

AGENDA ITEM 11

FOR INFORMATION

2020/0064/PPP

PLANNING APPEAL DECISION
(PPA-001-2023)



Decision by Rosie Leven, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-001-2023
- Site address: land at School Road and Craigmore Road, Nethy Bridge, PH26 3NW
- Appeal by CastleGlen Properties (Scotland) Ltd. against the decision by Cairngorms National Park Authority
- Application for planning permission in principle 2020/0064/PPP dated 28 February 2020 refused by notice dated 2 September 2020
- The development proposed: Residential development for up to 20 dwelling houses
- Date of site visit by Reporter: 21 April 2021

Date of appeal decision: 20 May 2021

Decision

I dismiss the appeal and refuse planning permission in principle.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The statutory development plan comprises the Cairngorms National Park Local Development Plan (2021). Although there is no strategic development plan, strategic direction is provided by the Cairngorms National Park Partnership Plan 2017-2022.
2. The appeal relates to planning permission in principle for up to 20 houses, including seven affordable units. The proposed site is 1.97 hectares in size, to the north of Craigmore Road, east of Dirdhu Court.
3. Having regard to the provisions of the development plan, the main issues in this appeal are:
 - the principle of housing development;
 - design and access;
 - the impact on the natural environment;
 - the impact on ancient woodland; and
 - the impact on the character of the area.
4. The local development plan contains the following policies which are relevant to the appeal:

- Policy 1: New Housing Development – provides support for allocated sites and sets out affordable housing requirements.
- Policy 3: Design and Placemaking – ensures that all developments meet the six qualities of successful places and requires the design of schemes to take into account a range of factors including the impact of the proposal's setting on climate change, the promotion of sustainable travel, opportunities for outdoor access and creation of opportunities to further biodiversity and promote ecological interest.
- Policy 4: Natural Heritage – requirements relating to designated sites, including ancient woodland sites, protected species and other biodiversity, with further details set out in supplementary guidance.
- Policy 5: Landscape – presumption against development that does not conserve and enhance landscape character and, if it does not, the circumstances where development would be supported.
- Policy 10: Resources – resource requirements, including water resources, flooding, sewerage and waste management.
- Policy 11: Developer Contributions – requirements for contributions to a range of public services or infrastructure, with further details set out in supplementary guidance.

Principle of housing development

5. Local development plan policy 1 supports housing on allocated sites or within an identified settlement boundary. The appeal site is not allocated for housing and is outwith the Nethy Bridge settlement boundary. The plan's Community Information section for Nethy Bridge provides settlement objectives, which include supporting the delivery of housing, particularly affordable housing, and increasing and enhancing flood management and resilience.

6. Policy 1 requires housing proposals in Nethy Bridge to provide a contribution of 25% affordable housing. The proportion of affordable housing units proposed here is 35%. Cairngorms National Park Authority (CNPA) has highlighted the high demand for affordable housing in the village and, as a result, welcomes the higher proportion in the proposed scheme.

7. For proposals not within a settlement boundary, policy 1 supports other housing proposals in the countryside which reinforce the existing pattern of development and are either linked to an active business or are on a rural brownfield site. I find that these criteria do not apply to the proposal.

8. While the affordable housing element exceeds the requirements in policy 1 and it is possible that flood management requirements could be delivered through conditions, I find that the site does not meet the locational requirements of policy 1 and therefore the principle of housing here is contrary to the development plan. I say more on flood management below.

Design and access

9. Local development plan policy 3 includes 12 factors that all proposals must consider, including assessment of the effects of the development on climate change, the promotion of

sustainable travel, opportunities for outdoor access and the creation of opportunities to further biodiversity and promote ecological interest.

10. I have had regard to the appellant's planning and design statement, which provides an indicative layout showing two groups of houses in a row, with two access points proposed off Craigmore Road. The proposed houses would sit to the north of an existing power line wayleave, running across the site roughly from east to west. The proposals include the retention of trees between the wayleave and Craigmore Road, to provide screening and privacy to the development. As this is an application for planning permission in principle, I am satisfied that detailed house design and materials could be controlled and agreed through conditions. I discuss issues around landscape character and ecology below.

