

CAIRNGORMS NATIONAL PARK AUTHORITY

MINUTES OF THE PLANNING COMMITTEE

held at Glenmore Lodge, Aviemore
on 23rd August 2013 at 11.00am

Members Present

Peter Argyle (Vice Convener)	John Latham
Duncan Bryden	Bill Lobban
Angela Douglas	Eleanor Mackintosh (Convener)
Dave Fallows	Willie McKenna
Katrina Farquhar	Martin Price
Jeanette Gaul	Gordon Riddler
David Green	Gregor Rimell
Kate Howie	Brian Wood
Gregor Hutcheon	

In Attendance:

Murray Ferguson, Director of Planning and Rural Development
Don McKee, Head of Major Projects & Housing
Matthew Hawkins, Senior Heritage Officer
Bruce Luffman, Monitoring & Enforcement Officer
Andy Rinning, Facilities Officer
Lee Murphy, CNPA Legal Adviser, Partner from Harper Macleod LLP Solicitors

Apologies:

Mary McCafferty
Fiona Murdoch

Agenda Items 1 & 2:

Welcome & Apologies

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

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Agenda Item 3:

Minutes & Matters Arising from the Previous Meeting

3. The minutes of the previous meeting, 19th July 2013, held at The Cairngorm Hotel, Aviemore were approved subject to the following amendment:
 - Paragraphs 19 & 20: 'Sand Martens' to be amended to 'Sand Martins'.
 - Paragraph 39: Paragraph to be deleted. Standing Orders state that where an Amendment is proposed but has no Seconder it would not be recorded in the minutes.
4. There were no matters arising.
5. The Convener provided an update on the Action Points from the previous meeting:
 - Action Point at Para. 17: Katherine Donnachie had highlighted the A93 parking issue to the Roads Authority.
 - Action Point at Para. 21: Katherine Donnachie had raised the issue of geodiversity with the CNPA Natural Heritage Officers for future applications.
 - Action Point at Para 28: The need for realistic drawings to be added to the Agenda at the next Developers Forum. This issue to also be raised with the Local Authority (who register the plans) and Applicants.
 - Action Point at Para. 41: Fiona Murphy had spoken to the CNPA Ecologist regarding fencing and connectivity of wildlife and they had concluded that a gap of 150mm was sufficient to allow for this.

Agenda Item 4:

Declaration of Interest by Members on Items Appearing on the Agenda

6. David Green declared an interest in:
 - Item No. 5 (Paper 1) - Indirect interest – Due to his Brother-in-Law having previously done some work on An Camas Mor. However, he had no knowledge of what this work consisted.

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Agenda Item 5:

Report on Called-In Planning Application:

Development of New Community

(Up to 1500 Houses; Associated Business, Community Facilities and Provision of Infrastructure)

An Camas Mor, Aviemore

(Paper 1) (09/0155/CP)

7. Eleanor Mackintosh advised Members that the Committee had taken the substantive resolution to grant planning permission in principle in June 2010, subject to conditions and the completion of a Section 75 Legal Agreement (S75). For various reasons, which will be explained in officers presentations, this was not achieved and since that time five significant new material considerations had been identified. It was these new material considerations that were to be discussed.
8. Due to the focus being on the new material considerations, there was no provision for further representations to be made. However, three letters had been received this week from BSCG, Cairngorms Campaign & Buglife. Staff had considered that all the points raised in the letters had either been covered in the planning report or will be picked up in the presentations to Committee.
9. Don McKee, Head of Major Projects & Housing, introduced a paper recommending that the Committee approve the application subject to the conditions stated in the report and registration of the Section 75 Planning Obligation.
10. Don McKee gave a presentation on the planning report, the presentation covered the following points:
 - The history of the application – original submission and what it was for (May 2009) and previous Committee decision (June 2010). No Decision Notice had been issued due to lengthy negotiations regarding the S75 and a challenge to the adopted Local Plan in the Court of Session.
 - The application was now at a point where the S75 negotiations were concluded and the Local Plan appeal to the Court of Session had dismissed the challenge to the adoption of the Local Plan. Legal advice received was that the CNPA could proceed to determine the application provided that regard was had to the Development Plan and all relevant material considerations. As the previous consideration was in June 2010 and there had been new material considerations in the interim, the report had been brought before the Committee for reconsideration (as required under Planning Law). A new Habitat Regulations Assessment had been carried out and a review of the planning conditions had also taken place.
 - He took members through his report drawing attention to the context within which the decision had to be taken, including legal advice received; the role of An Camas Mor in support of Aviemore as the economic driver for Badenoch & Starthspey in

