
CAIRNGORMS NATIONAL PARK AUTHORITY

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

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

DEVELOPMENT PROPOSED: **ERECTION OF 72 HOUSES; FORMATION OF 5 HOUSE PLOTS; PROVISION OF PRIMARY SCHOOL SITE; ASSOCIATED AMENITY GROUND, ROADS AND FOOTWAYS (FULL PLANNING PERMISSION)**

REFERENCE: **08/272/CP**

APPLICANT: **DAVALL DEVELOPMENTS**

DATE CALLED-IN: **25 JULY 2008**

RECOMMENDATION: **REFUSAL**

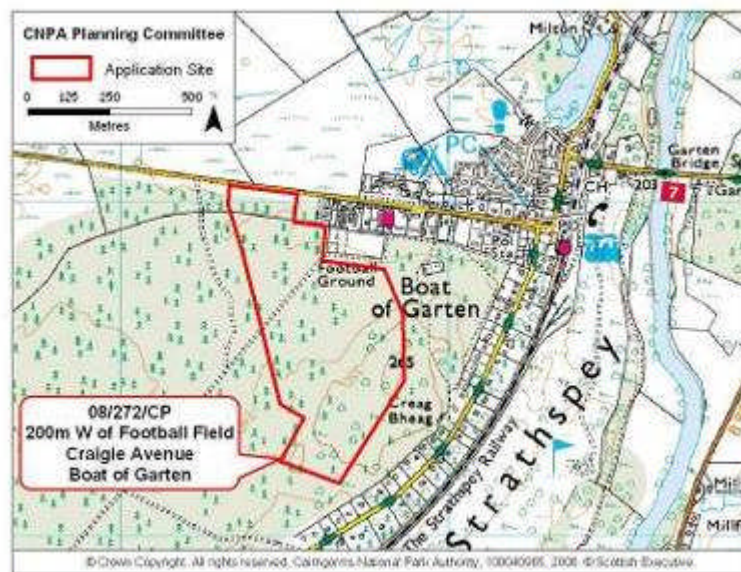


Fig. 1 - Location Plan

REASON FOR REPORT

1. This application was first considered by the CNPA Planning Committee on 7 January 2011. The decision of the Committee was to defer the application “to allow further information to be submitted on the proposed mitigation measures for capercaillie”. The application had been recommended for refusal by planning officers for 6 reasons as set out below:

Principle of Development

1. *The proposal would result in a significant housing development on a site not identified as part of the Housing Land Requirement for the Cairngorms National Park Local Plan (2010) and is contrary to Section 5.2.4 of the Cairngorms National Park Plan and Policy 20 Housing Development within Settlements of the Cairngorms National Park Local Plan.*

2. Natural Heritage Impacts (Capercaillie)

The proposal including mitigation proposed fails to demonstrate that it would not result in unacceptable detriment to Kinveachy, Craigmore, Cairngorms and Abernethy SPA’s and to the capercaillie population at Boat of Garten Wood. As a Schedule 1 European Protected Species capercaillie should be afforded the highest levels of protection in line with the precautionary principle. The proposal is therefore contrary to paras 125, 129, 132, 134 and 135 of Scottish Planning Policy, Section 5.1 Conserving and Enhancing of the Cairngorms National Park Plan ‘Biodiversity’, Highland Structure Plan Policies N1 Nature Conservation, G2 Design for Sustainability, Policies 1 Natura 2000 Sites, 2 National Natural Heritage Designations and 4 Protected Species of the Cairngorms National Park Local Plan (2010) and to CNP Supplementary Planning Guidance ‘Natural Heritage’.

3. Red squirrel

The proposal would result in unacceptable impacts upon the red squirrel population in Boat of Garten Woods when the CNPA has a duty under the Nature Conservation (Scotland) Act 2004 to further conservation of biodiversity. Red squirrel is a UK Biodiversity Action Plan and Cairngorms Local Biodiversity Action Plan Species and is afforded protection under the Wildlife and Countryside Act 1981. The proposal is therefore contrary to Paras 142-145 of Scottish Planning Policy, Policy N1 Nature Conservation, G2 Design for Sustainability of the Highland Structure Plan, Section 5.1 Conserving and Enhancing ‘Biodiversity’ of the Cairngorms National Park Plan, Policies 2 National Natural Heritage Designations, 5 Biodiversity of the Cairngorms National Park Local Plan (2010) and Supplementary Planning Guidance ‘Natural Heritage’.

4. Layout, Landscape and Housing Design

The proposed development fails to adequately respond to the characteristics of the site and fails to reflect its unique setting on the woodland periphery of a traditional Highland village. The proposed development, by reason of the current design proposals would also fail to adequately contribute to create a distinct identity and contribute to a sense of neighbourhood. The development would therefore be contrary to paragraphs 77-79 of Scottish Planning Policy, Planning Advice Notes on Designing Places, Designing Streets and Housing Quality, Policies L4 Landscape and G2 Design for Sustainability of the Highland Structure Plan, Policies 2 National Natural Heritage Designations, 20 Housing Development Within Settlements, 6 Landscape and 16 Design Standards for New Development of the Cairngorms National Park Local Plan (2010) which requires developments to reinforce and enhance the character of the settlement and conserve and enhance the landscape. It would also fail to accord with the strategic objectives for landscape, built and historic environment as detailed in the Cairngorms National Park Plan Section 5.1, which requires developments to complement and enhance the landscape character of the Park and complement and enhance the character, pattern and local identity of the built and historic environment.

5. Lack of vehicle access to village hall.

The development fails to provide a satisfactory vehicle linkage to Boat of Garten Community Hall contrary to the advice of Highland Council Roads Department and Policy 20 Housing Development Within Settlements of the CNP Local Plan which considers that proposals should accommodate within the development site appropriate access arrangements.

6. National Parks Act 2000

The proposal is contrary to the first and third aims of the Cairngorms National Park a set out in Section 1 of the National Parks Act (Scotland) 2000. Notwithstanding the contribution that the proposal may make to the fourth aim by the provision of affordable housing this does not outweigh the conflicts with the first aim which requires the National Park Authority to carry out its duty under section 9 (6) of the Act to give greater weight to the first aim (to conserve and enhance the natural and cultural heritage). The proposal is therefore contrary to the provisions of the National Park Plan 2007.

2. A number of verbal representations were made at the 7 January meeting and the application was discussed by the Planning Committee. The Committee voted to defer the application on the basis of allowing further information to be submitted on the proposed mitigation measures for preventing disturbance to capercaillie. Members took this decision in the full knowledge that there were several other reasons for refusal. A full copy of the approved minute is attached at Appendix E.

3. Since January a significant amount of work has taken place, including:
- *4 Meetings with the applicant's advisors.*
 - *CNPA, SNH and applicants advisors agreed criteria that any mitigation measures would have to meet.*
 - *SNH and CNPA officers providing comments on draft recreation questionnaire.*
 - *SNH and CNPA officers providing comments on camera survey.*
 - *SNH and CNPA commenting on draft report and feeding back initial views on whether criteria were being met by the mitigation proposal.*
4. The key output following the first meeting was a list of 10 criteria that were agreed by SNH, CNPA officers and the developer's advisors that any mitigation proposals would have to meet to be successful. In summary (see Appendix A- MBEC Report Appendix I for detail) the criteria were:
- 1) *Proposals to be based upon an understanding of the current and future recreational use of the woods.*
 - 2) *Mitigation proposals should be based on best UK and European practice.*
 - 3) *Proposals should be location and time specific.*
 - 4) *Paths and people's use: Proposals should consider a reduced network of paths which meet the community's needs and address the management of capercaillie and are enforceable.*
 - 5) *Proposals should demonstrate engagement with the community and a sufficient degree of support to ensure proposals are effective.*
 - 6) *Demonstrate alternative recreational provision.*
 - 7) *Any physical measures such as screening/landscaping to be effective and commensurate with phase of development.*
 - 8) *Proposals should demonstrate that they are practically enforceable and maintainable for the lifetime of the development at no cost to the public purse.*
 - 9) *Proposals should illustrate how they are timed to be in line with construction phasing.*
 - 10) *Monitoring, review and adaptive management mechanisms should be put in place.*

Site Description (Refer to previous 7 January report Appendix A for full description of site and proposal)

5. The site lies in a wooded area to the west of Boat of Garten and in area directly to the south of an existing playing field and the Community Hall. Figure 1 illustrates the area of the application site.
6. The sole access to the site would be from the road linking Boat to the A95 (Deshar Road) and the path which is National Cycle Route 7, with the access point being immediately to the west of an existing parking/recycling area.
7. A total of 77 houses including infrastructure and play area are proposed. A full breakdown of units can be seen at figure 11 on page 9 of the 7 January report (Appendix D). A total of 45 private units are proposed with 5 of these being discounted plots. Sixteen affordable houses for rent and 16 affordable houses on a shared equity basis are proposed. This equates to 42% of the development being classed as 'affordable'. Permission is also sought for a school site adjacent to the Community Hall. However, this is for the principle of a school use of the site and not for the detailed design of a particular building as this would be a matter for Highland Council. (the existing primary school at Boat is located at the junction of Deshar road with the A95).



