 (details required by condition 1), 9 (management & maintenance statement), 10 (details required by condition 1), 11 (phasing plan), 12 (detailed design statement), 14 (contoured site plan), 16 (construction method statement), 17 (management & maintenance statement) and 19 (programme of archaeological work) of Planning Permission in Principle 07/144/CP on Land north west of Dalfaber Farm, Dalfaber Drive, Aviemore

**REFERENCE:** 2013/0073/MSC

**DEVELOPMENT PROPOSED:** Approval of matters specified in conditions 1 (in part) (plans & particulars), 8 (details required by condition 1), 9 (management & maintenance statement), 10 (details required by condition 1), 12 (phasing plan), 13 (detailed design statement, 15 (site plan), 17 (construction method statement), 18 (management & maintenance statement), and 20 (programme of archaeological work) of Planning Permission in Principle 07/145/CP on Land north west and south of former Steadings, Dalfaber Farm, Aviemore

**REFERENCE:** 2013/0074/MSC

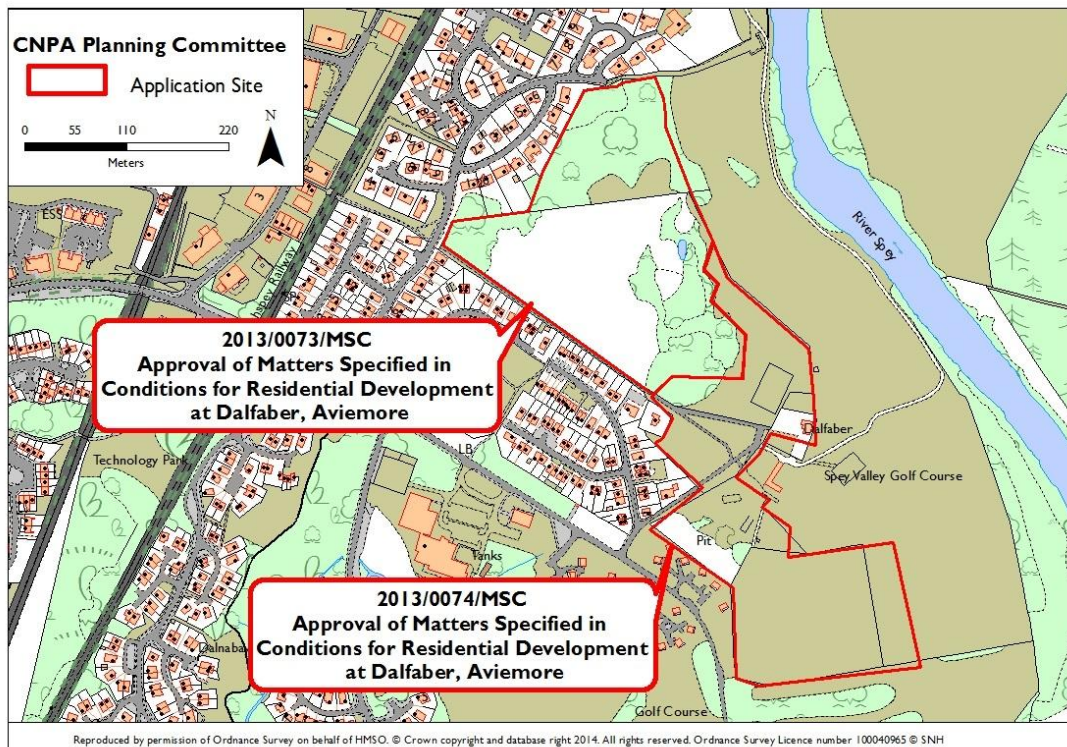
**APPLICANT:** REIDHAVEN ESTATES

**DATE CALLED-IN:** 11 March 2013

**RECOMMENDATION:**

The Members of the Committee support a recommendation to **REFUSE** planning permission for the **MSC** applications 2013/0073/MSC and 2013/0074/MSC, on the following grounds:

- (1) That the Planning Permissions in Principle to which the two **MSC** applications relate (Ref: 07/0144/CP and 07/145/CP) are no longer capable of being implemented and have expired.



