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## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title:** REPORT ON CALLED-IN PLANNING APPLICATION

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DEVELOPMENT MANAGEMENT)

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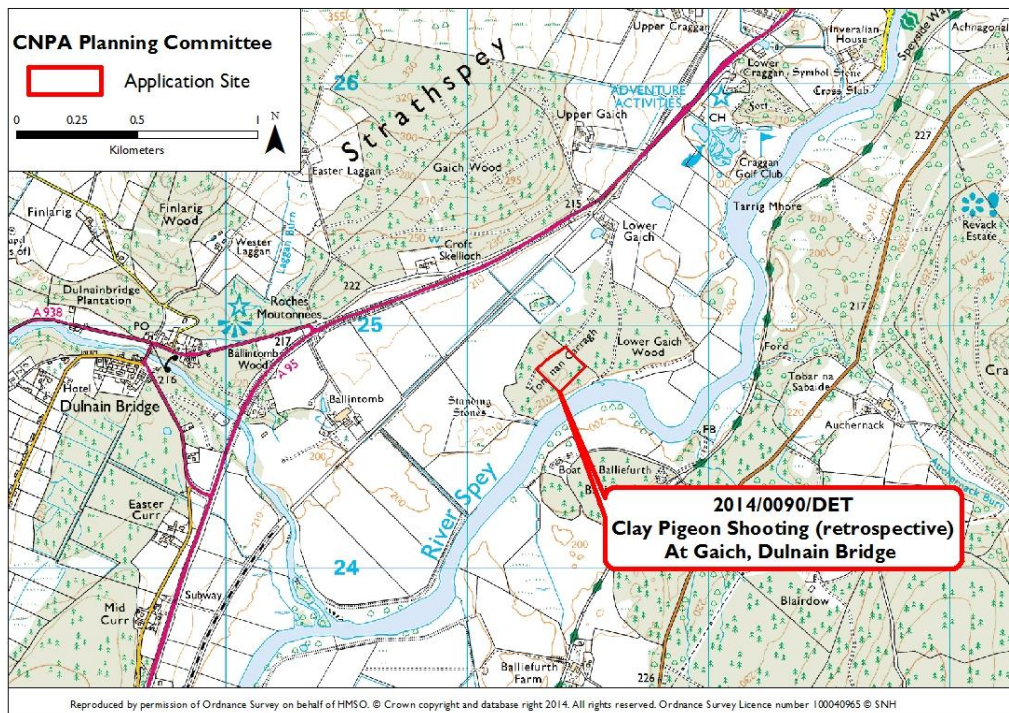
**DEVELOPMENT PROPOSED:** Commercial clay pigeon shooting in part of woodland (retrospective application) at Lower Gaich Woodland, Dulnain Bridge

