

# **PAPER I:**

**(Boat of Garten Housing Application)**

## **APPENDIX C**

**Representations received on  
Capercaillie Mitigation Report**

29 Craigie Avenue  
Boat-of-Garten  
Inverness-shire  
PH24 3BL

6<sup>th</sup> October 2011

Re: 08/272/CP Capercaillie Mitigation Report

Cairngorm National Park Authority  
Albert Memorial Hall  
Station Square  
Balllater  
Aberdeenshire  
AB35 5QB

Dear Andrew Tait

Having read the capercaillie mitigation report recently submitted, to you, by Davall developments I wish to put forward the following observations re the proposals presented in that report.

Firstly the proposal to close off certain tracks/paths in Boat of Garten woods, I would like to say I do not see how this can be successful as regardless of education, people will walk where they want to walk and there are examples of this within the wood itself. Indeed closing off a path is far more likely to lead to more disturbance to the capercaillie because alternate paths will be created by people taking new routes through the woods. Research by Dr Robert Moss has shown that the density of capercaillie droppings significantly declines within 300m of paths and tracks indicating that the caper are avoiding these areas, so when new paths are created as people walk desire routes through Boat Woods then the capercaillie will have additional areas to avoid, thus increasing disturbance in their habitat.

The report proposes placing numerous permanent and temporary signs within the wood, again people will still use their free will so there is no guarantee that users of the wood will stop to read or take heed of these signs. The result could be just more intrusion in the woods and it will be too late for the capercaillie and abundance of other wildlife. Also we do not need signs cluttering a woodland, there are more than enough signs, hoardings, etc, etc in our world as it is. We are bombarded with signs in our lives, whether they are advertising, instructing, educating they try to influence our actions. When you go for a walk in the woods it is an environment where you expect to get away from such things, not to be met by yet further instruction/attempts to control our actions. So we definitely do not want or need signs in the woodland.

A further proposal is to scarify and seed areas of the woodland to improve the capercaillie habitat ground flora but it takes years for that to be established so that it provides sufficient cover/food for capercaillie, by which time the proposed development will have been built creating so much disturbance that there will be no capercaillie left within the woods to take advantage of the improved environment. Thus this will be an ineffective action in terms of this proposed development.

A point that doesn't seem to have been considered at all in the mitigation is the increased light pollution as a result of the proposed development. There will have to be street lights within the proposed development and their light will carry a considerable distance into the woods, significantly altering the environmental conditions with the effected woodland having no period of darkness. It is known that artificial lighting can have a detrimental effect on wildlife and this will certainly increase the odds in favour of predators, thus increase the likelihood of predation of capercaillie, their eggs and chicks.

If built the development itself will result in an increase in predators within the woodland through cats/dogs of the residents and scavenging birds and mammals such as corvids, rats and foxes, which take advantage of a more fertile environment created by food and waste from human activity. This too will increase predation of the capercaillie, but there is no mention of the increase in predators being catered for in this mitigation. Research on the capercaillie of the Taiga region of Siberia has shown capercaillie prefer areas of woodland that are less fertile as they support fewer numbers of predators. The fertility predator balance of the Boat woods is clearly sufficient for the capercaillie to exist there at present but the increase in predators resulting from this proposed development will certainly have a detrimental effect on capercaillie predation and who knows if it could be such that the species becomes extinct in the wood. As a Schedule 1 listed species, whose habitat is also protected under the Wildlife and Countryside Act 1981 this cannot be allowed to happen.

The mitigation report says the Local Council have identified 4 other sites within the village suitable for smaller scale house building. These could be used to build the affordable housing needed in Boat of Garten, without the need for such a large scale development and the resultant disturbance to the capercaillie

For the above reasons I do not believe the mitigation report proposals will safeguard the existence of capercaillie and that the development will undoubtedly lead to a considerable increase in disturbance to the capercaillie habitat in Boat of Garten woods. For this reason and indeed for the omissions in the report, as mentioned, as well as all the other reasons presented in my original letter of objection to Andrew McCracken I implore you to please, please refuse planning permission for this development.

Yours sincerely

Dawn Smith.

Calngorms National  
Park Authority

04 OCT 2011

Allan Bantick

23 Craigie Avenue, Boat of Garten, Inverness-shire, PH24 3BL, Scotland, UK

RECEIVED JM

To:  
Andrew Tait  
Planning Officer, CNPA  
Albert Memorial Hall, Station Square  
Ballater Aberdeenshire, AB35 5QB

1st October 2011

**Response by Allan Bantick to the MBEC Capercaillie Mitigation Report  
commissioned by Davall Developments in respect of the Planning Application  
08/272/CP for housing in Boat of Garten Woods approx 200m West of the  
Football Field, Craigie Avenue, Boat of Garten**

**Introduction**

I feel bound to begin by expressing my concern over the unfair timescales of this part of the planning process. The developer was required by the CNPA to submit the capercaillie mitigation report before a given deadline but they failed to meet that deadline and were given a new one which they also failed to meet and were then given a third. This means they have artificially stretched the period they were allowed to compose their report to several months and in the process they have created a 121 page tome for us all to digest. Compare this with the mere two week period that respondents are allowed in which to study this huge report and compose a considered response.

Most people lead busy lives and I am no exception. In the period allowed for responses to this report I have to prepare for and travel to environmental meetings of national and international significance. This means I simply cannot scrutinise the capercaillie report properly in the time allowed and am reduced to passing general comments on the more obvious errors of fact and logic therein.

**Response by paragraph**

3.2.5 confesses that a resident of Kinchurdy Rd has twice seen capercaillie close to their garden. 3.2.12 says MBEC has not seen the report of capercaillie in the woods in Jan 2011 and 3.3.8 says the surveyors did not see capercaillie during any of their surveys and this amazes me. As a regular wood user I can confirm that capercaillie were using the wood throughout last winter and can provide dates and map references if required. As further evidence, at 0754 on the 23rd August my trail camera recorded a male capercaillie at NH 9288 1877, less than 500 metres from the proposed development. Capercaillie use of that part of the wood is in my opinion more common than the MBEC surveys suggest and makes me suspicious of the statement in 3.2.3 that data from previous surveys should be treated with caution.

3.2.9 suggests that due to the presence of new houses, "the potential for fragmentation and human impact may be increased". This is a gross understatement. The impact on capercaillie caused by scores of new people and their cats and dogs living ACTUALLY IN THE WOOD will be massive.

3.3.3 claims that the area of the development is not critical to capercaillie population but the wood overall is. This is a quite unjustifiable judgement call because the whole is the sum of its parts and you damage any part at your peril.

3.3.7 agrees that current disturbance levels are too low to totally dissuade capercaillie from using areas within the current buffer zones. There is an implication in the wording of this paragraph that any increase in disturbance is likely to pass the tipping point in this respect and cause the birds to avoid the areas adjacent to the current buffers, effectively reducing the amount of habitat available to them.

