

AGENDA ITEM 6

APPENDIX 4

2013/0119/DET

APPEAL DECISION
NOTICE
PPA-001-2005

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by Philip G Hutchinson, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-001-2005
- Site address: Land at School Road and Craigmore Road, Nethy Bridge, PH23 3ED
- Appeal by Inverburn Ltd against the decision by the Cairngorms National Park Authority [CNPA]
- Application for approval of Reserved Matters (ref 09/052/CP) dated 13 February 2009 refused by notice dated 17 January 2011
- The development proposed: Erect 30 dwelling houses, provide 10 affordable house plots, and erect 8 small business units with associated infrastructure and landscaping
- Date of site visit by Reporter: 31 May 2011

Date of appeal decision: 18 July 2011

Decision

I dismiss the appeal and refuse to approve Reserved Matters in the form submitted.

Reasoning

The key issues

1. The key issues are (1) whether the proposals satisfactorily dispose of Reserved Matters - reserved in February 2006 - having regard to the development plan, other relevant policy guidance, and the sensitive physical and ecological context, (2) if difficulty arises in relation to the development plan, whether other material considerations justify a development plan departure, (3) whether other conditions attached to the outline planning permission necessarily need to be discharged at this stage, and (4) whether new planning conditions can satisfactorily resolve any complications which emerge.

Preliminary matters

2. Third parties suggest that the current application roams beyond the scope of the outline planning permission. This is said to be (a) because the business units were expressed in the singular at outline stage, and (b) because an *additional 10* of the original 40 houses were to be developed on a self-build basis. The outline planning permission is headed "erection of 40 dwellings and business unit (outline)". The application under appeal carries a different heading. However CNPA accepts that the basic principle of the development has been established. I agree with that position. I find that the proposals lie



broadly within the scope of outline planning permission 02/00045/OUTBS granted by The Highland Council on 20 February 2006. My reasons are: -

(a) A business unit is expressed in the singular in the heading of outline permission, but the indicative layout plan implies 3 linked units. Condition 4 refers to “a single building or linked/terraced series or smaller buildings on the business site”. Conditions 12 – 14 respectively mention “the business site or buildings” “any individual business use of the business site or buildings” and “business uses”. There was no requirement for business units to be of a specific size, number, or format.

(b) The identity of any developer(s) and housing occupancy details are not covered by the outline permission although the indicative layout suggests the inclusion of self-build plots. The appeal proposal is for 40 houses, with 10 occupying plots labelled as affordable. An *additional* 10 houses were envisaged as ‘self-build’ plots for local persons. These two categories each of 10 houses are specified only in the Section 75 Agreement. Planning permission runs with the land, not with individuals. The self-build component - whichever plots it eventually covers - would not be endangered by the success of the appeal. If self-builders wish to vary house types, that will require separate resolution. An insight into the distribution of self-build plots would have been interesting, but I can put it no higher.

3. My attention has been drawn to the fact that a legal challenge to the Cairngorms National Park Local Plan 2010 was lodged with the Court of Session in January 2011. I note that the housing allocation NB/H2 (covering the housing components of the current site) has been cited as part of this challenge. I understand that CNPA is proposing to resist and defend its decision to adopt this plan. I am unaware of any suspension of the provisions of the local plan as they presently stand. Accordingly this decision notice is bound to respect the local plan in the form in which CNPA decided to adopt it.

Policy background

4. The most relevant parts of the development plan as it stands today are briefly summarised at the end of this notice in the Appendix on pages 6 and 7. Additionally two recently adopted Supplementary Planning Guidance Notes are relevant. These respectively deal with Sustainable Design and Natural Heritage setting out how applicants for planning permission should address these interests. Additional relevant background, over and above national planning policy which has been referred to, is the Cairngorms National Park Plan 2007. This sets out a vision for the park for 25 years.

Site-specifics and design issues

5. I am bound to attach considerable weight to the terms of the outline planning permission, despite the different policy background of today. I nevertheless remain deeply concerned about detailed shortcomings to which I turn in the following paragraphs.