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the National Park Partnership Plan and Proposed Local Development Plan; the justification for contributing to future housing land supply as per Scottish Government policy; and the rationale that now allowed officers to support up to 1500 rather than 1100 residential units.

11. The Committee were invited to ask points of clarification. No points were raised.
12. Matthew Hawkins, Senior Heritage Officer, gave a presentation on the Habitat Regulations Assessment (HRA), the presentation covered the following points:
 - The purpose of the HRA, to establish if the proposal would harm the integrity of any Natura site and the 10 step process used.
 - The screening process, which seeks to broadly identify what effects are likely or possible.
 - The appropriate assessment, which looks in more detail at the effects identified in the screening process.
 - Summary of effects –
 - Disturbance to Capercaillie (both within and outwith the application site) by visitors and residents of the new community.
 - Potential increase in nutrient, sedimentation and other pollution to the River Spey.
 - Disturbance to Otter and Golden Eagle.
 - Consideration of mitigation measures that may resolve the conflicts, such that the effects identified could all be managed in this way.
 - The requirement for a recreational management plan, to prevent disturbance from recreation to Capercaillie. The 10 criteria required regarding the content and quality of the plan.
 - The requirement for pollution control via a Construction Method Statement.
 - Prevention of increase in nutrient level, particularly in waste water. The requirement that the Waste Water Treatment Works at Aviemore should be upgraded in future in order that the nutrients would be removed to the correct levels.
 - A key change in breaking down of the permission into phases. Individual building phases must not contribute to any of these effects and there is no presumption of further development. Every phase will go through the HRA to ensure its achieving the same objectives as set out here. This will ensure that not only will the Masterplan not have any effect, but also that each individual phase will not either.
 - The requirement to have certainty beyond reasonable scientific doubt that there will be no effect upon the integrity of any Natura site. The CNPA have concluded that there is this certainty and this view is supported by SNH.

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- The Environmental Impact Assessment (EIA) which accompanied the original application was carried out in 2009 and concern that the survey information within it would be out of date. Since that time the CNPA has been in constant contact with the Estate and the Developers to ensure that the surveys have been kept up to date and where further information was required, this had been provided. The necessary surveys were up to date and included European protected species.
- The landscape impact and the significance of the 630 houses. The EIA tested what the potential landscape and visual impacts were at various volumes of houses. The conclusion, at that time, was that up to 630 houses would have no significant adverse effect and the CNPA agreed with this. It is now proposed that at each phasing block the potential impact will be re-assessed and checked that there is still no significant adverse effect. As a long term programme (25-27 years), advance planting and existing landscape will mature around the development. However, it has been accepted that for a period of time, towards the end of the building project, there will be some significant impact on the landscape. Eventually, once the landscaping has matured this impact will be reduced. In terms of enhancement, the area will end up with a high quality settlement in the landscape.

13. The Committee were invited to ask points of clarification, the following were raised:
- a) Clarification of how the increase in recreational use of the area by residents can be separated from increased use by visitors. Matthew Hawkins advised that it needed to be clear which impacts were attributable to the development and address those through the recreational management plan. This information needed to be seen in context to the overall users of the area via survey and monitoring work.
 - b) Clarification if the required upgrade of the Waste Water Treatment Plant was due to it not currently removing the nutrients highlighted. Matthew Hawkins responded that the Plant did remove the nutrients. However, the upgrade was required as the existing Plant had a fixed capacity and this would require to be increased to accommodate the additional development.
 - c) Identifying the forest areas affected on a map. Matthew Hawkins indicated the designated areas affected - Anagach, Abernethy, Cairngorms SPA, Kinveachy & Craigmore Wood. He also highlighted the non designated sites, including Boat of Garten Woods and Inshriach.
 - d) The relationship between the Natura sites and the development site. Matthew Hawkins responded that the development site did not encroach upon any Natura site, with the exception of the River Druie (tributary of the Spey). The development site was approximately 900m – 1km away from the boundary of the nearest Natura area (Cairngorms SPA) and therefore there was no direct effect upon any Natura site. Any effects upon the designated areas were for the species which use the site and adjacent sites. He advised that the issue of compensatory planting and that one of the identified areas for planting encroached upon the Cairngorms SPA. However,

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it was stated that this planting should not conflict with any of the other qualifying habitats of the SPA.