11. In terms of access, the proposal is located some distance from the centre of the village and key facilities such as the primary school, although I observed on my site inspection that the remote location of the school to the north of the village affects most of the local residents. Access to public transport is reasonably close, however, with a bus stop within 300 metres of the site. The woodland location would allow for connection into the existing path network which exists through and beyond the site. The proposals also include a maintenance programme for the wider School Wood, which is in the control of the appellant. The evidence suggests that this area is used regularly by walkers and cyclists and I find that the proposed programme has the potential to offer wider benefits in terms of outdoor access and enhancement of the path network. I agree with CNPA that the implementation of this management programme could be controlled by condition.

12. In terms of roads impacts, it has been suggested that a different priority system might be required at the crossroads between Craigmore Road and School Road and that Craigmore Road should be upgraded eastwards from its junction with Dorback Place, with the addition of a suitable roadside footway. The Highland Council's traffic and transport planning team has no objection to the proposal, subject to conditions providing detail on a number of matters, including bus services, visibility splays, parking arrangements, waste collection and street lighting. I consider that these matters, and a roadside footway, are matters which could be secured by condition if consent were to be granted.

13. The indicative layout includes two Sustainable Drainage System (SuDS) ponds proposed for the eastern and western edges of the site. No concerns over flooding have been raised and the Highland Council's flood risk management team has no objection, subject to suitable conditions to manage surface and foul water discharge. Subject to these conditions and the implementation of the SuDS scheme, I find that the proposal would be consistent with local development plan policy 10.

14. Taking these issues together I therefore find that, subject to various conditions, and allowing for design matters to be considered in further detail in a subsequent application for approval of matters specified in conditions, the proposals would be consistent with policy 3 and policy 10.

Impact on the natural environment

15. Local development plan policy 4 requires that development that is likely to have a significant effect on a European site must demonstrate no adverse effect on the integrity of

the site. Policy 4 also contains detailed requirements relating to development that would have a significant adverse effect on any protected species. Where there is evidence to suggest that a protected or priority habitat or species may be present, or could be adversely affected by development, focused surveys are required along with species/habitat protection plans to set out measures to avoid, reduce or mitigate effects.

16. The site is not itself part of a Special Area of Conservation (SAC) or Special Protection Area (SPA). However, two watercourses immediately to the east and west of the site (the Caochan Fhuarain to the east and an unnamed burn to the west) feed into the Allt Mhor, which is part of the River Spey SAC. The site is also located between the Craigmore Wood SPA and the Abernethy Forest SPA which are important habitats for protected birds, and near to the Anagach Woods SPA, the Cairngorms SPA and the Kinveachy Forest SPA in the wider area, which all relate to bird habitats.

17. CNPA carried out a Habitats Regulations Appraisal (HRA) under the terms of the Conservation (Natural Habitats, &c.) Regulations 1994, as amended (the Habitats Regulations). NatureScot agreed with the conclusions of the HRA, which were that the proposal will result in a likely significant effect on the qualifying interests of Abernethy Forest, Anagach Woods, Cairngorms, Craigmore Wood & Kinveachy Forest SPAs, and on the qualifying interests of the River Spey SAC. The relevant qualifying interests of the River Spey SAC are otters, Atlantic salmon, sea lamprey and freshwater pearl mussels, while the relevant qualifying interests of the SPAs are a range of bird species, including capercaillie.

18. Taking the above into account, and having considered the details of the HRA, I am satisfied that the requirements for such appraisals have been met. I do not consider there to be any cumulative effects with other proposals or plans. Overall, given the nature of the proposed development and its location, I agree with the identification of the likely significant effects and I adopt the conclusions of the HRA as my own.