6. The submitted layout is loosely in tune with the indicative layout submitted in support of the outline planning application. Both show 40 detached houses distributed fairly evenly over both areas, each served by a cul de sac. The indicative layout shows the larger group in School Wood severed by a single corridor of retained woodland with the whole group

being frontage strips of tress and lying 40m clear of properties in Dirdhu Court. Condition 4 of the outline planning permission states -

“Development of the two housing areas shall generally accord with the illustrative principles shown in the plan annexed hereto, that is to say, groups of detached and semi-detached houses separated by areas of retained or replanted woodland outwith house curtilages, and served by a single access road.....”

7. The above words clearly require the introduction of a proportion of semi-detached houses. With the indicative layout showing not a single pair, I interpret this language as a conscious pursuit of a layout which would include semi-detached houses. In my experience this would be likely to provide more scope for retained woodland outwith house curtilages – to serve as wildlife corridors.

8. At the Area Committee Meeting of 24 September 2002 planning officers advised that policy 4.1.1 of the former Badenoch and Strathspey Local Plan required “small groups of dwellings separated by treed compartments with safeguards for important specimens including those within plots”. The then applicant’s representative laid out a vision of separate self-contained stages of development – with “groups of houses bounded by woodland belts, enabling each group to be treated as an individual unit”.

9. Had the above vision been followed through, there would have been significantly more scope for effective wildlife corridors between individual groups of dwellings. There may also have been more scope for responsible public access into neighbouring woodland.

10. I am not satisfied that tree losses were somehow ‘waved through’ or considered in sufficient detail when the outline permission was granted. The scale of the indicative layout plan is 1/1250 (at A1) – although the surviving plan has been photographically reduced to A4 size. It is highly appropriate for detailed tree impacts and losses to be fully understood at this stage. I have seen no detailed tree surveys, certainly none at a scale which might reasonably inform a housing layout. Tree losses remain unquantified. I detect a clear expectation during the long life of the outline application that the indicative layout would be significantly adjusted at Reserved Matters stage. The health, quality and density of trees might reasonably have informed the layout.

11. The conscious pursuit of a proportion of semi-detached houses is consistent with those parts of the Section 75 Agreement which seek 10 affordable units and (to a lesser extent) the release of 10 self-build plots to eligible locals. For these reasons I am not satisfied that the appeal proposal is sufficiently consistent with the terms of the outline planning permission when it is read as a whole. I am being asked to approve plans showing exclusively detached houses. I cannot reasonably approve these in the vague hope that a proportion of semi-detached houses would be introduced later on.

12. I have seen two surveys of red squirrel dreys across the entire site. One is by the appellant’s consultant and is dated 21 January 2008. This drew the response of 22 May 2008 from a Highland Council planning official stating that the distribution of dreys severely constrains the site layout, particularly in Craigmere Wood. The other survey was undertaken by or for the Badenoch & Strathspey Conservation Group in April 2009 and reveals over 100 dreys with the densest concentrations in Craigmere Wood, and at the

south end of School Wood, with a lesser concentration at the north end of School Wood and with relatively few dreys in its central part. I am not suggesting that every drey is occupied or in use - this would be highly unlikely. The situation may very well have changed over the last two years. Despite anticipated licensing arrangements from 2011, what is seriously missing is a demonstration of how the *present* distribution of dreys has informed - or even roughly influenced - the detailed layout of roads, plots and building footprints. Both surveys to date indicate a high density of dreys. I cannot safely assume that the distribution in 2011 is significantly less dense.

13. Having focused on the red squirrel, I fear that this species may not be the only one to reasonably influence the layout of development. For *example* had the appeal succeeded I would have first had to consider how development might be reconciled with the otter population in the adjacent watercourse – and just conceivably within the site itself.

