

APPROVED COMMITTEE MINUTES

CAIRNGORMS NATIONAL PARK AUTHORITY

APPROVED MINUTES OF THE PLANNING COMMITTEE

held at Community Hall, Boat of Garten
on 13 February 2015 at 11.00am

Present

Peter Argyle (Deputy Convenor)	Bill Lobban
Duncan Bryden	Eleanor Mackintosh (Convenor)
Paul Easto	Mary McCafferty
Dave Fallows	Katrina Farquhar
Jeanette Gaul	Fiona Murdoch
Kate Howie	Gordon Riddler
Gregor Hutcheon	Gregor Rimell
John Latham	Willie McKenna
Angela Douglas	

In Attendance:

Simon Harrison, Head of Planning
Peter Ferguson, CNPA Legal Advisor, Harper MacLeod LLP
Bruce Luffman, Enforcement Officer
Matthew Hawkins, Landscapes and Ecology Manager
Alix Harkness, Clerk to the Board
Stephanie Lawrence, Planning Support Officer

Apologies: Brian Wood

Agenda Items 1 & 2:

Welcome & Apologies

1. The Convenor welcomed all present.
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, 16 January 2015, held at Community Hall, Boat of Garten were approved subject to the following amendments:
 - Para 3: Relating to Para: 28 of the Minutes of 19 December 2014 to be amended to read: “The reason for deferral was to allow the flood risk assessment to be reviewed and had nothing to do with the fencing...”
 - Para 32: To be reworded to read “The Convenor reminded Members that, due to our procedures surrounding Call-In and applications associated with previous CNPA determinations, rather than the proposal itself, then any subsequent applications on the site would most likely be Called-In by the Cairngorms National Park Authority”.
4. There were no matters arising.
5. The Convenor provided an update on the Action Points from the previous meeting:
 - Action Point at Para. 17: the applicant had been advised of the reasons for deferral but CNPA had been unable to obtain written agreement from the Crown Estate and the applicant in time for the application to be re-presented to this next planning committee.;
 - Action Point at Paras. 24 & 29: Consideration has concluded that a legal agreement, rather than a planning condition, is required and advice is being sought from Harper Macleod LLP on the terms of this agreement. Once concluded, the application can then be brought back before the Planning Committee.

Agenda Item 4:

Declaration of Interest by Members on Items Appearing on the Agenda

6. Bill Lobban declared an interest in:
 - Item No. 6 - Direct – As an objector to the proposals.

Agenda Item 5:

Report on Called-in Planning Application:

Remediation works & permanent retention of section of temporary track & associated bridges. (Resubmission 2013/0330/DET)

At Drumochter Lodge, Dalwhinnie, Highland

(2014/0339/DET) (Detailed Planning Permission)

8. The Convenor informed Members that a request to address the Committee had been received, within the given timescale, from:
 - Representee – George Allan, North East Mountain Trust
9. The Convenor informed Members that the Agent, Robert Patrick was also present and able to take questions.
10. The Committee agreed to the requests.

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11. Simon Harrison presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
12. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:
 - a) Could it be explained whether Scottish & Southern Energy (SSE) would be in breach of their planning consent for this application? Peter Ferguson, CNPA Legal Advisor advised that the planning consents awarded to SSE under the S37 Electricity Act contain an obligation to fully reinstate this track. This proposed application seeks the permanent retention of a section of this track, which if approved by the CNPA planning committee, would not relieve SSE of their obligations under the terms of the S37 consent. He added that SSE's obligations do not prevent the applicant making this application to CNPA., and that SSE would still need to apply to the Scottish Government for an amendment to their S37 consent and associated obligations separately from this application. Peter Ferguson advised that an Informative could be added which clearly states that the permission does not supersede the S37 Electricity Act.
 - b) If the application was approved as it stands would the commencement of works be dependent on SSE being granted the amendment of conditions by the Scottish Government? Peter Ferguson advised that this was correct and that the existing obligations in the S37 consent would need to be approved separately by the Scottish Government before works could commence.
 - c) In reference to Para 29 and Para 68, do they contradict each other? Simon Harrison advised not, but that it is for the Planning Committee to accord weight as they see fit. Simon advised that he is comfortable with it for the reasons stated in the Report. He added that having it as a planning condition could produce a better outcome however an Informative could adequately address this.
 - d) If this consent was granted today would it create a precedent for the rest of the Beaully to Denny tracks? Simon advised that each application would need to be considered upon its own merits and therefore this could not be used as a precedent.
 - e) Does the track link into Quartz Road, will there be a turning circle at the northern tip of the track? Simon Harrison was unable to answer this question therefore it was agreed that it would be put to the Agent.
 - f) If the Scottish Government were to grant permission to SSE would this permission supersede the Cairngorms National Park Authority Planning Committee's permission? Simon advised that it would but that one of the advantages would be that the CNPA would be consulted as a matter of course prior to any permission being granted. The decision of this committee in relation to this current planning application would therefore be a consideration of considerable weight in any consultation by Scottish Government.

