

CAIRNGORMS NATIONAL PARK AUTHORITY

MINUTES OF THE PLANNING COMMITTEE

held at The Community Hall, Boat of Garten

on 11 November 2011 at 10.30am

PRESENT

Peter Argyle

Duncan Bryden

Angela Douglas

Jaci Douglas

Dave Fallows

Katrina Farquhar

Marcus Humphrey

Gregor Hutcheon

Eleanor Mackintosh

Ian Mackintosh

Mary McCafferty

Willie McKenna

Martin Price

Gordon Riddler

Gregor Rimell

Brian Wood

Allan Wright

IN ATTENDANCE:

Don McKee

Mary Grier

Murray Ferguson

Matthew Hawkins

Hamish Trench

Lee Murphy, from Harper MacLeod (CNPA Legal Advisor)

Andrew Tait

Robert Grant

Pip Mackie

Bob Grant

APOLOGIES:

David Green

Kate Howie

AGENDA ITEMS 1 & 2:

WELCOME AND APOLOGIES

1. The Convenor welcomed all present and advised that as it was Remembrance Day the Committee meeting would pause at 11.00 am for 2 minutes silence.
2. Apologies were received from the above Members.

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AGENDA ITEM 3:

MINUTES & MATTERS ARISING FROM THE PREVIOUS MEETING

3. The minutes of the previous meeting, 2011, held at The Community Hall, Boat of Garten were approved with an amendment at Paragraph No.: 56 – the venue for the next meeting had incorrectly been detailed as ‘The Grant Arms, Grantown on Spey’ and should have stated ‘The Community Hall, Boat of Garten’.
4. There were no matters arising.
5. The Convener provided an update on the Action Points from the previous meeting:
 - Action Point at Para. 16: Completed.
 - Action Point at Para. 46: Completed.
 - Action Point at Para. 51: Completed.

AGENDA ITEM 4:

OUTCOME OF ELECTRONIC CALL-IN

6. The content of the Outcomes of the Electronic Call-in held on 14 & 28 October 2011 were noted.

AGENDA ITEM 5:

DECLARATION OF INTEREST BY MEMBERS ON ANY ITEMS APPEARING ON THE AGENDA

7. Dave Fallows declared a direct interest in Item No. 6 (Paper 1) on the Agenda, due to having previously declared public support for the application (prior to becoming a CNPA Board Member).
8. Marcus Humphrey & Gregor Hutcheon declared direct interests in Item No. 8 (Paper 3) on the Agenda, due to being Directors of Cairngorms Outdoor Access Trust (the Applicants).

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AGENDA ITEM 6:

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 FOOTBALL FIELD, CRAIGIE AVENUE, BOAT OF GARTEN

(PAPER 1) (08/272/CP)

9. Dave Fallows declared an interest and left the room.
10. The Convener advised members that the application had previously been deferred (from the meeting held on 7 January 2011) to allow for Capercaillie mitigation measures to be further explored and that the other reasons for refusal had not been discussed at that meeting (as covered in the approved minutes of the 7 January 2011 meeting). The agreed motion stated deferral should only be for a relatively short period of time in order that the application could be dealt with quickly. The application had initially been scheduled for the September and then the October meeting. However, due to the Applicant not submitting information timeously, the application had been deferred until the November meeting. The Convener strongly recommended that a decision be taken on the application at this meeting. Getting to this stage had been a challenging process and it had to be acknowledged that the applicant had carried out extensive studies on the site in support of their application, the local community had been both professional and diligent in providing their views and CNPA planners had examined all the evidence and arguments very carefully – seeking additional advice where required. This was all set out in the report.
11. The Convener informed Members that prior to this meeting the Applicant had requested a further deferral of the application. However, the Planning Officials were recommending that the request should not be granted and this issue would be covered in the presentation to Members.
12. The Convener informed Members that a request to address the Committee had been received, within the given timescale, from:
 - Applicant / Agent – Allan Rennie (Bracewell Stirling), Andrew McKenzie (MBEC) & Neil Collar (Brodies LLP, Legal Advisors).
 - Objector(s) – Gus Jones (BSCG)
 - Representative(s) of the Community Council – Alison Fielding (Vice Chair)
 - Other(s) – Anne Elliott & Debbie Greene, SNH
Sandy Lewis (Chief Executive) & Andrew Norval (Factor)
from the landowners, Seafield Estate
(Available to answer questions)
13. The Committee agreed to the requests.