4.4.2 MBEC claims that the use of the woods by people is bound to increase, even without the new development. SNH and CNPA disagree, saying there is no evidence to support that view, yet in the next paragraph MBEC rather arrogantly forges ahead with arguments that assume they are right and that use of the woods will increase in different modes. Oddly, the only mode they mention here is mountain biking.

5.2.2 claims that the data on capercaillie usage is insufficient to answer the question about population dynamics of the wood, but is sufficient to inform the development application process. This is blatantly inconsistent.

#### **General responses**

Due to time constraints already mentioned I have had to skip ahead and confine further comments to general observations on the proposed mitigation measures.

- Education of residents old and new. This may work with some but not with others. Over time the energy to keep up the education will wane and old habits will return.
- Restriction of access to the south-west and west and restrictions on the use of certain paths in the woods may fall foul of access legislation.
- The ease of entering the western area of the woods via the Sustrans cycle path completely nullifies the effect of the proposed "Berlin Wall".
- Using the proposed wall to reduce noise and visual disturbance will have only limited effect. In particular, the claim that the wall will avoid the loss of the current buffer zone is preposterous. The housing development site is part of the buffer zone - it will be gone forever if houses are built on it. There will also be an extra lost band along the outside of the wall due to the noise, smell and general close proximity of a population of humans with their children, cats and dogs.
- There is a proposal to provide a dogs-off-lead area that will carry signage but have no fence. This appears to assume that dogs can read.
- Monitoring, Review and Adaptive Management are discussed in the report. There will be ten years of this. It is a ridiculous overkill for a housing development of that size and the fact that it is in the report at all may simply be to prop up with quantity what the arguments in the report lack in quality.

## **Conclusion**

The report contains at least one mention (and possibly more) of the commitment of the developer not to disturb the capercaillie. This is manifestly nonsense. Nobody committed to protecting capercaillie would submit plans to build houses in a forest that is known to contain a capercaillie population. The developers are business people, pure and simple, and are only interested in making money.

The report contains nothing useful. The mitigation measures it proposes stand little chance of benefiting capercaillie in any meaningful way. Any benefits that do accrue will be miniscule compared with the benefits from not building the houses at all.

Cairngorms National Park Aim No 1 is, "To conserve and enhance the natural and cultural heritage of the area". The park aims are supposed to be applied in balance unless conflict persists. Clearly in this case conflict remains over the capercaillie issue and therefore I feel strongly that the Cairngorms National Park Authority will be failing in its duty if it does not reject this housing development application.


Yours sincerely,

A large, dark, irregularly shaped redaction mark covering the signature area.

**Allan Bantick**

Boat of Garten Resident and acknowledged authority on wildlife matters as evidenced by my current positions as Chairman of the Scottish Wildlife Trust and a Trustee of the Royal Society of Wildlife Trusts

**Roy Turnbull  
Torniscar  
Nethy Bridge  
Inverness-shire PH25 3ED  
Scotland**



Andrew Tait  
Cairngorms National Park Authority  
Albert Memorial Hall  
Station Square  
Ballater

8<sup>th</sup> October 2011

Dear Mr Tait

**08/272/CP Boat of Garten Housing: Capercaillie mitigation**

I refer to the MBEC Report concerning suggestions for mitigation of adverse impacts upon capercaillie with respect to the proposed Boat of Garten housing development.

1. It must be a general principle of good planning that the creation of permanent sources of conflict by permitting developments close to sensitive areas should be avoided wherever possible. This is particularly the case in an area such as Badenoch and Strathspey that has witnessed much conflict between conservation and development interests in the past. It is also a particularly pertinent consideration in a national park, where the creation of harmony between these interests is of paramount importance.

There is, of course, a prime example in Badenoch and Strathspey of a planning decision that created a permanent source of conflict between nature conservation interests and the interests of recreational users: the creation of the closed system for the funicular railway on Cairn Gorm. Whatever one's view on the merits or demerits of this planning decision, I think all would accept the truth of the following:

- The funicular closed system imposes real restrictions upon peoples' ability to recreate in a way that they might otherwise wish.
- The nature conservation interest concerned is recognised by Scottish National Heritage as sufficiently high as to warrant such imposition on peoples' movements.
- Significant numbers of those affected by the closed system, including Aviemore and Vicinity Community Council and local MSP Fergus Ewing, do not accept the need for the closed system, and have called publicly for it to be abolished.

The MBEC proposals provide for a similar "closed system" for the housing development. It states, "Direct access out of the proposed development into the northern Boat Woods ... should be prevented", which is somewhat analogous to the situation with the funicular closed system. Experience from the latter would suggest that opposition to the Boat of Garten housing "closed system" would likewise be manifest, and become yet another source of continuing conflict. However, there are also very important differences between the two schemes: with the funicular, the 'residents' are the operators of the system and are always present when the funicular is in operation whereas those who may wish to escape from the closed system are fleeting visitors. With the Boat housing the situation is reversed: those who may wish to access the woods through the fence would be the residents whilst the policing of the fence would be sporadic and fleeting and perhaps only continued for ten years. Whilst both systems create conflicts, with the funicular the operators have the upper hand. With the Boat housing proposal, the residents would be in control, and if they came to a similar conclusion as interested parties like AVCC and our local MSP with respect to the funicular closed system, then breaching of the fence is highly likely.

There is another difference between the two systems: in Boat of Garten there are alternative sites for housing developments where a closed system would not be necessary.

I submit therefore that the proposed fence around the housing development at Boat of Garten would likely not prevent 'escape' into the surrounding woodlands by dogs (for which a small hole would suffice) and people, and in any event would create an additional source of conflict between conservation and recreation interests.

2. The MBEC Report does not adequately address the issue of the impacts of second/holiday homes within the proposed development. Second/holiday homes are a source of people with a high recreational expectation and ample time to indulge it. They are also less likely to be aware of the capercaillie issue than residents. They and their dogs are therefore likely to be a particularly acute source of disturbance.
3. The MBEC Report does not recognise the need for a substantial increase in the capercaillie population, yet that is almost certain to be necessary in order to secure its long-term future. A small population such as that which presently survives is vulnerable to stochastic changes, such as a run of poor weather in the breeding seasons, an outbreak of disease or an unchecked increase in predation, that combined can lead to extinction. There is a need for a reduction in human sources of disturbance, not merely mitigating an increase.
4. The MBEC Report recognises the adverse effects of disturbance particularly of free roaming dogs and reports an "extremely high" incidence of off-lead dogs in the summer of 2011. Yet this was at the very time when the issue of disturbance to capercaillie in the Boat of Garten woods was much in the local news. This suggests that many people are resistant to keeping their dogs on the lead even when they are aware of the problems they cause to wildlife. Denial of personal responsibility or that there really is a problem with disturbance of capercaillie appears to be widespread, yet successful mitigation relies on an unsubstantiated hope that that denial can be overcome. There is no evidence to suggest that that is the case. The suggestion that people would instead use the proposed "official dog off-lead play area" appears to me to be fanciful nonsense divorced from any familiarity with real dog-owners.
5. The MBEC proposals to discourage the wandering of people and dogs off the paths and tracks by encouraging trackside vegetation appears problematic. In order to encourage new vegetation, existing trees may need to be felled to allow sufficient light, which in the short-term could make off-track access easier. Species such as juniper are so slow growing that it is likely to take several decades for an effective barrier to be formed from them. That would give ample time both for people to continue to wander off track and for the capercaillie to go extinct.
6. My objection to this proposed development is sustained.

