



Report to the Scottish Ministers

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Report by Amanda Chisholm, a reporter appointed by the Scottish Ministers

- Case reference: NA-ABS-049
- Site Address: Site at Prony Steading, Glengairn, Ballater, Aberdeenshire
- Application for planning permission reference APP/2019/2108 dated 6 September 2019, called-in by notice dated 17 April 2020
- The development proposed: conversion of part of steading to form dwelling house
- Date of unaccompanied site visit: 21 July 2020

Date of this report and recommendation: 20 October 2020



CONTENTS

Page

Summary Report	2
Preamble	6
Chapters	
1. Background	7
2. Planning policy and guidance	9
3. The cases for the parties	13
4. Conclusions and recommendations	24
Appendices	
Appendix 1: List of documents	34
Appendix 2: Suggested planning conditions and informatives	36

Abbreviations

AOD	Above Ordnance Datum
m ³ /sec	cubic metres per second
SAC	Special Area of Conservation
SEPA	Scottish Environment Protection Agency
SuDS	Sustainable Drainage System

The conversion of part of an agricultural steading to form a dwelling house at Prony Steading, Glengairn, Ballater, Aberdeenshire

• Case reference	NA-ABS-049
• Case type	Called-in application for planning permission
• Reporter	Amanda Chisholm
• Applicant	Mr C Wright
• Planning authority	Aberdeenshire Council
• Other parties	Scottish Environment Protection Agency
• Date of application	6 September 2019
• Date case received by DPEA	20 April 2020
• Method of consideration and date	Written submissions and unaccompanied site inspection on 21 July 2020
• Date of report	20 October 2020
• Reporter's recommendation	Refuse planning permission

Background

The application site, comprising a U-shaping agricultural steading, is located in the Cairngorms National Park in rural Aberdeenshire, some three kilometres north-west of Ballater and just over one kilometre to the north-west of Bridge of Gairn. The steading is part of a larger farm complex, including Prony (the original farm house) and Pronybeg House, in an area of agricultural pasture lying to the east of the River Gairn. The western boundary of the application site is contiguous with the east bank of the river.

The proposal is to convert the north wing of the building, including a former bothy, to residential accommodation on two levels, with the sleeping accommodation upstairs. Relatively minor changes to the building's exterior are proposed, and traditional materials would be used. A garden would be provided that would also incorporate a new septic tank and soakaway, as well as a surface water drainage soakaway. There would be a private water supply.

The Scottish Environment Protection Agency (SEPA) and Aberdeenshire Council's Infrastructure Services (Flood Risk and Coast Protection) both objected, as the application site lies in an area considered to be at medium to high risk of flooding from the River Gairn. Both considered that insufficient information was provided to allow an assessment of flood risk at this site, and therefore objected until a flood risk assessment or other appropriate information was submitted. No other consultees raised any objections, subject to planning conditions being imposed.

Aberdeenshire Council's Planning Service recommended refusal of the application on flooding grounds. The application was referred to the Marr Area Committee, which was minded to grant planning permission based on the view that it would comply with Policy 10

(Resources), Part 2 (Flooding), of the Cairngorms National Park Local Development Plan 2015. In coming to this decision, the committee gave consideration to the height of the application site above the river, the width of the river bank, and the fact that residential accommodation would be upstairs and managed on site. Local knowledge was also considered to be relevant.

The applicant's case

The proposal is not subject to the flood risk provisions of Scottish Planning Policy, given the exemptions identified in paragraph 257. There is sufficient historical evidence to show that the risk of flooding is low to medium and that the proposed development would have no adverse consequences. In particular, the application site was not affected by the 1 in 200 year flood event that occurred in December 2015. SEPA's flood maps are inaccurate, and flood risk assessments are equally unreliable and, at best, merely snapshots in time that would not provide a reliable indication of flood levels. Sufficient information has been provided, including about existing flood protection. Taking these things together, a flood risk assessment is not required. There is planning precedent for this development.

SEPA's case

This proposal is for change of use, rather than alteration. This, in combination with the resulting increase in vulnerability to flooding, means that the provisions of paragraph 257 do not apply to this proposal. It would be unreasonable if flood risk planning policy were not applied to all developments involving alterations to facilitate similar conversions to residential accommodation.

The application site lies within the medium likelihood (0.5% annual probability or 1 in 200 year return period) fluvial flood extent of the SEPA flood map, and may therefore be at medium to high risk of flooding from the River Gairn. A lack of flood records does not indicate an absence of flood risk, nor can it be concluded that flooding has not occurred in the past or would not occur in the future.

No evidence has been provided by the applicant that the flood event in December 2015 was a 1 in 200 year event. While SEPA agrees that flooding on the River Dee constituted a 1 in 200 year event, it considers that, on the River Gairn, this was more a 25 to 50 year flood. The two river catchments are not the same.

Insufficient information has been provided to assist in the assessment of flood risk at the application site, despite SEPA's advice in this regard. The information that has been provided is not robust in demonstrating that the proposed development would not be at risk of flooding during a 1 in 200 year event.

While the probability of flooding would not be changed, flooding risk would be increased by the conversion, especially in relation to human health and safety, as well as property.

The identification of appropriate mitigation measures would depend on the outcome of a flood risk assessment, demonstrating that people and property are not put at flood risk. The existing measures identified by the applicant are not considered to be adequate flood protection measures. SEPA also has concerns about adequate access to and egress from the site in the event of a flood. The case for precedent is not accepted.

The case for the council

The recommendation to the council by its planning officials was to refuse planning permission. However, the council is not obliged to accept such recommendation: each application must be considered on its own merits, in light of development plan policies and other material considerations. The proposal complies with Policies 1 and 3 of the local development plan, which support conversion of existing traditional and vernacular buildings.

Reporter's conclusions

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires this application for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.

The proposed development would constitute significantly more than an alteration, particularly in light of the extent of the works required to effect the conversion of the agricultural building to a dwelling house. This would not be a slight or trivial change and therefore would have planning significance. Had paragraph 257's intention been to exclude the change of use of an existing building from the flood risk provisions of Scottish Planning Policy, this would have been explicitly included alongside alterations and small-scale extensions.

SEPA's flood maps have been prepared following a consistent, nationally-applied methodology and are intended to assess flood risk at the community level, in support of planning and flood risk management. They are therefore indicative and strategic in nature and should not be used to assess flood risk at an individual property. Given that the detail of the models and information used in strategic and site-specific flood studies differs, the results cannot be expected to totally correlate. It does not seem reasonable to criticise strategic-level mapping on the basis of issues that may have been encountered with site-specific assessment.

The historic flood records provided by the applicant pertain mainly to the River Dee, and are therefore not relevant to the application site, given the differences between the River Dee and River Gairn catchments. The flooding event at the application site in December 2015 should not be considered to have been a 1 in 200 year event. The fact that a 1 in 200 year flood has not been experienced by the current residents does not mean that it could not occur in the future, particularly in light of climate change implications.

It is not possible to come to a satisfactory conclusion regarding the risk of flooding of the application site, as the requisite information has not been provided. The existing measures identified by the applicant would not provide any significant flood defence protection, given the proximity of the application site to the river and the lack of suitable access to and egress from the building in the event of a flood. The argument regarding precedent is not accepted. Each application must be considered on its own merits.

Overall conclusions

The principle of the development is supported. The proposed conversion would comply with Policy 1, Part 8 (Conversions), Policy 3, Part 3 (Converting existing buildings), Policy 4 (Natural Heritage) and Policy 10, Part 1 (Water Resources) of the development plan.

The proposed conversion does not accord with the requirements of Policy 10, Part 2 (Flooding), as it has not been demonstrated that the dwelling house would be free from significant risk of flooding.

Overall the proposed development is contrary to the development plan, as the benefits of the conversion are not sufficient to outweigh the risk that the dwelling house could flood in the future, with adverse consequences for human health and safety and for property.

The relevant policies of the proposed local development plan are not materially different from those of the extant plan, and there is no reason to alter the above conclusions.

Granting planning permission would be contrary to the precautionary approach set out in Scottish Planning Policy, and to the advice that areas at medium to high risk of flooding are generally not suitable for isolated dwellings in sparsely developed locations. The operational agricultural need identified by the applicant does not apply given that alternative locations may be available.

Recommendation

It is recommended that planning permission be refused.

Scottish Government
Planning and Environmental Appeals Division
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

DPEA case reference: NA-ABS-049

The Scottish Ministers
Edinburgh

Ministers

On 21 July 2019 I conducted a site inspection in relation to a planning application for the conversion of a former agricultural steading to a residential dwelling at Prony Farm, Bridge of Gairn, Ballater. (In light of the covid-19 situation this inspection was unaccompanied, with the prior agreement of the parties.)

Aberdeenshire Council, as the planning authority, is minded to grant planning permission, against the advice of both planning officials and the Scottish Environment Protection Agency (SEPA). Given the outstanding objection from SEPA, the planning application was notified to the Scottish Ministers.

Having considered the application, on 17 April 2020 the Scottish Ministers directed that the application be referred to them for determination, in view of the proposed development's potential conflict with national policy on flooding and inadequate justification provided for departing from this policy.

My report takes account of the evidence submitted by the applicant, SEPA and the council, including that provided in response to my request for further information. Chapter 1 of my report provides background information on the application, Chapter 2 summarises the relevant national and development plan policy and guidance, Chapter 3 sets out the position of each of the parties, and Chapter 4 provides my reasoning, conclusions and recommendation. Appendix 1 provides a list of documents. Appendix 2 contains a list of conditions that should be attached to a planning permission, should Ministers decide not to accept my recommendation that planning permission be refused.

The examination of the proposed replacement Local Development Plan has been completed, with the report submitted to the National Park Authority in September 2020. Should the new plan be adopted before Ministers make their decision, then it will form part of the development plan for the purposes of that decision.

CHAPTER 1: BACKGROUND

Site location and context

1.1 The application site is located in the Cairngorms National Park in rural Aberdeenshire, some three kilometres north-west of Ballater and just over one kilometre to the north-west of Bridge of Gairn. It comprises a U-shaped agricultural steading, formerly a cattle court, with a disused bothy in its north-west corner and an adjacent threshing mill. The steading is reported to be in good condition and is currently used for agricultural storage. The building is part of a larger farm complex that includes the original farm house (Prony) to the south east of the steading, a large agricultural storage shed to its north and, beyond that, a newer dwelling, Pronybeg House. There are agricultural pastures to the east, north-east and south-east of the houses and farm buildings. The River Gairn runs to the west of the farm; the western boundary of the application site is contiguous with the east bank of the river.

