

THE HIGHLAND COUNCIL

SOUTH PLANNING APPLICATIONS COMMITTEE

23 June 2015

Agenda Item	8.1
Report No	PLS/050/15

14/03675/S42 & 14/03676/S42: Reidhaven Estate

Land to the North West of Dalfaber Farm, Dalfaber Drive, Aviemore

Joint Report by Area Planning Manager – South & Head of Corporate Governance

SUMMARY

Description: Section 42 applications to develop land without compliance with conditions previously attached to planning permissions in principle refs: 07/144/CP (PPA-001-2000) & 07/145/CP (PPA-001-2001)

Recommendation: That this report be submitted as the Council's response to the appeals lodged.

Ward: 21 - Badenoch and Strathspey

Development category: Major

Reason referred to Committee: Applications have been appealed on the grounds of non-determination

1. PROPOSED DEVELOPMENT

- 1.1 The applications are for permission to develop land without compliance with: (1) conditions 1, 11, 12 and 21 previously attached to planning permission in principle ref: 07/144/CP (PPA-001-2000) for the development of 10 serviced housing plots and (2) conditions 1, 12, 13 and 22 previously attached to planning permission in principle ref: 07/145/CP (PPA-001-2001) for the development of 83 houses (PIP).
- 1.2 The s42 applications seek to vary these conditions. The tables in the appendix to this report indicate the existing and the conditions proposed by the appellant.
- 1.3 This report and the Committee's views thereon will form the Council's response to the appeal lodged.
- 1.4 **Variations:** None.

2. SITE DESCRIPTION

- 2.1 The sites lie on either side of the clubhouse area of the “Spey Valley” golf course on the north-eastern edge of Aviemore’s built up area. The northmost site is an area of birch woodland, with a limited number of clearings, bounded by existing housing developments at Corrour Road and Dalfaber Park to the south and north-west respectively, and the golf course to the east; the southmost site is bounded by the Corrour Road housing to the north-west, timeshare development to the south, and other parts of the golf course to the east. Both sites are near-level, with limited undulation in places.

3. PLANNING HISTORY

- 3.1 The PIP applications were lodged with the Council in 2007 but were called in by the Cairngorms National Park Authority (Park Authority) for determination. When the Park Authority failed to determine the applications within the statutory timescale, the applicant appealed the PIP applications on the grounds of non-determination. The appeals were upheld and the sites were granted planning permission in principle, subject to conditions, in March 2010. (Appeal Refs: PPA-001-2000 & PPA-001-2001).
- 3.2 Applications for the approval of matters specified in the conditions attached to the PIPs (MSC applications) were lodged by the applicant with the Council and these applications were called in by the Cairngorms National Park Authority (the Park Authority). On 19 February 2015 the Park Authority refused the MSC applications on the grounds that the PIPs had lapsed. The applicant has now appealed the Park Authority’s refusal of the MSC applications.
- 3.3 As set out above, the applicant also submitted two planning applications in September 2014 to vary the conditions on the original PIPs. These applications were validated in December 2014. It was expected that these planning applications would be called in by the Park Authority given their “ownership” of the original planning permissions. However the Park Authority declined to call in the planning applications, as was their right, and it therefore fell to the Council to determine them in line with the planning protocol adopted for determining planning applications within the National Park. Given the legal issues associated with the determination of the MSC applications referred to above (and discussed in more detail in section 4 below), it was considered sensible and appropriate to await the outcome of the Park Authority’s determination of the applications (and the consideration of the various implications thereof) before coming to a view on how best to deal with the s42 applications. This was duly done, however, the applicant has now appealed the Council’s failure to determine the s42 applications within two months of validation.

4. LEGAL CONTEXT

- 4.1 Unlike most applications that are subject to appeals on the grounds of non-determination, these appeals (and the appeals of the Park Authority's refusal of the related MSC applications) include a legal debate on the status of the PIPs.

Whether or not the PIPs have lapsed is material to determining the competency of the MSC and s42 applications. This matter will be determined by the Reporter as part of the appeal processes.

- 4.2 Section 59 of the Town and Country Planning (Scotland) Act 1997 sets out the requirements to be met by applicants when applying for approval of matters specified in conditions attached to PIPs. If these requirements are not met then a PIP will lapse. In summary, the appellant is of the view that the PIPs have not lapsed because they believe that they have satisfied the requirement to apply for approval of all reserved matters before the statutory time period expired (the appellant has Counsel's opinion that supports this position). If the Reporter agrees with the appellant that the PIPs have not lapsed then it is likely that she will proceed to assess the MSC applications against the development plan and other material considerations and then determine whether they should be granted or refused. If the Reporter agrees that the PIPs have not lapsed but proceeds to refuse the MSC applications, it is the Council's understanding of section 59 that the appellant would have one final opportunity to apply for approval of all matters specified in the conditions attached to the PIPs.