**Grid reference: (E/275424, N/801039)**

**Fig. 1 - Location Plan**

## **SITE DESCRIPTION AND PROPOSAL**

1. This report covers two interlinked applications seeking approval of matters specified in the conditions and other matters (MSC applications) of the related planning permissions in principle (PPIP's – ref: 07/0144/CP and 07/145/CP). These all relate to proposed residential developments on adjacent areas of land in Dalfaber, in the northern area of the settlement of Aviemore (see Figure 1 above).
2. The sites to which these MSC applications relate are allocated as H2 and H3 in the Local Plan. They are shown in the Finalised Modified Draft LDP 2015 as sites with Existing Permissions and within the Aviemore Settlement Boundary. The combined site extends to 11.2 ha lying east and north of Aviemore and west of the River Spey. The sites are within the Cairngorm Mountain National Scenic Area.
3. The overall area of land is bounded to the north-west, west and south west by existing residential developments in Dalfaber. The character of these residential areas varies from detached properties in individual plots in the site at the north to higher density semi-detached properties, holiday lodges and 'four-plex' units in the site to the south. The sites are bounded by the golf course and open land to the east and south.

## **PURPOSE OF THIS REPORT**

4. The purpose of this report is not to assess the relative planning merits of the MSC applications referred to. That task was undertaken in the report dated August 2014 on the basis of the information available at that time but that report was withdrawn ahead of the August 2014 Planning Committee (copy of Officer's previous Report at Appendix 1). Similarly, the Planning Committee are not being asked to make a decision on the merits of these applications, and based upon the Officer's assessment, as would normally be the case.
5. Rather, it is the purpose of this report to provide an update to Committee Members on the status of the above applications and to seek the agreement and a decision from the Planning Committee on the way forward, so that certainty can be re-established for the benefit of the applicant and local community.

## BACKGROUND

6. Planning Permission in Principle (PPIP) for residential development on two adjoining parcels of land at Dalfaber was granted to Reidhaven Estate following an appeal in March 2010. The PPIPs contained a number of matters specified in conditions “MSC’s” (MSCs are broadly equivalent to “reserved matters” which applied under the previous “outline planning permission” regime) which need to be applied for and approved before development can commence. Section 59 (2) of the 1997 Planning Act requires that applications for all MSCs must be submitted within 3 years of the date of the Decision Notices relating to the two relevant PPIPs. The 3 year period can be extended in certain circumstances but these circumstances do not pertain here.
7. In early March 2013, Reidhaven Estates submitted an MSC application for each of the two PPIPs to Highland Council. CNPA exercised its right to call these applications in. The information and documentation in respect of some of the MSCs was considered to be incomplete or inadequate and CNPA requested further information and documentation from the applicants. Supplementary information and documentation to address these shortcomings was provided to CNPA on a piecemeal basis by the applicant’s agent throughout the remainder of 2013 and in the first half of 2014. By summer 2014, despite the applicants not having provided all of the information and documentation requested by CNPA, it was considered that there was nevertheless sufficient information to allow the applications to be determined.
8. The applications were on the agenda for the 1 August 2014 Planning Committee. The officer’s recommendation at that time was that the applications be approved subject to a number of conditions. While it is not conventional for MSC approvals to be conditioned in this way, the proposed approach reflected the fact that not all of the information and documentation requested by CNPA had been provided. The alternatives would have been to refuse the applications on the basis of there being insufficient information or further defer consideration of the applications still further until the required information had been provided.
9. While reviewing the applications with CNPA’s legal adviser in preparation for the Committee meeting, it was identified that the pending MSC applications may not address all of the matters set out in condition 1 of each of the PPIPs. Specifically, the applications did not appear to address in detail the siting, design and external appearance of buildings. CNPA’s planning officers carried

out a review of the pending MSC applications and the information and documentation lodged in support. This concluded that no application had been made in relation to the siting, design and external appearance of the proposed buildings.

10. Moreover, as the three year period allowed for making MSC applications under Section 59(2) had expired in March 2013, it appeared that it would no longer be competent for the applicant to make an MSC application in relation to siting, design and external appearance. This cast doubt on the validity of the PPIPs and the MSC applications which were scheduled to be considered by the planning committee. Following discussion with the applicants and their representatives, the MSC applications were withdrawn from the agenda of the 1 August 2014 planning committee to allow matters to be further investigated.
11. Following the Committee meeting, the applicants and their advisers met with CNPA to try to find a way forwards. Two issues were identified by CNPA and acknowledged by the applicant:
  - (1) The need for, and previous lack of, all required information in support of the MSC applications. The applicant indicated their willingness to provide this, such that if an answer to issue (2) below could be found, then the applications could be determined favourably but without the issue of “conditions on conditions”; and
  - (2) To establish: (1) whether all of the MSCs had been applied for within the required timescale, (2) if not, whether or not this meant that the underlying PPIPs had already expired, and (3) the impact of such expiry of the PPIPs on the pending MSC applications, and (4) whether there was any mechanism for the situation being retrieved.
12. The applicant was made aware that Harper Macleod’s initial view was that the two underlying PPIPs for Dalfaber (PPA-001-2000 and PPA-001-2001) had expired due to the fact that no application for approval of the siting, design and external appearance of the buildings had been made within the three years of the date of these planning permissions (i.e. by 11 March 2013 and 9 March 2013 respectively). As such, the Head of Planning at CNPA recommended that the best course of action would be for the applicant to withdraw the MSC applications and submit a fresh PPIP application. The additional information referred to in (1) above could be utilised in the fresh application that would reduce the number of MSC’s and re-start the clock for submission of the remaining MSC applications. The Head of Planning also offered to consider an extension in the default three-year time limit for such a new PPIP, to an extended period (for example 5 years), so as to ensure