The proposed development

1.2 The north wing of the building, including the former bothy, would be converted to residential accommodation, 0.17 hectares in extent. The remainder of the building would continue to be used for agricultural storage, but would not include live animals.

1.3 The proposed living space would be on two levels. The ground floor would comprise a lounge, kitchen, study, bathroom, shower room and utility/boot room, with three bedrooms and a lavatory on the first floor. The floor levels would be raised. The corrugated iron roof above the former bothy would be replaced with slate to match the existing. The existing rooflight would be removed and seven conservation rooflights installed. Existing window and door openings would be reduced or enlarged, as appropriate, to provide new doors and windows apart from on the south elevation where, apart from one, existing openings would be built up. The windows throughout would be timber stepped sash and case lookalike and double-glazed.

1.4 A garden would be provided to the immediate north of the steading. This area would also incorporate a new septic tank and soakaway, as well as a soakaway to accommodate surface water drainage. The proposed dwelling would have a private water supply, which has been tested and is acceptable to the council.

1.5 Access would be via the existing access track that connects the farm complex to the unclassified Lary Road.

Consultations received by the council

1.6 The Scottish Environment Protection Agency (SEPA) noted that the application site lies within the medium likelihood (0.5% annual probability or 1 in 200 year return period) fluvial flood extent of the SEPA flood map, and may therefore be at medium to high risk of flooding from the River Gairn. The proposed change of use to a residential dwelling would result in an increase in land use vulnerability to flooding. SEPA considered that insufficient information was provided to allow an assessment of flood risk at this site, and therefore objected until a flood risk assessment or other appropriate information was submitted. SEPA indicated that the objection on flood risk grounds would be removed if a flood risk assessment or other information demonstrated that the proposed development would accord with the flood risk principles of Scottish Planning Policy.

1.7 Aberdeenshire Council Infrastructure Services (Flood Risk and Coast Protection) recommended refusal, noting that the application site is within SEPA's 1 in 200 year indicative floodplain, which may therefore put the development in the high flood risk category and may not comply with Scottish Planning Policy. For the application to proceed, a flood risk assessment would be required, considering flooding from all sources and demonstrating that the development site is above the functional floodplain (1 in 200 year plus climate change). Details on how surface water would be drained from the site were also requested (subsequently provided by the applicant).

1.8 No other consultees raised any objections, subject to planning conditions being imposed (see Appendix 2 for details of suggested planning conditions and informatives).

Consideration by Aberdeenshire Council

1.9 The planning application was submitted to Aberdeenshire Council on 6 September 2019, supported by a Structural Report, a Bat Survey Report and a Drainage Investigation Report. A site section showing ground levels relative to the River Gairn was subsequently provided. During consideration of the application, additional technical information regarding flood risk was submitted to SEPA (detailed in Chapter 3).

1.10 Given its location in the national park, the Cairngorms National Park Authority was notified of the application. The authority did not consider that it raised issues of significance to the collective aims of the national park, as it constitutes less than two residential units outside a settlement (the call-in criteria set by the authority), and in consequence it was not called in.

1.11 The council's Planning Service recommended refusal of the application on flooding grounds: firstly, that the proposed change of use of the steading from agricultural to residential would increase the vulnerability of the building from its current 'less vulnerable' land use to a 'highly vulnerable' land use and, secondly, that the application was not supported by a flood risk assessment, or other robust supporting information, to confirm that the residential use would be free from significant risk of flooding. The application was referred to the Marr Area Committee after requests from three Local Ward Members that flooding issues be considered.

1.12 At the meeting held on 18 February 2020, the area committee resolved that it was minded to grant planning permission, based on the view that it would comply with Policy 10 (Resources), Part 2 (Flooding) of the Cairngorms National Park Local Development Plan 2015. In coming to this decision, the committee gave consideration to the height of the application site being approximately eight to ten feet above the river, the width of the river bank, and the applicant's assertion that the residential accommodation would be upstairs in the building and managed by someone who would be on site at all times and able to take precautions in the event of bad weather. The need to judge applications based on local knowledge was also considered to be relevant.

1.13 Given SEPA's objection, on 16 March 2020 the application was notified to the Scottish Ministers in accordance with the provisions of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009. On 17 April 2020 Ministers directed that the application be referred to them for determination, in view of the proposed development's potential conflict with national policy on flooding and inadequate justification provided for departing from this policy.

CHAPTER 2: PLANNING POLICY AND GUIDANCE

The development plan

2.1 The development plan comprises the Cairngorms Local Development Plan, adopted on 27 March 2015. The examination of the proposed replacement Local Development Plan has been completed, with the report submitted to the National Park Authority in September 2020. There is no strategic development plan, but strategic context is provided by the Cairngorms National Park Partnership Plan 2017-2022. Development management in this area is the responsibility of Aberdeenshire Council.

2.2 The policies of the local development plan relevant to the application are set out in the following paragraphs. These policies are supported by non-statutory planning guidance published in 2015.

2.3 Policy 1 (New Housing Development), Part 8 (Conversions) supports the conversion of existing traditional and vernacular buildings where (a) it is demonstrated that the building is capable of the proposed conversion works; and (b) it maintains the style and character of the original building in terms of form, scale, materials and detailing, where they contribute positively to the context and setting of the area. This policy remains unchanged in the proposed plan.

2.4 Policy 3 (Sustainable Design), Part 3 (Converting existing building stock) reiterates criterion (b) of Policy 1 and also stipulates that the existing building should be redundant for its original use, and unlikely to have a commercial or economic future in its current form. This policy remains unchanged in the proposed plan, apart from the title, now “Design and Placemaking”.

2.5 Policy 4 (Natural Heritage), Part 1 (International and national designations) and Part 2 (National designations) protect Natura 2000 sites and Cairngorms National Park respectively. Both set out criteria whereby development proposals will be assessed for their effects in this regard. Policy 4, Part 4 (Protected species) protects species at both the European and national levels. Part 4 (All development) requires a comprehensive survey and a species/habitat protection plan where a habitat or species may be adversely affected by a development. This policy remains substantially unchanged in the proposed plan.

2.6 Policy 10 (Resources), Part 1 (Water resources) requires development to:

- a) minimise the use of treated and abstracted water;
- b) treat surface water and foul water discharge separately and in accordance with SuDS manual CIRIA C697;
- c) have no significant adverse impact on existing or private water supplies or wastewater treatment services;
- d) not result in the deterioration of the current or potential ecological status or prejudice the ability to restore water bodies to good ecological status;
- e) not result in the deterioration of water resources used for amenity or recreation; and
- f) avoid unacceptable detrimental impacts on the water environment. Existing and potential impacts up and downstream of the development, particularly in respect of potential flooding, should be addressed. An appropriately sized buffer strip will require to be retained around all water features. The relevant aspects of this policy remain substantially unchanged in the proposed plan.

2.7 Policy 10 (Resources), Part 2 (Flooding) states that all development should: a) be free from significant risk of flooding; b) not increase the risk of flooding elsewhere; c) not add to the area of land that requires flood prevention measures; and d) not affect the ability

of the functional floodplain to store or move flood waters. The supporting text (paragraph 11.10) notes that the submission of detailed assessments, including a flood risk assessment, may be required depending on the nature of the development.

2.8 Policy 10.2 (Flooding) in the proposed plan builds on the existing policy with the provision of more detail; its intent remains unchanged. Criterion a) now defines “significant risk” as medium to high risk, and notes that flooding from all sources, taking into account predicted impacts of climate change, should be considered. In exceptional cases where development is permitted in a medium to high risk area, water resilient materials and construction may be required. It also requires the incorporation of SuDS, proportionate to the scale and nature of development. The requirement for a flood risk assessment remains unchanged. The key points from the current non-statutory planning guidance have been incorporated into the supporting text to the policy.

National Planning Policy

2.9 Scottish Planning Policy (paragraph 29) includes a presumption in favour of development that contributes to sustainable development. The aim is to achieve the right development in the right place, which includes taking account of flood risk.

2.10 Paragraphs 254 to 268 deal specifically with managing flood risk and drainage. Paragraph 255 sets out the following policy principles:

- a precautionary approach to flood risk from all sources, taking account of the predicted effects of climate change;
- flood avoidance, by safeguarding flood storage and conveying capacity, and locating development away from functional flood plains and medium to high risk areas;
- flood reduction, assessing flood risk and undertaking natural and structural flood management measures; and
- avoidance of increased surface water flooding through requirements for Sustainable Drainage Systems (SuDS) and minimising the area of impermeable surface.

2.11 To achieve this, the planning system should prevent development that would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere (paragraph 256).

2.12 Paragraph 257 states that alterations and small-scale extensions to existing buildings are outwith the scope of this policy, provided that they would not have a significant effect on the storage capacity of the functional floodplain or local flooding problems.

2.13 Scottish Planning Policy sets out a flood risk framework (paragraph 263) to guide both development planning and development management decisions. The framework identifies the suitability or otherwise of different development types in three categories of flood risk (in terms of annual probability), based on their vulnerability to flooding. Areas at medium to high risk of flooding (i.e. 0.5% annual probability or 1 in 200 years) may be suitable for:

- residential, institutional, commercial and industrial development within built-up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan;

- essential infrastructure within built-up areas, designed and constructed to remain operational during floods and not impede water flow;
- some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place; and
- job-related accommodation, e.g. for caretakers or operational staff.

2.14 These areas are generally not suitable for:

- civil infrastructure and the most vulnerable uses;
- additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons, e.g. for navigation and water-based recreation, agriculture, transport or utilities infrastructure (which should be designed and constructed to be operational during floods and not impede water flow), and an alternative, lower risk location is not available; and
- new caravan and camping sites.

2.15 The “most vulnerable” uses are defined in the glossary as “basement dwellings, isolated dwellings in sparsely populated areas, dwelling houses behind informal embankments, residential institutions such as residential care homes/prisons, nurseries, children’s homes and educational establishments, caravans, mobile homes and park homes intended for permanent residential use, sites used for holiday or short-let caravans and camping, installations requiring hazardous substance consent”.

2.16 Where built development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome. Water-resistant materials and construction should be used where appropriate. Elevated buildings on structures such as stilts are unlikely to be acceptable.