- e) Although not part of the application being considered, clarification if the footbridge crossing the Spey would require a separate HRA. Matthew Hawkins responded that it had been included at the current stage as an outline proposal, due to its proximity to the development. However, when the time came for the bridge to be constructed it would be subject to a separate HRA.

14. Lee Murphy, CNPA Legal Adviser (Harper Macleod LLP Solicitors) gave a presentation on the most recent Local Plan challenge, the new material considerations and the S75, the presentation covered the following points:

- The previous appeals on the decision to adopt the CNP Local Plan, both having been dismissed.
- The current appeal to the UK Supreme Court noted on 12 August 2013. Senior Counsel's advice on the prospects of success to the CNPA on this appeal remains consistent with previous advice, that there is a reasonable prospect of success.
- The appeal has been served not only on the CNPA but also on the third party developers including An Camas Mor LLP. The period allowed for notices to be lodged in respect of the appeal is until 26 August 2013. Once this period had passed, and a subsequent period of 112 days has also elapsed, the hearing will be fixed in the Supreme Court. The hearing is expected to be fixed sometime in December and the date of the hearing is then likely to be 9 – 15 months ahead. Therefore, the hearing could be any time between September 2014 and March 2015. Once the hearing has taken place, the decision is usually available approximately 6 weeks from the date of the hearing.
- As with the previous appeals, the appellants have sought to restrict the potential liability for their costs in the event that the current appeal is unsuccessful; the usual procedure being that costs would be awarded against the unsuccessful party. Costs involved in an appeal to the UK Supreme Court are significantly higher than in the Court of Session. The matter of a protected expenses order would usually be dealt with as a preliminary prior to the substantive court process. The Supreme Court being currently in recess, any decision regarding the protected expenses order was not expected until September / October 2013. The determination on the order would not involve a hearing before the Supreme Court. The appellants may request the Supreme Court to bring forward the date of decision of the protected expenses order. However, any decision on this would sit within the context of the other significant number of cases that the Supreme Court deals with.
- The CNPA have objected to the appeal and the protected expenses order and the notices were lodged with the Supreme Court on 15 August 2013. The third parties also have an opportunity (until 26 August 2013) to lodge objections.

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- If the appeal were successful, it could mean that the justifications and support for the new settlement at An Camas Mor would be quashed and it would be removed from the currently adopted Local Plan; removing a key basis for the approval of the application under consideration. The objectors/appellants have not sought to interdict the CNPA from proceeding nor sought to have the adopted Local Plan quashed in its entirety.
 - Each of the material considerations should be considered in turn but the weight attributed to them should be the subject of planning judgement.
 - The fact that there are two Court of Session decisions refusing the challenge to the Local Plan is important, as is the likely timescale for the current appeal to the Supreme Court.
15. The Committee were invited to ask points of clarification, the following were raised:
- a) Counsel's thoughts on the protected expenses order. Lee Murphy advised that for the protected expenses order to be successful a number of criteria had to be met including matter of public interest and the point at issue in the court case to be decided upon. The precedent of the previous protected expenses orders.
 - b) The appeal process after the UK Supreme Court and timescales for the European Court. Lee Murphy advised that should the Supreme Court challenge be unsuccessful, the appellants would have a defined timescale in which to decide to take the process further to the European Court. Appeals taken to the European Court could be a lengthy process and last years. Further information on timescales could be provided if necessary.
 - c) The fact that public interest could move over time and the definition of 'public interest'.
 - d) Clarification if it was a material consideration that the appellants have not sought to interdict the CNPA on taking a decision on the application or quash the current Local Plan. Lee Murphy responded that if the appellants were to seek to interdict the CNPA from taking any decision it may expose them to much higher financial penalties, not only from the CNPA, but also other affected third parties. Lee Murphy advised that the whole Court position was one that should be kept in mind when taking a decision on the application.
 - e) Clarification if the option of an interdict was still available to the appellants. Lee Murphy replied that she would not expect them to change the appeal lodged to the Supreme Court at this point.
 - f) If a precautionary position were taken by the CNPA, given the previous two unsuccessful challenges, would there be an option for the developer to counter challenge for unacceptable levels of delay and / or non determination. Lee Murphy advised that it was open to any developers to take court action as they felt necessary. The issues for consideration would be if the CNPA had acted reasonably in the determination process to date. She felt it would be unlikely that the CNPA would be found to have acted unreasonably in bringing the application forward to

