

**CAIRNGORMS NATIONAL PARK AUTHORITY**

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**DRAFT MINUTES OF THE PLANNING COMMITTEE**

held at Cairngorm Hotel, Aviemore  
on 11 January 2012 at 11.30am

**Members Present**

Peter Argyle

Duncan Bryden

Angela Douglas

Dave Fallows

Katrina Farquhar

David Green

Kate Howie

Gregor Hutcheon

John Latham

Bill Lobban

Eleanor Mackintosh

Gregor Rimell

Brian Wood

Martin Price

**In Attendance:**

Don McKee, Head Planner

Mary Grier, Senior Planning Officer, Development Management

Andrew Tait, Senior Planning Officer, Development Management

Katherine Donnachie, Planning Officer, Development Management

Murray Ferguson, Director, Sustainable Rural Development

Matthew Hawkins, Heritage Manager

Frances Thin, Landscape Advisor

Charlotte Milburn, Planning Systems Officer

**Apologies:**

Jeanette Gaul

Mary McCafferty

Willie McKenna

Fiona Murdoch

Gordon Riddler

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## **Agenda Items 1 & 2:**

### **Welcome & Apologies**

1. The Convenor welcomed all present.
2. Apologies were received from the above Members.

## **Agenda Item 3:**

### **Minutes & Matters Arising from the Previous Meeting**

3. The minutes of the previous meeting, on 7 December 2012, held at The Albert Memorial Hall, Ballater were approved. The Convenor reminded Members that Item number 16 was considered in a closed session and whilst they may refer to the Minutes there can be no reference to the discussion. The full Minute of the session will be made public, but not until the Local Plan appeal has been concluded
4. There were no matters arising.
5. The Convener provided an update on the Action Points from the previous meeting:
  - Action Point at Para. 14: There will be an update on this item in AOCB
  - There has been one delegated Call-In since the agreed new Call-In procedure began before Christmas. Don McKee said he would welcome ongoing feed back from Members and there will be a full review in June.
  - Item 17: Clarification needed that a paper is coming forward on Affordable Housing under Policy 22 of the Local Plan. Don McKee confirmed that Katherine Donnachie is working on this and should be ready for the February 1st Planning Committee meeting.

## **Agenda Item 4:**

### **Declaration of Interest by Members on Items Appearing on the Agenda**

6. The Aberdeenshire Councillors declared a direct interest in:
  - Item No 8. (Paper 4 )
7. Bill Lobban declared an interest in:
  - Item No 5 and 6. (Papers 1 and 2 ) - Direct interest as he has spoken in favour of these applications prior to becoming a Member of the Board and his comments were utilised by the objectors and reported in a Newspaper article.

## **Agenda Item 5:**

**Report on Called-In Planning Application for Racing kart track; office, visitor and workshop accommodation; car parking; and associated vehicular access works and remote footway to Aviemore At Land 50M West Of Batching Plant, Knockgranish, Aviemore**

**(Paper 1) (2012/0208/DET) (Detailed Planning Permission)**

8. The Convener informed Members that a request to address the Committee had been received, within the given timescale, from:
  - Agent: David Keith.
  - Objector: Dr Gus Jones, (BSCG) Badenoch and Strathspey Conservation Group and Ian Cowan, Environmental Law Consultant.
9. The Committee agreed to the requests.
10. Andrew Tait presented a paper recommending that the Committee approve the application subject to the conditions stated in the report, with the addition of a condition that a further Ecological Walk Over Survey be carried out prior to commencement of the works. This is a repeat of Condition 10 in Paper 2.
11. The Agent, David Keith was invited to address the Committee. The presentation covered the following points:
  - This application would reinstate a previously well established and popular business
  - The site has been selected for access and proximity to the town, with opportunity to be screened from outside.
  - The area has a commercial feel as it is adjacent to a concrete batching plant and Council landfill site.
  - Pre-Application discussions established that the proposals met with planning policy, in particular the Scottish Planning Sustainable Development Policy
  - The Consultees are all in support as well as the Aviemore and Vicinity Community Council. The Sustainable Business Programme Manager has said it would be a welcome addition to the area. Fergus Ewing MP has also given his support and encouragement.
  - A breeding bird survey has been submitted and a Wildcat species protection plan will be put in place.
  - Environmental Health are satisfied with the Noise Impact Assessment and screening/tree planting proposal that has been submitted and are supporting the application.

