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## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title: REPORT ON CALLED-IN PLANNING APPLICATION**

**Prepared by: ANDREW TAIT, PLANNING OFFICER (DEVELOPMENT MANAGEMENT)**

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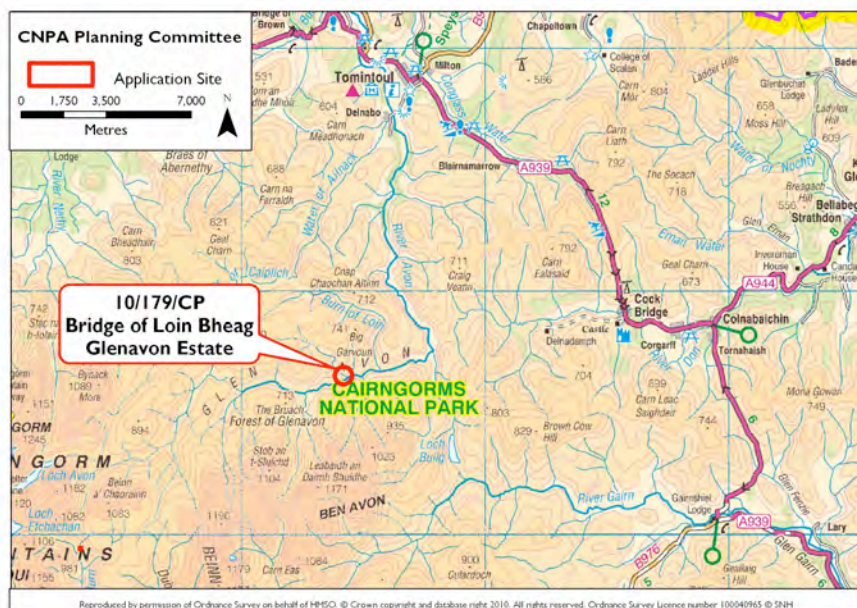
**DEVELOPMENT PROPOSED: RETROSPECTIVE APPLICATION FOR EMERGENCY REPLACEMENT AND REPAIR WORKS TO BRIDGE OF LOIN BHEAG, GLENAVON ESTATE, MORAY**

**REFERENCE: 10/179/CP**

**APPLICANT: GLENAVON ESTATE LTD C/O BIDWELLS, INVERNESS**

**DATE CALLED-IN: 25 JUNE 2010**

**RECOMMENDATION: GRANT SUBJECT TO CONDITION**



**Fig. 1 - Location Plan**

## SITE DESCRIPTION AND PROPOSAL

1. The site of this application is located in a remote part of Glen Avon below the northern slopes of Ben Avon and on the northern side of the River Avon approximately 14 kilometres from the nearest public road. The site consists of a bridge over the Allt Loin Bheag Burn about 100 metres up stream of its confluence with the River Avon (see figs 1, 2 & 3)
2. There has historically been a crossing here in the form of a bridge over culvert pipes. The bridge carries a vehicle hill track which allows access further up Glen Avon to Faindouran Lodge. The track is used for estate management purposes and is also popular with hill walkers and mountain bikers accessing Ben Avon, Ben a Bhuid and areas beyond to Loch Avon. The track is part of two Rights of Way recognised by the Scotways (Scottish Rights of Way Society). The routes link Tomintoul with Lin of Dee and Invercauld respectively. The track is sometimes used by the Mountain Rescue Service.
3. A report was received in summer 2009 that works had taken place at this site. The CNPA Enforcement Officer initiated an investigation about this site as well as works to a track known as the country walk near Tomintoul (see planning paper 3 on this agenda). The site was visited with estate representatives and specialist staff from SNH (Scottish Natural Heritage) and SEPA (Scottish Environmental Protection Agency). Representatives of the Spey Fisheries Board have also visited the site.



**Fig. 2- View looking upstream towards bridge works**



**Fig.3- Bridge works**



**Fig.4- Upstream works/spate debris**

4. The original bridge was washed away in floods (spring/summer 2009) and was of the same design as the one being considered here. The main difference being that the pipe diameters were smaller on the earlier structure that was

washed away. The works involved the installation of four larger bore pipes with a new road surface above, some works have been carried out to reconfigure the banks of the burn for about 60 metres above the bridge to clear debris left by the flood. It is likely that the original pipes became blocked resulting in a build up of water above the bridge the pressure of which washed it away. It is clear from the site inspection that a significant amount of material has been washed down from upstream.