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the Committee as Members had all the relevant information before them on which to base a decision. One of the factors a Planning Authority must consider is certainty and looking to the future as regards the need for economic benefit, housing etc. and An Camas Mor being seen as one of the economic drivers of the area. These issues could be taken into account and counter any allegations of the CNPA acting unreasonably. Although these factors could not be guaranteed.

16. Don McKee concluded the presentations, covering the following points:

- Drawing Members' attention to the aspirations that underpin An Camas Mor and the measures that would be in place via planning conditions to ensure ongoing and robust assessment at all stages to ensure delivery of a new community fit for a National Park;
- Informing Members of those matters which would now be dealt with by condition rather than as part of the S75 and highlighted the changes to conditions as a result of the HRA and to give greater clarity.

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

- a) The previous S75 covering waste management, provision of a green transport plan and maintenance of public areas, which don't appear to be covered in the current S75. Don McKee advised that these areas were considered to be more appropriately covered by conditions and so have been.
- b) The lack of the 12 week consultation for the phases of development. Don McKee replied that if the phases were lodged as individual applications they would be classed as major developments and so would have to undergo a formal 12 week pre-application consultation process prior to any planning application being lodged and would not necessarily tie in to the conditions on the planning permission in principle. It is to make clear that any forthcoming application for an individual phase hangs on this planning in principle application and would not be a major application in its own right. They would not have to go through the formal 12 week consultation but there would be community consultation.
- c) The definition of terms included in the S75 and conditions and assurances required that the same terminology will be used consistently throughout all paperwork.
- d) If the plans provided showed specific landmarks/fences/boundaries which could be used to identify specific areas e.g. for the compensatory planting. Don McKee responded that the plans showed the area as it is commonly understood. Provision had also been made in the S75 for the formal lease agreement for the countryside park, which is when precise boundaries would be defined. Matthew Hawkins advised that each compensatory planting area was marked on a map and defined in terms of the plan. Each site compensates for the loss of some habitat on the site, although not always within the development site. He stated that the CNPA and the Applicant were clear on the area of compensatory planting and the level of expectation for each site.

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- e) The successful delivery of the project relying on both public and private bodies and the recreational management plan (RMP) would be a significant part of this success. Matthew Hawkins advised that there were strong links between the RMP and the Capercaillie Framework currently being worked on, not just for this application but also for future developments.
- f) The requirement for a condition that community and business facilities would be built in all phases of the development thereby ensuring that should the building of the development be stopped prior to the completion of the Masterplan that a community would have been established not just another housing estate. Don McKee responded that this could be incorporated into Condition 3. He advised that the development would be built out slowly and it was critical that the balance of housing, work and community facilities be achieved at all stages of the project. It also needed to be considered at all stages that future phases may not take place due to any number of reasons e.g. economic reasons. Murray Ferguson advised that a significant level of cooperation would be required from all aspects of the private and public sectors to help integrate the new community into the area and that only a certain amount that can be achieved through the planning process at this stage.
- g) The proportion of Affordable Housing to be built and how this would be delivered at each phase of the development. Don McKee advised that the S75 covered how the Affordable Housing would be delivered over the course of the development, as housing needs would change over time. He also stated that the CNPA would be looking for a mix of housing that was affordable and Affordable housing, this would be done in consultation with Highland Council.

