



SCOTTISH EXECUTIVE

Development Department
Inquiry Reporters Unit

4 The Courtyard, Callendar Business Park
Callendar Road, FALKIRK FK1 1XR

DX 557005 FALKIRK

Brodies LLP
15 Atholl Crescent
Edinburgh
EH3 8HA

Telephone: 01324 696 451
Fax: 01324 696 444

http://www.scotland.gov.uk/planning_appeals/seiru

For the attention of Karen Hamilton

Your ref: KLH/GF/REI77.140
Our ref: P/PPA/001/8

16 November 2006

Dear Madam

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND SCHEDULE 4
PLANNING APPEAL BY REIDHAVEN ESTATES: NORTH DALFABER, AVIEMORE**

1. I refer to your client's appeal, which I have been appointed to determine, against the refusal of outline planning permission by Cairngorms National Park Authority for residential development comprising 104 serviced housing plots, all associated roads and access points, and all associated service engineering works and landscape works. I have considered the written submissions and made an accompanied inspection of the appeal site and the surrounding area on 12 September 2006. For the reasons given in this letter, I have decided to allow the appeal in part.
2. The appeal site, covering some 10.8 ha, is located on the north-east side of the North Dalfaber development, bounded on the north-east side by Dalfaber Golf Club, on the north, west and south-west by existing houses, and to the south by holiday accommodation including apartments and chalets. The site is relatively level, except for a number of gulleys, some relatively steep sided, mainly towards the north and north-western parts of the site. It is generally well wooded, predominantly under birch of varying ages, with a number of open glades. The south-eastern part is more open and includes a riding centre with ménage. This part of the site also includes a former farm house, boarded up and derelict, with its steading adjacent to but outwith the site. There is an extensive network of informal footpaths through the woodlands, as well as vehicular access tracks along the south-western edge, and serving the riding centre. The main access road into the area crosses the Strathspey railway at a light protected level crossing.
3. The application for planning permission, as amended, proposes residential development of 104 serviced plots with associated roads, access points, engineering and landscape works. Although an outline application, the submitted plans include a detailed layout, not marked indicative, for the plot layouts, roads and access points, service engineering works and landscaping, for which approval is sought as part of the outline permission. Indicative design information is also submitted by way of a draft brochure (the brochure) for the site. Of the housing units 25 are intended for affordable housing.

4. The layout forming part of the planning application shows access via the existing track to the disused farm steading, intended for a future golf club house and parking. Just before the steading an access road to the east would serve 24 plots on or near the edge of the golf course. From a roundabout by the steading one road would lead north to serve 17 plots and one indicative one on the north-east part of the site. A second road would lead west to serve 37 plots in the central and northern part. The 25 affordable houses would be at the western part of the site, with a separate access taken from Spey Avenue. The western and northern parts of the site would be separated from the central and eastern parts by an area of wooded public open space, and there would be another area of open space along the gully bounding the western edge of the site. A network of footpaths would pass through the open space connecting to the roads and existing housing areas.

5. A draft sales brochure for the development (the 'design guide') features extensive design and landscape guidance, showing house styles featuring traditional design elements set in well wooded plots. Details are given for each of the sale plots, together with guidance on the planning process for reserved matters approval.

6. Planning permission was refused because:

1. The proposed development would be premature on the grounds of the current constraints on water infrastructure serving Aviemore and uncertainty at the present time over the capacity of the existing sewer network, and in the light of the inability of Scottish Water to specify at the present time the period within which such constraints may be expected to be resolved.

2. The proposed development by reason of its overall layout and the extent to which that layout extends beyond lands allocated for housing and encroaches onto lands allocated for amenity woodland purposes and the extent of the loss of the trees, fails to comply with provisions of Section 6.1.2 (c) and the land zoning provision of the Badenoch and Strathspey Local Plan 1997.

3. The proposed development by reason of its overall scale layout would result in the loss of a significant area of semi-natural native woodland, and the position of the roads and house plots proposed would aggravate the negative effects of this loss of woodland by disrupting the relatively secluded and natural character of the area, thereby diminishing its value for use for amenity and recreation purposes, as well as having a significantly detrimental effect on the nature conservation value of the site. The development as proposed is not in accordance in particular with the first and third aims of the Cairngorms National Park.

7. Badenoch and Strathspey Local Plan, adopted 1997, states at paragraph 6.1.2 in the Aviemore settlement section:

"The following land is allocated for a mix of housing and related community facilities. Where appropriate the council will seek provision of roads, infrastructure, open space and other community facilities as well as safeguards for adjoining land."