**REFERENCE:** 2014/0090/DET

**APPLICANT:** Craggan Outdoors

**DATE CALLED-IN:** 24 March 2014

**RECOMMENDATION:** REFUSE PLANNING PERMISSION

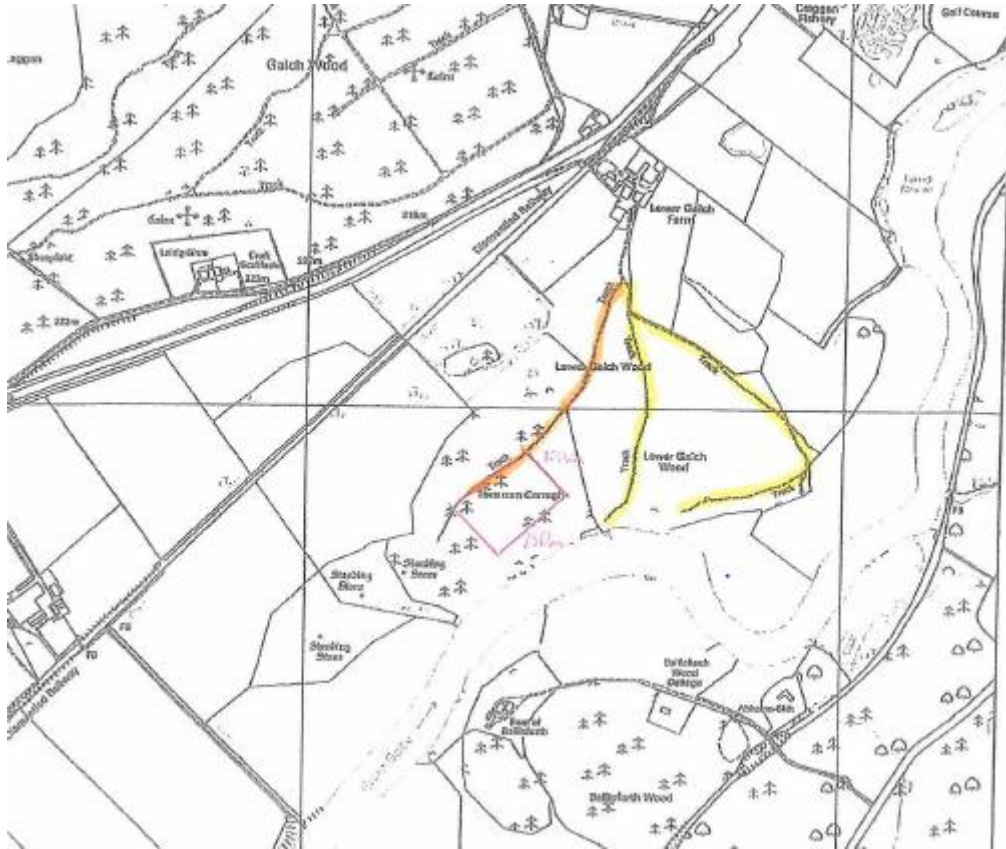


**Grid reference: (E/301408 N/824847)**  
**Fig. 1 - Location Plan**

## SITE DESCRIPTION AND PROPOSAL

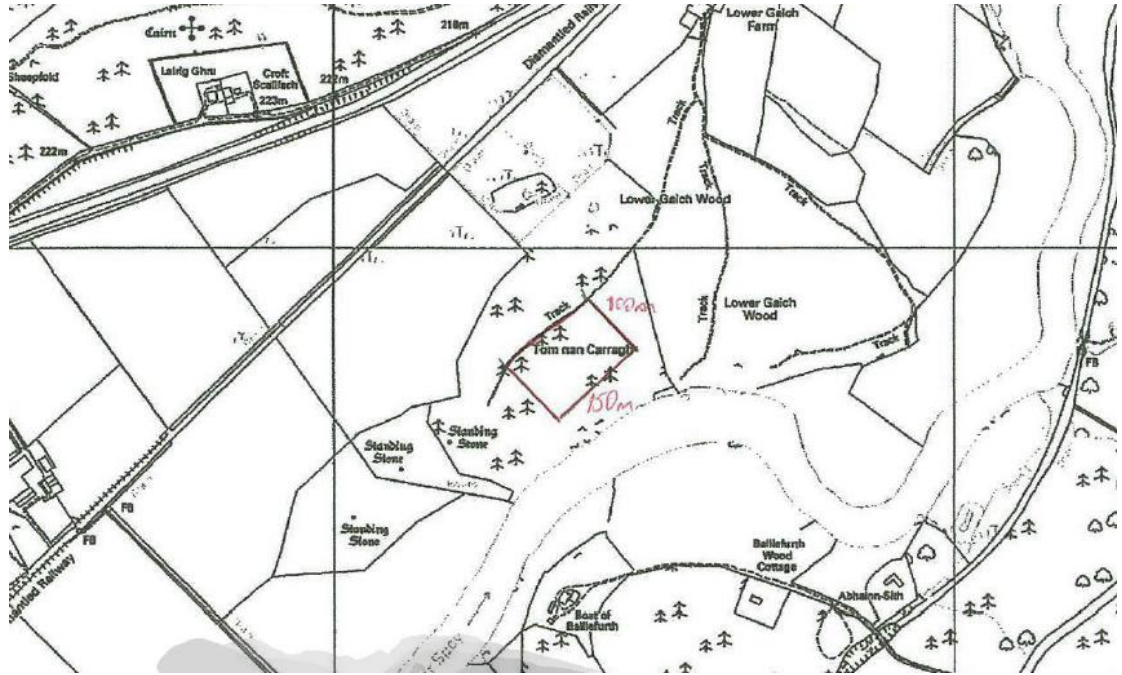
1. As members will recall this application was deferred at the 4 July 2014 meeting of the Cairngorms National Park Authority (CNPA) Planning Committee so that further information, considered to be material to the case, could be assessed and reported upon. This related principally to the status of the River Spey as a core path and the implications for the development, as well as clarification of some consultee responses, including Transport Scotland. Consideration of these issues has now taken place and the report has been updated including a change in recommendation all as set out below.
2. This is a retrospective planning application for commercial clay pigeon shooting within Lower Gaich woods some 1.7 km to the south west of Grantown and some 1.5 km to the east of Dulnain Bridge. The site is accessed through Lower Gaich farm using an existing access track onto the A95 Grantown to Aviemore trunk road. Currently users have no vehicular access to the site, but rather parties walk from Craggan Outdoors site through the fields to connect onto this track and then walk onwards to the site via a section of the A95 and then back onto the farm track. This farm track continues south from the farm through fields and into the woods where it becomes a grassed track leading into the woods. The River Spey runs to the south around 35 metres away at the closest point to the site boundary.
3. There are other tracks for fishermen leading south to the River Spey which lies to the south. The site lies some 500 metres south of the trunk road with the former railway line running between the site and the road. This context is shown on **Figure 2** below with the yellow highlighted tracks showing access for fishermen and the orange the track to the site.

Figure 2 Location of Site



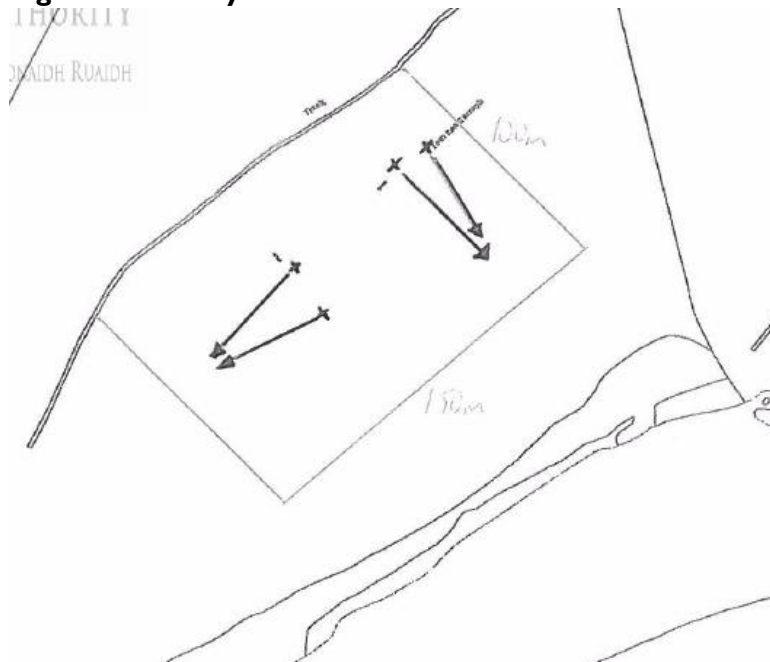
4. The site is located on the north of the River Spey at distances ranging from 300 to 500 metres from the residential properties at Balliefurth on the opposite side (south) of the River. This relationship is shown on **Figure 3** below which illustrates these properties. There are further residential properties at Gaich Farm some 750 metres to the south west and Lower Gaich Farm itself (around 500 metres to the north) and through which access is taken as noted earlier.

Figure 3: Relationship to Residential Properties



5. The site is located in the middle of a woodland area and measures some 100 metres by 150metres. This area is roped off, and there are two pairs of shooting stances on the site as shown in **Figure 4** below. These aim south and west and comprise simple wooden stands for persons to stand and shoot, with a clay-firing trap firing out the clays for persons to aim at and shoot.