19. As the decision maker, I am required to carry out an appropriate assessment under the terms of the Habitats Regulations, focusing on those qualifying interests for which a likely significant effect has been identified. In addition to CNPA's appropriate assessment (which includes some minor confusion over the use of the term 'significant' while assessing the effect on site integrity), I have considered the assessment of the proposals by CNPA ecology officers, and the other evidence relating to the impact on the natural environment, including the appellant's tree, capercaillie and ecological surveys (including an updated otter survey), the woodland management survey (relating to the wider School Wood) and matters raised in representations.

20. CNPA's appropriate assessment finds that, subject to two conditions relating to site run-off and drainage to mitigate the effect on the qualifying interests of the River Spey SAC, there will not be any adverse effects on the integrity of the SAC or the relevant SPAs. As I have not requested further information on the Natura impacts, I have not reconsulted NatureScot, which agreed with CNPA's overall findings.

21. In terms of the SAC, it is accepted that otters may be in the area around the Caochan Fhuarain, but as a route between hunting grounds rather than for foraging or breeding. In terms of SPAs, while the HRA suggests no significant loss of capercaillie foraging or breeding habitat, the appeal site is highlighted as having value as a dispersal route for capercaillie between Craigmore Wood SPA and Abernethy Forest SPA. The

evidence suggests, however, that existing heavy use of the site by people means it is unlikely to be preferred by capercaillie and that most of the proposed development site already falls within a 150 metre disturbance zone from paths, roads and settlements.

22. While preliminary assessments of the impacts on capercaillie and otters have been carried out, I have some reservations over the ability to prevent disturbance from this increased human activity, for example from dog walking and other recreational use. Although paths already exist within School Wood, the proposals would move the line of development further into the wood and are likely to increase human activity in the area immediately around the site, effectively moving the disturbance zone further north and east.

23. While Craigmore Road already runs between School Wood and Culstank Moss, the gap which is currently undisturbed between the existing buildings at Dirdhu Court and those lying further east on Craigmore Road would be significantly narrowed by the proposed development, potentially affecting the ability of species to use School Wood as a stepping stone to other areas. In relation to otters, moving the development line further into the woods would also move the line of disturbance closer to the potential routes used by otters along the Caochan Fhuarain.

24. I accept, however, the findings that capercaillie are already unlikely to use the site for foraging or breeding due to the existing levels of disturbance. Similarly, otters are not thought to use the Caochan Fhuarain for breeding. NatureScot has not raised concerns over the proposed mitigation for otters or about the effects on capercaillie.

25. In relation to otters and the other qualifying interests of the River Spey, I am therefore satisfied that with the proposed creation of a riparian buffer strip along the banks of the Caochan Fhuarain to provide cover for otters, and conditions to control run-off and pollution during the construction period and beyond, the proposals would not have an adverse effect on site integrity. Taking this into account alongside the other evidence submitted, the conclusion of my appropriate assessment is that I am satisfied that, with suitable conditions, the proposal would have no adverse effect on the integrity of the above European sites.

26. Beyond the species discussed in the HRA and appropriate assessment, the appellant's Preliminary Ecology Appraisal (PEA) identifies further protected species, including International Union for Conservation of Nature red and amber list bird species, rare and protected plant and fungi species, and rare, scarce and threatened invertebrates (some of which are UK Biodiversity Action Plan priority species and Scottish Biodiversity List species) on the site or nearby, which are likely to be negatively affected by the proposals.

27. The appellant's tree survey assesses trees inside and outside of the site boundary. The survey finds that the proposals would result in the loss of notable plant species within the site boundary and the loss of potential habitat for other protected species known to be in the area. It highlights, however, that the proposals have been designed to avoid the main areas of biodiversity and the larger mature/veteran trees, including retention of woodland cover in the centre of the site to allow for a wildlife corridor from north to south. The proposals include measures to protect red squirrel dreys and bat roosts. I am content that the detailed location and design of the wildlife corridor could be agreed through conditions,

as could a tree protection plan and species protection plans for the identified protected species.

28. The PEA is considered by CNPA's ecology team and by some of those making representations to be limited in scope due to having been carried out over a short time during the winter months and having been based on a data trawl rather than full survey work. The ecology team believes that additional species would be dormant or not active at that time and therefore may have been overlooked.