- 4.3 If the Reporter agrees that the PIPs have not lapsed, it is likely that the s42 applications would also be assessed and determined by the Reporter. In the interests of continuity, it is suggested that the Park Authority should take the lead in responding to the appeal of the s42 applications. The reasons in support of this position are that: both the PIPs and the MSC applications were called in by the Park Authority; and, if granted, the s42 applications will result in new planning permissions for Major developments within the National Park.

- 4.4 Contrary to the position taken by the appellant, the Park Authority is of the view that the PIPs have lapsed (and has legal advice that supports this position). The Park Authority refused the MSC applications on "legal" grounds; namely that the PIPs had lapsed and therefore it was not competent to determine the MSC applications following an assessment against the development plan and other material considerations. If the Reporter agrees with the Park Authority that the PIPs have lapsed then it is unlikely that she will proceed to assess the MSC applications against the development plan and other material considerations as the applications will be deemed to have been incompetently lodged. In this scenario, it is likely that the s42 applications will also be ruled to have been lodged incompetently and the appeal of the non-determination of the s42 applications would also fail.

- 4.5 For Members' information, representations have been received on the s42 applications and these have been forwarded to the Reporter for her consideration. Those parties making representations will be invited to make further representations on the appeal and will have the opportunity to play an active role in the appeals process.

5. CONCLUSION

- 5.1 Whether or not the Council agrees with the Park Authority's interpretation of section 59 of the Act, the Park Authority's decision to refuse the MSC applications on the grounds that the PIPs had lapsed cannot be ignored. In responding to the Directorate for Planning and Environmental Appeals, it is considered appropriate that the Council acknowledge that the appellant and the Park Authority disagree on the status of the PIPs but that the Council considers itself bound by the Park Authority's decision on the MSC applications. The Council would, had it been still able to determine the s42 applications, be refusing these on the grounds that they were incompetent.
- 5.2 Unlike the Council, the Reporter has the ability to come to her own decision on whether or not the PIPs have lapsed. If she favours the appellant's interpretation of section 59 of the Act, it is suggested that the Council's position should be that the Reporter request the Park Authority to take the lead in assessing the s42 applications against the development plan and other material considerations.

6. RECOMMENDATION

It is recommended that this report be submitted to the Directorate for Planning and Environmental Appeals as the Council's response to the appeals lodged on the grounds of non-determination of the s42 applications.

Signature: Allan J Todd & Stewart D Fraser
Designation: Area Planning Manager - South & Head of Corporate Governance
Background Papers: Documents referred to in report and in case file.

Appendix

(1) 07/144/CP (PPA-001-2000) - 10 serviced plots

	Existing Condition	Proposed Condition (Revisals Shown)
1	<p>Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.</p> <ul style="list-style-type: none"> • The siting, design and external appearance of all buildings and other structures including all fencing • The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities • A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors • Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS). <p>(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.)</p>	<p>1. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.</p> <ul style="list-style-type: none"> • The siting, design and external appearance of all buildings and other structures including all fencing; <u>or</u> • <u>alternatively, for a plot-by-plot approach condition 12 is adhered to;</u> • The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities; • A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors; • Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS). <p><u>Condition 12 allows a plot-by-plot approach in which case the site start made upon the infrastructure works will allow subsequent plot-by-plot MSC applications to be competently made and considered in line with Section 59(4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.</u></p> <p>(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by</p>