18. The Committee paused for a comfort break at 12:30 hrs.

19. The Committee reconvened at 12:35hrs.

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

- a) Condition 3 already including business and community use. Don McKee advised that for clarity a specific point could be incorporated.
- b) The clarity and level of work done by CNPA Officers on the application.
- c) If any habitats occur on the development site that will be lost or damaged that could not be compensated for off site. Matthew Hawkins responded that there were a variety of habitats on the site, all of which had value. He advised that perhaps the most sensitive was the Ancient Woodland site, and only one portion of it was classed as truly Ancient Woodland on the provisional inventory. He stated that the part to be changed was 30-40 year old plantation and so did not hold the same level of importance.
- d) If SNH have an obligation to provide commentary on future planning consideration stages. If planning decisions would have additional due weight if the decision taken by the CNPA was backed up by SNH. Matthew Hawkins outlined the casework level agreement between CNPA and SNH. CNPA are obliged to carry out the

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Appropriate Assessments on the advice from SNH. SNH are involved in cases where there could be an impact on European Protected Species. SNH would not be expected to be consulted on how a Planning Authority had applied their guidance provided to Government. Matthew Hawkins advised that if a specific issue was found that required specialist knowledge they could be consulted at that point.

- e) Condition 3 h) - How the level of second / holiday home use can be controlled. Don McKee responded that it was worded in this manner as legal control was very difficult on this issue, so that the onus was on the developer to articulate how they intend to address the issue. It was expected to be addressed through the Masterplan.
- f) Condition 3 k) – How opportunities for provision of further and higher education. Don McKee advised that the first reference to this was included in the Badenoch & Strathspey Local Plan and/or Highland Structure Plan, as it was aspirational for this to be included in the development.
- g) Condition 3 y) – The unnecessary last part of the sentence ‘...throughout the life of the development.’ Don McKee advised that this could be removed.
- h) Condition 4 g) – If the Cairngorms LBAP was still appropriate in light of the Cairngorms Nature Action Plan. Matthew Hawkins advised that it was and that the Cairngorms Nature Action Plan could also be included in this condition.
- i) Condition 4 k) – The need for improved wording rather than water bodies, as ecology evolves over time. Matthew Hawkins responded that it could be amended to ‘natural systems’.
- j) The need for all phases of the development to be built out to an exemplary level. The possibility of not granting future phases due to previous phases not being built to an exemplary level. Don McKee advised that to not grant a phase due to the build quality of a previous phase would be very subjective territory. He advised that all levels of development would have to be monitored and the CNPA would have to be robust in approving the level of detail associated with each development phase.
- k) Clarification if Matthew Hawkins believed, as a professional CNPA Officer, that the HRA meets the test of ‘beyond reasonable scientific doubt’. Matthew Hawkins stated that yes he did.
- l) Confirmation that Members were content with the findings in the HRA. Members agreed that they were.
- m) Developer contributions not being payable until the building of the 301st house. Clarification what happens if only 300 houses are built. Don McKee advised that if only 300 houses were built no developer contributions would be paid, as there was a lot of infrastructure investment upfront and it was only viable to collect contributions after 300 houses..
- n) Condition 4 b) – the need to include storage and retention of soil.
- o) Condition 4 – the need to review Landscape & Ecology Masterplan at each phase of development.