29. While further survey work on otters was carried out in May 2020 and on capercaillie in June 2020, the PEA acknowledges that further ecological surveys would be required during the spring and summer months to determine whether some fungi and rare plants are indeed present on site. It recognises that a breeding bird survey was not able to be carried out and that this would be required if works were to be initiated during the breeding season (March-August). There is also recognition that further surveys are necessary during spring and summer to determine the value of the site for rare invertebrates.

30. Taking all of this together, I find that with appropriate conditions, the requirements on European sites could be met in line with the related aspects of policy 4. Conditions could also require species protection plans for those protected species which have been identified. Nevertheless, given the lack of detailed survey work, I have some reservations about whether all of the species that may be on the site have been identified. I note that CNPA has suggested that additional survey work should be a condition of consent. To avoid any potential adverse impact on protected species, I consider that it would not be appropriate to grant consent without such surveys. If I had found that all other matters were acceptable, I would have requested further ecological survey work, to assess the existence of species and effects on them, before granting permission. I therefore find that the proposals would not meet all of the requirements in policy 4 on protected species.

Impact on ancient woodland

31. The appeal site lies within an area of woodland designated as category 2a semi-natural woodland in the Ancient Woodland Inventory (AWI). The site is predominantly close-grown Scots Pine, interspersed with birch, aspen and goat willow. The evidence suggests that the latter is rare here. The site also includes elements of deadwood which is valuable habitat for other plants, fungi and invertebrates. The appellant's survey work identifies the existence on the site of ancient woodland specialist invertebrate species, albeit that further survey work may be required, as highlighted above.

32. I sought clarification of the extent of the relevant AWI land. The submitted map shows large areas of AWI land surrounding Nethy Bridge. The appellant's tree survey indicates that this area of ancient woodland at the appeal site has naturally regenerated, following felling around 1947. The appellant contends that the trees on the site have been felled and re-established, suggesting that the site is therefore not exceptional. Nevertheless, the parties agree that the development will result in the loss of irreplaceable ancient woodland. While trees may be felled at periods in a wood's history, CNPA's ecology team considers that the complexity of the habitats and the assemblage of the various plant and animal species and habitats contribute to the value of this site. I also note the evidence that ancient woodland inventory sites can cover a range of different types of tree cover.

33. Local development plan policy 4 includes a strong presumption against removal of AWI sites, which are considered an irreplaceable resource. I find no differentiation in the policy between different types of ancient woodland cover, nor on the basis of site size. Only in exceptional circumstances will the policy permit the loss of AWI land, including: a) where the need and justification for the development outweighs the contribution of the woodland; and (b) where it can be clearly demonstrated that the AWI site has low ecological value. Where the removal of an AWI site is deemed acceptable, compensation for such loss will be mandatory.

34. Looking at criterion (a) in policy 4, the site is not allocated for housing in the adopted plan. The evidence includes concerns about the lack of affordable housing in Nethy Bridge. I sought further details on the effectiveness of the housing land supply to help establish whether there was an exceptional need for housing on the site. CNPA contends that the supply of effective housing land based on the previous adopted plan from 2015 was 7.7 years and based on the newly adopted plan, it is 9.9 years. While I accept that the proposal would provide welcome additional affordable housing, I conclude that there is an effective supply of housing land and that the appeal site is not required at this stage to meet an immediate need for housing land in the area. I also note that the two housing sites that are included in the newly adopted plan do not involve AWI land. I therefore find that criterion (a) would not apply.

35. In relation to criterion (b), CNPA's ecology team considers that even though the site is a small part of the wider School Wood, the proposed loss of the site will still be of high significance due to the loss of particular notable plant species as well as a diverse range of other species recorded within the site. Even without further survey work, I find that the appellant's existing surveys and the other ecological evidence raised in representations lead me to share the ecology team's view that the woodland habitat is of high ecological value. I therefore find that criterion (b) would not apply.

