

CAIRNGORMS NATIONAL PARK AUTHORITY

CONFIDENTIAL
FOR DECISION

Authorisation of planning enforcement action to serve an enforcement notice to seek the removal of two containers within Tolquhonie Woods, Near Carr Bridge

Prepared by: Ed Swales, Monitoring and Enforcement Officer

RECOMMENDATIONS

The Planning Committee is asked to:

- a) Authorise the use of an Enforcement Notice on the owner of the land to remove the containers.
- b) Authorise the use of a Section 33A notice to seek an application in order to regularise the improvement to the junction off the A938.
- c) Delegate to officers, all matters in relation to the preparation of and detail of the notice as well as the service of the notice.

Purpose

- 1. To seek explicit authorisation from the Planning Committee, for the use of formal planning enforcement powers by CNPA officers and for the formal delegation of those powers and their implementation to CNPA officers in relation to an Enforcement Notice to seek the removal of two containers installed within Tolquhonie Woods near Carrbridge as well as the service of a Section 33A notice to seek an application for the site access works.

Background

2. In 2023 it was reported that a tent had been erected within the woodland known to be home to capercaillie. This raised concern as a tent in this location may have become the established use. Officers subsequently contacted the owner to request the removal of the tent but were informed that the owner was planning to install two containers joined together on the land with their opinion that this was a caravan that was exempt from planning control.
3. Since the installation of the two containers, the owner has increased the ancillary development on the plot to include the retention of the tent, the installation of solar panels on the roof to provide power and other pieces of equipment and infrastructure that allow the containers to function as a habitable space. These collectively move the containers further away from the definition of a 'caravan' as defined under the relevant caravan exemption certificate legislation (S.29(1) of the Caravan Sites and Control of Development Act 1960) and therefore has resulted in an unauthorised change of use.
4. The woodlands have been split into several parcels of individually owned woodland, however given the presence of capercaillie within the woodland, human interference must be kept to a minimum.
5. In order to facilitate access to the site an existing, albeit disused junction was improved with hardcore placed to ensure a firm surface to enable the trailers to drive into the woodland. Beyond the access, there is a forestry track that runs through the woods past the site.

Analysis and options

6. The CNPA's Planning Enforcement Charter notes that where a breach of planning control has been confirmed and action considered necessary, it will be considered against the policies of National Planning Framework 4 (NPF4) Scotland 2045 and the Cairngorms National Park Local Development Plan (LDP 2021) to decide whether permission would be considered acceptable with the imposition of conditions or other limitations.
7. The full wording of policies can be found at:

<https://www.gov.scot/publications/national-planning-framework-4/documents/>

and at:

<https://cairngorms.co.uk/wp-content/uploads/2021/03/CNPA-LDP-2021-web.pdf>

National Policy	National Planning Framework 4 (NPF4) Scotland 2045	
POLICY 3	Biodiversity	
POLICY 4	Natural Places	
Strategic Policy	Cairngorms National Park Partnership Plan 2022 – 2027	
Local Plan Policy	Cairngorms National Park Local Development Plan (2021) Those policies relevant to the assessment of this application are marked with a cross	
POLICY 1	NEW HOUSING DEVELOPMENT	
POLICY 2	SUPPORTING ECONOMIC GROWTH	
POLICY 3	DESIGN AND PLACEMAKING	
POLICY 4	NATURAL HERITAGE	X
POLICY 5	LANDSCAPE	
POLICY 6	THE SITING AND DESIGN OF DIGITAL COMMUNICATIONS EQUIPMENT	
POLICY 7	RENEWABLE ENERGY	
POLICY 8	OPEN SPACE, SPORT AND RECREATION	
POLICY 9	CULTURAL HERITAGE	
POLICY 10	RESOURCES	
POLICY 11	DEVELOPER OBLIGATIONS	