Figure. 2- View towards site from A95

Capercaillie Mitigation Report

8. The work described in para 3 culminated in the submission of a report at the end of September by MacKenzie, Bradshaw Environmental Consulting (MBEC). The report identifies existing research on capercaillie and recreation use of the Boat of Garten Woods. This exercise involved the analysis of existing information to identify gaps where further primary research was required.
9. The key gaps identified related to the recreational use of the woods and two key methods were identified where additional research was needed to gain information on people's choice of woodland paths, the levels of use of various paths, identification of the demographics of users; and identification of times of use. This information was sought to gain an understanding of user flows and dispersal across the path network. The first method to enable an understanding of this was a questionnaire sent out to approximately 430 households with additional copies placed in the post office and local store. In total 263 questionnaires were returned which represents a high return.
10. It is clear from the questionnaire that the existing level of human presence within the woods is high, higher than would reasonably have been expected before the survey was undertaken. Local people use the woods regularly with almost a third using them daily. The survey finds that many people stick to the paths. However, a large percentage (41.9%) go off path at least occasionally. Given the survey MBEC believe that, inevitably, there is a significant level of disturbance to the more sensitive wildlife present. The report notes "that without wishing to single out dog owners, it is clear from the questionnaire returns that dogs are regularly off-lead and this adds significantly to wildlife disturbance".
11. Moving on from the survey, MBEC presented their findings to the local community at a meeting on 29 June which resulted in feedback and discussion in terms of what local people think will work with regard to mitigation (minute of the meeting at end of MBEC Report, Appendix A).
12. The second key method of the research involved camera survey with 4 cameras set out to cover agreed paths. MBEC sought advice and clearance from Highland Constabulary before placing the cameras on site. The camera survey showed that Boat of Garten Woods are used by large numbers of people and on a regular basis, at least during summer when the cameras were in place. MBEC consider that the level of use can be considered as high, if not very high. Dog presence within the woods is very high and the number and percentage of dog's off-lead is extremely high. This is a crucial issue as the camera survey was conducted within the main brood rearing season for capercaillie.
13. The next step in the research was to identify the potential for disturbance to capercaillie over the existing level, due to increased numbers of people associated with the proposed housing. Using the population census it is estimated that the new houses would result in an additional 199 people if

built as currently designed (approx 32% increase in the population). However, this does not take account of potential for second homes. Using the questionnaire responses from existing residents it can be estimated that an additional 166 people may well use the woods if the proposed development was built. However, this figure takes no account of occasional residence, holiday home use by other people or of further visitor increases to the area. It is also estimated that an additional 18 dogs would likely to be resident in the proposed houses.

14. The MBEC Report identifies a set of five key issues that any mitigation proposals would have to tackle directly. The most important issue is considered as relating to new resident awareness of capercaillie. The second relates to direct access out of the new development and that direct access to the south and west should be prevented. The third issue relates to preventing direct access to the woods from the gardens of the proposed development to prevent a proliferation of smaller paths around the development. The fourth issue relates to direct access to the village and into the woods east of the development. The fifth issue relates to limiting additional visual and noise disturbance into the woodland.
15. The updated mitigation proposals expand on those presented to planning committee in January can be seen at page 50 onwards in the MBEC report (Appendix A). The response to the first key issue relates to new resident awareness of capercaillie. To address this a welcome pack will be provided to all residents by the developer. This would explain why the development has been designed the way it has, the sensitivity of capercaillie and how the woods should be accessed. The key intention with the pack would be to inform new residents on how they can take part in the conservation of the species, and in particular the issues around dogs off-lead. The Community Council and newsletter articles will give both new residents and local people more knowledge on the issue. Through peer pressure it is hoped that it will become accepted within the woodland that dogs should be kept on lead. A dog off-lead play area will also be provided.



Figures. 3 & 4 – Views of Path 7 (proposed for closure) Fig. 4 shows efforts to keep path open.

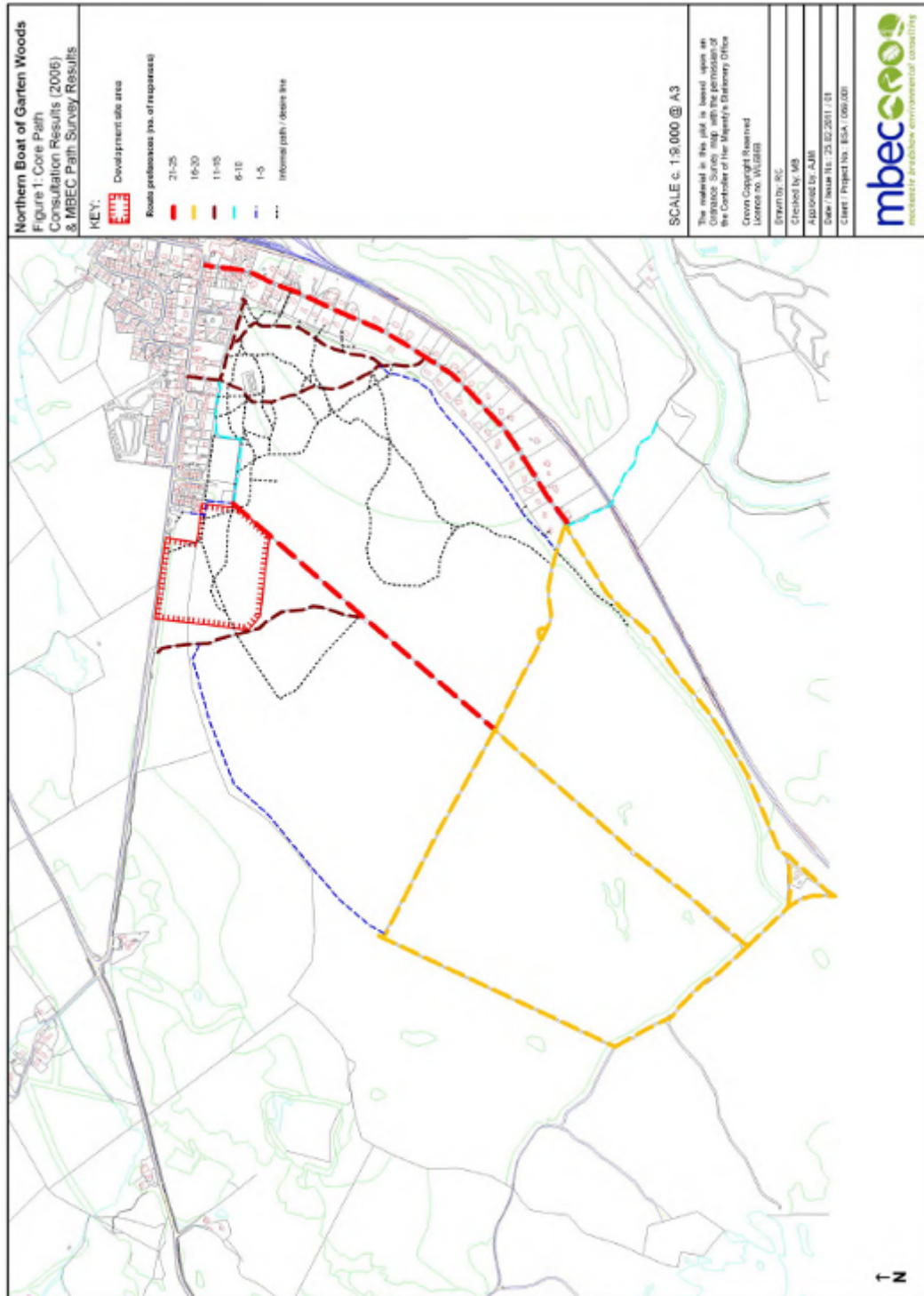


Figure 5. Extract from MBEC Report showing development in relation to path network from Core Paths Survey 2006

