

# **AGENDA ITEM 9**

## **FOR INFORMATION**

**APPEAL DECISION FOR  
2021/0168/DET  
(Planning Appeal PPA-001-2025)**



## Appeal Decision Notice

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Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-001-2025
- Site address: Land north-west of Glen Clova Hotel, Glen Clova, Angus DD8 4QS
- Appeal by Mr. Hugh Niven against the decision by Cairngorms National Park Authority
- Application for planning permission 2021/0168/DET dated 12 May 2021 refused by notice dated 30 March 2022
- The development proposed: Erection of 8 holiday lodges and plant/storage building, formation of vehicular access, parking and turning areas, installation of sewage treatment plant and surface water soakaways
- Date of site visit by Reporter: 23 August 2022

Date of appeal decision: 20 September 2022

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### Decision

I dismiss the appeal and refuse planning permission.

### Preliminary Matter

The scale and nature of this proposed development is such that it is consistent within the description of development set out in Class 12(c) 'Tourism and leisure' of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. On 21 June 2021 it was the subject of a screening opinion by the Cairngorms National Park Authority (CNPA) to the effect that environmental impact assessment (EIA) was not required. I agree with the CNPA's decision that, based on the characteristics and location of the proposed development, together with the potential impacts, the proposal was not a development that required an EIA.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. The development plan comprises the adopted Cairngorms National Park Local Development Plan 2021 (the local development plan).
2. Having regard to the provisions of the development plan the main issues in this appeal are, firstly, whether the proposal is of an appropriate design and layout compatible with the location, visual amenity, landscape character and special landscape qualities of this part of the Cairngorms National Park, and whether it is sympathetic to the traditional pattern and character of its surroundings. Secondly it is necessary to assess whether the economic benefits that the proposal may generate would contribute to the local economy and outweigh any impact that the proposal could have on the landscape character and visual amenity of this part of the Cairngorms National Park. Thirdly, I require to assess whether

the proposal would have an adverse impact on the natural and cultural heritage of the area in terms of its effect on protected species, breeding birds, the River South Esk Special Area of Conservation, and any archaeological remains within the site.

### *The appeal proposal*

3. The appeal seeks full planning permission for eight timber lodges on some 4,160 square metres of upland grassland, interspersed with large boulders and occasional rocky outcrops. The lodges would offer ancillary accommodation to the nearby Glen Clova Hotel and its existing lodges to the east. The linear site gently rises north-west of the hotel and would be accessed from the B995 which leads south to Kirriemuir, around 24 kilometres distant. The site is bisected by, and accessed from, an unmetalled track to the north of the proposed lodges. From the B995 the access firstly passes a farm yard and buildings and the appellant's property at Arntibber Cottage and then leads towards the vernacular designed and secluded Parkhead Cottage. A remnant stone wall is to the south of the site beyond which are some several mature broadleaved trees that when in leaf, to an extent, filter views to the site from the B995.

4. The appellant initially proposed eight one and two bedrooled single-storey lodges, contained within two groups adjacent to the access track. Revised proposals that are the subject of this appeal seek to address concerns expressed by the CNPA in order to reduce the development's landscape impact. It is now proposed that, to reflect the landscape context of the site, the lodges would be built in two distinct clusters comprising groups of four units each, giving rise to a greater separation between the buildings. Several additional field trees, protected by stock shelters, would be planted south of the buildings. Each lodge would incorporate what the appellant describes as "exemplar" low energy technology and incorporate a sustainable design approach. The original and separate plant room would be attached to the eastern most group. The track, to be widened in places, leads from the assemblage of buildings adjacent to the hotel and beyond the curtilage of Arntibber Cottage, which is largely screened by the woodland adjoining the hotel. Each lodge would have balconies projecting southwards. The extent of underbuilding has been reduced and grassed banking would be formed to ease the assimilation of the buildings into the surrounding land. Dry-stone walls around the parking areas would seek to minimise any potential light pollution and the specification for balcony lighting could also reduce light pollution.

5. Within the national park and north-westwards from the group of buildings at Milton of Clova the unspoilt upper part of Glen Clova is substantially uninhabited apart from very few isolated and traditionally designed houses such as Braedownie, Mains of Glen Clova and Parkhead Cottage. The flat valley floor of upper Glen Clova is characterised by steep side slopes, corries and rocky outcrops. It draws the eye to the unspoilt mountain massif of the inner Cairngorm Mountains in the central part of the national park. In and surrounding the glen recent and extensive timber extraction has brought about landscape change in contrast to the broadleaved woodland both between Parkhead Cottage and Milton of Clova, and that north-east of the hotel which serves to assist in screening the cluster of timber chalets. Despite the recent commercial timber extraction I find upper Glen Clova to be an exceptionally attractive mountain landscape.

