
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

Prepared by: MARY GRIER (PLANNING OFFICER, DEVELOPMENT MANAGEMENT)

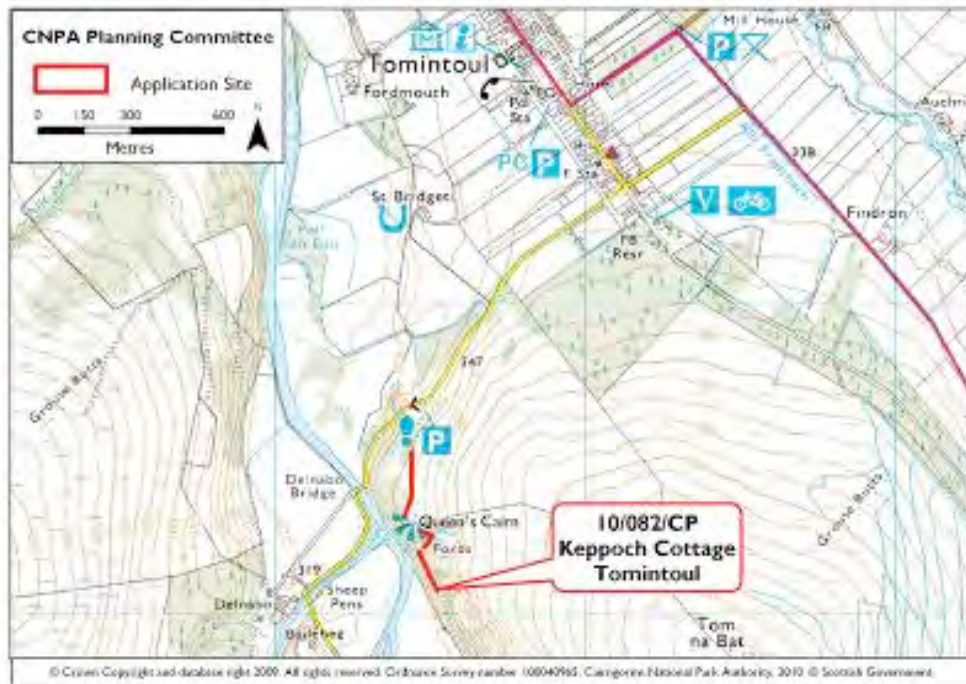
DEVELOPMENT PROPOSED: PLANNING PERMISSION FOR TEMPORARY USE OF GROUND FOR MAINTENANCE OF ACCESS TRACK AT KEPOCH COTTAGE, TOMINTOUL

REFERENCE: 10/082/CP

APPLICANT: GLENAVON ESTATE LIMITED, CRADLEHALL, INVERNESS

DATE CALLED-IN: 1 APRIL 2010

RECOMMENDATION : APPROVE WITH CONDITIONS



Grid reference : 316702 816514

Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. Planning permission is being sought in this application for the “temporary use of ground for maintenance of access track” at Keppoch Cottage, Tomintoul. The proposal is retrospective, as the work was undertaken some time prior to the submission of the planning application. The development essentially relates to works which the applicants indicate were undertaken to maintain an existing access track which runs from Tomintoul into Glenavon.



Fig. 2 : Start of the Tomintoul Country Walk

2. The access track is located just over 1 kilometre to the south west of Tomintoul. The junction of the access track with the public road marks the start of the Tomintoul Country Walk, which leads to the Queen Victoria Viewpoint. The track is also an identified core path (CC6) and a Right of Way.
3. The applicants' submission describes the works involved in reinstating the track, referring to taking back encroaching vegetation which had been hitting passing vehicles, and works were then undertaken to reinstate ditches and banks. Works occurred on the track at three locations. The first and most extensive section is located immediately to the south of a small car parking area and approximately 134 metres to the south of the junction of the track with the public road. Works have occurred on either side of the track and included the following : -
 - Clearing back overhanging vegetation which consisted of small self-seeded birch and scrub. Levelling off of deposited spoil on the track verge and consequent re-seeding;
 - Reinstating the track to full width of 3.5 metres;
 - Clearing out the top half ditch and scraping back the bank above, and re-seeding with rough grasses.
4. The second location at which works have been carried out is approximately 350 metres to the south of the aforementioned small car parking area. The works at this location extend over a length of approximately 73 metres on a curved section of track, at a ford across a small burn. The following works were undertaken at this location involved building up of previous cutting on the top side by placing large rocks at the base of the slope and backfilling with

soil. Reference has also been made to re-seeding with rough grasses and broom and the placing of rock on the culvert splash in order to secure against further wash-out.