The relevant section (c) DALFABER NORTH states:

"9.2 ha with a capacity for 250 houses. Requirements include; extension of loop road from Spey Avenue; realignment of the junction onto Dalfaber Road; retention and active

management of birch woodlands and related glades to sustain this as an integral habitat; footpaths/parking and related amenities, including a children's play area. Any requirement to upgrade the level crossing will be monitored in relation to future development and any increase in the frequency of rail traffic. In these areas, housing layouts should become an integral part of the village with residential enclaves absorbed within compartments of woodland and modulated according to localised physical characteristics, landform and other planning factors. The objective is to achieve a series of sheltered neighbourhoods, individually designed in the interests of fostering community spirit and security. These should involve a hierarchy of buildings, with massing intensified towards the core, and arranged around well defined open spaces. Densities ranging from 10 dwellings per hectare for larger detached properties to 25 per hectare for terraced, flatted or courtyard type groupings would generally be appropriate. Design features, construction methods, materials and finishes should be drawn largely from Aviemore's traditional buildings, and individual dwellings should be capable of being extended in compatible styles."

8. Of consultation responses the most relevant are from **Scottish Natural Heritage** which states that the proposal is unlikely to affect the River Spey Site of Special Scientific Interest (SSSI) or Special Area of Conservation (SAC). Whilst not objecting to the proposals it expresses concerns about the amount of retained woodland and recommends alterations to secure a greater scope for functioning woodlands, with particular attention to the retention of trees. **Scottish Water** expresses concern about the lack of current capacity for water and sewage, but states that it will withdraw its objection provided an appropriate suspensive condition is imposed on any permission granted to delay development until agreement can be reached on satisfactory provision that will not affect its resources.

9. The **Railway Inspectorate** part of the **Health and Safety Executive** supported concerns expressed by the Strathspey Railway about potential accidents at the crossing, and the implications of blocking the only access into the area. After further consultation it was accepted that the proposed development in isolation would not have a significant impact, but recommended that the crossing should be upgraded.

10. **Aviemore and Vicinity Community Council** objected on the grounds that the proposal did not fit the development areas of the local plan, and that any development should be confined to these areas. It expressed concern about the impact on wider public services in Aviemore. **Highland Council** as roads authority also expressed concerns about the level crossing, leaving the matter to the railway inspectorate, and asked for various conditions to be imposed on any conditions granted.

SUMMARY OF CASES

11. In support of your client's appeal, in a lengthy submission, you set out the history of the proposal, noting that the format of the application was agreed with authority officials. In particular your client wished to establish the principle and layout for the site, minimising bureaucracy for subsequent individual reserved matters applications. Continuing discussion with the authority suggested there were no 'show stoppers', but its emphasis changed to take into account water infrastructure and landscape capacity, following which your client requested determination of the (then) application. This was subsequently refused permission, despite constructive dialogue with consultees who raised no objections regarding environmental issues, water, drainage or access.

12. There is no conflict with the Highland Structure Plan 2001, and it does not form part of the reasons for refusal. The Badenoch and Strathspey Local Plan 1997 includes the appeal site within

the Aviemore settlement boundary as part of the designation Dalfaber North 6.1.2(c), 9.2 ha with a capacity of 250 houses. Some 100 have already been built within the designated area, so the appeal proposals for 104 units are well within the estimated capacity. A very small part of the site is designated for commerce and tourism, but the authority has not objected to this.

13. The local plan adopts an approach of allowing residential development within woodland enclaves, and the settlement diagram shows woodland at North Dalfaber as enclosing 'pockets' for development marked as 'new' or 'long term'. Your client considers these 'pockets' to be indicative in nature, and that the layout of the proposed development respects the plan's concept, with some 70% of the built area within the 'pocket' areas. The woodland and footpath systems have been surveyed in detail, and the proposed layout is derived directly from this. The proposal must therefore generally accord with the local plan.

14. The authority's assessment that the proposal is contrary to the local plan because of loss of trees is therefore misguided, as the development of the designated number of houses would by its nature involve incursion into the existing woodland, with the loss of some of the trees. The local plan gives no specific guidance as to the numbers of houses and trees in specific areas, so your client's approach of assessing the quality and character of the trees, and maximising the retention of the better quality ones must be the correct. Of the mature trees on the site, 600 would be retained, with 40 lost due to poor or damaged condition and 59 to development requirements, and there is no local plan policy preventing the felling of amenity woodland.

15. Scottish Natural Heritage (SNH) has not objected to the proposals, and notes that no part of the site is designated for its birch woodland interest. The proposed layout, although extending farther than the indicative 'pockets' does not prevent active management of the trees and woodlands, as required by Paragraph 6.1.5(c). The authority's natural heritage group (NHG) acknowledges that even in areas of the site where it is concerned about development, the north-east, north-west, and north-central parts, a 'large' or 'high' proportion of trees would be retained. Any loss of trees does not therefore give rise to any material conflict with the local plan. The proposal therefore accords in general terms with both the structure and local plans.