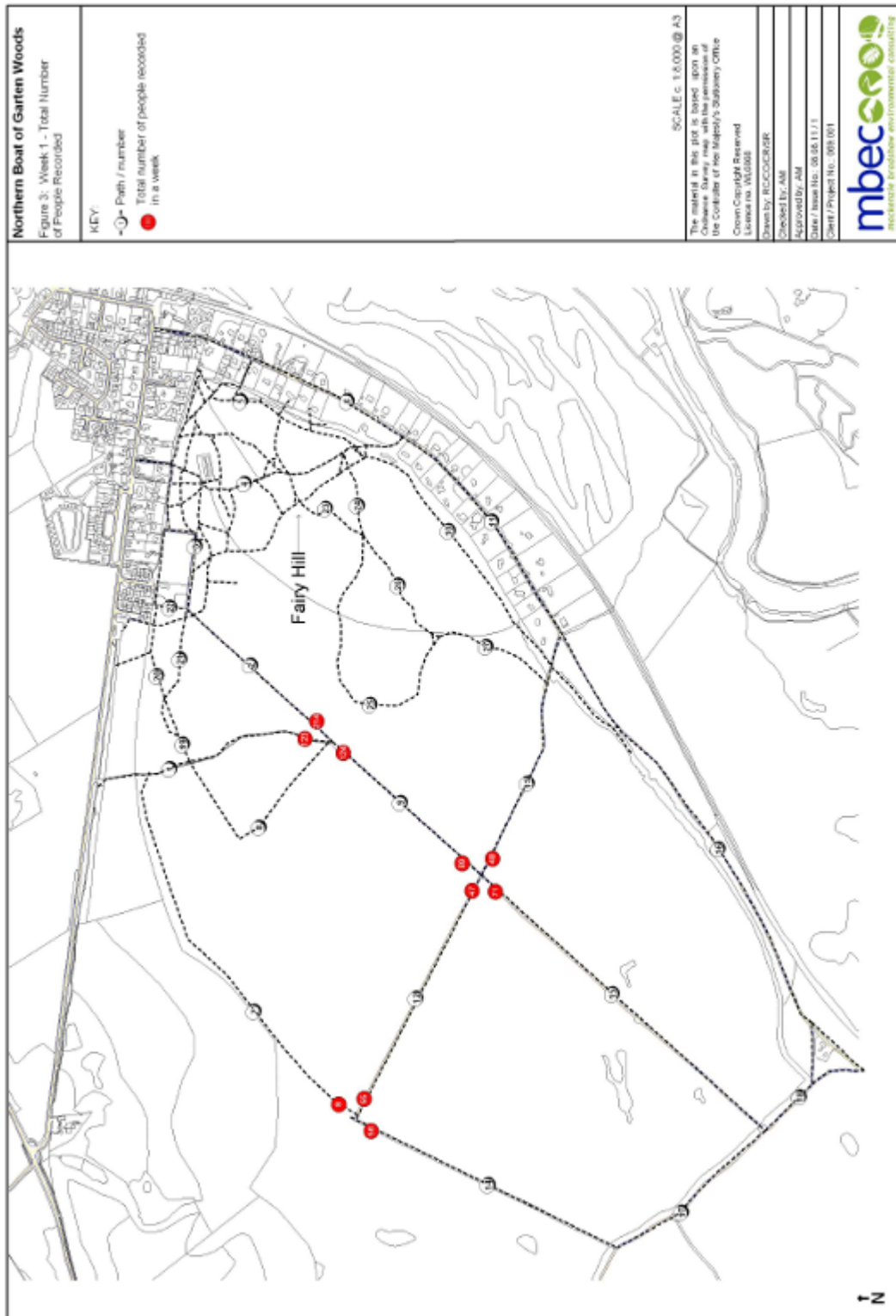


Figure. 6 - Showing total No of people recorded first week of camera survey

16. On the second key issue the development has been designed so that there will be no direct access onto Path 1 (see Fig 3 MBEC Report). This is to prevent access to more sensitive areas to the south and south west. People will actively be encouraged to walk east by providing a link to Path 2 which is Core Path LBS67.

17. On the third key issue access directly out of the development to the south and west will be totally prevented using a double fence with an exclusion zone in between. Consequently, even if entrances are made through the first fence then further access into the woodland would be prevented by a fence on land outwith the ownership of individual householders. A factoring agreement will be put in place by the developer for the management and maintenance of the fences in perpetuity and the situation would be explained by the welcome pack. Planting of juniper and encouragement of scots pine scrub around the woodland fence will be carried out.
18. On the fourth key issue the design of the development encourages direct access to the village and into the Northern Boat Woods via Path 2 (Core Path LBS67). However, no direct access to Paths 1, 7 or 8 is provided as this may encourage use of more sensitive woodland to the west.
19. On the fifth key issue the double fencing will be used to ensure that visual and noise disturbance into the woodland is fully mitigated. The inner and outer fence will be of a solid wooden construction to ensure no movement is visible and that full noise attenuation occurs.
20. The MBEC Report at page 54 includes a section on how mitigation measures will be practically managed. A Steering Group would be set up made up of a range of representatives including landowner, community, developer and SNH/CNPA staff. The Group's overall aim will be to provide knowledge and experience to allow the successful implementation of proposals. They will agree final design inputs and steer the implementation of the works. This committee will exist for as long as necessary during the implementation phase and a monitoring period of up to 10 years. All the works would require a budget and an initial operational sum has been calculated.
21. A further section of the report goes beyond trying to mitigate potential impacts from the development and looks at additional proposals that could mitigate the impacts from the existing recorded high level of usage of the woods. The landowner, through the developer has put forward additional "enhancement measures" to mitigate (in part) wider issues in the northern Boat Woods. This is regarded by the MBEC Report to be outside of the developers remit but a number of measures have been put forward including:
 - Positive limited targeted signage related to ground nesting birds along with measures including local community involvement;
 - Remove lesser used Paths 7 & 8 (see Figs 3-6);
 - Targeted woodland management to improve capercaillie habitat and to thicken up path edges to discourage off-path use;
 - Formal, signed but not fenced, off lead dog play area with signage marking its boundary and encouragement through positive local education;

- Selective thinning to encourage better quality capercaillie habitat.

DEVELOPMENT PLAN CONTEXT

National Policy

22. **Scottish Planning Policy¹ (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.
23. **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.
24. 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.”
25. 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 economic development, rural development, and landscape and natural heritage. The following paragraphs provide a brief summary of the general thrust of each of the subject policies.

¹ February 2010

26. Economic development: Planning authorities are encouraged to respond to the diverse needs and locational requirements of different sectors and to take a flexible approach to ensure that changing circumstances can be accommodated. The benefits of high environmental quality are also recognised and planning authorities are therefore required to ensure that new development safeguards and enhances an area's environmental quality and where relevant, also promote and support opportunities for environmental enhancement and regeneration.
27. Housing: **SPP** highlights the Scottish Government commitment to increasing the supply of new homes. The planning system is expected to enable the development of well designed, energy efficient, good quality housing in sustainable locations. The subject of 'Affordable Housing' is discussed and it is defined "broadly as housing of a reasonable quality that is affordable to people on modest incomes" and that it may take the form of social rented accommodation, mid-market rented accommodation, shared ownership, shared equity, discounted low cost home ownership, or low cost housing without subsidy. **SPP** advises that the need for affordable housing should be met, where possible, within the housing market area where it has arisen.
28. 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.
29. Landscape and natural heritage: Under para 134 the SPP notes that development which would have a significant effect on a Natura site can only be permitted where an appropriate assessment has demonstrated that it will not affect the integrity of the site, or there are no alternative solutions, and there are imperative reasons of overriding public interest, including those of a social or economic nature. The **SPP** 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.
30. **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."

31. **Scottish Government Planning Advice Notes (PAN)**
PAN 67 deals with the subject of **Housing Quality** and recognises the fact that many people want to live in a place that has a distinct identity, “rather than one that could be anywhere.” **PAN 67** advises that all development has the potential to contribute to a sense of neighbourhood and also highlights the fact that “thoughtlessly chosen standard house types and inappropriate materials look disconcertingly out of place.” In a detailed section on layout, it also urges developers to think about the qualities and characteristics of places and not consider sites in isolation. The Government’s recently published policy on **Designing Streets (2010)** is a key policy document and was based on earlier guidance ‘Designing Places’. The guidance notes that in the more recent past vehicle movement has often dominated design resulting in many streets being out of context with their location. The aim of the guidance is to reverse this trend back to the creation of successful places through good street design. The six qualities of successful places forming key considerations for street design are firstly distinctiveness, in that street design should respond to the local context. The second quality relates to a safe and pleasant environment where streets should be safe and attractive places. The third quality considers that streets should be easy to move around for all users and connect well to existing movement networks. The fourth quality is that places should be welcoming with street layout and detail encouraging positive interaction for all members of the community. Adaptability is the fifth quality in that street networks should be designed to accommodate future adaptation. The final quality is that places should be resource efficient with street design considering orientation, the integration of sustainable drainage and use attractive durable materials that can be easily maintained. In terms of street structure the guidance considers that the street hierarchy should consider pedestrians first and private motor vehicles last.

Strategic Policies
Cairngorms National Park Plan (2007)

32. 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.
33. Strategic Objectives for Biodiversity seek to conserve and enhance the condition and diversity of habitats throughout the Park; ensure all designated sites are in favourable condition; engage all sectors in meeting or exceeding biodiversity targets; ensure that populations of species given special protection under a range of Acts including European Directives are stable, or where appropriate increasing. Page 42 of the Plan includes a highlighted

section on the Natura 2000 network of special sites which covers SPA's. For Natura sites there is an obligation in law to prevent any activities being undertaken which are likely to have an adverse impact on the qualifying features of interest, unless such impact would be caused by activity that is in the overriding public interest for which there was no available alternative.

34. 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. Section 5.2.4 of the Plan focuses on housing and highlights the need to ensure greater access to affordable and good quality housing in order to help create and maintain sustainable communities. The Plan advises that the quality and design of all new housing should meet high standards of water and energy efficiency and sustainable design and be consistent with or enhance the special qualities of the Park through careful design and siting.
35. The National Park Plan includes a number of strategic objectives in relation to housing, including
- Increasing the accessibility of rented and owned housing to meet the needs of communities throughout the Park;
 - Promote effective co-ordination and co-operation between all public and private organisations involved in housing provision in the Park and communities living there; and
 - Improve the physical quality, energy efficiency and sustainable design of housing.

