

AGENDA ITEM 5

APPENDIX 2a

2017/0086/DET

OBJECTIONS



www.cairngormscampaign.org.uk
Email: cairngormscampaign@gmail.com
Telephone number 078524 14024

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 piecemeal 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

The Firs, Khantore, Crathie, Ballater, AB35 5TJ



Cairngorms Campaign
The Firs
Crathie
Ballater
AB35 5TJ

www.cairngormscampaign.org.uk
Email: cairngormscampaign@gmail.com
Telephone number 078524 14024

Gavin Miles
Head of Planning
Cairngorms National Park Authority
14 The Square
Grantown-on-Spey
PH26 3HG

by email only

10th March 2017

Dear Gavin Miles

2017/0086/DET | Application under Section 42 to variation condition 1 of Planning Permission in Principle (CNPA Ref 09/155/CP) | An Camas Mor Inverdrue Aviemore

We are writing to put the CNPA on notice that were the CNPA to grant the above application before midnight on 11 March 2017, the Authority would be acting ultra vires, according to legal advice we have received.

We note that in addition to applying to vary Condition 1, the covering letter dated 20 February 2017 to The Highland Council from Turnberry Planning on behalf of the applicant states the following:

"At the same time we would like to replace the current direction in order to extend the timescales for the submission of future detailed information required by the planning conditions."

The decision notice for the Planning Permission in Principle states that *"application for [approval of matters specified in conditions] must be made within 3 years from the grant of planning permission in principle"*. The legal advice we have received indicates that such application must therefore be made by midnight on 11 March 2017, and that it would be unlawful for the CNPA to set a new deadline for such application at this stage.

In any event, given that the advertisement for the current planning application was published on 2 March 2017, it would be unlawful to determine the application before the end of the period of 14 days beginning with the date of advertisement of the application, i.e. before 16 March 2017.

Yours sincerely


Susan Matthews

Convener

Matthew Taylor

Via Email

07 April 2017



Dear Mr Taylor,

Application: 2017/0086/DET | Application under Section 42 to variation condition 1 of Planning Permission in Principle (CNPA Ref 09/155/CP) | An Camas Mor Inverdrue Aviemore

The Scottish Wildlife Trust objects to this application and our main points are outlined below.

Impacts on designated sites

The River Spey is a Special Area of Conservation and a Site of Special Scientific Interest for freshwater pearl mussels. Scottish Natural Heritage surveyed the Spey in 2013 and 2014 to make an assessment of the freshwater pearl mussel population in the designated sites. The surveys, alarmingly, found that compared with 2000 levels there were 50% fewer freshwater pearl mussels and that the current status of the freshwater pearl mussels is considered to be 'unfavourable declining'.¹

The surveys carried out by SNH highlighted that water quality is likely to be contributing to the decline in the status of pearl mussels in the River Spey.

Given the proximity of the development to the designated sites there is obvious risk during the construction phase and this should be kept in mind by the Cairngorms National Park Authority when they are considering the application.

The Trust is also concerned that current plans to treat sewage involve simply connecting to the "existing sewerage system serving the area of Aviemore". Given that SNH highlight that water quality is likely a contributing factor in the decline in freshwater pearl mussels in the Spey and James Hutton Institute highlight "The existing Aviemore WWTW discharge is affecting water quality"² the Trust is concerned that these plans will unacceptably impact on water quality and the designated feature of the designated sites.

Environmental information

Scottish Wildlife Trust is concerned about the lack of environmental information that has been supplied in relation to this application. This is especially concerning given the application is within the CNP and also borders the River Spey SSSI and SAC. From what the Trust can see, surveys provided do not cover the whole area of the proposal. At a minimum the whole site should be surveyed.

The Trust also has concerns that many of the surveys viewed are now out of date with the ES dating back to 2009, there could be changes in environmental condition, species, habitats etc... since this time.

Patron HRH The Prince Charles, Duke of Rothesay **Chairman** Robin Harper **Chief Executive** Jonathan Hughes

Scottish Wildlife Trust Harbourside House 110 Commercial Street Edinburgh EH6 6NF
T 0131 312 7765 F 0131 312 8705 E enquiries@swt.org.uk W www.swt.org.uk

The Scottish Wildlife Trust is a company limited by guarantee and registered in Scotland (registered no. SC040247). It is also a Scottish registered charity (charity no. SC005792).

Protecting Scotland's wildlife for the future

The Trust would like to be kept informed regarding the progress of this application.

Yours Sincerely

Bruce Wilson
Senior Policy Officer

ⁱ Please see <http://www.snh.gov.uk/docs/A1478200.pdf>

ⁱⁱ S, Cooksley & L, Jackson Blake. (2014). River Spey water quality and effluent chemistry. James Hutton Institute



Scottish Campaign for National Parks

IUCN
Member of IUCN The World Conservation Union

Honorary Vice Presidents:
Michael Dower CBE FRICS MRTPI Hon FCI
John Foster CBE FRSES
Robert G Mison BSc Dip TP FRTP(Inst)
Adrian Phillips CBE MRTPI Hon FCI

Chairman
Bill McDermott BSc C Biol M Bior

An Teamann
East Leisidh
Coilaiside
Dummadrocht
Inverness
IV63 8UJ

Tel: 01456 450397
email: info@scnp.org.uk

Scottish Charity no. SC 31008

Matthew Taylor
Cairngorms National Park Authority
14 The Square
Grantown-on-Spey

7 April 2017

PH26 3HG

12 APR 2017

11/04/17

Dear Mr Taylor,

**Application under Section 42 to Variation Condition of Planning
Permission in Principle (CNPA Ref: 09/155/CP) 17/0086/DET**

**SCNP are writing to object to the above application. We support BSCG's
proposition that it would be unlawful to extend the Planning permission
in Principle.**

Notwithstanding the issuing of a Permission in Principle decision, dated 12 March 2014, we remain unconvinced that this development is of such strategic importance to merit it major development status within a national park. That said, we agree completely with the Planning Progress organization that the proper procedure in dealing with this application is to advise the applicant that the PIP has lapsed and the development requires a new application.

Looking at the history of An Camas Mor and the non-performance of the applicant in providing an agreed masterplan dealing with all the constraints associated with the environmental integrity of the site, we suggest that no action is taken to accommodate an extension of time for further consideration of this application, nor should there be any acceptance of a variation to planning condition 1, which appears to us to be a crucial safeguard to the long term environmental sustainability of the site.

We have always been convinced, along with Scottish Natural Heritage that a full development of this site would have a deleterious effect on the water quality of the River Spey and, in particular, the effect of an additional burden of sewerage accessing the Aviemore Sewage Works without recourse to phosphate or nitrate stripping would endanger the River ecosystem. As we understand it, there are no plans by Scottish Water to offer such facility and yet the James Hutton Institute in their extensive study of the Fresh Water Mussel (FPM) population in the Spey, commissioned by the CNPA, clearly identified a high correlation between sewage outfalls and non-recruitment to the FPM.

The current status of FPM is of concern to environmental agencies and as the Competent Authority for the Spey SAC, which has seen a significant decline in FPM numbers, the CNPA has a clear duty to safeguard the remaining stock. As yet, we have seen no evidence of empirical LD 50 studies to ascertain the level of phosphate pollution detrimental to the larval stages of FPM. Such a study should be commissioned before any masterplan is agreed.



Scottish Campaign for National Parks

It seems obvious to us that a national park authority whose main responsibility, according to the current SPP is to conserve the natural and cultural heritage of its area, should not be giving planning permission for such a large development with foreseen deleterious consequences for the River Spey, until it can assure itself that it can safeguard this vulnerable species of international significance.

We are also concerned at the potential disturbance to the extremely fragile state of the Capercaillie community. It is clear that increased disturbance, likely if the development proceeds, will seriously threaten their continued survival in the NP and Scotland.

The biodiversity value of this site and surrounding area is enormous and we are aware that either much of the survey information previously undertaken is out of date, inaccurate and incomplete.

These are serious shortcomings and the application needs to be refused.

Yours sincerely

Ross Anderson

Chairman



Butterfly Conservation Scotland

Saving butterflies, moths and our environment

Butterfly Conservation Scotland
Mill House
Mill Road
Kingussie
PH21 1LF

Matthew Taylor
Via Email

13th April 2017

Application: 2017/0086/DET
Proposed development: Application under Section 42 to variation condition 1 of Planning Permission in Principle
Location: An Camas Mor Inverdrurie Aviemore
CNPA Ref: 09/155/CP

Dear Mr Taylor,

I am writing on behalf of Butterfly Conservation Scotland to voice our concerns over the above planning application.

We understand that 233 different species of Lepidoptera have been recorded on the site by the developer's invertebrate contractors. This clearly reflects the size and extent of the semi-natural habitats present. Their list includes a number of notable species including Rannoch Sprawler *Brachionycha nubeculosa*, a Red Data Book listed species that only occurs in the UK in Scotland in four discrete populations, and a number of specialised scarce moorland species including Wood Tiger *Parasemia plantaginis* and Golden-rod Brindle *Xylena solidaginis*.

But what is significant are the scarce and threatened species that have not been recorded. This includes Small Dark Yellow Underwing *Coranarta cordigera*, a UKBAP Priority species that is also included on the Scottish Biodiversity List and one of only four species of Lepidoptera identified as key species for focussed action in the Cairngorms Nature Action Plan since its UK distribution is almost entirely restricted to the Cairngorms. This species has become increasingly rare recently despite targeted survey effort with not a single Scottish sighting between 2011 and 2014. However, on 2nd May 2015, it was recorded from An Camas Mor and its presence brought to the attention of both Cairngorms National Park Authority staff and the developer's invertebrate contractor, yet omitted from their list.

Small Dark Yellow Underwing is a specialist moth of Arctostaphylos (bearberry-rich) heath as its sole larval foodplant is bearberry. It shares this niche habitat with other equally rare specialist lepidoptera including Netted Mountain Moth *Macaria carbonaria* and *Coleophora arctostaphyli*.

Due to its great rarity and significance in the Cairngorms we feel that the development must, therefore, avoid areas of Arctostaphylos heath and the developers commit to undertake suitable long-term management to maintain and enhance this habitat. In addition it would be prudent for improved targeted surveys to be undertaken to ascertain the extent and size of its population as well as determine the presence of other key Lepidoptera, most notably Kentish Glory *Endromis versicolor*.

Butterfly Conservation would be more than happy to provide management, survey and monitoring advice on the key species mentioned.

I would also be grateful if you would keep me informed about the progress of this application.

Yours sincerely



Dr Tom Prescott.

Senior Conservation Officer
Butterfly Conservation Scotland

Badenoch & Strathspey Conservation Group

Fiodhag, Nethybridge, Inverness-shire PH25 3DJ

Tel [REDACTED]

Scottish Charity No. SC003846

Email info@bscq.org.uk

Website bscq.org.uk/

CNPA

12th April 2017

Grantown-on-Spey

planning@cairngorms.co.uk

Dear Matthew Taylor

Application under Section 42 to Variation Condition 1 of Planning Permission in Principle (CNPA Ref 09/155/CP) 17/0086/DET

BSCG requests the opportunity to address the planning committee when this application is determined.

I am writing to object to the above application. Please note that BSCG is sending separate letters of objection covering different aspects of the application.

Notwithstanding that it would be unlawful to extend the Planning Permission in Principle in our view, we wish to draw to your attention the following observations relating to the various significant changes to baseline conditions at the site and related factors.

Planning Condition 1

Planning Condition 1 is fundamental and should not be varied. It prevents any development beyond the first 630 houses until a review of the impacts of that phase of the development has been undertaken. The full review of the impact of the first 630 dwellings has consistently been deemed essential by both CNPA officers and Board members on every occasion that the ACM proposal has been considered, for reasons of impacts on landscape and ecology.

However, the applicant is now proposing that the wording of condition 1 is varied so that it includes no requirement for a review of that first 630-house phase of the development but instead it includes "a review of potential ... impacts ... in respect of those phases beyond 630 residential units". This proposed variation removes an environmental safeguard and is to the detriment of natural heritage and landscape. Further, we note that the applicant does not provide a rational justification in planning terms for this variation.

Inadequate Environmental Information

There has been a history of inadequate baseline information at the ACM site. For example, some surveys were not available to inform the committee's views when the planning committee determined the ACM application in 2010 nor when they reviewed it in 2014.

In order to renew the PPIP, the CNPA as the competent authority must have sufficient environmental information. We disagree with the applicant's claims that the Environmental Statement that was provided in 2009 and some more recent surveys, adequately meet this need. We also disagree with the view that the environmental information provides a reliable basis on which the PPIP may be re-determined.

There are still no comprehensive surveys that cover all the areas within the red line boundary. Most surveys only partially cover this area.

Given the need to properly assess impacts and identify mitigation options, a higher proportion of surveys should have included a buffer zone beyond the red line boundary, especially for such a major proposal.

Many of the surveys are seriously out of date, having been undertaken prior to 2009. Even some of the more recent ones are so dated that they do not comply with the CNPA's Supplementary Planning Guidance which requires surveys to be kept reasonably up to date. To go against these guidelines would be setting a precedent that conflicts with the 1st aim of the National Park.

These surveys have not effectively been updated, as apparently claimed. The recent surveys are largely focused on different areas and some simply target species or groups that were previously neglected.

Some surveys include significantly inaccurate information that has not been corrected even after this has been pointed out to the CNPA. It is our firm view that the CPNA should not be relying on such an outdated Environmental Statement, that includes fundamental errors.