sufficient time would be available to the applicant for the submission of all required MSC applications for all phases of the development.

13. The applicant contended that: (1) in the particular circumstances of this case it was not necessary for siting, design and external appearance of buildings to be approved at the MSC stage; (2) irrespective of whether that contention was correct the PPIPs had not expired; and (3) applications under Section 42 could be submitted which would rectify matters.
14. In relation to the first contention, the applicants have pointed out that the PPIPs allow the sites to be either built out as a single development by a builder and then sold, or alternatively built out on a plot by plot basis by individuals. CNPA acknowledge that is the case. The applicants argue, however, that the requirement to have siting, design and external appearance approved as an MSC is only relevant in the event that site was developed as a single development and, as it was now their intention for the site to be built out on a plot by plot basis, then no MSC application was required. They argue that a design statement which they have submitted fulfils any requirements in relation to siting and design on a plot by plot build basis. The design of individual plots would either be submitted for approval at some point prior to implementation or would be the subject of a separate application for full planning permission.
15. CNPA's officers consider that the siting, design and external appearance of all buildings and structures is an essential feature of any proposed development. There are no planning reasons why approval of these matters shouldn't be approved by the planning authority at the MSC stage, irrespective of the build-out model which is followed. If the original applications had been for full planning permission rather than PPIPs, it is inconceivable that full planning permission could have been granted without details of the siting, design and external appearance of all buildings being supplied and approved. The position should be no different with PPIPs where siting, design and external appearance of buildings has been made the subject of an MSC.
16. CNPA made it clear to the applicant that their understanding of the legislation was not consistent with the applicant's contentions and so would have to be persuaded of this, and advised that the onus was on the applicant to explain this to the satisfaction of CNPA and their legal advisors within a reasonable timescale.
17. Harper Macleod LLP (CNPA legal advisors) was then instructed to engage with the applicants' solicitor, Neil Collar of Brodies, to try to understand the reasons for their contentions. Discussions were held and e-mail

exchanges took place up to December 2014. The purpose of engaging in this way was to allow Harper Macleod LLP to fully understand and test the arguments being advanced so that these could be taken into account by CNPA when coming to a conclusion. Despite shortcomings with the wording of the planning legislation (acknowledged by both sides) Harper Macleod were not persuaded by the applicants' arguments. The legal opinion of Harper Macleod, which was given to CNPA late in December 2014, was that: (1) the PIPs could no longer be implemented even if the MSCs were approved (as the time limit for applying for the remaining MSC had expired), and (2) while the position was not entirely clear due to the shortcomings with the planning legislation, in their view the PIPs expired in March 2013 and could not be revived by Section 42 applications or otherwise.

- a) Attached as Appendix 2 is a summary by Peter Ferguson of Harper Macleod of his view on these matters.
  - b) Attached as Appendix 3 is a summary by Neil Collar of Brodies of his view on these matters.
18. The applicant, in the meantime, and against the explicit advice of CNPA, has made applications to The Highland Council under S42 to seek to try and rectify the matter. Harper Macleod advised that they did not consider the Section 42 applications to be competent as such applications cannot be made after the original permission has expired. CNPA therefore declined to call-in these applications. At the time of writing this report, The Highland Council were understood to be considering their position in relation to these S42 applications.
19. The applicant also initiated with The Highland Council the formal three month pre-application consultation (PAC), in line with the recommendation of CNPA Head of Planning for them to start afresh with a new application, which being categorised as a "major" application therefore required formal PAC. They declined, however, to withdraw the MSC applications. We understand the PAC Notice was served on The Highland Council on 28 October 2014, meaning that no planning application could be made until 22 January 2015 at the earliest.

## **CURRENT SITUATION**

20. CNPA advised the applicant in late December 2014 that the matter must now be drawn to a conclusion. The engagement between the two legal advisers had run its course but no consensus had been reached. In these



circumstances it was felt appropriate for CNPA to ask again that the applicant should formally withdraw the two MSC applications. The applicant did not wish to do this and preferred the applications to be continued. CNPA considered that it would not now be in the public interest to determine the applications on their merits, because there would be no practical purpose to be served in doing so as even if the applications were to be approved the PPIPs could never be implemented.

