
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

Prepared by: ANDREW TAIT, SENIOR PLANNING OFFICER (DEVELOPMENT MANAGEMENT)

DEVELOPMENT PROPOSED: CREATION OF 450M OF HILL TRACK, REINSTATEMENT OF 477M OF HILL TRACK, RE-BUILDING OF 377M OF HILL TRACK AND RE-OPENING OF BORROW PIT, LAND AT GLEN GAINR

REFERENCE: 2012/0126/DET

APPLICANT: INVERCAULD ESTATE c/o STRUTT AND PARKER, BANCHORY OFFICE

DATE CALLED-IN: 27 APRIL 2012

RECOMMENDATION: APPROVAL



Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. The site is located to the north of Deeside, high in Glen Gairn where it divides the Munro of Ben Avon from the Corbett's Carn Liath and Culardoch. In this area the bottom of the glen is flat and a track runs alongside the south bank of the River Gairn after crossing a bridge from the north bank.
2. This application seeks to rationalise a number of tracks in the area the key elements of the proposal are:
 - The re-routeing of a 450m section of 4x4 track away from the Gairn;
 - The reinstatement and restoration of 477m of existing track (largely along the riverbank);
 - The re-building of an existing 337m section of existing 4x4 hill track;
 - The re-opening of a borrow pit to provide material for the above.



Fig. 2- Site of works area, track alongside left bank of river to be restored, new track (red line) to be on shelf set back from flood plain.

3. The rationale behind the proposals is to remove a section of track away from the Gairn, where it is subject to flooding resulting in potential for release of sediment into the river and to replace this with a new track in a drier area

set back from the flood plain of the river. The reinstatement of the section of track alongside the river will mitigate for the loss of habitat from the new section of track. The third element involves the rebuilding of an existing track across a wet area to create a better running surface so that vehicles will be contained to the track stopping a proliferation of wheel ruts.



Figure, 3- View of track to be restored alongside river, replacement track in red.

4. The proposals have been designed to take account of a number of designations in the area. These are Cairngorms Special Area of Conservation (SAC) (birds, otter, open water), Eastern Cairngorms Site of Special Scientific Interest (SSSI) (breeding birds and fish- Arctic Charr in Loch Builg), Cairngorms Massif Special Protection Area (SPA) (Golden Eagles) and River Dee Special Area of Conservation (SAC) (salmon, otter, freshwater pearl mussel). Given the number of designations the applicants undertook pre-application discussions with SNH and the CNPA. The application has been submitted with a supporting statement and this is attached at the back of the report.
5. On visiting the site at the end of June contractors vehicles were in place. However, no works were being carried out, though some limited maintenance works had been carried out on the route to the site. The construction period is expected to take 21 days.

DEVELOPMENT PLAN CONTEXT

National policy

6. **Scottish Planning Policy¹ (SPP)** is the statement of the Scottish Government's policy on nationally important land use planning matters. It supersedes a variety of previous Scottish Planning Policy documents and National Planning Policy Guidance. Core Principles which the Scottish Government believe should underpin the modernised planning system are outlined at the outset of **SPP** and include:
 - The constraints and requirements that planning imposes should be necessary and proportionate;
 - The system shouldallow issues of contention and controversy to be identified and tackled quickly and smoothly; and
 - There should be a clear focus on quality of outcomes, with due attention given to the sustainable use of land, good design and the protection and enhancement of the built and natural environment.
7. **SPP** emphasises the key part that development management plays in the planning system, highlighting that it should “operate in support of the Government's central purpose of increasing sustainable economic growth.” Para. 33 focuses on the topic of Sustainable Economic Growth and advises that increasing sustainable economic growth is the overarching purpose of the Scottish Government. It is advised that “the planning system should proactively support development that will contribute to sustainable economic growth and to high quality sustainable places.” Planning authorities are encouraged to take a positive approach to development, recognising and responding to economic and financial conditions in considering proposals that would contribute to economic growth.
8. Under the general heading of Sustainable Development, it is stated that the fundamental principle is that development integrates economic, social and environmental objectives, and that the “aim is to achieve the right development in the right place.”
9. As a replacement for a variety of previous planning policy documents the new **Scottish Planning Policy** includes ‘subject policies’, of which many are applicable to the proposed development. Topics include rural development, and landscape and natural heritage. The following paragraphs provide a brief summary of the general thrust of each of the subject policies.
10. *Rural development*: Para. 92 of **Scottish Planning Policy** states in relation to rural development that the “aim should be to enable development in all rural areas which supports prosperous and sustainable communities whilst

¹ February 2010

protecting and enhancing environmental quality.” All new development is required to respond to the specific local character of the location, fit in the landscape and seek to achieve high design and environmental standards.