Implications for River Spey

The Freshwater Pearl Mussel (*Margaritifera margaritifera*) is critically endangered globally. It is a keystone species and one of the designated interests of the River Spey and is vulnerable to even low levels of pollution. The unusually high water quality of the River Spey contributes to this river's status as a recruiting river in which highly sensitive juvenile mussels can survive. This adds significantly to the importance of this river for pearl mussels.

The fact that the Cairngorms area supports significant populations of FPMs was one of the special features contributing to its designation as a National Park. FPM is short-listed on the Cairngorms Nature Action Plan.

There are significant changes since the 2009 ES regarding FPM. These include: the publication of a water quality standard providing guidance on FPM monitoring (BSI 2017); a report by the James Hutton Institute in 2014 and new evidence of serious decline of the FPM population in the Spey (SNH report).

There is now, for the first time, a water quality standard providing guidance on monitoring freshwater pearl mussel populations and their environment (BSI 2017). This represents a significant new material consideration and has relevance to international obligations to safeguarding this globally threatened species on the Spey.

The James Hutton Institute report (JHI, 2014) emphasises that “The existing Aviemore WWTW [Waste Water Treatment Works] discharge is affecting water quality” and “Absences in the FPM [freshwater pearl mussel] population were found to be significantly associated with the location of inputs from pipes and drains to the river.” This new evidence makes it plain that development within the CNP is already having a damaging impact on FPM. Such decline in water quality is a major contributor to the globally threatened status of FPM.

There is a lack of scientific evidence as to what constitutes safe limits of pollutants for juvenile FPMs. It is therefore appropriate to adopt a precautionary approach, especially for such a significant FPM population and large scale development.

In this context it is alarming that the proposed sewage arrangements for ACM would pump ACM's sewage to the existing Aviemore Waste Water Treatment Works, thus roughly doubling its load.

It can no longer be reasonably claimed that the Spey FPM population is in favourable status (see SNH report). There has been a major decline in FPM numbers on the Spey. This is a further new material consideration. The ACM proposal will exacerbate the factors that are believed to have caused this decline.

In light of the JHI report and the documented declines, it is evident that a radically new approach is needed to safeguard FPM. In view of the documented grave decline in FPM it is no longer acceptable to provide planning permission in principle without a definitive view on the impacts of the proposal on the integrity of the Spey SAC.

In relation to this, the need for a Master Plan that could assist in determining impacts takes on a new urgency. Such a plan would allow for better assessment of the impacts of the proposal on the integrity of the Spey SAC. An agreed Master Plan needs to be provided before, not after, a decision on the S42 application is taken in order to inform that decision process.

We understand that Storm Frank caused significant losses to FPM populations on the River Dee. The Spey too is susceptible to extreme flooding events exacerbated through climate change, which could impact on FPM. However, the Spey is less susceptible to extreme flooding events than many rivers, as it benefits from the moderating influence of Insh Marshes. When considering long term strategies for safeguarding viable FPM populations in Scotland and the Cairngorms NP, the degree of protection the Spey enjoys from extreme storm events adds significantly to its importance. The responsible and precautionary management of the Spey is of greater importance to the authorities than previously understood, given that a higher incidence of extreme events can now be anticipated.

At a national level, there have been continuing problems for FPM since 2009; these include a major pollution incident associated with a hydro scheme at Glen Lyon that destroyed very large numbers of FPM; and other losses due to floods, poaching and low water levels.

The increasing effects of climate change are also liable to lead to warmer water which favours *Ranunculus* growth that is believed to be very damaging to FPM. In addition, more low water flows (associated with climate change) may expose FPM which can be rapidly fatal, as well as raise pollution

levels which is damaging to FPM and beneficial to *Ranunculus*.

Diffuse pollution is a threat that has not been modelled, despite much of the land being freely draining sands and gravels. 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.

In addition to FPM, other wildlife, including other designated features of the Spey SAC are susceptible to water quality impacts.

Capercaillie

We have long been concerned about the over-reliance on mitigation to address the issue of recreational impacts on this Annex 1 species that is one of our most endangered birds. Disturbance impacts are inevitable given the proximity of the proposed new town to woodlands and the size of the proposal. We have no confidence in mitigation measures being effective enough to sufficiently reduce adverse impacts.

New material considerations include the following.

Since the ES 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.

Rothiemurchus and Glenmore are now among the most important forests for capercaillie. These are the major forests closest to ACM.

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, and so reducing the area of habitat effectively available to capercaillie.

Off-track recreation has been growing substantially in popularity, including mountain biking and running. This significantly reduces the effectiveness and relevance of mitigation measures that seek to influence which tracks people use.

The effective extinction of capercaillie from LLTNP can be associated with human disturbance.

The CNPAs Capercaillie Framework is a new (2015) policy document. It reflects a significant increase in concern and emphasises that there are growing challenges.

The dualling of the A9 is anticipated to bring higher numbers to the Glenmore corridor and the woods of Strathspey in general. Woods are also being subject to increased disturbance through the Government's drive to get more people active in the countryside and the CNPA's Active Cairngorms

initiative.

Various new developments have been given planning consent within and close to capercaillie habitat. These add to disturbance, and include a development within 200m of an SPA for capercaillie at Glenmore. On this Forestry Commission site the CNPA (as planning authority) has continuing problems in enforcing mitigation measures deemed essential by SNH to mitigate impacts on capercaillie.

Heathland Communities

The NVC habitats map provided is significantly inaccurate. It cites communities that are very clearly incorrect, for example H18 *Vaccinium myrtillus-Deschampsia flexuosa* heath and H9 *Calluna vulgaris-Deschampsia flexuosa* heath. Both these communities are wrongly identified on floristic grounds. In addition, the distribution of H9 is described in Rodwell as "*The characteristic sub shrub vegetation of acid and impoverished soils at low to moderate altitudes through the Midlands and northern England. The relatively cool and wet climate of this part of Britain has some influence on the floristics of the community but much of its character derives from a combination of frequent burning and grazing with heavy atmospheric pollution around the industrial conurbations of the region.*" This gives a flavour of the extent to which this community is misidentified.

The NVC habitats document omits a restricted heathland community that is present on the site (in addition to H12). SNH identified that the community H16 *Calluna vulgaris-Arctostaphylos uva-ursi* heath is present on the site. There are relatively few designated sites of this heath habitat in Scotland. The only area of this habitat that is designated in Strathspey is the SSSI at Tulloch on Abernethy. This community at ACM supports *Pyrola media*, abundant *Genista anglica*, a very rarely recorded fungus on bearberry leaves. There are also associated invertebrate species of conservation importance, such as Small Dark Yellow Underwing.

This heathland at ACM supports specialist species also found at Tulloch and contributes to the long-term viability of the Strathspey populations. The ACM site lends connectivity and resilience to the SSSI, and removing it would further fragment this significant habitat. These impacts have not been assessed and the proposed mitigation does not mitigate for this habitat nor for its specialist associated species.

Biodiversity Value of the Site

ACM supports a large number of Scottish Biodiversity List species and species that have been recorded at only a few sites in Scotland. The CNPA should not disregard the high biodiversity value of this site by placing reliance on inaccurate, incomplete and out of date surveys.

Yours sincerely,
Gus Jones (convenor)

Matthew Taylor
Cairngorms National Park Authority
14 The Square
Grantown on Spey
PH26 3HG

9 April 2017

BY EMAIL ONLY to : matthewtaylor@cairngorms.co.uk; planning@cairngorms.co.uk

Dear Mr Taylor

17/0086/DET: Section 42 Application to vary Condition 1 of Permission in Principle ref 09/0155

We are instructed by the Badenoch and Strathspey Conservation Group ("BSCG") to advise, and make representations on their behalf, on this planning application.

In summary, what we detail below is that;

- 1. Permission in Principle 09/0155 ("the PIP") has now lapsed. This Section 42 application is therefore invalid and any 'permission' granted pursuant to it would also be invalid and unlawful, and;**
- 2. If this application is determined then it must be refused because there is no proper planning purpose behind it. Further and in the alternative to 1. above, any permission granted pursuant to this application would be unlawful.**

Furthermore, the information in the CNPA 'EIA Regulations' advertisement dated 16 March 2017 in The Strathy newspaper is incorrect and misleading in how it describes the effect of this Section 42 application and the possible CNPA responses to it. The advertisement is therefore contrary to the statutory requirement for accurate publication of planning application details and relevant procedures.

1. This Section 42 Application is not valid because the Permission in Principle to which it relates has lapsed.

The PIP dated 12 March 2014 was subject to a number of conditions requiring details to be submitted to and approved by the CNPA before any development could begin. The PIP therefore falls within the statutory definition of Section 59(1), Town and Country Planning (Scotland) Act 1997 (as amended) (the "TCPA") which also provides that an application or applications for approval of all matters specified by condition must be made within three years of the date of the permission. Only if an application for approval of conditions made within three years is refused or unsuccessfully appealed does a further period of six months apply for a further conditions application to be made outside the three year period. Development pursuant to a permission in principle can only commence within two years of the approval of all of the matters specified by condition.

Whatever one chooses to call the provisions of Section 59(2),(3) and (4) - they are statutory conditions limiting the time period, duration or validity of a permission in principle.

In this case, only one application (2014/0169/MS) for approval of some, but not all, of the specified conditions was submitted before the expiration of three years from the date of the PIP. That application was not refused or approved, but withdrawn.

Now over three years after the date of the PIP, 12 March 2014, no applications for approval of the specified conditions have been approved, refused or are still live. The time limit for the PIP imposed by Section 59 has now expired and the PIP has lapsed. It is no longer a valid planning permission and no longer capable of implementation.

The validity of the current Section 42 application (17/0086/DET) (the "Section 42 Application") in the context of the lapsed PIP must be considered by reference to the Section itself.

Section 42(1) provides that; *This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.*

Subsection (4) makes clear that; *This section does not apply if the previous permission was granted subject to a condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.*

Section 42(4) obviously applies in this case. *The previous permission [the PIP] was granted subject to a [statutory] condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.*

It is possible that the guidance in *Planning Series Circular 3/2013; Development Management Procedure* (the "Circular") has caused confusion on this point - that is addressed in more detail below - but there is no statutory authority to undermine or contradict the clear meaning of Section 42(4) or its application to this case.

Annex I of the Circular deals with Section 42 applications; paragraph 9 is as follows.

9. In terms of section 42(4), section 42 does not apply if the permission was granted subject to a condition as to the time within which development was to be begun, and that time period has expired without the development having been begun. Following changes made through the Planning etc. (Scotland) Act 2006, there will be limited circumstances where this will be the case.

This reinforces the statutory effect of Section 42(4) as we have stated it. The last sentence of this paragraph is not explained and in view of the legislation is difficult to understand.

Paragraph 10 of Annex I of the Circular reads;

10. Since 3 August 2009, the duration of a planning permission is specified in section 58 or 59 of the 1997 Act as appropriate, as are the time limits for making applications for requisite approvals under a PPP. The duration of a planning permission (and in the case



of a PPP the time limits for making applications for requisite approvals) can be altered by direction but (other than for the purposes of appeals or local reviews) they are not conditions subject to which the previous planning permission was granted. Section 42 therefore does not apply in relation to non-compliance with these timescales.

Does this mean what it says, that Section 42 does not apply in relation to non-compliance with these timescales? If so, we agree with that.

Or does it mean, with opposite effect, that Section 42(4) does not apply in relation to non-compliance etc.? If so, then that is not what it says.

This paragraph is therefore confusing and ambiguous. It is certainly not authoritative. The last two sentences are particularly misleading because whilst Section 59(6) expressly affirms that a *direction ... is to be treated as a condition* for the purposes of appeals or local reviews, there is no statutory provision in Section 59 or anywhere else to assert that the Section 59(2) time limits are not conditions, and in effect that is exactly what they are.

In any case, the paragraph 10 guidance on *directions* does not apply here because the duration of the PIP was not imposed by a *direction* (under Section 59(5)) but the statutory time limit under Section 59(2)(a)(i). There is no statutory authority to suggest that Section 42(4) does not apply in relation to non-compliance with Section 59(2) time limits on a permission in principle.

The purpose and effect of Section 59(6) is to provide a right of appeal against a *direction*, or the planning authority's election not to make a direction, to alter the Section 59(2) time limits, *except where as in this case* the authority has elected not to make a direction to alter the 3 year time limit under Section 59(2)(a)(i); *that cannot be appealed*. The Scottish Parliament clearly intended that the default 3 year time limit, where the planning authority elects not to alter it, should not be subject to appeal. It is therefore a perverse interpretation of the legislation to allow that 3 year time limit to instead be avoided by way of a Section 42 application.

The Circular is not statutory and is not a statement of the law. Where it conflicts or is inconsistent with legislation, it is the statutory provisions that take effect.

The CNPA's own guidance to applicants appears to reflect the statutory position.

The *Cairngorms Planning Advice Note - Applying to change an existing planning permission* of May 2014 advises on four possible options, with a "*Section 42 Application [being] to change conditions attached to the original planning permission [and that] applications to change conditions with time limits will no longer be accepted.*"

The note explains the fourth option as "*A new application for full planning permission*" which is of course what is required in this case.

The acceptance of the Section 42 Application as a valid application and the CNPA's willingness to consider and determine it is not only contrary to statute and unlawful, but is inconsistent with CNPA's own *Planning Advice Note*. Any permission issued pursuant to the Section 42 Application would be vulnerable to legal challenge.