21. On 13 January 2015 the applicants submitted further information in relation to the MSC applications. Receipt of this information has been acknowledged but our preliminary assessment still shows this additional information to be lacking details in relation to certain of the matters which require approval. It does not contain any information in relation to the siting, design and external appearance of buildings and structures. The applicant's agent claims that these details have already been provided in the Design Guide January 2014, but that view is not held by Officers at CNPA.

## **THE WAY FORWARDS**

22. There are, in our opinion, only two options that are now available and these are described below:
  - a) *Option 1: Determine the MSC applications on their planning merits.* This would involve a revised version of the paper which was on the agenda for the August 2014 planning committee (see Appendix 1), being tabled at a future planning committee. It could also involve a full appraisal, consultation on and consideration of the recently received additional supporting information. In view of the need for consultation and third party input on the additional information, the earliest this matter could be put before the Committee for consideration is the April 2015 meeting. If this option was followed it would have to be made clear to everyone that even if the applications were approved, development could not proceed as there would be no opportunity to lawfully allow for a further MSC application for consideration and approval of details of the siting, design and external appearance of the buildings.
  - b) *Option 2: Refuse the MSC applications – not on their planning merits – but on the basis that the PPIPs to which they relate are no longer capable of being implemented and have expired.* In these circumstances we consider it would be not be in the public interest to determine academic applications on their merits against the terms of the development plan and any other relevant material considerations, as would normally be the case, as such an exercise would be without public benefit.

23. The applicants are of the view that this approach would remove the PIPs without compensation or due process; would be incompatible with their Convention Rights under the Human Rights Act 1998; and is without legal authority (see Appendix 3).
24. The applicants would, however, still have a right of appeal to DPEA against this decision. If the Reporter concluded that, notwithstanding the fact that the PIPs can no longer be implemented and/or the PIPs have not in fact expired, as was argued by the applicant's solicitors, the Scottish Government Reporter would determine the applications on their planning merits.
25. In summary, neither of the options open to CNPA are straightforward or without risk. Option 2 does, however, appear to be the most logical approach to what is an unprecedented situation and this is the approach recommended by officers.

## **CONCLUSION**

26. The following conclusion is therefore reached:
  - a) In the opinion of Officers, the decision should be taken to refuse the two MSC applications, not on their planning merits, but rather on the basis that the PIPs to which they relate are no longer capable of being implemented and have expired (see Option 2 above).

## RECOMMENDATION

**The Members of the Committee support a recommendation to REFUSE planning permission for the MSC applications 2013/0073/MSC and 2013/0074/MSC, on the following grounds:**

- (1) That the Planning Permissions in Principle to which the two MSC applications relate (Ref: 07/0144/CP and 07/145/CP) are no longer capable of being implemented and have expired.**

**Simon Harrison**  
**Head of Planning**  
13<sup>th</sup> February 2015.

[planning@ Cairngorms.co.uk](mailto:planning@ Cairngorms.co.uk)

**Date: 13/02/15**

*The map on the first page of this report has been produced to aid in the statutory process of dealing with planning applications. The map is to help identify the site and its surroundings and to aid Planning Officers, Committee Members and the Public in the determination of the proposal. Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Cairngorms National Park Authority and other Copyright holders. This permission must be granted in advance.*

# APPROVED COMMITTEE MINUTES

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## CAIRNGORMS NATIONAL PARK AUTHORITY

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### APPROVED MINUTES OF THE PLANNING COMMITTEE

held at Community Hall, Boat of Garten  
on 13 February 2015 at 11.00am

#### Present

Peter Argyle (Deputy Convenor)	Bill Lobban
Duncan Bryden	Eleanor Mackintosh (Convenor)
Paul Easto	Mary McCafferty
Dave Fallows	Katrina Farquhar
Jeanette Gaul	Fiona Murdoch
Kate Howie	Gordon Riddler
Gregor Hutcheon	Gregor Rimell
John Latham	Willie McKenna
Angela Douglas	

#### In Attendance:

Simon Harrison, Head of Planning  
Peter Ferguson, CNPA Legal Advisor, Harper MacLeod LLP  
Bruce Luffman, Enforcement Officer  
Matthew Hawkins, Landscapes and Ecology Manager  
Alix Harkness, Clerk to the Board  
Stephanie Lawrence, Planning Support Officer

