



Committee Report

Development proposed:

Formation of a borrow pit (retrospective)

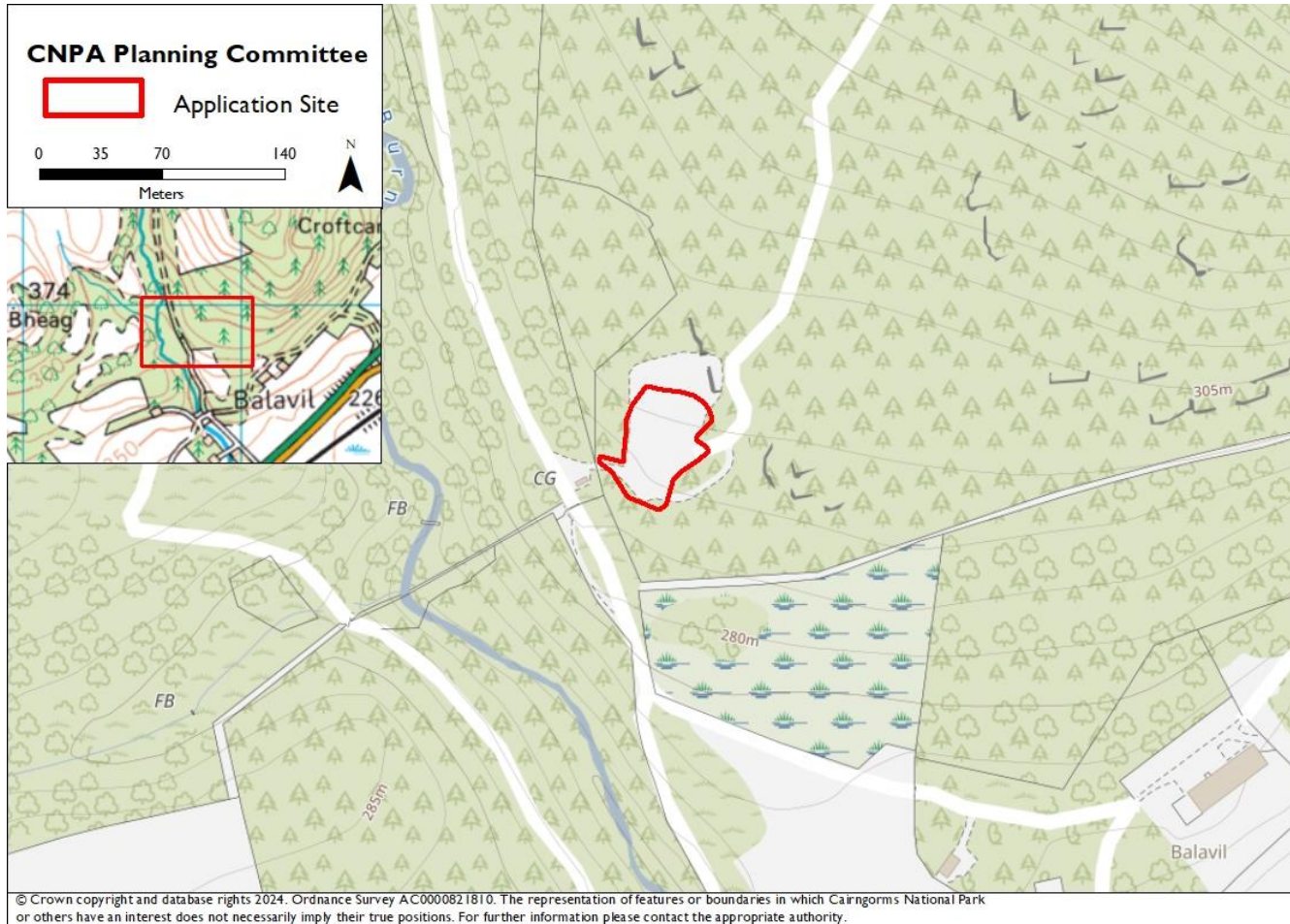
Reference: 2022/0290/DET

Applicant: Balavil Estate

Date called-in: 20 September 2022

Recommendation: Approve subject to conditions

Case officer: Colin Bryans, Senior Planning Officer



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Site description, proposal and history

Site description

1. The Balavil estate is approximately 3km north east of Kingussie. The estate is a long, thin estate stretching from the A9, 13km northwest from there into the Monadhliath Mountains and consists of mixed land uses including forestry, agriculture and sporting. The estate is currently undertaking a woodland restoration and regenerative landscape management programme.
2. The application site is a pre-existing historic borrow pit located in the southwest corner of the Croftcarnoch forest plantation and directly adjacent to the estate's main spinal road. The proposal site is largely surrounded by ancient woodland.