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- There is only one Objection to the application and all the objections that were raised have been addressed during the negotiations with the CNPA
- The application is in line with planning policy and meets the four aims of the Park.

12. The Committee were invited to ask questions of the speaker and the following points were raised:

- a) As it is a commercial site will the increased traffic be manageable on the existing access? David Keith confirmed that a Civil Engineer has been advising on the application and part of the proposal is to widen the road to make it suitable for the level of use expected.

13. Dr Gus Jones (BSCG) and Mr Ian Cowan were invited to address the Committee. Their presentation covered the following points:

- There is a possible presence of Wildcats on the site and granting permission will be likely to breach the EU Habitats Directive.
- Wildcats come under the Habitats Directive as a European Protected Species and Member States must protect against the deterioration or destruction of breeding sites or resting places
- The UK Conservation Regulations 1994 make it an offence to damage or destroy a breeding site or resting place of a European Protected Species.
- Scottish Natural Heritage (SNH) operate a licensing system to allow disturbance for reasons of overriding public interest or public health and safety. The Scottish Government have made it clear that Planning Authorities have a duty to avoid unnecessary applications to SNH. A 2006 circular to Planning Authorities from the Scottish Executive states that Planning Authorities were using suspensive conditions in relation to protected species when issuing planning permissions, instead of fully ascertaining whether a protected species was present on a site. Appended guidance to the circular says Planning Authorities, when considering any application, should address whether any European protected species are present on a site for which planning permission is sought.
- Wildcats have been observed close to the location, the advice of SNH, the CNPA Ecologist Dr Hethrington and the CNPA Policy on Biodiversity has not been followed as a mammal survey has not been carried out for this site. A survey and a protection plan are not the same thing.
- If planning permission is granted the BSCG will request that the Scottish Government Call In this application. They will also complain to the European Commission of a breach by the UK of the European Habitats Directive.

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- Rock Rose has been identified on the site which is a food plant for a Scottish Biodiversity List species, as there has been no Invertebrate Survey it is not known whether the species is present.

14. The Committee were invited to ask questions of the speakers and the following points were raised:

- a) If a mammal and invertebrate survey were included in the conditions with any relevant subsequent Management Plan, would that satisfy the concerns? Mr Cowan responded that a good survey would be welcomed however it would not address the concerns expressed by the Scottish Executive in their 2006 circular as it would be a suspensive condition.
- b) What rare species have been identified on this site? Dr Jones replied that a number of invertebrate species have been seen that have not been identified elsewhere in the Park. A full report has been submitted to the CNPA Ecologist.
- c) How much would the development actually affect any potential rare species?
- d) How can one develop a mitigation or protection plan without having previously had a survey? Mr Cowan answered that a protection plan should include a survey as a first step and the proposed plan mainly covers wildcats that may travel across the site rather than use it for breeding.
- e) Was the 2006 Scottish Executive quote from statute or guidance? Mr Cowan replied that the guidance was issued in 2001, then in 2006 The Scottish Executive issued a circular to highlight the guidance.

15. Eleanor Mackintosh thanked the speakers.

16. Eleanor Mackintosh invited the Planning Officer to respond to the points made

- a) Andrew Tait confirmed that there is an issue with Wildcat surveys and Matthew Hawkins, CNPA Heritage Manager, would explain more.
- b) Andrew Tait said it would be possible to change the recommendation to make the issue of a permission subject to a survey.
- c) Matthew Hawkins explained the various difficulties in surveying for Wildcats. A survey was done by MBEC for the nearby caravan site as part of the ecological work and no evidence of wildcats was found. The Protection Plan is a precautionary measure.
- d) Don McKee expanded on the Scottish Executive guidance to Planning Authorities. If the presence of a species is fundamental to the decision then you cannot have a suspensive condition.

17. The Committee discussed the application and the following points were raised:

- a) How should we respond to the threat of further legal challenge to the decision? Don McKee replied that we are open to challenge if we don't comply with the

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Habitats Directive. As the survey that has been done does not cover this application then a sensible approach could be to approve the application subject to a mammal survey being carried out.

