

Cairn Dairne Bike Track Project

I am not opposed to a Bike Track through a Forest in Principal. However, though not qualified to comment on the issue of Wildlife & the effect this may have on local businesses, I will try to respond with my concerns based on the four objections written to the Planning officer on the 6th Dec 2010.

1. Access

The existing single track road is unsuitable for continuous, or in the least, increased traffic.

In the literature, I did not state any research on the increased traffic and its effect on the local community.

Some questions that come to mind:

- Will increased traffic affect local traffic?

• Is the local ambulance service geared up to respond to an emergency call on the access road/track ^{to} car?

• What contingencies have been placed for speedy recovery of an insured cyclist in isolated tracks?

• What is the recorded rates of cycling injuries on "Pumice" Mountain Bike Trails?

• Will the staff be trained/qualified to deal with injuries?

• Will the existing tracks still be accessible to locals?

• The existing tracks are ^{today} a great source of leisure to walkers. How will this affect them? How can planning ensure continuation of this activity.

• For the 3 months the track is closed, will this restrict access to local traffic on wheels or on foot?

2. Financial Viability

I HAVE NO OBJECTION THOUGH I AM ANXIOUS TO SEE HOW FULL TIME JOBS WILL BE MAINTAINED THROUGHOUT THE YEAR

3. Wildlife & Biodiversity

SHOULD THE IMPACT SURVEY BE DONE BY AN INDEPENDENT PARTY?

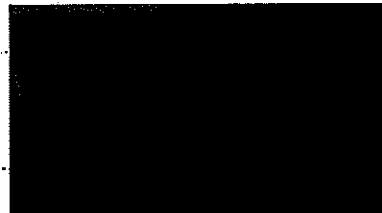
WAS ALL ENVIRONMENTAL / WILDLIFE PARTIES CONSULTED?

4. Detrimental Effect on Local Businesses

No comments

I THINK THERE IS ENOUGH JUSTIFICATION TO OPPOSE PLANNING APPLICATION UNDER THE CURRENT TERMS

Nick Maclean



BALLANTRUAN FARMHOUSE • KIRKMICHAEL • BALLINDALLOCH • AB37 9AQ

Mary Grieg
Albert Memorial Hall
Station Square
Ballater

13th January 2011

Formal Objection: 10/401/CP-Bike Trails

Dear Mary,

It is with regret that I make a formal objection to the above proposal, at least in its current form, on the following grounds:

- 1) Failure to provide an appropriate environment impact assessment and mitigation strategy for wildcat; contradiction of key assertions contained in the Environmental Statement by Davis and Grey (2010), cited by the Crown Estate in support of those claims. If uncorrected, a Complaint made to the European Commission, DG Environment, regarding a failure to correctly apply strict protection to a Habitats Directive Annex IV species has a significant prospect of success. Even the possibility of such a complaint regarding wildcat would have reputational and financial consequences— an appropriate assessment would avoid those risks;
- 2) Failure to correct document the richness of bird fauna, particularly for Cairn Ballantruan. Failure to take into account the significant area of advanced Scots Pine regeneration on Cairn Ballantruan. Misrepresentation of a key citation, Banks and Bryant (2007) in support of a claim that dogs are the principle source of disturbance of birds, and that the cycle trails will therefore cause no disturbance of birds. (Banks and Bryant actually provided evidence consistent with cumulative disturbance from increased activity of all sorts);
- 3) Landscape impact of the exposed trails on Cairn Ballantruan.

I doubt the project's current viability. While not opposed in principle, I believe that a fatal strategic error was made at the outset by not basing the centre in Tomintoul, and developing a Route on Cnoc Lochy, linking Tomintoul and proposed Routes One and Three. For reasons stated above, I do not believe that Route 2, Cairn Ballantruan, should go ahead unless there were major rerouting and major mitigation measures.

Care should be taken, should the project be staged, that a lower standard of environmental protection does not arise from creeping development. This can be achieved by requiring benchmark survey work prior to development, and wildcat and other wildlife goals to be set such that the wildlife value has increased at the end of each phase as a condition to further development.

The reasons for all of which are expanded on the following pages.

Yours faithfully



Dr Malcolm MacGarvin

Background to the objection

I have a professional interest. I have a doctorate in Ecology, and provide professional services in this subject area, including for some years to the European Commission, DG Environment, as a technical consultant in the assessment and, if appropriate, infringement proceedings against Member States with regard to the implementation of environmental Directives.