Structure Plan Policy

Highland Council Structure Plan (2001)

36. **Highland Council Structure Plan** is founded on the principles of sustainable development, which are expressed as –
- Supporting the viability of communities;
 - Developing a prosperous and vibrant local economy; and
 - Safeguarding and enhancing the natural and built environment.
- A variety of detailed policies emanate from the principles.
37. The following provides a brief summary of the policies applicable to a development of this nature. **Policy NI – Nature Conservation** advises that new developments should seek to minimise their impact on the nature conservation resource and enhance it wherever possible. The Plan refers to the socio-economic benefits of the nature conservation resource and advises that it should be optimised by a high level and standard of interpretation and understanding wherever possible.

38. The Structure Plan also includes a section on biodiversity, defining it as “natural richness and diversity of nature – the range of habitats and species and the uniqueness of each and every organism.” Biodiversity is not the same as natural heritage, but is one of the key functional components. As a key part of the natural heritage of an area it is important to protect, and where possible enhance biodiversity and to monitor any change.
39. Section 2.4 of the Plan concentrates on the subject of landscape, stating that “no other attribute of Highland arguably defines more the intrinsic character and nature of the area than its landscape.” Similar to national policy guidance, there is a recognition that landscape is not a static feature and that the protection and enhancement of landscape and scenery must be positively addressed. **Policy L4 Landscape Character** states that “the Council will have regard to the desirability of maintaining and enhancing present landscape character in the consideration of development proposals.”
40. **Policy G2 (Design for Sustainability)** states that developments will be assessed on the extent to which they, amongst other things make use of brownfield sites, existing buildings and recycled materials; are accessible by public transport, cycling and walking as well as car; are compatible with service provision; demonstrate sensitive siting and high quality design in keeping with local character and historic and natural environments; and contribute to the economic and social development of the community.

Local Plan Policy

Cairngorms National Park Local Plan (2010)

41. 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>
42. 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.
43. 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.

44. Policy 1 Natura 2000 Sites: development likely to have a significant effect on a Natural 2000 site will be subject to an appropriate assessment in accordance with the Conservation (Natural Habitats, &c.) Regulations 1994. 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. Where the site has been designated for a European priority habitat or species, development will only be permitted where the reasons of overriding public interest relate to human health, public safety, beneficial consequences of primary importance for the environment or other reasons subject to the opinion of the European Commission (via Scottish Ministers).
45. Policy 2- National Natural Heritage Designations: development that would adversely affect the Cairngorms National Park, a Site of Special Scientific Interest, National Nature Reserve or National Scenic Area will only be permitted where it has been demonstrated that: a) the objectives of designation and overall integrity of the designated area would not be compromised; or b) any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social or economic benefits of national importance and mitigated by the provision of features of commensurate or greater importance to those that are lost.
46. 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.
47. 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.

48. 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.
49. Policy 16 Design Standards for New Development : design of all development will seek where appropriate to: a) minimise effect on climate change; b) reflect and reinforce the traditional pattern and character of the surrounding area and reinforce the local vernacular and distinctiveness, whilst encouraging innovation in design and materials; c) use material and landscaping that will complement the setting of the development; d) demonstrate sustainable use of resources; e) enable storage and segregation of recyclable materials; f) reduce need to travel; g) protect neighbouring amenity; h) accord with Sustainable Design Guide. All proposals to be accompanied by a design statement.
50. Policy 19 – Contributions to Affordable Housing: The affordable housing policy is intended to ensure the delivery of a wide range of housing options to a wide range of households in the Park. Policy 19 requires that developments of three or more dwellings will be required to incorporate a proportion of the total number of units as affordable. Developments solely for affordable housing will be considered favourably.
51. Policy 20 – Housing Developments within Settlements: Settlement boundaries have been identified indicating to the extent to which settlements may grow. Policy expects new housing development to be within the boundaries of settlements. Housing proposals within these settlement boundaries will be considered favourably where the development: a) occurs within an allocated site identified within the proposals' maps; or b) is compatible with existing and adjacent land uses, and comprises infilling, conversion, small scale development, the use of derelict or under used land or the redevelopment of land. Proposals should reinforce and enhance the character of the settlement and incorporate adequate amenity space and access.

SITE SPECIFIC PLANNING POLICY AND HISTORY

52. The settlement proposals section of the CNP Local Plan identifies a hierarchy of settlements including strategic, intermediate and rural settlements. The introduction to the settlement proposals notes that the majority of development and provision of facilities should be provided within strategic settlements.

53. The plan identifies three key proposal types including housing and goes onto note that settlement boundaries are identified, outwith which it is expected that proposals will require justification for their selected location. Housing sites are proposed where strategic sites have been identified and development of these sites must comply with the policies of the Local Plan and any specific requirements for the site noted in the proposal text.
54. Boat of Garten is identified as an intermediate settlement in the settlement hierarchy. The village services currently include a school, shops, post office, hotel, other tourist facilities including the steam railway and a new community centre. The housing site proposed by this application is not allocated on the proposals map. A corner of the site subject to the application is allocated as BG/CI: Site to west of village and immediately west of the new village hall, is to be retained in order to support the community and would be appropriate for a new school and/or other uses which support the economic development of the settlement and its sustainable community. Any proposal must take account of the high environmental sensitivity of its context. The design of any development will retain as much of the existing woodland of the site as possible.
55. **CNP Supplementary Planning Guidance** The CNPA has produced a range of supplementary planning guidance that is a material consideration in the determination of the proposal. The most relevant guidance is contained within '**Natural Heritage**' guidance which sets out a range of principles with key Principle 1 considering that development should result in no net loss of natural heritage. Principle 2 considers that where loss or damage to natural heritage interest is unavoidable then this must be minimised as far as possible. Principle 3 sets out that if loss or damage is unavoidable then it will be fully mitigated on the development site and moving on from this Principle 4 considers that if on site mitigation is not possible a combination of on site mitigation and off site compensation would be required. Principle 5 considers aspects of financial compensation will be required to benefit the natural heritage of the National Park. The document sets out the level of information required dependent upon the nature of the sites in terms of designations and species.
56. The **Sustainable Design Guide** flows from Policy 16 Design Standards and sets out a checklist summary that is to be considered in the determination of applications. This covers such issues as to whether a development conserves and enhances the character of the Park in terms of layout, scale, proportions, materials, construction and finishing as well as considering landscaping and cultural heritage. The guidance also considers whether resources are being used efficiently in terms of energy, water treatment, and flooding, surface water run-off and waste recycling. The guidance goes onto consider issues of accessibility and flexibility of design and amenity space as well as access to community facilities.
57. Guidance has also been produced on **Affordable Housing** and sets out how proposals will be assessed in terms of their contribution which flows from Policy 19 Contributions to Affordable Housing in the CNP Local Plan.

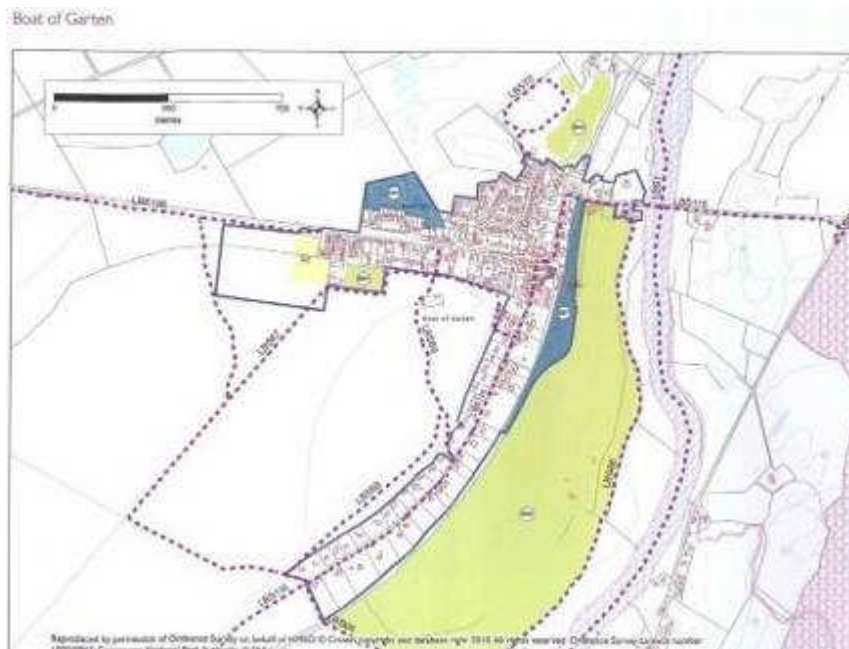


Figure. 7 - CNP Local Plan Proposals Map for Boat of Garten site is to west of BG/CI (which is in yellow)

Department of Planning and Environmental Appeals Report into the CNP Deposit Plan (Modifications) October 2008.