2.17 Paragraph 264 sets out criteria to be taken into account when applying this risk framework to proposed development. Paragraph 266 notes that flood risk assessments should be required for development in the medium to high category of flood risk, and will generally be required for applications within areas identified at high or medium likelihood of flooding/flood risk in SEPA’s flood maps.

Guidance

2.18 The Scottish Government’s “Delivering Sustainable Flood Risk Management” (February 2019) advises on the framework for flood management in Scotland set out in the Flood Risk Management (Scotland) Act 2009. It identifies the land use planning system as one of the most powerful tools available to manage flood risk.

2.19 The Scottish Government’s updated Planning Advice Note on Flood Risk (June 2015) provides advice on flood risk and its management, including through the development management process (paragraph 43). Paragraph 17 advises that the flood risk framework set out in paragraph 263 of Scottish Planning Policy should be read in conjunction with SEPA’s land use vulnerability guidance to aid decision making. The guidance is particularly relevant where changes of use are being proposed.

2.20 SEPA’s “Flood Risk and Land Use Vulnerability Guidance” (27 July 2018) sets out five classifications of the relative vulnerability of land use to flooding (most vulnerable, highly vulnerable, least vulnerable, essential infrastructure, and water compatible uses) and lists typical land uses within each category. The most vulnerable uses reflect the definition

provided in Scottish Planning Policy. A matrix of flood risk is provided, based on land use vulnerability and flood risk, that sets out SEPA's likely planning response for proposed development in these categories. The impact of a flood on the particular land use could vary within each vulnerability class. In particular, a change of use to a dwelling house within the 'highly vulnerable' category could significantly increase the overall flood risk, especially in relation to human health and financial impacts. Any proposal for a change of use to a dwelling house should therefore be supported by a flood risk assessment.

2.21 The land use vulnerability guidance should be read in conjunction with SEPA's "Planning Background Paper: Flood Risk" (10 July 2018), which sets out guidance to planning authorities on how flood risk should be taken into consideration in the land use planning process.

CHAPTER 3: THE CASES FOR THE PARTIES

The case for the applicant

3.1 The applicant's arguments are set out in the following paragraphs, which take account of the correspondence between the applicant, the council and SEPA, and his representation to the DPEA, as well as his responses to the request for further information. In summary, there is sufficient historical evidence to show that the risk of flooding is low to medium and that the proposed development would have no adverse consequences. SEPA's flood maps are inaccurate, and flood risk assessments are equally unreliable and, at best, merely snapshots in time that would not provide a reliable indication of flood levels. In addition, the proposal is not subject to the flood risk provisions of Scottish Planning Policy. Taking these things together, a flood risk assessment is not required.

3.2 Prony Farm was run as a family business for many years until taken over by the applicant to run it single-handedly. He manages a flock of 500 breeding ewes. As no suitable accommodation is available on the farm, he has to live off the farm in very low quality accommodation. It is almost essential that, as the sole keeper of livestock, he should live on site in suitable and affordable modern residential accommodation.

3.3 Part of the area of the application was formerly living accommodation in the form of a bothy. This and the adjacent threshing mill are unsuitable for modern agriculture and are therefore redundant. The proposal is to convert this area to modern residential accommodation for the applicant so that it can provide affordable and secure living accommodation for the applicant under Cairngorms National Park planning policy. If this part of the steading cannot be converted to residential accommodation it would fall into disrepair and be detrimental to the environment of the Cairngorms National Park.

Development is exempt from Scottish Planning Policy

3.4 Paragraph 257 of Scottish Planning Policy identifies alterations to existing buildings as being outwith the policy's scope, provided that they would not have a significant effect on the storage capacity of the functional floodplain or local flooding problems. The proposed development comprises the conversion of a redundant traditional farm building to housing and is therefore an alteration to an existing building. In regard to the two provisos, the proposal does not alter the footprint of the building, as no extension is being sought, and so there would be no significant effect on the storage capacity of the floodplain. Nor would it change the risk of local flooding, however small, to all four local buildings.

3.5 Both SEPA and the planning authority have argued that the proposed change of use of the building would cause an increase in vulnerability, and that this causes paragraph 257 to be irrelevant to the proposal. There is no mention of vulnerability or change of use in this policy. The exchange of emails with the Scottish Government's Planning and Architecture Division indicates that paragraph 257 applies regardless of change of use. SEPA's reference to paragraph 264 is therefore irrelevant, as is any reference to vulnerability or change of use.

3.6 One must consider the intent and purpose of the Scottish Government in inserting paragraph 257. Clearly it was inserted to exclude alterations to existing buildings from the subject policy Managing Flood Risk and Drainage, otherwise it would serve no purpose. Hence paragraphs 255 to 256 and 258 to 268 cannot apply to the proposed development. Clearly paragraph 257 must be applied to all alterations other than the stated exceptions,

which do not apply to the proposed development. The proposed development is not in breach of Scottish Planning Policy.

History of flooding

3.7 The house and steading at Prony were built circa 1865-70. The first Ordnance Survey map (1866) shows a building on the site, later replaced on its present site as shown on the Ordnance Survey map of 1897. There are no records of flooding at Prony: historical records since before the Muckle Spate and examination of most of the statistical accounts up to 1871 indicate that there has been no flooding at the site.

3.8 [Table 1.2](#), an extract from the Ballater Flood Protection Study report (prepared by RPS), summarises flood records. There is apocryphal evidence that the farms in Glen Gairn were not affected by the Muckle Spate of 1829 and documented evidence that the floods of 1937 had no effect. During the Muckle Spate of 1829, regarded as the worst flood event in modern Scottish history, Sir Thomas Dick Lauder reports that the former woollen mill (located a short distance upstream of the Bridge of Gairn) suffered flooding to the first storey. The floor level of the mill is only a little above the bed of the River Gairn and susceptible to flooding. He does not report flooding of any other buildings in the glen, but reports damage to crops in Glen Gairn. A marker was laid at Invercauld, a few miles upstream of Ballater, to mark the peak flood of 1829. In December 2015 the then factor of Invercauld Estates noted that the peak level was within a few millimetres of the 1829 level.

3.9 The SEPA gauge at Invergairn indicates that the highest level recorded occurred in August 2014, whereas the exceptional flood in Ballater was in December 2015. There is evidence, in newspaper articles, to suggest that the flood of December 2015 was more severe than a 1 in 200 year event. An interview with a SEPA staff member states that the River Dee may have risen to a higher level than it did during the Muckle Spate. An interview with Professor George Fleming states that he has calculated the December 2015 flood to be between a 1 in 500 and a 1 in 1000 year event. Although this information relates to the River Dee, the Gairn has a catchment area which is close to and runs parallel to that of the Dee, so that high water levels in one are mirrored in the other.

3.10 In summary, the farm has been worked by the same family for over 41 years and there has been no flooding at Prony during this time. During the two most severe floods of the past 200 years (the Muckle Spate of 1829 and December 2015), the buildings at Prony were unscathed.

SEPA flood maps/ flood risk assessments

3.11 The property lies within the 1 in 200 year SEPA flood map. Scottish Planning Policy states that "the calculated probability of flooding should be regarded as a best estimate, and not a precise forecast" (paragraph 258). The flood of December 2015 is regarded as a 1 in 200 year event, yet the maximum flood level recorded at this time was about 500 millimetres below the top of the river bank. The maximum level during the August 2014 flood was slightly lower. It must be concluded that the flood map for the area is not accurate.

3.12 Such forecasts have proved to be very inaccurate in the past. For example, the extent of flooding in Ballater in 2015 exceeded that shown on the SEPA flood maps which were derived by calculation. In addition, the SEPA flood maps show a greater flood extent along the River Gairn than the model prepared for the Ballater Flood Protection Study

(Hydraulic Analysis Report, paragraph 3.65), thus questioning the validity of the SEPA maps.

3.13 An illustration of the inaccuracy of calculated flood levels is the replacement of the warden's office at Ballater Caravan Park. A flood risk assessment for an adjacent site was obtained and the floor level was designed to be 600 millimetres above the maximum flood level. During the 2015 flood the water rose to 600 millimetres above the floor, or 1.2 metres above the calculated level.

3.14 The Ballater Flood Protection Study Feasibility Report, Section 4.4, lists uncertainties in its appraisal, of which the most relevant are hydraulic modelling, channel and floodplain roughness, and the dynamics of the River Dee following the 2015 flood. For example, paragraph 3.4.1 of the Hydraulic Analysis Report indicates that tweaking of ground roughness affects calculated peak flood levels by up to 1.8 metres. SEPA's hydrologist has verbally advised (during a telephone call on 21 October 2019) that historical records are not reliable because of river bed changes. From an intimate knowledge of the River Gairn, bed changes occur at nearly all spates, exacerbated by the hydraulic gradient of 2%.

3.15 The magnitude and effects of certain events on the River Gairn cannot be predicted by flood risk assessment calculations, nor from historical records. Firstly, in the upper reaches of the River Gairn catchment, ice dams can form and often burst when there is a sudden rise in temperature, causing avalanches of ice and debris. Secondly, there are fallen trees on the west bank of the river, indicating that this horizontal movement of the river is continuing. The widening of the channel will increase the cross-sectional area of the flood, resulting in a lowering of the peak level.

3.16 The course of the River Gairn has been moving west (away from the steading) and the river channel has widened steadily over the past 42 years, as testified by the occupants of the farmhouse and steading, resulting in a widening of the channel and a lowering of maximum flood levels. The trees which fell on the east bank during December 2015 illustrate this, as does the submitted photographic and mapping evidence. There can be no guarantee that the movement will be continued, but this cannot be predicted by calculation.

3.17 SEPA states that it has obtained up-to-date estimates of 1 in 200 year flow in the Gairn ranging from 147 m³/sec to 175 m³/sec, while the RPS report predicts 207 m³/sec. Thus there is an increase of 41% from lowest to highest estimate. This clearly demonstrates the uncertainties of calculated values. The chosen value would obviously have a significant effect on the 1 in 200 year flood extent map. SEPA should explain the value chosen for the current flood map and the extent arising from both the 147 m³/sec and 207 m³/sec values. At a flow of 147 m³/sec, the application site would not be flooded.

3.18 In summary, historical records show that the site has weathered unscathed the two worst storms of the last 200 years – the Muckle Spate of 1829 and the December 2015 flood. There can be little doubt that historical records are more reliable and a better indicator of flood risk than either the flood maps or a calculated level. There is little or no value in a calculation of a design flood level and this has not been carried out.