The rationale for taking enforcement action

8. In considering what action to take officers have considered the CNPA's Planning Enforcement Charter and the harm and potential risk of allowing the breach to persist.
9. The CNPA's Planning Enforcement Charter sets out the CNPA's approach to planning enforcement. It explains how the CNPA prioritises the investigation of potential breaches using a number of factors, including where they cause significant harm to the aims of the National Park. The Charter also notes two stages of assessment:
10. Whether there is a breach of planning control (in this case, it is considered the installation of the two containers within the Tolquhonie woodland area is contrary to Policy 3: Biodiversity and Policy 4: Natural Places of National Planning Framework 4 (NPF4) Scotland 2045 and Policy 4: Natural Heritage of the Cairngorms National Park Local Development Plan (2021)) and;
11. Whether it is in the public interest to take action (in this case the erection of the hut may lead to increased disturbance to capercaillie).

12. In addition, the Charter sets out that: *“If the breach cannot be resolved through discussion, the planning authority will consider serving a formal notice. Formal action will only be taken for serious breaches of planning control where harm to public amenity is significant.”*.
13. In this case, officers have been in discussions with the owner of the land and persons responsible for the installation of the two containers to explain that the containers constitute development and are contrary to the policies within NPF4 and the LDP 2021. The owner of the land has been advised that the works carried out does constitute development, is unauthorised and should not have been installed.
14. In addition to being considered development and without prejudice to the above argument, the development is considered to be ‘Schedule 2’ development under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 and permitted development rights would therefore not apply unless the Planning Authority had undertaken an screening process to confirm that this was not EIA development before the development took place. No request for an EIA screening opinion was received prior to the development being undertaken and no EIA screening opinion has been given, so development cannot therefore be considered as permitted development.
15. Policy 3: Biodiversity states any potential adverse impacts, including cumulative impacts, of development proposals on biodiversity, nature networks and the natural environment will be minimised through careful planning and design. While Policy 4: Natural Places of NPF4 states developments that are likely to have an adverse effect on species protected by legislation will only be supported where the proposal meets the relevant statutory tests. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. There is reasonable evidence to suggest that capercaillie reside within the Tolquhonie woodland and therefore any development that increases a human presence within the woods is likely to have a detrimental effect on the species.
16. **Policy 4:** Natural Heritage of the Cairngorms National Park Local Development Plan 2021 seeks to ensure that there are no adverse effects on natural heritage interests, designated sites or protected species and that any impacts upon biodiversity are avoided, minimised or compensated.
17. Although the site is not located within any NATURA designations, it has links with the surrounding designated areas due to its use by capercaillie. Consequently, a key environmental issue in this case is therefore the potential impact upon the qualifying interests of the NATURA sites. The conservation

objectives for the qualifying interests of capercaillie for each of the noted Special Protection Areas are:

- a) To avoid deterioration of the habitats of the qualifying species; or
- b) Significant disturbance to the qualifying species; thus ensuring the integrity of the site is maintained; and
- c) To ensure for the qualifying species that the following are maintained in the long term:
 - i) Distribution of species within the site;
 - ii) Distribution and extent of habitats supporting the species;
 - iii) Structure, function and supporting processes of habitats supporting the species;
 - iv) No significant disturbance of the species;
 - v) Population of the species as viable component of the site.

18. Within the Badenoch & Strathspey area, there are five SPAs with capercaillie as qualifying interest: Abernethy Forest, Anagach Woods, Craigmore Wood, Cairngorms and Kinveachy Forest. The distances between these SPAs are well within maximum capercaillie dispersal distances known from the relevant literature. An impact on any woodland supporting capercaillie has the potential to impact on the qualifying interests of all five SPAs. SPA conservation objectives will not be met by this development so it would have an adverse effect on the integrity of the five SPAs classified for capercaillie.
19. Given the scale of likely disturbance to capercaillie it is considered necessary to seek the removal of the containers and other ancillary development in order that the area does not facilitate overnight stays or additional human activity within close proximity to capercaillie areas. A location plan showing the site is included as Appendix 1 and a draft enforcement notice is included as Appendix 2.
20. The improvements to the junction are considered to be development and therefore require an application in order to regularise the works. There are no permitted development rights for the development of private ways within 25 of a public road. It is considered that seeking an application for the works is appropriate as they comply with the relevant policies within NPF4 and the Local Development Plan 2021. A draft section 33A notice requiring a planning application to be made for those works is included as Appendix 3.