16. Regarding material considerations drawn from the reasons for refusal, adequate provision can be made by condition for the planting and preservation of trees, under section 159 of the Act. This is independent of the development plan, and your client considers more than adequate provision has been made for both preservation and planting, but any remaining areas of concern could be dealt with by planting.

17. In relation to water and sewage, SEPA has no objection on the basis that relevant conditions would be imposed regards SUDS, flood risk assessment, and construction methods. Scottish Water would withdraw any objection provided conditions were imposed relating to there being no impact on its waste water assets, and that suitable infrastructure could be put in place to support the development. The authority's approach in these circumstances is misleading, as a 'Grampian style' condition could be imposed in accordance with the Scottish Executive's preferred approach of not letting current infrastructure difficulties impede the granting of planning permission for otherwise appropriate development.

18. Your client acknowledges the amenity woodland is open space in terms of PAN 65 Open Space, but the proposed layout is in keeping with the advice note, given the local plan strategy of achieving residential enclaves within the woodland. There would clearly be some change to the existing character of the area, but this does not necessarily equate to loss of amenity or recreational

opportunity, and the proposed design and layout have been achieved very much with this in mind. The authority's visitor services and recreation group acknowledges the site is not a high quality recreational environment although of high amenity value. Claims that it is the last amenity woodland space in Aviemore are not a justification for refusal of permission.

19. In the absence of any SNH objection the authority's reliance on its NHG's conclusion must be challenged as the latter seeks to supersede the local plan by prohibiting development over the whole northern part of the site. This is also inconsistent as the NHG's conclusions form part of the input to the emerging local plan, which the authority says carries no weight as a material consideration. NPPG 14 Natural Heritage states at paragraph 74 that environmental concerns should be addressed where possible by modifications or conditions, and at 76 that planning permission should not be refused if conditions would prevent unacceptable damage to the natural heritage.

20. Any issues relating to the level crossing have been resolved following consultation. There is no development plan requirement for affordable housing, but recognising that it is an emerging policy issues the proposal will make an appropriate contribution for this.

21. In relation to the aims of the national park, the first and third relate to conserving and enhancing the natural heritage of the area, and promoting understanding and enjoyment. Your client considers the authority's conclusions on these objectives have been reached on the basis of issues considered above, and that there is no conflict with these aims. Even if this should be the case it does not carry sufficient weight to override a proposal in accordance with the development plan. There are no material considerations that justify the refusal of planning permission.

22. You say that in the event of my not being satisfied in relation to detailed aspects of the application, your client would seek approval of such elements of the scheme that are justified, including outline planning permission for 104 units on the site. In a later submission you amplify many of the points already made, and say that such a 'fall back' position is entirely valid, and would not equate to a development of a different nature, but simply require matters of concern to be addressed as part of a reserved matters application. No matters would be authorised that consultees and objectors have not already had an opportunity to comment on.

23. The authority produced a very long and detailed response of which only the main points are referred to here. In relation to water supply and drainage constraints, it says there is no clear indication of when servicing provision for the site could be made available. It records contact with Scottish Water, and concludes that uncertainty still exists, despite some indications that investment for upgrading facilities could be programmed shortly. As there is no guarantee of provision within the timescale of any permission granted this is a valid and reasonable reason for refusal.

24. Regarding the second reason for refusal, the authority accepts that a number of areas within the appeal site are allocated for housing in the local plan as 'pockets' in the designated area. It emphasises the relevance of land zoned for amenity woodland as a distinct land use allocation that should have the same status as that for housing. The 79 plots proposed for sale to private developers are an expansive low density arrangement, with a much higher density proposed for the 25 affordable houses. Although the overall proposed figure of 104 is below the estimated capacity for the area, this is simply an estimate and the capacity will be dependent on appropriate siting and design within relevant constraints.

25. The local plan states at section 6.1.2 that development of main village expansion areas should range from 10 to 25 per hectare, with a hierarchy of buildings, denser towards the core and arranged

around well defined open spaces. The overall proposal has a density of 9.5 per hectare, so that the 79 individual plots are well below the plan minimum, requiring a more extensive area of ground than envisaged in the plan. It is accepted by the authority that the zoning boundaries in the plan are diagrammatic by nature, but it shows seven clear areas for development, marked 1.2(c), virtually all within the application boundary, that are not properly reflected in the proposed layout. Several areas of housing, including the affordable units, would therefore encroach on the designated amenity woodland.

26. It appears that over 40% of the housing units, with associated roads and services, would be within the area designated for amenity woodland in the local plan. Consultees such as SNH have expressed concern about the proposed loss of trees despite not objecting to the principle of the development overall. A development that places the onus for care and retention of trees on private individual house owners or occupiers would be likely to result in further loss of woodland in the future. The significant loss of trees is also contrary to one of the main plan objectives set out in section 6.1.5 of the local plan.