Yours sincerely Roy Turnbull



Badenoch & Strathspey Conservation Group  
Fiodhag, Nethybridge, Inverness-shire PH25 3DJ

[REDACTED]  
Scottish Charity No. SC003846  
[REDACTED]

Andrew Tait  
CNPA  
Ballater

10.10.11

Dear Andrew

77 Houses etc, Boat of Garten 08/272/CP and revised mitigation proposals

BSCG welcomes the opportunity to make further representations on the above application in the light of new mitigation proposals.

BSCG maintains a strong objection to the application, which is not in accordance with the adopted local plan, conflicts with all 4 aims of the National Park as well as many aspects of the Park Plan. Development on this site was not supported by three Reporters.

Below are BSCG's comments and notes.

#### Use of northern Boat wood by capercaillie

Capercaillie breed, lek and over winter in Boat Wood. However, MBEC make misleading assertions about the use of northern Boat wood by caper.

#### Winter use

MBEC appear to suggest that caper may make little use of the wood in winter (3.2.6 and 3.2.12). They are completely mistaken and provide no survey or other quantitative evidence of their own to support this. A survey was undertaken in December 2008 in which 45 locations of droppings were recorded and 2 birds seen; and a survey in March 2009 (different surveyor) recorded 46 locations of droppings and 2 birds were seen (both surveys Moss et al 2010, which MBEC has a copy of).

The following data provide examples of documented winter use. A Boat resident and professional ecologist recorded caper roost and droppings in December 2010 near the corner on path 8; a cock flushed on several occasions during winter 2009-10 on path 13; and a cock flushed in January 2010 on path 26.

#### Sightings During Surveys

MBEC state (3.2.2) that the majority of sightings over 17 years are of individual birds, other than hens seen with chicks and several cocks seen together displaying, and MBEC appear to imply that seeing the majority of caper individually indicates there are not many birds. This is misleading. It is unsurprising that the majority of sightings are of individual birds, as caper are often solitary, especially in a forest such as Boat where Moss (2012) found that cocks were more numerous than hens. In a study of capercaillie in plantation forests in Moray, Jones (1982, p171) reported from a study involving 2,516 km of walked transects "Males showed a relatively weaker tendency than females to associate with other capercaillie and outside the breeding season were rarely found in the company of females or closely associated with other males".

### Lack of Sightings by MBEC

MBEC report that their staff have never seen a caper "on the proposed housing site and within the surrounding northern area of Boat Woods" (3.2.6 and 3.3.8). This is to be expected as this disturbed area is largely avoided by caper, as MBEC themselves state (3.3.1) and as is demonstrated quantitatively in all the 8 surveys (Moss et al 2010, which MBEC has), and MBEC staff were not in the wood early in the morning.

We note that MBEC do not refer to the 'northern Boat Woods' or the study area, but to the area "surrounding" the proposal site, so it is reasonable to assume they are referring to the area surrounding the proposal site in the north part of northern Boat Woods.

MBEC state that the absence of sightings by their staff suggests to them that caper do not occupy the wood year round and the wood is "perhaps more likely to be used for small periods of the year by single or a few birds". MBEC concede that their data is "again not totally objective" (3.2.6). Notwithstanding this, MBEC unreasonably extrapolate from the lack of sightings by their staff in the part of the wood where their staff spent time (on the site and surrounding the site), to the use by caper of the whole study area i.e. northern Boat Wood (Fig 2 MBEC Report).

MBEC's report appears to be contradictory on this claim regarding lack of use. On the one hand the report states that the area near the village and the proposal site itself are generally avoided by caper; and on the other hand, because their staff see no caper in this general area they take this to be evidence that the wood is only being used for small periods of the year by single or a few birds.

MBEC provide no quantitative data to support their conclusion relating to few birds, which is simply based on the absence of sightings by staff whilst they were carrying out other survey work.

If MBEC were correct that the wood is only used for small periods of the year and only by single or a few birds, then it might have been expected that on some of the surveys no signs or only a very few signs would have been found. As is shown in the data, this was never the case and on every one of the 8 surveys carried out there have been numerous signs of capercaillie (Moss et al 2010). Signs have included roost trees and browsed trees.

### Population estimation and national importance of population

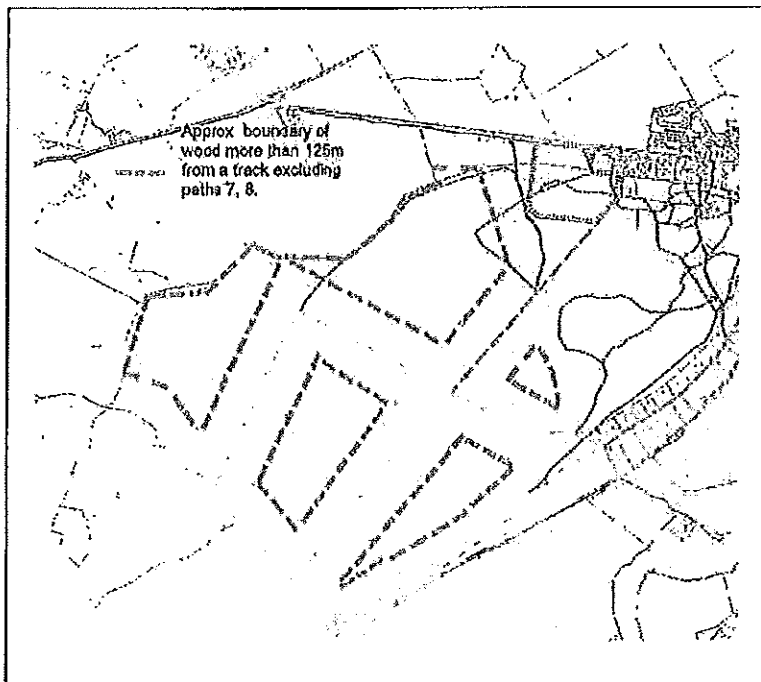
Counts of cocks at leks provide a minimum number of cocks, which can be related to the total number of cocks counted at all leks.