3.19 There are four buildings on the site (two residential and two agricultural), and another two buildings and six static caravans are nearby, all of which have full flood insurance. Obviously the insurance companies do not believe that there is unacceptable risk of flooding.

Sufficient information has been provided

3.20 All the correspondence from SEPA states that a flood risk assessment or other appropriate information is required. In other words, SEPA accepts that there are other methods to demonstrate likely flood risk, and was not insisting on a flood risk assessment. The following information has been provided to SEPA: copies of drawings 2296/07, 08 and 09; a copy of the flood risk assessment checklist; a copy of RPS design flows/return periods for the River Gairn; and RPS historic flood records.

Flood protection

3.21 The retaining wall adjacent to the building offers it protection from flooding. The area of granite pitching ([Drawing number 2296/07, Section AA](#)) is the same as the 10-foot high wall shown on the aerial [photo](#). It consists of very large granite stones laid end-on to the river bank and is approximately 100 metres long, with a constant height of three metres over the southern half, reducing to zero at the north end. It is thought to have been installed in the nineteenth century and serves two purposes: the first to retain the soil behind it, and the second to protect the bank from erosion by the river. The northern half is no longer serving any useful purpose as the river has scoured out and widened the channel to the west.

3.22 While it is accepted that the proposed development is close to the water source, the existing building is very substantial with 600 millimetre thick granite external walls. In the event of a flood the maximum depth of water on the site, as shown by the SEPA 1 in 200 year flood maps, would be about 300 millimetres. The existing building is capable of withstanding such an event.

3.23 Even if flooding did occur, the sleeping accommodation is all on the upper floor, so there would be no increase in risk to life.

Access/egress

3.24 The field between the application site and the unclassified Lary Road is almost completely level. The 1 in 200 year SEPA flood map indicates that the water would reach the edge of this road at its lowest point but would not cover it. At the lowest point the road is only about 300 millimetres above the field, and hence the depth of water at the application site would not exceed 300 millimetres. This would not present any unusual problems for egress and access. In any case records show that all major floods in the region tend to be of very short duration, as shown in the Ballater Flood Protection Study report. There would be no need for occupants to seek to leave.

3.25 It should be noted that the SEPA flood maps indicate that during a 1 in 200 year event, the A93 would be impassable at Bridge of Gairn and at Ballater. The road through the Pass of Ballater would also be flooded. The Bridge of Gairn bridge would almost certainly collapse at the calculated flow. In this situation, even rescue vehicles would not be able to reach the site. There are at least five houses and six static caravans on the east bank of the River Gairn, all of which would be flooded according to SEPA's flood maps, so the obvious solution is for the occupants to remain in place until the water levels fall, especially since paragraph 259 of Scottish Planning Policy states that occupiers have ultimate responsibility for safeguarding properties against flooding.

Precedent for this development

3.26 The Marr Area Committee took a positive view on application 2018/2194 in late 2018 for an application for residential use in Ballater which had a similar SEPA objection and was subject to flooding in December 2015. This approval was not changed when it was considered by the Scottish Ministers.

3.27 The two cases are comparable. In the case of application 2018/2194, there is ample evidence that significant flooding occurred in December 2015 and that there would be no access or egress available during a similar event. The application under consideration could hardly be described as being of national significance.

The case for SEPA

3.28 SEPA provided a consultation response to the council on 23 September 2019, and corresponded with the applicant on 17 October, 30 October and 11 November 2019, as well as responding to the request for further information. The following paragraphs set out the key points from these submissions.

3.29 SEPA objected to this application, due to a lack of information on flood risk, but indicated that the objection on flood risk grounds could be removed if a flood risk assessment or other appropriate information could demonstrate that the proposed development would accord with the flood risk principles of Scottish Planning Policy. The approach of requiring flood risk assessment in this situation is supported by the Cairngorms National Park Local Development Plan, Scottish Planning Policy and the Scottish Government's updated Planning Advice Note on Flood Risk.

3.30 In considering flood risk, paragraph 255 of Scottish Planning Policy refers to "a precautionary approach to flood risk from all sources" and "flood avoidance: by ... locating development away from functional flood plains and medium to high risk areas". The cornerstone of sustainable flood risk management is the avoidance of flood risk in the first instance, along with taking a sustainable approach towards flood risk management to protect people and property and not increase risk. It is clear that the development, if at flood risk, would conflict with the local development plan.

Development is exempt from Scottish Planning Policy

3.31 This proposal is for change of use, rather than alteration. In considering this case the position of alterations within Scottish Planning Policy is not relevant, as the planning application is for conversion to residential use. This has been the experience from many planning applications involving changes of use and flood risk, several of which have been through the planning appeal process. Because of the proposed change of use, and resulting increase in vulnerability to flooding, the provisions of paragraph 257 do not apply to this change of use proposal.

3.32 The submitted correspondence demonstrates the narrow context of the correspondence between the applicant and the Scottish Government. Even if the application was considered only in this narrow context, the proposal would not be in accordance with Scottish Planning Policy or the local development plan, for the following reasons:

- Firstly, the applicant's attention has consistently been drawn to the fact that the planning application is for conversion to residential use. The proposed use as a dwelling house is a "highly vulnerable land use" and the steading is a "less vulnerable land use" as per SEPA's land use vulnerability guidance, referenced within Scottish Planning Policy. As such a dwelling house represents a considerable increase in vulnerability to flood risk compared to a farm steading, especially in relation to human health and financial impacts. Any proposal for a change of use to a dwelling house should, therefore, be supported by an appropriate level of flood risk assessment.
- In terms of the second proviso of paragraph 257, the alterations to facilitate residential use of the building would certainly have a significant effect on local flooding problems, in that a family would be exposed to unacceptable flood risk who currently are not exposed to such a risk.

3.33 Paragraph 264 of Scottish Planning Policy sets out criteria to take into account in applying the risk framework to proposed development, including "the design and use of the proposed development". The Scottish Government's Planning Advice Note on Flood Risk further advises "for redevelopment and change of use proposals in areas at flood risk, consider options to reduce flood risk vulnerability through e.g. design, type and use of development or number of buildings". As such, while the building would be altered this is to facilitate a change in use, as opposed to an alteration to the building to continue the existing use.

3.34 It would be unreasonable if flood risk planning policy were to be said not to apply to all developments involving alterations to facilitate similar conversions to residential accommodation. It is accepted that this particular development relates only to part of a farm steading, but the implication would be that redevelopment of any existing building, regardless of scale or number of extra people within the building put at flood risk, would be outwith the scope of Scottish Planning Policy on flood risk, which clearly cannot be the case.

SEPA flood maps/ flood risk assessment

3.35 The application site lies within the medium likelihood (0.5% annual probability or 1 in 200 year return period) fluvial flood extent of the SEPA flood map, and may therefore be at medium to high risk of flooding from the River Gairn. These maps have been produced following a consistent, nationally-applied methodology for catchment areas equal to or greater than three square kilometres using a digital terrain model to define river corridors and low-lying coastal land. The maps are indicative and of a strategic nature, designed to be used as a strategic tool to assess flood risk at the community level and to support planning policy and flood risk management in Scotland. It is inappropriate for these flood maps to be used to assess flood risk to an individual property.

3.36 Whilst all reasonable effort has been made to ensure that the flood maps are accurate for their intended purpose, no warranty is given by SEPA in this regard. Within any modelling technique there is inherent uncertainty.

3.37 Factors like climate change, river bed movement and assumptions in the flood estimation methods are all sources of uncertainty in any flood risk assessment, which is why it is standard to carry out some sensitivity tests on any flood estimates and apply an additional allowance for 'freeboard', like a small safety margin, to ensure that any assessments are robust and do not go out of date too quickly.

History of flooding

3.38 SEPA does not hold any records of flooding at the application site. A lack of flood records does not indicate an absence of flood risk, particularly in rural areas where flood events tend not to be as well recorded as in urban areas. Nor can it be concluded from a lack of flood records that flooding has not occurred in the past or would not occur in the future.

3.39 Where records of flooding are available and the exact location of flooding can be verified, it is simple to determine that there is a history of flooding at a site. It can be more complex however to determine the associated return period of a flood event or make an inference about the likely risk to areas close by which were not flooded on past occasions. Without modelled analysis, it is not possible to determine how the records of flood level and extent in one flood compare to a larger 200 year flood event as required for land use planning. In this case historic records and modelling would be complementary, and unfortunately the historic records available at the site are not sufficient in themselves.

3.40 Further, the historic information available for this case is an indicative flood level and a description of an absence of flooding. Where such information can be supported with evidence of surveyed flood levels or extents, photographs (particularly if date/time stamped) and comparative evidence from more than one flood, this is often more conclusive. As noted above, the 2015 flood was a similar size to other floods which have occurred in the past 30 years, and so evidence of no flooding from this flood is not a robust demonstration that there is no significant flood risk.

3.41 The other key reason that the historic flood records are not conclusive in this case is that there seems to only be a relatively small difference in height between the development and the observed flood levels. In cases where there is a much clearer difference in height, more reliance can be put on records like those provided here because the margin to account for uncertainties is much greater.

3.42 Along the main River Dee floodplain at a number of communities, including Ballater, it is currently thought that the 2015 flood event was in the order of a 1 in 200 year event. This was quite widely reported at the time and SEPA agrees with that assessment. The River Dee assessment is supported by a range of evidence including corroboration from detailed flood records for several flood events over the past 200 years, long river level and flow records at several locations, analysis of rainfall during the flood event and comparison with a number of different flood flow estimation methods.

3.43 No evidence has been provided by the applicant that the flood event at the application site in December 2015 was a 1 in 200 year event. This is the biggest event on record at the Invergairn gauging station, situated approximately one kilometre downstream of the application site. However, there have been five events of a similar magnitude on the River Gairn since 1978 and the flow experienced in December 2015 is thought to have a return period of less than 200 years. This is concluded in the Ballater Flood Protection Study report. The local authority has undertaken extensive analysis of hydrological data and historic flooding in the area, but this does not include a site-specific assessment of this site and it is unlikely that any reports that have been undertaken will be able to provide a comprehensive assessment of the risk. The 2015 event in the River Gairn is more likely to be in the range of a 25 to 50 year event.