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14. The Convener advised that a late letter of representation from Fergus Ewing as constituency MSP had been circulated for Members attention should they wish to receive it. The Committee paused to read the letter.
15. Andrew Tait presented a paper recommending that the Committee refuse the application for the reasons stated at the end of the report.
16. 11.00 am - The Committee paused for 2 minutes silence.
17. Andrew Tait advised the Committee that Planning Officials had been trying to schedule the report for a determination meeting since the summer and the venue had twice been changed to accommodate this. He advised that a draft mitigation report had been received in August and CNPA Officials had provided comments to the Applicants on the proposals, therefore there had been ongoing awareness of the issues being raised since that time. Andrew Tait stated that there were other issues regarding the application, which were covered in the planning report and strongly recommended that a decision be taken on the application at this meeting.
18. The Convener stated that at this point it was usual for Members to ask the Planning Officer any points of clarification. However, he advised that he intended to ask the SNH Officials to address the Committee regarding their objection.
19. The Committee invited Anne Elliott & Debbie Greene, to summarise the objection submitted and maintained by SNH, the following points were covered:
 - a) The proposed mitigation measures had not fully addressed the key risks to Capercaillie that could arise from the development.
 - b) The importance of the site in supplying breeding birds and contributing to the national population of Capercaillie.
 - c) The site being an important 'stepping stone' site to allow Capercaillie to move between the surrounding Special Protection Area's (SPA's), without which it was felt the natural heritage value of the SPAs would decline.
 - d) The recreation survey undertaken by the developers being a key change to the information available regarding the usage of the site.
 - e) The woods being a popular walking route (with much higher usage than expected) particularly for dog walkers, with between 90 – 100% of dogs being walked 'off lead' in the area nearest to the Capercaillie habitat and the challenges this now presents with regard to acceptable mitigation measures.
 - f) The recreation survey had been used to identify 6 key risks to the Capercaillie, 3 of which SNH felt had been adequately addressed. However, the other 3 risks were more difficult issues to manage, including people's behaviour and the need for any mitigation to effectively influence recreational behaviour, which could not be managed by an 'off the shelf' solution. Any solution would require input from the local community, landowner, developer, access authority and SNH. At the present time, there was no confidence that such a solution could be found.
 - g) The most challenging risk being the likelihood of increased numbers of dogs (by approximately a third) ranging away from paths due to the development increasing the population in Boat of Garten.

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- h) SNH being keen to provide advice and assist in finding a solution to the housing need in Boat of Garten, which would allow Capercaillie to remain in the woods.
20. Hamish Trench, CNPA Director of Strategic Land Use, & Matthew Hawkins, CNPA Senior Heritage Officer, advised Members on the Appropriate Assessment (AA) which had been carried out on the site, covering;
- The CNPA was required to carry out an AA on the site to assess if there was any likely significant effect on the site integrity of the SPA's and SNH provide advice which informs that assessment.
 - The AA focuses on the likely effect on Capercaillie, which is a qualifying interest of the four relevant SPA's. The CNPA were obliged to consider whether it could be ascertained that the development would not adversely affect the integrity of the site for those qualifying interests i.e. Capercaillie. After having considered the site, the habitat and the evidence of disturbance the AA concludes that there could be a significant impact on Capercaillie. It goes on to assess if the development (including the mitigation proposals) will not adversely affect the integrity of the site, by looking at 3 key areas – population and distribution of the Capercaillie, supporting habitats and the potential for disturbance to the Capercaillie. The AA concludes that due to the potential increase in recreational disturbance and the impact on the population and distribution of Capercaillie the CNPA could not ascertain that the development would not affect the SPAs. Therefore the SPAs could be affected by the proposed development.
21. The Convener requested Andrew Tait to advise Members of the full reasons for refusal.
22. Andrew Tait stated that the reasons for refusal were:
- The development being contrary to the CNP Local Plan 2010.
 - The natural heritage impacts on Capercaillie.
 - The natural heritage impacts on Red Squirrel.
 - The Layout, Landscape & Housing Design.
 - The lack of vehicle access to the village hall.
 - The development being contrary to the first and third aim of the National Parks Act 2000.
23. The Committee were invited to ask the Planning Officer points of clarification, the following points were raised:
- a) The lack of a hammer head turning point on the access road to the east of the site and the potential for this to lead to further future development. Andrew Tait responded that there was no turning point indicated on this road and it may be a point to ask the Applicant.
- b) The different ways to calculate the number of Capercaillie located in an area (either 2 x or 4 x) and which multiplier was being used in this instance. Anne Elliott responded that the Capercaillie figures are based on the numbers of actual birds that have been seen at the site (in terms of at the Lek or by a brood count), SNH make an assumption that there are an equal number of male and female birds located at the site. It was advised that SNH currently use the 2 x calculation (which was

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viewed to underestimate the numbers present) and work was being carried out regarding re-assessing the calculation variable with SNH assisting in the project. The 4 x variable had not yet been peer reviewed. However, once it had been reviewed and found to be acceptable by members of the scientific community, SNH would look to move forward using the 4 x variable, as this would become the scientifically accepted method of calculation.