On the evidence of lek counts Boat Wood supports 1-2% of the Scottish population. This percentage makes it a site of national importance.

Statutory authorities consider that SPA's need to support more than 1% of the national population. Boat Wood surpasses this standard and is therefore of a status appropriate to be designated as a European site for capercaillie.

MBEC states that the population estimates derived from numbers of cocks at the lek must be "treated with caution". The only reason this data should be treated with caution is that it may underestimate the true number of cocks.

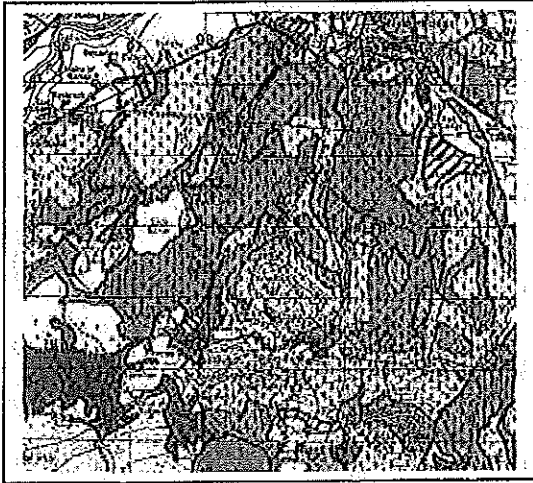
## Capercaillie 'low disturbance' areas



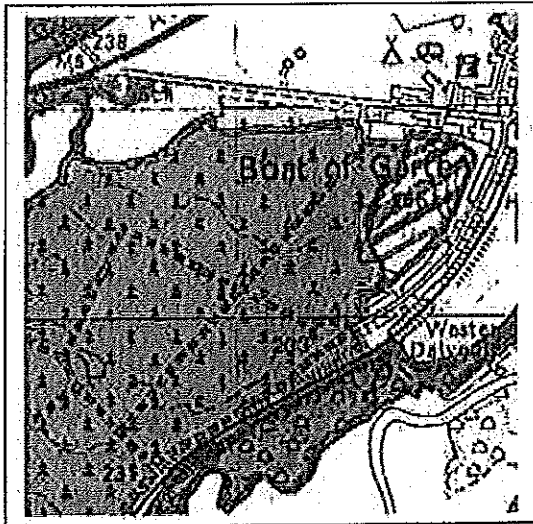
The above figure sketches the wood to indicate woodland habitat that is more than 125m from the mapped tracks. Moss et al (2010) found that avoidance of ground near tracks in Boat wood by capercaillie was statistically significant up to 125m from tracks. They also reported an avoidance effect in Boat Wood up to 230m but this was not statistically significant. 75% of their study (slightly larger than the MBEC study area) is within 125m of a track and 95% is within 230m of a track.

### Woodland Types

The MBEC Report (p1) states "The plantation forestry within which this proposed development is located". However, only part of the proposal site is of plantation origin; this is the part nearest to the road (shown yellow on map). The part of the proposal site further from the road is 'Self-sown Scots pine woodland' and all of the rest of the wood that is included in the mitigation proposal maps is also 'Self-sown Scots pine woodland' (green on map). This information was presented to the CNPA Planning Committee by BSCG at the meeting of 7.1.11, at which the developer/developer's agents were present. It is therefore of concern to us that the developer is still promoting inaccuracy on this matter.



Woodland categories Abernethy Forest (Capercaillie SPA) showing the extensive areas of planted Scots pine (yellow and orange) and the extent of self sown Scots pine (green) (SNH Research, Survey and Monitoring Report 33)



Woodland categories Boat Wood showing the large extent of self sown Scots pine (green) and small extent of planted Scots pine (yellow) (SNH Research, Survey and Monitoring Report 33)

### **Absence of core path assessment**

The developer states (13.1.1) "Being core paths, it is already accepted that they are well used and this was fully assessed during their designation by the CNPA and not thought detrimental to capercaillie (N.B. the Habitat Directive would have prevented their designation as core paths should they have been determined to be detrimental to capercaillie)".

This statement is untrue. BSCG is informed by SNH (D.Greene 7.10.11) that no assessment whatsoever was made of potential impacts on caper of designating the core paths in Boat Wood. SNH explained to BSCG that SNH asked the CNPA whether the CNPA were proposing any changes to the promotion or maintenance of paths as a result of designating them as core paths. If the answer to this question was 'no' (i.e. no changes were proposed) then SNH did not make any assessment of the impacts on Natura sites of designating routes as core paths, because no changes were proposed as a consequence of the designation. This was the case for all the paths in Boat Wood and so no assessment was made.

*It is essential that the CNPA Board is made fully aware that this statement by the developer is incorrect, so that the Board do not assume a level of assessment of impacts of these core paths that has never existed.*

### **Proposed Mitigation Measures**

#### **Thinning**

We consider that thinning will reduce, rather than improve habitat quality for caper in this wood, by opening up the wood too much. In addition, the forest operations would cause additional disturbance to caper.

#### **Scarifying**

Scarifying to encourage natural regeneration could have unintended, negative impacts on several species, including caper and other Scottish Biodiversity List Species.

### **Negative impacts of scarifying on Capercaillie**

**Dust baths:** Sunny, dry banks on track sides in northern Boat wood are used by caper for dust bathing (essential for feather health). These banks in general, as well as individual dust baths, would both be negatively impacted on by scarifying on the one hand, and dense growth of Scots pine and other tree species on the other. Dust bathing sites change over time. Therefore, to retain dust baths that are currently in use (by not scarifying near them) will not provide for this important aspect of caper habitat.

**Grit:** Tracks provide an important source of grit for caper (essential for food digestion). Caper generally gather grit in open situations where they are less vulnerable to predation. Encouraging natural regeneration along track edges will lead to habitat deterioration for caper. Dense, natural regeneration along track edges will result in these tracks becoming substantially more enclosed and narrower, with dense tree stems replacing what is now more open habitat. It is generally accepted that caper benefit from open flightways and good visibility, given their vulnerability to ground predators, which at this wood include foxes.

**Flightways:** Caper have been found to make statistically significantly greater use of trees with outswept branches along the edges of rides and tracks (e.g. Jones 1982). Such outswept branches will not develop where the density of trees is high.

**Wood ant nests:** Adverse impact on wood ant nests through scarifying (e.g. through shading and loss of open, sunny habitat) could reduce habitat quality for capercaillie. Caper make frequent use of wood ant

nests in Boat Wood as evidenced by droppings on nests and also feed on wood ants. They also take advantage of the sunny, elevated perches that wood ant nests can provide.