2. If the Section 42 Application is determined then it must be refused because there is no proper planning purpose behind the proposed modification of Condition 1.

The condition, in fact the only condition, of the PIP that the Section 42 Application seeks to modify is Condition 1;

No development beyond 630 residential units shall commence until the developer has undertaken a review of the impact of the development to that stage on landscape and ecology, that review has been completed and submitted to CNPA acting as planning authority for approval in writing and such approval has been given.

The fundamental importance of Condition 1 to the PIP cannot be overstated.

That importance, and the significance of Condition 1 to the approval of the application can only be understood by reference to the three reports by the then Head of Development Management, Don McKee, and the minutes of Planning Committee Meetings convened to consider those reports (on 11 June 2010, 23 August 2013 and 6 December 2013) into planning application 09/0155. The evolution of Condition 1 can be summarised as follows.

The origin of the Condition is in the detailed consideration of the application by the CNPA's Heritage and Land Management Group (HLM) and its comments and recommendations on landscape and ecology issues. HLM concerns are recorded at paragraphs 86 and 263 of the June 2010 McKee Report, and paragraph 295 states that;

"The Environmental Impact Assessment identifies significant adverse impact for a prolonged period on landscape in particular and it would not be possible to say that a development with 1500 residential units complies with this aim: indeed it would conflict with it. Following discussions with the applicant's advisers, if the numbers are reduced to a ceiling of 1100 units, with a major review after 630 units, and other measures are required by condition to further reduce impact and ensure delivery of the applicant's aspirations under this aim, then it is considered that the conflict can be resolved and the development can meet the aim."

At the 11 June 2010 Planning Committee Meeting, only after an assurance by Mr McKee that if the upper limit were increased to 1500 dwellings Members would still have an opportunity to review the number and impact again, did the Committee resolve to approve the application subject to (then) Condition 2 requiring *"... a full review of the impact of the development on landscape and ecology to be undertaken upon the completion of 630 units and interim reviews at timescales to be stipulated thereafter by CNPA acting as planning authority ...[and] .. After each review further development will only take place with the approval of the CNPA acting as planning authority."*

For various reasons a decision was not issued pursuant to that resolution and the application went back to committee in August 2013. At paragraphs 153-156 of his August 2013 Report, Mr McKee re-emphasised the need for a detailed and comprehensive review mechanism and that *"Importantly, there will be a full review of the impact of the development on landscape upon completion of 630 residential units, as this was identified as a critical point in the environmental impact assessment (para.154)."*



Consequently, a slightly revised Condition 2 which retained "a full review of the impact of the development on the landscape upon the completion of 630 residential units", was recommended and supported by committee on 23 August 2013.

Consolidation and minor revisions approved by committee in December 2013 produced Condition 1 of the PIP that the Section 42 Application now seeks to overturn.

Further development *entirely conditional upon a review of the impact of the development after completion of 630 residential units* has been a fundamental condition and a feature of the CNPA's consideration of the An Camas Mor proposal from the outset. Moreover, and as the 2010 McKee Report makes clear, the applicant has been fully aware of, and involved in discussions about, that review since at least 2010, yet the Section 42 Application completely ignores this.

The applicant proposes to replace Condition 1 with the following;

Condition 1

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.*

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.*

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).*

Proposed Condition 1a) - the Site-wide Phasing Plan - is superfluous because existing Condition 2.c. already requires that the Masterplan includes a "Detailed phasing plan and mechanism for detailed review of that phasing plan etc, etc."

The applicant's proposed Condition 1a) duplicates, but with less clarity and rigour, the existing Condition 2.c., and therefore serves no planning purpose.

Proposed Condition 1b) is also superfluous because *it* duplicates, but again with less clarity, existing Condition 3 which deals with the matters concerned far more comprehensively. Condition 1b) therefore also serves no planning purpose.



The references in Condition 1 b) to "630 residential units" and a "review" are spurious. This proposed condition ignores and seeks to abandon the *full review of the impacts upon completion of 630 units* that has been a feature of every stage of the CNPA's consideration and determination of the proposal, and an essential condition of the PIP.

Proposed Condition 1c) is already covered by the comprehensive requirements for a Masterplan in existing Condition 2, and in particular by the detailed requirements of Condition 2. y., so this too is entirely unnecessary and serves no planning purpose.

Furthermore, neither the proposed condition nor the applicant's covering letter of 20 February 2017 addresses the three Reasons for Condition 1 set out in the PIP;

Based on the conclusions of the Environmental Impact Assessment; the site has been demonstrated to have capacity for 630 residential units without having a prolonged significant adverse impact on the landscape and 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, and;

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, and;

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

Even if it were valid, the Section 42 Application and the proposed new condition has no merit and should be refused. The modification applied for serves no planning purpose and provides no planning reasons why the existing Condition 1 should be modified.

Further and in the alternative to our representations on the validity of the Section 42 Application, any permission issued would on its merits be open to legal challenge because there are no reasonable grounds for this application to succeed.

To any impartial and objective observer the real reason for the Section 42 Application, as evidenced in the covering letter, is that the applicant has run out of time to make the necessary applications for approval of conditions and the PIP has lapsed.

What this Section 42 Application is really seeking, via an unlawful 'back door' route is a new permission with new time limits. The only lawful way to achieve that, as the CNPA *Planning Advice Note* makes clear, is by a new planning application.

Yours sincerely



Peter Edwards

Planning Progress

peteredwards@planningprogress.co.uk



2017/0086/DET 17/3/17

The Brae,
Insh,
Kingussie,

20 MAR 2017 PH21 INT

Dear Planners,

I write concerning An Camas Mor proposed development which I consider wholly inappropriate with a National Park. This new settlement seeks to destroy the environment which it is presumed the homeowners seek. It is a gross overdevelopment of a site which has not been properly assessed.

This is good grazing land + could be of environmental benefit both to residents & visitors. I am sad that a local landowner should put personal gain & profit before the preservation of the countryside treasured by our ancestors, spurned on, no doubt, by construction companies who are the true beneficiaries.

The existing model of allowing filling in + small developments in existing communities, and keeping to the villages, not dotted around the strath, has served well.

I am still exercised by the unfortunate

change from the pre-National Parks
requirements of local materials
one and a half storeys
within settlements
has been abandoned, & no justification has
ever been provided.

Yours sincerely,



Comments for Planning Application 2017/0086/DET

Application Summary

Application Number: 2017/0086/DET

Address: An Camas Mor Inverdrue Aviemore

Proposal: Application under Section 42 to variation condition 1 of Planning Permission in Principle (CNPA Ref 09/155/CP)

Case Officer: Matthew Taylor

Customer Details

Name: Miss Jane Meek

Address: 75 Glasgow Road Blanefield Glasgow

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I strongly object to this Section 42 application for the following reasons. The PIP granted in March 2014 was valid for 3 years and has now expired. The PIP was conditional upon the developer submitting key information within that 3-year period. The developer has failed to do so. Not only has the PIP lapsed, but a new Local Plan has replaced the plan that was in force in 2014. Under these circumstances the developer should now submit an application for an entirely new PIP. How can CNPA think it acceptable to give backing to a Section 42 application that seeks to get round this situation in such a devious way? In particular, how can CNPA in good conscience accept the deletion of the original key condition - imposed by CNPA - that a full review of the impact of the first 630 dwellings would be needed before further development could take place? This is a National Park and a highly contentious proposal such as An Camas Mor must not be seen to be pushed through in this underhand way, especially when the effects on landscape and ecology are potentially so serious. This is outrageous, shoddy and deeply disappointing to anyone who cares about fairness and about preserving our landscapes and ecology from permanent and devastating damage.

From: Dave Windle
Sent: 8 Apr 2017 13:40:06 +0100
To: Planning
Subject: Planning Application 2017/0086/DET

Dear Planning Officer,

I am writing to object to the above application on behalf of the North East Mountain Trust (NEMT). NEMT represents hill walkers, climbers and other groups of people who visit and enjoy Scotland's mountain land. Individual and club membership is now over 1000 people. NEMT aims to protect wild land in Scotland from inappropriate developments for all who enjoy visiting such places and has a particular commitment to the greater Cairngorms area.

NEMT has three main points to make.

1. It is unacceptable to remove the requirement for a review after 630 buildings have been constructed. This requirement was made by the CNPA after careful consideration and consultation with stakeholders. It is clearly a wise and prudent requirement as this is a completely new development and to pause to see what can be learnt after completing a substantial phase before committing to finish the development makes complete sense. The developer has provided no rational basis for this request.
2. Time limits on planning permissions have a purpose. They are needed to ensure that all considerations are relevant to the proposal and that all assessments are current. Once, planning permissions are allowed to lapse, then new up to date assessments are needed. We believe that should the committee approve the proposal, they will be acting in contravention of their own policies.
3. Things have changed since the original permission was granted and the requirements for affordable housing become clearer and more acute. Now is a good time to require a reapplication and, hence, a re-evaluation of the most suitable ways of providing such housing in this area.

Yours sincerely,

David Windle, Chairman of the North East Mountain Trust.

From: M V Bell
Sent: 10 Apr 2017 16:46:31 +0100
To: Planning
Subject: An Camas Mòr 2017/0086/DET

CNPA,
14 The Square,
Grantown-on-Spey,
PH26 3HG

10 April 2017

Dear Sir,

Planning application number 2017/0086/DET An Camas Mòr

I strongly objected to this planning application when it was first proposed. It was wholly inappropriate for a National Park and clearly in breach of the spirit of what should be the guiding principle of a National Park, namely protecting the outstanding natural environment, landscape and wildlife for future generations.

I object to the present application on the following grounds.

- 1) The applicant is using a cynical abuse of the planning system to submit a new application. The previous Planning Approval in Principle (09/155/CP) expired on 13th March 2017 and three weeks before this the applicant submitted, an "S42 Planning Application to vary condition 1 of Planning Permission in Principle 09/155/CP Development of new community (up to 1500 residential units.....)". This condition was made by the CNPA at the time of approval and required a full review of the impact of the first 630 dwellings before further development could take place. The applicant now wants this removed. This is not acceptable. This application should not be used to obtain a new Planning Permission in Principle for An Camas Mòr, a controversial and sensitive development. It is a misuse of the planning legislation. The applicant is trying to use a back door method to get a new Planning Permission in Principle, having run out of time on the one they have had for three years. It is against the CNPA's own policies to use such a mechanism and to use it in such a highly controversial development such as this is will undermine every commitment the CNPA has made about this development.
- 2) It is unacceptable to remove the requirement for a review after 630 dwellings since this was decided by the CNPA after a great deal of thought and discussion by its planners, committee and board members having carried out the required statutory consultations. In such a location, where it was recognised the development would impact on landscape, heritage and ecology it is wrong to remove it.
- 3) Planning Permission in Principle for the development at An Camas Mòr should be rejected as a consequence. The CNPA is receiving feedback that people want to see greater emphasis on the number one aim of the National Park. A new housing development in such a location is not sustainable, there is no evidence at all that it will fulfil any of the "good things" it aspires to, it will take habitat and landscape away that is irreplaceable. There are other, far more suitable

ways, to provide affordable housing and business opportunities within the National Park that are in keeping with the aspirations of a National Park.

Yours sincerely,

Michael Bell

Dr M V Bell
48 Newton Crescent,
Dunblane,
Perthshire
FK15 0DZ

Comments for Planning Application 2017/0086/DET

Application Summary

Application Number: 2017/0086/DET

Address: An Camas Mor Inverdrue Aviemore

Proposal: Application under Section 42 to variation condition 1 of Planning Permission in Principle (CNPA Ref 09/155/CP)

Case Officer: Matthew Taylor

Customer Details

Name: Dr Maureen Sturrock

Address: Kinrara Gowanlea Road Comrie

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I wish to object in the strongest possible terms to the above planning application. The original planning permission was controversial in nature particularly as such a large development was planned in a National Park and if completed, is likely to lead to a further increase in the proportion of holiday rental accommodation rather than houses for local residents. This is already much higher than the national average, even for tourist destinations

The approach used by the applicants to renew the application and at the same time, as I understand it, also to amend the permission so that no review of the situation is required after the first 630 houses are developed is unacceptable.

I have spoken to friends who are familiar with the planning regulations in the English National Parks who cannot believe that such a large new development has been planned within a National Park of such special and unique importance.

As a frequent visitor to the area, I fear that Aviemore and its environs are already overdeveloped and that in the longer term the natural environment will be spoiled by unsustainable excessive development as proposed.

I therefore believe that the application should be refused.

Maureen Sturrock

From: Neil Mackenzie
Sent: 11 Apr 2017 11:19:51 +0100
To: Planning
Subject: 2017/0086/DET

Dear Sir,

Re: 2017/0086/DET. *Application under Section 42 to variation condition 1 of Planning Permission in Principle (CNPA Ref 09/155/CP) An Camas Mor, Inverdrùie, Aviemore.*

I would like to object to the above application to vary Condition 1 of the An Camas Mor PIP. As this is such a very large development in an area of countryside it is imperative that the original conditions, as determined by the CNPA original approval, are strictly adhered to. It is entirely sensible and appropriate that a review of the impact of the first phase of the development on the landscape and ecology of the area should be undertaken before any further work has started. The developer has not provided any sound reasoning in support of the application. In fact, as time passes and situations change and new information is available, the requirement for a review becomes even more essential.