I have a practical interest. I donate time towards gathering flora and fauna records in the area, including the North East Scotland Bird Atlas in the early years of this decade. More recently I have had responsibility for conducting the standardised winter and breeding bird surveys for the UK and Irish Bird Atlas 2007-2011 over a 200 km area stretching from north of the Spey to Tomintoul, and which includes the area covered by this planning application.

I have a human interest. I have lived and worked in the area since 1996; know the area covered by the planning application intimately, and care very much about the future of this much overlooked and still underrated area.

Shortcomings in the Environmental Statement

Wildcat

The relevant paragraphs from the Applicant's Environmental Statement, section 3.2, is reproduced below, with key sections highlighted in colour:

Scottish Wildcat *Felis silvestris* As Glenlivet Estate has good typical wildcat habitat and is part of one of the larger areas identified in the last Scottish wildcat survey (Davies 2010) as a having a high number of sightings **it should be considered possible that wildcats could be present in the development area, however there is no firm evidence of this.**

There are anecdotal reports of 'wildcats' being seen at nearby locations, however it is thought that the majority of wildcats in Scotland are not true wildcats, having bred with feral farm cats. It is extremely difficult to distinguish a wildcat from a hybrid (wildcat-feral cross) or a feral tabby cat, the commonly accepted method of identification is by pelage (coat) markings, as defined by Kitchener (Kitchener et al., 2005). However this is difficult for the untrained eye and with the briefest of glimpses. The only way to confirm a true wildcat from a hybrid is by DNA testing, which is generally not possible. Because of this generally all sightings have to be considered 'possible wildcat sighting'. **A current camera trapping programme as part of the Cairngorms Wildcat Project running over the last 5 months at Glenlivet has to date (as of 27/10/10) not photographed any wildcats, capturing only images of cats that have been identified as hybrids.**

Assuming that there is a wildcat presence in the woods, the key factor of threat to them are disturbance/damage to den sites, particularly during breeding time (Feb-May) and significant change to their habitat (Davies 2010). **There are no known den sites in the development area and the construction of the centre and trails will not cause changes to the wildcat's habitat.** As wildcats are most active at dusk and dawn, there isn't likely to be a conflict with disturbance from mountain bikers who will be using the centre and trails during the daytime. As is the practice with current forestry management at Glenlivet, all work will be carried out in accordance with the FCS Guidance Note 35d: Forest operations and wildcats in Scotland, produced by Forestry Commission Scotland and SNH.

Glenlivet Estate is already working with the Cairngorms Wildcat Project to monitor wildcats on Glenlivet, control feral cats and increase education about the project. The first intensive camera trapping survey for wildcats is currently being carried out at Glenlivet, as part of a research project through the Royal Zoological Society of Scotland to try and confirm the presence of wildcats and learn more about their behaviour patterns.

1) Wildcats have a special status under the EU Habitats Directive, being an Annex IV 'species of Community Interest in need of strict protection'. It is open to any individual or group to make a Complaint to the Commission regarding the failure of a Member State to apply strict protection, which the Commission is then obliged to follow up. While diffuse Complaints will have difficulty in succeeding, a Complaint based on a failure to correctly apply planning or other regulations is likely to be pursued vigorously by the Commission, and the consequences can be draconian, including large fines

and a requirement to restore prior status. The implications of hybridisation for the actions required of a Member State has, so far as I know, never been tested, but it would be unwise to assume that the presence of any hybridisation, in practice, would allow lower level of protection of individual animals (whether through culling or changes in land use) or a relaxation of the maintenance of the habitat requirements of the species.

2) Wildcats have a special status in the area Turning to the Environmental Statement, the assertion (red highlighted), that reports of wildcats in the vicinity are 'anecdotal', and likely to be (it is insinuated) hybrids, is contradicted by Davis and Grey (2010), despite their citation by the Crown Estate in support. Davis and Grey's Figure 5, of possible and probably sightings in 2008, is shown below.

