
**CAIRNGORMS NATIONAL PARK
DEPOSIT LOCAL PLAN
PUBLIC LOCAL INQUIRY 2009**

**INITIAL HEARING
STATEMENT**

APRIL 2009

Representations on Behalf of
The Mar Estate
Objection Ref: 394c
**Policy 1 – Development in the
Cairngorm National Park**



HALLIDAY | FRASER | MUNRO
PLANNING

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1 INTRODUCTION

This Initial Hearing Statement has been prepared by Halliday Fraser Munro Planning on behalf of The Mar Estate. It should be read in conjunction with previous representations made to the CNPA Deposit Draft Plan and subsequent Modifications.

2 REPRESENTATIONS - POLICY 1

2.1 REPRESENTATIONS – FIRST MODIFICATIONS

We made the following representations on behalf of the Mar Estate.

Policy 1 had been substantially re-written since the Deposit Plan and there have been several supplementary sections added to Chapter 1 Introduction. These additions at paragraphs 1.3 and 1.6 try to overcome some of the complication that has arisen out of the juxtaposition between the National Parks (Scotland) Act (CD 1.3) aims and the Planning Etc. (Scotland) Act 2006 (CD 1.2).

However we noted that, unlike most other Local Plans, the context of the Planning Acts is not explained at the beginning of Chapter 1, just the National Parks (Scotland) Act. To our knowledge the Planning Act remains the superior (and much longer standing) piece of legislation in Scotland. It is usually the case that Development Plans set out the legislative context of the Planning Acts at the beginning. We suggest there may be clear benefit for this being done and the logical steps being followed from each legislative context (as opposed to only a one-sided explanation) toward the balancing duty that the CNPA must enact.

Our Client has no argument with the Aims of the Cairngorms National Park. We raised no objection to these at all and recognise that this is a statutory framework, which must be adhered to. It is just that in the construction of Policy 1 it would appear that development will be made even more difficult to achieve than is already the case. We wonder whether a rod is not being built for the National Park Authority's back through the present wording of Policy one.

The core argument of the original objection was as follows:

1. To begin with the Plain English Society would not be inclined to award a Crystal Mark to the present formulation of Policy 1. It succeeds in making what should be easily understood sound very complicated indeed.

2. Secondly, Policy 1 attempts to explain and provide a route-map for the machinations which the CNPA has to go through as planning authority but it does so without first explaining the 'balancing' objectives it has to bear in mind when implementing the Planning Acts. To quote the purposes of the planning system as presently set down, they state:

- To set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration;
- to maintain and enhance the quality of the natural heritage and built environment. (SPP1)

In order to fulfil those requirements the CNPA must fulfil its duties as a planning authority as well as a National Park. It is the interplay between those roles that must be explained and set down in simple terms at the beginning of the Local Plan. We would submit that Policy 1 does not do this.

3. The Government's guidance given to Planning Authorities states that because of the importance accorded development plans it is essential that policies:

- Provide clear guidance to developers and the public on the relevant planning issues affecting their area;
- are properly justified to explain their intention;
- are expressed simply and unambiguously; and
- can easily be monitored, reviewed and kept up to date. (SPP1)

We believe that Policy 1, as presently re-drafted, does not fulfil this litmus test.

4. Policy 1 and its associated text do not explain the ramifications of implementing these two separate but clearly related pieces of legislation. We would suggest that the preamble to Policy 1 has to focus on the interplay between the two sets of objectives provided by the two separate acts. To state both sets of objectives would help. To explain the tension between these objectives would also help. To set down the role of the

CNPA as having to make a balanced judgement, taking all these objectives into account should be a relatively simple policy to write, as well as implement. It is only right and proper that Section 9 (6) of the National Parks (Scotland) Act, giving effect to the Sandford Principle (**MAR 2.1**), is also explained.

5. In clear difference to the English counterparts, the Scottish National Parks have been given an important role in supporting the sustainable economic and social development of the area's communities. This ties in well with the first aim of the planning system in Scotland (see above). We would suggest that the presumptions inherent in Policy 1 should be more clearly written to exemplify this. Presently it does not do this. Moreover, we now know that all development must be sustainable in terms of the 2006 Planning Acts. Policy 1 succeeds in setting the bar substantially higher, but in our view unnecessarily so. Policy 1 would be much improved were the presumptions set out positively from the beginning with the caveat of an 'unless' statement to bring forward the Sandford Principle. As presently drafted Policy 1 (d) is a single sentence of over 75 words that is extremely difficult to understand.
6. We also observe that Policy 1 is designed to steer the whole plan and all the policies that follow. If this is the case then there has to be guidance within Policy 1 that covers matters of fact and degree. Comparing single house applications within settlements to windfarms on hill tops or major new settlements makes little sense. Whilst the CNPA would wish to apply Policy 1 across the board, the plain truth is that if its effect is most frequently used against single houses then the status of that policy will be seriously downgraded and undermined.

We would submit that there are clear and justified arguments for giving differing weight to Policy 1 depending upon the scale of the impact that any development might have. This should be easily and readily drafted in line with the new categorisation of planning applications envisaged under the 2006 Planning Act.

3 HEARING UPDATE APRIL 2009 - INITIAL HEARING STATEMENT

We have looked carefully again at the opening chapters of the CNPA Deposit Local Plan and remain of the view that the subtle interplay between the Planning Acts and the National Park Act have not been well explained especially with regard to “promoting sustainable economic development”. The presumptions in favour of well designed, sustainable development does not emerge, ‘screaming and shouting’ from the present drafted form of Policy 1.

Given this is a key, navigating policy to be read in conjunction with all the other policies, or stand alone where none are relevant, it is incumbent on the CNPA to better explain this policy. At present the opening chapters heavily emphasise the role of the National Park Plan (CD 7.1) and the National Parks Act (CD 1.3) – which is good and proper – but it isn’t well explained in terms of the prevailing planning system we are already working with. That in itself might be of no consequence were it not for the fact that the reliance on Park Plan and National Park Act results in a very negative policy introduction to the Plan. The worry is that the plan will end up being judged by what it has stopped rather than by what it has achieved.

It may be easier to explain the difficulties with some simple examples.

If we imagine an area of relatively homogenous ground bisected by the National Park boundary, what would be the difference for development applications either side of that boundary?

e.g. 1: A SINGLE DWELLING

QUESTION: For a single proposed house would the planning application inside the park boundary have to do something different than the one just outside the boundary?

ANSWER: Yes. As with, for instance, a conservation area, there would be an expectation of an enhanced level of design quality. There is also a case for expecting a higher level of sustainability in terms of its carbon footprint.

COMMENT: Aren’t we in fact moving to a time where the expectation in either case would demand that quality and sustainability?

e.g. 2: A TOURISM DEVELOPMENT

QUESTION: For a group of holiday homes, would the planning application inside the park boundary have to do something different than the one just outside the boundary?

ANSWER: Yes. This development would have to have a better design and possible be shown to have no negative impacts on the resource upon which it is based (although it could be argued that a more domestic based tourist industry might minimise the carbon emissions of long haul travel).

We can see that the expectation is that the bar should be set higher and that is currently only explained and justified against the National Park Act and the National Park Plan. But are the presumptions different? Where is it explained that development (and progress) will be encouraged? Has the presumption in favour of development been extinguished in the National Park and if so where is that openly and clearly explained?

4 CONCLUSION

We remain of the view that this opening key policy requires considerable simplification and overhaul for it to become easily used.

HALLIDAY FRASER MUNRO
April 3rd 2009