36. The appellant has proposed compensatory planting at another site in Nethy Bridge in the appellant's control, next to the Nethy Bridge Hotel. CNPA's ecology team considers that while the compensatory planning would provide welcome additional tree cover, it cannot compensate for the loss of the particular habitats at the appeal site, due to the way in which the woodland has developed - its soil type, hydrology and historical use. Similarly, members were not convinced that compensatory planting could provide new habitats of the same or greater nature conservation value. I have had regard to the differing views in representations over whether that site is appropriate for compensatory planting, including the community council's preference to keep the site open, due to low levels of open space in the village for community use.

37. CNPA has suggested a condition requiring approval of the details of a woodland compensation planting area (including layout of proposals and management plan) before development commences on site. If the principle of the loss of woodland was considered acceptable, it would be appropriate to include a condition on the consent, to finalise the location and details of the compensatory measures.

38. As highlighted above, the appellant has proposed a management programme for the wider School Wood and an area for outdoor learning to the south of Abernethy Primary School. I find that these aspects could have ecology and education benefits, but not to the

extent that they would outweigh the loss of the woodland in the first instance. I am aware that the Woodland Trust would wish to buy and manage the site and wider School Wood on behalf of the community, should planning permission be refused. It is therefore clear that the opportunity to conserve and enhance the wider School Wood does not rest solely on the appeal proposals.

39. In light of the above, I find that there are no exceptional circumstances to permit the loss of this AWI site and that the proposals would therefore be contrary to policy 4 in relation to ancient woodlands.

Impact on the character of the area

40. Local development plan policy 5 includes a presumption against development that does not conserve and enhance the landscape character of the national park and the setting of the proposed development. Where landscape character is not conserved or enhanced, development will only be permitted where significant adverse effects are clearly outweighed by social or economic benefits of national importance, and where the adverse effects have been minimised and mitigated through the design of the scheme.

41. Nethy Bridge is described in the plan as a small woodland village and is identified on village signage as 'the Forest Village'. The village has a dispersed layout with low density development following the banks of the River Nethy and along a number of routes out from the village centre. I find the character of the village to be defined by extensive woodland up to the edge of the village, particularly on the village's eastern side where the appeal site lies. The entrance to the village along Craigmore Road is characterised by tall, dense woodland on both sides of the road. Shortly after the village entrance sign the woodland stops and housing appears on both sides of the road, creating a sharp change in character on entering the village.

42. In terms of landscape impact from the proposals, CNPA's conservation manager finds that there would be an adverse impact, due to significant change to the entrance to the village from the east and a weakening of the definition between village and its countryside setting. A narrow strip of woodland along Craigmore Road would be retained. While I consider that the character of the proposal, with housing sitting within the woodland and surrounded by it, is not generally characteristic of the rest of the village, particularly in the area around the junction of Craigmore Road and School Road, the retention of trees within the site could contribute to the sense of a woodland village.

43. However, I consider that the linear extension of the village in this direction would be at odds with the established settlement boundary. The village would no longer have a clear entrance from the east framed by woodland and then houses on both sides. The conservation manager contends that the proposal would not meet the plan's objective 'that development contributes to a clear definition between settlement and countryside'. This specific wording arises from the previous plan, and is not replicated in the adopted plan. However, I find that the character of the entrance to the village from the east would be significantly altered. Even with the retention of a strip of woodland, housing would still be visible through the trees and the feeling of enclosure from the woodland on either side of the road would be lost, as would the clear definition between the settlement and the countryside. As a result, I find that the proposal would not conserve or enhance the landscape character of the area, contrary to policy 5.

Other issues

44. Local development plan policy 11 relates to developer contributions and the plan identifies in Nethy Bridge a need for contributions towards affordable housing and increasing capacity at strategic community leisure facilities serving the village. I find no issues with the ability of the proposals to meet the requirements for developer contributions and therefore find that the proposal would be in line with policy 11.

Overall compliance with the development plan

45. Although the proposal could deliver a higher than required proportion of affordable housing and is likely to be able to meet flood management requirements, I find the proposal is not in line with the key locational aspects of policy 1. With appropriate conditions, I consider that the elements of the proposals relating to design, access, resources and developer contributions are in line with policies 3, 10 and 11.