58. The Scottish Government Reporters considered that the CNPA allocation of housing land supply in the Park was over-generous and recommended that this be reduced. The Reporters noted that the deposit plan identified a 5.8 ha site fronting onto Deshar Road on the western edge of the settlement as BG/HI for 70 housing units. The Reporters go on to note that the site contains and is affected by important natural heritage interests and recommended that BG/HI be removed from the plan.
59. The Reporters expressed concern that the SNH advice may underestimate the importance of Boat of Garten Wood for capercaillie by a significant margin. This is because current, peer reviewed evidence indicates that a multiplier which doubles the number of cocks at the site is used, whereas objectors and the RSPB would use a multiplier of 4. This would increase the representative population of capercaillie in the woods to 1.2% which is nationally important.
60. In conclusion, the Reporters considered that the allocation could make a contribution to the effective land supply and also noted that development in the village had been limited so an allocation could be considered appropriate in principle, but there was no evidence that it was essential in the face of what was considered to be an over-supply of housing land. They held serious concerns about the impact of the allocation for capercaillie as one of Scotland's most threatened species. The Reporters also agree that that the site would have a significantly negative landscape impact on the landscape character of Boat of Garten. The Reporters conclude that while the site can make a contribution towards housing supply given the environmental

constraints, the CNPA would need to show an overwhelming need for the housing at the site. The Reporters concluded that this has not been satisfied and while accepting that safeguards can be put in place to secure an appropriate standard of development the shortcomings were of such overriding significance that the allocation of BG/HI should not proceed.

61. In adopting the Local Plan the Planning Committee removed allocation BG/HI on the basis that a working group be set up including members of the community and landowner as well as SNH and CNPA Officers to look at housing issues in Boat of Garten, including other potential sites. A number of meetings of the Working Group have taken place. The group have been updated of progress on this application and discussed housing issues at Boat of Garten in general. Discussion also took place on other potential sites for housing at Boat of Garten and four potential options have been taken forward as part of the Local Development Plan Main Issues Report.

CONSULTATIONS

(for previous consultation responses see 7 January Report Appendix D)

62. **Scottish Natural Heritage (SNH)** (full response see Appendix B) **object** to the proposal as currently submitted, because the development is likely to cause disturbance to capercaillie using the adjacent woodland. The woodland in question is known to be well used by capercaillie and the birds using the wood are part of the Strathspey metapopulation, which holds 75% of the UK population. Boat Woods lie in a central position helping to facilitate capercaillie movement between four SPA's designated to protect this species and if the development compromises the ability of the birds to live in Boat woods the conservation objectives of the 4 SPA's could be affected.
63. SNH advise that the impact is likely to have a significant effect on capercaillie populations in four nearby Special Protection Areas (SPA's) SNH have assessed the effects of the proposed development and mitigation measures in relation to disturbance to capercaillie in Boat of Garten woods, and consider that it cannot be ascertained that the proposal will not adversely affect the integrity of the SPA's.
64. Having considered the recreation survey provided by the developers, and taking account of advice from CNPA as Access Authority on the access management measures, SNH identify six risks noting that there are significant doubts over the likely effectiveness of the mitigation measures proposed to avoid increases in disturbance to capercaillie in Boat of Garten Woods from three of the six risks identified as follows
 - Significantly increased recreational use of currently little used Path 7, and routes in the south west sector of the woods accessible from Path 7;
 - Increased off-path use by people in areas used by capercaillie;
 - Increases in the number of dogs ranging off paths in areas used by capercaillie.

65. These doubts mean that SNH cannot conclude that this proposal will allow the conservation objectives of the SPA's to be met. On the basis of the information currently available, and for the reasons given above, SNH consider that it has not been ascertained that the proposal will not adversely affect the integrity of the SPA's which leads to an objection.
66. SNH recognise the considerable efforts that the developers and other interested parties have made to collect and collate survey data and develop mitigation, and are happy to advise further on any future iterations of proposals and associated mitigation measures.
67. SNH remind the CNPA that notification of the application to Scottish Ministers would be required where SNH has advised against a grant of planning permission should the CNPA wish to grant permission.
68. **Boat of Garten and Vicinity Community Council** response has been reproduced in full as part of Appendix B. The Council reaffirms its commitment to achieving further housing provision for the Boat of Garten area, in particular, affordable housing. The Council is also committed to ensuring the protection and enhancement of the local environment for the mutual benefit of people and wildlife.
69. The questionnaire and camera survey both provide invaluable information for the village, demonstrating the importance of the woods to the local population and to visitors. The response draws from para 10.3.5. of the MBEC Report where it states that "Overall it is clear from this work that the existing level of disturbance to capercaillie is high to very high within the northern Boat of Garten woods". Given this, the Council consider it very important for the community to understand the mitigation measures being put forward. The Community Council welcomes the recommendation to set up a steering committee to include community representation. It is the Council's view that community engagement is not something that ends if planning consent is granted and community engagement and steering group involvement over a period of years would be required.
70. The Community Council would recommend including a planning condition relating to continuing community engagement and the setting up of the recommended Steering Group. A further public meeting would be most effective if held after planning consent is granted (if granted).
71. For successful mitigation measures to be achieved, understanding about the impact of human and animal disturbance is vital. Education, information and good signage are key to this. but positive change takes time and requires regular focus over a matter of years. Some residents have suggested a warden to help with education and monitoring.

72. With regard to the potential closure of Paths 7 and 8 it is noted that these are not included in the Boat of Garten Trails leaflet. It is likely that resident's views about such path closures would vary and may be an issue which can most usefully be discussed post planning consent and hopefully a compromise found which meets the approval of all stakeholders.
73. The dogs off lead area proposal met with favour in principle, but will require further discussion. Emphasis is also placed upon encouraging residents and visitors to keep dogs on a lead. This does not happen in any other area of the National Park and it would be naïve to think that that could be achieved here and this is an issue for the whole of the Park.
74. The Council note that the developers and MBEC have maintained communication with and have consulted the Community Council about the survey and a number of issues have been discussed between MBEC and the community, in particular, at a meeting on 29 June (a copy of the minute of the meeting is attached at the back of the MBEC Report Appendix 1).
75. The Council has a concern about the agreed criteria (No 5) regarding the proposals need to demonstrate effective engagement with the community with a sufficient degree of support to ensure that proposals are effective (Reason: to be effective there needs to be clear support from regular users shown through positive behaviour change so that informal (path) networks are unlikely to be created or existing desire lines restored if removed). The Community Council wishes to express its concern that the reason given implies a level of support that is unrealistic to expect at this stage of the Housing Application process. People need time to become familiar with and give consideration to, the details and reasons for the proposals. Community engagement needs to be an ongoing process which takes time to implement and does not start or finish with the planning consent. At the most recent Community Council open meeting on 3 October, members took the view that the public meeting of the 29th June gave a positive steer to the draft mitigation proposals and that detailed proposals would be best discussed with all stakeholders after the Housing Application has been determined.
76. In conclusion, it is the wish of the community to achieve further housing provision, particularly affordable housing, but also some private housing to ensure the long term sustainability of the community within a reasonable time frame. The Community Council ask the CNPA Planning Committee to consider this mitigation report bearing in mind the vital importance of achieving a balance between the interests of the natural heritage of the area and the interests of the human population. It is the view of the Community Council that this or any other future housing development will necessitate an understanding of, and positive engagement in, any mitigation arrangements. Consequently, if planning consent is given, the Community Council will actively seek the co-operation of local residents in working with all stakeholders to achieve success.

77. Ecology Officers within CNPA **Strategic Land Use Directorate** have reviewed the new information (full comments and Appropriate Assessment in Appendix B) on capercaillie and further note on red squirrels. Since January 2011 more work has been undertaken by the developer into the impacts upon capercaillie in the woodland and possible mitigation measures. The CNPA and SNH drew up criteria in discussion with the developer in February 2011 to assist the developer in developing the mitigation measures.
78. SNH has undertaken an assessment of the possible impacts upon adjacent SPAs and concluded that impacts are likely. Consequently the CNPA has been obliged to undertake a formal Appropriate Assessment. This has concluded that there are likely to be adverse impacts on the SPAs from an increase in human and dog disturbance to the capercaillie resulting from the proposed development. It has also concluded that the mitigation measures are unlikely to be effective in changing the behaviour of users of the woods. The infrastructure measures will be partially effective. The fencing around the development should deter a proliferation of desire lines near the proposed development site, however the scarifying of the path edges to encourage regeneration for screening will be take several years (at least 5-10) to be of value, so providing no mitigation in the short term.
79. The assessment against the ten mitigation criteria agreed by CNPA, SNH and the developer shows that from a biodiversity point of view none have been fully achieved. Nine of the ten have been partially achieved and one has not been met. Having assessed the proposed mitigation it is not clear how the proposal could comply with policies 1, 4 and 5 of the Local Plan.
80. Since the adoption of the Wildlife and Natural Environment Act (WANE) Act in June 2011 there is now a mechanism for applying for a licence to remove squirrel dreys. This is managed by SNH and they assess each case against criteria set out in the Act. (However, there is no change in the officer's position with regard to red squirrels at the site and this issue is still seen as a reason for refusing the application, in planning terms, regardless of the licensing situation).
81. The **CNPA Access Officer** comments (full comments based upon the agreed mitigation criteria- Appendix B) that the report anticipates a 32% increase in the population of the community. The comprehensive questionnaire and results from the camera survey have provided a very clear picture on how people currently use the woods. This has proved to be very valuable in assessing the potential effectiveness of the proposed mitigation. The survey has shown a much higher use of the woods than was previously envisaged and has also shown much higher numbers involved in letting their dogs roam freely.
82. The report has provided a range of measures that will help restrict direct access from the development into the woods and provides clear guidance for new residents about the importance of the woods from an environmental perspective. However, unless existing users change their current behaviour patterns it has to be questioned whether new residents will continue to

follow requests to modify their behaviour. The proposals, particularly in relation to dogs are unlikely to satisfy current or future demand and are therefore unlikely to be effective. The extent to which the current population would buy-in to this change remains untested.