Proposal

3. The drawings and documents associated with this application are listed below and are available on the Cairngorms National Park Authority website unless noted otherwise:

<http://www.eplanningcnpa.co.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S2H06USI0CP00>

Title	Drawing number	Date on plan*	Date received
Plan – Site Location Plan	n/a	01/08/2022	20/09/2022
Plan – Borrow pit location plan	n/a	01/09/2022	20/09/2022
Plan – Site plan	n/a	01/08/2022	20/09/2022
Plan – Site plan (2)	n/a	01/08/2022	20/09/2022
Plan – Borrow pit reinstatement plan	n/a	01/03/2023	05/03/2023

*Where no specific day of month has been provided on the plan, the system defaults to the first of the month.

4. The proposed development consists of the excavation (retrospective), utilisation and restoration of a borrow pit for the purpose of the winning and storage of the



materials necessary to undertake the upkeep and maintenance of the aforementioned access tracks etc from within the estate.

5. The upkeep and maintenance of the access tracks will facilitate the woodland restoration and regenerative landscape management programme currently underway across the estate.

History

6. Balivil Estate submitted a planning application for a new track to the northern part of the estate. This was approved in January 2019, under reference 2018/0400/DET.
7. Balivil Estate submitted a planning application for a new track (retrospective). This was approved in December 2019, under reference 2019/0347/DET.
8. Balivil Estate submitted a planning application for the repair and upgrade of existing estate track. This application is currently under consideration, under reference 2023/0455/DET.
9. Balivil Estate submitted a planning application for the repair and upgrade of existing estate track. This application is currently under consideration, under reference 2023/0445/DET.

Habitats regulations appraisal

10. The proposals are not considered to impact upon any European sites. As such no Habitat Regulations Appraisal is required.



Development plan context

Policies

National policy	National Planning Framework 4 (NPF4) Scotland 2045 (Officer to delete policies that are not relevant)	
Policy 1	Tackling the climate and nature crises	X
Policy 2	Climate mitigation and adaptation	X
Policy 3	Biodiversity	X
Policy 4	Natural places	X
Policy 5	Soils	
Policy 6	Forestry, woodland and trees	
Policy 7	Historic assets and places	
Policy 8	Green belts	
Policy 9	Brownfield, vacant and derelict land, and empty buildings	
Policy 11	Energy	
Policy 12	Zero waste	
Policy 13	Sustainable transport	
Policy 14	Design, quality and place	X
Policy 15	Local living and 20-minute neighbourhoods	
Policy 16	Quality homes	
Policy 17	Rural homes	
Policy 18	Infrastructure first	
Policy 19	Heating and cooling	
Policy 20	Blue and green infrastructure	
Policy 21	Play, recreation and sport	
Policy 22	Flood risk and water management	
Policy 23	Health and safety	
Policy 24	Digital infrastructure	
Policy 25	Community wealth building	
Policy 26	Business and industry	
Policy 27	City, town, local and commercial centres	
Policy 28	Retail	
Policy 29	Rural development	X



Policy 30	Tourism	
Policy 31	Culture and creativity	
Policy 32	Aquaculture	
Policy 33	Minerals	X

Strategic policy	Cairngorms National Park Partnership Plan 2022 – 2027	
Local plan policy	Cairngorms National Park Local Development Plan (2021) (Policies relevant to the assessment of this application are marked with a cross (x))	
Policy 1	New housing development	
Policy 2	Supporting economic growth	
Policy 3	Design and placemaking	X
Policy 4	Natural heritage	X
Policy 5	Landscape	X
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	

11. All new development proposals require to be assessed in relation to policies contained in the adopted Development Plan which comprises National Planning Framework 4 (NPF4) and the Cairngorms National Park Local Development Plan 2021. 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>

Planning guidance

12. Supplementary guidance also forms part of the Local Development Plan and provides more details about how to comply with the policies. Guidance that is relevant to this application is marked with a cross (x).