Fig. 3 : Location of maintenance works on existing track



Fig. 4 : Works location 2 (photo taken April 2010)

5. The third and final location is a short distance further downhill to the south of location 2, and the works have been undertaken over a section of track which is approximately 146 metres in length. The top side ditch has been cleared out and the bank above this has been scraped back. Reference has also been made to re-seeding with rough grasses and broom in order to assist in stabilising it.

Justification for the track works

6. Information submitted in support of the development describes the works as being necessary in order to maintain the existing access track from Tomintoul into Glenavon. The track provides essential access for larger vehicles¹ and emergency vehicles, all of which are unable to use the tarred road via Delnabo due to restrictive sharp turns and bridges.

DEVELOPMENT PLAN CONTEXT

National policy

7. **Scottish Planning Policy² (SPP)** is the statement of the Scottish Government's policy on nationally important land use planning matters. It supersedes a variety of previous Scottish Planning Policy documents and National Planning Policy Guidance. Core Principles which the Scottish Government believe should underpin the modernised planning system are outlined at the outset of **SPP** and include:
 - The constraints and requirements that planning imposes should be necessary and proportionate;
 - The system shouldallow issues of contention and controversy to be identified and tackled quickly and smoothly; and
 - There should be a clear focus on quality of outcomes, with due attention given to the sustainable use of land, good design and the protection and enhancement of the built and natural environment.
8. **SPP** emphasises the key part that development management plays in the planning system, highlighting that it should "operate in support of the Government's central purpose of increasing sustainable economic growth." Para. 33 focuses on the topic of Sustainable Economic Growth and advises that increasing sustainable economic growth is the overarching purpose of the Scottish Government. It is advised that "the planning system should proactively support development that will contribute to sustainable economic growth and to high quality sustainable places." Planning authorities are encouraged to take a positive approach to development, recognising and responding to economic and financial conditions in considering proposals that would contribute to economic growth.
9. Under the general heading of Sustainable Development, it is stated that the fundamental principle is that development integrates economic, social and

¹ Examples given of larger vehicles which utilise the track include livestock floats, forestry wagons and fuel delivery vehicles.

² February 2010.

environmental objectives, and that the “aim is to achieve the right development in the right place.”

10. As a replacement for a variety of previous planning policy documents the new **Scottish Planning Policy** includes ‘subject policies’, of which many are applicable to the proposed development. Topics include rural development, and landscape and natural heritage. The following paragraphs provide a brief summary of the general thrust of each of the subject policies.
11. *Rural development* : Para. 92 of **Scottish Planning Policy** states in relation to rural development that the “aim should be to enable development in all rural areas which supports prosperous and sustainable communities whilst protecting and enhancing environmental quality.” All new development is required to respond to the specific local character of the location, fit in the landscape and seek to achieve high design and environmental standards.
12. *Landscape and natural heritage* : The **Scottish Planning Policy** document recognises the value and importance of Scotland’s landscape and natural heritage. It is accepted that landscape is constantly changing and the aim is to facilitate positive change whilst maintaining and enhancing distinctive character. As different landscapes have different capacities to accommodate new development, the siting and design of development should be informed by landscape character. There is also an acknowledgement that the protection of the landscape and natural heritage may sometimes impose constraints on development, but the potential for conflict can be minimised and the potential for enhancement maximised through careful siting and design.
13. **Scottish Planning Policy** concludes with a section entitled ‘Outcomes’ in which it is stated that the “planning system should be outcome focused, supporting the creation of high quality, accessible and sustainable places through new development, regeneration and the protection and enhancement of natural heritage and historic environmental assets.” Planning authorities are required to be clear about the standard of development that is required. Quality of place not only refers to buildings, but also how the buildings work together as well as the relationships between buildings and spaces. Design is highlighted as an important consideration and planning permission may be refused solely on design grounds.³ Finally it is stated that the planning system should be “judged by the extent to which it maintains and creates places where people want to live, work and spend time.”