RECOMMENDATION

That the Planning Committee approve:

- a) the use of an enforcement notice to require the removal of the unauthorised containers;**

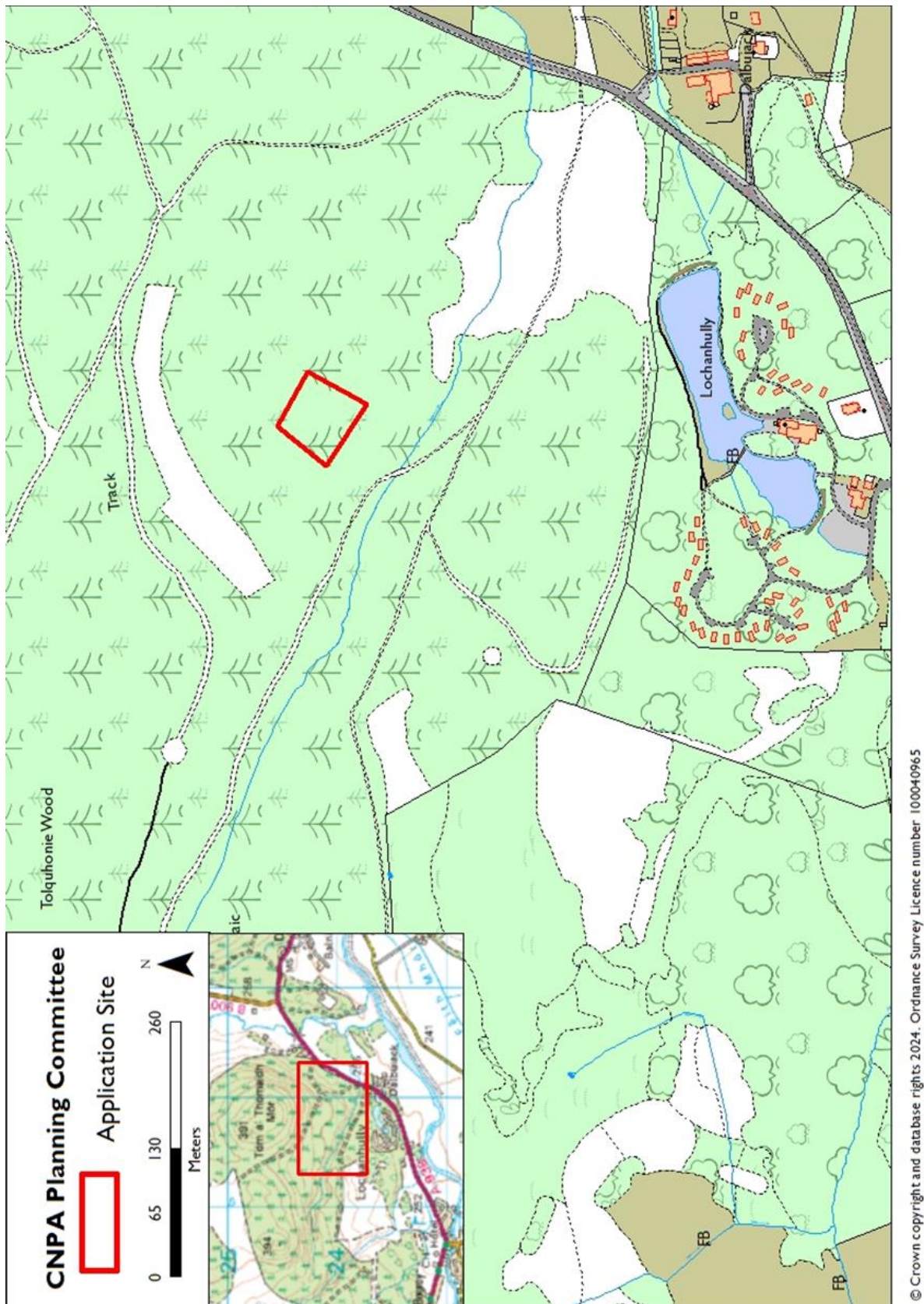
- b) Authorise the use of a Section 33A notice to seek an application in order to regularise the improvement to the junction off the A938.**
- c) Delegate to officers, all matters in relation to the preparation of and detail of the notices as well as the service of the notice.**