3.44 The Ballater Flood Protection Study recently completed on behalf of Aberdeenshire Council is relevant to this application as the study contains assessment of flows on the River Gairn at the Invergairn gauging station, and includes some modelling and assessment of flood risk in the catchment, though not at the application site. As it covers a nearby part of the same catchment as the site, its findings help with the interpretation of the information available at the site. The river at the site drains a catchment area of 144.5 square kilometres. By the time the river reaches the Invergairn gauging station downstream, the catchment has increased to 145.9 square kilometres, which is an increase of only 1% in area. The difference in river flow at the site and at the gauging station is therefore expected to be very small.

3.45 The study concludes that the event in 2015 had a peak flow of 103 m³/s on the River Gairn. This is around 100 m³/s lower than the design 1 in 200 year (0.5%) return period event which is reported in the study as 207 m³/s. This means that the 2015 event was not as extreme as an expected 1 in 200 year event and so the flood observations and levels from that flood cannot be directly used as a proxy for the size of event that should be considered in a planning context at this particular site. Hydraulic modelling was used in the study to calculate flood levels and extents from the river flows but did not extend upstream to the site in question, and so, although the flows are comparable, there is no information on how that translates to flood levels.

3.46 SEPA has recently re-examined the data from past events at the Invergairn site and has slightly revised its calculation of the 2015 peak flow to 116 m³/sec. This is still some way short of the best estimate of the 1 in 200 year flow which is what has to be considered for planning purposes, as per Scottish Planning Policy. SEPA's current assessment is that a flood equal or larger to the 2015 flood has a probability of between 2% and 4% of occurring in any one year.

3.47 Rainfall across any catchment is unlikely to be evenly distributed during a flood event, and so it is common for different parts of a large catchment to flood to different severity during the same event. The River Gairn is a tributary of the River Dee and part of the larger Dee catchment. However, the rainfall recorded in December 2015 in the River Gairn catchment was less than that recorded at gauges in other parts of the Dee catchment.

3.48 The statement that "high water levels in one are mirrored in the other" is incorrect. This is because the rainfall totals in neighbouring catchments can differ due to overall rainfall distribution and the influence of local topography on rainfall. For example, the presence of high ground can create rain shadows meaning neighbouring catchments with slopes facing the wind direction receive more rain than those sheltered by the high ground. Catchment size, the number of in-flowing tributaries and land use can also locally influence the rate at which water enters a river depending on the surface water runoff rate, meaning that no two catchments are the same.

Risk of flooding at the application site / sufficiency of information

3.49 Insufficient information has been provided to assist in the assessment of flood risk at the application site. The applicant was advised that appropriate information might include a topographic survey of the site demonstrating the site ground and proposed finished floor levels relative to the River Gairn, appropriate photographs and/or any nearby historical flood levels. Topographic level information could include cross sections across the river (including the channel bed levels and bank levels of the opposite bank), upstream,

downstream and adjacent to the site. However, if this information were insufficient to provide a robust assessment of the risk of flooding to the proposed development then a detailed flood risk assessment would need to be carried out by a suitably qualified professional.

3.50 Some channel cross section data has been provided; however, this does not include the levels of the bank opposite to the application site at all the cross sections which means that it is not possible to tell if the land on the opposite bank is lower or higher or how much floodplain capacity there is overall below the height of the development. This means that for floods large enough for the river to have water flowing over its banks onto the floodplain, it is not possible to ascertain how likely it is for flood water to flow towards the site or away from it.

3.51 Comparison of the ground levels at the site and the December 2015 water level (Drawing number 2296/07, section 2-2) indicates a difference of one metre, i.e. the water level was one metre below the application site. However, as the 2015 event level is not considered to be representative of the 200 year flood level, a height difference of only one metre is not a robust demonstration that the building has an annual probability of 0.5% or less of flooding. From the information provided by the applicant, the river was two metres higher than its usual level during the 2015 flood. It is therefore not unreasonable to consider the possibility that the river would rise an additional metre or more in larger floods. Assuming the information is accurate, it shows that the building does not flood regularly, but it does not assess the risk to the level required.

3.52 There is a bend in the river upstream of the site. As well as the possibility of flows coming out of bank adjacent to the site, another mechanism for flooding could be if high flows come out of bank upstream where the river bends. It is possible that the path of least resistance would be for flows to travel over land straight through the site to re-join the main channel downstream.

3.53 With regard to the applicant's statement regarding a wider channel, it is agreed that a wider channel could allow for a lower water level at that point of the river as there would be more volume available at that particular cross section. However, as noted in paragraph 3.52, there is a bend in the river upstream of the site which could have implications for flooding of the application site. In regard to the applicant's comments on the widening of the channel and cross sectional flow, and that the effects of such changes to the available channel cannot be predicted by flood risk assessment calculations, the best practice way to address the issue is in fact through a flood risk assessment.

3.54 The applicant suggests that risk is not increased because the probability of a flood is not changed by the conversion. This is incorrect. Flood risk is defined in the glossary to Scottish Planning Policy as: "The combination of the probability of a flood and the potential adverse consequences associated with a flood, for human health, the environment, cultural heritage and economic activity." In this case whilst, as the applicant rightly says, the probability of a flood would not be changed by the conversion, the potential adverse consequences would be greatly increased by conversion to residential accommodation.

3.55 The information provided tends to suggest that the property does not flood regularly at return periods of lower than 50 years, but is not robust enough to demonstrate that the site is not at risk during higher return period events. Put simply, the information provided does not show clearly that the house would not flood.

3.56 The applicant has stated that “historical records show that the site has weathered unscathed the two worst storms of the last 200 years – the Muckle Spate of 1829 and the December 2015 flood, so there is little or no value in a calculation of a design flood level”. Design flood analysis should always be undertaken based on the most up-to-date information available. In doing so, the most current river flow and rainfall data are taken into account and the uncertainties associated with aspects such as climate change and natural river migration and changes in the channel morphology can be best accounted for. SEPA therefore disagrees that there is little or no value in recalculating the design flood level.

3.57 Regarding the “need to judge applications on local knowledge”, SEPA agrees that local knowledge is part of the information needed in such cases, complemented by local site-specific flood risk assessment as is normally carried out in these circumstances.

Flood protection

3.58 The identification of appropriate mitigation measures would depend on the outcome of a flood risk assessment, demonstrating that the proposals comply with the flood risk principles of Scottish Planning Policy that people and property are not put at flood risk. It is certainly true that measures like raising floor levels, electrics and making the building more resilient can help to reduce damage during flooding and reduce recovery costs and time. However, given the proximity of the building to the river and the likelihood that if flooded it would be inaccessible, it would be extremely hazardous due to high velocity flow for anyone to try to evacuate or rescue occupants. This aspect cannot be mitigated against due to the building location within a high risk area.

3.59 In regard to the area of granite pitching, it may be that the wall was built as an informal flood defence or bank protection. Whether or not the wall was built to provide flood protection, any properties located behind and given initial protection by an informal flood defence wall are vulnerable due to the potential for failure and/or overtopping. In cases when such structures are overtopped and/or fail, areas behind them are at greater risk than they would have been otherwise as sudden and rapid inundation can occur, with extremely high velocities and forces. The granite embankment is thus not considered to be an adequate flood protection measure.

Access/egress

3.60 Information is required to demonstrate adequately that there would be safe access and egress in a flood event. Separately from access by emergency services, adequate access and egress involves the provision of a safe and flood-free route during the relevant flood probability event that enables the free movement of people of all abilities (on foot or with assistance) both to and from a secure place that is connected to ground above the design flood level and/or wider area. In contrast, the proposed development could result in an “island of development” with the potential for people to be stranded in a flood event or put in a vulnerable situation if they tried to leave the building and reach higher ground. The Scottish Government’s updated Planning Advice Note on Flood Risk also states that access and egress should be considered.

3.61 The argument that, even if flooding should occur, the sleeping accommodation would all be on the first floor runs counter to Scottish Planning Policy on flood risk. SEPA’s experience is that when residents are confronted with rising flood water around their house, some attempt to leave the area by car or on foot, some might try to safeguard their house or

belongings outside. This has been a cause of fatalities. If the site were to be flooded, the flows from the River Gairn could be of such high velocity that there would be great risk to anyone trying to evacuate or rescue occupants, or to the occupants were they to attempt to leave the site.

Precedent for this development

3.62 In regard to application 2018/2194, the two cases are not comparable. Application 2018/2194 was in an urban regeneration setting. The Scottish Ministers decided not to call in the referenced application for their own determination as it did not raise an issue of national significance, and it was referred back to the planning authority to determine. In contrast, the current application is in an isolated, rural setting and Scottish Ministers have intervened by calling in the application for their own determination, indicating that it does raise an issue of national significance, presumably to ensure consistency in applying flood risk planning principles to development.

The case for the council

3.63 The recommendation to the council by its planning officials was to refuse planning permission. However, the council is not obliged to accept such recommendation: each application must be considered on its own merits, in light of development plan policies and other material considerations. In being minded to grant planning permission, the Marr Area Committee members considered the height of the site above the river (around eight to ten feet) and the width of the river bank, and noted that the residential accommodation would be upstairs in the building and managed by someone who would be on site at all times and able to take precautions in the event of bad weather.

3.64 The applicant has detailed the operation of the farm and the need to live on site to manage a flock of 500 breeding ewes. He notes that part of the site was previously a bothy but the whole building is now redundant. The proposal is for conversion to affordable housing for a farmer. Cairngorms National Park Local Development Plan 2015 Policy 1 (New Housing Development), Part 8 (Conversions) and Policy 3 (Sustainable Design), Part 3 (Converting existing building stock) support conversion of existing traditional and vernacular buildings. The assessment of the proposal was that it complied with both policies. The difficulty for the Planning Service in assessing the application arose not from the conversion of the building but from the potential increase in risk from flooding to the new residential use.

CHAPTER 4: REPORTER'S CONCLUSIONS

4.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires this application for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. Although the principal issue in considering the application is the flood risk to the proposed dwelling house, Ministers are required to address the application as a whole.

Principle of the development

4.2 The existing steading is a traditional agricultural building, now redundant, and there is no evidence that it would be likely to have a commercial or economic future in its current form. Indeed, the applicant has indicated that if the part of the steading proposed for development cannot be converted to residential accommodation, it would fall into disrepair. The drawings and reports supporting the application demonstrate that the building is capable of being converted in the manner proposed.