- c) Due to the development being within a National Park, the possibility of finding an innovative solution to mitigate against the impact on Capercaillie. Debbie Greene, SNH, responded that in order to make any mitigation successful it would require a range of groups to be involved, this could not be dealt with by an 'off the shelf' solution and therefore could not easily be conditioned in planning terms.
- d) Had adequate discussion and input been received from SNH and other organisations regarding innovative solutions to mitigation measures.
- e) Clarification that whilst there was a lack of short and medium term benefits from mitigation, there could be long term benefits to Capercaillie. Debbie Greene responded that one of the proposals included in the mitigation was to thicken the vegetation screening alongside tracks, if these proposals were successful, it could lead to reduced disturbance to Capercaillie in the long term. However, it could take up to 10 years for the vegetation to become established and provide an effective barrier. With an increased disturbance predicted in the short / medium term, SNH were unable to accept a situation that would mean Capercaillie were unable to live and breed in the wood, as there would then be no birds to mitigate against in the long term. Any mitigation solutions needed to be able to work effectively in the short, medium and long term in order to be acceptable.
- f) Clarification that if the wood was so crucial to Capercaillie, why the area had not been specifically designated to reflect this. Debbie Greene responded that there are a range of criteria used for selecting SPA's for Capercaillie, this was based on the data available at the time and other areas in Strathspey had been chosen. The intention had not been to designate every wood where Capercaillie were found. However, since the designation, further data had been collected regarding Capercaillie and the Boat of Garten woods and their importance was now clearer. There were legislative measures currently being drafted for giving greater protection to 'stepping stone' sites and should the legislation proceed there would be increased protection for Capercaillie in these areas.
- g) Confirmation that the Capercaillie count carried out in 2011 was related to the site in the Boat of Garten woods. Matthew Hawkins responded that the count had been carried out by an RSPB Officer on the site and related to the actual numbers of birds seen.
- h) Clarification that the Capercaillie population in the woods were of national importance. Matthew Hawkins responded that it was estimated that there was 1% of male birds (national population) with an equal number of female birds being located on the site.

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- i) The consultation response from RSPB being 'no objection', the verbal update from the Planning Officials that the RSPB position had changed to 'objection' and why this opinion had altered. Hamish Trench responded that the RSPB had viewed the mitigation measures and had submitted their initial 'no objection' response. After looking further at the mitigation measures and the comments from SNH, they had submitted a letter of objection. However, this had arrived outwith the required timescales as specified in Planning Committee Standing Orders for it to be considered.
- j) Clarification if there was any evidence that dogs and walkers have an impact on Capercaillie, and if so, what this impact was. Debbie Greene stated that there is research (a lot from Scotland) that shows that recreation can disturb Capercaillie, particularly from dogs and walkers going 'off track'. Anne Elliott advised that there had been work done by Bob Moss on the subject and the disturbance to Capercaillie included: an avoidance of the habitat and food sources that should be available; dogs eating eggs / chicks; adult females being put off nests and other predators eating the eggs / chicks; an indirect effect of bad weather putting adult females off the nest and losing eggs / chicks to cold.
- k) The current level of 'off lead' dog walking surveyed at the site, the proposed mitigation measures including a dedicated 'off lead' walking area and an educational programme for the occupants of the new development. Debbie Greene responded that it was felt (after consultation with CNPA as Access Authority) that these proposed mitigation measures would not work sufficiently. The proposed 'off lead' dog walking area was located close to the village whilst it had been assessed that the majority of 'off lead' walking took place further away from the village and would not cater for all types of dog walkers. Members were informed that in research published earlier in the year by the CNPA - 'Dogs in the Outdoors' it stated that education initiatives by themselves are not likely to work and a national survey of dog walkers had found and that the biggest factor for where people walked their dogs was that people wished to walk their dogs 'off lead' (41% response). Therefore just requesting people to keep dogs on a lead was unlikely to work in practice. Bob Grant, CNPA Senior Access Officer, stated that there remained risk associated with the development and the assumptions of people's behaviour – by the new community that would arise by the population increasing by approximately one third, how the woods are currently used and modifying any new users of the woods behaviours. Hamish Trench stated that the context for the assessment of the risk was the Natura legislation and the obligations that was placed upon the CNPA when dealing with this European legislation. Hamish Trench reiterated that this legislation required that the proposal would not have an adverse affect on the qualifying interest on the Capercaillie and that based on the proposed mitigation measures, the CNPA and SNH could not conclude that there would not be an adverse affect.
- l) The difficulty in balancing fact from opinion with regards to the impact of the development on Capercaillie. Debbie Greene responded that each of the 3