Ed Swales

March 2024

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Appendix 1 – Location Plan



Appendix 2 – draft Enforcement Notice

Important – this communication affects your property or that in which you have an interest

Town and country planning (Scotland) act 1997

Enforcement notice

To:

Reference number : 2023/0018/ENF

Issued by the Cairngorms National Park Authority ("the Authority"), as planning authority in terms of paragraph 7(1)(b) of The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003, for the purposes of Section 127 of the Town and Country Planning (Scotland) Act 1997 ("the Act").

1. **This is a formal enforcement notice** under Section 127 of the Act which is issued by the Authority because it appears to them that there has been a breach of planning control, under Section 123 (1)(a) of the Act at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of National Planning Framework 4 (NPF4) Scotland 2045, the Cairngorms National Park Local Development Plan 2021 and to other material planning considerations.
2. **The land affected**
Tolquhonie, Carrbridge, Highland "the Land" shown edged in red on the attached plan ("the Plan").
3. **The breach of planning control alleged**
The use of land for the placement of a storage unit, and other ancillary development on the Land ("the Development"), all of which in the opinion of

the Authority is a breach of planning control involving the carrying out development without the required planning permission under Section 123(1) (a) of the Act.

Section 124(3) of the Act is not engaged as the hut has been in place less than 4 years.

4. Reasons for issuing this notice

The Development is contrary to Policy 3: Biodiversity and Policy 4: Natural Places of National Planning Framework 4 (NPF4) Scotland 2045 and Policy 4: Natural Heritage of the Cairngorms National Park Local Development Plan (2021) and any application for retention of the Development would not be supported. Copies of the relevant policies are attached for reference at Appendix 1.

The development on site does not constitute a caravan under the relevant caravan exemption certificate legislation (S.29(1) of the Caravan Sites and Control of Development Act 1960).

Without prejudice to the above argument, that the development is considered to be 'Schedule 2' development under the GPDO and permitted development rights would therefore not apply unless the Planning Authority carries out a screening opinion to confirm that this is not EIA development. That the 'ancillary kit' taken on to the site (solar panels, water tanks, toilets, tents etc) does not benefit from any permitted development rights and requires planning permission.

5. What you are required to do

The purpose of the steps and actions set out in this paragraph of this notice is to remedy the breach of planning control specified in paragraph 3 by restoring the Land to its condition before the breach took place. The hut, ancillary development and all other associated materials must be removed from the Land, shown outlined in red on the Plan. Failure to comply with an enforcement notice which has taken effect is an offence and can result in the service of a Fixed Penalty Notice or prosecution and/or remedial action by the Authority.

6. Time for compliance

All actions required above must be undertaken within 3 months of the date of this notice taking effect.

7. When this notice takes effect

This Notice takes effect on 1st March 2024 unless an appeal is made against it before that date.

8. **Your right of appeal**

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Scottish Government before the date specified in paragraph 6 above. The explanatory note, included as Appendix 2 to this notice, gives information on your rights of appeal and Appendix 3 includes copies of the section of the Act which relate to your right of appeal. Please read them carefully.