It is also concerning that the developer has failed to undertake all the necessary surveys and provide the essential information required under the conditions of the original application. As this planning application has now lapsed the correct procedure would be for the developer to re-submit a fresh application.

Yours sincerely

Neil MacKenzie

Garradh Beithe
Gorthleck
Inverness-shire
IV2 6YP

11 APR 2017

Cairngorms National Park Authority
14 The Square
Grantown-on-Spey
PH26 3HG

8th April 2017

Dear Sir

**Proposed housing development at An Camas Mor.
Application 2017/0086/DET**

I urge the CNPA to consider a range of alternative ways of providing affordable housing and business opportunities in the area. An Camas Mor is an unsuitable area for development on the scale proposed by the application because it will remove habitat and landscape that is irreplaceable and be unacceptably intrusive. I do not believe that the development is a proposal that the CNPA should be supporting and I strongly urge you to reject it and consider promoting much less intrusive ways of achieving limited sustainable growth in the Park.

Yours faithfully



Nicholas Hamilton

Mr N Hamilton
9 Avon Crescent
Broughty Ferry
Dundee
DD5 3TX

From: Roger Tozer
Sent: 11 Apr 2017 20:24:31 +0100
To: Planning
Subject: 2017/0086/DET

FAO Planning at CNPA

Dear sir,

2017/0086/DET.

I note that the applicant has submitted an S42 Planning Application to vary condition 1 of Planning Permission in Principle reference 09/155/CP. Condition 1, made by the CNPA at time of approval, required a full review of the impact of the first 630 dwellings before further development could take place. I see that the applicant now wants it removed. It would seem that the applicant is trying to secure a new Planning Permission in Principle, having failed to start work under the planning permission that has recently expired.

I object to this as follows:

1. This application must not be used to secure a new Planning Permission in Principle for An Camus Mòr. A development that is highly controversial and in an ecologically sensitive area. Planning Permissions are issued with strict time limits to ensure timely development. If the applicant cannot proceed in the timescale, then there is clearly something wrong, that may indicate the development is no longer in the public interest or no longer meets current planning practices. It would be against the CNPA's own policies to use such a mechanism, to give planning permission, especially so in such a highly controversial development.
2. I presume that considerable thought was given to the requirement that a review after 630 dwellings were constructed be undertaken. I cannot see that anything has changed to make this no longer necessary. In such a contentious location, it would be unacceptable to remove it.
3. This attempt to obtain Planning Permission in Principle for the development at An Camas Mòr should be rejected. It is increasingly recognised that the local need is for affordable housing and not for the many, larger houses which this development would provide. A new housing development in this location cannot now be justified, will destroy valuable habitat and is no longer in the interests of the National Park.

Yours faithfully,

Roger Tozer

R B Tozer

7 Barclay road,
Aviemore
PH22 1UH

Application Number 2017/0086/DET

I object to the above application for the following reasons;

1. With regard to Condition 1 of the original planning permission In principle (pip) it is not acceptable to remove the requirement for a review of the landscape, heritage and ecological impacts upon the proposed completion of 630 dwellings. This condition was decided upon by the Authority after much thought and discussion between its Planners, Planning Committee and Board Members who clearly thought it right that such a condition was in the circumstances appropriate. I urge the Board to maintain their original decision with regard to Condition 1.
2. The original pip has expired. Use of a Section 42 application to vary Condition 1 and to try and obtain a new pip is not valid, and it is a misuse of the planning legislation. The time limit with regard to the original pip was set for good planning reasons. It seems to myself that the Applicant realised too late that the time limit was approaching and is trying by misuse of the planning legislation to circumvent applying and trying to obtain a new pip. The Applicant if they feel that they want to go ahead with this development should submit a new application for a new pip. "Full stop, end of story"
3. This proposed development is not sustainable. Sustainable being as defined in recognised dictionaries, not the meaningless wording contained in the Park documentation which has "clearly" been written to in part justify allowing this sort of development to proceed. There is nothing sustainable about building on a "brown" field site involving the destruction of flora and fauna that has had the site as its home for many a year, and there is nothing sustainable about the consequent production of vast quantities of carbon dioxide resulting from the construction activities. In addition, the likelihood is that the development if it were proceeded with would become second homes and/or commuter homes (commuters to and from the likes of Inverness). There is nothing sustainable about the consequent increase in vehicle exhaust carbon dioxide emissions and other exhaust pollutant and particulates. There is nothing sustainable about the increased risk of injury and death to wildlife owing to the increased vehicle journeys that such a development would inevitably produce.

Thank you for being given the opportunity to comment.

I am Martin Ashdown of 124 Newlands Road East, Bettyhill, KW14 7SR

E mail 

Deirdre Straw

From: Martin Ashdown <[REDACTED]>
Sent: 10 April 2017 20:31
To: Deirdre Straw
Subject: RE: Comments for Planning Application - 2017/0086/DET

Thank you. I apologise for the following mistake that I made. In my objection, item 3 fourth line I referred to "brown". This should read "green"

Again, my apologies.

Martin Ashdown

Sent from [Mail](#) for Windows 10

From: Deirdre Straw
Sent: 10 April 2017 14:33
To: 'shmatthews@live.co.uk'
Subject: Comments for Planning Application - 2017/0086/DET

Dear Sir,

2017/0086/DET

Thank you for your contribution related to the above application. Please find attached the formal acknowledgment of its receipt.

Please note that your comments cannot be treated in confidence as they form part of the public record of the planning application. In addition, your comments will be published on the Cairngorms National Park Authority's website. This will take the form of your original letter. Care should therefore be taken with the information you provide. Anonymous comments will not be taken into account.

Kind regards

Dee.

Dee Straw
Planning Systems Officer
Cairngorms National Park Authority
14 The Square
Grantown-on-Spey
PH26 3HG

Direct Number 01479 870517
Switchboard 01479 873535

www.cairngorms.co.uk

Get the latest news - sign up for the ebulletin and follow us on twitter @cairngormsnews
Before printing, think about the environment

2 Ember Farm Way East Molesey Surrey KT8 0BL

Email: [REDACTED]

Tel: [REDACTED]

11 April 2017

Cairngorms National Park Authority
14 The Square
Grantown-on-Spey
PH26 3HG

Your ref: 2017/0086/DET

OBJECTION TO
Application under S 42 to variation condition 1 of Planning Permission in Principle
(CNPA Ref 09/155/CP) - An Camas Mor Inverdrue Aviemore

I hereby object to the above planning application as the Applicant, An Camas Mòr LLP has had ample time, 3 years, to take matters further under the original planning permission in principle. It is using this planning application as a back-door method to gain new planning permission which is an abuse of process; and against CNPA's own policies to use such a mechanism.

Further, the whole Planning Permission in Principle for the development at An Camas Mòr should be rejected not only because of the time that has elapsed but also because the original Permission in Principle should never have been granted in the first place as it drives a coach and horses through the legislation which set up the CNP which provides that if there is a conflict on any matter the aim of conservation and enhancement of the natural and cultural of the area must be given greater weight, which has so far been ignored.

There can not be a clearer reason why this planning application is a step to far and should not be allowed to progress.

[REDACTED]

Robert Shaw

12 APR 2017

Parkneuk

Tarland

Aboyne

AB34417

10 April 2017

Reference Application No.

2017/0086/DET

Dear Sir,

I write to register my objection to the above planning application.

The original application for development in Cairn Hill is controversial and sensitive at the planning approval expires 13 April 2017. It is inappropriate to vary an condition of the planning permission is an undoland and undemocratic misuse of the planning legislation.

Besides this, the basic principle of this application for housing development in this area is not in keeping with the aspirations of a National Park. The proposed development is not sustainable and it will remove irreplaceable habitat and landscape for ever. The remit of a National Park is surely to preserve the environment rather than to destroy it.

Yours faithfully,



A. CONNER FOR

12 APR 2017

Alan Jones

Cairngorms National Park Authority
14 The Square
Grantown-on-Spey
PH26 3HG

3 Green Mount
Upton
Wirral
Merseyside
CH49 6NR

Ref: 2017/0086/DET

8 April 2017

Dear Sirs,

I am writing to object to the planning application for large-scale housing development at An Camas Mòr within the Cairngorms National Park.

I have known Aviemore since it was a small village serving the railway junction and the local farming and forestry community. Since then, I have seen it grow into significant town, already out of sympathy with the National Park. This was largely due to the development of the skiing industry on Cairngorm Mountain. There can be no justification for further large-scale development which, I am convinced that, in practice, will increase holiday accommodation rather than affordable housing for local population. Tourism is now the main industry, but tourists come primarily to enjoy the natural beauty of the landscape and the wildlife, which are threatened by development on this scale in this location. Further housing for employees in the skiing industry is not required because of the limitation of facilities on the mountain which are now threatened by climate change. Tourists should be encouraged to use hotels and guest houses rather than build numerous private properties which remain empty for much of the time. Examples will be found in Norway where this sort of development has got out of hand.

I was disappointed that the CNPA had allowed conditional development of 630 properties (09/155/CP), which was the thin end of the wedge. As I understand it, the original planning application has now lapsed because the conditions have not been met. I trust that the CPNA will ensure that it stays that way and will not allow the rules to be bent.

I hope that any future application for a large-scale housing development will be considered very carefully to ensure that it conforms to the principles of a National Park and the CNPA's own policies.

I understand that The Cairngorm Campaign has submitted a detailed objection, so I will not go into detail here. The Cairngorm Campaign has also made a strong case on numerous environmental grounds showing the potential harmful effects of this development and how it contravenes the principles of a National Park. I trust that the CPNA will take due note of the case presented by the Cairngorm Campaign after detailed consideration.

Yours faithfully,


Alan Jones

2 APR 2017

CNPA
14 The Square
Grantown-on-Spey
PH26 3HG

"ARNEWOOD"
8 CLEVEDEN ROAD,
KELVINSIDE,
GLASGOW,
G12 0NT
TEL. [REDACTED]

11 April 2017

Dear Sirs,

AN CAMAS MOR, PLANNING APPLICATION, 2017/0086/DET

OBJECTION

I understand that the applicant wishing to develop a New Town on the Spey opposite Aviemore has made an application to vary the original Planning Permission in Principle (09/155/CP – "PPP"), which has now expired.

As no work has yet started on this horrifying project, it appears that the purpose of this recent application is primarily to try to extend the period of the PPP by the back door, which would be a clear mis-use of the purpose and intention of the planning process.

I wish to **object** to this application.

The time-limit on the original PPP was determined for a purpose, and as more time passes since the original application was approved by the CNPA, the matters which were considered then become more and more outdated. I believe it would be entirely against the CNPA's own principles to allow such a cynical attempt to subvert its own processes.

The new application requests that the CNPA remove the requirement to review the impact of the first 630 dwellings which may be built as part of a planned development of up to 1500 houses. I am sure that the CNPA made this condition, which appears only sensible and reasonable, as part of its comprehensive plan to ensure the New Town complies with its specific requirements and conditions. To remove such a relatively modest, and apparently reasonable, condition, and to allow the whole New Town to be constructed without any part-way review, would be very risky. The CNPA would lose most of its practical power to control the development, with obvious consequent threats to the environment, wildlife and landscape.

I believe that the original grant of PPP was a severe mistake, which would bring irreparable damage to the natural heritage of the Cairngorms. I have heard members of the CNPA say they do not want to "trash the park", while being well aware that a large New Town in this location would do just that. There are many ways of finding more suitable small sites for sensitive, and affordable, house-building than a huge development which will have the effect of doubling the size of unlovely Aviemore, and inflicting permanent damage on the wildlife and landscape of the Spey Valley. The

CNPA should focus more than ever on the first aim of the National Park, "to conserve and enhance the natural and cultural heritage of the area" rather than on an inevitably unsustainable building project.

What does it say on the walls of the Scottish Parliament? *"The battle for conservation will go on endlessly. It is part of the universal battle between right and wrong."*(John Muir)

It is time for the CNPA to do right, and reject the application.

Yours faithfully,

A large black rectangular redaction box covering the signature area.

J M T Ambrose

A black rectangular redaction box covering contact information.

From: Heather Marshall
Sent: 13 Apr 2017 20:38:32 +0100
To: Planning
Subject: 2017/0086/DET An Camas Mòr

Dear Sir/Madam,

I am writing to OBJECT to the proposed development at An Camas Mòr (application no. 2017/0086/DET) for the following reasons:-

- 1) This application should not be used to obtain a new Planning Permission in Principle for An Camas Mòr, a controversial and sensitive development. It is misuse of the planning legislation. Time limits on Planning Permissions are there to ensure the relevant planning regulations, policies and conditions are relevant, that public interest is taken into account and current thorough environmental assessments according to the changing conditions are made. It is against the CNPA's own policies to use such a mechanism and to use it in such a highly controversial development such as this is will undermine every commitment the CNPA has made about this development.
- 2) It is unacceptable to remove the requirement for a review after 630 dwellings since this was decided by the CNPA after a great deal of thought and discussion by its planners, committee and board members having carried out the required statutory consultations. In such a location, where it was recognised the development would impact on landscape, heritage and ecology, it is wrong to remove it.
- 3) Planning Permission in Principle for the development at An Camas Mòr should be rejected as a consequence. Time has elapsed since the previous approval and even more so than then CNPA is receiving feedback that people want to see greater emphasis on the number 1 aim of the National Park. A new housing development in such a location is not sustainable, there is no evidence at all that it will fulfil any of the "good things" it aspires to, and it will take habitat and landscape away that is irreplaceable. There are other, far more suitable ways to provide affordable housing and business opportunities within the National Park that are in keeping with the aspirations of a National Park.