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remaining criteria had different levels of uncertainty attached to them, particularly the risk of dogs and walkers ranging off designated paths.

m) Concern about the difficulty in influencing behaviour and getting people to adhere to bylaws and staying on footpaths through sensitive natural heritage areas. Anne Elliott responded that it was notable that the Capercaillie remained in the wood despite the existing disturbance. However, scientific research (due to be published) had found that the existing disturbance was having an impact on the Capercaillie. It was important not to lose the Capercaillie from the site, but to find a way for people and the birds to live together.

24. Allan Rennie, Andrew McKenzie & Neil Collar, Representatives of the Applicant, were invited to address the Committee.
25. Neil Collar addressed the Committee - the presentation covered the following points:
 - The sustainability of the Boat of Garten Community and the strong support of the development by both the local population and Fergus Ewing, MSP.
 - The development being linked to the fourth aim of the National Park (economic development), sustaining the community by providing affordable housing in the area.
 - The site being appropriate for housing and not designated as a Special Protection Area.
 - The impact of the development on Capercaillie being now better understood due to the proposed mitigation measures, as developed by the Applicant.
 - The planning report not providing an accurate overview and the potential impact on Capercaillie being exaggerated and the critical approach taken by the Planning Officials in assisting with the application.
 - The potential impact on Capercaillie not being about the housing or the construction phase but the leisure use of the site and this being a key point.
 - When the CNPA proposed a Core Path located on this site it concluded that no Appropriate Assessment was required, despite the Core Path status potentially bringing an increased usage to the site. Why the Applicant is now required to provide information regarding this issue when the CNPA did not feel it was necessary for the Core Path Plan?
 - The existing users of the woods being the main issue not the proposed development.
 - There being no specific environmental designation on the development site and the site being one of commercial planting which would be due for felling or thinning at some point.
 - The possibility of a phasing condition being used
 - The majority of the mitigation measures having been accepted. Any outstanding issues could be dealt with via conditions and / or legal agreement requiring the remaining matters to be resolved.
 - Any decision made on the application having an effect for future development sites throughout the CNP.
 - The application being contrary to the CNP Local Plan. However, the CNPA Planning Committee not being required to follow the Local Plan.

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- The refusal reason regarding Red Squirrels not being competent, as this issue was now dealt with via licence agreement.
 - The refusal reason regarding Layout, Design and Landscape being resolvable.
 - The refusal reason regarding the lack of vehicle access to the Community Hall also being resolvable and could be conditioned.
 - The Applicants belief that SNH and the CNPA were being too cautious in their approach to the application.
26. Andrew Mackenzie addressed the Committee - the presentation covered the following points:
- The application being an incredibly frustrating project to work on.
 - The belief that there are workable mitigation solutions to this situation.
 - The vast majority of the Capercaillie data presented being sourced from much further south in the wood and away from the development site.
27. The Committee were invited to ask questions of the speakers and the following points were raised:
- a) The access road to the east of the site. Allan Rennie responded that it was to be the original access road to the Community Hall. However, the road could be pulled back and a hammerhead formed.
 - b) How the Applicants would promote responsible access to the woods to the occupants of the new development. Andrew Mackenzie responded that they would be required to engage the existing users of the woods, the Community Council and the occupants of the new development in order to modify users behaviour of the woods including the use of peer pressure. It was stated that the approach was new and innovative and it should be given an opportunity to be tried and succeed.
 - c) The thinking behind any proposed phased development. Allan Rennie responded that there were 2 main issues – affordable and private development. It was stated that the affordable housing element was dependent on public funds being available and in the current economic climate this may take 2 / 3 years. The private housing element was envisaged at being built out at a rate of approximately 8 dwellings per year, which would mean that the overall development would be phased over 10 years. This would also allow for the proposed mitigation measures to be started and become established prior to the development being completed.
 - d) The perceived best and worst case scenario for the number of dogs residing in the new development. Andrew Mackenzie advised that the existing baseline for dog owners was approximately 24%, but this could be higher given the lifestyle choices of people in the area. He advised that it could be specified in title deeds that households in the new development were only able to own one dog.
28. Duncan Bryden requested Don McKee, Head of Planning, to provide a response on the issue of sewer capacity. Don McKee stated that Scottish Water had advised that they were committed to taking forward a joint project next year between Boat of Garten and Kingussie Waste Water Treatment Works. There would be capacity for the existing

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Boat of Garten settlement as well as future development, whether it was the site currently under consideration or another in the area.