4.3 The proposed conversion to a dwelling would not result in significant change to the external facades of the building, other than replacement of the corrugated iron roof and some relatively minor amendments to the existing window and door openings. The materials would reflect those already in use, for example, slate roofs and timber window frames. I therefore consider that the style and character of the original building would be maintained. Overall I am of the view that the proposed conversion complies with the relevant criteria of both Policy 1 (New Housing Development) and Policy 3 (Sustainable Design). Subject to its conformance with other policies in the local development plan, the principle of this type of development is supported.

Flooding issues

Should the proposal be exempted from flood risk policy?

4.4 As noted in Chapter 2, paragraph 257 of Scottish Planning Policy states that "alterations and small-scale extensions to existing buildings are outwith the scope of this policy, provided that they would not have a significant effect on the storage capacity of the functional floodplain or local flooding problems". This requirement is echoed in paragraph 36 of the non-statutory planning guidance supporting Policy 10 of the local development plan. The applicant argues that this paragraph exempts the proposed conversion from the flood risk provisions of Scottish Planning Policy, as it is an alteration to an existing building, and that his position is supported by the Scottish Government. SEPA disagrees.

4.5 While I accept that Scottish Planning Policy does not provide a definition of "alteration" in the context of paragraph 257, I consider that the thrust of this paragraph is to exempt relatively minor alterations of and extensions to buildings in the flood plain from flood risk provisions, provided that the proposed changes are not such that flood risk locally or elsewhere would be increased, for instance through significant land take from the flood plain. In my view, the proposed development would constitute significantly more than an alteration, particularly in light of the extent of the works required to effect the conversion of the agricultural building to a dwelling house. This would not be a slight or trivial change and therefore would have planning significance, as evidenced by the fact that such a change of use requires planning permission.

4.6 I accept that paragraph 257 makes no mention of change of use. However, my interpretation of the paragraph is that, had its intention been to exclude the change of use of an existing building from the flood risk provisions of Scottish Planning Policy, this would have been explicitly included alongside alterations and small-scale extensions.

4.7 As I do not consider that the proposal is an alteration in the context of paragraph 257, it is not strictly necessary to consider the application of the stated provisos. However, for completeness, I consider it likely that, in the absence of any additional flood defence measures, there would be no change from the existing ability of the functional floodplain to store flood waters, given that the development footprint would not be altered from the existing situation. In coming to this conclusion, I have assumed that, as the land proposed for the garden is currently rough ground, it would remain substantially unchanged. There is no information before me in regard to flooding problems at the local level.

4.8 Drawing all of the above together, I conclude that the proposed conversion is not exempt from the flood risk policy provisions of Scottish Planning Policy or those of the local development plan.

Flood risk

4.9 The applicant argues that the application site is at low to medium risk of flooding, rather than medium to high, because SEPA's flood maps are not accurate and there is no history of flooding at the application site. I will take each of these points in turn.

4.10 From the flood map provided by SEPA, the application site is located within an area where there is a medium likelihood of flooding from the River Gairn. SEPA has indicated that this means that the application site is at medium to high risk of flooding (0.5% annual probability or a 1 in 200 year return period). The applicant asserts that the December 2015 flood at the application site constituted a 1 in 200 year event: the flood water here was between 500 millimetres and one metre below the top of the river bank. In consequence, the SEPA flood map is not accurate and the application site is not at risk from a 1 in 200 year flood. While SEPA agrees that the December 2015 flood on the River Dee was a 1 in 200 year event, it considers that the flooding on the River Gairn was less than a 1 in 200 year event; this view is supported by the Ballater flood study reports. Having further reviewed the data, SEPA's current assessment is that the 2015 flood on the River Gairn had a return period of between 25 and 50 years.

4.11 Otherwise, from the submissions before me it seems that the applicant's assertions regarding the flood map's accuracy are based on, firstly, that the actual extent of flooding in Ballater in December 2015 exceeded that shown on the SEPA flood map and, secondly, that flooding at the Ballater caravan park exceeded, by 1.2 metres, the levels predicted by the site-specific flood risk assessment. In addition, in the River Gairn "flood cell" the SEPA flood map predicts greater flooding than does the Ballater flood study's hydraulic modelling.

4.12 SEPA's flood maps have been accepted by the local authorities and as part of Scottish Planning Policy. They have been prepared following a consistent, nationally-applied methodology and it is plain from the advice provided by SEPA and others that such maps are intended to assess flood risk at the community level, in support of planning and flood risk management, and are therefore indicative and strategic in nature. This is echoed by the non-statutory planning guidance supporting Policy 10 of the local development plan and paragraph 258 of Scottish Planning Policy, which cautions that the calculated probability of flooding should be regarded as a best estimate and not a precise forecast.

The SEPA flood maps therefore should not be used to assess flood risk at an individual property, which should instead be undertaken using the flood risk assessment methods set out in SEPA's "Technical Flood Risk Guidance for Stakeholders".

4.13 In regard to site-specific studies, although both flood map preparation and flood risk assessment may utilise modelling, my understanding from the SEPA flood risk assessment guidance is that the detail of the models and information used differs. The Ballater flood study would also have had recent site-specific flooding information to include in the modelling. I therefore would not expect strategic and site-specific modelling results to totally correlate. While I understand the applicant's concerns, there is no other information before me regarding the accuracy or otherwise of the afore-mentioned flood risk assessment. In any case, it does not seem reasonable to criticise strategic-level mapping on the basis of issues that may have been encountered with site-specific assessment. There is no other information before me to support the applicant's argument that SEPA's flood maps are not accurate. I am therefore content to accept that, at the strategic level, there is a medium likelihood of fluvial flooding at the application site, which would put the proposed development at medium to high risk.

4.14 The applicant argues that historical records are more reliable. I accept that there are no known historic records of the application site having flooded, and that the applicant and his family have not observed such flooding during their forty or so years of occupancy. However, I have concerns about the examples cited as evidence by the applicant. For example, in relation to the December 2015 flood event, the evidence submitted by the applicant in support of his claim that this was a 1 in 200 year event relates entirely to the River Dee. The flood history information extracted from the Ballater flood studies ([Table 1.2](#)) also all relates to flooding of the River Dee at Ballater, rather than to the River Gairn at Prony. The submitted newspaper article about this event refers to various locations along the River Dee, including Ballater, but not the River Gairn. The information about the flood marker at Invercauld, near Braemar, also relates solely to the River Dee, some 15 miles west of Ballater.

4.15 While I note the information submitted by the applicant in regard to the Muckle Spate of 1829, I question its direct relevance to this application, given that:

- The buildings at Prony were not built until about 1865. They would not have been present at the time of the Muckle Spate.
- The historic account by Sir Thomas Dick Lauder reports damage in Glen Gairn generally and to the former woollen mill, a short distance upstream of the Bridge of Gairn (and less than a kilometre downstream from the application site). The fact that the land around Prony was not specifically mentioned does not mean that this land was not affected.
- No definitive information has been submitted regarding the return period of this flood, other than a newspaper article speculating that it may have been a 1 in 500 year event. It is therefore difficult to equate it to a 1 in 200 year flood, or more.

4.16 I have taken the applicant's argument that the River Gairn and River Dee catchments would have similar high water levels, given their proximity and orientation, to mean that the flooding events on the Dee should be considered to have also occurred on the Gairn. This is countered by SEPA's explanation regarding the differences between rainfall totals and surface water runoff rates between catchments, meaning that no two catchments are the same. On this basis I accept that the catchment of the River Gairn and that of the River

Dee, although related, behave differently. I therefore consider that the flood history evidence relating to Ballater is not directly applicable to the application site.

4.17 Having considered the evidence it is my view that the flooding event at the application site in December 2015 should not be considered to have been a 1 in 200 year event. Nor is there definitive evidence that the Muckle Spate was a 1 in 200 year flood or more, or that the land at Prony was unaffected. In consequence I cannot accept the applicant's assertion that the site is not at significant risk of flooding from a 1 in 200 year event, located as it is in the functional floodplain (defined in Scottish Planning Policy as having a greater than 0.5% (1:200) probability of flooding in any year). The fact that a 1 in 200 year flood has not been experienced by the current residents does not mean that it could not occur in the future, particularly in light of climate change implications

Vulnerability to flooding

4.18 As noted in Chapter 2, paragraph 263 of Scottish Planning Policy sets out a flood risk framework to guide different categories of development, based on their vulnerability to flooding. As noted earlier, the application site lies in an area at medium to high risk of flooding, which is considered to be generally not suitable for the most vulnerable uses. The application falls into this use category, as it would constitute an isolated dwelling in a sparsely populated area.

4.19 Section 3 of the Flood Risk Management (Scotland) Act 2009 defines "flood risk" as the combination of the probability of a flood and of the potential adverse consequences associated with a flood, for human health, the environment, cultural heritage and economic activity. This is also the definition used in Scottish Planning Policy. In terms of use, according to SEPA's guidance on the vulnerability of land use to flooding, the existing agricultural use of the steading constitutes a less vulnerable use, but the proposed dwelling house would be at greater risk from flooding because of the potential impacts on human health and safety. Thus, although the probability of flooding would not necessarily change, the overall risk would be greater, given the greater adverse consequences for residents.

4.20 The flood risk framework indicates that areas at medium to high risk of flooding are generally not suitable for additional development in sparsely developed areas, unless a location is essential for operational reasons and an alternative, lower risk location is not available. In applying the flood risk framework to the proposed development, I have considered whether this provision is applicable. The applicant argues that the proposed dwelling is almost essential as he should live on site, given that he is the sole keeper of livestock. In addition, the development would constitute a re-use of the redundant agricultural building. While these arguments are relevant, there is no evidence before me that no other location is available, other than that there are no other buildings on the farm complex suitable for conversion (as I observed on my site inspection).

Flood risk at the application site

4.21 In considering flood risk at the application site, paragraph 264 of Scottish Planning Policy sets out criteria to be considered in applying the flood risk framework set out in paragraph 263 to proposed development:

- the characteristics of the site;
- the design and use of the proposed development;
- the size of the area likely to flood;
- depth of flood water, likely flow rate and path, and rate of rise and duration;
- the vulnerability and risk of wave action for coastal sites;
- committed and existing flood protection methods: extent, standard and maintenance regime;
- the effects of climate change, including an allowance for freeboard;
- surface water run-off from adjoining land;
- culverted watercourses, drains and field drainage;
- cumulative effects, especially the loss of storage capacity;
- cross-boundary effects and the need for consultation with adjacent authorities;
- effects of flood on access including by emergency services; and
- effects of flood on proposed open spaces including gardens.