5. The replacement of the bridge was undertaken as an emergency by the estate to maintain access to the upper part of the glen for management purposes and to ensure that visitors undertaking recreation in the area were not faced with an unexpected and potentially difficult burn crossing. While recognising the emergency need, the works constitute engineering works requiring planning permission and the estate agreed to submit this planning application to regularise matters.
6. The burn is a tributary of the River Spey Special Area of Conservation (SAC) and there is a Special Protection Area (SPA) focused upon Ben Avon to the south of the site.

## DEVELOPMENT PLAN CONTEXT

### National policy

7. **Scottish Planning Policy<sup>1</sup> (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 should .....allow 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

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<sup>1</sup> February 2010

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 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.<sup>2</sup> 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.”

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<sup>2</sup> Para. 256.

## 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 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 29<sup>th</sup> 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. **Tomintoul Community Association** has been consulted but no comment has been made.
27. **SNH** has no objection to the proposal noting that there had been an Irish bridge consisting of 8 smaller concrete pipes at the site. The summer wash-out blocked the pipes and broke the concrete. Emergency repairs replaced that old structure with something similar consisting of 4 much larger pipes set level with upstream and downstream beds. At the same time works were carried out straightening the alignment to facilitate flow through the pipes. The burn is now re-establishing natural bends upstream of the bridge with material deposited in one of the pipes. All materials were won on site. SNH advise that the works carried out would not have had a significant effect on salmon or otters (SAC qualifying interests) as the two species most likely to be found in the catchment. The conclusion of SNH is that while the bridge may be in a location that could render it vulnerable to further damage during spates to rectify or remove the location of the bridge would probably be more damaging to the environment overall. Maintenance may be required in the future to prevent a build up of materials.
28. **SEPA** comment that with regard to watercourse engineering it is noted that the crossing is an improvement on the previous structure and is likely to



allow improved fish passage and sediment movement. However, the watercourse bed in this area is mobile and the potential for another spate to have an impact upon the structure should be acknowledged by the applicant. No flood risk assessment has been provided so SEPA cannot advise on the likelihood of the structure being inundated.

29. **The Spey Fishery Board** comment that the Board were consulted prior to repairs being carried out, at the time emergency works were undertaken to repair and maintain the existing track, the track needed to be maintained for a number of reasons including mountain rescue. The replacement pipes are a considerable improvement on what was in place before. The previous pipes being too narrow leading to blockages, they were also considered too small to allow fish passage. The replacement pipes have been dug into the river bed allowing silt and shingle to collate on the floor of the pipes. While a clear span bridge would have been preferable they can be cost prohibitive. The Board has no objection to the retrospective grant of planning permission.
30. **The CNPA Landscape Officer** notes that the site lies within the upland character area for the Cairngorms Central Massif. Mobile river systems are characteristic of this area with frequent braided sections and 'wandering' gravel banks. There is a strong sense of remoteness in the area reinforced by exposure and the unpredictability of the climate, relative inaccessibility and dominance of natural processes where human intervention is minimal.
31. It is difficult to tell how much of the disturbance is the result of river bed movement in the recent storm event and how much was created by the development. To attempt to re-engineer the banks at this stage would inevitably mean extending the area of disturbance and could cause problems by loosening boulders that are establishing some level of stability and moving plants that have begun to establish. Although the development fails to meet the strategic objective of the Park Plan to conserve and enhance the Landscape Officer would recommend that the works are left well alone and that if possible a condition is attached for regular monitoring.
32. With regard to wider issues the Landscape Officer comments that climate change predictions would suggest that this kind of event may become more frequent and there is anecdotal evidence that it is happening already. Given the sensitivity of the Cairngorms Massif landscape, geo-physically, in wild land terms and from a management point of view it is suggested that a co-ordinated policy steer needs to be developed with all relevant parties to develop pro-active and responsive guidance to this issue.
33. **CNPA Access Officer** notes that the bridge is situated on a Right of Way which accesses a remote area of the Eastern Cairngorms, notably Ben Avon, Ben a' Bhuird and Faindouran Bothy. The route is for much of its length a rough track rather than a path which is capable of supporting off road vehicle use in addition to mountain biking and walking. The replacement bridge has meant that all these forms of access have been maintained, and as such this

should have no discernable impact of the type and pattern of outdoor access taken to the hills in this area.