29. Duncan Bryden requested Bob Grant, Senior Access Officer, to respond on the issue of the Core Paths. Bob Grant advised that the Interim Draft Core Path Plan (consulted on in 2007) showed path LPS67 linking to an area locally known as 'The Yard'. The advice received from SNH and Kenny Cortland (Capercaillie Project Officer) was that the path was directing people close to a sensitive area and suggested its removal. Bob Grant confirmed that this had been done.
30. Duncan Bryden permitted Allan Rennie to respond on the issue of sewer. Allan Rennie advised that the issue was in the network prior to the sewage reaching the Waste Water Treatment Plant. Scottish Water would require the Applicant to carry out an assessment on the network and to upgrade as necessary, merely upgrading the Treatment Plant would not address the issue.
31. Duncan Bryden advised that the Committee would pause for a comfort break at 12.15pm.
32. The Committee reconvened at 12.20pm.
33. Gus Jones, Objector, was invited to address the Committee. The presentation covered the following points:
 - Advising that Andy Nisbet, (Objector) was unable to address the Committee.
 - The mitigation measures being unrealistic and any proposals would have to work over short, medium and long term timescales.
 - The high level of 'off lead' dog walkers using the area.
 - The importance of the wood in supporting the national Capercaillie population.
 - The recent decline in Capercaillie numbers in North East Scotland and Badenoch & Strathspey being a stronghold for the species.
 - The 5 SPAs within maximum Capercaillie dispersal distance.
 - The flawed dog walking figures being extrapolated from the national average.
 - The view of the RSPB that the any effective mitigation measures are unworkable.
 - Capercaillie being the key consideration for any assessment of the application.
34. The Committee were invited to ask questions of the speaker. No points were raised.
35. Alison Fielding, Representative of the Community Council, was invited to address the Committee. The presentation covered the following points:
 - The need for affordable housing in Boat of Garten.
 - The lack of housing allocation (in the CNP Local Plan) within the Boat of Garten settlement.
 - Thanks to the Applicant for the work undertaken.
 - The need for the community and other parties to continue to work on the debate, because if the issue regarding Capercaillie affects this site it would surely affect all other sites for development in Boat of Garten.
 - The large number of visitors and tourists to the village that use the woods for recreation purposes including walking dogs. The camera survey of the woods being carried out in July when tourism and therefore recreation is at its peak level.

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- The requirement for a balance between the needs of the community and Capercaillie.
 - The access issue to the Community Hall being resolvable.
 - Clarification was required if a new village school would be included in the forthcoming CNP local Development Plan.
 - If the application is refused, who will undertake the required mitigation measures in order to ensure that viable development sites are found within Boat of Garten? The community being fully committed to buying in to the work required.
 - Other sites being allocated in the Local Plan but not being viable.
 - The local letting policy requiring further work and the need for the CNPA to work with Highland Council and the Scottish Government to ensure that this policy is in place prior to houses being built.
 - The possibility of the Committee considering either phasing of the development or a smaller number of houses on the site.
36. Andrew Tait clarified that the application had been deferred from the January meeting to allow for further work to be done on Capercaillie mitigation measures. However, there were still outstanding reasons for refusal which had not been addressed including the access road to the Community Hall. In order to address this issue it would require new road information to be formally submitted and then considered.
37. Don McKee advised that the school site would need to be carried out in conjunction with Highland Council as the education authority. However, it was shown in the current CNP Local Plan and although it was not in the CNP Local Development Plan Main Issues Report (currently out to consultation) it did not mean that it could not feature in the forthcoming CNP Local Development Plan and this point would be passed onto the CNPA Local Plan Officer.
38. Don McKee stated that he hoped the CNPA's commitment to the Boat of Garten Working Group was recognised and that the CNPA were aware of the need for housing in the settlement. He stated that should the application be refused, the CNPA were committed to meet and work with the community and interested parties as soon as possible to discuss alternative proposals and take them forward. This would include close involvement of Di Alexander, CNPA Affordable Housing Officer. Don McKee stated that the CNPA were willing to work with all communities within the Park on the general issues of recreation disturbance to Capercaillie, as it was an issue outwith the confines of the application being discussed.
39. Don McKee stated that the CNPA would continue to work with Highland Council and Housing Associations regarding the local lettings policy.
40. The Committee were invited to ask questions of the speaker, Alison Fielding. No points were raised.
41. The Committee were invited to ask questions of Sandy Lewis & Andrew Norval, Representatives of Seafeld Estate (land owner). The following questions were asked:
- a) The land owners view on alternative sites for development in Boat of Garten. Sandy Lewis responded that the land in Boat of Garten was under the ownership of 3

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different parties. The current site was unusual in that the application site and the woodland where the mitigation was proposed was under one owner. Other potential development sites would have different owners for the application site and the mitigation area and only the application site was currently available.