- b) It was suggested that the landscaping be done in such a way as to maximise the habitat for, and minimise disruption to, rare species. Condition 2 be amended to explicitly include this.
  - c) There is a list in the report including Highland Council's suggested amendments to the access. It was suggested that of the list, only the visibility splays are needed, could it be confirmed that the other suggestions, such as street lighting, will be put aside. Andrew Tait confirmed that the process has tried to ensure safe access whilst minimising the effect on the habitat. He also suggested it would not be appropriate to request additional lighting just for access to the Kart track, given that the access road is already well used by the public.
  - d) The visibility splays are within the Ancient Woodland Inventory, could there be a reassurance that no features of note within the Ancient Woodland Inventory would be removed.
  - e) It was suggested that this facility and the use of karts with petrol engines, does not promote the sustainable use of natural resources in the Park. Don McKee advised this was not a consideration with regard to planning. It was suggested that if the Karts were energy efficient with regard to build and fuel it would be a plus point for the Park to promote. Don McKee confirmed that an advice note could be added to that effect.
18. The Committee agreed to approve the application subject to a mammal survey including Wildcats being carried out prior to the issue of a decision and to the conditions stated in the report. Paper 2, Condition 10, which refers to an Ecological Walkover Survey, should be directly lifted and included as a new condition for this application. Condition 2 will be amended to say any landscaping must minimise the impact and maximise the opportunities for the habitat of protected species, to include invertebrates.
19. It was made clear that if the mammal survey has to be conducted before planning permission is issued then it is not a suspensive condition. Don McKee added that if the CNPA was not satisfied with the survey results the application would be brought back to Committee.
20. **Action Points arising:** A Mammal Survey to include Wildcats to be undertaken

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## **Agenda Item 6:**

**Report on Called-In Planning Application for Touring caravan park comprising 33 caravan pitches; area for tents; reception, farm shop and manager's accommodation, including toilet/shower block; and associated vehicular access works and remote footway to Aviemore At Land 50M West Of Batching Plant, Knockgranish, Aviemore  
(Paper 2) (2012/0188/DET) (Detailed Planning Permission)**

21. The Convener informed Members that a request to address the Committee had been received, within the given timescale, from:
- Agent: David Keith.
  - Objector: Gus Jones, (BSCG) Badenoch and Strathspey Conservation Group and Ian Cowan, Environmental Law Consultant.
22. The Committee agreed to the requests.
23. Andrew Tait presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
24. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:
- a) Clarification was needed on the surface of the track and caravan stands. Andrew Tait confirmed that the first few metres of access would be tarmac then the track would become a permeable surface. The caravan stands would be grass.
  - b) A question was raised about Highland Council requests for street lighting. Andrew Tait confirmed that street lighting was not necessary
  - c) Is the Caravan Park going to be connected to mains water and drainage? Andrew Tait confirmed that it would be.
  - d) Has there ever been any discussion with the Council Roads Engineers about extending the 30mph speed limit on the main road? Andrew Tait confirmed that the discussion had taken place but it was something that the Council was not willing to consider.
25. The Agent, David Keith, was invited to address the Committee. The presentation covered the following points:
- The Manager's accommodation would be tied to the caravan park so it would not be sold off in the future as an independent housing unit.
  - The site was chosen for its natural beauty and because it is discreet and can be screened in the locations where the site is visible from the A9

