



Cairngorms Campaign
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To all our Members,

Please find enclosed the notice of our Annual General Meeting 2017 and our response to the planning application made in March 2017 as the developer's latest planning move to seek to build a new town at An Camas Mòr (ACM), Rothiemurchus Estate. For our Scottish Members you will also find enclosed a postcard, which we hope you will consider sending to your representative Member of the Scottish Parliament supporting the Campaign for equal right of appeal in planning decisions.

We covered some aspects of the latest ACM planning application in our last newsletter. Since then the Cairngorms National Park Authority (CNPA) Planning Committee, which includes all 19 Board members have approved the application. The Cairngorms Campaign joined with other groups to voice our objections to the CNPA Board as well as participating in a "show of protest" before the meeting taking our placards into the hall and arranging them at the back of the room. We are disappointed although not surprised that the CNPA approved the application removing the very first condition imposed by them last time round. However we are enthused by the growing opposition to the proposal from the local community and other conservation minded groups as more details of the proposed development and its impact emerge. It is thanks to our Members and the legal campaign that we mounted that the development has not progressed and the Cairngorms Campaign intends to continue energetically opposing this ill-conceived proposal.

For those of you that have received the postcard "Equal Right of Appeal" - the Cairngorms Campaign has been supporting a campaign to introduce Equal Right of Appeal in Scotland's new Planning Bill. At present a developer can repeatedly appeal when planning permission is refused, but objectors have no equivalent right when an application is approved. This unfairly weights planning in favour of even the most inappropriate developments. All Members of the Scottish Parliament (MSPs) need to know they have a strong mandate from their constituents to support Equal Right of Appeal, so if you live in Scotland please consider completing and sending the enclosed postcard to your MSP. If you would like more postcards (to send to your list/regional MSPs) please telephone Planning Democracy on 07778 002667.

THANK YOU VERY MUCH FOR YOUR SUPPORT

From

Susan Matthews

On behalf of the Directors of the Cairngorms Campaign



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ANNUAL GENERAL MEETING

Venue; Talla Nan Ross, King Street, Kingussie PH21 1HP

Date and Time; Saturday November 18th 2017 from 1300 to 1600

Speaker and subject; Nic Bullivant "Cairngorm Ranger – 20 Years on Cairngorm" an illustrated talk

Light refreshments at 1300, with Nic at 1330 followed by the Annual General Meeting

AGENDA

1. Apologies for absence
2. Minutes of 2016 Annual General Meeting
3. Matters arising
4. Annual Report
5. Treasurer's Report and Accounts
6. Election of Directors:

Tim Ambrose - Treasurer
Martin Ashdown
Helen Geddes
Gus Jones
Tessa Jones
Susan Matthews

Other Nominees most welcome

7. Any Other Competent Business

Campaign future - 1 to 2 years

Response to Application 2017/0086/DET

S42 Planning Application to Vary Condition 1 of Planning Permission in Principle 09/155/CP

Introduction

This response is made on behalf of the members of the Cairngorms Campaign and we are requesting an opportunity to address the planning committee when this application is determined.

The nature of this application as advertised i.e. the use of section of a section 42 application, that if approved will lead to a new planning permission in principle with possibly different conditions and timescales, raises a number of complexities, depending upon what decisions are made by the planning authority. Therefore in our response we have considered issues that are relevant if any other of our objections are not accepted by the planning authority. This does mean that we rescind any objections.

1. Objection to the process by which the Planning Permission in Principle is being extended

We object to and consider unlawful the use of a Section 42 Application to vary Condition 1 of the Planning Permission in Principle (PPIP) when the PPIP was within 3 weeks of expiration having been valid for 3 years. The PPIP approved in 12th March 2014 had 10 conditions attached, all of which were to be addressed before development could commence. Not a single application to satisfy one of these conditions has been determined or rejected in that time period and therefore there was no chance of those conditions being satisfied before expiry of the PPIP within the time periods under the relevant planning legislation. We consider this a “back door” method to extend the now expired PPIP without having to go through the statutory process required by such a PPIP.