**Negative impacts of scarifying on Invertebrates**

**Wood ants - SBL species**

Wood ants are viewed as keystone species and contribute to sustaining biodiversity. Wood ant nests often exploit the sunny banks at the edges of forest tracks and are vulnerable to destruction of this habitat.

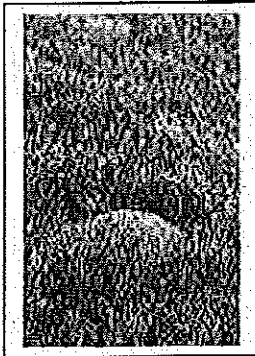
There has been no comprehensive survey of the wood ants of Boat Woods and MBEC have not undertaken any survey of wood ants in the areas proposed for scarification.

The most abundant species in Boat Wood is probably the northern (or hairy) wood ant *F. lugubris*, an SBL species. This is contrary to MBEC's finding of only Scottish wood ants *F. aquilonia* in 2009 at 5 nests. All of these nests contained *Formica lugubris* in 2011 (identification confirmed by Dr M MacDonald), suggesting that MBEC's identification was incorrect. With respect to these two wood ant species, BSCG understands that to date all Highland Biological Recording Group records in Boat Wood are of *F. lugubris*.

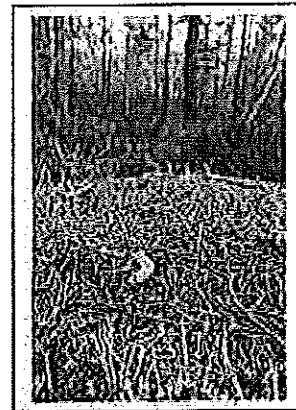
As noted by MBEC, the narrow headed ant *Formica exsecta* is the rarest wood ant in Scotland and is close to extinction in England. MBEC refer to the "absence" of narrow headed ants. However, Boat Wood (and in one or two places the wood edge) supports a few nests of this ant, making it possibly one of the most vulnerable populations of the narrow headed ant in the UK. MBEC further refer misleadingly to the narrow headed ant in Scotland as being "limited to the pinewoods and Caledonian Forest around Loch Morlich..", when there is, for example, a nationally important population at Carrbridge .



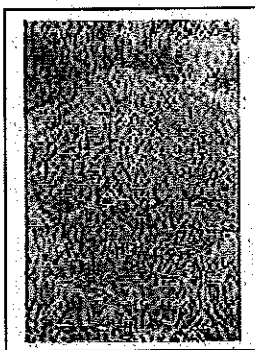
The Narrow headed ant is endangered in the UK and is an SBL species. It has a small vulnerable population in Boat Wood.



A nest of narrow headed ant (March 2011) at the edge of Boat of Garten Wood. This nest is much smaller in size than nests of other wood ants overlooked in the September 2009 MBEC survey.



Wood ant nest with caper dropping in Boat Wood, where caper are found in winter (although contrary assertions by MBEC persist).



A large long established nest of narrow headed ant (March 2011) within Boat of Garten Wood.



Northern or hairy wood ant *Formica lugubris* on Boat Wood application site. The ant is on a leaf of cowberry that MBEC incorrectly suggested BSCG confused with bearberry.

**Shining Guest Ant *Formicoxenus nitidulus* - SBL and UK Priority species**

This ant requires the nests of wood ants and has not been surveyed for at Boat Woods. Any work that impacted negatively on wood ants would inevitably destroy potential habitat for this species. This ant appears to be scarce in Strathspey, where it may be at the north of its range in the UK.

**Other invertebrates associated with wood ant nests**

There are a range of other invertebrates that depend on wood ants or their nests. Below are two examples.

The spider *Dipoena torva* that is an SBL and UK Priority species with wood ant prey.



A notable chafer beetle with a life cycle that requires wood ant nests.

**Netted Mountain Moth *Macaria carbonaria* – SBL and UK Priority Species.**

This key Cairngorms species has been recorded at Boat Wood, as was stated to the Reporter during the site visit for the previous application (by former Boat of Garten resident the late Gill Nisbet). Its food plant is bearberry *Arctostaphylos uva-ursi*. Bearberry is a light demanding species that would die out in the shade of dense regeneration.

In addition to impacts of shading relating to mitigation, bearberry grows on track edges in northern Boat wood in locations where it is vulnerable to direct destruction from the current construction proposals. MBEC have failed to record this plant and have suggested that BSCG's records of it are misidentifications (MBEC Report Nov 2010, for 7.1.11 Planning meeting). BSCG reported the presence of bearberry prior to the planning meeting in January 2011.

**Bees**

Various bees are amongst invertebrates that make use of open ground on sunny banks beside tracks in which to excavate nests.

It is possible groundhoppers find rather open habitats of particular value and noteworthy that the first record for the Cairngorms National Park of the slender groundhopper was on the edge of Boat Wood



The bee *Andrena lapponica* at a nest site within the application site in Boat of Garten wood where it is likely to provide a pollination service for plants like cowberry.

## **Cumulative impacts of proposed development and mitigation proposals.**

There are cumulative impacts that need to be taken into consideration. For example, the proposals at Boat Wood would add to planned, or already initiated, habitat loss, fragmentation and degradation at other woods used by caper and wood ants. These woods include School Wood, Nethybridge (threatened by 40 houses and industrial units), the woods at Carrbridge (threatened by 117 houses), Kinveachy (added recreational and other disturbance from Higher Burnside), woodlands near An Camas Mor (threatened with recreational and other disturbance from 1500 houses).

Two species of Newts are recorded from the Boat proposal site and newts are also threatened at other sites including at Tescos and Milton Wood, Aviemore.

Reducing the size of a patch of woodland reduces its value for capercaillie. The proposals at Boat push disturbance further into the wood

SNH's capercaillie specialist, Dr S Haysom, has stated "Capercaillie are often thought of as an umbrella species which means if you protect a habitat that supports them then a huge range of other species are also protected". In the context of recreational use of woods, Dr Haysom has commented that "capercaillie are very sensitive to disturbance" (Nature of Scotland, Summer 2011).

It is a material consideration that various species that would be likely to suffer adversely from the mitigation and development proposals at Boat Wood are threatened at other sites. These include significant pinewoods for caper in the National Park at sites line Carrbridge, School wood Nethybridge and An Camas Mor.

### **Impacts on Recreation**

The proposed mitigation measures would impact negatively on the quality of people's recreational experience in the wood. For example, through reducing views, creating a less open woodland experience (through encouraging dense natural regeneration on track edges), as well as the closure of paths.

### **Uncertainty and limitations of mitigation outcomes**

There are fundamental unknowns in the mitigation proposals of which the most fundamental is levels of compliance with requests to stick to tracks, and keep dogs under close control; related is to not create new desire lines (e.g. in the general vicinity of routes 7 and 8 and elsewhere).

The timescale for these mitigation proposals is open-ended and certainly extremely long term. To sustain such restrictions over a long time period is extremely challenging.