## REPRESENTATIONS

34. No representations have been received.

## APPRAISAL

35. In this case works have been carried out and retrospective consent is sought by means of a planning application to regularise matters. The CNP Local Plan has no direct policy on hill tracks or bridges but includes a number of natural heritage policies which are relevant to the consideration of the proposal.
36. The burn that the bridge crosses is a tributary of the SAC. This means that Policy 1 Natura Sites as well as Policies 4 on Protected Species and Policy 5 on Biodiversity all apply. These policies seek to protect different aspects of the natural heritage of the area. SNH, SEPA and the Spey Fisheries Board have undertaken inspections of the site with specialist staff giving consideration to the works. Some concern was initially expressed to the applicant's about whether the pipes allowed the migration of salmon up stream but since the initial inspection sediment is settling in at least one of the pipes and the Spey Fisheries Board consider the solution to be an improvement for salmon on what was the case with the previous structure. This is likely to be the only species that would be affected by the works and none of the statutory consultees are raising objection to the retention of the works. While other options such a clear span bridge may have been preferable it is widely considered that to intervene further with the structure would be likely to do more harm than good. It is considered that the application does not impact negatively upon the protective environmental policies of the CNP Local Plan with regard to protected areas, species and biodiversity. In addition, the proposal to retain the works is not considered to have a significant effect on the qualifying habitat of the SAC.
37. With regard to the works above the bridge structure, as mentioned by the Landscape Officer it is difficult to define which deposits are as a result of the spate event and which are as a result of the engineering operations. Consultees have slightly differing views of the situation at the site perhaps based upon the timing of their visits, it is clear that the burn is subject to dynamic change as is the case with many of the burns in the area. SNH are of the view that some bends in the river are starting to re-establish. The fact that there is debris above the bridge (whether deposited by natural process or engineering works) illustrates that the area will continue to be subject to change. Some of the material could cause a problem in the future as hinted at by SEPA. To address this planning condition is recommended that regular reports (probably in the form of digital photographs) are provided by the applicant on the conditions at the site.

38. CNP Local Plan Policy 6 Landscape requires development to conserve and enhance. The CNPA Landscape Officer has concerns that the works do not meet this policy. However, despite this recommends that the structure is left well alone and also suggests that the situation at the site is monitored. Again, it is emphasised that the view of consultees is that any further intervention could cause problems.
39. Policy 34 of the CNP Local Plan seeks to improve responsible outdoor access. The CNPA Access Officer opines that the replacement bridge has meant that all forms of access from sporting use, through to mountain biking and walking have been maintained by the reinstatement of the bridge. Consequently, the retention of the works accord with Policy 34. Importantly, as mentioned by the Spey Fisheries Board the works enable the mountain rescue service to continue accessing the upper glen quickly by vehicle in case of emergency.

### **Conclusion**

40. In conclusion, there is no hesitation in recommending retrospective planning permission for the development as is, without any interventions being proposed. However, it is important that the site is monitored and a planning condition is recommended that the estate provide a 6 monthly update on the condition of the structure over the next 3 years.
41. While not for this individual planning paper this development has raised wider issues in terms of how estates can carry out emergency repairs that need to be done quickly without planning permission. In May this year a severe spate caused the wash out of part of a bridge and a track elsewhere on Glen Avon Estate. In this instance CNPA Officers were able to provide a view quickly for the estate that the works would constitute repairs not requiring planning permission. Officers will continue to look at situations where works are required as a result of storm damage as quickly as possible to assist estates with the day to day management of their activities.
42. The works have also raised wider concerns as expressed by the CNPA Landscape Officer regarding the policy approach to such emergency works if climate change is to result in more severe weather events such as the one that caused the wash out of the bridge. It is suggested that a co-ordinated approach of both policy and practice is required.

### **IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK**

#### **Conserve and Enhance the Natural and Cultural Heritage of the Area**

43. The proposal has been assessed for its impact on species and designated sites and been found to be acceptable. The proposal may not conserve and enhance the landscape but as mentioned by the Landscape Officer the works are best left alone as any intervention would cause more disturbance and potentially impacts beyond the current situation at the site.

### **Promote Sustainable Use of Natural Resources**

44. Apart from the pipes all materials have been won at the site.

### **Promote Understanding and Enjoyment of the Area**

45. The works have maintained public access over the burn to the upper part of the glen so have maintained the ability of a range of users to gain understanding and enjoyment of the area.

### **Promote Sustainable Economic and Social Development of the Area**

46. The works will allow the estate to maintain its economic activities in the area and will ensure a safe crossing for all users which would not be the case had the bridge not been replaced.

## **RECOMMENDATION**

47. That Members of the Planning Committee support a recommendation to **GRANT** retrospective planning permission for emergency replacement and repair works at Bridge of Loin Bheag, Glen Avon subject to the following:

#### **A. Condition**

- I. For a period of 3 years from the date of this permission a short statement on the state of the bridge and its immediate environs shall be submitted to the CNPA acting as planning authority on a 6 monthly basis unless otherwise agreed.

**Reason** : To provide information on the long term suitability of the structure for its purpose and to allow consultees to provide informal advice to the estate if required.

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

Andrew Tait

**29 November 2010**

[planning@cairngorms.co.uk](mailto:planning@cairngorms.co.uk)

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