- b) The possibility of the woods being thinned. Hamish Trench, CNPA Sustainable Land Use Director, responded that any felling would have to be subject to a licence (handled by the Forestry Commission Scotland) and this would be subject to and assessed against the Natura legislation. Sandy Lewis informed Members that current felling was being carried out under licence and the Estate were aware of legislation regarding protected species.

42. Duncan Bryden thanked the speakers.

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

- a) The huge amount of work done on the proposed mitigation measures.
- b) The difficulty in assessing the application due to the large number of variables and uncertainties.
- c) The innovative mitigation measures being proposed and the opportunity for the various interested parties to work together.
- d) The potential for a reduced number of houses and phasing of the development to have long term benefits for the Capercaillie and the area. Don McKee responded that Members could not consider a reduced number of houses as they were to assess what was currently being proposed. However, phasing the development could be conditioned but the planning permission could not be withdrawn at a subsequent point should the mitigation measures subsequently be found not to work. Don McKee also advised that the scale of the development did not comply with the recently adopted CNP Local Plan which had been through a Local Plan Inquiry, it was therefore not appropriate to depart from a strong policy position – as specified in the planning report.
- e) The possibility of being able to approve the application given the outstanding objection by SNH and should the Committee be minded to approve the application, the requirement for the decision to be referred to Scottish Ministers and seeing this as an opportunity for a second opinion on such a finely balanced proposal. Don McKee responded that the Committee could be minded to approve the application. However, the terms of the approval would have to be brought back to Committee. The decision would also have to be referred to Scottish Ministers, who may choose to make a decision on the application, in which case they would take account of the same advice provided to Members (in particular the advice from SNH as Scottish Ministers advisors on natural heritage issues).
- f) Members being duty bound to ensure that there was no risk to Capercaillie from development and the measures being proposed all carrying some form of risk.
- g) The need for discussion to continue regarding Capercaillie in order to base future decisions on a sound information basis.

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- h) Clarification that the decision taken in January was to defer the application subject to suitable mitigation measures being agreed with SNH and that this has not happened.
 - i) Clarification that wherever in Boat of Garten development were to take place it would require some form of mitigation measures. Hamish Trench responded that 5 potential development sites had been identified for consultation in the CNPA Local Development Plan Main Issues Report (MIR), all of which had had a landscape and ecological survey and the whole MIR an initial Natura study. Whilst mitigation measures would still be required, there would be more confidence that they could be achieved.
 - j) How to assess SNH's advice regarding mitigation on the sites in the MIR, when they had previously advised that mitigation may be possible on the site currently being discussed. Hamish Trench advised that the size of the sites in the MIR were smaller and scale of the mitigation was proportional to the size of the development and therefore population increase.
 - k) The need to assess the application on the basis of planning principles and material considerations, whilst having sympathy with the community's requirement for affordable housing.
 - l) The reasons for refusal still being applicable and uncertainty that the Red Squirrel licence would be granted.
44. Angela Douglas proposed a Motion to Refuse the application as recommended in the Planning Report. This was seconded by Peter Argyle.
45. Jaci Douglas proposed an Amendment to Approve the application, as the need for Affordable Housing in Boat of Garten was a material consideration and outweighed the requirement to adhere to the CNPA Local Plan. This was seconded by Gregor Rimell.
46. Duncan Bryden requested that Lee Murphy provide a legal view on the terms of the Amendment.
47. Lee Murphy, CNPA Legal Advisor from Harper MacLeod, advised that in order for the Committee to make a decision against the recommendation, the reasons for approving the application must be clearly stated and must be a material consideration (such as the need for Affordable Housing). However, she advised caution in approving an application contrary to the CNP Local Plan.
48. A Member advised that the difficulty in providing a competent reason for the Amendment was due to the reasons for refusal being absolutely sound and based in legislation and planning policy.
49. Neil Collar, Representative of the Applicant, requested clarification on the legal advice given to Members.
50. Lee Murphy responded that in order to approve an application contrary to the CNP Local Plan there must be a material planning consideration and Affordable Housing was such a consideration. Members must therefore decide if this factor outweighed all the other information given and reasons for refusal.