**Apologies:** Brian Wood

#### Agenda Items 1 & 2:

##### Welcome & Apologies

1. The Convenor welcomed all present.
2. Apologies were received from the above Members.

# APPROVED COMMITTEE MINUTES

## **Agenda Item 3:**

### **Minutes & Matters Arising from the Previous Meeting**

3. The minutes of the previous meeting, 16 January 2015, held at Community Hall, Boat of Garten were approved subject to the following amendments:
  - Para 3: Relating to Para: 28 of the Minutes of 19 December 2014 to be amended to read: “The reason for deferral was to allow the flood risk assessment to be reviewed and had nothing to do with the fencing...”
  - Para 32: To be reworded to read “The Convenor reminded Members that, due to our procedures surrounding Call-In and applications associated with previous CNPA determinations, rather than the proposal itself, then any subsequent applications on the site would most likely be Called-In by the Cairngorms National Park Authority”.
4. There were no matters arising.
5. The Convenor provided an update on the Action Points from the previous meeting:
  - Action Point at Para. 17: the applicant had been advised of the reasons for deferral but CNPA had been unable to obtain written agreement from the Crown Estate and the applicant in time for the application to be re-presented to this next planning committee.;
  - Action Point at Paras. 24 & 29: Consideration has concluded that a legal agreement, rather than a planning condition, is required and advice is being sought from Harper Macleod LLP on the terms of this agreement. Once concluded, the application can then be brought back before the Planning Committee.

## **Agenda Item 4:**

### **Declaration of Interest by Members on Items Appearing on the Agenda**

6. Bill Lobban declared an interest in:
  - Item No. 6 - Direct – As an objector to the proposals.

## **Agenda Item 5:**

### **Report on Called-in Planning Application:**

#### **Remediation works & permanent retention of section of temporary track & associated bridges. (Resubmission 2013/0330/DET)**

#### **At Drumochter Lodge, Dalwhinnie, Highland**

#### **(2014/0339/DET) (Detailed Planning Permission)**

8. The Convenor informed Members that a request to address the Committee had been received, within the given timescale, from:
  - Representee – George Allan, North East Mountain Trust
9. The Convenor informed Members that the Agent, Robert Patrick was also present and able to take questions.
10. The Committee agreed to the requests.

## APPROVED COMMITTEE MINUTES

11. Simon Harrison presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
12. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:
  - a) Could it be explained whether Scottish & Southern Energy (SSE) would be in breach of their planning consent for this application? Peter Ferguson, CNPA Legal Advisor advised that the planning consents awarded to SSE under the S37 Electricity Act contain an obligation to fully reinstate this track. This proposed application seeks the permanent retention of a section of this track, which if approved by the CNPA planning committee, would not relieve SSE of their obligations under the terms of the S37 consent. He added that SSE's obligations do not prevent the applicant making this application to CNPA., and that SSE would still need to apply to the Scottish Government for an amendment to their S37 consent and associated obligations separately from this application. Peter Ferguson advised that an Informative could be added which clearly states that the permission does not supersede the S37 Electricity Act.
  - b) If the application was approved as it stands would the commencement of works be dependent on SSE being granted the amendment of conditions by the Scottish Government? Peter Ferguson advised that this was correct and that the existing obligations in the S37 consent would need to be approved separately by the Scottish Government before works could commence.
  - c) In reference to Para 29 and Para 68, do they contradict each other? Simon Harrison advised not, but that it is for the Planning Committee to accord weight as they see fit. Simon advised that he is comfortable with it for the reasons stated in the Report. He added that having it as a planning condition could produce a better outcome however an Informative could adequately address this.
  - d) If this consent was granted today would it create a precedent for the rest of the Beaully to Denny tracks? Simon advised that each application would need to be considered upon its own merits and therefore this could not be used as a precedent.
  - e) Does the track link into Quartz Road, will there be a turning circle at the northern tip of the track? Simon Harrison was unable to answer this question therefore it was agreed that it would be put to the Agent.
  - f) If the Scottish Government were to grant permission to SSE would this permission supersede the Cairngorms National Park Authority Planning Committee's permission? Simon advised that it would but that one of the advantages would be that the CNPA would be consulted as a matter of course prior to any permission being granted. The decision of this committee in relation to this current planning application would therefore be a consideration of considerable weight in any consultation by Scottish Government.