11. Landscape and natural heritage: The **Scottish Planning Policy** document recognises the value and importance of Scotland’s landscape and natural heritage. It is accepted that landscape is constantly changing and the aim is to facilitate positive change whilst maintaining and enhancing distinctive character. As different landscapes have different capacities to accommodate new development, the siting and design of development should be informed by landscape character. There is also an acknowledgement that the protection of the landscape and natural heritage may sometimes impose constraints on development, but the potential for conflict can be minimised and the potential for enhancement maximised through careful siting and design.
12. **Scottish Planning Policy** concludes with a section entitled ‘Outcomes’ in which it is stated that the “planning system should be outcome focused, supporting the creation of high quality, accessible and sustainable places through new development, regeneration and the protection and enhancement of natural heritage and historic environmental assets.” Planning authorities are required to be clear about the standard of development that is required. Quality of place not only refers to buildings, but also how the buildings work together as well as the relationships between buildings and spaces. Design is highlighted as an important consideration and planning permission may be refused solely on design grounds.² Finally it is stated that the planning system should be “judged by the extent to which it maintains and creates places where people want to live, work and spend time.”
13. **Cairngorms National Park Partnership Plan (2012-2017)**
The Cairngorms National Park Plan sets out the vision and overarching strategy for managing the Park and provides focus and priorities at a time of limited financial resources. The Plan also provides a strategic context for the Local Development Plan and shows how the four aims of the National Park can be achieved together. Three long term outcomes address the interaction of three characteristics of the National Park recognising that: the Park is an internationally important area for nature conservation; the CNP is a fragile rural economy, and; the CNP is an internationally known tourism destination.
14. The heading- ‘Success in being a sustainable economy supporting thriving business and communities means that’ the special qualities of the Park will have stimulated growth and diversification in the economy. The heading ‘Success in being a special place for people and nature with natural and cultural heritage enhanced means that’ the distinct character of the Park’s landscape and its diverse mix of mountains, straths, glens, forest and farmland will continue to be conserved and enhanced. The sense of wildness, particularly in the high mountain areas, will be enhanced and renowned as a particular special quality that continues to be enjoyed by many. The Park will

² Para. 256.

also continue to have a rich and enhanced biodiversity which will be better connected and able to adapt to changing climate. The heading 'Success in people enjoying the Park through outstanding visitor and learning experiences means that: The CNP will be renowned in Scotland and internationally as a protected area as well as being a world class sustainable tourism destination, there will also continue to be an excellent and integrated network of routes to enjoy outdoor access.

Local Plan Policy

Cairngorms National Park Local Plan (2010)

15. The Cairngorms National Park Local Plan was formally adopted on 29th October 2010. The full text can be found at :
<http://www.cairngorms.co.uk/planning/localplan/pdf/19-Aug-10-Local-Plan-with-PIMs-included-for-web-23-Aug.pdf>
16. The Local Plan contains a range of policies dealing with particular interests or types of development. These provide detailed guidance on the best places for development and the best ways to develop. The policies follow the three key themes of the Park Plan to provide a detailed policy framework for planning decisions:
 - Chapter 3 - Conserving and Enhancing the Park;
 - Chapter 4 - Living and Working in the Park;
 - Chapter 5 - Enjoying and Understanding the Park.
17. Policies are not cross referenced and applicants are expected to ensure that proposals comply with all policies that are relevant. The site-specific proposals of the Local Plan are provided on a settlement by settlement basis in Chapter 6. These proposals, when combined with other policies, are intended to meet the sustainable development needs of the Park for the Local Plan's lifetime. The following paragraphs list a range of policies that are appropriate to consider in the assessment of the current development proposal.
18. Policy 1 Natura 2000 Sites: development likely to have a significant effect on a Natura 2000 site would be subject to an appropriate assessment. Where an assessment is unable to ascertain that a development will not adversely affect the integrity of the site, the development will only be permitted where,
 - (a) There are no alternative solutions; and
 - (b) There are imperative reasons of overriding public interest including those of a social or economic nature.
19. Policy 2- National Natural Heritage Designations: development that would adversely affect the Cairngorms National Park, a Site of Special Scientific Interest, National Nature Reserve or National Scenic Area will only be permitted where it has been demonstrated that: a) the objectives of designation and overall integrity of the designated area would not be compromised; or b) any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social or economic

