

PAPER 1:

(Boat of Garten Housing Application)

APPENDIX E

**Extract of Approved Minutes
of Planning Committee
7 January 2011**

**AGENDA ITEM 7:
REPORT ON CALLED-IN PLANNING APPLICATION FOR ERECTION OF 72
HOUSES; FORMATION OF 5 HOUSE PLOTS; PROVISION OF PRIMARY
SCHOOL SITE; ASSOCIATED AMENITY GROUND, ROADS AND FOOTWAYS
AT LAND 200M WEST OF BOAT OF GARTEN FOOTBALL FIELD, CRAIGIE
AVENUE, BOAT OF GARTEN
(PAPER 1) (08/272/CP)**

1. The Planning Officials were joined by Hamish Trench, CNPA Strategic Land Use Director, and Matthew Hawkins, CNPA Senior Heritage Officer.
2. Duncan Bryden informed Members that some letters of representation had been received within the given timescales and these had been circulated for Members attention. The Committee paused to read the letters.
3. Duncan Bryden informed Members that several requests had been made to address the Committee –
 - For the Applicant: Bill Hepburn, Bracewell Stirling, Agent & Andy Mackenzie, MBEC, Environmental Consultant
 - Community Council: Alison Fielding & Sam Faircliff
 - Objectors: Andy Nisbet & Tessa Jones, BSCG
 - Others: Simon Campbell, Cairn Housing & Andrew Norval, Seafield Estate (available for questions)
4. The Committee agreed to the requests.
5. Andrew Tait presented a paper recommending that the Committee refuse the application for the reasons stated in the report.
6. Matthew Hawkins advised the Committee on natural heritage issues regarding Capercaillie and Red Squirrels on the site.
7. Hamish Trench clarified the consideration of the application in relation to the aims of the Park, particularly Section 9(6) of the National Parks (Scotland) Act 2000, which deals with the procedure when there is conflict between the aims of the Park. He also clarified the European Birds Directive and how this was interpreted in domestic legislation under the Wildlife & Countryside Act and other government policies and regulations.
8. The Committee were invited to ask the CNPA Officers points of clarification, the following were raised:
 - a) Clarification of the area of the proposed land to be built on, within the wood with significance for Capercaillie habitat. Andrew Tait responded that the area of the application site was 5.8 hectares.
 - b) The advice given by SNH regarding potential mitigation measures for natural heritage issues and if this conflicted with what the CNPA had stated. Matthew Hawkins confirmed that the CNPA did have a different view from SNH as to whether mitigation to an acceptable degree may be possible and practical.
 - c) The length of time the Applicants had to amend the proposed mitigation measures, since the meeting held in November, and the apparent lack of response from the CNPA regarding this issue. Matthew Hawkins stated that the application had been under consideration for a considerable time. He confirmed that at the meeting in November,

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the Applicants were requested to submit as much detail as possible on the proposed mitigation measures and that SNH, as the leading body, had responded to the Applicants on the information submitted. Due to other commitments by all parties, the soonest a meeting could be held to discuss this information was 15th December, by which time the CNPA Strategic Land Use Group had to submit their comments to the Planning Officer for inclusion in the report.

- d) Concern that if the Applicants had been afforded more time to investigate mitigation measures, they could have found a solution which would be acceptable to SNH.
 - e) The current national population of Capercaillie and how this figure translated to the 1% of birds inhabiting the woodland location. Matthew Hawkins responded that the information available on Capercaillie was several years old and at that time it was set at a national population of 2200, which equated to 1 – 6 male birds on the site.
9. Bill Hepburn, Agent, and Andrew Mackenzie, Environmental Consultant addressed the Committee. Duncan Bryden informed Members that Allan Rennie, from Bracewell Stirling and Mark Berry, from MBEC were also present at the meeting. The presentation covered the following points:
- The importance of Boat of Garten within of Badenoch & Strathspey and the level of local facilities available.
 - The inclusion and subsequent removal of the site from the CNP Local Plan.
 - The impact on Capercaillie in the vicinity of the development.
 - The short timescale given by the CNPA to submit mitigation measures.
 - The consideration of alternative sites by the Working Group.
 - The design of the proposed house types and willingness to enter discussion with the Planning Officer and amend if necessary.
 - The Applicants willingness to form an access from the development to the Community Hall.
 - The implementation of the SPA sites, under the Conservation Regulations 1994, and which are directly applicable to Capercaillie.
 - The meeting of 15th November, and the belief that both the CNPA and SNH would respond with comments on the mitigation measures submitted.
 - The quick time in which the Applicant had submitted the requested mitigation measures and the lack of response from the CNPA Officials.
 - The importance of the development for the future of the Boat of Garten Community.
 - The area of proposed development within the larger red line boundary.
 - The Red Squirrel surveys undertaken for the site.
 - The area of the development site (5.7 hectares), within the wider Boat of Garten woods (approx. 800 hectares).
 - The site area being covered by commercially planted Scots Pine.
 - The hope of reaching agreement with SNH regarding the mitigation measures.
 - The forthcoming Parliamentary Bill regarding licensing for Red Squirrel dreys.
 - The need for balance to be maintained between people and natural heritage, particularly Capercaillie.