83. Developing proposals that will be effective is not straightforward and it is always sensible to consider management mechanisms that might be required if the initial proposal is not successful. No such proposals have been included and it is being left to a Steering Group to bring these forward if required

REPRESENTATIONS

84. Letters of representation have been received on the capercaillie mitigation report. Issues raised are noted below. The representations have been reproduced in full at Appendix C.
85. **RSPB Scotland** does not object subject to the following: all mitigation proposals directly related to the proposed development to be enforced by legal agreement, the additional measures set out in para 12.1.3 of the report should also be enforced by legal agreement. A further letter received outside of the deadline for consultations now objects to the proposal. This letter is not copied as part of Appendix C because it was received outside of the deadline for responses.
86. **The Scottish Campaign for National Parks** comment that the local population of capercaillie within the nearby SPA is already sub-optimal and there is evident need to ensure that habitat connection is not compromised by further human pressure. The mitigation proposals to off-set this disturbance are more aspirational than realistic especially in respect of dog walkers. Capercaillie is a Schedule 1 bird and the NPA is the appropriate authority and it has a responsibility to ensure that capercaillie populations within the SPA's do not suffer.
87. **The Badenoch and Strathspey Conservation Group (BSCG)** has provided detailed comment on the mitigation proposals. Concerns are raised about whether winter use of the woods by capercaillie has been recognised and concern is raised by the emphasis upon single birds being noted as opposed to hens with chicks, the group note that caper are often solitary. It is noted that on the evidence of lek counts Boat Wood supports 1-2% of the national population which makes the woods of national importance. Concern is raised that the wood is referred to as plantation woodland when BSCG had previously pointed out that only refers to part of the site. BSCG consider that some of the measures, such as thinning, scarifying could have a negative impact on capercaillie as well as other species in the woods. Concern is raised about the uncertainty and limitations of mitigation outcomes of which the most fundamental is around requests to stick to tracks.

88. Six individual objections have been received raising a range of detailed concerns including an analysis of the walks that people take and that they tend to always look for circular routes. Concern is raised about the nature of the dog-off lead area and how this would work. Concern is raised that the proposals do not have community buy in despite discussions with the Community Council and would reduce some people's enjoyment of the area. The criteria set out by SNH and CNPA are not considered to be met.
89. Further concern is raised that the measures could have an impact on other species such as invertebrates. If approval is to be considered all mitigation measures should be in place and tested before any planning permission is granted. Other issues raised include:
- Light pollution from development
 - More signage is an intrusion into the woods
 - People will walk where they want regardless of education
 - Proposal would change fertility balance of woods, capercaillie prefer infertile areas
 - Increase in predators
 - Concern over short time to respond to mitigation report
 - References given for sightings of capercaillie close to the village and in winter
 - Some path proposals could fall foul of access legislation
 - Monitoring review and adaptive management period of 10 years is overkill for a development of this size
 - Comparisons made with funicular closed system
 - Dogs could escape through a small hole in the fence
 - Second/holiday homes come with a high expectation of recreation opportunity
 - Need for a reduction in human disturbance not mitigating an increase
 - Dog owners unlikely to change behaviour as evidenced by high incidence of dogs off lead at most sensitive time for capercaillie during MBEC research summer 2011
90. Appendix F of this report contains representations that were received too late to be included in the 7 January Report. This includes a letter of support from the constituency MSP. Appendix G contains the developer's response to the objection from SNH.

APPRAISAL

91. This appraisal section of the report is based upon an assessment of the capercaillie mitigation measures put forward by the developer in the form of the MBEC Report against the criteria agreed by all parties (SNH/CNPA/Developer). The conclusions of this are based upon comments of SNH, and CNPA Officers, the Community Council and third party representations. These conclusions will then be assessed in terms of their 'fit' with planning policy. This is followed by brief comment on the other

recommended reasons for refusal contained within the 7 January Committee report, because they remain as valid reasons for rejecting the proposal. Finally, an overall assessment of the proposals against the statutory context of the Park will be followed by a conclusion.

92. As mentioned in the previous report the concern surrounding capercaillie relates to two distinct sets of issues. Firstly, capercaillie is a species that is protected by the SPA designation which is classified by the UK Government to meet its obligations under the European Commission Birds Directive to protect the most important habitat for rare birds within the European Union. In this case, their habitat has been protected by a number of SPA designations at Kinveachy, Abernethy, Craigmore Wood and Cairngorms. Scottish Natural Heritage has provided advice in relation to the effects of this proposal upon these sites. It is an important factor that with regard to SPA's consideration of development proposals that lie outside of these designated areas must be considered where those development proposals could have an effect upon those designated areas. Where the 'likely' effect on those designations is significant the planning authority (CNPA) has a duty to prepare an appropriate assessment setting out the implications of the development for those Special Protection Areas.
93. The second set of issues revolves around the capercaillie population at Boat of Garten Wood. This issue falls for the consideration of CNPA as does the requirement to prepare an appropriate assessment for the implications of the proposal upon the SPA sites mentioned above.
94. Despite there being two sets of distinct issues around the SPA capercaillie populations and the Boat Wood capercaillie population they are intrinsically linked. This is because, while Boat Wood is not designated as an SPA, it hosts a significant proportion of the population which are a qualifying interest on the four nearby SPA's. In other words Boat Woods acts as a 'stepping stone' between the SPA's so, in broad terms, any mitigation proposals proposed at Boat Woods in connection with the housing proposals would have to result in their being no likelihood of adverse effects upon both the SPA and Boat Woods populations.
95. The key concern does not arise from the loss of habitat from the housing (though there are reasons for resisting this loss as set out in the 7 January Committee Report) but come from the introduction of more people taking part in recreational activities in the area as a result of the additional housing. This is particularly significant given the high levels of recreational and dogs off-lead use that has been identified by the MBEC Report. The next section of the appraisal represents summary of whether the criteria agreed for capercaillie mitigation are met. The extent to which the criteria have been met will then feed into a policy assessment of the proposals.

Criterion 1 - Proposals to be based upon an understanding of the current and future recreational use of woods

96. The view of CNPA specialist officers is that this is partially met in that a thorough questionnaire and camera survey have been carried out which provide a detailed, evidence based understanding of recreational use of the area. The information in the MBEC Report also allows an estimate of the increased use of the paths and in particular draws attention to the increased use of the woods for short family walks and an increase in mountain biking as the development would be likely to result in a younger demographic for the use of the woods. There is some concern from the CNPA Access Officer that this change could produce an increase in informal mountain bike skills areas being constructed as is prevalent in the vicinity of other settlements in the Park. The report does not explain how this might be managed and it is a factor that could have a considerable and sustained impact on the habitat available to capercaillie.

Criterion 2 - Mitigation proposals to be based on best UK and European Practice

97. Elements of the proposals are certainly drawn from best practice, partially meeting the criterion. However, the report highlights a very high level of off-lead dog walking which increases with distance from the village. The proposal for an off-lead dog walking area will cater for some. There is reference to other work but no reference to mitigation that is proven to be effective for capercaillie to limit the effects of disturbance. The proposals do not address earlier findings that dog owners will seek out quieter areas to let their dog's off-lead to avoid conflict with other dogs, and this, to some extent, would undermine the dog off-lead area proposal.

Criterion 3 - Mitigation proposals to be location and time specific

98. The double fence proposal around the housing to prevent direct access to the woods is likely to be successful in preventing access directly to the woods. However the location and time specific requirement criteria are required to be based upon the sensitivity of different parts of the wood to capercaillie. The work of Moss et al 2010 shows a much wider usage of the woods (sightings and droppings) throughout the year. Consequently, the CNPA Ecologist considers that this criterion is not met.

Criterion 4 - Paths and Peoples Use: Proposals should consider a reduced network of paths which meet the community's needs, address the management of capercaillie and are enforceable

99. This is considered by CNPA specialist officer's as being partially met. The removal of Path 7 appears beneficial for capercaillie. However, this forms part of a quiet loop walk the removal of which may be difficult (there are signs of this path being kept open after windfall of trees see fig 4) and if achieved this could result in pressure for other options which include a loop walk with the same degree of quietness. The effectiveness of this measure is very

dependent upon community buy-in. Part of the proposals include reference to regeneration of young pines and scrub over path 7 but in the opinion of the CNPA Ecologist the current deer numbers in the woods are currently inhibiting natural regeneration and this would also have an impact upon attempts to screen the double fence around the housing development.

Criterion 5 - Proposals should demonstrate engagement with the community and a sufficient degree of support to ensure proposals are effective

100. Again, this is considered to be partially met. The community have been kept informed with progress on the development and a presentation was made by MBEC to the Community Council on 29 June. However, the degree of community “buy-in” to the mitigation measures is not clear, although the Council did have an opportunity to discuss the proposals at their meeting on the 3 October and this discussion is reflected in their response. The Community Council are supportive of the idea of a Steering Group with effective representation. However, the degree to which users of the wood would buy in to the mitigation measures is yet untested and it must be borne in mind that there is some level of objection to the planning application from people who express doubts about the measures proposed.