11	<p>The development shall be carried out in phases, in conjunction with the adjacent development permitted under application 07/145/CP (appeal decision PPA-001-2001). No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites (applications 07/144/CP and 07/145/CP) shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a north to south direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development. (Reason: to ensure an orderly sequence of development.)</p>	<p>the Planning etc. (Scotland) Act 2006)</p> <p>The development shall be carried out in phases, in conjunction with the adjacent development permitted under application 07/145/CP (appeal decision PPA-001-2001). No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites (applications 07/144/CP and 07/145/CP) shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a north to south direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development. (Reason: to ensure an orderly sequence of development.)</p>
12	<p>In the event that any plots within the development are proposed to be developed on an individual basis, a detailed design statement shall be submitted for the written agreement of the planning authority, prior to the submission of any subsequent application on the individual plots. The design statement shall include design guidance (including sample house type illustrations where appropriate) and shall cover details of height, materials, plot ratio, boundary treatments, the incorporation of energy efficiency and sustainability measures, and landscape and ecology guidance. All subsequent applications shall be in accordance with the agreed detail of the design statement. (Reason: for consistency of design principles in the whole development.) [nb This is condition 13 on the other consent]</p>	<p>In the event that any plots within the development are proposed to be developed on an individual basis, a detailed design statement shall be submitted for the written agreement of the planning authority, prior to the submission of any subsequent application on the individual plots. The design statement shall include design guidance (including sample house type illustrations where appropriate) and shall cover details of height, materials, plot ratio, boundary treatments, the incorporation of energy efficiency and sustainability measures, and landscape and ecology guidance. All subsequent applications shall be in accordance with the agreed detail of the design statement. <u>A plot-by-plot approach is competent in terms of Section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 with the proviso that the other MSCs set out at bullet points 2, 3 and 4 in Condition 1 have</u></p>

		<p><u>been approved by the Planning Authority and a lawful site start achieved.</u></p> <p>(Reason: for consistency of design principles in the whole development; <u>and to ensure to ensure that the matters referred to are given full consideration and to accord with section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006)</u></p>
21	<p>The development shall not be begun before either the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision to a registered social landlord of not less than 22 dwellings on this site together with the contiguous site of appeal decision PPA-001-2001 (application 07/145/CP); or the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing. (Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)</p>	<p>The development shall not be begun before either the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision to a registered social landlord of not less than 22 dwellings <u>a number of dwellings not less than 25% of the total number of dwellings to be built on this site</u> together with the contiguous site of appeal decision PPA-001-2001 (application 07/145/CP); or the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing. (Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)</p>

(2) 07/145/CP (PPA-001-2001) - 83 houses

	Existing Condition	Proposed Condition (Revisals Shown)
1	<p>Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.</p> <ul style="list-style-type: none"> • The siting, design and external appearance of all buildings and other structures including all fencing • The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities • A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors • Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS). <p>(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.)</p>	<p>1. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval.</p> <ul style="list-style-type: none"> • The siting, design and external appearance of all buildings and other structures including all fencing; <u>or</u> • <u>alternatively, for a plot-by-plot approach condition 12 is adhered to;</u> • The location and specification of all vehicular roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities; • A detailed landscaping plan, including extensive peripheral tree planting, and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors; • Surface drainage of the site in accordance with Sustainable Urban Drainage Systems principles (SUDS). <p><u>Condition 12 allows a plot-by-plot approach in which case the site start made upon the infrastructure works will allow subsequent plot-by-plot MSC applications to be competently made and considered in line with Section 59(4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.</u></p> <p>(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006)</p>
12	The development shall be carried out in	The development shall be carried out

	<p>phases, in conjunction with the adjacent development permitted under application 07/145/CP (appeal decision PPA-001-2000). No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites (applications 07/144/CP and 07/145/CP) shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a north to south direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development. (Reason: to ensure an orderly sequence of development.)</p>	<p>in phases, in conjunction with the adjacent development permitted under application 07/145/CP (appeal decision PPA-001-2000). No phase shall be commenced until the previous phase has been certified by the planning authority as sufficiently complete. Before development is begun a detailed phasing plan for both development sites (applications 07/144/CP and 07/145/CP) shall have been approved in writing by the planning authority. Phasing shall be undertaken generally in a north to south direction, and shall include details of the development method (for example single entity development or individual plot development), including responsibility for the provision of infrastructure to serve the development. (Reason: to ensure an orderly sequence of development.)</p>
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		<p><u>achieved.</u> (Reason: for consistency of design principles in the whole development; <u>and to ensure to ensure that the matters referred to are given full consideration and to accord with section 59 (1) (2) & (4) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006</u>)</p>
22	<p>The development shall not be begun before either the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision to a registered social landlord of not less than 22 dwellings on this site together with the contiguous site of appeal decision PPA-001-2000 (application 07/144/CP); or the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing. (Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)</p>	<p>The development shall not be begun before either the planning authority has certified in writing its satisfaction with arrangements, binding on all relevant parties, for the provision to a registered social landlord of not less than 22 dwellings <u>a number of dwellings not less than 25% of the total number of dwellings to be built</u> on this site together with the contiguous site of appeal decision PPA-001-2000 (application 07/144/CP); or the planning authority has notified in writing its agreement to alternative arrangements for the provision of affordable housing. (Reason: to ensure that development of the site makes a due contribution to affordable housing in the locality.)</p>