27. Relating to the third reason for refusal, the authority considers there is an inextricable link between the amenity woodland designated areas and the loss of amenity that would occur from those areas being developed. Some of these areas, and their semi-natural character, would be lost despite the proposal to maintain some pedestrian access routes through the site, and is an important material consideration. It is perceived as a significant component of the character of the area. The needs of engineering requirements, and the presence of two suburban style roundabouts preclude any form of rural concept, reinforced by the design brochure showing plots extending to the line of the public footpath, largely devoid of any new planting proposals other than small numbers of individual trees and the retention of some existing mature ones.

28. The authority's NHG refers to the local natural heritage value of the site, and its overall structural and biological diversity. This would undoubtedly be affected by the development proposals and it is therefore valid to refer to a detrimental effect in the reasons for refusal. The NHG recommended that the north-east, north-west and north-central parts of the site remained undeveloped, but this is not reflected in the proposed layout. The damage caused by the development as proposed would not be compatible with the NPPG 14 guidance regarding conditions.

29. Affordable housing is referred to in structure plan policy H5 which states that the council, with other agencies, will identify areas in local plans where there is a demonstrable need for such housing. Development plan policy guidelines specify a figure of 25% as the normal expectation in a development based on a notional number at standard density levels. The 25 houses proposed would therefore be just below the threshold on a 25% basis, but well under if standard density levels are applied. Also the layout is not integrated, but effectively segregated in one corner, with its own access. As the proposals are indicative it is not possible to say whether the 25 units proposed would offer a sufficient mix of house types.

30. The authority sets out 22 proposed conditions in the event of planning permission being granted.

31. **Dalfaber Action Group (DAG)** objected on grounds relating to:

- proposal contrary to development plan regarding retention and active management of birch woodland, extension of development beyond zoned 'housing pockets' and encroachment onto commerce/tourism area;
- disparity between area of built land and total absorbed by gardens;

- many retained trees within private plots restricting active management;
 - wide use of area for local informal recreation – survey shows over 200 people per day;
 - safe play area for children;
 - inadequate detail on proposed play areas, and unlikely to serve all ages;
 - high amenity value of woodland;
 - misleading figures on tree removal;
 - previous refusal of permission on appeal for nearby site on woodland grounds;
 - space not accessible in terms of PAN 65;
 - no time scale for dealing with water supply constraints;
 - sewage pumping problems at times of population increase due to tourists;
 - destroying woodland does not enhance it;
 - building on amenity area does not promote understanding;
 - low cost housing not an issue as no definitive plan or agreements;
 - pressure on education facilities;
 - medical and dental facilities under pressure;
 - potential traffic increase and level crossing safety concerns; and
 - 264 objections noted by DAG;
32. **The constituency MSP raised issues relating to:**
- the need for a hearing on this important 'test case' application;
 - his support for the Dalfaber Action Group;
 - the large number of objectors;
 - lack of expansion of local facilities;
 - Dalfaber Wood being a precious asset seen by some as a symbol of Aviemore;
 - the strategic position of the wood relative to others in the town;
 - lack of consultation with local people by agency consultees;
 - importance of local evidence on recreation;
 - reduction in recreation space because of developed area, and thus lack of enhancement;
 - need for family sized affordable housing;
 - legitimacy of 'fall-back' position – asking reporter to 'redraw the developer's application';
 - procedural opportunities for a revised development proposal ignored;
 - role of authority officials in giving guidance and reporting to the authority; and
 - the applicability of Government guidance when houses are likely to become holiday homes.
33. **Representations** from some 50 individuals, together with a petition and over 200 pro forma letters were received, objecting on grounds already largely set out above under the objections for the DAG or the constituency MSP.

CONCLUSIONS

34. Section 25 of the Act requires the determination in this case to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan comprises the Highland Structure Plan, approved 2001, and the Badenoch and Strathspey Local Plan, adopted 1997. The only provisions of relevance drawn to my attention are structure plan policy H5 and local plan section 6.1.2(c). I consider, based on my inspection of the appeal site and the written submissions, that the issues to be determined are whether the proposal is consistent with the relevant provisions of the development plan and, if not, whether an exception to these provisions is justified by other material considerations.

35. Structure plan policy H5 relates to affordable housing, and effectively leaves it to local plans to identify areas where there is a demonstrable need for such housing, although as the local plan pre-dates the structure plan this has not been done. Despite this the proposal does recognise the principle of the policy, and the proposed figure of 25 affordable houses is close enough to 25% of the 104 total as not to differ materially from the policy. It would however be of a significantly lower density than the other parts of the development, and whilst I do not have any details regarding quality, as the proposals are for individually developed plots these are likely to be of a higher quality than the affordable houses. Overall however I am satisfied that the proposal meets the spirit, if not the exact letter, of the policy.