Strategic Policy

Cairngorms National Park Plan (2007)

14. The Cairngorms National Park Plan sets out the vision for the park for the next 25 years. The plan sets out the strategic aims that provide the long term framework for managing the National Park and working towards the 25

³ Para. 256.

year vision. Under the heading of 'conserving and enhancing the special qualities' strategic objectives for landscape, built and historic environment include maintaining and enhancing the distinctive landscapes across the Park, ensuring that development complements and enhances the landscape character of the Park, and ensuring that new development in settlements and surrounding areas and the management of public spaces complements and enhances the character, pattern and local identity of the built and historic environment.

15. Under the heading of 'Living and Working in the Park' the Plan advises that sustainable development means that the resources and special qualities of the national park are used and enjoyed by current generations in such a way that future generations can continue to use and enjoy them. Strategic objectives for economy and employment include creating conditions that are conducive to business growth and investment that are consistent with the special qualities of the Park and its strategic location and the promotion of green business opportunities. Section 5.3 of the Plan concerns 'enjoying and understanding the park' noting that the Cairngorms National Park is known for its outstanding environment and outdoor recreation opportunities.

Structure Plan

Moray Structure Plan (2000)

16. The **Moray Council Structure Plan** has four main aims –
 - (i) To promote economic growth and development;
 - (ii) Spread economic benefits of economic growth across the community;
 - (iii) Maintain and improve the natural and built environment; and
 - (iv) Underpin development by promoting sustainability.The "central pillars of the strategy are to promote economic growth and to conserve the natural and built environment, and to promote overall sustainability."
17. In a chapter on the Environment, there is recognition that the built and natural environment of Moray is one of its most important resources. The Structure Plan therefore needs to balance the protection and conservation of the environment with the need to support the economy and provide recreational opportunities. Structure Plan aims in relation to the Environment to protect the natural environment of nature conservation areas, landscapes, and special areas of the countryside.

Local Plan Policy

Cairngorms National Park Local Plan (2010)

18. The Cairngorms National Park Local Plan was formally adopted on 29th October 2010. The full text can be found at :
<http://www.cairngorms.co.uk/parkauthority/publications/results.php?publicationID=265>

19. 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. The policies follow the three key themes of the Park Plan to provide a detailed policy framework for planning decisions:
- Chapter 3 - Conserving and Enhancing the Park;
 - Chapter 4 - Living and Working in the Park;
 - Chapter 5 - Enjoying and Understanding the Park.
20. Policies are not cross referenced and applicants are expected to ensure that proposals comply with all policies that are relevant. The site-specific proposals of the Local Plan are provided on a settlement by settlement basis in Chapter 6. These proposals, when combined with other policies, are intended to meet the sustainable development needs of the Park for the Local Plan's lifetime. The following paragraphs list a range of policies that are appropriate to consider in the assessment of the current development proposal.
21. Policy 1 Natura 2000 Sites : development likely to have a significant effect on a Natura 2000 site would be subject to an appropriate assessment. Where an assessment is unable to ascertain that a development will not adversely affect the integrity of the site, the development will only be permitted where,
- (a) There are no alternative solutions; and
 - (b) There are imperative reasons of overriding public interest including those of a social or economic nature.
22. Policy 4 Protected Species : development which would have an adverse effect on any European Protected Species will not be permitted unless there are imperative reasons of overriding interest, including public health or public safety; there is no satisfactory alternative solution; and the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range. The policy is intended to ensure that the effects of development proposals on protected species are fully considered by the planning authority. Developers will be required to undertake any necessary surveys for species at their own cost and to the satisfaction of Scottish Natural Heritage and the planning authority.
23. Policy 5 – Biodiversity : development that would have an adverse effect on habitats and species identified in the Cairngorms Biodiversity Action Plan, UK Biodiversity Action Plan, or by Scottish Ministers through the Scottish Biodiversity List, will only be permitted where
- (a) The developer can demonstrate that the need and justification for the development outweighs the local, national and international contribution of the area of habitat or population of species; and
 - (b) Significant harm or disturbance to the ecological functions, continuity and integrity of the habitats or species populations is avoided, or minimised where harm is unavoidable, and appropriate compensatory and / or management measures are provided and new habitats of commensurate

or greater nature conservation value are created as appropriate to the site.