Figure 5: Probable and Possible wildcat sightings

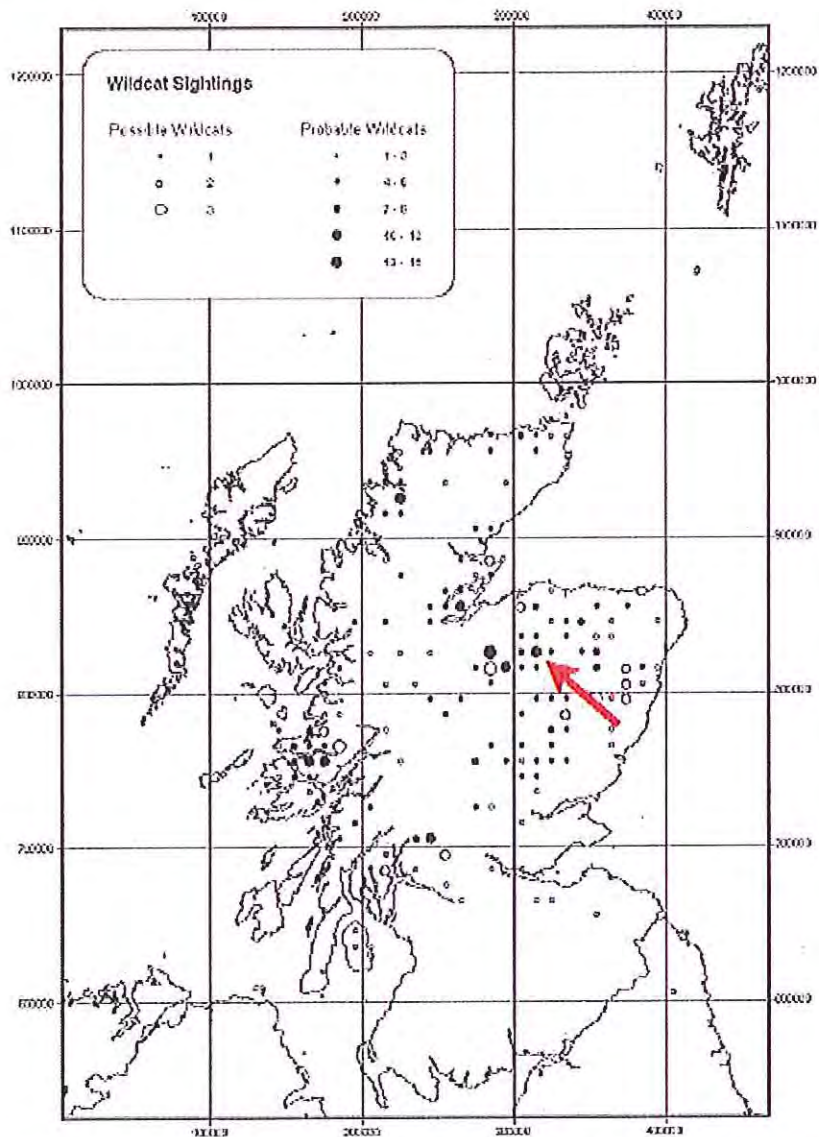
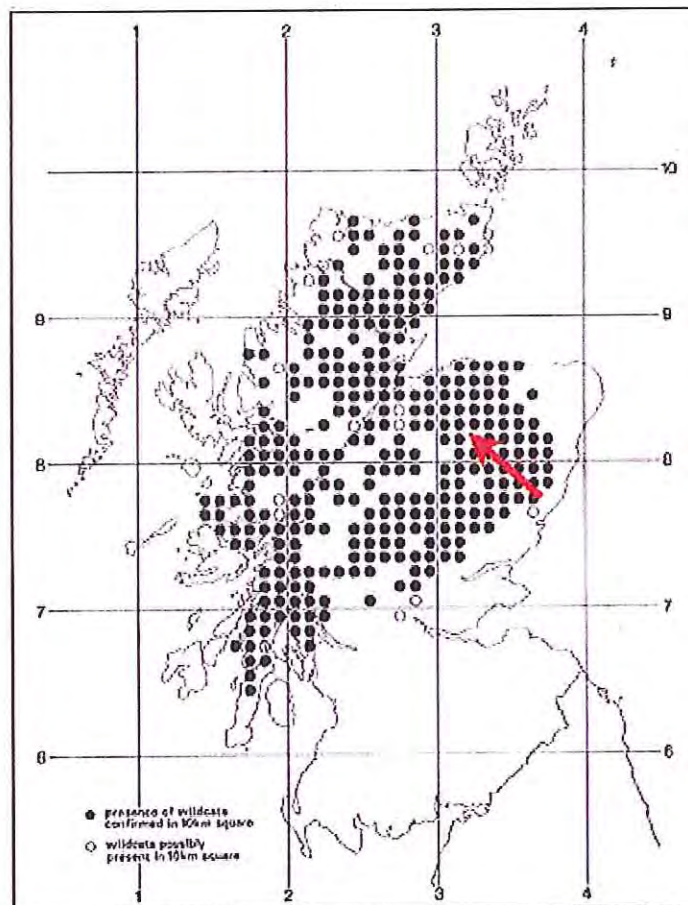