14. As things stand there remains too high a probability that layout changes would be needed at some later stage on account of the presence of red squirrels and perhaps other protected species if this appeal was to succeed. A similar risk arises given the absence from the written submissions of a detailed tree survey at a suitably large scale. Changes may also be required on account of the secondary matter which I discuss in the next paragraph

15. I accept that an archaeological investigation could be required by a planning condition to be discharged before development commences. It would not often be a prerequisite of approval of Reserved Matters. However, the brief produced by the Highland Council Archaeology Service in 2002 (although now apparently out of date) required only a “rapid walk-over survey” “at the earliest possible stage” plus a check of available documentary sources. It required no physical intervention which incidentally could well have endangered trees. It would not have been asking a great deal to have expected the completion of such a straightforward exercise by now. Alongside other constraints discussed above it might usefully have informed the detailed layout.

16. In contrast, I see no great need for the resolution of all other matters at this stage of the process. A SUDs solution for surface water disposal can probably be achieved within or alongside the footprint of the access roads. This seems clear from background papers predating the grant of outline permission. Likewise a landscape management plan does not necessarily have to be settled at this stage – merely the very clear identification of sufficient tree groups and landscaping outwith individual plots. The management regime itself could surely be secured by a suspensive condition.

17. For reasons discussed prior to the previous paragraph, I expect that a significantly revised layout will emerge in due course. Third parties may well feel entitled to comment on such changes. They could well be denied such an opportunity if I was to conditionally approve the submitted layout, with a high risk of a series of later adjustments. I cannot safely assume that third party concerns are likely to abate.

18. The individual house types are pleasing enough in themselves, but they are unlikely to enhance any sense of place at this sensitive location. I share the reservations of CNPA officials. These are fairly standard upper/mid-market ‘executive’ house types. They make some concessions to local architectural traditions. However, with their fairly even

distribution the upshot would be perceptions of a suburban development in cleared woodland. This is despite 10m frontage strips of trees surviving, trees surviving to the rear, and in fragments of woodland within each part of the site. What is called for is house types typical of, and subordinate to, their woodland setting. They should occupy more concentrated groups, consistent with the original vision described in paragraph 9 above. In such a layout wildlife corridors would surely be more numerous and effective – and therefore more in tune with the expectations of the recently adopted local plan.

19. I have considered the significant advantage of under-grounding the power lines on each road frontage. I suggested (in the further procedure concluded on 23 June) that this might offset the environmental impact of the development, but this was in a strictly non-pejorative spirit. Any development brings some environmental impact or other. This undeniable benefit cannot however offset these underlying problems since the layout is bound to change. At the very least there remains too high a probability of later changes. These are likely to be more significant than the type of minor changes which might be legitimately treated as 'micro-siting'. I cannot modify the development by planning conditions. This is clear from paragraph 83 of Circular 4/1998 – *The Use of Conditions in Planning Permissions*. Moreover the scale of modifications would be considerable.

20. I recognise that Scottish Natural Heritage has not objected. Having reviewed all the submitted background papers to emerge in the long life of this project, I can understand why. That is not to say that natural heritage and other constraints should not thoroughly inform the layout.

The key issues revisited

21. In the light of paragraphs 7 – 20 above I am unable to reconcile the appeal proposal with policies N1 and L4 in the Highland Structure Plan. Nor can I reconcile it with that part of structure plan policy G2 which expects development to demonstrate sensitive siting and high quality design in keeping with local character. The proposal is undeniably consistent with parts of the Cairngorms Local Plan 2010. However for much the same reasons I cannot fully reconcile it with local plan policies 4 – 6. Somewhat unusually at Reserved Matters stage I therefore find the proposal inconsistent with the development plan.

22. The proposal can be reconciled with several parts of Scottish Planning Policy, but I cannot reconcile it with paragraphs 125 – 132. This is because the woodland setting and other natural heritage interests constrain the development to the point where these interests should transparently influence, even dictate, its layout and precise footprints. There is corresponding friction with parts of the Cairngorms National Park Plan 2007, although I recognise that this document supports the provision of affordable housing. In addition I have some difficulty reconciling the proposal with parts of CNPA Supplementary Planning Guidance which have been referred to. For example the application is not accompanied by sufficiently detailed information on the natural heritage interest of the site, and on how impacts may be mitigated or compensated. In view of direct conflict with the development plan it would be unproductive to explore such additional tensions any further. Taking this and the previous paragraph together I find that the first key issue does not run in favour of the appeal.

