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CONFIDENTIAL

[REDACTED]

12 June 2019
Our ref: 201704544

Dear [REDACTED]

Complaint about Cairngorms National Park Authority – Final Decision

As you know, I have been looking into your complaint about Cairngorms National Park Authority (the Authority). I know this has been a long process and I would like to acknowledge the time that it has taken for our work to be completed. We are thorough in our investigative procedures and this can sometimes mean that they take longer than we would wish. I am sorry that this has been the case here and would like to thank you for your patience and understanding throughout the investigation. It has been very much appreciated.

I have now completed my investigation, and this letter gives you my decision. The complaints you agreed and which I investigated are that:

- (a) Cairngorms National Park Authority unreasonably failed to accept that its Planning Committee was materially misled by one of the Applicant's consultants during consideration of planning application 2016/0060/DET (*not upheld*);
- (b) Cairngorms National Park Authority unreasonably failed to accept that unreasonable time pressure was placed on the Planning Committee by the Chair of the Committee whilst considering planning application 2016/0060/DET (*not upheld*);
- (c) Planning Condition 1 of 2016/0600/DET unreasonably contravened the guidance in Circular 4/1998 (the Use of Conditions in Planning Permissions), in particular the precision test (*not upheld*);
- (d) Discharge of Planning condition 1 of 2016/0600/DET was unreasonable (*not upheld*);



- (e) Cairngorms National Park Authority unreasonably failed to take reasonable action to enforce planning control, including many of the planning conditions (*not upheld*); and
- (f) Cairngorms National Park Authority unreasonably failed to ensure that the export of soil from the site was properly controlled (*not upheld*).

I appreciate that the matters you have complained about have been of significant ongoing concern to you. Based on my investigation and the independent advice I have received, I have not upheld your complaints and I recognise this may not be the outcome you were hoping for. I have explained the reasons for my decisions below. If there is anything you wish to discuss once you have read this letter through, please do not hesitate to contact me.

Background

Your complaints relate to planning application 2016/0060/DET (the Application), and the resulting development neighbouring your property. You raised a number of complaints with the Authority from October 2016 onwards. As you were dissatisfied with their responses, you brought your complaints to SPSO.

Investigation

In investigating your complaint, I have carefully reviewed the documentation provided by you and the Authority. I have also sought independent planning advice from the Adviser. In providing their advice, the Adviser took into consideration the following legislation and guidance:

- Town and Country Planning (Scotland) Act 1997
- Planning etc. (Scotland) Act 2006
- Planning Series Circular 4/1998: The use of conditions in planning permissions
- Planning Series Circular 5/2009: Hierarchy of Developments
- Planning Series Circular 10/2008: Planning Enforcement
- Standards Commission Scotland Councillors' Code of Conduct 2018

The remit of this office is set out in the Scottish Public Services Ombudsman Act 2002. Our role is to consider complaints where the body in question has not done something they should have done (service failure) or where they have made a mistake in the process of making a decision (maladministration).

As explained by my colleague, Mr Noble, whilst we always take the views of complainants into account, our investigations are independent and decisions about whether or to what extent we investigate complaints are ours to make. It is not



our website. Sometimes the media contact us to ask if you would like to speak to them. We will not give them any information that could identify you, but if you would like to speak to the media our communications team can put you in touch with them. If you would like this, or have any questions about the reports that we make public, please let me know.

If you have any other questions about my decision, please contact me on the phone number below.

Yours sincerely

Lily Malcolm-Watts
Complaints Reviewer

Investigations by the Scottish Public Services Ombudsman are to be carried out in private, in terms of the Scottish Public Services Ombudsman Act 2002. This helps prevent any prejudice to the confidentiality of our investigations. Accordingly, we ask recipients to respect this privacy. This does not affect the rights of recipients to seek legal advice in relation to this complaint. We also ask that recipients respect the privacy of our staff. Where appropriate, recipients are reminded of their obligations under Data Protection Legislation in relation to the processing of personal and sensitive personal data. If you want to know more about how we handle your own personal information, you can read our Privacy Notice on our website at <https://www.spsso.org.uk/privacy-notice-and-disclaimer> or ask us for a copy.