Figure 4 Site Layout



6. In terms of environmental designations, the woodland within which the site is located is listed as Ancient Woodland and the River Spey to the south is designated as a Special Area of Conservation and Site of Special Scientific Interest. The River Spey is also designated as a Core Path in the CNPA Core Paths Plan, (Reference LBSI) and is promoted by the Scottish Canoe Association. Standing stones lie to the south west of the site some 200 metres from the site boundary.
7. The application is accompanied by a Supporting Statement from the applicants who have requested to be **heard** at Committee. This statement is attached as **Appendix I**. It outlines how the Craggan Outdoors centre has been operation on the Glenbeg Estate since 2003 with the current owners taking it over in 2008 when commercial clay pigeon shooting formed part of the activities. The landowner has advised that the shooting had been taking place for around 2-3 years before this i.e. from around 2005. When the applicants took over the site their solicitors checked the status of the site and the need for planning permission for the clay pigeon shooting was not raised.
8. The applicants' supporting statement outlines in detail how they believe the development to comply fully with the aims of the National Park in terms of :
  - The care for the environment exercised
  - Promoting the qualities of the Park to visitors
  - The doubling of the work force ( from 4 full time equivalents- FTE- to 8) as a result of the applicants investment in the business and range of activities (including the clay pigeon shooting)with consequent economic benefits.
9. The statement highlights that the clay pigeon shooters comprised 7% of the 9,678 visitors to the site in 2012/13 and is the fourth highest attraction for Craggan Outdoors in terms of number of heads. Due to its higher pricing this represents 9.4% of the annual turnover of the business so as such effectively supports 1 FTE employee.
10. The frequency of shooting over the time that the current applicants have been operation is detailed in the statement. This rises from 383 persons over 54 days in 2008/9 (with average shooting time of 85 minutes on each of these days) to 674 persons over 76 days in 2012/13 (with average shooting time of 106 minutes on each of the days)
11. The applicants have also replied in detail to the contributions made by third parties and consultees. In relation to Environmental Health comments they have noted that other clay pigeon ranges in the area (Rothiemurchus and Dell of Glenlivet) also lie within 1 -1.5 km of houses. Also that their operational practise of no shooting outwith the hours of 10 am to 4 pm ensures that the impacts upon residents are minimised, with noise not being constant as there is shooting taking place only around 20% of the total days in any year. They

also highlight that if there had been excessive noise/disturbance it would have been anticipated that complaints would have been received before now.

12. Safety concerns raised by objectors are also commented upon explaining why the applicants consider there is no conflict and outlining how the site would not be affected by casual access.
13. The supporting statement also advises that Craggan Outdoors has robust Standard Operating Procedures and Risk Assessments for all activities undertaken. Training and monitoring of instructors is ongoing. They are inspected on an annual basis by the Adventure Activities Licensing Authority (AALA), an arm of the Health & Safety Executive. Shotguns are held under the licence of the company director (the applicant) and the operation has the requisite Police Scotland permit, last renewed in Autumn 2013.

### Site History

14. It is understood that there has been clay pigeon shooting taking place on this site for some years with the landowner advising that this dates back to 2005 as noted earlier. The applicants acquired the business (Craggan Outdoors) in 2008 and have submitted records to demonstrate that they have been using the site for clay pigeon shooting since then as outlined above. The Highland Council received complaints regarding the operations in 2013 and investigated the situation. They determined that planning consent was required for the operations and advised the applicants accordingly. Following ongoing contact from the Council the applicants submitted this retrospective application for consideration.
15. There is no other relevant planning history on the site itself. As advised by the applicant, there is another clay pigeon range in the area at Rothiemurchus which was granted temporary consent by Highland Council in 1987 (Ref 87/334) and thereafter permanent consent, with use of an existing building as a café in 1990 (Ref 90/456). *(It should be noted however that each application must be dealt with on its own merits and the above site was considered 24 years ago)*
16. There have been numerous planning applications at the Craggan Outdoors site to the north granted by the Highland Council over the years as summarised below:
  - Erection of High Ropes ( 04/00314/FULB)
  - Erection of office, changing room and rope slide (05/0027/FULB)
  - Renewal of temporary consent for existing clubhouse and extension (02/00065/FULBS )
  - Erection of Toilet Block (98/00121/FULBS) | Status: Permission Granted

The following applications were refused:

- Display of Advertisement ( 06/00101/ADVBS)

- Erection of Cages and Buildings to house birds of prey, formation of picnic area, car and coach park (97/00284/FULBS)

## DEVELOPMENT PLAN CONTEXT

### National policy

16. **Scottish Planning Policy** (SPP, revised 2014) sets out national planning policies that reflect Scottish Ministers priorities for the operation of the planning system and for the development and use of land. Under planning law, planning applications must be determined according to the development plan unless material considerations indicate otherwise. The content of SPP is a material consideration in planning decisions that carries significant weight. The SPP promotes consistency in the application of policy across Scotland whilst allowing sufficient flexibility to reflect local circumstances. SPP highlights the importance of increasing sustainable economic growth to create a more successful country with opportunities for all of Scotland to flourish. It also seeks to ensure that the planning system encourages rural development which supports prosperous and sustainable communities and businesses whilst protecting and enhancing environmental quality. SPP also highlights the need for the planning system to promote business and industrial development that increases economic activity while safeguarding the natural and built environments as national assets. Due weight is to be given to the economic benefit of proposed development.
17. SPP seeks to promote sustainable travel and active travel highlighting the need to optimise the use of existing infrastructure; reduce the need to travel; provide safe and convenient opportunities for walking and cycling for both active travel and recreation, and facilitate travel by public transport; enable the integration of transport modes; and finally to facilitate freight movement by rail or water.

The SPP sits alongside four other Scottish Government planning policy documents:

- The **National Planning Framework** (NPF) which provides the statutory framework for Scotland's long term spatial development. The NPF sets out the Scottish Government's spatial development policies for the next 20 to 30 years;
- **Creating Places**, the policy statement on architecture and place, containing the Scottish Government's policies and guidance on the importance of architecture and design;
- **Designing Streets**, a policy statement putting street design at the centre of placemaking. It contains policies and guidance on the design of new or existing streets and their construction, adoption and maintenance; and
- **Circulars**, which contain policy on the implementation of legislation or procedures.

18. **Scottish Government Planning Advice Note 1/2011: Planning and Noise** is also relevant in this case. It promotes the appropriate location of new potentially noisy development and a pragmatic approach to the location of new development within the vicinity of existing noise generating uses to ensure that quality of life is not unreasonably affected and that new development continues to support sustainable economic growth. It stresses the importance of involving Environmental Health officers at an early stage for development proposals which are likely to have significant noise impacts.
19. The guidance explains the importance of fully considering noise impacts with development management and the role of noise impact assessments. It also outlines the role of mitigation measures to control noise and the need for these to be proportionate and reasonable. There is specific mention of clay target shooting under recreational and sporting uses. This notes the need for any noise impact assessment to demonstrate that the proposed activity does not have an adverse impact on nearby noise sensitive land uses.
20. In addition specific guidance on the “**Control of Noise for Clay Target Shooting**” produced in 2003 by the Chartered Institute of Environmental Health is also relevant in terms of representing the guidance used by Environmental Health officers to consider fully the noise impacts of such proposals along with their other standard legislation and guidance. This guidance sets out issues to be considered and potential mitigation measures for noise. It recommends that no shooting should take place in the direction of any public right of way (or any building with public access) that is within 275 metres of the shooting position.
21. This guidance goes on to set out that a much larger buffer zone will be required to protect noise sensitive premises which will depend on local circumstances and on the level of shooting noise transmitted. It stresses that the guidance is intended to offer practical guidance on the typical size of a noise buffer zone, rather than precise enforceable distances, recommending that where shooting is taking place on flat land in the absence of significant sound reflecting media (e.g. rock faces, woodland areas, large lakes, significant buildings) that a noise buffer zone of at least 1.5 km in the general direction of shooting and 1 km in the rearward arc is advisable.
22. The guidance concludes on this point by saying “*shooting should nevertheless not normally take place with separation distances of less than 1 km in the direction of shooting unless under very exceptional circumstances which have been fully discussed and agreed with the local authority and any affected residents.*” It also notes that as the size of a noise buffer decreases so the frequency and duration of events may also need to be decreased.