I urge you to reject this application.

Yours faithfully,
Heather Marshall

Heather Marshall
Cragg Howe, Lyth, Kendal, Cumbria LA8 8DF

Comments for Planning Application 2017/0086/DET

Application Summary

Application Number: 2017/0086/DET

Address: An Camas Mor Inverdrue Aviemore

Proposal: Application under Section 42 to variation condition 1 of Planning Permission in Principle (CNPA Ref 09/155/CP)

Case Officer: Matthew Taylor

Customer Details

Name: Mr Alan Bratney

Address: 5 Paterson Road Aviemore

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: This new application should be rejected because the applicant is using it as a means whereby the original requirement to conduct a review into the impact of the first 620 houses should be abandoned and only subsequent developments should be subject to review. That isn't acceptable in a development of this size which has the potential to negatively impact on the landscape and ecology of the area in question.

Comments for Planning Application 2017/0086/DET

Application Summary

Application Number: 2017/0086/DET

Address: An Camas Mor Inverdrue Aviemore

Proposal: Application under Section 42 to variation condition 1 of Planning Permission in Principle (CNPA Ref 09/155/CP)

Case Officer: Matthew Taylor

Customer Details

Name: Mr George Allan

Address: 7 Bothwell Terrace Pitmedden Ellon

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I am writing as an individual, who visits the Park on a very regular basis, to object to the application.

I simply want to endorse what other objectors have addressed in fuller detail namely:

-it is not acceptable to remove planning condition 1 regarding the review. This was included for a good reason and that reason has not changed.

-a reapplication is needed as it is becoming clearer and clearer that there are better ways of providing affordable housing in the Park as demonstrated by national parks elsewhere in the UK.

-the time lapse is such that the original application is now seriously out of date.

With thanks.

From: Olwen Billington
Sent: 13 Apr 2017 12:29:43 +0000
To: Planning;Matthew Taylor
Subject: Objection to An Camas Mor, Inverdrue, Aviemore

Dear Sirs

We are writing to strongly object to the Planning Reference 2017/0086/DET. Application under Section 42 to variation condition 1 of Planning Permission in Principle (CNPA Ref 09/155/CP) An Camas Mor Inverdrue Aviemore.

There will be serious repercussions on:

- rare and protected wildlife and important habitats.
- The conservation status of capercaillie; capercaillie could be heading to extinction. With some 80% of the Scottish population now within the National Park, this would almost certainly lead to the Scottish population becoming extinct. The impacts of pursuing the An Camas Mor proposal on capercaillie, such as those from increased recreational disturbance pressure, has not been properly addressed and mitigation measures given the present state of our capercaillie population are completely inadequate and unrealistic.
- Freshwater Pearl Mussel: There is new information on the damaging impacts of sewage outflows on water quality and freshwater pearl mussels. These mussels are globally threatened and the Spey is a river of international importance.

Please do the right thing, protect the Cairngorm National Park and do not allow this project to proceed.

Olwen & Alan Bilington
Ellen Brae
Nethy Bridge
PH25 3DB

From: beryl leatherland
Sent: 20 Apr 2017 08:55:36 +0100
To: Deirdre Straw
Subject: RE: Ref 2017/0086/DET

> -----Original Message-----

> From: beryl leatherland [REDACTED]
> Sent: 17 April 2017 09:09
> To: Planning
> Subject: Ref 2017/0086/DET

>

> Dear Sir

>

> I am writing to OBJECT to application 2017/0086/DET

>

> Name: Beryl Leatherland

>

> Address:

>

> 57 Charles Way

> Limekilns

> Fife KY11 3LH

>

> My grounds for objection are as follows:

>

> The condition originally imposed by the CNPA authority when the An
> Camus Mor housing development was first approved, was that after the
> first phase of housing had been built there would be a review of the
> impacts of this on local features of natural heritage and other
> interests. This was very reasonable and in my view was overgenerous to
> the developer.

> The developer is obviously attempting to abuse the system and its
> loopholes. The original Planning Application in Principle ran out
> [13/03/2017] and they are trying to get a new one which will enable
> them to negotiate new timescales and conditions. They will obviously
> be looking to do this to their advantage, and this will certainly not
> be expected to be for the advantage of the local landscape and
> important natural heritage features.

>

> This is serious abuse of the planning legislation. If this is
> accepted, I consider that the planning authority is complicit in this
> abuse. The original condition was set having taken account of relevant
> regulations, assessments, policies and public consultation. It has to
> be remembered that this development was controversial and there was
> considerable objection to it. I consider that the condition set was
> pretty minimal,

> 650 houses is over a third of the number the developer aspired to, so
> it was a large development in its own right, in a National Park on a
> site with specific protected habitats and species, and the number of
> houses was both superfluous to the stated housing need locally and
> inappropriate on this scale. To attempt to water down and amend any
> conditions, after the work and thorough consideration put into setting
> them, is completely unacceptable.

>

> The time set for Planning Permission in Principle has elapsed, the

- > developer has had ample time to commence work. The Planning
- > Permission in Principle should now be withdrawn from the developer, in
- > accordance with nationally accepted planning legislation. The
- > planning authority should uphold the first Aim of the National Park,
- > which to many people is the most important one.
- >
- > kind regards
- >
- > Beryl Leatherland
- >
- > The information contained within this e-mail and in any attachments is
- > confidential and may be privileged. If you are not the intended
- > recipient, please destroy this message, delete any copies held on your
- > systems and notify the sender immediately. If you have received this
- > email in error, you should not retain, copy or use it for any purpose,
- > nor disclose all or any part of its content to any other person. All
- > messages passing through this gateway are checked for viruses but we
- > strongly recommend that you check for viruses using your own virus
- > scanner as Cairngorms National Park Authority will not take
- > responsibility for any damage caused as a result of virus infection.

Cairngorms National Park Authority
14 The Square
Grantown-on-Spey
Moray
PH26 3HG

By email only to planning@cairngorms.co.uk

13 April 2017

Dear Sir or Madam

2017/0086/DET: Application under Section 42 seeking planning permission for development at An Camas Mor, Inverdrurie, Aviemore

Thank you for consulting RSPB Scotland on this application made under Section 42 of the Town and Country Planning (Scotland) Act 1997.

We note that the application seeks a new planning permission for the same development as approved under 09/155/CP, but with different conditions from those attached to that previous permission. Annex I of Circular 3/2013 confirms that the effect of approving a Section 42 application would be such that a new and separate permission exists for the development. It also confirms that requirements set out in other legislation apply as for any application for planning permission - including the requirements of The Conservation (Natural Habitats &c.) Regulations 1994 ('the Habitats Regulations') and the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 ('the EIA Regulations').

Our response focuses on the likely significant effect of the development on capercaillie, a qualifying species of several nearby Special Protection Areas (SPAs).

We wish to stress that RSPB Scotland is not opposed in principle to the development of new housing in sustainable locations and of an appropriate scale in the National Park. However, **RSPB Scotland objects to the application as submitted**, on the grounds that the environmental statement (ES) does not contain any information on the likely significant effect on capercaillie and associated Special Protection Areas, nor on mitigation measures to address this effect. This means that the planning authority cannot give proper consideration to the likely significant effects of the proposed development on the environment as required by the EIA Regulations, nor carry out a sufficiently detailed appropriate assessment as required by the Habitats Regulations.

North Scotland Office
Etive House
Beechwood Park
Inverness
IV2 3BW
Tel 01463 715000
Fax 01408 715315
rspb.org.uk



The RSPB is part of BirdLife International,
a partnership of conservation organisations
working to give nature a home around the world.

Patron: Her Majesty the Queen **Chairman of Council:** Professor Steve Ormerod, FIEEM **President:** Miranda Krestovnikoff
Chairman, Committee for Scotland: Professor Colin Galbraith **Director, RSPB Scotland:** Stuart Housden OBE **Regional Director:** George Campbell

The RSPB is a registered charity in England and Wales 207076, in Scotland SC037654

We also wish to highlight that at this stage we do not believe that it would be feasible to implement a suitably robust mitigation scheme to ensure that the development (alone, or in combination with other projects) would not adversely affect the integrity of the Special Protection Areas. We consider that there would remain considerable scientific doubt as to the absence of adverse effects. However, we would be pleased to reconsider this opinion in the light of more detailed information on the assessment of effects on capercaillie and on specific mitigation measures proposed to address those effects.

The detailed reasoning for our position is outlined in Annex 1 attached. Comments relating to the submitted 'Review of Existing Environmental Statement – Ecology' and other protected species issues are included in Annex 2.

We request an opportunity to speak at the Planning Committee meeting to which the application will be reported, in order to explain our position and answer any related questions that committee members may have.

We would be pleased to discuss our comments with you, and to provide further comments following the submission of additional information to address the points we raise. We would also appreciate an opportunity to comment on and suggest changes to the conditions to be attached to the decision notice if the CNPA is minded to approve the application.

To discuss any aspect of this letter or Annex 1 please contact Tom Barratt (Senior Conservation Planner) on 0131 317 4111 or at Thomas.Barratt@rspb.org.uk. To discuss any of our comments in Annex 2, please contact me on 01463 228824 or at Darrell.Stevens@rspb.org.uk.

Yours faithfully

A black rectangular box redacting the signature of Darrell Stevens.

Darrell Stevens
Conservation Officer – South Highland

Annex 1: Likely significant effects on SPAs and impacts on capercaillie

The adopted Cairngorms National Park Local Development Plan confirms that development at An Camas Mor is likely to have a significant effect on several nearby Special Protection Areas (SPAs): Abernethy Forest; Anagach Woods, Cairngorms, Craigmore Wood and Kinveachy Wood. The boundaries of all of these SPAs are within 20km of the application site, the closest one being the Cairngorms SPA less than 2km away. The Abernethy Forest SPA (most of which is owned by RSPB Scotland) is approximately 7km away.

Under the terms of the Habitats Regulations the CNPA should not approve this application unless the authority is convinced, after having carried out an appropriate assessment, that the development will not adversely affect the integrity of any European site, either alone or in combination with other plans or projects. If there remains any reasonable scientific doubt as to the absence of adverse effects, the application should not be approved.

We are particularly concerned about the potential effects on capercaillie, a qualifying species of all of the above SPAs, as a result of disturbance caused by recreation (including walking, dog walking and cycling) by the development's residents. Capercaillie are sensitive to disturbance and predation at all life stages but especially so when attending leks, incubating eggs (late April to mid June) or rearing broods (late May - late August but critically during June and July when the chicks are small and dependent on the hen for warmth).

Status of capercaillie

Strathspey is increasingly the last remaining stronghold for capercaillie in the UK. After a dramatic decline from around 20,000 individuals in the 1970s to between 1,000 and 2,000 in the early 1990s, the national capercaillie population has remained at this lower level for the last 20 or so years. However, the population range has continued to contract, so the peripheral populations have continued to decline while the core of the population in Strathspey has strengthened. In the last published National Capercaillie Survey in 2009/10, 75% of the population was found to be in Strathspey and annual lek counts correspond with this. Population changes since this survey show that the proportion of the population that is in Strathspey is increasing. In 2009 only 59% of all cocks recorded at leks were in Strathspey, but in 2016 Strathspey made up 85% of the national total. This trend shows that Strathspey has grown in importance for the national capercaillie population and is now the overwhelming stronghold for the species in the UK. Clearly, the fate of the entire national population is very closely tied to the fate of the Strathspey population. Any threats to the local population are now even more of a concern than they were at the time of the original An Camas Mor planning application.

Requirement for additional environmental information

In view of the above points, the potential impact of the development on capercaillie arising from recreational disturbance is a 'likely significant effect' on the environment in terms of Schedule 1, Part 1, paragraph 4 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 ('the EIA Regulations'). Under the terms of Regulation 2 and Schedule 4 of the EIA Regulations, the environmental statement should have contained a description of this likely significant effect and "a description of the measures envisaged to prevent, reduce and where possible offset" (i.e. mitigation measures for) this significant adverse effect.

In addition, the adopted Cairngorms National Park Local Development Plan states in relation to An Camas Mor (at 14.15) that the applicant must supply as part of the planning application all necessary information to allow the planning authority to carry out the appropriate assessment required under the Habitats Regulations.

Despite these requirements, the submitted application and environmental statement (ES) contain no information on the potential effects of recreational disturbance to capercaillie. Additional environmental information is therefore required from the applicant in order to allow the planning authority to (1) give proper consideration to the likely significant effects of the proposed development on the environment as required by the EIA Regulations (see

Regulation 23(2)(b)), and (2) undertake an appropriate assessment as required by the Habitats Regulations. In the absence of this information, the application must be regarded as being contrary to Policy 4: Natural Heritage of the CNP LDP.

We are aware that CNPA has already undertaken work to assess potential effects of the development on capercaillie and to identify mitigation measures to avoid significant recreational disturbance to capercaillie, and provided a report of that work to the applicant. We consider that CNPA should require this information (and any subsequent revisions) to be provided in a supplementary ES and publish it for public comment as 'additional information' under the terms of Regulations 23 and 24 of the EIA Regulations.