Criterion 6 - Demonstrate alternative recreational provision

101. The criterion is considered partially met and is covered in part by the responses to criteria 4 in terms of the closure of Paths 7 and 8 resulting in the removal of a quiet loop walk, the likely success of the dog off-lead walking area is dealt with under criteria 2.

Criterion 7 - Physical measures such as screening/landscaping to be effective and commensurate with the phase of the development

102. As previously mentioned the fence around the housing development is likely to be effective in preventing access to the woods from people’s back gardens. The scarifying of tracks is likely to encourage growth over those areas in principle. However, as pointed out by the CNPA Ecologist, any proposals for regeneration may take longer than anticipated as regeneration may require deer management and opening up of the woodland canopy to aid any regeneration. The early establishment of these mitigation features would be key during the period which new residents establish their patterns of use in the woods.

Criterion 8 - Proposals should demonstrate that they are practically enforceable and maintainable for the lifetime of the development at no cost to the public purse.

103. The CNPA Access Officer points out that the questionnaire and camera survey have produced detailed information about how the woods are currently being used. From this it is clear that there is significant use of the woods by people with dogs that are off-lead in areas where capercaillie are likely to be present and at times of year when disturbance is likely to have an adverse impact. There is a clear discrepancy between the questionnaire and camera survey in that more dogs off-lead are present in the camera survey results than indicated by the questionnaire response. The welcome pack for residents is important in influencing new resident's behaviour and this will be supported by the Community Council in the form of the newsletter. The long term goal of peer pressure on the ways in which the woods are used is the right approach. However, without the behaviour of existing users being moderated it is difficult to see how the behaviour being encouraged for new residents would be sustainable in the long term. The practical enforcement of such measures is not covered beyond the advice of the proposed steering group and much emphasis is placed upon this group by the Community Council. CNPA Ecologist and Access Officer's consider that this criterion is partially met.

Criterion 9 - Proposals should illustrate how they are to be timed in line with construction phasing

104. This criterion is considered to be partially met in that many of the measures (fencing, dog-off lead area) can clearly be timed and required prior to first occupation of the houses as suggested by the MBEC Report. The measures for landscaping and encouraging regeneration are less certain in terms of what point in time scarifying and regeneration on paths 7 and 8 would be effective in terms of effectively closing those paths and the proposals also depend heavily on community support for their delivery. At this point the MBEC Report suggests that the Steering Group exists for a period of 10 years.

Criterion 10 - Monitoring, review and adaptive mechanisms should be put in place

105. Again this criterion is partially met with monitoring detail to be developed by the proposed Steering Group. This is not considered to gauge effectiveness at this stage and it is possible that monitoring itself may result in disturbance. The detail and frequency of monitoring would be left to the Steering Group and given the level of expertise proposed for this group this is a reasonable approach and the group would have the power to change the mechanisms. However, the report does not go into detail about what other adaptive options could be if the early mechanisms proposed are identified by the Steering Group as failing. Potential adaptive mechanisms could include rangers, dog wardens and/or byelaws.

Policy Assessment

106. As previously mentioned capercaillie are afforded the highest levels of protection by European conservation legislation. The process of assessment is complex and the legal requirements shared between SNH and the CNPA. SNH are the statutory consultee for proposals that may affect SPA's and carry out an appraisal looking at the implications of the proposal for the conservation objectives of the SPA's. This advice is passed to the CNPA who have a legal duty to carry out an Appropriate Assessment of the proposal against the conservation objectives of the SPA's. The Appropriate Assessment has been carried out by CNPA Ecologists and this finds that, on the basis of the mitigation plans, the proposal could adversely affect the integrity of the SPA's.
107. Clearly a significant amount of work has been carried out on the mitigation criteria and there must be an appreciation of all the contributions that have been made and in particular the work carried out by MBEC. The criteria are generally considered as not being fully met. The survey has proved an invaluable source of information. At its heart are two key findings. The first being that the use of the woods is much higher than anticipated, the second being that there is a very high percentage of dogs being walked off-lead, this being based upon direct research of people's existing behaviour in the woods. Two sets of proposals are put forward one largely relating to measures to mitigate the effects of the development and other wider measures such as the recommended closure of Paths 7 and 8 which could, in MBEC's view improve upon existing levels of disturbance and the closure of these paths would not necessarily contravene the Scottish Outdoor Access Code if carried out to achieve other functions (e.g. planning) of the authority. It is apparent that more than any other single issue the mitigation proposals depend upon changing the way in which people use the woods. As pointed out by the CNPA Access Officer, influencing the behaviour of new residents is unlikely to be successful unless the recreational behaviour patterns of existing residents can to be moderated. Because of this, community "buy in" to the measures is crucial in assessing whether they could ultimately be successful in mitigating potential disturbance to capercaillie. From the assessment it is clear that some of the 'hard' measures such as the double fence around the development could work and be clearly implemented within a given time frame. However, there is considerable doubt as to whether the 'softer' measures proposed that focus on changing behaviour would work or be enforceable in the long term.
108. The mitigation criteria agreed by all parties provided a framework to measure how any proposals put forward by MBEC would perform against policy. While the site itself is not a SPA, the site and the SPA's are intrinsically linked and any mitigation in Boat Woods has to address concerns regarding the capercaillie population as a whole across the SPA's and Boat woods. The National Park Plan sets the context for the more detailed policy contained within the CNP Local Plan. Under the biodiversity section of the plan there is a clear emphasis upon conserving and enhancing in line with the first aim of the Park. Earlier in the report attention was drawn to the two distinct areas

of concern, one with regard to Special Protection Areas and the other with regard to the capercaillie population in Boat Woods. Scottish Natural Heritage have expressed objection citing concern around three areas of risk. The Appropriate Assessment carried out by the CNPA finds against the proposal. Policy 1 Natura Sites of the CNP Local Plan considers that development will only be permitted where there are no alternative solutions; and there are imperative reasons of overriding public interest, including those of an economic nature for granting permission. In the context of what is a housing application, it is important to recognise that the CNPA has allocated substantial land elsewhere in the Housing Market Area and as evidenced as part of the Boat Working Group on housing there may be alternative options around the village. These options have been fed into the Main Issues Report for the forthcoming Local Development Plan which is currently out to consultation. The response of SNH, taken together with the CNPA's Appropriate Assessment, show the proposal to be in open conflict with Policy 1 Natura Sites. Should the CNPA wish to grant planning permission for the development contrary to SNH advice then the proposal would have to be notified to Scottish Ministers first.

109. As outlined the mitigation measures do not meet the criteria agreed between SNH, CNPA and the developer's advisors. This, in effects, means that the proposals do not meet the requirements of Policy 4 Protected Species which considers that development that would have an adverse effect on a European Protected Species will not be permitted unless there are imperative reasons of overriding public interest, again, as with Policy 1, and given this is an application for a housing development the overriding reasons are not evident in this case. The proposal is also contrary to Policy 2 National Natural Heritage Designations and there is not sufficient evidence for overturning protective environmental policies contained within the plan.

Summary of Other Recommended Reasons for Refusal in 7 January 2011 Planning Report

110. The first and overriding reason for recommending refusal of the application in January related to the fact that the site is not allocated in the Local Plan. The site had been allocated in the CNPA Deposit Plan. However, despite recognising that there should be scope for a land allocation at the village the Inquiry Reporter's recommended it be removed. The allocation was removed in part because of general concerns about the CNPA's approach to housing land allocations. However, crucially, the Reporters also considered that the natural heritage value of the site is so significant that development should be presumed against. The Scottish planning system is plan-led and greater emphasis has been placed upon this plan-led approach in recent years. Consequently, to approve the application would represent a significant departure from the established and accepted planning process, undermining a CNP Local Plan position that was agreed a little over a year ago.

111. The third reason for recommending refusal on 7 January related to an unacceptable level of impact upon red squirrels as a UK Biodiversity Action Plan Species. This concern remains as before. However, changes in legislation since January now allow a license to be issued for disturbance or removal of a drey under certain circumstances. A note at the end of this report explains the situation regarding licenses.
112. Design and landscaping were also cited as reasons for refusal. Over recent years the Scottish Government has published a range of design guidance and in particular Designing Places and Designing Streets. The adoption of the CNP Local Plan at the end of October 2010 has introduced a clear policy expectation that layout, design and landscaping will improve upon what went before under the Badenoch and Strathspey Local Plan which had little by way of design and landscape policies. While such issues are resolvable the application as it stands is not considered to meet the design expectations of national, or local policy and to grant permission on the current basis is not acceptable within a National Park.
113. There is no clear vehicle link between the development site and the Community Centre. This was always an intention when Boat Community Hall was built to take some traffic off Craigie Avenue. This is easily resolvable and in the mitigation report a drawing indicates how a private road could connect the community centre to the development.

Assessment of the Proposal Against the Aims of the Cairngorms National Park and its Statutory Context.