### **Strategic Policies**

#### **Cairngorms National Park Partnership Plan (2012-2017)**

23. The Cairngorms National Park Partnership Plan 2012 – 2017 is the management plan for the National Park for the next 5 years. It sets out the



vision and overarching strategy for managing the Park and provides a strategic context for the Local Development Plan. Three long term outcomes have been identified to deliver the vision for the Park, to continue the direction set out in the first National Park Plan and to together deliver the four aims of the National Park. The outcomes are:

- A sustainable economy supporting thriving businesses and communities;
- A special place for people and nature with natural and cultural heritage enhanced; and
- People enjoying the park through outstanding visitor and learning experiences.

Policies to secure the outcome of 'a special place for people and nature with natural and cultural heritage enhanced' are of relevance. Also relevant in this case is Policy 1.1 which seeks to grow the economy of the Park by strengthening the existing business sector as well as supporting business diversification and start ups

Policy 1.2 which seeks to encourage safe travel off road and links with public transport is also relevant.

24. Finally the **National Park Outdoor Access Strategy** is also relevant in this case which sets out the wider strategy for access in the Park.

### **Local Plan Policy**

#### **Cairngorms National Park Local Plan (2010)**

25. The Cairngorms National Park Local Plan was formally adopted on 29<sup>th</sup> October 2010. The full text can be found at :  
<http://www.cairngorms.co.uk/parkauthority/publications/results.php?publicationID=265>
26. The Local Plan contains a range of policies dealing with particular interests or types of development. These provide detailed guidance on the best places for development and the best ways to develop and all relevant policies of the Plan apply. The following paragraphs list a range of the key policies that are appropriate to consider in the assessment of the current development proposal.
27. *Policy 33: Tourism Related Development* sets out that tourism related development which has a beneficial impact upon the local economy through enhancement of the range and quality of tourism attractions and related infrastructure will be supported provided, amongst other criteria it does not have an adverse impact on the built or natural environment which in the judgment of the Planning Authority outweigh the beneficial impacts.
28. *Policy 35: Sport and Recreation Facilities* supports the development of formal facilities or diversification or extensions to existing recreation related business activities where they demonstrate best practise in terms of sustainable design and where there are no adverse environmental impacts on

the site or neighbouring areas and they meet an identified community or visitor need.

29. Policy 6: Landscape sets out that there will be a presumption against development which does not conserve and enhance the landscape character of the National Park unless any significant adverse effects are outweighed by social or economic benefits of national importance and all adverse effects can be mitigated.
30. Policy 16: Design Standards for Development sets out the design standards to be met with new development and is supported by supplementary planning guidance in the form of the sustainable design guide. This policy seeks to ensure that the amenity enjoyed by neighbouring proprietors is protected
31. Policy 5: Biodiversity sets out the importance of ensuring there is no adverse impact upon habitat or species identified in the local biodiversity action plan.
32. Policy 4: Protected Species sets out that any development which would have an adverse effect on any European Protected species (e.g. bats) will not be permitted unless there are reasons of public health, safety or overriding public interest and beneficial environmental consequences and no other satisfactory alternatives available.
33. Policy 1: Natura 2000 Sites sets out that any development likely to have an effect on a Natura 2000 site will be subject to an appropriate assessment and where this is unable to ascertain that the development will not adversely affect the integrity of the site, the development will only be permitted where there are no alternative solutions or there are imperative reasons of overriding public interest including those of a social or economic reason
34. Policy 3: Other Important Natural and Earth Heritage Sites and Interests seeks to ensure that any adverse impacts upon such areas, including ancient woodland, are mitigated and that the overall interests are not compromised.
35. Policy 11: The Local and Wider Cultural Heritage of the Park seeks to conserve and enhance features, or uses, of local/wider or cultural significance,
36. Policy 34: Outdoor Access seeks to encourage development which improves opportunities for responsible outdoor access and adheres to the National Park Outdoor Access Strategy Policy also sets out that development proposals which would result in a reduction of public access rights or loss of linear access (such as core paths or access to inland water) will only be permitted where an appropriate or improved alternative access solution can be secured to the satisfaction of the planning and access authorities. Supporting text outlines the international reputation of the National Park as a venue for outdoor access and recreation and explains how the CNPA will work to protect public access rights and core paths

37. Policy 12: Water Resources seeks to ensure that resources are used sustainably, connection is made to public sewers and surface water is treated in accordance with SUDS principles.
38. Policy 29: Integrated and Sustainable Transport Network seeks to ensure that adequate consideration is given to maintaining or improving the sustainable transport network and requires submission of transport assessment where impacts are considered to be significant. This should cover local transport impacts. The supporting text to this policy explains that development proposals should consider the impact on the core paths network within the area, the wider impacts upon the National Park Outdoor Access Strategy and any other established routes in order to help promote a sustainable transport hierarchy.

### Supplementary Planning Guidance

39. In addition to the adoption of the Cairngorms National Park Local Plan (2010) on 29th October 2010, a number of Supplementary Planning Guidance documents were also adopted. With this application key documents are the Sustainable Design Guide which sets out the principles to be considered when planning new development in the Park and *Natural Heritage* supplementary planning guidance which sets out matters to be considered.
40. Also key to consideration of this application is the adopted **Cairngorms National Park Core Paths Plan 2010**. The key purpose of the Plan is to provide for a core paths network which is sufficient for the purpose of giving the public reasonable access throughout their area. The Plan helps deliver key aims of the National Park Partnership Plan to ensure that a wider range of people have the opportunity to enjoy the outdoors; and to have a more extensive, high quality, well maintained and clearly promoted path network so that everyone can enjoy the outdoors and move around the Park in a way that minimises reliance on motor vehicles, The River Spey is identified in the Plan as a core path (LBSI)

### CONSULTATIONS

41. **The CNPA Economic Development Manager** notes that the applicants have developed a reputation for providing a good quality of service and expertise (2012 Highland and Islands Best Visitor Attraction) with turnover and employment increasing since 2008. The wider clay pigeon market in the UK has grown rapidly in the last decade with a growing demand from the entertainment market (e.g. stag/hen parties, and companies looking to entertain guests and employees) in addition to membership shooting clubs.
42. They conclude that clay pigeon shooting is an important and appropriate part of the product mix for Craggan Outdoors providing enough income to employ a member of staff and is a key driver in bringing people to the centre. The impact could potentially be lessened by having a more robust structure around availability which may focus marketing and reduce the days in which the activity is available.