There is a critical lack of evidence to show that the proposed mitigation methods will be effective.

Keeping dogs under 'close control' is a non specific request that can mean one thing to one person and another to someone else.

No 'lead only' or 'track only' areas are proposed. The whole wood would remain as an area where dogs can roam freely off lead and where people can go where they wish (complying with SOAC).

It is unclear how effective the dogs off lead area will prove to be given that the entire wood is currently used as a dogs off lead area and will remain as a dogs off lead area.

It is predictable that there will be a range of viewpoints, as there is with everything, on the necessity and merits of the requests to stick to tracks and keep dogs under close control.

### **Increase in use of paths**

MBEC suggest an estimate of 166 extra people using the woods from the proposed development, based on figures from the surveys.



In addition to this there will be a displacement of people and their dogs from the paths within the proposal site and from paths 7 and 8 (assuming these paths are effectively closed off), which will (presumably) lead to an increase in use of other nearby paths in the wood.

Yours sincerely

Gus Jones  
Convener



nature's voice

RSPB SCOTLAND

Matthew Hawkins  
Senior Heritage Officer  
Cairngorms National Park Authority  
14 The Square  
Grantown on Spey  
PH26 3HG

10 October 2011

Dear Mr Hawkins

**Planning application Ref: 08/272/CP – Housing at Boat of Garten**

Further to our previous correspondence in relation to this application and having read the report prepared by Mackenzie Bradshaw Environmental Consulting (MBEC) for the CNPA planning committee, RSPB Scotland does not object to this application subject to the following:

- All of the mitigation proposals directly related to the proposed housing development shall be implemented and enforced by means of a legal agreement – SNH's advice will be sought and implemented in relation to marking of the double fence to prevent collisions by capercaillie;
- The additional measures set out in paragraph 12.1.3 of the report and shown in Figure 8 shall be implemented and enforced by means of a legal agreement – SNH's advice will be sought and implemented in relation to all of these measures, in particular to the methods by which they will be carried out (for example, the scarification of surfaces referred to in Figure 8 may not in practice be adequate on its own to deliver the desired and intended result and modifications to the treatment may be required in order to do so).

In addition, we strongly recommend that provision is made by means of a factoring arrangement connected with the ownership and occupancy of any housing to ensure that all of the mitigation measures, including those in the wider woodland, can continue to be properly resourced, in order to maintain and enhance the capercaillie interest on site in perpetuity.

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These measures will be necessary in order to ensure that the National Park Authority can comply with: the requirements of the Conservation (Natural habitats & c.) Regulations 1994 (as amended) (the "Habitats Regulations"); the four aims of the National Park (In particular, the requirement to give greater weight to the first aim, to conserve and enhance the natural and cultural heritage of the area); and the requirement of section 1 the Nature Conservation (Scotland) Act 2004, to further the conservation of biodiversity.

While in this case we welcome the efforts made by the developer and landowner to identify appropriate mitigation measures, we are conscious of wider pressure for housing development in the Park, and the potential for further impacts on capercaillie habitat and (potentially) on the proper functioning of the existing network of Special Protection Areas (SPAs) for this species. Based on our current understanding of impacts, the scope for new housing in this part of the National Park is very close to capacity and it is unlikely that significant new housing development would be acceptable. We intend, of course, to comment in more detail on this issue in our response to the current consultation on the Cairngorms Local Development Plan Main Issues Report.



Yours sincerely

A large, dark, irregularly shaped redaction mark covering the signature area of the letter.

Dr Pete Mayhew  
Senior Conservation Manager, North Scotland

Colin Ormston

32 Craigie Avenue, Boat of Garten, PH24 3BL

  
  
07/10/2011

Andrew Tait, CNPA Planning Officer  
Albert Memorial Hall, Station Square  
Ballater, Aberdeenshire, AB35 5BQ

Planning ref: 08/272/CP

Capercaillie Mitigation Report

Dear Sir,

I am writing to you to provide my comments and observations on the capercaillie mitigation report provided to the Planning Committee by the developer. These comments are in addition to earlier communications objecting to the proposed development (20/12/2010), the size and location of which is totally unsuitable, inappropriate and unnecessary for this village.

**1. Current usage of the woodlands**

Despite carrying out a questionnaire survey and using remote photography, the developer has failed to understand the motivation and wishes of the local population that uses the woods on a daily basis. Here is my interpretation of what goes on...

The majority of dog owners I know use a route known locally as the 'big triangle', from paths 20/21 and 19, then south on 1, then north on 2 on a daily basis, often 2 – 3 times a day. Path 1 is often substituted for path 8 on these walks (known as the 'side extension').

Other extensions to this route includes cutting off of route 2 eastwards and walking off track to route 25 (known, along with 26 and 27 as the 'secret path'), onto Fairy Hill and back to the village hall.

Evening walks usually go from 20/21 and 19, north on 1 to 7, then back via 12, 9 and 2 (known as the six o'clock walk) or if on a longer walk, back via 13, 25, 26 and 27.


Weekend walks when people have more time usually go from 20/21 and 19, north on 1 to 7, then either 14, 17 (often with a diversion to Loch Vaa) then back using either 15, 9 and 2 or 18, 13, 9 and 2 or 25, 26 or 27 to Fairy hill ad back to the village.

The network of paths around 3, 4 and 5 are perceived as a low value walking environment to many, probably because it is heavily used, not just by walkers but by children who have developed various unofficial mountain bike trails.

A significant characteristic of all the walks I have described is that they are circular – people very rarely walk in 1 direction, turn round and come back the same way despite what the report suggest,

Colin Ormston

32 Craigie Avenue, Boat of Garten, PH24 3BL

  
07/10/2011

it is just not in human nature to do this. People will always seek a circular route for recreational walking, with or without dogs. If no circular path exists, one or more will develop.

The questionnaire survey indicates that paths 8, 19 and 20 are used by >50% of respondents (263), so that is 130 people using these paths. Paths 1 and 21 were used by >60%, 158 people. This is borne out by the camera results that show 123 people using route 1 in 1 week, and the majority of these would have been using the 'big triangle'.

These people will continue to use the 'big triangle' route, but because paths 19, 20 and 21 will be lost to development, a new path will develop between path 1 and 2, on the outside of the double ring fence that MBEC proposes to surround the new development— it won't take long for this to become established with c130 people using it regularly. As this will have the effect of shortening this route, people are also more likely to incorporate path 8 into this revised 'big triangle' walk.

This will also mean that access to paths 7, 12, 14 etc will be maintained, and I know for a fact that existing walkers will continue to use existing paths, irrespective of any proliferation of signs in the woodland (do we really need more signs in our lives, particularly when out in what is perceived to be the natural environment?) or attempts to break up / block the existing paths.