benefits of national importance and mitigated by the provision of features of commensurate or greater importance to those that are lost.

20. Policy 4 Protected Species: development which would have an adverse effect on any European Protected Species will not be permitted unless there are imperative reasons of overriding interest, including public health or public safety; there is no satisfactory alternative solution; and the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range. The policy is intended to ensure that the effects of development proposals on protected species are fully considered by the planning authority. Developers will be required to undertake any necessary surveys for species at their own cost and to the satisfaction of Scottish Natural Heritage and the planning authority.
21. Policy 5 – Biodiversity : development that would have an adverse effect on habitats and species identified in the Cairngorms Biodiversity Action Plan, UK Biodiversity Action Plan, or by Scottish Ministers through the Scottish Biodiversity List, will only be permitted where
 - (a) The developer can demonstrate that the need and justification for the development outweighs the local, national and international contribution of the area of habitat or population of species; and
 - (b) Significant harm or disturbance to the ecological functions, continuity and integrity of the habitats or species populations is avoided, or minimised where harm is unavoidable, and appropriate compensatory and / or management measures are provided and new habitats of commensurate or greater nature conservation value are created as appropriate to the site.
22. Policy 6 – Landscape: there will be a presumption against any development that does not complement and enhance the landscape character of the Park, and in particular the setting of the proposed development. Exceptions will only be made where any significant adverse effects on the landscape are clearly outweighed by social or economic benefits of national importance and all of the adverse effects on the setting of the proposed development have been minimised and mitigated through appropriate siting, layout, scale, design and construction.
23. Policy 34 – Outdoor Access: the policy encourages development which improves opportunities for responsible outdoor access and adheres to the Cairngorms Outdoor Access Strategy. Development proposals which would result in a reduction of public access rights, or loss of linear access (such as core paths, rights of way, or other paths and informal recreation areas) will only be permitted where an appropriate or improved alternative access solution can be secured.
24. The CNP Local Plan is the subject of an appeal under section 238 of the Town and Country Planning (Scotland) Act 1997 against the decision of the CNPA to adopt the CNP Local Plan 2010. The Appeal will be decided by the Court of Session and is a material consideration. Therefore, account has been

taken of the Appeal in the determination and recommendation made in respect of this application.