Time expiry periods on planning approvals are statutory and for good reason as Planning Permissions are granted according to relevant planning policies and legislation. To approve a Section 42 application and allow a new PPIP with new timescales, without reviewing these, is not the intention of Section 42 applications. A new PPIP application should be made if the applicant wishes to have a relevant PPIP. This would then be compliant with Planning Law and the CNPA’s planning policies.

The PPIP, now expired was the subject of great controversy and a lot of work by the CNPA planners, committee members and discussion at Board level and various commentators. It was a lengthy process and the conditions were attached to address issues raised as a result of this, particularly given the sensitivity of building a new town in a National Park, and with impacts upon the adjacent Natura 2000 site.

2. Objection to the application to change Condition 1

We object to the Applicants proposed new wording for Condition 1 (quotes in italics) and make our comments (in bold):

“a) No development shall commence until a Site-wide Phasing Plan (SPP) has been submitted to and approved in writing by the CNPA acting as planning authority. The proposed development shall then be implemented in accordance with the SPP with any amendments to the document to be submitted to and approved in writing by the CNPA.”

Our response: This was already covered under Condition 2 of the PPIP 09/155/CP now expired and is therefore of no planning purpose.

“b) The SPP shall include a review of potential landscape and ecological impacts and associated mitigation strategy in respect of those phases beyond 630 residential units. Details of the Review shall be submitted to and approved in writing by the CNPA.”

Our response: This was already covered in Condition 3 of the PPIP 09/155/CP and is therefore of no planning purpose.

“c) Detailed Site Plans (DSPs) shall then be submitted to and approved in writing by the CNPA for each phase or sub-phase and shall define the range and quantity of uses proposed to include (but not exclusive to): residential (Class 9); residential institutions (Class 8); retail (Class 1-3); business (Class 4); hotel (Class 7); non-residential institutions (Class 10); and leisure (Class 11).”

Our response: This was already covered in Condition 2 of the PIP 09/155/CP and is therefore of no planning purpose.

Our conclusion therefore is that the Applicant is actually seeking to remove the requirement that puts a hold on development beyond 630 residential units until a review of the impact of the development to that stage on landscape and ecology, has been completed and the CNPA has approved it.

The National Park Authority's reasons for imposing Condition 1, were:

“...it is considered that a development of between 630 - 1500 residential units can be achieved without prolonged significant adverse impact on the landscape; however, this is dependent on the successful implementation of the landscape measures required by the conditions of this Planning Permission in Principle.

To ensure that the development complements and enhances the landscape character of the National Park in accordance with Policy 6 of the Cairngorms National Park Local Plan.

To ensure that there are no negative effects upon the integrity of any Natura Sites and to ensure protection of European Protected Species”

Evidence supporting the need and acceptance of this condition by the planning committee can be seen in the thorough documentation associated with the PPIP 09/155/CP. No one should approve this change in Conditions who doesn't read and familiarise themselves with this documentation and the CNPA should ensure this is so.

The decision to attach this condition was the result of a great deal of work by planners, committee and board members and commentators who at the time were immersed in the proposals for the new town development. As one example, Paragraphs 305 and 306 in the Planners report in June 2010 specifically laid this out and the review after the development of 630 houses was required because *“After assessing the planning application, it has been concluded that the proposal ...accords with the principles except in certain key respects: 1500 residential units cannot be accommodated without an unacceptable level of prolonged adverse impact on landscape and ecology.”*

It would be fundamentally wrong to remove such a condition given the in depth work and processes associated with submission of a full PPIP and without having the level of knowledge and expertise as those who recommended and agreed to it at the time. It was part of the PPIP for 3 years without challenge.

3. Objection to the validity of the environmental statement/updated ecology report

3.1 Potential Impacts on the Spey SAC: Freshwater Pearl Mussel (*Margaritifera margaritifera*)

The Fresh water mussel is recognised a globally threatened species. There have been two outstanding significant changes in information concerning fresh water mussel status since the 2009 ES and the granting of a PPIP, namely the findings of the James Hutton Institute report 2014 and BSI report of 2017.