In accordance with SNH guidance on EIA (SNH, 2013 - see in particular C.7.1 - 7.11) the ES should include information on the magnitude of the impact (expressed in absolute terms and in terms of percentage change to the capercaillie population), its likelihood and an indication of the degree of confidence in those predictions. We are not aware of any attempt to quantify the potential effect of the development on capercaillie, and this is an important part of both the EIA and appropriate assessment processes. We appreciate that this would be a challenging task but we believe it would be possible.

The ES must also include details of the mitigation measures proposed in relation to the effect on capercaillie, and in accordance with the SNH guidance (see C.9.16) the ES should address the effectiveness of these measures; their reliability and certainty; and the commitment to ensuring their practical implementation.

It would not be competent to defer assessment of this issue to the 'matters specified in conditions' stage. Circular 3/2011 highlights that in the case of multi-stage consents, the European Court of Justice has made clear that the effects which a project may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision (i.e. the decision on whether to approve this application for permission in principle).

Assessment requirements and uncertainties

The appropriate assessment must consider any impacts on the conservation objectives of each of the affected SPAs. These conservation objectives are to avoid deterioration of capercaillie habitats or significant disturbance to capercaillie; and to ensure that the following are all maintained with regard to the species:

- Population of the species as a viable component of the site;
- Distribution of the species within the site;
- Distribution and extent of habitats supporting the species;
- Structure, function and supporting processes of habitats supporting the species;
- No significant disturbance of the species.

Scientific understanding of the effects of recreational disturbance on capercaillie has developed since the original planning application was considered by CNPA. It is now understood that recreational disturbance can influence the first three factors listed above. As noted in the Cairngorms Capercaillie Framework: Phase 1 Report (CNPA, 2015) disturbance by humans and dogs can affect capercaillie by reducing the availability of otherwise suitable habitat (including habitat used for roosting, feeding, nesting and brood rearing). Moss *et al.* (2014) found that there is significant avoidance of suitable habitat around paths (by an average of 125m) and forest entrances (by an average of 300m). Disturbance therefore reduces the amount of habitat available for capercaillie and this is confirmed by Coppes *et al.* (2017). This effect is therefore a significant concern for a species that already has very limited habitat. Disturbance can also displace birds from leks, disrupt behaviour patterns, increase the risk of predation, separate chicks from hens, and result in the direct killing of chicks and adult birds. Reported responses to disturbance include a decline in local capercaillie numbers (Brenot *et al.*, 1996 cited in Thiel *et al.*, 2007) and abandonment of lek sites (Labigand & Munier, 1989 cited in Thiel *et al.*, 2007).

The required assessment of the effects of this development on capercaillie and associated SPAs and the identification of mitigation measures (in both the EIA and the appropriate assessment) necessarily includes the following key stages:

- Gathering information on capercaillie population and distribution;
- Predicting all recreation activity generated by the development;
- Predicting the impacts of recreation activity on capercaillie (and specifically on the related conservation objectives);
- Identifying specific mitigation measures to avoid all negative impacts and assessing whether/how these measures can be secured and implemented and the degree to which their success can be guaranteed;
- Determining whether the mitigation measures are sufficient to eliminate the adverse effects.

There is a great deal of uncertainty associated with these stages.

It is very difficult to predict with much confidence the destinations and routes that residents (and their dogs) would take and the frequency and timings of these trips, especially in the absence of robust baseline data on the destinations and routes taken by existing residents in the area. This difficulty exacerbates the scientific uncertainty associated with predicting the impacts of recreation activity on capercaillie.

As the Capercaillie Framework report (CNPA, 2015) confirms, different levels of human pressure have differing effects i.e. capercaillie may totally avoid areas with high visitor pressure, but the level of impact arising from low intensity use is less clear. The impacts on less well used sites may be more directly detrimental to individual capercaillie than on high use sites. Even small increases in activity on little used paths (or off paths) or the use of paths earlier in the morning may result in significant disturbance to individual capercaillie.

There will inevitably be considerable scientific uncertainty as to the effects of the development on capercaillie, and this makes it very difficult to be confident that any mitigation measures identified will address all potential effects.

In accordance with EU guidance (European Commission, 2001) the appropriate assessment should:

- provide evidence of how each mitigation measure will be secured and implemented and by whom;
- provide evidence of the degree of confidence in their likely success;
- provide a timescale, relative to the project or plan, when they will be implemented;
- provide evidence of how the measures will be monitored, and, should mitigation failure be identified, how that failure will be rectified.

The CNP LDP Supplementary Guidance on Natural Heritage also sets out criteria that should be satisfied in relation to mitigation measures to address potential disturbance impacts on capercaillie. These criteria include that the mitigation should:

- build on best practice;
- be location- and time-specific;
- “demonstrate effective engagement with the community and recreational users and a sufficient degree of support to ensure the proposals are effective”
- “be practically and legally enforceable and maintained for the lifetime of the development.”

It is not possible to consider whether these requirements will be met unless details of specific mitigation proposals are provided, and made available for public scrutiny and comment. Measures such as closures of areas of forest, paths and car parks and other access restrictions are likely to be very unpopular with recreational users, and very difficult if not impossible to enforce. Adequate ranger coverage in perpetuity would be very costly, albeit necessary. Many of the necessary mitigation measures would be on third party land not owned by the applicant nor by CNPA,

and the owners of that land should be consulted on the specific mitigation measures to establish whether those measures would be deliverable.

We are happy to provide an indicative list of examples of mitigation measures that are likely to be acceptable on our own land at Abernethy. However it should be noted that given the many uncertainties highlighted above, at this stage it is unclear whether these mitigation measures would be sufficient and effective.

Cumulative/in-combination effects

The appropriate assessment (and the information required from the applicant to inform that assessment) should also consider the cumulative effects of this development in combination with other developments that may also increase recreational pressure on Strathspey capercaillie. Those other developments include the A9 dualling programme and allocated and/or approved (but not yet completed) housing sites in Aviemore, Nethy Bridge, Carr Bridge, Boat of Garten, Kingussie and Kincaig. We understand that those other developments comprise more than 600 as yet unbuilt homes. This highlights a need for a strategic approach to assessing and mitigating the effects of residential development on capercaillie (similar to the good practice approach adopted for the Thames Basin Heaths in relation to other bird species vulnerable to recreational disturbance).

References

Cairngorms National Park Authority (CNPA) (2015) *Cairngorms Capercaillie Framework: Phase 1 Report*

Coppes, J., Eherlacher, J., Suchant, R., and Braunisch, V. (2017) Outdoor recreation causes effective habitat reduction in Capercaillie *Tetrao urogallus*: a major threat for geographically restricted populations, *Journal of Avian Biology*. Accepted Author Manuscript. doi:10.1111/jav.01239

European Commission (2001) *Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC*

Moss, R., Leckie, F., Biggins, A., Poole, T., Baines, D., & Kortland, K. (2014) Impacts of human disturbance on capercaillie *Tetrao urogallus* distribution and demography in Scottish woodland, *Wildlife Biology*, 20(1) pp 1-18

Scottish Natural Heritage (SNH) (2013) *A handbook on environmental impact assessment: Guidance for Competent Authorities Authorities, Consultees and others involved in the Environmental Impact Assessment Process in Scotland* (4th edition)

Thiel, D., Ménoni, E., Brenot, J. F., and Jenni, L. (2007) Effects of recreation and hunting on flushing distance of capercaillie, *The Journal of Wildlife Management*, 71(6), pp 1784-1792

Annex 2: Comments on the submitted 'Review of Existing Environmental Statement - Ecology' and other protected species issues

Whilst the application area itself does not have any nature conservation designations, it holds a particularly diverse set of species some of which are protected under European Law and therefore requires special conservation measures before this development can proceed. RSPB Scotland also believes the development may have a significant potential impact on protected species residing adjacent to the site.

We have the following comments on the survey work presented in the submitted 'Review of Existing Environmental Statement - Ecology' ('the Ecology Review report').

Potential impacts on freshwater Pearl mussel (FWM)

A James Hutton Institute report to CNPA on River Spey water quality and effluent chemistry (Cooksley and Jackson Blake, 2014) provides information on the point source pollution from sewage outfalls on the water quality of the River Spey, including the levels of Phosphorous and Nitrogen in various forms. The report states that the existing Aviemore Water Waste Treatment Works 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. The development at An Camas Mor could exacerbate this further and affect the water quality which in turn could prove very detrimental to the FPM population in the River Spey. More information is required than currently presented to allow for assessment of these potential impacts of this large scale development.

There is now, for the first time a water quality standard which provides guidance on monitoring FPM in their environment (BSI, 2017). The applicant and CNPA should ensure that this guidance informs the appropriate assessment, to ascertain whether the development would adversely affect the integrity of the River Spey SAC. This guidance is designed to protect the globally threatened population of FPM on the River Spey.

Much of the An Camas Mor site is freely draining sand and gravel. The long term effects of diffuse pollution on water quality in the River Spey should be considered as part of the assessment.

Amphibian and Reptile Report Appendix 3

Great crested newts

We note that due to the detailed work undertaken in 2011 which produced a low habitat suitability index for great crested newt it was deemed unnecessary to undertake any further survey work for great crested newt, other than the basic amphibian survey using egg searches, terrestrial searches and netting.

Scottish National Heritage refers to great crested newt mitigation guidelines (English Nature, 2001) which state that the most common survey methods for great crested newt include torching, egg searches, terrestrial searches, netting and bottle trapping, all of which require a licence.

Given there are 5 historical great crested newt sites and one active site within 5km of the application site we consider it is necessary for the applicant to conduct both bottle trapping and torching surveys in order to confirm whether or not the species is present on the site.

Appendix 4 Protected mammal survey report

Otter

The otter survey recorded much activity along the site boundary adjacent to the River Spey. Other independent records suggest that otters use the small kettle hole pond near the B970 and areas around the south entrance to the site; otters have also been recorded using the burn across the B970 that feeds into Loch Pityoulish. Therefore otters are likely to cross the B970. The increased traffic associated with this development could lead to an increase in mortality of otters through road traffic collisions. The development could affect the linear movements of otter using the Spey particularly with the addition of the proposed footbridge to connect the An Camas Mor site with Aviemore. Development on both sides of the Spey will restrict the movements and the use of refugia for otters on the currently quiet An Camas Mor side of the river. The effects on otter need to be comprehensively considered in the assessment of this development.

Wildcat

There are both confirmed and unconfirmed records of wildcat within 10km of the development site and SNH guidance states that if there are records within 10km of a development site it is reasonable to consider that wildcat may be present. We therefore consider that a comprehensive survey should be undertaken on the An Camas Mor site to determine whether or not wildcat are present.

The survey described in the Ecology Review report focused on identifying field signs such as den sites, scats, scratch marks, prey remains and prints. The general survey approach as detailed by Cresswell *et al.* (2002) was used. A series of camera traps were also deployed and baited with cat nip, valerian and meat.

Camera trapping for wildcat is by far the most accurate method of surveying wildcat as it can be used to conclusively identify the presences of true wildcats and allows for the separation of hybrid animals. The SNH Commissioned Report *The use of Camera trapping as a method to survey for Scottish wildcat* (Kilshaw and Macdonald, 2011) recommends the following:

- That camera trapping should be undertaken for 60 days at each bait station using up to 10 stations with 2 cameras each.
- That valerian and catnip was not proved to be affective in attracting wildcats.
- That February through to the spring is when cats are most active and that scat morphology is open to errors and cannot be relied upon to identify the presence of wildcat.

The survey undertaken falls short of the recommendations in the SNH report, with regards to camera trapping which is the most reliable method of detection. As only 4 bait stations were used with 1 camera over a much shorter timeframe, the timing of the survey is also unclear. Scat morphology and the use of some attractants are open to error. Therefore we recommend that a more extensive camera trapping survey is undertaken for wildcat in order to provide more confidence that wildcat are not present and would not be affected by the development.

Road collisions

The Environmental Statement has not considered the potential increased risk of road collisions on protected species which cross the B970. The weight of traffic during the construction phases and once the development is occupied will rise considerably which could have a potential impact on protected mammals which intersect the road. Species such as otter, badger, pine martin and wildcat move large distances and are frequent road casualties. Therefore the impact of extra traffic on protected species should be considered using a standard methodology for such survey work and included in the assessment of this development.

Appendix 7 & 8 Birds

The Ecology Review chapter sent to us does not contain Appendices 7 and 8 and only gives brief summary details of changes to the baseline section of the report on page 9. This makes it impossible for us to comment fully on the survey methodologies adopted, and we request that these are provided to us to allow us to comment further.

Records demonstrate that the development site has 8 Red and 4 Amber listed bird species which are of conservation concern and protected under the Nature Conservation (Scotland) Act 2004.

We know of recent evidence of capercaillie using 15 year old forestry plantations in other parts of the Cairngorms. Given the site's close proximity to other woodland areas used by this species and the known dispersal distances of the birds it is possible that they could occupy the site at certain times of the year. The Cairngorms Capercaillie Framework Phase 1 Report (CNPA, 2015) recommends the following two survey methods.

- Cold searching is deliberately targeted, usually by the Capercaillie Project Staff to find all the droppings and other evidence located when cold searching for leks but without being on an actual lek survey this is carried out from March until May.
- The national winter survey involves a stratified random transect design). This methodology could be adapted to a walk through winter survey of the site.

Our recommendation is that a combination of both survey techniques is required to conclusively determine whether capercaillie use the site.