CONSULTATIONS

25. **Scottish Natural Heritage (SNH)** note that the proposal site lies within the Cairngorms SAC, Cairngorms SPA, the Cairngorms Massif SPA and is adjacent to the Gairn which forms part of the River Dee SAC.
26. SNH comment that the proposal does raise natural heritage issues of national interest. However, based on the information provided by the applicant, SNH has no objection to the proposals. Advice is offered to further reduce any potential impacts to the River Dee SAC, and Cairngorms SAC and to build on the existing restoration proposals. The CNPA are required to carry out an appropriate assessment of the proposal in view of the sites conservation objectives with regard to the Cairngorms SAC and the River Dee SAC. However, it is SNH's view that based upon the information provided the proposals will not adversely affect the integrity of the site. SNH also conclude that the proposal is unlikely to have any significant impacts on the features of the Eastern Cairngorms SSSI. With regard to the SPA the proposals are unlikely to cause disturbance as none of the bird species which are qualifying interests of the site are known to nest in the immediate vicinity of the site.
27. The following mitigation/enhancement is recommended to reduce the impacts of track construction on the Cairngorms and River Dee SAC's:
 - Material to build up track surface to be brought in from borrow pit, unless it is decided that side drains are required;
 - Side drains should only be constructed where essential;
 - With regard to the track to be restored it is recommended that where the central part of the track is re-vegetated, turves are placed only in the wheel ruts;
 - The restoration work is proposed for June, SNH would generally recommend that this work is carried out in autumn as work in the summer will increase the requirement for turves to be kept watered.
 - There is potential for otters in the proximity of the site, SNH would recommend with regard to otter as European Protected Species that work is not carried out in the 2 hours after sunrise and the 2 hours before sunset.
28. **CNPA Ecology** have carried out an appropriate assessment and while recognising the SPA designations in the area the proposals are unlikely to cause disturbance as none of the species which are qualifying interests of the site are known to nest in the immediate vicinity. The small scale and temporary nature of the works means that there are unlikely to be any indirect impacts resulting from the proposals. The proposal is likely to have a significant effect on the qualifying interests of the cairngorms SAC and the River Dee SAC. However, based upon the information provided and

appraisal carried out, the proposal would not adversely affect the integrity of the site.

29. **CNPA Landscape Officer** comments that the level of impact is dependent upon mitigation and sensitive routing in relation to landform, drainage and high quality construction (of both new and redundant section of track) Attempts should be made to restrict the width of the track running surface to the minimum required for 4 x 4 vehicles. Restoration of and reinstatement of cut faces, ditches and borrow areas to match adjacent landforms, a vegetated central strip is important as described by the construction method statement. Overall, the Landscape Officer has no major concerns with regard to the principle of the proposed works. However, in order to minimise impacts and meet Policy 6 Landscape it is important that all works are undertaken in accordance with best practice as set out in SNH guidance 'Constructed tracks in the Scottish Uplands' and with careful attention to detail. This is essential if the proposed works are to complement and enhance the character of the glen, and to enhance the quality of the experience of the user.
30. **CNPA Outdoor Access Officer** comments that the potential impact relates to public access during construction works. The track in question is a Right of Way and a core path (CC6). It is a very popular walking and cycling route through from Tomintoul to Deeside and is particularly popular from June until October with Duke of Edinburgh groups, the public and events such as the Caledonian 100. There should be a management plan to manage the public around the works with as little disruption as possible. Depending on the time of year this could be by means of workers conveying walkers through the works or by the public using the old track as a diversion until it is reinstated. If the works are proposed for the winter months and unlikely to take more than 10 days such measures may not be required.
31. **Braemar Community Council** has been consulted but no response has been received.
32. **Dee and District Salmon Fishery Board** has been consulted but no response has been received.

REPRESENTATIONS

33. No representations have been received on this proposal.

APPRAISAL

34. In principle, the track rationalisation works on the estate raise no significant policy issues, such tracks being part of the management of grouse shooting and deer stalking operations on sporting estates throughout Scotland. Consequently, the key issues revolve around whether the potential

environmental impacts of the proposed track works are acceptable against the protective environmental policies of the CNP Local Plan.

Natural Heritage- Ecology

35. SNH are responsible for advising upon SPA, SAC and European Protected Species issues. The site is subject to a number of European designations as outlined previously. The site is also located within the Eastern Cairngorms SSSI and it is likely that otter as European Protected Species frequent the site.
36. Overall, SNH has no objection to the proposals providing certain measures are put in place to provide improved mitigation. The measures are very much about how the tracks will be constructed at the site and these are covered in the requirement by condition as points to be adhered to in addition to the method statement. On one issue it is likely that the applicant does wish to carry out the work as soon as possible this summer, rather than in the autumn as suggested by SNH. Given recent and current predicted weather conditions this is not felt to be a concern and the further the works are put back into autumn the more difficulty there may be in accessing the site and carrying out the works on site.
37. The CNPA Ecologist has carried out an appropriate assessment and finds there to be no significant impacts upon the designated sites. The reinstatement of the track adjacent to the river should result in less sediment being released into the Gairn, part of the River Dee SAC.