Figure 5 shows that the 10km square within which the proposed area lies, NJ12, (red arrow) based on selected trusted sources, had the second highest number of 'probably' (note, not 'possible') wildcat sightings in Scotland, of

between 10-12. This is the most relevant 'evidence-based' published data that we currently have; and a better point of departure than the Applicant's general point that 'the majority of wildcats in Scotland are not wildcats'. It is evidence that that the development is set within a hotspot, in turn within a core area of probably wildcat sightings.

Davis and Grey's Figure 2, reproduced below, showing the reported distribution of wildcats in the 1980s, may raise concerns regarding a decline in abundance but, because the methods were different, this is best considered as raising issues that require urgent follow-up.

Figure 2: The distribution of the wildcat in Scotland 1983-87 (From Easterbee *et al.* 1991)



While the 'briefest of glimpses by the untrained eye' may indeed be unreliable, some of the observations of cats in the development area are *neither* by the uninformed eye *nor* from the briefest of glances. The diagnostic coat markings given by Kitchener *et al.* (2005), and repeated in Davies and Grey (2010) are well established and given by Corbit and Harris (1991)—a good sighting of an adult cat with a thick bushy tail, clear rings and a blunt black tip, among other features, remains a good indication of wildcat presence in an area. This is consistent with Figure 5; the difficulties associated with a good sighting are being overstated here by the Glenlivet Estate in their advocacy of the proposal. Davies and Grey give a good rule of thumb: "any wildcat with a bushy tail with a blunt black tip and stripy

pattern is a wildcat. ... any cat with white feet or white markings on the body (except the throat and muzzle) is not a wildcat". Moreover, **while the Glenlivet Estate refers to initial (and unpublished) results from camera trapping** (dark red highlight) **it is notable that only a generic location is cited ('Glenlivet')**; given the importance of such evidence to their case, one might expect if they had specific evidence from the development site, they would have said so.

It should also be briefly noted that **the speculative assertion in the Statement** (green highlight) **that DNA testing is the only way of distinguishing pure and hybrid wildcats is also contradicted by Davies and Grey**, who state only (p. 34) that "There is little research in Scotland to determine the degree of hybridisation between wildcats and feral cats although it is speculated that future genetic tests may be able to identify the genetic purity of the population".

The Applicant's Environmental Statement also appears to choose its words carefully (purple highlight) regarding den sites: "... there are no known den sites in the development area ..." (i.e the building development). **However, the Applicant should be aware that a den site has been observed by Tilly Smith of Ballcorach (farmer on the proposed site) near Inverchor, which is in the centre of the area covered by the proposed cycle tracks.** Moreover **the statement** (brown highlight) **that the development of the trails, and their projected use, will have no implications for the quality of wildcat habitat is an assertion, not a fact.** Davies and Grey state (p. 35) that developments resulting in habitat loss, fragmentation and damage are of concern and that, without mitigation measures, may damage wildcat habitat and range.

3) Summation So the wisest and practical basis for action (highlighted in blue) in the Applicant's Environmental Statement is that of "Assuming that there is a wildcat presence in the woods". Annex IV Habitats Directive species then requires the highest level of European protection. **The Environmental Statement is clearly deficient, and in crucial aspects contradicted by the main sources cited in its support. On this basis it would be open to challenge by any individual or group by a complaint to the European Commission, and this could well succeed.** The best available *published* data indicates that the cycle track proposal lies within the second most important hotspot of the most reliable wildcat reports, which in turn is within a core area for the wildcat, one already subject to development pressures elsewhere. Given the natural ebb and flow of territories and populations, the presence of suitable habitat within such an area is enough to require strict protective, anticipatory, action.

In practice it is hoped that that the reputational and financial consequences of such a challenge being made will readily be appreciated by all those considering funding and supporting the proposal as it currently stands. **Moreover the proposal could be readily remedied.** It may then be that an appropriate development would have no adverse consequences for wildcats, and by a combination of mitigation measures, and possible collateral effects such as the cessation of gamekeeping with indiscriminate predator control practices such as lamping (Davis and Grey, p. 34) a net improvement may result in in wildcat status.