114. As outlined in the planning report from the 7 January, the overall case for recommending development must be considered in a collective way taking account of all 4 aims of the National Park. The mitigation proposals have been taken a long way from those that were presented on the 7 January, but there is still considerable doubt about the long term viability and enforceability of the measures proposed. All parties place great importance on the establishment of a Steering Group with the output of this group providing many of the long term 'softer' solutions for educating and influencing peoples patterns of behaviour over the long term. While this seems practical, SNH and CNPA Officers must have a reasonable level of confidence that the Steering Group and measures it would be likely to propose would be effective before recommending in favour of the mitigation proposals. The mitigation places too much reliance upon what happens after a positive decision on this application is taken, this is not a reasonable approach given the degree of protection afforded to capercaillie and it is not an approach that is encouraged by planning policy. SNH in their response refer to risks, and there are considerable doubts from CNPA specialist officers on a number of the mitigation criteria. Such levels of risk and doubt clearly indicate against proposals that could have an adverse effect on a species of the highest conservation value. Attention must be drawn to the comments of a Scottish Government Reporter on another site within the Park in 2005 where he considered, in rejecting an application for a dwelling

house and stable block that 'absolutely no increased risk to capercaillie can be tolerated' (Department of Planning and Environmental Appeals Ref PPA/001/004).

115. This is clearly a case where the first aim is in conflict with the fourth aim and this relates to a number of the natural and cultural heritage reasons such as landscape, design layout and potential impact on red squirrels as well as the capercaillie issue. With this in mind the approach to be followed is clearly set out in Section 9 (6) of the National Parks (Scotland) Act 2000. This states that 'if in relation to any matter, it appears to the authority that there is a conflict between the National Park aim set out in section 1 (a) and other National Park aims, the authority must give greater weight to the aim set out in section 1 (a)' (the first aim). The level of conflict between the first and the fourth aim is still significant in this case, despite the mitigation proposals put forward. Given the consistent concerns of previous Scottish Government Reporters that have considered the site (and the capercaillie disturbance issue) and from the responses of consultees and CNPA officers, there is no alternative but to make a clear recommendation that this application is refused.

Conclusions

116. Given the arguments set out in this report the proposal still causes a number of serious concerns with regard to natural and cultural heritage and the detailed policies that cascade from the first aim of the National Park. The Community Council response presented in January considered there to be an overwhelming need for affordable housing and the latest response emphasises that it is the wish of the community to achieve further housing provision to ensure the long term sustainability of the village. At no point does this report refute a need for such housing in Boat of Garten. However, there is still a strong body of evidence against this proposal with 'risk' and 'doubt' being to the forefront of consultee conclusions on the mitigation measures. The CNPA is being asked to take this 'risk' based upon mitigation measures for a site that is not in the CNP Local Plan and in the face of substantial housing allocations being made elsewhere in the plan area. This results in a conflict between seeking to provide housing for the community at this site under the fourth aim set against the responsibilities of protecting the natural and cultural heritage under the first aim. Again, attention is also drawn to the fact that the other reasons for recommending against the application remain valid.
117. The issue regarding capercaillie is of paramount importance as the species enjoys the highest levels of protection afforded by European conservation legislation. SNH and CNPA have a legal obligation to meet the conservation requirements of this species. In this case, SNH object and the advice from CNPA specialist officers is that approval of this application should not be contemplated in the context of the risks to the species that have been identified. This results in a clear recommendation of refusal.

118. If the Planning Committee resolves to refuse planning permission, it is important that the work already started with the Boat of Garten Working Group continues. CNPA Officers, including the Affordable Housing Officer, will meet with the Working Group at the earliest opportunity to actively discuss and bring forward alternative proposals for meeting the affordable housing need in the village.

RECOMMENDATION

119. That Members of the Committee support a recommendation to **REFUSE** Full Planning Permission for the erection of 72 houses; formation of 5 house plots; provision of primary school site; associated amenity ground, roads and footways for the following reasons:

1. Principle of Development

The proposal would result in a significant housing development on a site not identified as part of the Housing Land Requirement for the Cairngorms National Park Local Plan (2010) and is contrary to Section 5.2.4 of the Cairngorms National Park Plan and Policy 20 Housing Development within Settlements of the Cairngorms National Park Local Plan.

2. Natural Heritage Impacts (Capercaillie)

The proposal including updated mitigation proposed fails to demonstrate that it would not result in unacceptable detriment to Kinveachy, Craigmore, Cairngorms and Abernethy SPA's and to the capercaillie population at Boat of Garten Wood. As a Schedule 1 European Protected Species capercaillie should be afforded the highest levels of protection in line with the precautionary principle. The proposal is therefore contrary to paras 125, 129, 132, 134 and 135 of Scottish Planning Policy, Section 5.1 Conserving and Enhancing of the Cairngorms National Park Plan 'Biodiversity', Highland Structure Plan Policies N1 Nature Conservation, G2 Design for Sustainability, Policies 1 Natura 2000 Sites, 2 National Natural Heritage Designations and 4 Protected Species of the Cairngorms National Park Local Plan (2010) and to CNP Supplementary Planning Guidance 'Natural Heritage'.

3. Red squirrel

The proposal would result in unacceptable impacts upon the red squirrel population in Boat of Garten Woods when the CNPA has a duty under the Nature Conservation (Scotland) Act 2004 to further conservation of biodiversity. Red squirrel is a UK Biodiversity Action Plan and Cairngorms Local Biodiversity Action Plan Species and is afforded protection under the Wildlife and Countryside Act 1981. The proposal is therefore contrary to Paras 142-145 of Scottish Planning Policy, Policy N1 Nature Conservation, G2 Design for Sustainability of the Highland Structure Plan, Section 5.1 Conserving and Enhancing 'Biodiversity' of the Cairngorms National Park Plan, Policies 2 National Natural Heritage Designations, 5 Biodiversity of the Cairngorms National Park Local Plan (2010) and Supplementary Planning Guidance 'Natural Heritage'

4. Layout, Landscape and Housing Design

The proposed development fails to adequately respond to the characteristics of the site and fails to reflect its unique setting on the woodland periphery of a traditional Highland village. The proposed development, by reason of the current design proposals would also fail to adequately contribute to create a distinct identity and contribute to a sense of neighbourhood. The development would therefore be contrary to paragraphs 77-79 of Scottish Planning Policy, Planning Advice Notes on Designing Places, Designing Streets and Housing Quality, Policies L4 Landscape and G2 Design for Sustainability of the Highland Structure Plan, Policies 2 National Natural Heritage Designations, 20 Housing Development Within Settlements, 6 Landscape and 16 Design Standards for New Development of the Cairngorms National Park Local Plan (2010) which requires developments to reinforce and enhance the character of the settlement and conserve and enhance the landscape. It would also fail to accord with the strategic objectives for landscape, built and historic environment as detailed in the Cairngorms National Park Plan Section 5.1, which requires developments to complement and enhance the landscape character of the Park and complement and enhance the character, pattern and local identity of the built and historic environment.

5. Lack of vehicle access to village hall

The development fails to provide a satisfactory vehicle linkage to Boat of Garten Community Hall contrary to the advice of Highland Council Roads Department and Policy 20 Housing Development Within Settlements of the CNP Local Plan which considers that proposals should accommodate within the development site appropriate access arrangements.

6. National Parks Act 2000

The proposal is contrary to the first and third aims of the Cairngorms National Park as set out in Section 1 of the National Parks Act (Scotland) 2000. Notwithstanding the contribution that the proposal may make to the fourth aim by the provision of affordable housing this does not outweigh the conflicts with the first aim which requires the National Park Authority to carry out its duty under section 9 (6) of the Act to give greater weight to the first aim (to conserve and enhance the natural and cultural heritage). The proposal is therefore contrary to the provisions of the National Park Plan 2007.

NOTE

Red Squirrels

The situation regarding red squirrels has changed since the decision to defer was taken in January 2011. Under the terms of the Wildlife and Countryside Act 1981 as amended (Scotland) 2004 it was not possible to gain a licence to disturb or remove a drey. However since then the Wildlife and Natural Environment (Scotland) Act 2011 (WANE Act) has been passed. This has introduced a new licensing facility for certain (non-bird) species protected under the WCA 1981 (as amended).

SNH are the licensing authority and will only issue a licence if two criteria are satisfied:

- That undertaking the conduct authorised by the licence will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit: and
- That there are no other satisfactory solutions.

The guidance prepared by SNH also states that “SNH will have regard to conservation status of the species concerned, where appropriate”.

As stated in the previous CNPA ecological response during a survey commissioned by the applicant in 2009, 49 dreys were recorded, scattered within the survey area, which includes the proposed development site and a 50m buffer. Dr Mel Tonkin (Project Manager of Saving Scotland’s red squirrels) suggested that there was probably around 12-13 adult squirrels within this area, making it very valuable red squirrel habitat. As this survey is now 2 years old the drey location and number is likely to have changed, although it is not expected to be vastly different as no habitat changes have occurred.

The CNPA cannot determine if a licence would be granted for removal of red squirrel dreys for this proposed development. However, it must be borne in mind that alternatives to this development site have been demonstrated and this area is known to be valuable squirrel habitat, therefore, a licence being granted by SNH is not assured.

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3 November 2011

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