43. **The CNPA Ecology Advisor** notes that the development lies within a thicket stage Scots pine plantation with the closest designated site being the River Spey SAC/SSSI. It is noted that the woodland is isolated from other blocks of woodland in the area whereby there should be no disturbance to capercaillie. The use has been taking place since 2008 and before, whereby there is unlikely to be any further negative impacts as a result of the development continuing. From the site visit it was clear the area is still being used by raptors/owls with a large number of brown hares evident. It is concluded that there are no ecology issues raised.
44. The officer has further considered the impacts upon the listing of the site as ancient woodland and notes that the woodland is presently thicket stage planted Scots Pine with the ground vegetation floristically poor, being dominated by common grasses. It is therefore likely that this is a "PAWS" woodland which may have had nutrient input or has been grazed in the past.
45. The development does not require the removal of trees and access to the woodland involves use of existing footpaths. Accordingly it is considered that the development will not adversely affect the integrity of the woodland.
46. **The CNPA Access Officer** notes that the River Spey is a Core Path. It is covered by access rights under the Land Reform (Scotland) Act 2013 and has a right of navigation along its length which has been confirmed in the courts in the *Wills Trustees v Cairngorm Canoeing and Sailing Ltd 1976* case. It is also promoted by the Scottish Canoe Association in their River Spey Guide. Accordingly statutory rights of access and navigation exist which favour the public in respect of regular and ongoing use of the Spey for recreation.
47. The Officer advises that day to day operation of the clay pigeon shooting range presents a significant potential hazard affecting recreational users of the River Spey. The hazard arises from a risk of airborne projectile material (including shot) striking users. The proximity of an existing shooting stance to the Spey does not comply with recommended minimum distances for situations where the public may be present and the proposals do not recognise or seek to mitigate this hazard. It is therefore recommended that the application be refused.
48. **Scottish Natural Heritage** note the proximity of the development to the River Spey SAC and SSSI designated for Atlantic salmon, freshwater peal mussels, otter and sea lamprey. They do not consider there is likely to be any significant effect on any of the qualifying interests, either directly or indirectly. SNH have also highlighted following further discussion that non toxic, non lead based shot should be used as a matter of good practise when shooting in the vicinity of the River Spey and that if the application were supported this should be a condition of any planning consent. *(The applicants are agreeable to this type of restriction and have advised that at present lead shot is used but that steel shot can be sourced instead)*

49. **Transport Scotland** was consulted in view of the fact that site access is via an existing access onto the trunk road here. They considered the additional information provided by the applicants in their supporting statement and confirmed that they had no objections to the development. Further to providing this response the Agency contacted the CNPA Planning Service to clarify that their “no objection” response was based upon their understanding of the applicants’ supporting statements as being that (a) there would be no use of the vehicular access by patrons of the site with patrons walking to site and (b) patrons would walk to site through farmland at Lower Gaich to connect from Craggan Outdoors to the Lower Gaich farm track.
50. When officers clarified to Transport Scotland that patrons walk alongside a section of trunk road (on the verge) to access the site Transport Scotland advised that they would object to the application unless a formal footway was provided. Subsequent to this discussion the applicants have confirmed that they have permission to walk through the Lower Gaich fields if required, noting that there have been no accidents to date as a result of walking along the verge.
51. If this were the case Transport Scotland would have no objections providing a plan illustrating the walk route between the centre and the shooting area was provided, together with written confirmation that no vehicle associated with the Clay Pigeon Shoot will use the Lower Gaich Farm Steading access.
52. **Police Scotland (Firearms Licensing)** has been consulted and have advised verbally that this site is appropriately licensed. They have not provided written comments to date and it is understood that they intended to re-visit the site to check compliance with their license and guidance issued.
53. **Scottish Environment Protection Agency (SEPA)** was consulted in view of the proximity to the River Spey. They advise that in order to protect the water environment a planning condition be imposed to ensure that only non-toxic non-lead based shots are utilised on this site. Providing this is done they have no objection
54. **Highland Council Environmental Health Officer** recommends that the application be refused on the grounds of the loss of amenity to nearby noise sensitive premises through noise from gunfire. They note that a suitable noise buffer zone of 1.5 km in the general direction of shooting and 1.5 km in the rearward arc is not achievable in this case and that there are existing complaints regarding the operations. They highlight that the proximity to noise sensitive premises should be a prime concern when considering suitable locations. This typically includes residential properties but can also include farm buildings particularly those housing young animals and impacts on wild and domestic animals.
55. The Environmental Health Officer was asked by CNPA officers to consider whether any mitigation by the applicants (such as acoustic bunds, restricted operational hours, removal of one of the shooting stances, submission of noise impact assessment) could help to address and overcome these

concerns as the applicants are willing to carry out any mitigation deemed necessary.

56. The Environmental Health Officer has confirmed that it is not considered there is any mitigation which would effectively address the noise impacts and loss of residential amenity. It is also advised that the noise levels are in excess of the 30 -35 decibel ambient background noise level normally experience in a rural area and that the Service are investigating these levels with a view to taking action on noise under environmental health legislation. They further highlight that the development does not comply with relevant guidance on clay target shooting.
57. **Dulnain Community Council** advise that whilst they have no objection in principle they have strong reservations about the suitability of the site in relation to the following:
- Although there are not many properties close to the site there is concern regarding impacts on those which are
  - Although rough shooting has always taken place in the area they are concerned that this proposal will be more intrusive
  - Concern regarding proximity to standing stone and safety of persons viewing these
  - Safety of fishers in the area who may cut across the site to the river.
58. **Nethybridge Community Council** has been consulted in view of the fact that affected residences lie within their area. They object on the following grounds noting that they have been contacted by objectors to the application:
- Disturbance/noise pollution to residents at Balliefurth area
  - Development breaches national standards in relation to proximity to houses
  - Shot from gun falls into River Spey
  - Adverse effects on local wildlife with the shooting over the years causing birds to leave the area.
  - Safety concerns
  - Request that enforcement action be taken immediately

Copies of these consultation responses are attached as **Appendix 2**.