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51. The vote was as follows:

NAME	MOTION	AMENDMENT	ABSTAIN
Peter Argyle	√		
Duncan Bryden	√		
Angela Douglas	√		
Jaci Douglas		√	
Katrina Farquhar	√		
Marcus Humphrey	√		
Gregor Hutcheon	√		
Eleanor Mackintosh	√		
Ian Mackintosh	√		
Mary McCafferty		√	
Willie McKenna		√	
Martin Price	√		
Gordon Riddler	√		
Gregor Rimell		√	
Brian Wood	√		
Allan Wright		√	
TOTAL	11	5	0

52. The Committee agreed to refuse the application for the reasons stated in the report.

53. Following the resolution Duncan Bryden stated that “This has been one of the most difficult decisions we have had to make since the National Park was established. The evidence shows we had no room to manoeuvre in the application of EU Regulations. We have immense sympathy for the community’s need for more affordable homes in the village. We are consulting on other sites already identified in Boat of Garten and as soon as possible we’ll get a meeting arranged with the right people and try our utmost to find a way to progress this.”

54. **Action Points arising:** Don McKee to advise CNPA Local Plan Officer of the Boat of Garten community’s wish for a school site to be included in the forthcoming CNP Local Development Plan.

55. The Committee paused for lunch at 1.30pm.

56. The Committee reconvened at 2.20pm.

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AGENDA ITEM 7:

REPORT ON CALLED-IN PLANNING APPLICATION FOR ERECTION OF 35 WOODEN WIGWAMS, ON SITE ACTIVITY AREA/CANVAS TENT AREA AND MOUNTAIN BIKE FREE RIDE TRAIL AT LAND TO NE OF SPEYSIDE TRUST BADAGUISH OUTDOOR CENTRE, GLENMORE, AVIEMORE (PAPER 2) (2011/0206/DET)

57. The Convener informed Members that a request to address the Committee had been received, within the given timescale, from:

- Applicant / Agent – Andrew Mackenzie (Applicant) & Amanda McRitchie (Agent) – to be available for questions
- Objector(s) – Gus Jones, BSCG

58. The Committee agreed to the requests.

59. Mary Grier presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.

60. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:

- a) The location of the toilet block in relation to the proposed wigwams.
- b) Where visibility splay improvements were required (as requested by the Roads Authority). Mary Grier confirmed it was at the junction with the Glenmore public road and the works were not extensive.
- c) The relevance of the Applicant not owning the site on which the application was being made. Mary Grier stated that land ownership issues are not a planning matter as the planning system is primarily concerned with the use of the land. It was advised that the land is leased by Forestry Commission Scotland (FCS) to Badaguish Speyside Trust (BST).
- d) The water capacity at the site. Mary Grier responded that the number of bed spaces being proposed was a reduction in the number from what was on the site in the 1990's and it wouldn't appear to be an issue.
- e) The possibility of the site being clear felled by the FCS. Mary Grier advised that the CNPA were aware that clear felling in the area was scheduled to take place in 2016. However, the proposed use was presenting an alternative to that of clear felling.
- f) Clarification if the development was for tourist or outdoor activity development. Mary Grier responded that in planning terms outdoor activity would come under the bracket of tourism.
- g) Clarification if the FCS, as leaseholder, had any responsibility to ensure the protection of Capercaillie on the site. Matthew Hawkins responded that it would be beholden on the operator to consider the impacts on Capercaillie and he could not advise with certainty whether or not the landlord had any responsibility for this issue. Mary Grier advised that the Capercaillie Officer had responded to the Pre-

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Application Consultation in 2009 and the proposal had been modified to take account of various natural heritage issues raised.