24. Policy 6 – Landscape : there will be a presumption against any development that does not complement and enhance the landscape character of the Park, and in particular the setting of the proposed development. Exceptions will only be made where any significant adverse effects on the landscape are clearly outweighed by social or economic benefits of national importance and all of the adverse effects on the setting of the proposed development have been minimised and mitigated through appropriate siting, layout, scale, design and construction.
25. Policy 34 – Outdoor Access : the policy encourages development which improves opportunities for responsible outdoor access and adheres to the Cairngorms Outdoor Access Strategy. Development proposals which would result in a reduction of public access rights, or loss of linear access (such as core paths, rights of way, or other paths and informal recreation areas) will only be permitted where an appropriate or improved alternative access solution can be secured.

CONSULTATIONS

26. The consultation response from **Scottish Natural Heritage** (SNH) states at the outset that the response follows the role set out in the SNH / CNPA Casework Agreement, under which within the National Park **SNH** only advise on any implications for Natura sites, Sites of Special Scientific Interest, National Nature Reserves and European Protected Species. **SNH** has no objection to the proposal but provides detailed comment in the consultation response on a number of issues.
27. It is noted that the subject site is relatively close to the River Avon, which is a tributary of the River Spey and is part of the River Spey Special Area of Conservation (SAC), with qualifying interests of the SAC being Atlantic salmon, freshwater pearl mussels, otters and sea lamprey. **SNH** consider that track works at locations 1 and 3 are sufficiently distant from the River Avon in order to ensure that there is no risk of disturbance to otters and no risk of pollution to the water course. As such the works in those areas are not considered to have any impact on the qualifying interests of the River Spey SAC.
28. The track works in the middle section (location 2) cross a ford at Allt a' Chois. Due to this it is recognised that there may be potential to affect aquatic interests of the River Spey SAC, principally through the risk of sediment pollution to the River Avon during and immediately after construction. However in this instance **SNH** advise that the works have not significantly increased the risk of sediment pollution. In conclusion **SNH** advise that "there will be no likely significant effect on the River Spey SAC as a result of the proposal, and an appropriate assessment is not required.

29. **SEPA** was consulted on the proposal but has no comment to make as the proposal falls below the threshold for consultation, as it is less than 4 kilometres.
30. In a response from the **Transportation Section** of Moray Council it is commented that works to the access track do not affect the public road. It is recommended in the event of the granting of planning permission that a condition is included to ensure that no water is permitted to drain or no loose material to be carried onto the public footway / carriageway.
31. Moray Council's **Contaminated Land** section was also consulted and has no comment to make.
32. **Tomintoul Community Association** was consulted but to date no response has been received.
33. The CNPA's **Access Officer** considered the proposal and there is no objection. It is noted in the response that the track which is the subject of the application is a core path (CC6) and also a Right of Way. The Access Officer recommends that the track is kept free from obstruction and in the event of the temporary closure of the route that suitable signage is put in place to warn users.
34. The landscape impact of the development has been considered by the CNPA's **Landscape Officer** who notes that there is a strong sense of enclosure in the glen, which is created by containment of the valley sides and is reinforced in places by woodland. The **Landscape Officer** also refers to the track being part of a network of promoted walks and as such considers that the edges of the track are crucially important in contributing to a high quality experience for users. The **Landscape Officer** recommends a number of conditions regarding treatment and seeding specifications for different areas of the track, all of which are intended to achieve a stable and naturally appearing edge to the track, which would complement and enhance the landscape character of this part of the National Park.

REPRESENTATIONS

35. The application was advertised in the Northern Star on 2nd April 2010. No representations have been received in respect of the development proposal.

APPRAISAL

36. The main issues to consider in this application relate to the principle of the development, the nature of the proposal and the implications of the works, and also consideration of its contributions towards the provision of access in the area.
37. Firstly, the fact that this is a retrospective application cannot be overlooked and in this respect it is disappointing that the applicants undertook the works

without due regard to the obligation to secure planning permission for a development of this nature. Notwithstanding the retrospective nature of the application, it is now necessary to assess the proposal on its merits.