References

British Standards Institution (BSI) (2017) *Water quality – guidance standard on monitoring freshwater pearl mussel (Margaritifera margaritifera) populations and their environment BS EN 16859:2017*

Cairngorms National Park Authority (CNPA) (2015) *Cairngorms Capercaillie Framework: Phase 1 Report*

Cooksley, S. and Jackson Blake, L. (2014) *River Spey water quality and effluent chemistry* (Final Report to CNPA)

Cresswell, W., Birks, J., Dean, M.D., Pacheco, M., Trehella, W., Wells, D. & Wray, S. (eds). (2012) *UK BAP Mammals; Interim Guidance for Survey Methodologies, Impact Assessment and Mitigation*. The Mammal Society, Southampton.

English Nature (2001) *Great crested newt mitigation guidelines*

Kilshaw, K. & Macdonald, D.W. (2011) *The use of camera trapping as a method to survey for the Scottish wildcat*, Scottish Natural Heritage Commissioned Report No. 479

Gavin Miles
Head of Planning and Communities
Cairngorms National Park Authority
14 The Square
Grantown-on-Spey
Moray
PH26 3HG

By email only to GavinMiles@cairngorms.co.uk

12 June 2017

Dear Gavin

2017/0086/DET: Application under Section 42 seeking planning permission for development at An Camas Mor, Inverdrue, Aviemore

I write further to our letter of 13 April 2017 with regard to the above application. All of the comments in that earlier response remain relevant and RSPB Scotland continues to object to the application as submitted, for the reasons explained in that response and this letter. However, again we wish to stress that RSPB Scotland is not opposed in principle to new development in sustainable locations and of an appropriate scale in the Cairngorms National Park. We now wish to provide further comments following the submission of the consultation response from Scottish Natural Heritage (SNH) dated 28 April 2017.

We understand that no environmental information on the potential effects of recreational disturbance to capercaillie has been formally submitted by the applicant, nor published for public comment as 'additional information' in accordance with the EIA Regulations and as discussed in our previous letter, we remain of the opinion that this is required.

We note that SNH have advised that if the proposal is undertaken strictly in accordance with the mitigation detailed in the Habitats Regulations Appraisal carried out by CNPA (with advice from SNH), it would not adversely affect the integrity of various SPAs and SACs. The response contains only a summary of the mitigation identified as being required. The response states that a fuller specification of, and rationale for, that mitigation is provided in a CNPA & SNH (2017) report *Identification of woodlands with potential for significant recreational disturbance to capercaillie arising from An Camas Mor, and specification of the mitigation required to avoid such disturbance*. However, neither that report nor the draft HRA report have been made available to us (nor to the public) for perusal and comment prior to determination of the application, and we consider that those reports should have been made so available.

North Scotland Office
Etive House
Beechwood Park
Inverness
IV2 3BW
rspb.org.uk

Tel 01463 715000
Fax 01408 715315



The RSPB is part of BirdLife International,
a partnership of conservation organisations
working to give nature a home around the world.

Patron: Her Majesty the Queen **Chairman of Council:** Professor Steve Ormerod, FIEEM **President:** Miranda Krestovnikoff
Chairman, Committee for Scotland: Professor Colin Galbraith **Director, RSPB Scotland:** Stuart Housden OBE **Regional Director:** George Campbell

The RSPB is a registered charity in England and Wales 207076, in Scotland SCO37654

As we explained in our previous letter, under the terms of the Habitats Regulations, the CNPA should not approve the application unless convinced (after having carried out an appropriate assessment) that the development would not adversely affect the integrity of any European site, either alone or in combination with other plans or projects. If there remains any reasonable scientific doubt as to the absence of adverse effects, the application should not be approved.

We believe that there remains significant doubt, and there are risks that the development, even with the mitigation set out by SNH, would have adverse effects on nearby SPAs and on the capercaillie population more generally. Based on the information available to us, we believe that the mitigation outcomes and measures identified by SNH would be insufficient; their effectiveness is uncertain; and difficult or impossible to enforce fully. There are significant challenges to the delivery of the measures, and doubts that the measures would be maintained in perpetuity and that they would have a sufficient degree of support from the public to be effective. These issues and challenges are discussed in Annex 1 attached to this response, and we strongly recommend that the implications of these need to be considered further as part of the assessment of this application.

It is crucial that CNPA ensures that sufficient funding would be secured to guarantee the implementation *in perpetuity* (or for as long as is appropriate) of all of the necessary mitigation measures, including additional ones which may emerge at a later stage as being necessary (following the adaptive management approach)¹.

We estimate that the capital costs of the mitigation already identified as being necessary to mitigate the effects of the development on capercaillie would be in the region of £900,000 and the ongoing yearly costs for provision of a ranger service could be in the region of £300,000. There would also be considerable extra costs associated with necessary monitoring of the effectiveness of the mitigation measures and the effects on capercaillie. However, given the significant uncertainties and challenges we highlight in relation to the effectiveness and delivery of the measures identified to date, it should be assumed that additional measures are likely to be necessary in the future, potentially incurring further significant costs. It is vital that the costs of all necessary mitigation measures are secured over the short and long term, to avoid a possible shortfall in funds for necessary mitigation. Otherwise there could be significant financial liabilities on public bodies such as CNPA to ensure that the requirements of the European Habitats and Birds Directives are not breached, and avoid any infringement proceedings against the UK by the European Commission.²

The Cairngorms Capercaillie Framework and its overall purpose: “To increase the Capercaillie population by co-ordinating deployment of management measures at landscape scale *to expand* [emphasis added] functioning habitat and reduce disturbance...” should be an important material consideration in relation to this application. More good quality habitat for capercaillie is the most significant long-term solution for capercaillie in the national park. The development, and indeed some of the mitigation measures proposed by SNH, could compromise the ability of capercaillie to expand their range by making areas of otherwise good quality capercaillie habitat unsuitable as a result of disturbance. This is discussed further in Annex 2.

In summary, we strongly recommend that the implications of the risks and challenges discussed in Annex 1 need to be considered further as part of the assessment of this application. The CNPA and SNH reports that have informed the identification of the mitigation measures identified in the SNH response should be published, with

¹ We note that SNH states that the mitigation should be delivered effectively for as long as the new settlement is occupied, “or until such point as CNPA, following consultation with SNH, determines that the development no longer poses a risk to the integrity of the capercaillie SPAs.” Clear criteria need to be set out in relation to this potential scenario, and the presumption should be that the measures *will* be required in perpetuity.

² A significant shortfall in funding for necessary environmental mitigation and restoration, with dire consequences for the environment, was encountered in the case of several open cast coal sites within SPAs in the Central Belt, when the developers went into liquidation and financial guarantees for the mitigation had not been adequately secured.

the public then being given a opportunity to make further comments before the application is determined. Detailed mitigation measures should be worked up, costed, and consulted upon (including with the public and other stakeholders) at this stage, in order to gauge the level of public support for them and ascertain whether they are likely to be effective and deliverable. We also recommend that the effects of the development itself, and of the mitigation measures, on the extent and distribution of suitable functioning habitat for capercaillie should be fully assessed before decisions are taken on which measures are appropriate. We have outlined a way in which this could be undertaken, in Annex X.

In the absence of this further work, we believe CNPA cannot be sufficiently certain that the development can go ahead without adverse effects on SPAs, contrary to the Habitats Regulations.

We would be pleased to discuss the application and the mitigation proposals with you and the applicant further. To discuss any aspect of this letter please contact me on 01463 228824 or Darrell.Stevens@rspb.org.uk, or Tom Barratt (Senior Conservation Planner) on 0131 317 4111 or Thomas.Barratt@rspb.org.uk.

Yours faithfully

Darrell Stevens
Conservation Officer – South Highland

CC: Debbie Greene, Scottish Natural Heritage

Attached

Annex 1: Key issues , challenges and risks requiring further consideration

Annex 2: Modelling the effect of additional disturbance on the capercaillie population around An Camas Mor (ACM)

Annex 3: Summary comparison table of mitigation outcomes and measures identified in SNH response of 28/4/17

Annex 4: Mitigation framework for Abernethy National Nature Reserve – Abernethy Forest SPA and Craigmore Wood SPA

Annex 5: “Natural England (2008) Guidelines for the creation of Suitable Accessible Natural Green Space (SANGS)

Annex 1:

Key issues , challenges and risks requiring further consideration

This annex outlines key issues, challenges and risks, including those associated with the mitigation measures identified by SNH, which we believe require further consideration and wider discussion before the current application is determined.

The CNP LDP Supplementary Guidance on Natural Heritage sets out criteria that should be satisfied in relation to the mitigation measures. These criteria include that the mitigation should “demonstrate effective engagement with the community and recreational users and a sufficient degree of support to ensure the proposals are effective” and “be practically and legally enforceable and maintained for the lifetime of the development.”

Furthermore, as we stated in our previous response, in accordance with EU guidance (European Commission, 2001³) the appropriate assessment should:

- provide evidence of how each mitigation measure will be secured and implemented and by whom;
- provide evidence of the degree of confidence in their likely success;
- provide a timescale, relative to the project or plan, when they will be implemented;
- provide evidence of how the measures will be monitored, and, should mitigation failure be identified, how that failure will be rectified.

Likelihood that mitigation measures are insufficient

As we advised in our previous response, it is very difficult to predict with much confidence the destinations and routes that residents (and their dogs) would take and the frequency and timings of those trips. This exacerbates the scientific uncertainties associated with predicting the impacts of recreation activity on capercaillie. Neither the SNH response nor the application provides any information on how the recreational patterns of An Camas Mor residents have been predicted in order to inform the identification of mitigation outcomes and measures. In addition, the extents of the areas A-G listed in the SNH response are unspecified – a map showing the boundaries of those areas should be provided, and we request this in order to make more informed comments on the required mitigation. In particular we would welcome clarification as to whether the vicinity of Tore Hill (west of Forest Lodge in Abernethy Forest) is included in the mitigation areas.

We note that no specific mitigation (other than seasonal targeted ranger activity) is identified for Slochd and Inverlaidnan Woods, Beananach Woods, Glen Feshie, and Mondhuie, “[in] the light of the outcome of the Impact Assessment.” Those woodlands, and Boat of Garten Wood, Tolquhonie, and Glencarnie (which are not mentioned by SNH) undoubtedly support the capercaillie populations in the SPAs and in Strathspey more widely. They are likely to be affected by recreation generated by An Camas Mor, and yet no mitigation is identified for them, nor for Craigmore Wood SPA. Without seeing the “Impact Assessment” to which SNH refers, we believe that the absence of specific mitigation requirements for those areas is unjustified, and the mitigation listed by SNH is insufficient.

The mitigation outcomes and measures identified for the various mitigation areas appear to be inconsistent. Annex 3 illustrates this by showing a summary comparison of the outcomes and measures that SNH identifies for the different mitigation areas. Specifically, the mitigation listed by SNH for Areas D (Garten Woods) and F (Forest Lodge,

³ European Commission (2001) *Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC*

Abernethy) appears to be less prescriptive and less comprehensive than that listed for the other mitigation areas, and we again consider it to be insufficient, in the absence of justification. For example, whereas measures to limit and discourage mountain biking, and monitor for and remove new informal paths and mountain bike tracks, are required for some mitigation areas, they are not identified as being required for Areas D and F. There is a requirement for no net increase in the use of paths and tracks that are currently lightly visited, in Glenmore and Garten Woods, but not in Area F: Forest Lodge, Abernethy. These inconsistencies have not been justified.

We have developed a framework of mitigation measures that we consider would be necessary to mitigate the effects of the development on capercaillie on RSPB Scotland land at Abernethy Forest and Craigmore Wood SPAs. A copy of this is attached as Annex 4. However, the uncertainties and challenges we outline elsewhere in this letter are also relevant to these measures, so further discussion and consultation should be undertaken in relation to these before judgements are made as to their effectiveness, robustness and deliverability.

Uncertain effectiveness of mitigation measures

On-site recreational opportunities – Suitable Accessible Natural Green Space (SANGS)

The SNH response states that “Good on-site recreational opportunities will allow residents to meet as many of their local recreational needs as possible, on or around the site”, including for dog walking; off-lead dog exercise; children’s play; walking, cycling, running; cross-country skiing; and mountain bike skills training. Many people are likely to get bored of taking the same recreational routes, and over time would wish to take different/longer routes, potentially into nearby woodlands that are more established and attractive, but also sensitive capercaillie habitat. This is likely to be particularly true for active families, outdoor enthusiasts, and second home owners living at An Camas Mor. In addition, the on-site recreational infrastructure would be accessible to non-An Camas Mor residents (particularly once a footbridge is constructed over the River Spey), taking up some of the carrying capacity of that on-site infrastructure. The capacity of the development site to satisfy the varied recreational needs of new residents may therefore be limited, needs careful consideration and should be quantified. For all of these reasons, it will be very challenging to achieve ‘required outcome’ 1 for the Rothiemurchus area – to “ensure there are more easily accessible and attractive routes and areas for dog walking and informal off-path activities for ACM residents, so that they avoid recreational use of this area.” Rothiemurchus would be conveniently close to the development site, and likely to be very attractive for recreation.

Notwithstanding our concerns above, the provision of on-site recreational spaces (also known as suitable accessible natural green space – SANGS) would still be an important component of the mitigation scheme. If permission is granted we believe that it would be essential for CNPA and SNH to set out detailed guidelines and quality requirements with which all SANGS proposals (including the off-site off-lead dog walking areas) must comply. Those guidelines and requirements should be of a similar standard to those adopted for SANGS to mitigate impacts on the Thames Basin Heaths (a copy of which is attached as Annex 5). RSPB Scotland would be pleased to provide further input on this matter.