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10. The CNPA Officers were invited to make any points of clarification regarding the speakers presentation - the following points were clarified:
- a) Clarification that, although the Working Group had met once, Seaford Estate had been unwilling to discuss alternative sites within the area until the current application had been determined.
 - b) The ability to obtain Squirrel Licences not currently being in place, and the fact that even if they were, there was no guarantee of getting a Licence.
 - c) Clarification that in preparation of the Core Path Plan the potential impact on Natura interests had been comprehensively considered. The specific paths in question were already well-established and promoted before their designation in the Plan.
 - d) That SNH maintained their objection to the current application, as the mitigation measures, as proposed, were not acceptable.
 - e) The area around the proposed development area being a valuable habitat for Squirrels.
 - f) The building of houses increasing the probability of usage of the wood and therefore the extension of the disturbance buffer.
11. The Committee were invited to ask questions of the speakers and the following points were raised:
- a) Clarification of the Article 2 Bird Directive and how it affects this development.
 - b) Clarification if there was a defined definition of the disturbance level to bird population, which then would relate to the level of mitigation measures required.
12. The Committee paused for a break at 12:10pm.
13. The Committee reconvened at 12:20pm.
14. Andy Nisbet & Tessa Jones, Objectors, addressed the Committee. The presentations covered the following points:
- Andy Nisbet:
- A previous petition against development in Boat of Garten.
 - The visual amenity of Boat of Garten.
 - The popularity of the wood and it being a key facility for outdoor recreation.
 - The need for affordable housing in the area, but not at the expense of the village.
- Tessa Jones:
- The origins of the woodland.
 - Habitat continuity implications of the direct footprint of the proposed development.
 - The flawed and unrealistic proposed mitigation measures.
15. The Committee were invited to ask questions of the speakers. No questions were asked.

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16. Alison Fielding & Sam Faircliff, representatives of the Community Council, addressed the Committee. The presentation covered the following points:

- The site being the only larger identified site for affordable housing in the village.
- The considerable amount of community consultation that had been undertaken regarding housing and the local support demonstrated for the development.
- Alternative development sites within the village being of a much smaller scale.
- The complex issues regarding wildlife and the economic reliance of the village on the wildlife sector.
- The need for the mitigation measures to be thoroughly assessed.
- The lack of existing affordable housing in the village.
- The need to support the local population and therefore the long term sustainability of the village.
- The funding currently available for the affordable housing.
- The current problems experienced with sewage in the village and the need for the upgrade of the Waste Water Treatment Works.

17. The Committee were invited to ask questions of the speakers and the following points were raised:

- a) The apparent difficulty the Working Group had at looking at alternative housing sites whilst there was still a 'live' application in the area.
- b) Alternative sites for housing in Boat of Garten, the level of housing they could support and the level of housing which was required.
- c) The Highland Small Communities Housing Trust survey which had been carried out and the level of community response to the survey.
- d) The timescale of funding currently available for Affordable Housing.

18. Members were invited to ask questions of Simon Campbell, Development Manager for Cairn Housing - the following points were raised:

- a) The availability of funding for Affordable Housing. Simon Campbell explained complex system by which public support was given for affordable housing and confirmed that no funding was available for developments until planning permission had been obtained. If the current application was not approved then it would very likely be more difficult in future to find public funding support.
- b) Simon Campbell confirmed that the only other development Cairn Housing were dealing with in the Park was located in Aviemore.

19. Duncan Bryden thanked the speakers.

20. The Planning Officer clarified the following points:

- a) The application site, although being located within the settlement boundary, is not covered by an allocation in the CNP Local Plan. The policies in the Plan do however allow for development within settlements that comprises, for example, infilling or small scale development.
- b) The very recent adoption of the CNP Local Plan and that the application being contrary to Policy 20 within the Plan.
- c) The current live application at the Boat of Garten Water Treatment Works and the intimation by Scottish Water that they would be willing to carry out works to rectify existing problems should this application not proceed.
- d) If the application were to be approved, it would have to be advertised as a departure to the Local Plan and also referred to Scottish Ministers, due to SNH (a statutory consultee) maintaining their objection.