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- The applicant has a tenancy that goes back 200 years and has an interest in protecting and enhancing the woodland surrounding the site.
  - The consultees are all in support of the proposal, including the Community Council and the Sustainable Business Programme Manager who has noted the Caravan Park would be a welcome addition to the area. The CNPA's Outdoor Access team welcome the footpath as it extends the network of footpaths in the area.
  - A bird survey, an invertebrate survey and a mammal survey have been undertaken and a Wildcat Protection Plan has been proposed,
  - There is a pond to the south of the site and there is a condition for enhancement of the pond.
  - The site entrance has been relocated to protect the oak trees at the entrance.
  - All objections raised have been satisfied.
26. Dr Gus Jones and Mr Cowan were invited to address the Committee. The presentation covered the following points:
- The Habitats Directive points from the previous application should be taken as read.
  - The objection is regarding the standard of the survey that has been carried out.
  - No reference to advice from Scottish Natural Heritage, perhaps because it was not requested.
  - CNP Ecologist Dr Hetherington reported that Scottish Wildcats do occur in the area and the applicant should provide a species Protection Plan for Wildcat
  - MBEC's report states that standard methodology was followed in the mammal survey, following known best practise survey methods. The mammal survey did not use best practise methods as it only used field signs as evidence and no camera trapping methodology and was therefore not comprehensive.
  - MBEC reported that although Wildcats have been resident in the wider area no evidence of Wildcat presence could be found on the site.
  - MBEC reported that the site sits between two roads making it unsuitable for Wildcats, however Dr Hetherington's report stated that there had been two unsubstantiated sightings of Wildcats in the area, one close to the road and one crossing the road.
  - Would request the decision is conditional upon a comprehensive mammal survey to include camera trapping.
  - The invertebrate survey was not reliable as it was not conducted over a full year and some species are seasonal.
27. The Committee were invited to ask questions of the speaker and the following points were raised:
- a) What is the definition of a Wildcat, how can one be sure they have sighted a true Scottish Wildcat and not a domestic cat?

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- b) If baited camera trapping was used would that not artificially draw in Wildcat that may not have otherwise been present? Mr Cowan replied that he could not comment on methodology other than noting that Dr Hetherington had recommended it. Dr Jones replied that Wildcats have a social behaviour which would make this unlikely.
- c) What percentage of a home range of a Wildcat would this caravan park cover?

28. Eleanor Mackintosh thanked the speakers.

29. Eleanor Mackintosh invited the Planning Officer to respond to the points made

- a) Scottish Natural Heritage (SNH) were consulted by Highland Council before the application was called in. The response from Dr Hetherington was based on discussions with SNH.

30. The Committee discussed the application and the following points were raised:

- a) The sightings of Wildcats in the area are all unsubstantiated.
- b) Condition 3 says 'inc. access' which means 'including' it could mislead someone to think it meant 'increase'.
- c) Clarification was needed as to whether the key issues raised in the Neighbour's letter (Appx. 2) have been addressed. Andrew Tait confirmed that they had, however the issue of potential economic viability was a matter for the applicant to address, not the CNPA in relation to a planning decision.
- d) Has a flood assessment been undertaken? Andrew Tait replied that a drainage survey has been undertaken and as all the surfaces will be permeable there should be no change to the existing situation. There had been an issue raised of water on the track, it is unclear whether the drainage survey would include that.
- e) The issue of the pond management plan was raised as it appears in the report but had not been mentioned. Andrew Tait confirmed that it was covered as part of the Invertebrate Survey
- f) It would be desirable to increase the biodiversity of the whole site in relation to plant species, by using minimal intervention methods and leaving grass areas in their natural state where possible. Andrew Tait agreed that as the land is currently used for grazing there should be opportunities to improve grassland areas across the site, Condition 11 could be amended to include the whole site as well as the pond and woodland.
- g) The issue of visitors with dogs was raised and whether an advice note would be needed to cover dog walkers on the site. Andrew Tait confirmed it would be included in the species protection plan and the presence of an on-site manager would mean that this could be managed.
- h) There are opportunities to educate the visitors on the merits of the CNP in relation to all the issues discussed. There will be a standard condition to this effect included for applications going forward.

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- i) Issue of the competency of the survey was raised and it was asked who takes the decision on a survey and how adequate it may be. Don McKee replied that all advice comes from internal specialists in conjunction with discussions with SNH. Matthew Hawkins confirmed that Dr Hetherington has raised no concerns with MBEC and the methodology of this particular survey.
- j) Andrew Tait said that he had received a request from the applicant to amend Condition 5 which prohibits a caravan returning within seven days. The applicant would like to make the return prohibited within 3 days. It was reasonable to expect that someone on holiday passing through the area may wish to make a return stop within the week or visitors to come skiing two weekends running. The Committee agreed to the change.
- k) A question was raised about what would happen to the planning permission on the existing caravan at the site. Andrew Tait replied that in order for this application to go ahead the caravan would have to be removed.