### *The development plan*

6. Both the appellant and the planning authority refer to six policies within the adopted Cairngorms National Park Local Development Plan 2021. I find that the following policies are key to my consideration of the appeal.

7. Policy 2: 'Supporting Economic Growth', amongst other things, is supportive of development which enhances tourism and leisure-based business and which makes a positive contribution to a year-round economy, provided there are no adverse environmental or amenity impacts. Policy 3: 'Design and Placemaking' requires all development to meet the six tests set out in Scottish Planning Policy (SPP). Additionally twelve individual tests must be met including the need for development to be sympathetic to the traditional pattern and character of the surrounding area. Policy 4: 'Natural Heritage' sets out the provisions to be taken into account where a proposal could affect an internationally or nationally designated site, woodlands, protected species and biodiversity. Policy 5: 'Landscape' provides that, subject to two tests, there is a presumption against any development that does not conserve or enhance the landscape character and special landscape qualities of the Cairngorms National Park, including wildness and the setting of the proposal. Policy 9: 'Cultural Heritage' provides the framework for assessing a proposal that could affect both designated and non-designated aspects of the cultural heritage. Finally Policy 10: 'Resources' sets out the necessary matters to be taken into account such as the water environment and waste management. I set out in paragraph 22 those parts of the non-statutory guidance published by the CNPA in respect of policies 2, 3, 4, 5, 9 and 10 as material considerations and I shall address each local development plan policy in turn.

#### *Supporting economic growth*

8. Policy 2 'Supporting Economic Growth' aims to enable and encourage appropriate economic development within the national park and supports, amongst other things, development which enhances tourism and leisure-based business activities that have no adverse environmental or amenity impacts on the site. However, all such proposals must be appropriate and compatible with their surroundings and contribute to the sustainable growth of the national park's economy.

9. As acknowledged by CNPA the appellant's Glen Clova Hotel and estate are popular year-round visitor destinations. The hotel currently employs some 19 permanent members of staff and an unspecified number of temporary staff. The appellant submits that existing accommodation is "consistently" occupied to capacity and the appeal proposal would complement the hotel and it would support these existing jobs and "potentially" give rise to additional employment. As such it is argued that the wider economy could benefit from the proposal, in accordance with Scotland's Tourism Strategy 2020. The proposal would be well-placed for visitors to access a range of tourist destinations elsewhere in Angus and the wide range of outdoor activities available locally. The CNPA concludes that the principle of the development is "likely to accord" with Policy 2, but subject to compliance with other relevant local development plan policies that satisfactorily address other environmental or amenity impacts in detail.

10. The appellant's evidence advises that there is a "pressing need" for lodge accommodation in Glen Clova and concludes that there would be a "potential" increase in employment if the development were to proceed, particularly with some temporary employment during its construction period and servicing jobs thereafter. However there would be no social or economic benefits of national importance and I did not observe any other commercial visitor facilities between Kirriemuir and Glen Clova which could otherwise benefit from revenue resulting from the occupation of the chalets. In conclusion, I have noted the contribution that would be forthcoming to the existing hotel business, and the wider benefits to the range of visitor accommodation available or to the local economy. However, as I describe below, I judge that those more focussed benefits do not outweigh

the significant adverse effects on the landscape character, visual amenity and the special landscape qualities of the Cairngorms National Park. I therefore conclude that the proposal is contrary to Policy 2 of the local development plan.

### *Design and Placemaking*

11. Policy 3: 'Design and Placemaking' requires that all developments must be accessed safely and designed to be sympathetic to the traditional pattern and character of the surrounding area, local vernacular, and local distinctiveness, whilst encouraging innovation in design and use of materials. Policy 3 also aims at ensuring that all development in the national park delivers high standards of design and placemaking and contributes to the national park's special sense of place. The policy promotes the highest standards of siting and design.

12. To address the requirements of Policy 3 the appellant refers to what is described as the support in principle for development at the hotel as expressed by the CNPA planning committee when determining the planning application. To reinforce this view it is contended that the site comprises "brownfield land" and the proposal is "infill development" between Arntibber Cottage and Parkhead Cottage. Furthermore the revised linear form fits within the site's contours without the need for excavation. A planning condition requiring the approval of all finishing materials and additional tree planting to augment current screening would be acceptable. Overall the appellant contends that the proposal would not result in a significant adverse effect on landscape character, visual amenity, and the special landscape qualities of the national park and that there is no evidence to support the refusal of the proposal.

13. In contrast the CNPA describes the site as being characterised by the openness between the woodland surrounding the Clova Hotel and a mixed woodland to the west. The siting and the form of the chalets would be out of character with the traditional pattern of development and with the surrounding open landscape. The buildings would be tantamount to discordant ribbon development. Similarly, the design of the lodges would be incongruous and would contrast with local vernacular architecture due to the chosen design. The proposed external finishes of coloured horizontal cement fibre cladding and the introduction of the covered balconies and balustrades would be out of keeping with the character and form of development which is otherwise local to Glen Clova.