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13. George Allan was invited to address the Committee. The presentation covered the following points:
- North East Mountain Trust is a voluntary body which represents the interests of walkers and mountain hill walkers;
 - The tracks are visually detrimental to the landscape and were to be removed once they were no longer required for the construction phase;
 - The convenience of the estate should not be a consideration, anything beyond road safety is not a reason;
 - Application argues for road safety issue for the estate workers and estate vehicles and a plea to the Planning Committee to postpone the decision until it is known what the dualling of the A9 will entail;
 - Fully supportive of condition 3 which prescribes that a band of native trees are planted as it goes some way to reducing the track's visibility.
 - Request that an additional condition be added, if application is approved, which states that the woodland and coniferous belt should never be felled;
 - The North East Mountain Trust have had lots of involvement in tracks in the past and would encourage the Estate to work closely with the Cairngorms National Park Authority to ensure all is worked out to the letter and within the agreed timescales.
14. The Committee were invited to ask questions of the speaker but no points were raised.
15. The Convenor thanked the speaker.
16. The Agent, Robert Patrick was invited to answer Members questions of clarification:
- a) Does the track link into Corpse Road, will there be a turning circle at the northern tip of the track? Mr Patrick advised that at the northern tip of the path was a sheep fank which was already in use by a tenant sheep farmer and would not be used by shooting vehicles. The track joins up with an existing track to Drumochter Lodge and onto the hill track. He went on to advise that there are currently 7 or 8 access tracks from the proposed track to access the A9. He added that at present this involves Estate staff travelling up the A9 and turning right onto one of these access tracks as a means of getting to the hill track. He advised that the main concern is that using the A9 would not be possible once it is dualled because Transport Scotland intend on prohibiting right hand turning for reasons of road safety.
 - b) If permission is granted would the Applicant have the commitment to carry out the improvements within the timescales involved? Mr Patrick agreed and advised that they had a local contractor on board who has experience of working in the Cairngorms National Park.
 - c) What could be done to mitigate the visibility of track had the estate agreed that the trees could remain in place rather than be taken down? Mr Patrick advised that he could not confirm that they would never chop the trees down however he could advise that they did not plan to in the near future. He advised that the Estate planned to plant trees to the right of the existing tree line however he could not agree to anything on behalf of the Applicant at this time. Simon Harrison drew the Planning Committee's attention to Condition 3 and advised that this condition would

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cover all the aspects that had been discussed. Simon went on to advise that he was happy to add the words 'no development shall commence until proposals for the planting (continuous cover) and future maintenance of a 5 meter wide native woodland planting belt in addition to the existing trees extending along the eastern edge of the existing planting, have been approved in writing by the CNPA acting as planning authority. The Planning Committee agreed to this rewording of Condition 3.

- d) If when the A9 is dualled and if the trees needed to be removed, would placing such a condition cause a problem? Simon Harrison advised that the application has to be appraised on its merits as it stands. Matthew Hawkins advised that the alignment of the A9 had not yet been planned however if the removal of trees was, mitigation measures would be put in place.

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

- a) Would Condition 8 make allowances for hill walkers being able to continue to access the Munro's? Matthew Hawkins advised that the A9 developers would have to take the track into consideration.
- b) Apprehension around Condition 5 and the impact on public access if the existing track is closed off. Matthew Hawkins advised that Transport Scotland intend on removing smaller junctions onto the A9 from estates and farmland and are aware of the need to allow people to cross the road. They will consider a number of options that facilitate this with the need to cross the carriageway. Simon Harrison advised that Transport Scotland would reinstate their objection to this application if it was not for Condition 5.
- c) Concern remained with Condition 8 as under Access legislation members of the public cannot get onto the track via Drumochter Lodge as one would need to go through the curtilage of the building. Simon Harrison agreed and requested time to draft a suitable condition.