4.22 In terms of the characteristics of the application site, the River Gairn runs to the immediate west of the existing farm complex. The existing steading is approximately six metres from the east bank of the River Gairn at its nearest point (as measured on Drawing number 1822/09 Rev A). It is the closest to the river of the buildings in the farm complex: Prony is just over 40 metres from the river bank, and Pronybeg is about 33 metres from the main body of the river.

4.23 Access to the application site is via the existing farm track leading to the unclassified Lary Road to the east. At the site inspection I observed that the farm complex and surrounds, including agricultural pastures, lie below the level of the Lary Road. This land is comparatively flat but, east of the Lary Road, rises quite steeply to the Craig of Prony, 532 metres above ordnance datum (AOD). To the west of the River Gairn and the adjacent A939, the land also rises relatively steeply to Carn Dearg, 594 AOD.

4.24 As noted previously, the applicant has provided a site section (Drawing number 2296/07 Section 2-2) which shows the site levels at the former steading as 238 metres AOD, and the normal water level as 235.23 metres AOD. No level information is provided for the opposite bank, and my understanding is that no cross sections upstream or downstream of the application site have been provided as advised in SEPA's flood risk assessment guidance.

4.25 I note the applicant's argument that the river is gradually moving to the west, away from the steading, and that the widening of the channel will increase the cross-sectional area of the flood, resulting in a lowering of the peak level. However, in the absence of cross-sectional information, including levels, and in light of the continuing proximity of the river to the application site, I am unable to give much weight to this assertion.

4.26 The design and use of the proposed conversion are described in paragraphs 1.2 to 1.5 in Chapter 1. In terms of design, no information is before me to demonstrate how the design has responded to the potential for flooding, for example the raising of floor levels to

reflect flood levels. In terms of use, SEPA's land use vulnerability guidance advises that sparsely developed areas in the medium to high risk category are generally considered not suitable for development unless it constitutes redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use. As noted in paragraph 4.19, the proposed dwelling house would be more vulnerable to and therefore at greater risk from flooding because of the potential impacts on human health and safety.

4.27 No information has been provided by the applicant in terms of: the size of the area likely to flood; the depth of flood water, likely flow rate and path, and rate of rise and duration; and the effects of climate change. Nor is there information about the potential contribution of surface water run-off from adjoining land or from culverted watercourses, drains and field drainage. I note SEPA's concerns that, in December 2015, the river rose to within a metre of the application site level in a flood event estimated to be considerably lower than a 1 in 200 year event, and that it would be reasonable to consider that it could rise to site level in a greater flood event.

4.28 In regard to existing protection methods, the applicant and the council have identified several which could serve to protect the proposed development from and/or mitigate the effects of such a flood, as follows:

- There is a retaining wall, comprising granite armouring, built into the riverbank, which is some three metres above the river bed and extends for 100 metres. I consider that, while the retaining wall may prevent the river bank from being washed away (which would have serious implications for the steading and its inhabitants), it would not prevent overtopping. I also note SEPA's concerns about their experience of such informal flood defences failing. I am not convinced that the retaining wall would provide any significant flood defence protection.
- There is a grassed track, observed at the site inspection, between the fence at the top of the river bank and the part of the steading proposed for conversion. From Drawing number 1822/09 (Rev A) the application site is approximately six metres from the river bank. I echo SEPA's concerns about the proximity of the river. It seems to me that a track of six metres' width would provide little protection in the event of the river bank being overtopped.
- The applicant argues that the existing building is very substantial, with 600 millimetre-thick granite external walls. The maximum depth of water on the site, according to the SEPA flood map, would be about 300 millimetres. The existing building is capable of withstanding such an event.
- The dyke mentioned by the applicant separates the proposed garden area from the grassed track adjacent to the river bank. This dyke does not enclose the garden area and in consequence is unlikely to provide protection from flooding.
- Both the applicant and the council refer to the sleeping accommodation being upstairs in the building, and managed by someone who would be on site at all times and able to take precautions in the event of bad weather. In light of the information provided by SEPA on possible responses of residents to flooding, and the consequent risks to human life, I consider that the potential risks to residents could not be ruled out by having the sleeping accommodation on the first floor of the property.

4.29 Scottish Planning Policy focuses on the ability of the emergency services to access a site during a flooding event. In addition, SEPA's "Planning Background Paper: Flood Risk" (DM Requirement 3) notes that adequate access and egress provision must be included

when the proposed development introduces overnight accommodation onto the site (including change of use) and is located in a medium to high fluvial flood risk area. As noted in paragraph 3.60, adequate access and egress involves the provision of a safe and flood-free route that enables the free movement of people of all abilities (on foot or with assistance) both to and from a secure place that is connected to ground above the design flood level and/or wider area. Despite his concerns regarding its accuracy, the applicant has used the information in the SEPA flood map, together with his knowledge of the area's topography, to estimate the potential depth of flood water between the proposal site and the unclassified Lary road as 300 millimetres, which he considers would not be a barrier to access and egress. However, SEPA's "Technical Flood Risk Guidance for Stakeholders" cautions against using these maps for such purposes, given their indicative nature and the necessary limitations of the methodology involved in their preparation. I therefore consider that there is not sufficient evidence before me to demonstrate whether safe access and egress could be obtained to the proposed dwelling house in the event of a 1 in 200 year flood. I also note that this argument by the applicant ignores the risk to others, including the emergency services, of trying to rescue anyone trapped in the building.

4.30 I am aware that the proposed conversion includes the former bothy, which I have assumed would have provided fairly basic accommodation. From the photographic evidence it appears that this part of the building has not been used for accommodation purposes for a considerable time and so could not be considered as comprising residential accommodation, either currently or in the recent past. I therefore consider the proposal to be a change of use, such that adequate access and egress provision must be provided in line with DM requirement 3 of SEPA's Planning Background Paper: Flood Risk.

4.31 The applicant argues that, because SEPA's correspondence requests a flood risk assessment or other appropriate information, SEPA accepts that there are other methods to demonstrate likely flood risk, and was not insisting on a flood risk assessment. His view is that flood risk assessments are unreliable snapshots in time and would not provide a reliable indication of flood levels, whereas historic records are more dependable. There are too many uncertainties associated with flood risk assessment methods.

4.32 However, the supporting text to Policy 10, Part 2 (Flooding) of the local development plan notes that the submission of detailed assessments, including a flood risk assessment, may be required depending on the nature of the development. The non-statutory planning guidance supporting Policy 10 states that if any part of the proposed development site lies within SEPA's indicative flood map, a flood risk assessment must be undertaken. Scottish Planning Policy (paragraph 266) states that flood risk assessment should be required for development in the medium to high category of flood risk, echoed by the Scottish Government's updated planning advice on flood risk (paragraph 33). While I understand the applicant's concerns, I do not consider them sufficient to outweigh these policy requirements.

4.33 Drawing all of the above together, I am unable to come to a satisfactory conclusion regarding the risk of flooding of the application site, as the requisite supporting information is not before me, particularly that relating to the size of the area likely to flood and the predicted depth of flood water, likely flow rate and path, and rate of rise and duration.

Precedent

4.34 I note the applicant's arguments regarding planning application APP 2018/2194. I acknowledge that there are similarities between the two cases, in particular the change

from a less vulnerable to a highly vulnerable use, and the fact that sleeping accommodation was located on the first floor. However, I consider the difference in location to be significant: the current application is in a relatively isolated, sparsely developed area whereas APP 2018/2104 was in the built-up area of Ballater. Scottish Ministers did not consider that APP 2018/2194 raised an issue of national significance, in contrast to their decision to call in the application before me. In any case, each application must be considered on its own merits and I have not given this claim of precedent any weight in coming to my recommendation.

Other matters

Natural heritage

4.35 The non-statutory planning guidance in support of Policy 4 (Natural Heritage) indicates that conversions of barns and steadings are likely to require bat and barn owl surveys. The applicant's bat survey, requested by the council, observed bats actively foraging along the River Gairn and in the field to the east of the former steading. Bats were not observed to be using the building: no bats exited during the survey and there was no evidence of bat roosting. In consequence, the survey concludes that the former steading has low roost potential.

4.36 Although the bat survey was not carried out at the optimal time to survey maternity roosts, I accept its findings. However, it would be necessary to carry out final checks immediately prior to the commencement of construction. Should Ministers be minded to grant planning permission, an informative should be appended regarding the potential presence of bats. In addition, in the interests of protecting biodiversity in general and other protected species in particular during the conversion, a condition should be appended to require a construction environmental management plan to be submitted to and approved by the planning authority prior to works commencing. The condition and informative are included in Appendix 2 of this report.

4.37 The River Gairn is a tributary of the River Dee and in consequence is included in the River Dee Special Area of Conservation. The Gairn joins the Dee just west of Ballater, approximately 1.5 kilometres to the south of the application site. The qualifying interests of this Special Area of Conservation are Atlantic salmon (*Salmo salar*), freshwater pearl mussel (*Margaritifera margaritifera*), and European otter (*Lutra lutra*). In addition, the River Gairn is known to support the protected species European eel (*Anguilla anguilla*) and brown/sea trout (*Salmo trutta*); Eurasian red squirrel (*Sciurus vulgaris*) has also been observed in the application site's environs.

4.38 The council's Environment Team did not initially raise any concerns about impacts on the qualifying species of the Special Area of Conservation. In response to my request for further information, the council indicated that the key concerns in this regard would include the run-off of silt into the River Gairn. From my own experience I am aware that the qualifying interests would be sensitive to increases in sediment levels in the river. The non-statutory planning guidance states that pollution and siltation from construction sites may result in contamination of a protected watercourse, e.g. from particles washed into it during rainfall events. In the event that Ministers grant planning permission, this could be controlled through the afore-mentioned construction environmental management plan. The procedural requirements of the Conservation (Natural Habitats &c) Regulations 1994 would necessitate that, should they intend to approve the planning application, an appropriate assessment be undertaken by Ministers as the competent authority.

Water Resources

4.39 Water supply would be from a private water supply that currently serves Prony Farm and Pronybeg. The supply (Supply Reference Number: 50141) has been sampled by Aberdeenshire Council Environmental Health and, following treatment, found to be potable.