14. Drawing these strands together, I have noted that there are positive attributes in the appearance of the lodges, which would display beneficial elements of sustainable design including energy efficiency, and they could help to financially support the adjacent hotel. Overall they may not look out of place in other less sensitive locations. However I have described in paragraph 5 my findings on the overall spatial characteristics of that part of upper Glen Clova within the national park boundary. Contrary to the appellant's contention I have no evidence that the appeal site has previously been developed and consequently I do not consider it to be 'brownfield land', as so defined in the glossary to the local development plan and as otherwise contended by the appellant. Nor can it be classified as 'infill development' given the extensive distance between Parkhead Cottage and Arntibber Cottage.

15. In my judgement the architecture, design, and the linear grouping of the proposed buildings would be a visible alien feature in the context of the pattern of development elsewhere in that part of upper Glen Clova within the national park. Their presence would extend built development into the otherwise unspoilt countryside north-west of the hotel that is punctuated in its vicinity by only a very few vernacular designed houses. The other

cluster of buildings at Milton of Clova is otherwise well contained south of Arntibber Cottage by the two substantial modern agricultural buildings and the hard surfaced agricultural yard and storage area. In this very sensitive location I conclude that the proposal would not be of an appropriate high standard of design nor placemaking and it would not contribute to the national park's special sense of place, contrary to Policy 3 of the local development plan.

### *Landscape*

16. Policy 5: 'Landscape' presumes against any development that does not conserve or enhance the landscape character and special landscape qualities of the Cairngorms National Park including wildness and the setting of the proposed development.

Development that does not complement or enhance the landscape character of the national park nor its setting will be only permitted where any significant adverse effects on the special landscape qualities of the national park are clearly outweighed by social or economic benefits of national importance. Additionally all the adverse effects on the setting of the proposed development are to be minimised and mitigated through appropriate siting, layout, scale, design and construction to the satisfaction of the CNPA.

17. The appellant acknowledges Glen Clova as having unique landscape qualities and ecological interest and the "key issue" in this appeal relates to the impact of the proposal on the landscape character and visual amenity of the area. I have described above how the proposal's design has been revised and seeks to minimise the impact on the landscape and its character and in order to address the CNPA's initial concerns. This revised submission illustrates the lodges being set against a background of extensive tree planting which would change the backdrop to the development, in the medium to long term. However this afforestation does not form part of the appeal proposal. Although planning permission may not be required for the scheme, I have no certainty that it would be implemented, and when.

18. The appeal site is not within an area of wild land, nor is it within a national scenic area. Nevertheless I have described its significant landscape attributes in paragraph 5, and how the River South Esk meanders through the flat valley floor within the largely unspoilt, upper Glen Clova with its backdrop of rugged mountain scenery and its views to the more remote and higher mountains to the north.

19. The appeal site is visible in north-easterly views as seen by southbound drivers, cyclists and walkers leaving the glen on the B995. From here the linear grouping of lodges for the most part would be punctuated only to a limited extent by the existing trees, and only when they are in leaf. The small scale of the proposed new trees, and the shielding by existing trees during the winter months, would give only limited assistance in screening the lodges and parked cars in views from the road towards the rising and wilder scenery beyond that is seen from this lower part of the Glen. From the north-east and from more elevated views elsewhere the proposal would be observed from nearby hills and mountains and, most noticeably and frequently by walkers to and from Loch Brandy, a popular core path publicised and signposted from Milton of Clova. Although not throughout, but from many lower parts of this core path, the linear alignment of the lodges, their access and visitors' parked cars would be seen leading westwards from Arntibber Cottage, disrupting views to the River Esk and the flat land below from where it rises to the steep slopes leading of the Hill of Strone and the characteristic corries beyond.

20. I judge that the siting of the proposed lodges is not in keeping with the character of traditional cottages and outbuildings that can be seen albeit rarely and sporadically throughout the surrounding landscape. Nor does it compare with the built tourist accommodation to the east of the Glen Clova Hotel which, for the most part, is well

screened in the adjoining woodland. Despite their now greater separation the proposed eight lodges would introduce a relatively uniform ribbon development across the open slopes between two wooded areas, where otherwise tourist development has been focussed to the east of the main group of buildings surrounding the hotel. In its current form, layout and design, the proposed development would result in significant adverse effect on the landscape character, visual amenity, and special landscape qualities of the Cairngorms National Park. I have found that there would be no social or economic benefits of national importance that offset the proposal's adverse landscape impact. I therefore conclude that the appeal proposal is contrary to Policy 5: 'Landscape' of the Cairngorms National Park Local Development Plan 2021. I describe in paragraph 24 key aspects of the CNPA's non statutory guidance (NSG) on landscape and which contains references to the landscape character of the upper Angus Glens and Upper Glen Clova, and its special landscape qualities.