9. **What happens if you do not appeal**

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 6 above and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in the notice. Failure to comply with an enforcement notice which has taken effect is an offence and can result in the service of a Fixed Penalty Notice or prosecution and/or remedial action by the Authority.

Dated:

Signed:

Gavin Miles
Head of Strategic Planning

The Plan

Appendix 3 – draft section 33A notice

(requiring a planning application to be submitted for the formalisation of an access point to the public road network.)

This is an important document which affects your property and has immediate effect

Town and country planning (Scotland) act 1997

Notice requiring submission of a planning application for development already carried out

To:

Reference number: 2023/0018/ENF

Issued by the Cairngorms National Park Authority ("the Authority"), as planning authority in terms of paragraph 7(1)(a) and (b) of The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 for the purposes of Section 33A of the Town and Country Planning (Scotland) Act 1997 ("the Act").

1. **This is a formal notice** Under Section 33A of the Act which is issued by the Authority because it appears to them that there has been a breach of planning control, under Section 123 (1)(a) of the Act at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the Cairngorms National Park Local Development Plan 2015 and to other material planning considerations.
2. **The land affected**
Tolquhonie, Carrbridge, Highland "the Land" shown edged in red on the attached plan ("the Plan").
3. **The breach of planning control**
The access off the road has been upgraded ("the Development") without applying for planning permission to Highland Council. This constitutes a

breach of Section 123(1)(a) of the Act., A copy of Section 123 is included in the Schedule of this notice.

4. Reasons for issuing this notice

It is considered appropriate to seek to regularise the breach of planning control described in paragraph 3 of this notice which has occurred by requiring an application for retrospective planning permission for the Development under Section 33A of the Act. A copy of Section 33A is included in the Schedule.

Notice is hereby given that the Cairngorms National Park Authority, in exercise of their power in Section 33A of the Act, requires the submission of an application to Angus Council for planning permission for the Development to regulate the breach listed in paragraph 3 of this notice.

5. What you are required to do

Submit a valid planning application to Angus Council for retrospective permission for the Development unless the land has, upon receipt of this notice, already been reinstated to its state prior to the breach of planning control referred to in paragraph 3 of this notice occurring.

The application required by this notice should be submitted to Highland Council no later than 8th July 2024.

6. Failure to comply

Please note that the issue of this notice constitutes enforcement action under Section 123 (2) of the 1997 Act. Failure to comply with the notice may result in further enforcement action.

7. Your right to appeal

You do not have a right of appeal against this notice.

Schedule part 1

Section 33A of the Town and Country Planning (Scotland) Act 1997:

33A Notice requiring application for planning permission for development already carried out

Where there is a breach of planning control the planning authority may issue a notice:

- a) Requiring the owner of the land in, on, over or under which the development has been carried out to make an application to them for planning permission for the development,
- b) Describing the development in a way that is sufficient to identify it,
- c) Specifying a date by which the application is to be made, and
- d) Setting out the terms of section 123(1).

Section 123(1) of the Town and Country Planning (Scotland) Act 1997:

123. Expressions used in connection with Enforcement.

1. For the purposes of this Act:

- a) Carrying out development without the required planning permission, or
- b) Failing to comply with any condition or limitation subject to which planning permission has been granted, or
- c) Initiating development without giving notice in accordance with section 27A(1) of this Act, or
- d) Carrying out development without displaying a notice in accordance with section 27C(1) of this Act, constitutes a breach of planning control.

2. For the purposes of this Act:

- a) The issue of an enforcement notice, or
- b) The service of a breach of condition notice, under this Part constitutes taking enforcement action [as does the issuing of a notice under section 33A]

3. In this Part “planning permission” includes planning permission under Part III of the 1947 Act and Part III of the 1972 Act.

These are the Plans referred to in the foregoing notice issued under Section 33A of the Act