4.40 Although it was originally proposed that surface water should drain directly to the River Gairn, the proposal was revised to provide a surface water soakaway. The treatment of foul water would be by septic tank and soakaway. The applicant's drainage investigation (Drainage Investigation Deeside Structural Design 31/7/2019) concludes that the ground is suitable for an infiltration system for the disposal of wastewater. The council has indicated that it is content with these proposals. Should Ministers be minded to grant planning permission, conditions to secure this infrastructure are included in Appendix 2 of this report.

Overall Conclusions and Recommendations

Assessment against the Local Development Plan

4.41 As noted in paragraph 4.3, I am content that the principle of the proposed development accords with the local development plan, subject to compliance with subject policies. For the reasons given, I am also content that the proposed development complies with the requirements of Policy 1, Part 8 (Conversions), Policy 3, Part 3 (Converting existing buildings), Policy 4 (Natural Heritage) and Policy 10, Part 1 (Water resources).

4.42 In light of my conclusions on flooding, I consider that the proposed conversion does not accord with the requirements of Policy 10, Part 2 (Flooding), as it cannot be demonstrated that the dwelling house would be free from significant risk of flooding.

4.43 While it is the case that the proposed conversion conforms with some local development plan policies, I do not consider this sufficient to outweigh the risk that the dwelling house could flood in the future, with the adverse consequences for human health and safety and for property that this would bring. I therefore find that the proposed development does not comply with the provisions of the local development plan.

Other Material Considerations

4.44 I have considered the relevant policies within the proposed local development plan. As these are not materially different from those of the extant plan, in terms of the key issues, there is no reason to alter my conclusions.

4.45 The flood risk provisions of Scottish Planning Policy are a significant material consideration for this application. I have assessed the application against these in the preceding paragraphs. The precautionary principle set out in paragraph 255 is a cornerstone of flood risk policy. While I have given the applicant's arguments due consideration, in light of my findings above, I do not consider that they outweigh Scottish Planning Policy's requirements that proposals should avoid flood risk.

Recommendations

4.46 For the reasons explained above, I recommend that planning permission be refused.

4.47 If Ministers are minded not to follow this recommendation and to grant planning permission, I recommend that this should be subject to the conditions set out in Appendix 2. A Habitats Regulations Appraisal would also be required.

Amanda Chisholm

Reporter

Appendix 1: List of documents

Application drawings

[Drawing number 1822-01 Existing layout](#)

[Drawing number 1822-02 Existing layout site plan](#)

[Drawing number 1822-08 Plans and elevations](#)

[Drawing number 1822-09A Surface water drainage details](#)

[Drawing number 2296/07 Site section showing burn](#)

Application documents

[Application form](#)

[Bat survey report](#) – not published due to confidential information

[Report of drainage investigation](#)

[Structural report](#)

Consultation responses

[Aberdeenshire Council Archaeology Service](#)

[Aberdeenshire Council Infrastructure Services \(Flood Risk and Coast Protection\)](#)

[Aberdeenshire Council Infrastructure Services \(Roads Development\)](#)

[Aberdeenshire Council Infrastructure Services \(Environment Team Surgery\)](#)

[NESBREC report](#)

[Aberdeenshire Council Infrastructure Services \(Environmental Health\)](#)

[Aberdeenshire Council Legal and Governance Developer Obligations](#)

[SEPA 23 September 2019](#)

Correspondence between applicant and SEPA

[Letter from applicant to SEPA 6 October 2019](#)

[SEPA 17 October 2019](#)

[Email from applicant to SEPA 21 October 2019](#)

[SEPA 30 October 2019](#)

[Email from applicant re SEPA 30 October 2019](#)

[SEPA 11 November 2019](#)

Committee report and minutes of meeting

[Report of Handling](#)

[Committee Report](#)

[Committee Minutes](#)

[Letter from applicant post committee 20 February 2020](#)

Other documents

[Aberdeenshire Council site visit record](#)

[Aberdeenshire Council site visit photos](#)

Representation to DPEA

[Representation from applicant](#)

Further written submissions

[Procedure notice requesting further information](#)

[Applicant's further written statement in response to procedure notice](#)

[Council's further written statement in response to procedure notice](#)

[SEPA's further written statement in response to procedure notice](#)

[SEPA flood map](#)
[North East Local Flood Risk Management Plan 2016-2022](#)
[Ballater potentially vulnerable area](#)
[Ballater Flood Protection Study Feasibility Report](#)
[Ballater Flood Protection Study Feasibility Report Appendix D Tabled Option Model Outputs](#)
[Ballater Flood Protection Study Feasibility Report Appendix H Map of Opportunities Identified for NFM](#)
[Ballater Flood Protection Study Feasibility Report Appendix I Long Section Drawings](#)
[Applicant's comments on SEPA's and council's responses to procedure notice](#)
[SEPA's comments on applicant's and council's responses to procedure notice](#)

Planning documents

[Cairngorms National Park Local Development Plan 2015](#)
[Cairngorms National Park Partnership Plan 2017-2022](#)
[Cairngorms National Park proposed Local Development Plan 2020](#)
[Non-statutory planning guidance – Policy 1 – New Housing Development](#)
[Non-statutory planning guidance – Policy 3 – Sustainable Design](#)
[Non-statutory planning guidance – Policy 4 – Natural Heritage](#)
[Non-statutory planning guidance – Policy 10 – Resources](#)

Policy and guidance documents

[Flood Risk Management \(Scotland\) Act 2009 – Delivering Sustainable Flood Risk Management – Part 1](#)
[Flood Risk Management \(Scotland\) Act 2009 – Delivering Sustainable Flood Risk Management – Part 2](#)
[SEPA's Flood Risk and Land Use Vulnerability Guidance](#)
[SEPA's Planning Background Paper: Flood Risk](#)
[SEPA's Technical Flood Risk Guidance for Stakeholders](#)

APP 2018/2194

[Design Statement](#)
[Report of Handling](#)
[Aberdeenshire Council Infrastructure Services \(Flood Risk and Coast Protection\)](#)

Appendix 2: Suggested planning conditions and informatives

At my request, the council prepared a set of draft planning conditions and informatives to be attached to the planning permission, should Ministers decide to grant consent. No comment on the proposed conditions and informatives was received from the applicant or SEPA.

Planning conditions

1. The dwellinghouse hereby approved shall not be occupied unless its parking and turning area has been provided and fully paved in accordance with details to be submitted to and approved in writing by the planning authority. The access shall be internally drained and formed in such a way to prevent any flow of surface water either onto or from the public road. Once provided, all parking and turning areas shall thereafter be permanently retained as such.

Reason: To ensure the timely completion of the driveway and parking to an adequate standard in the interests of road safety.

2. No works in connection with the development hereby approved shall commence unless details of the refuse bin uplift store area have been submitted to and approved in writing by the planning authority. The area shall be constructed behind any visibility splay and shall be designed so as to be accessible for refuse bin uplift and to prevent empty bins from being wind-blown. The dwellinghouse shall not be occupied unless the refuse bin uplift store area has been provided and surfaced in accordance with the approved details. Once provided, the refuse bin uplift store area shall thereafter be permanently retained as such.

Reason: To ensure the provision of an appropriate means of servicing in the interests of road safety.

3. The development hereby approved shall not be brought into use unless a water treatment system is installed that will ensure potable water is supplied for use at the premises. Once installed the private water treatment system shall thereafter be permanently retained.

Reason: To ensure the long term sustainability of the development and the safety and welfare of the occupants and visitors to the site.

4. No works in connection with the development hereby approved shall commence unless details of the specification and colour of all the materials/ roof/ wall/ windows/ doors/ rainwater goods to be used in the external finish for the approved development have been submitted to and approved in writing by the planning authority. The development shall not be occupied unless the external finish has been applied in accordance with the approved details.

Reason: In the interests of the appearance of the development and the visual amenities of the area.

5. No works in connection with the development hereby approved (including demolition, ground works and vegetation clearance) shall commence unless a construction

environmental management plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include the following:

- (a) Risk assessment of potentially damaging construction activities.
- (b) Identification of “biodiversity protection zones”.
- (c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- (d) The location and timing of sensitive works to avoid harm to biodiversity features.
- (e) Use of protective fences, exclusion barriers and warning signs.

All works carried out during the construction period shall be undertaken strictly in accordance with the approved CEMP.

Reason: In the interests of protecting the biodiversity of the environment.

6. The dwellinghouse hereby approved shall not be occupied unless the proposed foul and surface water drainage systems have been provided in accordance with the approved plans and the investigation and design report from Bryan Wright dated 31/7/2019 (including the revised surface water drainage system shown on drawing 1822/09 Rev A). The foul and surface water drainage systems shall be permanently retained thereafter in accordance with the approved maintenance scheme.

Reason: In order to ensure that adequate drainage facilities are provided, and retained, in the interests of the amenity of the area.

7. No demolition or any other works in connection with the development hereby approved shall commence unless a photographic survey of the existing buildings and structures on the application site has been submitted to and approved in writing by the planning authority. All external and internal elevations of the buildings and structures together with the setting of the buildings and structures and any unusual features of the existing buildings and structures shall be photographed. The photographic viewpoints must be clearly annotated on a plan to accompany the survey. The photographs and plan must be in a digital format and must be clearly marked with the planning reference number.

Reason: To ensure that a historic record of the building is made for inclusion in the National Monuments Record for Scotland and in the local Sites and Monuments Record.

Informatives

1. In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended) this planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development is begun within that period.

2. Notice of the start of development: The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start the development. Failure to do so is a breach of planning control and could result in the planning authority taking enforcement action. [See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)]. Such notification shall contain the information set out in the 'Notification of Initiation of Development' Notice as appended.

3. Notice of the completion of the development: As soon as possible after the development is finished, the person who completed the development must write to the planning authority to confirm that the development has been completed. [See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)]. Such notification shall contain the information set out in the 'Notification of Completion of Development' Notice as appended.
4. Adequate provision shall be made for internal surface water drainage to ensure that surface water does not run from the site onto the public road or vice versa.
5. Adequate precautions shall be taken to protect any Statutory Undertaker's plant which may be affected by the works/development.
6. Please note there is a possibility that bats may be present in the property. All bats and their breeding or resting places (i.e. roosts) are protected by law. It is an offence to disturb, injure or kill any bat or to damage, destroy or obstruct access to a bat roost. Damage does not have to be deliberate to be considered an offence. Work that may impact on bats and their roosts can only be carried out under licence. If evidence of bats is discovered works must cease immediately and the advice of NatureScot (formerly Scottish Natural Heritage) must be sought.