### *Natural Heritage, Cultural Heritage, and Resources*

21. Policy 4: 'Natural Heritage' seeks to ensure that there is no adverse impact from the proposal upon designated areas, protected species or biodiversity. The appellant's Habitats Regulations Appraisal (HRA) considers the effects of the proposal upon the conservation objectives of the Cairngorms Special Protection Area (SPA) and the South Esk Special Area of Conservation (SAC). The CNPA's ecology officer and NatureScot have agreed with the conclusions of the HRA and I am satisfied that the proposal would not conflict with Policy 4: 'Natural Heritage'. Similarly Policy 9: 'Cultural Heritage' seeks to conserve and enhance features of historic or archaeological significance, or to avoid, minimise or mitigate and adverse effects on them. Although there may be archaeological remains in and close to the site a suspensive condition requiring an approved scheme of archaeological investigations would mean that the proposal could comply with Policy 9 'Cultural Heritage'. Policy 10: 'Resources' requires that surface water is dealt with accordingly, that all new development is free from flood risks and that there is no significant adverse impact on existing or private water supplies. I have no evidence to suggest that, subject to planning conditions, the requirements of Policy 10 could not be met.

### **Material Considerations**

#### *Non-Statutory Guidance (NSG)*

22. The suite of NSG recently published by the CNPA provides more details about compliance with the local development plan's policies but does not form part of the local development plan. It is nevertheless an important material consideration relevant to my determination. The NSG that is relevant to this appeal relates to Policy 2 'Supporting Economic Growth', Policy 3 'Design and Placemaking', Policy 4 'Nature Conservation', Policy 5 'Landscape', Policy 9 'Cultural Heritage' and Policy 10 'Resources'.

23. In particular the NSG on design and placemaking sets out detailed design and landscape considerations to enable integration of new development with the national park's landscape. In my dismissal of the appeal it strengthens my application of Policy 3. Specifically and contrary to the appellant's view it confirms that the proposal could not be considered as infill development. The NSG repeats the six qualities of successful places described in Scottish Planning Policy and I find the appeal proposal to broadly reflect several aspects of these criteria. However I have set out above how the proposal does not complement local features such as landscapes and skylines, topography, spaces, and scales, building form, materials and detailing. I conclude that my dismissal of the appeal is consistent with the NSG entitled 'Design and Place Making'.

24. The appellant agrees that landscape impact is a “key consideration” in the appeal and I accordingly attach considerable weight to the contents of the NSG on landscape. The landscape character type (LCT) that embraces the appeal site and its contribution to the national park’s special landscape qualities (SLQ’s) relative to my determination of the appeal are identified in the NSG entitled ‘Landscape’. As such the appeal site lies within LCT ‘Upper Glen Clova’ and its special landscape qualities embrace ‘landscapes both cultural and natural’, ‘broad farm straths’, ‘a strong juxtaposition of contrasting landscapes’ and a ‘landscape of layers from inhabited strath to remote, uninhabited upland’. I describe above that my dismissal of the appeal on the basis of the statutory development plan is supported by the associated NSG ‘Landscape’.

25 My decision to dismiss the appeal is consistent with the NSG related to local development plan policies Policy 2, Policy 3, Policy 4, Policy 5, Policy 9 and Policy 10.

26. The appellant submits that Scottish Planning Policy (SPP) and draft National Planning Framework 4 (NPF4) support the proposal. The appellant also refers to the Scottish Government’s National Strategy for Economic Transformation entitled “Delivering Economic Prosperity”, published in March 2022 and which, amongst other things, identifies opportunities for nature restoration, eco-tourism, and nature-based solutions to climate change. To the appellant the proposal accords with this objective. I have noted those aspects of support for the appeal proposal within these documents, but they do not outweigh the development plan considerations and the non-statutory guidance to which I have referred.

### *Representations and consultations*

27. I note that no objections to the proposal from Scottish Water nor Angus Council’s environmental health and roads teams. The North East Mountain Trust, in an objection, are concerned about landscape impacts and seek additional tree planting if the development was to proceed. Angus Council’s roads team raise no objections to the development in terms of road safety.

### **Conclusion**

28. Overall I conclude that the appeal proposal would result in significant adverse effects on the landscape character, visual amenity, and special landscape qualities of the Cairngorms National Park. It would introduce a form of development whose scale and design would not be sympathetic to, nor complement, the surrounding landscape which in turn would have an adverse impact on the character and setting of upper Glen Clova. The appeal proposal is not supported by Policy 2: ‘Supporting Economic Growth’, Policy 3: ‘Design and Placemaking’ nor Policy 5: ‘Landscape’ of the Cairngorms National Park Local Development Plan 2021. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Chris Norman*  
Reporter