36. Chapter 6 of the local plan sets out principles and proposal for the development of Aviemore, to be read in conjunction with the settlement map. Section 6.1.2 allocates land for a mixture of housing and related community facilities, and 6.1.2(c) deals specifically with Dalfaber North. The key to this is the settlement plan, which shows Dalfaber North as an approximately triangular shaped area, with shorter sides bounding the Strathspey railway and housing along Callart Road, and the long side following the western edge of the golf course. There is an extension to this area at its south-east corner, on the edge of the golf course, which includes zones marked for tourism and commercial as well as housing.

37. Much of the triangular area is designated for amenity woodland, which provides a framework for areas of housing development that are shown on the map as a series of 'pockets', concentrated in the north-west, central and south-east parts, together with a further two in the extension area to the south. A loop road is shown running north from Spey Avenue to serve the north-west part, returning along the edge of the golf course to serve the south-east part. The north-west part of the area has already been developed, along a northerly extension of Spey Avenue and associated roads. The remaining part of the area is effectively that covered by the appeal site, which encroaches slightly onto the tourism/commercial area.

38. Although there is clearly a 'diagrammatic' element to the map, acknowledged by the authority and emphasised by the existing development of the north-west part not following the exact lines of the 'pockets', it is sufficiently clear to show substantial areas of amenity woodland separating the north-west, central and south-east development areas. The extent of this amenity woodland is not fully reflected in the appeal proposals, as the low density developed area would extend over a larger area than is shown on the plan, and significant areas of retained woodland would appear to be in private gardens. The affordable housing also appears to be placed within an area shown as amenity woodland. The encroachment onto the commercial/tourism area is not however critical given the proposals for further development of the golf course that would utilise the remainder of this area, and be compatible with the surrounding development.

39. Drawing all these points together, I find the appeal site as a whole to be located in an area which in principle is designated in the local plan for development, subject to retention of substantial areas of amenity woodland. Even allowing for some latitude, the proposals go further than the plan clearly intended, and to that extent they are not fully in accordance with the local plan. Taking the development plan as a whole, the proposals meet the principles regarding housing development, whilst falling short of the specific aspects regarding amenity woodland in the local plan.

40. Turning now to material considerations, much has been made by objectors about the procedures followed during the application process. These are not matters that are relevant to my determination of the appeal, and other channels are available to pursue them.

41. A number of references were made to Scottish Executive guidance, and I have referred in the summaries above only to the relevant NPPG 14 and PAN 65. As Executive guidance this carries significant weight and NPPG 14 places emphasis, at paragraph 74 on addressing environmental concerns by modifications or conditions. Paragraph 76 states that planning permission should not be refused if it could be granted subject to conditions which would prevent unacceptable damage to the natural heritage. Your client has suggested a 'fall-back' position, and whilst the legitimacy of this has been queried, the granting of outline planning permission, subject to the subsequent approval of the details of the layout and landscaping and other relevant matters, either as reserved matters or by specific condition, is an established procedure under the Act, even when detailed proposals have in part been submitted as part of the application.

42. Pan 65 states at paragraph 44 that the open space strategy in development plans should be reflected in development control decisions. It adds that the credibility of the planning system can be significantly undermined when policies for the protection and provision of open space are set aside without sound and clear justification. This supports the retention of amenity woodland as set out in the local plan, and through this emphasises the unsatisfactory extent of development as proposed in the detailed layout.

43. In considering the first and third reasons for refusal, your client has suggested that issues of water and drainage could be dealt with by a suspensive condition, restricting the start of development until after these matters had been resolved, and I accept this view. I have dealt with matters relating to woodlands. Regarding the first aims of the National Park, with regard to the natural heritage there are no specific designations covering the appeal site, and whilst the woodland has obvious important local value the site is intended for housing development in the local plan. I have already found that whilst the detail of the proposal as it stands is not acceptable this can be addressed through conditions, allowing the most important elements of the woodland to be protected. On this basis the aim of the national park to conserve and enhance the natural heritage can be met so far as is realistic within an area designated for housing within the settlement boundary. No issues of significance have been raised in relation to cultural heritage.

44. Regarding the promotion of understanding and enjoyment of the area, no evidence has been provided to suggest that this aim must be fulfilled by every development that takes place within the area. Issues relating to the enjoyment can be dealt with at the detailed stage in terms of an adequate network of footpaths throughout the area. I do not find that this is an issue justifying the refusal of planning permission, and therefore give it little weight in relation to the overall application.

45. Reference has also been made to the emerging local plan, where the area is zoned as an active application site. As the plan is still in its early stages, subject to public consultation and examination, and liable to change, and therefore carries little weight. That said, it is not unsupportive of the proposal and does not contain anything that suggests overriding the extant local plan.

46. The majority of the points raised by objectors have been dealt with above. Those referring specifically to issues relating to woodland and informal recreation will be taken into account by the authority when considering specific proposals at a detailed stage. The development would not be allowed to proceed without adequate water and sewerage facilities being provided. I am satisfied that any potential issues relating to traffic, the level crossing, health and education facilities, are capable of being resolved. I am unaware of any legislative basis that would prevent any of the proposed houses being used by its occupiers for holiday purposes, or of guidance in this regard.