## APPROVED COMMITTEE MINUTES

13. George Allan was invited to address the Committee. The presentation covered the following points:
- North East Mountain Trust is a voluntary body which represents the interests of walkers and mountain hill walkers;
  - The tracks are visually detrimental to the landscape and were to be removed once they were no longer required for the construction phase;
  - The convenience of the estate should not be a consideration, anything beyond road safety is not a reason;
  - Application argues for road safety issue for the estate workers and estate vehicles and a plea to the Planning Committee to postpone the decision until it is known what the dualling of the A9 will entail;
  - Fully supportive of condition 3 which prescribes that a band of native trees are planted as it goes some way to reducing the track's visibility.
  - Request that an additional condition be added, if application is approved, which states that the woodland and coniferous belt should never be felled;
  - The North East Mountain Trust have had lots of involvement in tracks in the past and would encourage the Estate to work closely with the Cairngorms National Park Authority to ensure all is worked out to the letter and within the agreed timescales.
14. The Committee were invited to ask questions of the speaker but no points were raised.
15. The Convenor thanked the speaker.
16. The Agent, Robert Patrick was invited to answer Members questions of clarification:
- a) Does the track link into Corpse Road, will there be a turning circle at the northern tip of the track? Mr Patrick advised that at the northern tip of the path was a sheep fank which was already in use by a tenant sheep farmer and would not be used by shooting vehicles. The track joins up with an existing track to Drumochter Lodge and onto the hill track. He went on to advise that there are currently 7 or 8 access tracks from the proposed track to access the A9. He added that at present this involves Estate staff travelling up the A9 and turning right onto one of these access tracks as a means of getting to the hill track. He advised that the main concern is that using the A9 would not be possible once it is dualled because Transport Scotland intend on prohibiting right hand turning for reasons of road safety.
  - b) If permission is granted would the Applicant have the commitment to carry out the improvements within the timescales involved? Mr Patrick agreed and advised that they had a local contractor on board who has experience of working in the Cairngorms National Park.
  - c) What could be done to mitigate the visibility of track had the estate agreed that the trees could remain in place rather than be taken down? Mr Patrick advised that he could not confirm that they would never chop the trees down however he could advise that they did not plan to in the near future. He advised that the Estate planned to plant trees to the right of the existing tree line however he could not agree to anything on behalf of the Applicant at this time. Simon Harrison drew the Planning Committee's attention to Condition 3 and advised that this condition would

## APPROVED COMMITTEE MINUTES

cover all the aspects that had been discussed. Simon went on to advise that he was happy to add the words 'no development shall commence until proposals for the planting (continuous cover) and future maintenance of a 5 meter wide native woodland planting belt in addition to the existing trees extending along the eastern edge of the existing planting, have been approved in writing by the CNPA acting as planning authority. The Planning Committee agreed to this rewording of Condition 3.

- d) If when the A9 is dualled and if the trees needed to be removed, would placing such a condition cause a problem? Simon Harrison advised that the application has to be appraised on its merits as it stands. Matthew Hawkins advised that the alignment of the A9 had not yet been planned however if the removal of trees was, mitigation measures would be put in place.

17. The Committee discussed the application and the following points were raised:

- a) Would Condition 8 make allowances for hill walkers being able to continue to access the Munro's? Matthew Hawkins advised that the A9 developers would have to take the track into consideration.
- b) Apprehension around Condition 5 and the impact on public access if the existing track is closed off. Matthew Hawkins advised that Transport Scotland intend on removing smaller junctions onto the A9 from estates and farmland and are aware of the need to allow people to cross the road. They will consider a number of options that facilitate this with the need to cross the carriageway. Simon Harrison advised that Transport Scotland would reinstate their objection to this application if it was not for Condition 5.
- c) Concern remained with Condition 8 as under Access legislation members of the public cannot get onto the track via Drumochter Lodge as one would need to go through the curtilage of the building. Simon Harrison agreed and requested time to draft a suitable condition.

18. The Committee agreed to approve the application subject the conditions stated in the report with the following amendments:

- a) Condition 3: To be amended to include 'No development shall commence until proposals for the planting (continuous cover) and future maintenance of a 5 meter wide native woodland planting belt in addition to the existing trees extending along the eastern edge of the existing planting, have been approved in writing by the CNPA acting as planning authority. .
- b) Condition 8: To reword the condition to ensure public access is permitted.
- c) Informative 4: To make it clear to the Applicant that the consent having been granted does not supersede SSE's S37 consent and any amendments to the S37 consent would need to be considered and complied with separately.

**19. Action Points arising:                      Planning Officers to make changes to conditions 3 and 8 as listed in paragraph 18 above.**



## APPROVED COMMITTEE MINUTES

**Planning Officers to amend Informative 4 to include reference to SSE and planning conditions.**

20. The Planning Committee paused for a 5 minutes comfort break.
21. Bill Lobban left the room for the duration of the discussion of Item 6.