Natural Heritage- Landscape

38. The CNPA Landscape Officer has considered the proposal and has no objections in principle. Advice is offered in terms of mitigation measures to improve the resulting construction of the track and further information is requested by planning condition to achieve this. This will ensure that the proposal complies with Policy 6 Landscape of the CNP Local Plan.

Outdoor Recreation

39. The CNPA Outdoor Access Officer notes that the track to be reinstated is a core path and right of way. There is no objection to the proposals. However, if the works are to be carried out in the summer months then a plan should be agreed for managing pedestrians/cyclists through the works. The most logical way would be to keep the existing track alongside the river open for use while the new section is being constructed. A condition is attached that there should be a management statement setting out how people will be managed during works at the site.

Conclusion

40. The proposals involve rationalisation of tracks to assist Invercauld Estate with the management of the area. While a new section of track is proposed an existing section will be reinstated. The proposal will prevent sedimentation entering the Gairn which is currently happening. While the proposal alters a core path and right of way it is entirely possible that the existing track (or part of it) may well collapse into the burn in time without significant work. The proposal effectively maintains a route for the core path and right of way along a safer, drier line.

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

41. The proposal would have no real impacts on designated sites or species and subject to conditions set out at the end of the report can provide a degree of enhancement by preventing sedimentation entering the Gairn.

Promote Sustainable Use of Natural Resources

42. The track surface running material would be sourced from a nearby re-opened borrow pit. A local contractor will be carrying out the works.

Promote Understanding and Enjoyment of the Area

43. The proposal will ensure the longevity of the right of way and core path; measurements for management of the public during works are sought by planning condition.

Promote Sustainable Economic and Social Development of the Area

44. The track rationalisation will assist the estate in the management of the area.

RECOMMENDATION

45. That Members of the Committee support a recommendation to **GRANT** Planning Permission for the creation of 450m of hill track, reinstatement of 477m of hill track, rebuilding of 377m of hill track and re-opening of borrow pit, land at Glen Gairn, Invercauld Estate, subject to the following conditions:
 - I. The development to which this permission relates must be begun within three years from the date of this permission.

Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.

2. No works shall be carried out until 2 hours after sunrise and within 2 hours before sunset unless otherwise agreed by the CNPA acting as Planning Authority.

Reason: In the interests of protecting natural heritage at the site and in accordance with Policy 5 Biodiversity of the CNP Local Plan.

3. Construction shall be carried out in accordance with the submitted construction method statement and in addition construction on site shall comply with the following points:

- All materials for the track running surface shall be sourced from the borrow pit unless it is decided that side drains are required;
- In addition to restoration proposals for area 2 it is recommended that where the central part of the track is vegetated turves are placed only in the wheel ruts and the surfaces disturbed/rotavated prior to turves being laid.

Reason: To reduce the impact of the development on surrounding habitat that is part of the Cairngorms SAC and to improve the chances of successful restoration

4. Prior to work starting at the site a statement shall be submitted to and approved by the CNPA setting out how the public will be managed through/around the area during the construction works. The agreed measures shall be put in place during construction.

Reason: To ensure safe passage through the area for members of the public.

5. Prior to the commencement of the development hereby approved scaled cross sectional drawings through the whole working corridor (6m) to include a central vegetated strip shall be submitted to and approved by the CNPA acting as Planning Authority. Work shall be carried out in accordance with the approved drawing.

Reason: To further reduce landscape and visual impact of the proposals.

6. Prior to the commencement of the development hereby approved a scaled cross sectional drawing for area 2 (proposed track restoration) showing estimated depths of overburden, peat and vegetated turves, and any proposed works to relieve compaction along the running surface of the redundant track shall be submitted to and approved by the CNPA acting as Planning Authority. Restoration shall be carried out in accordance with the approved drawing.

Reason: To further improve the chances of successful restoration of area 2.

Andrew Tait

planning@cairngorms.co.uk

11 July 2012

The map on the first page of this report has been produced to aid in the statutory process of dealing with planning applications. The map is to help identify the site and its surroundings and to aid Planning Officers, Committee Members and the Public in the determination of the proposal. Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Cairngorms National Park Authority and other Copyright holders. This permission must be granted in advance.