- h) The potential fire risk for the wigwams. Mary Grier stated that fire risk was not a planning matter and was covered by separate regulations.
 - i) Clarification if the Badaguish Speyside Trust, which had been set up as a charitable trust for disadvantaged children was now acting outwith its remit as a tourism business. Mary Grier advised that the information provided states explicitly that the BST remit is to provide educational opportunities and disabled facilities and 2010 occupancy figures show that 92% of visitors were derived from these groups.
 - j) The plans for the existing camp site. Mary Grier advised that the site would be used as an outdoor activity space for the user groups.
61. The Committee were invited to ask questions of Andrew Mackenzie and the following points were raised:
- a) The location of the toilet block. Andrew Mackenzie referred to the distance between the existing camping area and the toilet and he also stated that if required temporary toilets could be installed. He informed Members that a new toilet block had also been built in the south of the site.
 - b) The lease arrangements with the FCS. Andrew Mackenzie responded that should the application be granted the BST would approach the FCS to consider leasing the ground. Until permission was granted the FCS would not consider any request.
 - c) The fire risk to the wigwams. Andrew Mackenzie responded that the site held a Highland Council campsite licence which required strict guidelines to be adhered to.
 - d) The educational role of the BST. Andrew Mackenzie responded that the remit of the BST was to provide educational opportunities and disabled facilities and they were committed to doing this.
 - e) Clarification of the future use of the existing campsite area. Andrew Mackenzie responded that the area was to be used as an outdoor activity space for the user groups.
 - f) How many tents the site could accommodate. Andrew Mackenzie responded that it would be approximately 50 / 60 tents.
 - g) Where the wood would be sourced from for the construction of the wigwams. Andrew Mackenzie responded that it would be sourced locally from a company in Newtonmore.
 - h) Proposals for lighting at the site. Andrew Mackenzie responded that small bollard downlights were proposed. Matthew Hawkins confirmed that this type of lighting did not raise concern for disturbance to Capercaillie.
62. Duncan Bryden thanked the speaker.
63. Gus Jones chose not to address the Committee.

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64. The Committee discussed the application and the following points were raised:
- a) A need to think innovatively about visibility splays and road standards in woodland settings and a requirement for the measures to be proportionate. Mary Grier advised that a tarmac finish already existed and was therefore not felt to be an onerous condition.
 - b) Clarification that the camping facilities had to be pre-booked and were therefore not in competition with other existing businesses. Mary Grier stated that the camping facilities had to be pre-booked.
 - c) The need for conditions to be rationalised in general on planning applications.
 - d) The requirement for an advisory note to be included regarding adequate toilet facilities to be provided during peak periods.
 - e) The overall Masterplan for the site. Mary Grier advised that this application was the final element of the proposals previously outlined. Andrew Mackenzie responded that this was the final development proposed at the site.
65. The Committee agreed to approve the application subject to the conditions stated in the report with an amendment to Condition 7 to include lighting and an Advisory Note that the Applicant ensure that adequate toilet facilities are provided during peak periods.
66. **Action Points arising:** None.

**AGENDA ITEM 8:
REPORT ON CALLED-IN PLANNING APPLICATION FOR SITING OF A
TEMPORARY ACCOMMODATION COMPRISING 2 TEMPORARY
ACCOMMODATION UNITS, ONE TOILET UNIT & ONE STORE UNIT
AT GARBH UISGE, CAIRNGORM
(PAPER 3) (2011/0272/DET)**

67. Marcus Humphrey and Gregor Hutcheon declared an interest and left the room.
68. Robert Grant presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
69. The Committee were invited to ask the Planning Officer points of clarification. No points were raised.
70. The Committee agreed to approve the application subject to the conditions stated in the report.
71. **Action Points arising:** None.
72. Marcus Humphrey and Gregor Hutcheon returned.

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AGENDA ITEM 11 ANY OTHER BUSINESS

73. Duncan Bryden advised Members that the meeting on 9 December 2011, would be followed by an afternoon session on the Landscape Framework carried out by Hamish Trench and Frances Thin, CNPA Landscape Officer.
74. Duncan Bryden informed Members that the CNPA had recently served an Enforcement Notice on the Owner of Feshiebridge Cottage, Feshiebridge. The Applicant had tried to appeal the Notice and refusal of planning permission but had not submitted them in time and they had therefore not been accepted by DPEA. The CNPA Enforcement Officer was now pursuing compliance with the Enforcement Notice.
75. Gregor Rimell thanked Andrew Tait for attending the Access Forum. He also reported that the Laggan Community Association were pleased to see the CNPA Enforcement Officer involved with the non compliance of conditions for the retrospective works at the Laggan Water Treatment Works site.
76. Jaci Douglas queried the differing response from SNH regarding Capercaillie at the Boat of Garten site (objection) and the Badaguish site (no objection) which was located next to SPAs and could potentially have impacts due to walkers / tents etc.
77. Don McKee advised that each application is assessed on its merits. He advised that the way the information was presented to Members would be addressed in order to assist with public perception of the issue.
78. **Action Points arising:** Don McKee to investigate the way information was presented to Members when similar natural heritage interests were involved in different applications.

AGENDA ITEM 12 DATE OF NEXT MEETING

79. Friday 9 December 2011 at The Community Hall, Boat of Garten.
80. Committee Members are requested to ensure that any Apologies for this meeting are submitted to the Planning Office in Ballater.
81. The public business of the meeting concluded at 3.05pm.