It will not take long before any new residents see this and begin to copy their behaviour, and this will lead to an increase in the number of people using the more remote paths, simply because there will be more people living in the village.

## **2. 'Dog exercise area'**

I believe that this idea is ill conceived and poorly thought through. There are no current paths in the area suggested for off lead dog exercise, so is it the developers intention that new paths are created within this area, or is it the intention of the developer that the dog owner stand at the edge of this area whilst trying to encourage their dog to go off for a run? What will limit the dogs from running beyond the boundary of the approved area? Fencing will only provide further hazard to the capercaillie population.

In reality, dogs are pack animals, seeing their human owner as pack leader, and will range a certain distance around the pack leader (i.e. walking ahead /behind owners as they walk along). If the pack leader is stationary at the edge of the dog exercise area, the dogs will be stationary too.

How large is this area, as it will need to be of a considerable size to make up for the loss of the existing routes currently used – in fact it would need to be on a like for like basis, in an area where I have personally seen capercaillie on several occasions.

## **3. Survey data**

Using just two weeks worth of camera survey data and a simplistic questionnaire is hardly likely to provide a representative overview of the likely use of the woods over a full year. To my mind, the data does not present a detailed understanding of the present use of the woods, certainly does not

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07/10/2011

reflect my use of the woods and certainly cannot be used to predict future patterns of use in the woods.

No account has been taken on the types of dog activity recorded. Dogs off lead could mean dogs waking to heel off lead, dogs off lead ranging >25m ahead or behind owners but still on track, dogs ranging 5-10m off track to investigate smells or retrieve balls /stick or dogs with no owners in site (I would consider this latter category the only type to be considered out of control, and would be interested in seeing any camera evidence for this) but it seems that the report is assuming that all dogs off lead results in disturbance to capercaillie.

No questions sought to identify the current extent of domestic cat ownership, in order that an assessment could be made on current and predicted levels of predation to capercaillie chicks.

#### 4. Mitigation proposals

The report states that all mitigation will be implemented before the first new resident moves in. I assume this means that all trackside regeneration / thickening works will be established to a level that the suggested 'steering group' is happy with, as obviously if the regeneration is incomplete (i.e. not thick enough to prevent dogs / people straying off path) then obviously the mitigation is incomplete and will therefore not be implemented.

Additionally, I also assume that this means that all fences and signs will be in place, and all residents will be assimilated and be obeying all instructions and following the routes identified by the developer like a herd of mindless sheep repeating the mantra 'obey the signs, obey the signs' and that constant monitoring will have shown that all residents are obeying the 'rules' before a divot of earth is lifted?. Somehow, I can't see it.


Furthermore, I believe that trackside regeneration / thickening will not be achieved to the level that the developer assumes. The existing trackside regeneration is absent in many areas and sparse in most, with stunted / spindly growth. This is after much more than 10 years of growth, and is to be expected where the woodland canopy has shaded out these areas, preventing any new growth. Is it the developer's intention that in order to encourage trackside regeneration they will fell a strip of woodland adjacent to the track so that regeneration can take place – cut down trees to allow trees to grow?

The use of Juniper is not the best choice to use as screening vegetation, as it is a slow growing species, typically growing 3-5cm / year. Whatever species are used to develop the trackside regeneration, they will all struggle to become established due to the shading effects of the current canopy, as is shown by the poor re-growth along the tracks at present. Any planted vegetation will either develop spindly stunted characteristics or be browsed by deer.

The proposal to scarify paths 7 and 8 to encourage scots pine regeneration is not ecologically achievable. These paths are within existing mature woodland, and measure c50cm wide. Scots pine will not regenerate underneath existing woodland canopy.

Colin Ormston

32 Craigie Avenue, Boat of Garten, PH24 3BL



07/10/2011

The developer states that funding will be available for 10 years – I believe this is a very short sighted approach and far too short term. If approved, the houses are going to be there forever, and this commitment indicates that after 10 years the developer is not prepared to take any responsibility for what happens after. Therefore this is not really a real commitment to the welfare of the woods or the capercaillie population at all. What is going to happen if after 15 years new residents create gaps in the woodland fence line and start to create new paths in the woods?

The proposals indicate that access and use will be directed to the eastern side of the woods. Therefore this area will become even more heavily used and overcrowded. People will not want to use this area exactly because it is heavily used and overcrowded, and this will have the effect of pushing people to look for alternative circular walks to the west.

The loss of existing paths to development will only lead to new paths developing as current woodland users will look to re-link with other paths on the other side of the development (I have seen recent evidence that new paths will develop along existing deer tracks).

Furthermore, blocking off existing paths 7 and 8 will not stop people that have been using these paths for years to continue using these paths. New residents will copy this behaviour; I do not see any real proof from the developer that this will not take place.

Although path 14 is proposed to be closed according to Figure 8 of the developers report, I can find no reference to this in the supporting written documents.

There is absolutely no reference to the potential impact an increase in the domestic cat population and increased rates of predation will have on ground nesting birds, of which the capercaillie is one, and without this I can't accept that the assessment is complete.

Due to the reasons above and identified in points 1, 2 and 3 I do not believe that the proposals will actually work. Indeed, the developer has failed to provide any case studies or evidence, or cited any references to other sites where similar proposals have been established and been successful. Therefore, I am led to believe that they do not actually know if the proposed approach will work or not. Finding out that the proposals don't work once the houses have been built will be far too late.

## **5. Community involvement**



From my perspective, as a member of the community, I believe that my interest are not being met or considered. The developer's communications with the community council are all well and good, but I don't believe that the community council are representing all interests or views from the local community evenly or fairly.

There has been no community wide engagement regarding the provision of dog exercise areas or the removal of existing paths. The latter proposal would certainly impact upon a large number of current resident's use of the woods, and is one to which I am firmly opposed.

As a member of the community, I certainly do not provide my support or agreement to any of the proposals presented in the developer's mitigation report.

Colin Ormston

32 Craigie Avenue, Boat of Garten, PH24 3BL

  
  
07/10/2011

## 6. Summary

In summary, I believe that the developer has failed to meet the mitigation criteria set out by SNH and the National Park. I believe there are question marks over the suitability of the data, lack of clarity in the assessment of the data and enough uncertainty over the effectiveness of the outlined mitigation measures that I object to the proposals described by the developer, and call for the National Park to maintain their original position identified in their own Appropriate Assessment:

*'On the basis of information currently available, CNPA consider that the mitigation is insufficient and that even with significant revisions (my underlining), is unlikely to be able to demonstrate that no further negative impacts will be experienced by the capercaillie population. CNPA consider that this proposal could adversely affect the integrity of the SPAs.'*

Furthermore, the first aim of the National Park is to conserve and enhance the natural and cultural heritage of the area. Where the fourth aim (to promote sustainable economic and social development) conflicts with this, greater weight must be given to the first aim (the Sandford Principle) because this is the main justification for national park designation. Where the effects of development could potentially result in damage or loss to special qualities of the park, but where uncertainty over the nature of the likely impacts (as I have demonstrated is the case with this development) the precautionary Principle must apply and such developments must be refused.