The James Hutton Institute report to the CNPA of 2014 provides information on point source pollution from sewage outfalls on the water quality of the Spey, including in terms of levels of Phosphorous and Nitrogen (in various forms). The report states that “The existing Aviemore WWTW discharge is affecting water quality” and “Absences in the FPM population were found to be significantly associated with the location of inputs from pipes and drains to the river.”

In taking account of these findings and accepting that the performance of the Aviemore Sewage treatment works currently contravenes the first aim of the Cairngorms National Park, then increased discharges in the vicinity from the existing point source (AVSTW) or from an additional sewage treatment plant within close proximity will increase the magnitude of negative impact upon the populations of this globally threatened species.

In addition, there is now, for the first time, a water quality standard providing guidance on monitoring freshwater pearl mussel populations and their environment (BSI 2017). We understand that Ian Simes (SNH FPM specialist) has contributed expert advice to this publication.

In court before Lord Glenney (the case BSCG, ourselves (Cairngorms Campaign) and SCNP took against the CNPA Local Plan), the legal team for the CNPA indicated that the CNPA would avoid giving detailed permission for any development that would be in breach of Natura obligations in terms of the integrity of the River Spey. The new BSI is material with respect to international obligations to safeguarding this globally threatened species on the Spey.

It is unclear how the CNPA can successfully control this aspect of the development if they were to approve the present application. The information provided to date on the sewage arrangements is sparse. At present it looks as though the intention is to pump it to the existing Aviemore WWTW at Granish, the discharge of which is already seen to be affecting water quality in a manner that impacts negatively upon the fresh water mussel populations.

Diffuse pollution is a further issue that has not been modelled, much less quantified, despite much of the land being freely draining sands and gravels and linked to the Spey by hydrology and porous geology. The long term adverse impact of diffuse pollution on the water quality of the Spey is a material consideration that has not been adequately addressed.

We object to this application as it has not considered the adverse impact of the increased pollution load from both surface run off from areas of hard standing, and from treated sewage discharges (whether from the existing Aviemore Sewage Treatment works, or any new plant built on the south side of the River Spey).

Given the adverse impact of point source discharges on the fresh water mussel population, and given that fresh water mussels are listed as a population of importance within the SPA designation for the River Spey the first aim of the CNP is at risk of being contravened if the current application is approved.

On the grounds given above we object to this application.

3.2 Adverse Impact on Capercaillie Populations

This iconic species for the Cairngorm National Park ranks with the Osprey, the Red Squirrel and Red Deer in attracting and supporting our tourism industry. Its presence differentiates our locality from the rest of the Highlands for visitors.

This is a highly protected Annex 1 species i.e. one of our most endangered birds. Disturbance impacts are inevitable given the proximity and large size of the proposed new town to Capercaillie habitat. Management to reduce the impact of disturbance and recreational pressures is seen to be difficult and uncertain. We object to this application as the CNPA has no power to enforce mitigation measures that are sufficiently robust ensure no adverse impacts.

Additional new material also has to be considered yet was not part of the previous EIS and ecological assessment; this includes the following.

Since the Environmental Statement the conservation prospects for capercaillie have significantly deteriorated. In March 2017 the CNPA wrote that “Without collaboration and urgent action across the National Park, there’s a very real chance capercaillie may become extinct here [in the CNP]”.

The range of capercaillie has significantly contracted. Around 80% of the entire Scottish population of capercaillie is now

dependent on a few forests in Strathspey and Rothiemurchus and Glenmore, adjacent to ACM, are amongst the most important for the remaining populations.

A major peer reviewed publication (Moss *et al* 2014) has provided definitive new insights into how human disturbance impacts capercaillie in forests in Strathspey. It has been shown that recreational disturbance impacts adversely on capercaillie, causing birds to avoid disturbed areas such as paths. Path creation reduces the area of suitable habitat for capercaillie to use. The proximity of the houses and their residents will inevitably lead to path creation within the vicinity of ACM.