Policy 1	Housing supplementary guidance	
Policy 2	Supporting economic growth non-statutory guidance	
Policy 3	Design and placemaking non-statutory guidance	X
Policy 4	Natural heritage non-statutory guidance	X
Policy 5	Landscape non-statutory guidance	X
Policy 7	Renewable energy non-statutory guidance	
Policy 8	Open space, sport and recreation non-statutory guidance	
Policy 9	Cultural heritage non-statutory guidance	
Policy 10	Resources non-statutory guidance	
Policy 11	Developer obligations supplementary guidance	

Consultations

A summary of the main issues raised by consultees now follows:

13. Cairngorms National Park Authority Ecology Officer highlighted that the borrow pit and surrounding area are part of the Ancient Woodland Inventory and that as this is retrospective, and the borrow pit has been mined for materials, the resources which were once on the site have been lost through this process. The proposed borrow pit, therefore, has a large significance of effects, due to the loss of nationally important habitat, ancient woodland. The Officer requests that any grant of planning permission is subject to a condition requiring the submission of details of compensatory planting; species planted, number planted and a maintenance schedule to monitor the success of planted trees which have been highlighted for immediate planting on the upper and lower extremes of the slopes and entrance area of the borrow pit, and for the area designated for planting within 2 years, should be submitted to CNPA for approval.

14. Cairngorms National Park Authority Landscape Officer highlighted the submission of “open ended restoration statements” alongside more specific statement of intent relating to site restoration. The Officer highlights the imprecise nature of these and the lack of implementation timescales. On this basis the Officer does not support the



proposal stating that they “cannot advise on the effectiveness of restoring this unconsented development”.

15. **Kincraig Community Council** offered no consultation response.

Representations

16. No representations have been received within the statutory timeframe.

Appraisal

17. The borrow pit provides locally won materials for a programme of estate track upgrades. The tracks have been upgraded for mixed use purposes, but the primary use is to facilitate regenerative native woodland planting. The development will facilitate the wider aims of the estate to introduce more native woodland planting across the estate allowing better conservation management throughout.

Principle

18. NPF4 Policy 33: Minerals states that borrow pits will only be supported where the proposal is tied to a specific project, is time-limited/temporary, complies with the mineral extraction criteria and where the appropriate restoration proposal is enforceable.

19. The borrow pit and surrounding area are part of the Ancient Woodland Inventory, and as such the proposal site is not the optimum site within which to locate a borrow pit and would not be supported were this application not retrospective.

20. Notwithstanding this the proposed borrow pit is tied to a specific project providing locally won materials for a programme of estate track upgrades. Subject to the recommended conditions reflecting the temporary nature of the development band reflecting to the cessation of activities and the submission, approval and implementation of a detailed restoration plan, the proposed development meets the policy requirements in this respect.



Design

21. NPF4 Policy 14: Design, quality and place seeks to support development proposals that improve the quality of an area regardless of scale and that are consistent with the six qualities of successful places, that is:

- a) Healthy
- b) Pleasant
- c) Connected
- d) Distinctive
- e) Sustainable
- f) Adaptable

22. LDP Policy 3: Design and placemaking seeks to ensure that development meets the six qualities of successful places.

23. The design of the proposal is of a functional scale and nature and will ensure the use of locally sourced materials across the estate track upgrade programme. This, in combination with the fact that it will facilitate a regenerative native woodland planting project, ensures that in terms of design the proposal complies with the above policies.

Environment

24. NPF4 Policy 3: Biodiversity seeks to ensure that development proposals protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks. Development proposals must include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance.

25. NPF4 Policy 4: Natural places seeks to ensure that development proposals protect, restore and enhance natural assets making best use of nature-based solutions. Development that has significant adverse impacts on designated sites, after mitigation, will not be supported.



26. NPF4 Policy 6: Forestry, woodland and trees states that development proposals will not be supported where they will result in any loss of ancient woodlands, ancient and veteran trees, or adverse impact on their ecological condition.
27. LDP Policy 4: Natural heritage seeks to ensure that there are no adverse effects on European Protected Species and other biodiversity interests and states that “there will be a strong presumption against removal of ancient semi-natural woodland, including sites in the Ancient Woodland”.
28. Cairngorms National Park Authority Ecology Officer highlighted that the borrow pit and surrounding area are part of the Ancient Woodland Inventory, and as such the proposal site is not the optimum site within which to locate a borrow pit.
29. If this application was not retrospective, then the proposal would not be supported at this location due to the loss of ancient woodland.
30. As this is a retrospective application and the borrow pit is operational and has been mined for materials, the ancient woodland resources which were once on the site have been lost through this process. The proposed borrow pit, therefore, has a large significance of effects, due to the loss of nationally important habitat, ancient woodland. Ancient Woodland Inventory is considered to be an irreplaceable resource and as such the proposal does not comply with the above policies.
31. The proposal does not include any specific measures concerning biodiversity net gain. However, the proposed development constitutes part of a wider project to plant and regenerate native woodland.
32. Notwithstanding the above it is deemed that, in line with the Ecology Officer’s response, securing the delivery of a high-quality restoration scheme, through the recommended condition, which delivers native species planting to a prescribed timescale, is in the interest of achieving the best possible outcome.
33. An acceptable restoration scheme will further supplement the woodland restoration and regenerative landscape management programme currently underway across the