31. The Committee agreed to approve the application subject to the conditions stated in the report and the amendments to Condition 5 and 11.

**32. Action Points arising: None**

### **Agenda Item 7:**

**Report on Called-In Planning Application for Section 42 application to extend the period of time on condition 1 of the existing permission (ref 08/443/CP) At Land 30M West Of 31 Allt Mor, Aviemore (Paper 3 ) (2012/0353/DET) (Detailed Planning Permission)**

33. Don McKee recommended that the Committee approve the time extension for the application subject the conditions stated in the report.

34. The Committee were invited to ask the Head Planner points of clarification, the following were raised:

- a) It was noted that the land is currently used for storage of building materials and is unsightly. Don McKee agreed that best endeavours would be used with the applicant to get the site tidied up.

35. The Committee agreed to approve the time extension.

**36. Action Points arising: None**

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### **Agenda Item 8:**

#### **Report on Consultation Response to Aberdeenshire Council on Erection of 6 wind turbines and associated infrastructure At Tibberchindy, Alford (Paper 4 )**

37. The Aberdeenshire councillors left the room
38. Katherine Donnachie presented a report on the consultation and recommended that the Committee agree a response of No Objection with comments
39. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:
  - a) The report used the word 'compact' does that mean below the skyline or drawing the turbines closer together? Frances Thin confirmed it referred to the drawing together of the turbines.
  - b) The importance of advice was discussed. In giving a response of No Objection the Committee are not saying there is no impact but there is not significant impact on the Park and will submit advice to Aberdeenshire Council.
  - c) Clarification about what 'zone of theoretical influence' means. Frances Thin explained that it refers to the theoretical area where the turbines would be visible from, it does not take into account of topography or woodland that may obscure the visibility.
  - d) Where are we on cumulative impact of wind farms? Don McKee replied that the CNPA continues to try and bring this matter to the decision makers in Scottish Government and give it proper weighting.
  - e) There have been local questions about impact from the viewpoint Ben Newe, would it be visible from there? Frances Thin replied that the visual assessment was made from viewpoints on the easternmost perimeter of the Park and suggested that the view from Ben Newe would fall between those.
40. The Committee agreed that the response of No Objection be submitted.
41. **Action Points arising: None**
42. Aberdeenshire councillors returned

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### **Agenda Item 9:**

#### **Any Other Business**

43. Don McKee updated the Committee on the Aviemore Tesco application. He reminded the Committee that they resolved in April 2012 to grant planning permission subject to three requirements: SEPA withdrawing their flood objection, developer contributions and information to SNH on sedimentation.

- The flood report was submitted by Tesco to SEPA in December 2012, SEPA are currently looking at it.
- With regard to developer contributions, Tesco have insisted on a Section 75 rather than paying upfront and have only just contacted the CNPA solicitors.
- SNH have confirmed that Condition 4 has covered the issue of sedimentation.
- Once these points are addressed the CNPA can issue a decision notice.
- There is a pond on site which has to be relocated, the CNPA have suggested a solution and given Tesco the appropriate contact.
- There is an issue of damsel fly translocation, Tesco have been told what is required at every stage of the planning process, the CNPA ecologist has had a meeting with the Tesco ecologist. Since then Tesco have missed a survey window to find alternative locations for the damsel fly, the next window is this spring. If a suitable location is not found the measures allow for a payment instead of a relocation.

In conclusion, the CNPA are doing all they possibly can to get the release of the Decision Notice and work with Tesco so they can implement the permission as soon as possible.

44. The Convenor informed Members that Andrew Tait was leaving the authority to take up a new post in the private sector in the Lake District. She thanked Andrew for all of his work for the Park since 2004 and made a presentation on behalf of the Planning Committee.

### **Agenda Item 10:**

#### **Date of Next Meeting**

45. Friday 1 February 2013 at Community Hall, Boat of Garten, 10am start

46. Committee Members are requested to ensure that any Apologies for this meeting are submitted to the Planning Office in Ballater.

47. The public business of the meeting concluded at 14:10