### **Agenda Item 6:**

#### **Report on Approval of Matters Specified in Conditions (2013/0073/MSC) and Approval of Matters Specified in Conditions (2013/0074/MSC)**

#### **At Dalfaber, Aviemore, Highland**

22. Simon Harrison presented a paper recommending that the Committee support a recommendation to REFUSE planning permission for the MSC applications 2013/0073/MSC and 2013/0074/MSC, on the following grounds:
  - That the Planning Permissions in Principle to which the two MSC applications relate (Ref: 07/0144/CP and 07/145/CP) are no longer capable of being implemented and have expired.
23. The Convenor reminded the Planning Committee that they should have received electronic correspondence from Mr Reid. She added that Mr Reid was present to answer questions if required.
24. Peter Ferguson provided the Planning Committee with a summary of the legal complexities surrounding the applications.
20. The Committee were invited to ask the Head of Planning points of clarification, the following were raised:
  - a) Mr Ferguson, in his verbal summary, had referred to a 2 year time period, a 3 year time period and a 4 year time period. Could these time limits be explained? Peter Ferguson apologised for any reference to 4 years – he had meant 3 years. He advised that in accordance with Section 59 (2) of the 1997 Planning Act, applications for all MSCs must be submitted within 3 years of the date of the decision notice relating to the relevant planning permission in principle (PPIP). Once the last of the MSCs is approved, a further 2 year period starts, and the Applicant has 2 years thereafter to implement the permission. However in this case, the applicant was now out of time because not all MSCs had been applied for within 3 years as required. The 2 year period was therefore irrelevant.
  - b) Is this a competent reason for refusing? Simon Harrison advised that this scenario is unique in his experience and advised that the problem only really arose when the legislation changed in 2009. He added that he was aware of similar circumstances

## APPROVED COMMITTEE MINUTES

beginning to arise elsewhere in Scotland. Having taken guidance from the CNPA legal advisor and their interpretations of the Planning Act as it currently stands, and where one MSC remains outstanding but which cannot now be determined, then the only way forward is to refuse the application not on its planning merits, but rather on legal grounds. This would still provide the applicant with a right of appeal. In addition, Simon highlighted that the Applicants have started the required 3 month pre-application process (PAC), in accordance with his advice, and so it was anticipated that a fresh PPIP application would be forthcoming which could then be determined in due course without this legal issue. The outstanding work undertaken would therefore not be wasted but could be utilised in the determination of this fresh application.

- d) Clarification as to the stage at which the CNPA would call-in any new application relating to the sites. Simon Harrison advised that they would be called-in as and when they were submitted.
21. The Committee agreed that they were looking forward to the new application and therefore agreed to support the recommendation as stated in the report.
22. **Action Points arising:                   None.**
23. Bill Lobban returned to the meeting at this point.

### **Agenda Item 7:**

#### **Enforcement Issues at Badaguish Activity Centre, Glenmore**

24. The Committee took this Item in a Confidential Session due to reasons of legal confidentiality.

### **Agenda Item 8:**

#### **Any Other Business**

25. Gregor Rimell asked for information regarding a retrospective application on the Co-op site in Newtonmore. The Convenor advised that the application had been called-in and therefore should not be discussed until it came before Planning Committee at a later date.

26. **Action Points arising:                   None.**

### **Agenda Item 9:**

#### **Date of Next Meeting**

27. Friday 13 March 2015 at Community Hall, Boat of Garten.
28. Committee Members are requested to ensure that any Apologies for this meeting are submitted to the Clerk to the Board, Alix Harkness.
29. The public business of the meeting concluded at 12.56

# Decision Notice

Reidhaven Estate  
c/o B Reid Esq.  
Halliday Fraser Munro  
Carden Church  
6 Carden Place  
Aberdeen  
AB10 1UR

19 February 2015

**Application Reference:** 2013/0073/MSC

**Type of Application:** Application for Approval of Matters Specified in Conditions (MSCs)

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997, AS  
AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006  
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (SCOTLAND) REGULATIONS 2013**

**The Cairngorms National Park Designation, Transitional and Consequential  
Provisions (Scotland) Order 2003**

**National Parks (Scotland) Act 2000**

CNPA in exercise of its powers under the above mentioned Act and Regulations hereby

**REFUSE** the application for:

Approval of Matters Specified in Conditions 1 (Plans & Particulars), 4 (Landscaping Information re: Trees), 8 (details required by Condition 1), 9 (Management & Maintenance Statement), 10 (details required by Condition 1), 11 (Phasing Plan), 12 (Detailed Design Statement), 14 (Contoured Site Plan), 16 (Construction Method Statement), 17 (Management & Maintenance Statement), 19 (Programme of Archaeological Work) in relation to Planning Permission in Principle reference 07/144/CP

In relation to;

Land North West Of Dalfaber Farm, Dalfaber Drive, Aviemore.