## REPRESENTATIONS

59. The application has been advertised in the local press and a total of four representations have been received which are attached as **Appendix 3**. Three of these letters object to the application for the following reasons and are from residents of the three houses which lie across the River at Balliefurth. The basis of objection is summarised below
- Loud repetitive noise destroys quality of life in formerly peaceful area within National Park
  - Danger to walkers and fishers using the area
  - Existing noise nuisance from operations (gun fire and shouting of instructions)

- Objectors initially thought noise was due to private shooting
  - Lower Gaich is a SSSI designed to protect the area  
*Note: the site lies outwith the SSSI*
  - Endangered species are on decline due to the shooting
  - Reference is made to guidance on clay target shooting which is being breached.
  - No need for this development when there is another range only 10 miles away  
*Note: this is not a relevant land use planning consideration.*
  - Property devaluation  
*Note: this is not a relevant land use planning consideration*
60. One representation has been received from the landowner that in response to the objections received regarding safety, noting that the river bank is not in the line of fire from the clay pigeon shooting and is at a much lower level. Similarly the standing stones lie outwith the marked area for the shooting.
61. The landowner also considers that there has been no reduction in the amount of wildlife over the years and notes that the application site lies outwith the designated SSSI area.
62. After publication of the original committee report to for the July 14 meeting, two of the objectors raised material issues which would have been reported orally to Committee. Having viewed additional, supporting material from the applicants relating to the position of the shooting stances objectors wished to highlight the following matters:
- The development contravenes Article 8 of the European Convention on Human Rights, (perhaps more widely known as the Human Rights Act), which entitles anyone to "the right to a quiet family life". Also that noise is proven specifically to be detrimental to health, and in particular causes high blood pressure and strokes.
  - Due to the position of the stances the 275 metres minimum safety zone referred to in "Clay Target Shooting: Guidance on the Control of Noise" (produced by the Chartered Institute of Environmental Health) involves land in the objectors and other parties control (*This has been represented in **Figure 5** later in the report*)
63. Finally as noted earlier the applicants have requested to be **heard** at Committee.

## APPRAISAL

### Principle and Economic Benefits

64. Planning Policies 34 and 35 support tourism and recreational development in the National Park where these have a beneficial impact upon the local economy through enhancing the range of tourism attractions. There is no doubt that this proposal meets this policy intention with considerable evidence provided by the applicants to demonstrate the value of this

development to their business. Their view is shared by the CNPA Economic Development Manager.

65. This supportive stance for the development in principle is also subject to full consideration of environmental impacts including the impacts upon neighbouring areas and public access and safety. Consequently the principle of this type of recreational development is in line with policy providing it is suitably sited and complies with all relevant planning policies. These will now be considered below.

### **Servicing/Access**

66. The development is a low key one in terms of servicing and does not give rise to any drainage or water supply issues. Existing vehicular and pedestrian access is used, with no changes proposed to the vehicular access point onto the A95 trunk road at Lower Gaich. Transport Scotland has no objections to the proposal as noted in the consultation section providing that (1) there is no proposal for additional vehicular use of the existing junction at Lower Gaich and (2) pedestrians do not walk along the trunk road verge, but rather that a walking route is provided through the farmland.
67. As noted earlier the applicant has confirmed that users walk to the site and that this may be done through the farmland at Gaich instead of the trunk road verge if required. It would therefore appear that Transport Scotland's requirements could be met in the event of consent being granted and a condition requiring provision of a suitable footway through the Gaich farmland from the Craggan Outdoors Centre would be required if so.
68. Similarly the low key nature of the development does not raise any particular waste management issues with biodegradable clays being used and the applicants picking up and disposing of any spent cartridges, all as outlined in the supporting statement. In the event of the application being supported conditions could be imposed to cover these matters.

### **Landscape and Visual Impact**

69. This is a low impact development visually, comprising a roped off area and two pairs of timber shooting stances. It sits within a wooded area with no trees removed/affected and existing grass tracks used with no upgrading proposed. This means it is visually unobtrusive and does not impact upon the landscape or the special landscape qualities of the National Park. It is therefore considered to comply with Policy 6.

### **Environmental Impacts**

70. The impacts of the proposals upon the environment and wildlife in the area have been fully considered by SNH, SEPA and CNPA Ecology Officers. It is considered that there is not an adverse impact upon these interests as a result of this type of development with no evidence of any adverse impacts as a result of the ongoing clay pigeon shooting to date. Accordingly the



application is considered to comply with Policies 1, 3, 4 and 5 relating to natural heritage sites and the environment. However, this view is subject to the use of non lead based shot if the application were supported to ensure that there is no possibility of adverse impacts upon wildlife or upon the water environment of the River Spey.

### **Cultural Impacts**

71. As noted by objectors there are standing stones located to the south west of the site, outwith its boundaries. These are unaffected by the development and it is not considered that there is any adverse impact upon their setting or qualities. Accordingly the application is considered to comply with Local Plan Policy 11 on the local and wider cultural heritage of the park.