I am sure the National Park does not want further challenges and legal proceeding against the park as was the case earlier this year with other proposed housing developments in the park.

Yours

Colin Ormston BSc MIEEM



**Julie Millman**

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**From:** tim ranson [REDACTED]  
**Sent:** 10 October 2011 14:25  
**To:** Planning  
**Subject:** Objection letter Ref: 08/272/CP

For the Attention of: Andrew Tait

## **Planning Application 08/272/CP**

I am writing in objection with reference to the Capercaillie mitigation report, submitted recently by the developer, concerning the above planning application at Boat of Garten Woods.

I have considerable experience with regards to footpath management as a former Countryside Ranger, including within the Cairngorm National Park, and have serious concerns that the mitigations offered by the developer in this report will actually have any effect at all on the current situation and also in some cases may be detrimental to other wildlife. Their own survey data has shown that there is already an unacceptable high level of disturbance on various levels including the very high levels of dogs roaming the woodland off of a lead and should this planning application be passed on the basis that these mitigations would guarantee to change this situation without any sort of monitoring of these proposed changes beforehand would be a seriously flawed approach.

All the mitigations in regard to footpath and public management pay little more than lip-service to the issue and I have an issue over the benefits of some of the proposed mitigations:

- erecting a few signs which only encourage but in no way enforce, for instance that all dogs must be on a lead or under close control such as is currently required in a field of farm animals under the Scottish Access Code;
- a fence around the proposed development that will only serve as a minor inconvenience to users and won't do anything to change general usage levels and behaviour and is unlikely to in any way reduce light pollution from the development into the surrounding woodland;
- closing two lesser used paths, path 7 is indeed a less used path but the data shows path 8 as quite heavily used and is questionable whether attempting to close this path will actually be achievable, and importantly in both cases there is the issue over the loss of path edge habitat which is valuable to woodland invertebrates and also the loss of bare open ground which is important to many species including especially for solitary bees for nesting;
- thickening up path edges which raises issues over the loss of important path edge habitat for invertebrates which within woodlands can often be some of the most biodiversity rich areas, the resulting loss of visibility from these paths and an issue of potential drainage issues if sunlight levels are decreased in time due to denser edge vegetation and therefore whether in time these paths will not be liked by the public due their tunnel-like nature and potentially boggy appearance and so possibly won't be used and other more preferable routes nearby will be commenced by walkers leading to more paths and not less in that sensitive area;
- a proposed off-lead dog play area for which there appears no mention of whether trees and other vegetation will be lost to create this area and no mention of the issue of dog mess and who will be responsible for either clearing up any mess or emptying any dog bins that may be positioned at this play area.

While of course, if approached in the right way, the public can be encouraged to change behaviour with regards to path usage, there is no way of being sure that these particular proposed mitigations will work in this particular woodland and really to be sure then they should be implemented well before any planning permission is granted and are to be shown to have worked rather than to allow the development to be built and only then see if these mitigations actually work. The report states that all mitigation will be implemented before the first house is occupied but this is far too late as the development will already be complete and should the mitigation at that point be shown not to be working then occupation of the properties will still go ahead as I'm sure the properties will not be left empty until mitigation is shown to work. There should be at the very least a couple of years of monitoring and data collection of these proposed mitigations prior to any planning permission being granted and any building works are commenced to be sure that the effect on capercaillie will not be detrimental. To purely monitor the mitigation for up to 10 years after the development is complete is a case of trying to close the gate after the horse has bolted. The current proposed approach appears presumptive and it concerns me that these mitigations are untested in this particular woodland and it is unknown if any will actually work in practice, and as stated previously I question the actual benefits of some of these proposed mitigations as they stand at present.

For the reasons I have outlined above I implore you to at this point in time to reject the planning application until, at the very least, that these proposals are tested and/or changed so as not to be detrimental to other wildlife and are seen to actually work in practice and not to allow this development to go ahead based simply on a hope that they will work.

Mr Tim Ransom, BSc  
Flat 8,  
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Scottish Campaign for National Parks

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Head of Planning  
Cairngorms National Park  
Authority  
Ground Floor  
Albert Memorial Hall  
Station Square  
Ballater  
AB35 5QE

09 October 2011

Dear Sir,

### **Mitigation Proposal for Housing Development at Boat of Garten**

#### ***Preamble***

*The SCNP's primary aim is to promote the protection, enhancement and enjoyment of nationally outstanding areas that are National Parks, or are appropriate to be designated as such, or are of sufficient merit to warrant special protection. This is manifest in our support for good stewardship of the country's best environmental assets and encouragement of environmentally sustainable methods of development, particularly within areas of national park potential. SCNP is a recognised Scottish Charity.*

We refer to the above application and the mitigation proposals by Duvall Developments Ltd to avoid disturbance to capercaillie in the Northern Boat Woods in support of their development for 77 houses.

Whilst we recognize that SNH, having previously objected to the housing proposal, also commented that mitigation measures should be considered, we find that the various aspects of mitigation do not meet our central concerns.

A woodland, which everybody admits is already subject to disturbance to the detriment of capercaillie, in our view, cannot cope with an increase of housing on this scale.

The local population of capercaillie within the nearby SPAs is already sub-optimal and there is an evident need to ensure that habitat connection is not compromised by further human pressure. We have previously commented on the relevance of the NPA's housing policies in meeting the need for affordable and social housing, which in the case of Boat of Garten, would deliver a large majority of the new build to the second home market. However, given the high sensitivity to disturbance of these birds during the lekking and breeding periods of Spring and early Summer, we can assume that even with the second home market, the new housing is likely to be fully occupied and therefore generating maximum potential disturbance at a crucial part of the season.

The mitigation proposals to offset this disturbance are more aspirational than realistic especially in respect of dog walkers. The fact that holiday makers with dogs present an even greater problem than local residents because of lack of local knowledge compounds the problem and, given the open market nature of the housing, occupants could not realistically be kept from introducing cats (animals which are notable by their absence from the proposals).



Scottish Campaign for National Parks

The environmental consultants gratuitously refer to capercaillie as least endangered in the Red Book. However it is a Schedule 1 bird and the NPA is an appropriate authority and it has a responsibility to ensure that the capercaillie population within the SPAs does not suffer detriment as a result of its planning decisions. The operating principle in this regard is one of precaution. Developments should not be permitted where there is recognized threat to a population and appropriate measures to safeguard the population are not available. In our view that means that much more work would have to be done to guarantee the success of such measures before any development is allowed.

Yours faithfully

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Bill McDermott