38. The formal description of the development works is the ‘maintenance of an access track.’ It is clear that a track has long been in existence at this location. Part of the track is also promoted as the Tomintoul Countryside Walk and in this respect is a beneficial recreational opportunity in the area. The principle of carrying out improvements to an existing track is generally acceptable and the issue to then consider is the impact and acceptability of the nature of the works. It was evident in an inspection of the works by CNPA planning officials prior to the submission of the planning application that the efforts to upgrade and maintain the track had been undertaken in a somewhat crude method. However, the works are of a nature that their impact improves with time, and the natural process of regeneration is of assistance in this.
39. In terms of the impact of the development on the natural heritage of the area, this matter has been considered by SNH and the CNPA’s Landscape Officer. SNH has confirmed that the works will not impact on the qualifying interests of the nearby River Spey Special Area of Conservation. The Landscape Officer has recommended that further works be undertaken in terms of reinstatement and re-seeding, in order to further minimise the landscape impact of the track maintenance.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

40. In terms of landscape the proposed development is a relatively small project, involving works to an existing track. The development is not on land which is the subject of any natural heritage designations, and it is not considered to detract from achieving this aim. Conditions may also be included in order to improve the landscape impact of the works that have been undertaken.

Promote Sustainable Use of Natural Resources

41. No details have been provided on the sourcing the raw materials which were used in the maintenance works on the track and it is not therefore possible to assess whether or not the development contributes to this aim.

Promote Understanding and Enjoyment of the Area

42. The maintenance works to the existing track have the potential to provide enhanced access opportunities in the area, particularly for users of the Tomintoul Countryside Walk. As such the proposal may be considered to contribute to the general public’s enjoyment of the area.

Promote Sustainable Economic and Social Development of the Area

43. The maintenance works to the existing track may be of benefit to the applicant / landowner in providing vehicular access opportunities to more

remote areas of land. The works are however likely to make limited contribution to the economic or social development of the wider area.

RECOMMENDATION

That Members of the Committee support a recommendation GRANT PLANNING PERMISSION for temporary use of ground for the maintenance of an access track on land near Keppoch Cottage, Tomintoul, subject to -

(A) The following conditions :

1. For a period of 3 years from the date of this permission a short statement (including photographic evidence) on the state of track shall be submitted to the Cairngorms National Park Authority as Planning Authority on a six monthly basis unless otherwise agreed.

Reason : In order to ensure that the works are appropriately assimilating into the landscape and in order to ensure that the works assist in enhancing the natural heritage of the area.

2. No water is permitted to drain or no loose material to be carried onto the public footway / carriageway.

Reason : in the interests of traffic safety and in the interests of public safety.

3. The track shall be kept free from obstruction at all times. In the event of the need for any temporary closure of the track to facilitate track works, suitable advance warning signage shall be put in place.

Reason : in the interests of public safety.

4. The following reinstatement works shall be undertaken in the planting season immediately following the granting of planning permission –
 - (a) All slopes less than 45 degrees, with a drainage ditch at the base of the slope, shall be (i) top dressed lightly with organic top soil from a local source and (ii) shall be seeded using a grass seed mix of appropriate species;
 - (b) For all slopes greater than 45 degrees, (i) a cut-off ditch shall be provided above the cut slope in order to remove water and prevent erosion and spillage and (ii) shall be hydro seeded with a grass seed mix of appropriate species;
 - (c) Mounds of deposited material on all areas of downslope deposits, shall be levelled and re-graded by hand, and shall be seeded using a grass seed mix of appropriate species.

Reason : in order to minimise the visual impact of the development and in the interests of enhancing the natural heritage of the area.

AND

(B) A letter to be issued to the applicant expressing disappointment at the retrospective nature of the works.

Advice Note

The grass seed mix required in connection with condition 4 of this permission shall include a mix of the following :

- Common bent (*agrostis capillaries*)
- Sweet vernal grass (*anthoxanthum oderatum*)
- Wavy hair grass (*deschampsia flexuosa*)
- Sheeps fescue (*festuca ovina*)
- Smooth stalked meadow grass (*poa pratensis*)
- Flowers native to the area such as yarrow, harebell, bedstraw and birds foot trefoil.

Mary Grier

planning@cairngorms.co.uk

1 December 2010

The map on the first page of this report has been produced to aid in the statutory process of dealing with planning applications. The map is to help identify the site and its surroundings and to aid Planning Officers, Committee Members and the Public in the determination of the proposal. Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Cairngorms National Park Authority and other Copyright holders. This permission must be granted in advance.