As indicated in the plans:

<b>Title</b>	<b>Reference</b>	<b>Date on Plan*</b>	<b>Date Received</b>
Site Layout Plan	A3583/L	01/10/13	
Site 2 Location Plan	A3583/L	01/03/13	
Overall Site - Location Plan	A3583/L	01/03/13	
Landscape Strategy Plan	P6D	01/02/13	
Landscape Details	P7	01/09/13	
Road Plan	007B	25/02/13	
Landscape Management and Maintenance Statement		01/02/13	
Phasing Plan	A3583/L	01/03/13	
Design Guide (as amended with Page 20)		01/01/14	
Outline Construction Method Statement			
Drainage Impact Assessment and Plans (Roadside Swale with infiltration trench detail R & C 006A		14/10/13	
Archaeological Written Scheme of Investigation		06/02/13	
Site Walkover		01/10/13	

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

For the following reason(s):

That the Planning Permission in Principle to which the application for approval of matters specified in conditions relates (Ref: 07/0144/CP) is no longer capable of being implemented and has expired as a consequence of the failure of the applicants to apply for approval of all matters specified in conditions (specifically the failure to apply for approval in relation to the siting, design and external appearance of all buildings and other structures including all fencing) within the timescales specified in Section 59(2) of the Town and Country Planning (Scotland) Act 1997.

**Dated: 19 February 2015**

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**Simon Harrison MRTPI FRICS  
Head of Planning**

**For details of how to appeal to Scottish Ministers regarding  
any aspect of this Decision Notice please see the attached notes.**

**THIS IS A LEGAL DOCUMENT -  
PLEASE RETAIN WITH YOUR TITLE DEEDS**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997, AS  
AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006  
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (SCOTLAND) REGULATIONS 2013**

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission in respect of the proposed development, or to grant permission or approval subject to conditions, he may appeal to Scottish Ministers under Section 47 of the Town and Country Planning (Scotland) Act 1997 within three months of the date of this notice. The appeal should be addressed to the Chief Reporter, Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Falkirk FK1 1XR.
  
2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out any development which has been or would be permitted, he may serve on the planning authority a purchase notice requiring the purchase of his interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

# Decision Notice

Reidhaven Estate  
c/o B Reid Esq  
Halliday Fraser Munro  
Carden Church  
6 Carden Place  
Aberdeen  
AB10 1UR

19 February 2015

**Application Reference:** 2013/0074/MSC

**Type of Application:** Application for Approval of Matters Specified in Conditions (MSCs)

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997, AS  
AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006  
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (SCOTLAND) REGULATIONS 2013**

**The Cairngorms National Park Designation, Transitional and Consequential  
Provisions (Scotland) Order 2003**

**National Parks (Scotland) Act 2000**

CNPA in exercise of its powers under the above mentioned Act and Regulations hereby

**REFUSE** the application for:

Approval of Matters Specified in Conditions 1 (Plans & Particulars), 8 (details required by Condition 1), 9 (Management & Maintenance Statement), 10 (details required by Condition 1), 12 (Phasing Plan), 13 (Detailed Design Statement), 15 (Site Plan), 17 (Construction Method Statement), 18 (Management & Maintenance Statement), 20 (Programme of Archaeological Work) in relation to Planning Permission in Principle reference 07/145/CP.

In relation to;

Land North West And South Of Former Steadings, Dalfaber Farm, Dalfaber Drive,  
Aviemore.

As indicated in the plans:

<b>Title</b>	<b>Reference</b>	<b>Date on Plan*</b>	<b>Date Received</b>
Site Layout Plan	A3583/L	01/10/13	
Site 2 Location Plan	A3583/L	01/03/13	
Overall Site - Location Plan	A3583/L	01/03/13	
Landscape Strategy Plan	P6D	01/02/13	
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Landscape Management and Maintenance Statement		01/02/13	
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Archaeological Written Scheme of Investigation		06/02/13	
Site Walkover		01/10/13	

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



For the following reason(s):

That the Planning Permission in Principle to which the application for approval of matters specified in conditions relates (Ref: 07/0145/CP) is no longer capable of being implemented and has expired as a consequence of the failure of the applicants to apply for approval of all matters specified in conditions (specifically the failure to apply for approval in relation to the siting, design and external appearance of all buildings and other structures including all fencing) within the timescales specified in Section 59(2) of the Town and Country Planning (Scotland) Act 1997.

**Dated: 19 February 2015**

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**Simon Harrison MRTPI FRICS**  
**Head of Planning**

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