21. The Committee discussed the application and the following points were raised:

- a) Affordable housing being the biggest issue within the CNP.
- b) The removal of the site allocation from the CNP Local Plan, as per the Reporters' recommendation due to environmental sensitivities and to over- allocation of housing.
- c) The lack of time the Applicant had been given to address SNH and CNPA's concern regarding the mitigation measures.
- d) The extended period of time the application had been live on the CNPA books.
- e) The possibility of deferring the application to allow the Applicants more time to prepare adequate mitigation measures.
- f) The willingness of SNH and CNPA to work with the Applicants on the mitigation measures.
- g) The need to support Communities who wish to enhance their survival and sustainable development.
- h) The importance of the decision to be taken on the application and its impact on the local Community.
- i) The reasons for refusal not just including the lack of mitigation measures but also very strong policy reasons.
- j) The need for the Working Group to be active in looking at alternative sites.
- k) The requirement for obtaining updated housing need figures for the Boat of Garten area.
- l) Concern that by approving the application it would be contrary to the CNPA Local Plan which was so recently approved.
- m) Disappointment that the Working Group had not taken the opportunity to look at alternative housing sites and had instead focussed on the current application. Also, that the Working Group had not demonstrated that the current application was the only feasible site in the area.
- n) The application being a very emotive issue for the Boat of Garten Community.
- o) The potential for the site to support some type of development, but on a much reduced scale to that currently being proposed.
- p) The high level of Affordable Housing included in the proposal.

- q) The Planning Committee being legally obliged to base decisions on the Local Plan, unless material variations allow a departure to the Plan.
 - r) The weighting to be attributed to the four Aims of the Park, and the requirement to give greater weight to first aim in certain circumstances, as stipulated in the National Parks (Scotland) Act 2000.
 - s) The very recent adoption of the CNP Local Plan.
 - t) The Applicant being able to appeal the decision or to resubmit with revised proposals should the application be refused.
 - u) The lengthy time taken to get the application to its current stage.
 - v) Concern that the CNPA are not entirely aligned with SNH's position on the application.
 - w) The need for the CNPA to deliver the first Aim of the Park but also for Affordable Housing to be delivered within Boat of Garten.
22. The Planning Officer clarified the following points:
- a) Emphasis on the length of time the application had been under consideration (since 2008) and that CNPA had made several attempts to encourage the applicant to come forwards with the required information at an earlier stage.
 - b) That by refusing the application it would still allow the investigation of other sites for Affordable Housing, also, the potential for re-submission of proposals for development of the current site, and the continuation of the Working Group.
23. Murray Ferguson, CNPA Sustainable Rural Development Director, addressed the Committee regarding the remit of the Working Group and the work they had undertaken. He was joined by Cllr Stuart Black, Chair of the Working Group. Murray Ferguson clarified that the Group had met once and that the discussion had broadly been useful. However, Seafield Estate had not be willing enter discussion regarding other sites until the current application had run its course. Stuart Black advised that a few of potential alternative sites had been discussed at the meeting, however, they were smaller in scale and not large enough to provide the level of housing that the Community requires.
24. Willie McKenna proposed a **Motion** that the application be Deferred, to see if acceptable mitigation measures, both in theoretical and practical terms, could be agreed with SNH (leading to them withdrawing their objection) and also to the satisfaction of other bodies responsible for mitigation including the CNPA as the Access Authority. Willie McKenna stated that the Deferral should only be for a relatively short period of time, in order that the application could be dealt with expediently. This was seconded by Jaci Douglas.
25. Duncan Bryden clarified the position on the proposal for Deferral, which was to allow further information to be submitted on the proposed mitigation measures for Capercaillie. Duncan Bryden reminded Members that there were several other reasons for refusal, and that if the motion were approved these would still require to be taken into account in coming to a final decision. This was agreed.

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26. David Green proposed an **Amendment** that the application be Refused, as per the Planners' recommendation, and that the Working Group continue to look at the Affordable Housing situation and the alternative sites in Boat of Garten. This was seconded by Peter Argyle.

27. The vote was as follows:

	MOTION	AMENDMENT	ABSTAIN
Peter Argyle		√	
Duncan Bryden		√	
Jaci Douglas	√		
David Green		√	
Gregor Hutcheon		√	
Bob Kinnaird		√	
Eleanor Mackintosh		√	
Ian Mackintosh		√	
Mary McCafferty	√		
Willie McKenna	√		
Andrew Rafferty	√		
Gordon Riddler	√		
Gregor Rimell	√		
Brian Wood	√		
Allan Wright	√		
TOTAL	8	7	0

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