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- p) Condition 6 d) – Clarification if it is the CNPA carrying out the restoration. Don McKee responded that it was to be a scheme for restoration to be carried out by the developer and as approved by the CNPA and would amend the condition accordingly.
 - q) An Camas Mor being a realistic alternative to the consistent expanding of existing settlements.
 - r) Confirmation that Members have received enough information and had enough debate to make an informed decision on the application. Members confirmed that they had.
 - s) The need to make progress with the application. The level of work that the Applicant has done to come forward with a high quality development. The overwhelming public need for the development. The economic and housing benefit for the local area. The development having been recognised as part of the Scottish Sustainable Communities Initiative by the Scottish Government.
 - t) Recognition that there is a risk to the decision and it is important that Members take it into account. Democracy is about protest as well as progress: there has been protest, but two unsuccessful challenges, and there is a stage where it is in the public interest to take a decision. The application is well thought through, there are comprehensive recommended conditions, the proposal has been in the public domain for 25 years, and the fundamental public interest in terms of environment, economy and culture is overwhelmingly in support.
 - u) Confirmation that Members agreed to all aspects of the application – the new material considerations, the HRA, the issues covered in the S75 and the planning conditions to be attached to the decision notice. Members confirmed that they did.
21. The Committee agreed to approve the application subject to registration of the S75 Planning Obligation and the conditions stated in the report with amendments to the following conditions:
- Condition 3: To include the need for business and community facilities to built in all phases of the development.
 - Condition 3 y): Removal of ‘...throughout the life of the development.’
 - Condition 4: The inclusion of ‘This Plan shall have a primary aim of ensuring that *each phase of the* development complements and enhances the landscape character...’
 - Condition 4 b): The inclusion of the storage and retention of soil.
 - Condition 4 g): The inclusion of ‘Cairngorms Nature Action Plan’.
 - Condition 4 k): The replacement of ‘water bodies’ with ‘natural systems’.
 - Condition 6 d): Evidence that an appropriate site restoration scheme, as approved by the CNPA, is in place should the proposals be abandoned or delayed for a protracted period.

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22. Following the resolution, the Convener stated that this was just Stage 1 in a long term project and there would be a lot of work by both the public and private sectors to deliver this. The Committee had made it clear that it did not want just another housing estate, this has to be a sustainable village, a living and working place for people to enjoy, a high quality place, fit for a National Park.
23. **Action Points arising:** Registration of the Section 75 Planning Obligation and issue of the decision notice.

Agenda Item 6:

Report on Enforcement Activity:

At Highburnside, Aviemore

(Paper 2)

24. Bruce Luffman presented a paper informing Members of the issue surrounding the boundary treatments at the Tulloch Homes development at Highburnside, Aviemore and recommending the way forward in terms of existing enforcement issues and future boundary treatments at this site.
25. The Committee discussed the report and the following points were raised:
- a) Clarification if the Monitoring & Enforcement Officer has sight of planning conditions prior to them being attached to any permission. Bruce Luffman confirmed that he was being consulted upon conditions.
 - b) The need for the design of future developments to be in keeping with the rural surroundings and not appear suburban in nature. Bruce Luffman advised that the principle of the Highburnside development had been approved by Highland Council prior to the CNP coming into being. This issue could be raised at the Developers Forum.
 - c) The need for 3D views to be incorporated where site levels are an issue. This issue could be raised at the Developers Forum.
 - d) Conflict between wanting an 'open' style development but residents wanting private back gardens.
26. The Committee agreed to support the recommendation to:
- Take no enforcement action against the householders regarding the unauthorised boundary treatments which are in breach of Condition 9 of the Application 07/024/CP.

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- Support a policy of guidance for current and future house owners that requires the timber fencing to be between 900mms and 1.8m in height, vertically attached and not stained or painted. Where the rear fence backs onto the woodland, the guidance will be for a 900mm wire stock fence to be placed on top of the existing 900mm post and rail fencing for a 1.8m high wire fence. This would apply to Plots 16 – 24 and Plots 29, 31 – 42.

27. **Action Points arising:** The issue of the 3D views and the design of developments to be raised at the Developers Forum.

Agenda Item 7:

Any Other Business

28. Angela Douglas advised she had seen that Balavil House was for sale. She queried if a recently granted planning permission for a new house on the estate was conditioned to prevent the selling of the main house from the new build, and if so, did the CNPA need to take action. Eleanor Mackintosh advised that this would be investigated. However, at first instance it would appear not as to condition this would be against Scottish Government policy. It may have been on the word of the Applicant.

29. **Action Points arising:** The conditions attached to the new build at Balavil to be investigated.

Agenda Item 8:

Date of Next Meeting

30. Friday 13th September 2013 at Duke of Gordon Hotel, Kingussie. The meeting had previously been scheduled to be held in Glenlivet. However, with the Kingussie housing application (2013/0190/MS) due to be on the agenda, the meeting was moved to within the Kingussie community.

31. Committee Members are requested to ensure that any Apologies for this meeting are submitted to the Planning Office in Ballater.

32. The public business of the meeting concluded at 1:45 hrs.