5.922Ha
PPA/001/2000

5.182Ha
PPA/001/2001

**Residential Development, Dalfaber, Aviemore
REIDHAVEN ESTATES**

SITE 1 - LOCATION PLAN + INDICATIVE LAYOUT

Scale: 1:1250 (A2)

Date: 10 Sept. 2014

Dwg No: P1705/ D(-) 01

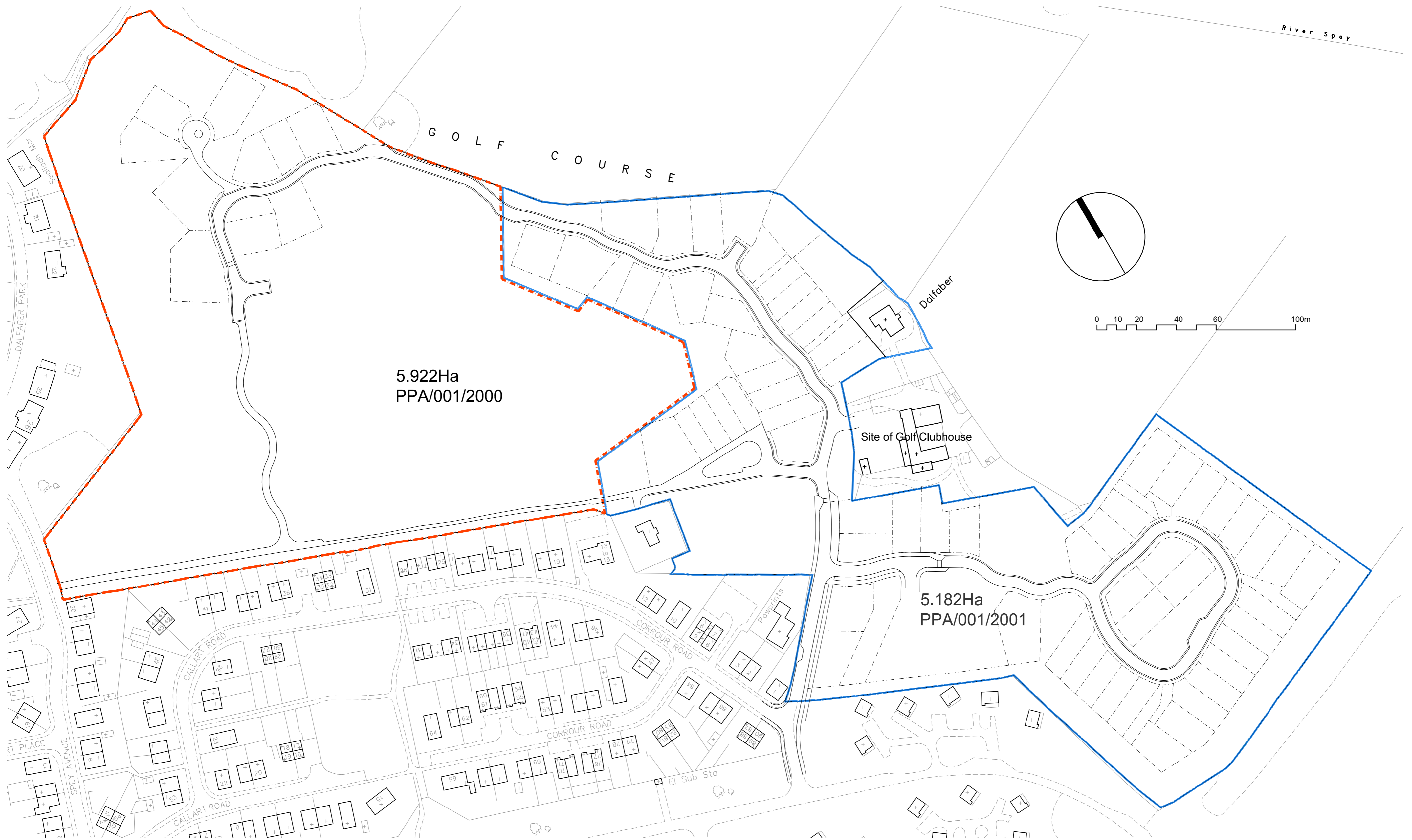
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**Residential Development, Dalfaber, Aviemore
REIDHAVEN ESTATES**

SITE 2 - LOCATION PLAN + INDICATIVE LAYOUT

Scale: 1:1250 (A2)
 Date: 01 March 2013
 Dwg No: P1705/ D(-) 02

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