Ranger presence

We consider that a *seasonal* ranger service (identified as a measure for all but one of the mitigation areas) is unlikely to be sufficient to break individuals’ habits of potentially disturbing access patterns. A *year-round* professional ranger service, with perhaps extra seasonal rangers, is likely to be more effective (but still not entirely effective) at promoting responsible access behaviours.

Promotion of responsible access and signage to direct users onto suitable tracks

Current promotion and signage of routes is not always working, with frequent instances of dog-walkers and others ignoring such signage and walking in sensitive areas, often with their dogs off-lead. This is sometimes despite the advice of rangers⁴.

Improved screening

Improved screening by vegetation management is identified as a mitigation measure for Glenmore; Garten Woods; Forest Lodge, Abernethy; and Uath Lochan Woods. There is a lack of scientific evidence that screening is effective at preventing disturbance to capercaillie, and what specific screening is most appropriate for this purpose. Whether planted or via natural regeneration, screening would need to be in place and acting as a natural barrier at the time the first houses are occupied, so would have to be starting to grow 5 years in advance of this at the very least. We also query whether this measure would require temporary fencing to protect vegetation against deer (giving rise to collision risks) or reductions in deer numbers which would require more stalking resource. As the Cairngorms Capercaillie Framework states, marking or reducing fence heights does not completely remove the risk of capercaillie mortality through collisions, and new fences should not be erected within woods with capercaillie unless it is the only option to ensure regeneration or the protection of planted stock. If improved screening is required, there should be more clarity on how this will be achieved and in what timescales, and there should be a high degree of certainty that it can both be achieved and be effective and would not have detrimental side-effects on capercaillie.

Prevention of informal parking, closure of laybys

It remains to be seen how effective measures to prevent informal parking (e.g. closure of laybys) would be – in many cases, motorists may instead simply park on a nearby verge. Detailed arrangements for whether and if so how these measures can be made more effective should be considered and set out.

Enforcement, monitoring and long-term funding

It would be difficult if not impossible to fully enforce several of the required outcomes and measures – such as preventing informal parking and ensuring that walkers and their dogs keep to promoted routes and do not stray off them. An adequately resourced ranger service will be an essential component of the mitigation, helping to implement and enforce other mitigation measures. It is crucial that such a service is adequate and sufficiently resourced to cover all affected woods in perpetuity, but it is not apparent from the SNH response as to the required arrangements of such a service – such as the number of rangers expected. As highlighted above, a year-round ranger service is likely to be more effective (but still not entirely effective) at promoting responsible access behaviours than a seasonal service, but individuals may still choose to ignore rangers' advice.

The SNH response identifies a necessity for monitoring for, and removal of, any new informal mountain biking trails that evolve in certain areas (e.g. Glenmore, Inshriach and Kinveachy), and removal of new informal paths within sensitive areas in Rothiemurchus. These measures should also be implemented across all other mitigation areas, including at Garten Woods and Abernethy, and this would require rigorous monitoring (which in turn would require

⁴ On our Abernethy reserve, we recorded 75 incidences of dogs being off the lead in between 31 March 2015 and 10 June 2017. These records come from a 2-day per week coverage by a Ranger, and some ad hoc records by other staff, and despite their routes having signs asking walkers to keep dogs on leads during the ground nesting bird breeding season. In 9 of these instances, owners refused to put their dogs on a lead despite being requested by our ranger to do so. The total number of incidences of dogs being off the lead is likely to have been much greater than the level recorded by our staff.

sufficient funding). It is not clear how those new trails and paths would be 'removed' to ensure that individuals do not continue to use them.

We note SNH's advice that the recreational management plan must detail how recreation patterns will be monitored; arrangements for reviewing the results and determining and implementing any changes in management needed; and arrangements for monitoring the integrity and effectiveness of mitigation measures and their long-term maintenance. Monitoring and adaptive management will be crucial, and should be overseen by a partnership of stakeholders including CNPA, SNH, and RSPB Scotland (or with RSPB at least acting in an advisory capacity) similar to the Thames Basin Heaths Joint Strategic Partnership Board.

We consider that detailed arrangements for the ranger service and ongoing maintenance of mitigation measures; monitoring; and adaptive management – and mechanisms for the long-term funding of these critical components of mitigation - should be agreed prior to the determination of this planning application.

Imprecise / vague measures

Many of the required mitigation outcomes and measures set out in the SNH response are imprecise or vague. For example, a required outcome is "No net increase in use of paths and tracks that are currently lightly visited." No explanation is provided as to what is meant by "lightly visited", nor which paths and tracks fall into this category and how these have been identified. "Sensitive areas", "selected tracks" and "suitable tracks" are mentioned numerous times but are not defined and those areas and tracks are not specified. "Management of car parking along the B970" is mentioned, but there is little detail of how the car parking can or should be managed. Closure of informal laybys opposite Garten Woods car park is only described as "possible", and again this is vague.

Deliverability – requirements for further consents and landowner agreement

Many of the mitigation measures set out in the SNH response (including new footpaths, parking areas, fencing and signage) would require separate planning permission and/or other consent, in addition to consent from the affected landowner(s). They would need to be subject of detailed environmental assessment, potentially including environmental impact assessment (EIA) and/or Habitats Regulations Appraisal (HRA). The effects of these measures on the environment (including the qualifying features of the affected SSSI, SPAs and Cairngorm SAC) would need to be assessed.

It is therefore not guaranteed that the required measures are actually deliverable, and the deliverability of the measures should be considered in much greater detail before the current application is determined.

Community engagement and support

The SNH response states that the mitigation measures identified have been designed to meet the RMP criteria set out in the 2013 HRA for the previous planning permission for An Camas Mor. One of those criteria is that mitigation should *"demonstrate effective engagement with the existing community, the future community of the development and recreational users with a sufficient degree of support to ensure the proposals are effective."* The effectiveness of many of the measures set out in the SNH response depend upon the support and understanding of all recreational users – otherwise they are likely to be ignored, or even actively resisted. As we highlighted in our previous response, closures of areas of forest, paths and car parks and other access restrictions are particularly likely to be very unpopular with recreational users.

We are not aware that any public consultation or engagement has been undertaken in relation to the measures set out in the SNH response to gauge the level of public support for them. The mitigation measures would need to be set out in more detail in order for local communities and other recreational users and stakeholders to make informed comments on them. However, we believe that such consultation/engagement is crucial before the application is determined.

Reduction of suitable habitat for capercaillie

The Cairngorms Capercaillie Framework and its overall purpose: “To increase the Capercaillie population by co-ordinating deployment of management measures at landscape scale *to expand* [emphasis added] functioning habitat and reduce disturbance...” should be an important material consideration in relation to this application. The Framework concludes that more good quality habitat for capercaillie is the most significant long-term solution for capercaillie in the national park.

As discussed in our previous response and in the Capercaillie Framework, disturbance by humans and dogs can reduce the availability of otherwise suitable habitat for capercaillie. As explained above, there are many uncertainties and risks associated with the mitigation outlined by SNH, so that mitigation is not guaranteed to be effective. Without effective mitigation, the proposed development would significantly reduce the amount of functioning habitat available to capercaillie, as discussed in Annex 2. This would be contrary to several conservation objectives of the relevant SPAs, and contrary to the Capercaillie Framework.

The mitigation proposals to promote recreation in certain areas (e.g. Pityoulish, where diversionary car parking, downhill mountain biking, and new paths are proposed) would effectively mean that those areas will not be suitable for capercaillie expansion.

Similarly, other areas where mitigation is not proposed would be particularly suitable for capercaillie expansion if not for the increased recreation they would likely experience as a result of the An Camas Mor development. An example is Auchgourish (grid ref. NH947164) where work under SRDP has recently been undertaken to promote native woodland and remove deer fences to reduce collision risk for capercaillie. Capercaillie would be likely to start colonising that site as the forest develops over the next 10-20 years. However given its location we would expect it to be an obvious recreation destination for An Camas Mor residents, probably compromising its potential for capercaillie expansion.

The effects of the development itself, and of the mitigation measures, on the extent and distribution of suitable functioning habitat for capercaillie should be fully assessed before decisions are taken on which measures are appropriate. We have outlined a way in which this could be undertaken, in Annex 2.

Effects on other protected sites and species

The CNPA will need to be satisfied that the impacts of the development on all potentially affected designated areas including SPAs, SACs, SSSIs and Abernethy and Glenmore National Nature Reserves, and on protected species, have been fully considered. We note that the SNH response does not provide advice on the potential effects of the development on the National Nature Reserves, and with the exception of otter, does not mention European Protected Species such as wildcat and red squirrel.

It should be noted that some of the proposed mitigation measures (such as provision of diversionary recreation facilities) may be in close proximity to protected species, and potential impacts (such as disturbance) arising from these measures should be considered further.

Annex 2:

Modelling the effect of additional disturbance on the capercaillie population around An Camas Mor (ACM)

It is known that capercaillies respond to use of forest tracks by people. They avoid the woodland closest to roads and this effect of disturbance declines at greater distances from the roads. It is still possible to detect the effect 200 m from roads. In a study at Abernethy Forest and Glenmore, the effect of disturbance was measured along roads that were lightly and heavily used by people (Summers *et al.*, 2007⁵). In order to translate the declining effect of disturbance with distance from tracks into a readily usable measure, the former measure was converted into a stepped relationship, such that there was a distance from tracks that capercaillies effectively totally avoided, beyond which there was no avoidance (see Figure 1 for an example). The mean 'avoidance distance' was found to be 62.5m for lightly used tracks, and 90.5m for heavily used tracks. Because there is a direct relationship between numbers of capercaillies and the area of available old woodland we can expect that the population will be smaller if woodland is effectively lost due to disturbance.

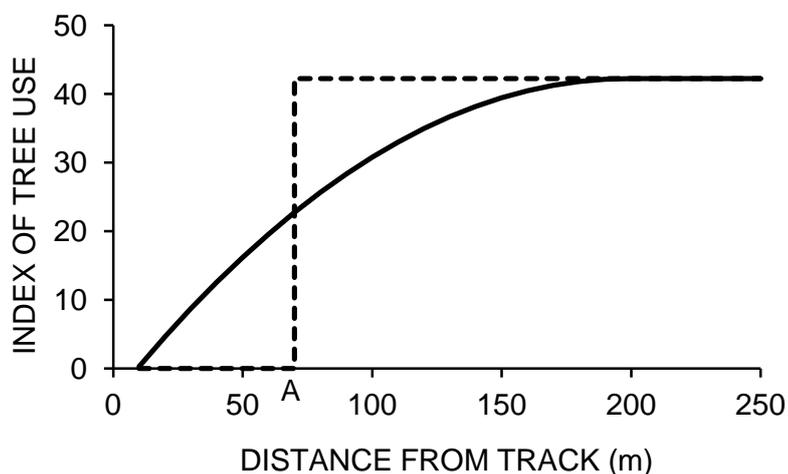


Figure 1. The conversion of the actual measure of tree use by capercaillies (solid line) to a stepped relationship whereby there is total avoidance of woodland out to point A, and complete use beyond this point. This example is for a heavily used track in Abernethy Forest.

It is possible to use these 'avoidance distance' values, in conjunction with modelled densities of capercaillie, to assess the possible effects that additional use by people (caused by the ACM development) may have on the effective availability of habitat for capercaillie, and thus capercaillie numbers, in the forests around ACM. Below is an outline as to how this exercise might be undertaken, although other approaches would be possible.

Existing patterns of recreation, and those likely to be generated by the ACM development, first need to be established. This is in order to ascertain the existing levels of recreational use associated with tracks, and the degree to which those levels would be changed as a result of the development. From this, the extent of track network likely to be affected by the development can be estimated.

⁵ Summers, R. W., McFarlane, J. & Pearce-Higgins, J.W. (2007) "Measuring avoidance by capercaillies *Tetrao urogallus* of woodland close to tracks" *Wildlife Biology* 13: 19-27

A distance sampling model can then be run with all sightings from the 2003, 2009 and 2015 capercaillie national surveys, to predict the densities of capercaillie across the area likely to be affected by recreation generated by ACM. The estimated population of capercaillie within that entire area can then be calculated.

A 62.5m buffer can be set either side of all 'lightly used' tracks in the forests, and a 90.5m buffer can be set either side of all 'heavily used' tracks. The area within those buffers can be assumed to be totally avoided by capercaillies.

By removing native pinewood land cover polygons within those buffers, and then re-running the distance sampling model, the effective habitat loss due to disturbance and the consequent reduction in capercaillie numbers can be calculated.

The above process should be undertaken for the existing (baseline) situation; the situation likely to arise as a result of the development without mitigation; and with the mitigation proposed. It should also be used to assess the likely effects of specific mitigation measures, such as track closures or diversions. This exercise depends upon (a) robust baseline data on the existing use of tracks; (b) accurate predictions of the likely recreational patterns generated by the development and resulting from the mitigation measures; and (c) sufficient detail of the mitigation measures proposed – e.g. which lengths of tracks are to be closed.

We would be pleased to discuss this recommended exercise in detail with CNPA, SNH and the applicant, and consider that this exercise is an essential part of the assessment of the proposed development and mitigation measures.