estate and go some way to mitigating the significant impacts, although it is acknowledged that the loss of ancient woodland is irreparable.

Landscape

34. LDP Policy 5: presumes against development which does not conserve and enhance the landscape character and special qualities of the National Park, and particularly the setting of the proposed development.
35. As stated, this application is made in retrospect and the loss of Ancient Woodland is considered irreplaceable. This loss will have detrimental impacts on the landscape character and special qualities of the National Park.
36. Where this application not in retrospect the proposal would not be supported at this location.
37. Securing the delivery of a high-quality restoration scheme, through the recommended condition, which delivers native species planting to a prescribed timescale is in the interest of achieving the best possible outcome with regards to mitigating impacts on landscape.
38. This will further supplement the woodland restoration and regenerative landscape management programme currently underway across the estate and go some way to mitigating the landscape impacts.

Conclusion

39. The proposed development, made in retrospect, does not accord with planning policy with respects to a loss of native woodland and the subsequent impacts on ecology, biodiversity and landscape character/quality.
40. Notwithstanding this it is deemed that, through the application of a suitably worded condition(s), securing the delivery of a high-quality restoration scheme which delivers native species planting to a prescribed timescale is in the interest of achieving the best possible outcome.



41. Furthermore, the proposed development will provide locally won materials to facilitate the wider aims of the estate to introduce more native woodland planting across the estate allowing better conservation management throughout.

Recommendation

That members of the committee support a recommendation to approve the proposed borrow pit (retrospective), subject to the following conditions:

1. Planning permission is hereby granted for a temporary period only and shall cease to have effect within two years of the date of this permission (the 'cessation date'). Prior to the cessation date, the application site shall be cleared of all works and development approved under the terms of this permission (including any subsequent ancillary works, infrastructure, fixtures, fittings and any temporary developments permitted under Class 14 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992) and reinstated in accordance with the agreed restoration scheme submitted to and approved in writing by the Cairngorms National Park Authority under the terms of Condition 3 of this permission.

Reason: To enable the impact of the temporary development on the amenity of the surrounding area to be reviewed and to ensure the appropriate restoration of the site.

2. Within three months of the date of this decision a fully detailed scheme for the restoration of the site must be submitted to and approved in writing by the Cairngorms National Park Authority. The restoration of the site shall be carried out in complete accordance with the approved restoration scheme. For the avoidance of doubt the aforementioned restoration scheme must include:
 - a) Detailed information on non-native tree removal scope and extent.
 - b) Details of proposed replanting to include scope/extent and species.
 - c) Details of proposed purpose-built and installed bird and squirrel boxes, including locations.



- d) An implementation schedule to complete all planting within two planting seasons from the date of this consent.
- e) Monitoring schedule and details of actions to be taken if measures fail.

Reason: To ensure the timeous and appropriate restoration of the site following the expiry of this temporary permission in the interests of visual amenity, landscape protection and biodiversity enhancement.

Informatives

1. The person undertaking the development is required to give the Planning Authority prior written notification of the date which it is intended to commence the development. Attached to this decision notice is a Notice of Initiation of Development for completion and submission. Submission of this information assists the Cairngorms National Park Authority Monitoring and Enforcement Officer in monitoring active work within the area to ensure compliance with the approved details and to identify and correct any potential problems, as they arise, rather than later when it may be more difficult and more costly to rectify. Failure to give notice would constitute a breach of planning control which may result in enforcement action being taken.
2. Following completion of the development, a notification of completion shall, as soon as practicable, be given to the Planning Authority. Attached to this decision notice is a Notice of Completion of Development for completion and submission. Submission of this form will assist the Cairngorms National Park Authority Monitoring and Enforcement Officer in making a final inspection and checking compliance with the approved drawings and conditions. If the development hereby approved is to be carried out in phases, then a notice of completion should be submitted at the completion of each phase.