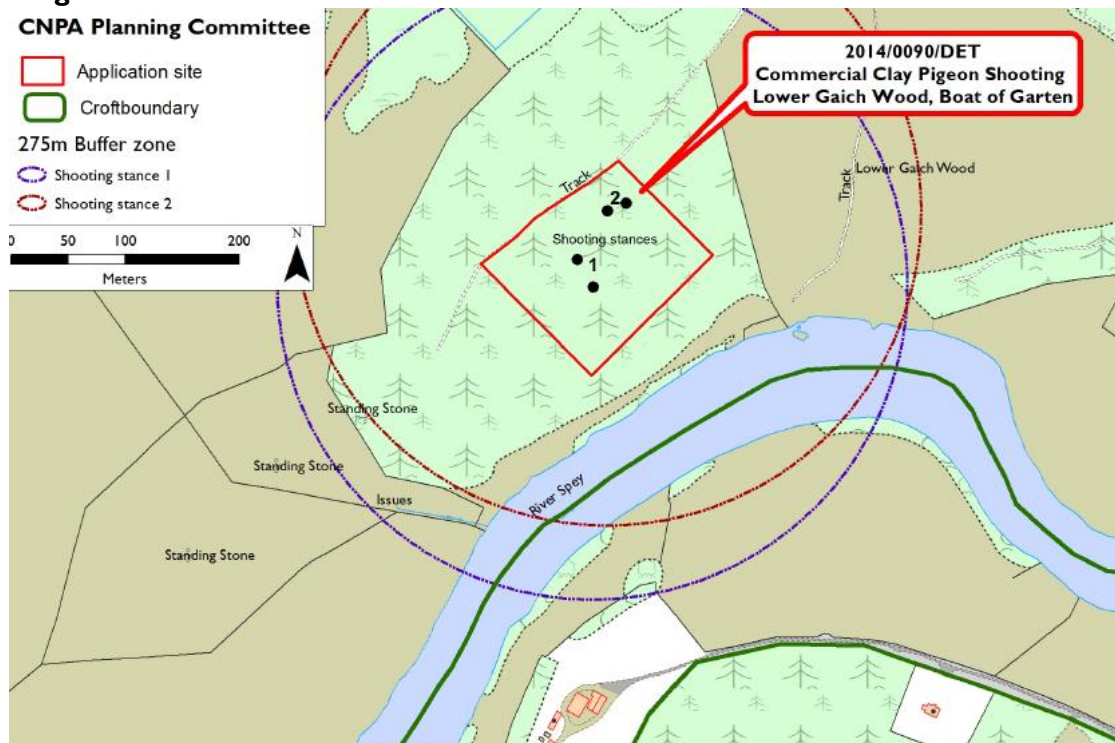
### **Public Safety and Access Considerations**

72. The application was passed to Police Scotland for comment as they are responsible for licensing such activities. As noted earlier they have advised verbally that the operations have the requisite licenses in place and it is understood that they intend to revisit the site to check compliance with the license and associated guidance. The Police would normally be expected to consider public safety both in terms of the suitability of the operator and the site itself. Accordingly this is a matter which should be adequately regulated by another body.
73. It is further noted that the standing stones and river banks lie outwith the site, and, in the case of the river bank, at a lower level.
74. However as noted earlier, the River Spey is a designated Core Path with a right of navigation along it. As such it is crucially important that development does not impact upon its use and the access rights of the public with both national and local planning policy ( and associated CNPA access and core path documents) setting out the importance of ensuring that new development does not result in a loss of public access.
75. In this case the boundary of the clay pigeon shooting range lies around 35 metres from the River Spey with the closest shooting stance being within around 100 metres of the river. As noted in the consultations section of this report the CNPA Access Officer considers that the development presents a significant potential hazard affecting recreational users of the River Spey and recommends refusal of the application as detailed in the submission. In this regard, it is recognised (and has been highlighted by the applicants) that to date there have been no accidents with conflicts of users. However that is not sufficient comfort to provide assurance that this will remain the case.
76. Guidance produced on “Control of Noise for Clay Target Shooting” by the Chartered Institute of Environmental Health (as referred to in paragraph 20 earlier) provides some guidance on the safe siting of clay pigeon sites. This recommends that no shooting should take place in the direction of any public right of way (or any building with public access) that is within 275 metres of

the shooting position. This zone is also referred to in guidance issued by the Police which advises that there should be a zone extending to 275 metres from the shooting point in the direction of fire which should be clearly defined. In these circumstances this zone can be considered to be a reasonable measure of how best to consider public safety.

77. The current submission fall well short of these recommendations in relation to the position of the shooting stances relative to the River Spey which is a core path and undoubtedly an area with important public access. (The standing stones also lie within this zone although there are no defined core paths or rights of way leading to the stones) **Figure 5** below illustrates this 275 metre zone in relation to the shooting stances, River Spey and land in the control of other parties at Boat of Balliefurth.

**Figure 5 -275 metre Buffer Zone**



78. In these circumstances it is considered that the development fails to comply with Policy 34 on Outdoor Access in that it would result in a reduction of public access as a result of the safety issues arising from the proximity of the shooting to the River Spey and its users.

### Residential Amenity

79. This is the key remaining planning issue with this proposal. As noted earlier there are residential properties located between 300 to 500 metres of the site boundary and this breaches environmental health guidance on clay pigeon shooting which advises, as noted earlier, a noise buffer zone of at least 1.5 km in the general direction of shooting and 1 km in the rearward arc. In this case there are objections from the occupiers of these houses all of which raise concerns regarding the noise of the operations. These concerns are

considered to be justified by our technical advisors in Environmental Health and are shared by the local Community Councils

80. Local and national planning policy and guidance sets out that new development should not have an adverse impact upon neighbouring areas or upon their amenity. It would appear clear in this case that the current operation results in a loss of amenity for local residents. Whilst it is not fully understood why objections have not been raised previously it may be the case that the gradual intensification of use over recent years at the site (as evidenced in the applicants' supporting statement) may have resulted in increasing loss of amenity and disturbance. In any event the fact remains that there is a loss of amenity now according to our advisors who do not consider that mitigation measures such as reduction of number of shooting stances to one pair of stances, restricted operating hours or acoustic measures will address this problem. Consequently, as noted earlier, they recommend the application be refused.
81. In these circumstances it is considered that the clay pigeon use as currently operating fails to fully comply with policies 16 Design Standards for Development and Policy 35 on Sport and Recreation Facilities, in view of the impact upon local residents.

### **Conclusion**

82. This development complies with Local Plan policies with the exception of the requirements to protect existing residential amenity and public access and these are key issues with the development. The noise issues have been discussed with the applicants who are very willing to seek to mitigate noise by implementing any measures which may be considered appropriate such as erecting any acoustic barriers that may be considered appropriate, restricting their operating hours, and removing one of the pairs of shooting stances. However Environmental Health officers do not consider that these measures could adequately address noise nuisance and would be prepared to take action under their own legislation on noise nuisance in this case. However, the issues regarding impact upon the Core Path cannot be mitigated against.
83. The applicants' situation in this particular case is acknowledged in that they took on this business in good faith and were not advised at the time (2008) that planning consent was required for commercial clay pigeon shooting. It is not therefore considered that there has been any blatant disregard of planning legislation in this case. In addition when the matter of planning permission requirements were brought to the applicants' attention an application was submitted.
84. It is also worth noting that the operations since 2008 had not given rise to any complaints to the appropriate authorities (Planning and Environmental Health) until this year. Notwithstanding this situation CNPA as Planning Authority is obliged to consider the application on its land use planning merits now.