The CNPAs Capercaillie Framework is a new (2015) policy document that reflects a significant increase in concern. The outcome of considering this application should be consistent with this framework.

New developments have been given planning consent within and close to capercaillie habitat adding to disturbance. At a development within 200m of an SPA for capercaillie at Glenmore the CNPA (as planning authority) has continuing problems in enforcing mitigation measures deemed essential by SNH to mitigate impacts on capercaillie.

We do not see the evidence that this proposal can be adequately managed to safeguard the nearby capercaillie populations; **we therefore object.**

3.3 Adequacy of Environmental & Ecological Information and Assessment

- 3.3.1 The information presented in the application is incorrect, even in so far as drawing the application site boundary. The earlier environmental and ecological surveys have been piece meal covering sections of the site. There has not been a site wide consideration of the interactions, and of the overall impact.
- 3.3.2 In particular, the conditions outlined in the lapsed PPIP require the overall impact on the landscape at various phases of the development to be determined. If this section 42 application is approved this visual/landscape impact cannot be determined and managed. This is unacceptable within a National Park and is potentially yet another opportunity to flout the primary aim of the CNP.
- 3.3.3 There has been no inclusion of the new information discussed in 3.1 to 3.3 above in the ecological review and each aspect should have been covered. We suspect that there will be other areas of omission. We consider that the current EIS, ES & ecological assessments are therefore not competent. Without competent environmental information the impacts of the proposals cannot be assessed.

On these grounds we object.

4 Objection to the renewal and approval of Planning Permission in Principle

We object to PPIP being granted. Following are our main reasons for this objection:

The development contravenes all four aims of the National Park. It will actually be to the detriment of the No.1 aim to “conserve and enhance the natural and cultural heritage of the area” and this is evidenced in the planners report for the PPIP June 2010.

It will not promote the sustainable use of the natural resources of the area. Once the land is developed the flora and fauna that use it today will be no more. The land will be occupied by buildings for human use and will visually detract from the area.

People that visit the Park for its landscape, flora and fauna will have their enjoyment significantly lessened. The Landscape issues are particularly referred to in the 2010 planners report.

And, perhaps worst of all, is the wilful misunderstanding that it will “*promote sustainable economic and social development of the area’s communities*”. Agreed that more houses and more people will mean more money being spent in the local area. It is called suburbia. This development and plans were inherited by the National Park when it was formed. All that has happened since is the language has been modified to make it sound more attractive. One such example is the

misuse of words like “sustainable” to justify it. There is nothing sustainable in building 1500 houses in a currently undeveloped site in a National Park, made so for its landscape and ecology.

There is some evidence from the last National Park Partnership Plan consultation and report that the CNPA management are beginning to be willing to truly address some of the issues around long term affordable housing and economy. This has to be done in detail and in depth with existing communities, and specific to being a National Park to make it real and true to its aspirations, not the blunt instrument of open market housing development, as is being done in so many places in the UK. Species and habitat loss is a direct consequence of such. A suburban development inherited from Highland and Island when the Cairngorm National Park was formed is the wrong place to start from.

There are numerous aspirations laid out by the developers, who it should be remembered are doing this for profit. They have no vested interest once their work is done. The CNPA has no control over construction, does not monitor or have powers to act quickly enough to prevent damage to the environment. It is impossible to comprehend how such a development can take place near the River Spey SAC, with little security that effective remedial measures can be put in place that do not lead to significant adverse impacts.

Now that the PPIP has lapsed the CNPA has a new opportunity to consider afresh the validity of siting a “new town “of such a large scale within the National Park and adjacent to the River Spey, and the Rothiemurchus Pinewoods.

We would suggest that instead of using taxpayer’s money to pay for infrastructure development for this site, that the CNPA find a way to use same to provide carefully and specifically selected sites for small scale affordable housing in perpetuity and business units that suit local community aspirations.

Susan Matthews

On behalf of the Cairngorms Campaign

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