Nevertheless, because of the legal status of wildcats this should have been, and will have to be, backed up by a substantial evidence-based Environmental Statement, drawing upon the following minimal requirements: camera based trapping in the proposed area, and in the adjacent 10 km square area of NJ12 to establish the all important context: collaborating with local farmers, keepers and residents to identify appropriate sites for such camera trapping, and mitigation areas; a formal evidenced-based evaluation to establish the correlation, if any, between increased levels of activity, including cycling, and wildcat status. Evidence of the degree of hybridisation may be useful for the future beneficial management of wildcat conservation, but should not be relied upon as a legal defence for the inadequacy of any actions or measures.

General Issues and birds

Again, for convenience the following paragraph from the Environmental Statement of the Application is again reproduced below, part of paragraph 2.2. Areas of objection are highlighted in colour.

Ongoing Disturbance. The bike centre will be located in the edge of a commercial forest plantation, 1.1km further along an estate track from an existing parking area. There is a commercial property (holiday cottage) beyond the centre and the track is currently used by farm and estate vehicles. It is not expected that the additional numbers of people visiting this area will have any adverse affect on the wildlife or countryside. The site is part of a commercial forest plantation; there are no special areas of wildlife value or designated sites, which was why this area of Glenlivet Estate was chosen for the project. The area is already promoted for recreational use and is well used by walkers, horse riders, cyclists and landrover safari tours. Studies (Banks, P and Bryant, J 2007) show that more disturbance to wildlife (birds in particular) is caused by people with dogs, rather than people without dogs and as mountain bikers do not have dogs with them, these additional visitors to the forest shouldn't cause any significant disturbance to wildlife.

Relevant data on bird abundance, based on provisional data from the ongoing UK and Ireland Bird Atlas 2007-2011, is shown in Appendix 1. The area in the vicinity of the site (Ordnance Survey 10 km square NJ12) has among the highest number of winter (72) and summer (82) bird species of any southern and central areas of Moray. The number of species recorded in just the four kilometre square 'tetrad' NJ12M, centred on Cairn Ballantruan, is an extremely impressive 50 species (winter) and 60 species (summer). This is higher than some entire adjacent 10 km squares in Moray, and should therefore be regarded as of high conservation significance). The four kilometre square tetrad NJ12R, centred on Carn Mèilich has 20 winter species recorded and 41 summering species, while 10 wintering species have been recorded on tetrad NJ12S, centred on the Carn Daimh plantation, with no data present in the database for summer. Much of this work is from two hour timed surveys, and is not necessarily comprehensive. I have seen golden eagle within the proposed site area and merlin and short-eared owl just outside.

At least some species of birds confirmed to be present in the proposed area are sensitive to the continual presence of people; it is likely within the experience of those judging the Application to know that red grouse, once put up go some distance and will not settle in sight of people. Black grouse tend to fly further still. Of the other species, which occur within or within sight of the proposed routes, merlin, goshawk, hen harrier, short eared owl, long eared owl and teal should all be considered at least at risk from greater, constant, human disturbance. Of these all but the goshawk are more likely to be affected by line of sight disturbance, i.e by activity connected with Route 2, Cairn Ballantruan. Goshawks, which settle up in undisturbed woodland including plantations, are likely to be more generally disturbed. I have not recorded capercaillie or black grouse within the proposal area (although I have recorded black grouse just outside the area). However I have recorded them both elsewhere on other traditional Strathavon sites. They were until recently recorded as resident in the proposal area (Cook, 1992¹) who recorded it breeding on Carn Mèilich in that year also notes (p. 90) "Small leks containing one or more males are formed in early Spring, and it is important that such sites are not disturbed". I am unsurprised that others have reported their temporary presence, which are likely to be prospecting juvenile birds. That they do not take up residence can be taken as indicative of the degeneration of habitat suitability, requiring restoration work, and the need to prevent disturbance; rather than a reason for further degrading the conservation value of the site.

Turning to the text of the Crown Estates Environment Statement, and starting with the concluding paragraph of the extract first (red highlight), the short paper cited by the Glenlivet Estate, Banks and Bryant (2007), attached here as Appendix 2, actually *contradicts* the conclusion drawn by the applicant. The results of Banks and Bryant (2007) is summarised in their Figure 1. It shows that human access *without dogs* had an impact on both bird species abundance and bird species richness. Unsurprisingly, it also shows that loose dogs and people have an even greater impact. Overall it supports the equally unsurprising conclusion that cumulative disturbance, from whatever source, reduces bird habitat value.