85. Planning legislation requires decisions on planning applications to be made in accordance with the development plan unless material considerations indicate otherwise. Consequently the Planning Authority is required to fully consider whether there are any material considerations which would outweigh the policy conflict. Such material considerations in this case would be:
- economic benefits
  - permitted development rights
  - Scottish Government guidance on material considerations
86. It is clear that the economic benefits of the development are considerable to the applicants business representing just below 10% of their annual turnover and one full time equivalent job as well as the added value to the facilities on offer at their site. However, this is only one aspect of this business and arguably, given the low level of works concerned, another more suitable site could perhaps be found. This has been discussed with the applicants who point out the benefits of the current location in terms of proximity to their existing operations which maximises efficiency and minimises movements.
87. It is also material to note that Class 15 of the Town and Country Planning (General Permitted Development)(Scotland) Order 2011 sets out as following permitted development class *“The use of land (other than a building or land within the curtilage of a building) for any purpose, except as a caravan site or an open air market, on not more than 28 days in total in any calendar year, and the erection or placing of moveable structures on the land for the purposes of that use“*
88. Accordingly should the applicant decide to operate the clay pigeon business for no more than 28 days in any year planning permission would not be required and there would be no planning control over the operation. In such circumstances, the Environmental Health Service could still take enforcement action if the operations were considered to constitute a noise nuisance.
89. Scottish Government guidance on material considerations as contained in Annex A of Circular 4/2009 Development Management Procedures states as follows *“The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.”*
90. Against these material considerations, therefore the key issue to consider with this case is whether it is possible to support the application when there is evidence of:
- (a) loss of amenity to three private households and;

(b) A potential adverse impact upon the existing use of the River Spey (a Core Path which requires to be protected in the public interest)

91. Having carefully considered all options, including refusal and potential enforcement action, it was the initial view that there was another option in terms of impacts upon residential amenity. This option was to restrict the operations to the level first experienced when the applicants took over the business in 2008 (which gave rise to no complaint) which together with restricting the hours of operation could result in more effective planning control than the option of the application operating 28 days a year with no planning controls whatsoever. This option provided potential to limit the loss of amenity in planning terms. It was also appreciated that the Environmental Health Service could take action under noise nuisance legislation if they considered this necessary at any time.
92. It was therefore considered that applying appropriate planning conditions could limit the loss of amenity to householders to a reasonable level and represented a practical, proportionate approach in terms of amenity considerations which struck a balance between the competing needs here. Also it provided the opportunity that if the applicants felt aggrieved by the restriction in operating days then they had recourse to the appeals system and similarly for residents, noise nuisance could be controlled by other legislation in any event.
93. However the matter of impact upon the public access on the River Spey is not an issue that can be addressed in this way. The basic fact remains that the site lies within a safety buffer of a core path which is of crucial importance to the economy and tourism potential of the National Park and where it is essential that safety of users is guaranteed with no potential impediments to the safe use of the Spey.
94. It is concluded, that on balance, the site is too close to the River Spey to ensure the safety of users of the Spey and that the level of amendments to the proposal which could be required to make the development acceptable demonstrates that it is not a suitable location for this use. It is appreciated that there have been no accidents with users to date but the Planning Authority is obliged to consider the application on its land use merits and these indicate, as noted above, that the site is not suitable in land use terms due to its proximity to the River Spey. In these overall circumstances refusal of the application is recommended.
95. In relation to the reasons for refusal, these are framed on the basis of the application as currently operating, as submitted. It is recognised that some aspects of the refusal reasons could be addressed by planning conditions as detailed in the report and are therefore potentially capable of being overcome. Accordingly ancillary reasons relating to the lack of safe road access and the existing use of lead shot have been attached too.

## **IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK**

### **Conserve and Enhance the Natural and Cultural Heritage of the Area**

96. The development does not conflict with this aim as it is well sited visually, and does not adversely affect the natural heritage of the area either providing lead shot is not used. In addition it is not considered to affect the cultural heritage of the area as it does not impinge on, or harm, the standing stones in the wider area.

### **Promote Sustainable Use of Natural Resources**

97. The application does not directly relate to this aim as it does not use natural resources other than the clays and shot used. The clays are biodegradable so do not conflict with this aim and as the site is well located in relation to the applicants' business at Craggan Outdoors to the north, traffic movements are minimised making the location a generally sustainable one providing safe access to the site were secured, which is not the case at present due to the existing practise of walking patrons along the A95 trunk road verge.

### **Promote Understanding and Enjoyment of the Area**

98. The development could have some potential to support this aim by offering opportunities to provide information to visitors on the attractions and qualities of the National Park, and by encouraging more people to appreciate the area through providing enhanced visitor attractions for Craggan Outdoors' operations. However it may detract from the enjoyment of the area by creating a hazard for users of the River Spey, a core path located in close proximity to the site. Reducing public access rights on the River Spey is in direct conflict to this aim. In addition the development would detracts from the enjoyment of the area for existing residents at Balliefurth as a result of noise nuisance and therefore conflicts with this aim unless appropriate safeguards can be put in place to reduce nuisance.

### **Promote Sustainable Economic and Social Development of the Area**

99. The development supports this aim in relation to the applicants' business in that it is an important component of the business enhancing the provision of facilities offered by the business and thus improving the package on offer. This is of wider benefit to the National Park as it provides improved economic opportunities and the potential to attract more visitors to the area with subsequent economic spin offs. However a development which causes noise nuisance could adversely affect economic and social development in relation to impacts upon residents in the area and also other economic uses such as walkers and fishers in relation to the hazards arising from shooting close to the River Spey.

## RECOMMENDATION

**That Members of the Committee support a recommendation to REFUSE FULL PLANNING PERMISSION for Commercial clay pigeon shooting in part of woodland (retrospective application) at Lower Gaich Woodland, Dulnain Bridge for the following reasons:**

1. The development does not comply with Local Plan Policy 34: Outdoor Access (as contained in the Cairngorms Local Plan 2010) in that it could result in a reduction of public access on the River Spey Core Path (as designated in the Core Paths Plan 2010) due to the safety issues arising from the proximity of the shooting to the River Spey and its users.
2. The development does not comply with Local Plan Policy 16: Design of New Development and Policy 35: Sport and Recreation Facilities (as contained in the Cairngorms Local Plan 2010) in that it gives rise to adverse environmental impacts and loss of amenity to nearby noise sensitive premises in the area due to noise from gunfire.
3. The development does not comply with Local Plan Policy 29: Integrated and Sustainable Transport Network in that it does not currently provide for safe pedestrian access to the site alongside the A95 Trunk Road.
4. The development does not comply with Local Plan Policy 1: Natura Sites, Policy 5: Biodiversity and Policy 12: Water Resources in that lead based shot is currently used for the development which could give rise to adverse impacts upon wildlife and the water environment.

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**Date: 18 July 2014**

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