47. Taking the material considerations together, as the issues relating to the extent of the amenity woodland and informal recreation areas can be addressed at the detailed planning stage, in line with NPPG 14 guidance, I find nothing to justify the refusal of planning permission for a development that accords with the principle, if not the letter of the development plan.

48. I have considered the conditions submitted by the authority, taking into account your client's comments and the guidance in SDD circular 4/1998 regarding the use of conditions in planning permission. In general I accept these views, noting in particular that your client does not require planning permission for the demolition of the former farm house and the comments on the viability of potential restoration. In these circumstances I accept that the proposed condition would be unreasonable. A condition should also be added to state the specific size of the development and that the proposed layout submitted with the application is not approved. I also see no overriding need for a section 75 agreement in this case regarding affordable housing, provided this is noted in the overall numbers and secured by condition. Conditions referring to trees and landscaping can be consolidated, and it is reasonable to safeguard trees from future felling by condition. I accept that play areas are unnecessary in each phase of development. It is also unnecessary to refer to council consultations in conditions. Subject these comments, and to minor editing, such as planning authority approval being in writing and 'in perpetuity' being replaced by 'the life of the development', I am satisfied that the proposed conditions provide a satisfactory basis for the permission.

49. I have taken account of all the other matters raised but find none that outweigh the considerations on which my decision is based. In exercise of the powers delegated to me I therefore allow your client's appeal and grant planning permission for the development proposed in the application to Highland Council dated 17 February 2005, as called in by the Cairngorms National Park Authority, authority reference 05/101/CP, at the above address, subject to the conditions set out in Annex A of this letter.

50. This decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks of the date of this letter, as conferred by sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

51. A copy of this letter has been sent to the Cairngorms National Park Authority, Highland Council, Scottish Water, Scottish Natural Heritage, Aviemore and Vicinity Community Council, Dalfaber Action Group and the Constituency MSP. Others who made representations have been informed of my decision.

Yours faithfully

This is the version sent to parties on 16 November 2006.

Trevor A Croft
Reporter

ANNEX A – CONDITIONS IMPOSED ON THE GRANT OF OUTLINE PLANNING PERMISSION FOR RESIDENTIAL DEVELOPMENT COMPRISING 104 SERVICED HOUSING PLOTS, ALL ASSOCIATED ROADS, ACCESS POINTS, AND SERVICE ENGINEERING AND LANDSCAPE WORKS AT NORTH DALFABER, AVIEMORE, CAIRNGORMS NATIONAL PARK AUTHORITY, AUTHORITY REFERENCE 05/101/CP

1. The residential development hereby approved is for up to 104 residential units in total, of which 25 shall be affordable units. *Reason:* in accordance with the submitted application.
2. For the avoidance of doubt the layout plan submitted with the application is not approved. A revised layout shall be agreed with the Cairngorm National Park Authority (CNPA) as part of the reserved matters approvals referred to below. *Reason:* because the application is in outline, and the submitted plan does not adequately reflect the local plan intentions for the application site with regard to the retention of amenity woodland.
3. Formal applications and detailed plans indicating all matters relating to following 'reserved matters' namely the siting, design and external appearance of all buildings, means of access thereto, means of enclosure and landscaping proposals shall be submitted for the prior approval in writing of the CNPA as planning authority within 3 years of the date of this permission and the development must be commenced within 5 years of the date of this permission or within 2 years from the date of final approval of all the foregoing reserved matters. *Reason:* to comply with Section 59 of the Town and Country Planning (Scotland) Act, 1997.
4. No development shall commence on site until evidence is provided to the CNPA as planning authority, and accepted in writing by the authority, that an agreement has been reached with Scottish Water regarding the provision of a suitable water supply and drainage scheme for the development. *Reason:* at the time of granting permission there may be capacity issues with the Blackwater treatment works regarding the supply of potable water, and with the ability of the sewerage system to cope with foul water treatment, and in the interests of public health.
5. The development shall be carried out in phases, with the minimum number of phases being three, other than that the basic road and service infrastructure shall be provided as preliminary works. No phase shall be commenced until the previous phase has been completed to an extent acceptable in writing to the CNPA acting as planning authority. An application for approval of reserved matters shall include a detailed phasing plan, which shall make provision for the delivery of the affordable housing element within an early phase of the development. *Reason:* in order to ensure the satisfactory completion of the development and the timely provision of affordable housing, communal areas and other recreational areas.
6. Prior to any work starting in connection with the development of individual plots in each phase of the development, the works listed hereunder shall be completed for each phase and approved in writing by the CNPA acting as planning authority:
 - (a) all internal roads serving more than four dwellings shall be designed and constructed to a standard suitable for adoption in compliance with Highland Council's Road Guidelines for New Developments;
 - (b) drainage measures shall accord with SUDS principles and shall satisfy the respective requirements of CNPA acting as planning authority, Highland Council, Scottish Water and SEPA;