Banks and Bryant actually provide no evidence by which to judge the point relevant to the Application, which is whether a significant increase in the number of cyclists would increase disturbance.

The paragraph highlighted in red should therefore be set aside by the planning body as evidence in support of the Applicant's case.

It follows from this that the Applicant has provided no evidence to support the assertion (green highlight) that additional numbers of visitors will not result in additional disturbance on the wildlife – and as already pointed out this would be expected to affect certain species: the onus is on the Applicant to demonstrate any special circumstances to support the contrary case. **This paragraph should also be set aside by the planning body as evidence in support of the Applicant's case.**

¹ Cook, Martin (1992) 'The Birds of Moray and Nairn. Mercat Press, Edinburgh. 263 pp.

Similarly, the Applicant has provided no data to support the assertion that it is 'well used' by walkers, horse riders, cyclists and land rover safari tours (blue highlight). I am probably among the most frequent of visitors (typically once or twice a week), and I mainly, occasionally, see farm tenants and gamekeepers. Indeed, due to lack of maintenance, the current Cycle Trail 3 has turned into a quagmire above Ardgieith, and there is rarely evidence of footprints or tracks, other than those of sheep, cattle and quad bikes. I occasionally encounter cyclists on the existing Cairn Daimh plantation cycle trail. Overall, again, I would argue that this statement should also be set aside.

Finally, the statement (purple highlight), that there are no special areas of wildlife value or designated sites that are likely to be affected ignores three points; the bird species already discussed; second, wild cats, already discussed, and third, that the proposed Cairn Ballantruan route runs through the largest and most advanced area of natural Scots Pine regeneration on the Strathavon side of the Crown Estate and then runs atop of a protected ESA. The regenerating pine has just reached a stage of maturity where the biological interest and potential is increasing, and should now be sympathetically enhanced for key species, as described below, rather than degraded.

It should be noted that many statements about the artificial 'plantation' nature of the routes, while arguably true of Route One, Carn Mèilich and Route Three, Carn Daimh, is not true of the Cairn Ballantruan route. At the very least, this statement regarding the artificial plantation nature of the site, should be set aside for the Cairn Ballantruan route.

Wildlife habitat improvement measures

Regardless of whether the cycle tracks go ahead there are a number of wildlife habitat improvement measures that should be undertaken in the area. The actual proposals by the Crown Estate for bird habitat enhancement are relatively trite, and in one case – the proposal to encourage tawny owl nesting – positively harmful: Long-eared owl, a declining species which favours remote locations, and which is displaced by tawny owl, breeds in the copse at Inverchor. Measures should be focused on retaining long eared owl, not encouraging tawny owl.

If bird habits are to be enhanced, the pressing needs within this area include starting to manage the regenerating Scots Pine on Cairn Ballantruan for capercaillie settlement; provision of nest sites for crested tit, and of nest boxes for redstart and spotted flycatcher, and possibly the erection of dummy osprey nests, given that osprey feed on the pools on both sides of Cairn Ballantruan. More generally, it is important that plantation margins should be restored to a status which encourages black grouse re-establishment; the eastern slopes above the Chabet should be managed for hen harrier (which breed on the opposite side of the Avon) and red kite; and the upper reaches of burns with good outlooks should be managed to encourage merlin nesting. The measures necessary to maintain and enhance goshawks in the area are uncharted territory, but the estate has a responsibility to come up with a plan.

With the exception of the Cairn Ballantruan route, the success of these measures, and those to encourage otter and wildcats, may not be mutually exclusive to some cycle track developments. An expansion of Scots Pine regeneration might in time allow expansion on Cairn Ballantruan as well; however, as it stands, the Environmental Statement does not contain a credible plan for wildlife enhancement.

However, were a phased 'creeping' development be considered it is essential that this does not allow a lower standard of wildlife conservation by default. This is readily achieved by requiring benchmark survey work to be performed prior to development, and wildcat and other wildlife goals to be set such that the wildlife value has demonstrably increased at the end of each phase as a condition to successive phases of development. This has the great benefit of, hopefully, leaving everybody a winner.

Potential landscape impact

The Feasibility Study (Carn Daimh section) notes the importance of keeping trails invisible from the Speyside Way spur, which is to be commended. Plantation routes have the merit of becoming largely invisible, but this is not true of the northern section of the Cairn Ballantruan route which will be visible from the Speyside Way. The track on Cairn Ballantruan will be highly visible from locations downstream on the Avon, and across the Avon from Knock Fergan and from the Cromdale Hill ridge.