46. I find that the impacts on European sites can be mitigated in line with the relevant aspects of policy 4. I have found, however, that the proposal is not consistent with the protected species and woodland elements of policy 4 and I find it contrary to policy 5 on landscape. Given the particular sensitivity of the natural environment at the appeal site, and the irreplaceable nature of the ancient woodland, I therefore consider that the proposal does not comply overall with the development plan.

Other material considerations

47. The site was an allocated housing site in the previous local development plan adopted in 2015. It has been removed in the current plan, which was adopted on 26 March 2021, following the necessary consultation and examination processes. In November 2020, when CNPA published its intention to adopt the proposed plan, it confirmed its intention to remove the housing allocation on the appeal site, as had been signalled in the proposed plan published for consultation in early 2019. CNPA also confirmed its intention to include a revised policy 4 which, in my opinion, significantly strengthened the policy protection for AWI sites by including a strong presumption against their removal and allowing their loss only in exceptional circumstances: two elements which were not included in the previous plan.

48. Given that the proposed plan was already at an advanced stage of preparation when the appeal was made, even if it had not now been adopted, I would in any case have given significant weight to the proposed plan in my decision, in particular the removal of the housing allocation on the appeal site and the stronger emphasis on woodland protection.

49. Scottish Planning Policy (SPP) states that proposals that do not accord with the development plan should not be considered acceptable unless material considerations indicate otherwise. It also states that where a housing proposal is for sustainable development and the decision-maker establishes that there is a shortfall in the housing land supply, then the shortfall is a material consideration in favour of the proposal. As highlighted above, I am satisfied that there is not a shortfall in the housing land supply. As there is no shortfall, even if it was considered sustainable development, which I find unlikely

due to the loss of ancient woodland, the SPP would not provide a presumption in favour of the proposal.

50. The Scottish Government's policy on the Control of Woodland Removal (CWR) states that woodland in general should only be removed where it would achieve significant and clearly defined additional public benefits. There is a strong presumption against removing certain types of woodland, including ancient semi-natural woodland. I therefore find that the proposals would be contrary to the CWR policy.

51. SPP recognises ancient semi-natural woodland as an irreplaceable resource, and seeks to protect it from adverse effects resulting from development. There is a presumption in favour of protecting woodland (with no reference to size) unless its removal would achieve significant and clearly defined additional public benefits. Where woodland is removed, developers are expected to provide compensatory planting. As set out above, I consider that a compensatory planting scheme could be agreed at detailed planning stage, before development commences. However, as I have also set out above, I consider that the woodland habitat is of high ecological value and I have found no exceptional reasons to permit the loss of the AWI land. The proposal would therefore be inconsistent with SPP in this regard.

52. Section 14 of the National Parks (Scotland) Act 2000 (the 2000 Act) requires me to have regard to the National Park Partnership Plan. The Cairngorms National Park Partnership Plan 2017-2022 includes the four aims set out in the 2000 Act:

- to conserve and enhance the natural and cultural heritage of the area;
- to promote sustainable use of the natural resources of the area;
- to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public; and
- to promote sustainable economic and social development of the area's communities.

53. The 2000 Act requires these aims to be pursued collectively. However, if there is conflict between the first aim and any of the others, then greater weight must be given to the first aim. In the committee report, CNPA discusses this balancing act, with the suggestion that the delivery of affordable housing, along with the compensatory planting and a management programme for the wider School Wood outweighs the loss of the AWI land. However, taking into account my findings above on the loss of ancient woodland and on the housing land supply, I have found no evidence to justify the development that would outweigh the contribution of the woodland. I therefore give greater weight to the first aim.

54. Finally, I have taken account of the planning history of the site, recognising that outline planning permission has previously been granted for the site but that permission for detailed matters has not been achieved. I must, however, consider the appeal in the current context and find that the planning history does not provide reasons to justify overturning the current development plan position.

Conclusion

55. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission.

Rosie Leven
Reporter