- (c) the drainage measures shall provide the following: the post development run off for a 1 in 25 years flood event shall be attenuated to the level of the corresponding pre development run off for a 1 in 2 years flood event; a 1 in 200 years flood event shall be safely contained within the site without causing flood risk to properties or resulting in an unacceptable depth of inundation at any location; there shall be no increase in flood risk to properties upstream or downstream of the development;
 - (d) where the finished level of any new road is higher than existing ground level, house and plot levels adjacent to the road shall be such that no ponding occurs within any plot;
 - (e) a suitable management and maintenance agreement shall be established in respect of any drainage measures that are not to be adopted by Highland Council or Scottish Water;
 - (f) all properties within the development shall be free from the effects of a 1 in 200 years flood event;
 - (g) appropriate Design and Check Certification shall be provided in respect of any structures to be incorporated in the works;
 - (h) visibility splays shall be provided and maintained on each side of the each road junction; these splays are the triangles of ground bounded by the first X metres along the centreline of the minor road (the X dimension) and the nearside edge of the main road (the Y dimension) measured in either direction from the intersection with the access road, in accordance with Highland Council guidelines;
 - (i) visibility splays of 4.5 metres x 70 metres shall be provided and maintained at the junction of the main access road and Dalfaber Drive;
 - (j) visibility splays of at least 4.5 metres x 70 metres shall be provided and maintained at the junction of Corrou Road and the main access road and at the junction of secondary access serving Plots 56 - 81 and the main access road;
 - (k) visibility splays of at least 4.5 metres x 70 metres shall be provided and maintained at the junction of the secondary access road and Spey Avenue;
 - (l) appropriate visibility splays in compliance with the requirements of the Design Manual for Roads and Bridges shall be provided and maintained at all roundabouts;
 - (m) visibility of at least 2.5 metres x 30 metres shall be provided and maintained at all individual house accesses;
 - (n) within the visibility splays nothing shall obscure visibility between a driver's eye height of 1.0 metres positioned at the X dimension and an object height of 1.0 metre anywhere along the Y dimension;
 - (o) parking and manoeuvring space for at least two cars shall be provided within the curtilage of each property such that each vehicle can enter and leave the plot independently in forward gear;
 - (p) the access to each plot shall be hard surfaced for a distance of at least 6 metres from the rear edge of the adjacent hard edge strip or footpath as appropriate;
 - (q) suitable pedestrian/cycle links shall be provided to link the development to existing facilities nearby;
 - (r) a suitable management and maintenance agreement shall be established in respect of any hard or soft landscaped areas, roads, footpaths/cycle links that are not to be adopted by Highland Council;
 - (s) street lighting shall be provided, as required, to the satisfaction of Highland Council.
- Reason:* to ensure that all properties will be free from the effects of flooding; to ensure that all vehicles may enter and leave the site safely at all times; and to ensure the long term management and maintenance of any elements that are not adopted by a statutory authority.

7. Prior to any development commencing on site, a scheme shall be submitted by the developer (at his/her expense) to deal with potential contamination on site. No construction work shall

commence until such scheme has been submitted to and approved in writing by the CNPA acting as planning authority and is thereafter implemented to its satisfaction. The scheme shall contain details of proposals to deal with potential contamination and must include:-

- (a) the nature, extent and type of contamination on site, identification of pollutant linkages and assessment of risk (i.e. Site Investigation and Contaminated Land Risk Assessment); the scope and method of this assessment shall be agreed in advance in writing with the CNPA acting as planning authority, and undertaken in accordance with PAN 33 (2000) and BS10175:2001;
- (b) remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for the uses proposed (this shall include a method statement, programme of works, and proposed verification plan);
- (c) submission of a validation report (should remedial action be required) by a competent person employed by the developer who will validate and verify the completion of works to a satisfactory standard as agreed in writing with the CNPA acting as planning authority;
- (d) submission, if necessary, of monitoring statements at periods to be agreed with the CNPA acting as planning authority, for such a period considered appropriate by the authority.

Written confirmation from the CNPA acting as planning authority, that the scheme has been implemented, completed and if appropriate, monitoring measurements are satisfactorily in place, shall be obtained by the developer before any development hereby approved commences.

Reason: to ensure that adequate remediation is carried out on potentially contaminated lands prior to the commencement of development in the affected areas of the site.