23. So far as the second key issue is concerned, I have covered several other material considerations in passing, namely the balance of relevant policy background as well as site-specific and design considerations. Additional material considerations are the need for more affordable housing in and around Nethy Bridge and the undeniable benefits of providing space for existing or new local businesses. This decision does not obstruct either of these interests, although it doubtlessly introduces a little delay while the above shortcomings are addressed. Any delay would be miniscule given the proposal's long evolution thus far. I consider this a small price to pay for a superior outcome, demonstrably in tune with the site's sensitive context and natural heritage interest. I have also considered the commercial imperatives for the appellant company, and the transformed state of the housing market since the outline permission was first sought. I am sensitive to market realities, but I cannot reasonably allow these matters to over-ride every other factor. The development in whatever form will endure for generations. Accordingly, I find that other material considerations do not justify a development plan departure.

24. I agree that planning conditions covering surface water drainage and landscape maintenance do not necessarily have to be discharged at this juncture. It would be sufficient for these matters to be settled before development commences. However, detailed implications for trees and other natural heritage interests and to a lesser extent archaeological interests require to be more thoroughly understood at this stage. They should very visibly inform the layout and detailed footprints. For the reasons explained mainly in paragraphs 14 and 19 above, additional planning conditions at this stage could not contribute to a resolution of the above shortcomings. Accordingly the third and fourth key issues cannot help justify the success of this appeal.

25. I have been at pains to consider *how* the site can be developed – not *whether* it should be. I have kept one eye very firmly on the outline planning permission and on the allocations covering the appeal site in the Cairngorms National Park Local Plan 2010. I suspect that the delivery of satisfactory Reserved Matters may prove challenging. In no way do I imply that this is out of reach. Careful account has been taken of all the other matters which have been raised - including detailed references to a range of additional natural heritage issues - but they do not outweigh those considerations on which this decision is based.

Philip G Hutchinson

Reporter

Appendix – Relevant Development Plan Provisions

(A) From the Highland Council Structure Plan 2001:

Policy N1 – Nature Conservation: this expects that new developments should minimise their impacts on nature conservation interests and enhance these where possible.

Policy L4 – Landscape Character: This asserts the desirability of maintaining and enhancing present landscape character in the consideration of development proposals.

Policy G2 – Design for Sustainability: This applies an extensive range of assessment criteria to the evaluation of development proposals with a view to achieving maximum sustainability.

(B) From the Cairngorms National Park Local Plan 2010:

Policy 4 – Protected Species: This presumes against development which would have an adverse effect on any European Protected Species [EPS] unless there are imperative reasons of overriding interest (of which potential examples are listed).

Policy 5 – Biodiversity: This presumes against development which would have an adverse effect on habitats and species identified in the Cairngorms Biodiversity Action Plan, the UK Biodiversity Action Plan or by Scottish Ministers in the Scottish Biodiversity List. The policy lists exceptional circumstances in which the above presumption may be set aside.

Policy 6 – Landscape: This presumes against development which does not complement and enhance the landscape character of the Park, in particular the setting of the proposed development. It nevertheless accommodates exceptions where there are special overriding social or economic benefits of national importance, coupled with thoroughly effective mitigation.

Policy 19 – Contributions to Affordable Housing: This expects developments of more than 3 houses to incorporate an affordable proportion. It looks favourably on housing developments aimed solely at the affordable sector.

Policy 20 – Housing Development within Settlements: This expects new housing to be directed to sites within settlement boundaries. Conditionally it looks favourably on development on allocated sites, on infill development and on the reuse of brownfield sites.

Policy 25 – Business Development: This looks favourably, subject to certain provisos, on proposals which support economic development, which supports or extends existing business uses, including those on identified business sites.

Policy 34 – Outdoor Access: This encourages development which improves opportunities for responsible outdoor access, and seeks to ensure that such interests are not endangered.

The Proposals Map: This in principle and conditionally identifies all 3 components of the present appeal site, plus additional perimeter strips, for the classes of development currently proposed. This is for 40 houses on School Road and Craigmore Road (together) plus business use on the remaining 0.76 ha on Craigmore Road.