18. The Committee agreed to approve the application subject the conditions stated in the report with the following amendments:

- a) Condition 3: To be amended to include 'No development shall commence until proposals for the planting (continuous cover) and future maintenance of a 5 meter wide native woodland planting belt in addition to the existing trees extending along the eastern edge of the existing planting, have been approved in writing by the CNPA acting as planning authority. .
- b) Condition 8: To reword the condition to ensure public access is permitted.
- c) Informative 4: To make it clear to the Applicant that the consent having been granted does not supersede SSE's S37 consent and any amendments to the S37 consent would need to be considered and complied with separately.

19. Action Points arising: Planning Officers to make changes to conditions 3 and 8 as listed in paragraph 18 above.

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Planning Officers to amend Informative 4 to include reference to SSE and planning conditions.

20. The Planning Committee paused for a 5 minutes comfort break.
21. Bill Lobban left the room for the duration of the discussion of Item 6.

Agenda Item 6:

Report on Approval of Matters Specified in Conditions (2013/0073/MSC) and Approval of Matters Specified in Conditions (2013/0074/MSC)

At Dalfaber, Aviemore, Highland

22. Simon Harrison presented a paper recommending that the Committee support a recommendation to REFUSE planning permission for the MSC applications 2013/0073/MSC and 2013/0074/MSC, on the following grounds:
 - That the Planning Permissions in Principle to which the two MSC applications relate (Ref: 07/0144/CP and 07/145/CP) are no longer capable of being implemented and have expired.
23. The Convenor reminded the Planning Committee that they should have received electronic correspondence from Mr Reid. She added that Mr Reid was present to answer questions if required.
24. Peter Ferguson provided the Planning Committee with a summary of the legal complexities surrounding the applications.
20. The Committee were invited to ask the Head of Planning points of clarification, the following were raised:
 - a) Mr Ferguson, in his verbal summary, had referred to a 2 year time period, a 3 year time period and a 4 year time period. Could these time limits be explained? Peter Ferguson apologised for any reference to 4 years – he had meant 3 years. He advised that in accordance with Section 59 (2) of the 1997 Planning Act, applications for all MSCs must be submitted within 3 years of the date of the decision notice relating to the relevant planning permission in principle (PPIP). Once the last of the MSCs is approved, a further 2 year period starts, and the Applicant has 2 years thereafter to implement the permission. However in this case, the applicant was now out of time because not all MSCs had been applied for within 3 years as required. The 2 year period was therefore irrelevant.
 - b) Is this a competent reason for refusing? Simon Harrison advised that this scenario is unique in his experience and advised that the problem only really arose when the legislation changed in 2009. He added that he was aware of similar circumstances

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beginning to arise elsewhere in Scotland. Having taken guidance from the CNPA legal advisor and their interpretations of the Planning Act as it currently stands, and where one MSC remains outstanding but which cannot now be determined, then the only way forward is to refuse the application not on its planning merits, but rather on legal grounds. This would still provide the applicant with a right of appeal. In addition, Simon highlighted that the Applicants have started the required 3 month pre-application process (PAC), in accordance with his advice, and so it was anticipated that a fresh PPIP application would be forthcoming which could then be determined in due course without this legal issue. The outstanding work undertaken would therefore not be wasted but could be utilised in the determination of this fresh application.

d) Clarification as to the stage at which the CNPA would call-in any new application relating to the sites. Simon Harrison advised that they would be called-in as and when they were submitted.

21. The Committee agreed that they were looking forward to the new application and therefore agreed to support the recommendation as stated in the report.

22. **Action Points arising: None.**

23. Bill Lobban returned to the meeting at this point.

Agenda Item 7:

Enforcement Issues at Badaguish Activity Centre, Glenmore

24. The Committee took this Item in a Confidential Session due to reasons of legal confidentiality.

Agenda Item 8:

Any Other Business

25. Gregor Rimell asked for information regarding a retrospective application on the Co-op site in Newtonmore. The Convenor advised that the application had been called-in and therefore should not be discussed until it came before Planning Committee at a later date.

26. **Action Points arising: None.**

Agenda Item 9:

Date of Next Meeting

27. Friday 13 March 2015 at Community Hall, Boat of Garten.

28. Committee Members are requested to ensure that any Apologies for this meeting are submitted to the Clerk to the Board, Alix Harkness.

29. The public business of the meeting concluded at 12.56