8. Detailed SUDS proposals, designed in accordance with the agreed outline Drainage Impact Assessment, shall be submitted to and approved in writing by the CNPA acting as planning authority, before development commences. *Reason:* to ensure the site is free from the effects of flooding.
9. SUDS proposals for any phase of development must be implemented and operational prior to the occupation of any property within that phase of the development. *Reason:* to ensure the site is free from the effects of flooding.
10. A detailed site specific construction method statement for the particular site must be agreed in writing by the CNPA acting as planning authority, prior to the commencement of works on site, and must be implemented in full during works on site. The method statement must address the temporary measures proposed to deal with surface water run-off during construction and prior to the operation of the final SUDS. *Reason:* to ensure the site is adequately drained to meet Best Management Practice and to prevent pollution of watercourses.
11. Prior to the commencement of development, a programme of archaeological work for the preservation and recording of archaeological features affected by the proposed development, including a timetable for investigation, all in accordance with Highland Council's specifications for such work, shall be submitted to and approved in writing by the CNPA acting as planning authority. All arrangements thereby approved shall be implemented by the developer at his/her expense in accordance with this approved timetable for investigation. *Reason:* In order to ensure the protection of the archaeological interest of the site.

12. An application for approval of reserved matters shall include a comprehensive landscaping scheme for the entire site, based on the tree assessment undertaken by the developer. The scheme shall include indications of all existing trees and landscaped areas on the land, and details of any to be retained, together with measures for their protection in the course of the development, taking into account all communal woodland/open space areas, housing layouts, levels and building lines of individual plots, and shall indicate the siting, numbers, species and heights (at the time of planting) of all trees, shrubs and hedges to be planted and to the extent of any areas of earth mounding, and construction and finish details of all footpaths and shall ensure: -
- (a) completion of the scheme during the planting season next following the completion of each phase of the development, or such other date as may be agreed in writing with the CNPA acting as planning authority.
- (b) the maintenance of the landscaped areas for the duration of the development in accordance with the detailed maintenance schedule/table; any trees or shrubs removed, or which in the opinion of the CNPA acting as planning authority, are dying, severely damaged or becoming seriously diseased within three years of planting, shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.
- Individual trees other than those approved for removal as part of the scheme shall not be felled without the prior approval in writing of the CNPA acting as planning authority.
- Reason:* to ensure the retention and protection of the woodland setting, in the interests of the visual amenity of the area and to enhance the natural features of the site.
13. The 25 affordable houses to be provided shall be retained as affordable and low cost for the duration of the development. *Reason:* in the interests of ensuring the provision of affordable housing in the area and in the interests of promoting the social and economic development of the area.
14. The surface of all pathways through the site, other than those intended for adoption by Highland Council, shall be a permeable material in keeping with the woodland nature of the site. An application for approval of reserved matters shall include details of the extent of pathways, as part of the access arrangements, affected by this condition, details of the proposed surfacing and details of the proposed width. *Reason:* to visually enhance access provision throughout the site.
15. Adequate temporary car parking accommodation shall be provided on the site for the use of employees engaged in construction work on the site. *Reason:* to avoid traffic congestion and in the interests of public safety.
16. All public services for the development, including electrical, cable television and telephone cables, shall be located underground throughout the site. All such work shall be carried out prior to road surfacing and junction boxes shall be provided by the developer. *Reason:* in the interests of visual amenity.
17. An application for approval of reserved matters for the overall site development shall include a detailed Design Guide, which shall incorporate comprehensive design guidance on house types, scale, form, materials, and including illustrative designs. The Design Guide shall also include advice on boundary treatments, landscaping, surface dressings for paths and driveways, and guidance on external lighting. *Reason:* In the interests of visual amenity and in the interests of ensuring a consistently high standard of siting and design.

18. All dwellings within the development shall comply with design parameters set out in the Design Guide, in terms of scale, form, design features and materials. All applications for approval of reserved matters on individual plots shall include: -
- (a) detailed plans, sections and elevations of the proposed building, and detailed colour and type of materials to be used externally on walls and roofs and details of external lighting;
 - (b) a detailed site layout, including existing site levels and proposed finished floor levels, provision of car parking, comprehensive access details, and details of all boundary treatments;
 - (c) a detailed landscaping plan, clearly identifying existing trees and vegetation to be (i) retained and (ii) removed, and providing detailed proposals for new landscaping on the plot.

Eighteen conditions in all.

ADVICE NOTES

1. Road Construction Consent shall be required in respect of all roads related works intended for adoption by Highland Council, as Roads Authority.
2. The sale of individual house plots shall be regulated to take account of the phasing requirement detailed in condition no. 5 of the schedule of conditions.
3. In connection with condition no. 6, roadside filter trenches are not favoured. Measures incorporating a system of road gullies and carrier drains connecting to discrete soakaways or attenuation ponds and including overflow facilities to existing watercourses shall be adopted where possible.
4. Highland Council will consider for adoption only those pedestrian/cycle links that are considered strategic routes and that have been designed and constructed in accordance with the requirements of the Council's Road Guidelines for New Developments.

