

PAPER I

APPENDIX 3

REPRESENTATIONS

Ms M Grier
Cairngorms National Park Authority
Planning Office
Albert Memorial Hall
Station Square
Ballater
AB35 5QB



Balallan House
24 Allan Park
Stirling
FK8 2QG

01 May 2013

Telephone: 01786 447 504
E-mail: scotland@buglife.org.uk

Dear Ms Grier,

Application reference: 2013/0115/DET. Erection of 30 houses, 2 house plots, associated roads & footways. Land 200M West Of Boat Of Garten Football Field, Craigie Avenue, Boat Of Garten.

Buglife - the Invertebrate Conservation Trust is the national charity that conserves endangered and declining invertebrate species and populations. We have recently been made aware of the above planning application and **object to planning permission being granted** due to insufficient ecological information to accurately assess the impact of this development.

Scottish Planning Policy (SPP) states '*All public bodies, including planning authorities, have a duty to further the conservation of biodiversity under the Nature Conservation (Scotland) Act 2004, and this should be reflected in development plans and development management decisions. Biodiversity is important because it provides natural services and products that we rely on, is an important element of sustainable development and makes an essential contribution to Scotland's economy and cultural heritage*' (para 129).

To ensure that this requirement is met it is essential that further ecological information is requested from the applicant. The current application only includes a minority of the species that may be affected by the development. It is impossible for the National Park Authority to evaluate the impact of the development on the ecology of the area without further work. To understand and then mitigate the impact of the development there should be a wider invertebrate survey following the guidelines in the Environmental Assessment Handbook technical appendix available at:

<http://www.snh.org.uk/publications/online/heritagemanagement/eia/appendix2.shtml>.

This includes standard guidelines for vegetation, bird, mammal and invertebrate surveys. **This further work should be in advance of any planning decision being made**, inline with the guidance of paragraph 131 of the SPP.

Historical survey records indicate that the following species are found in the immediate vicinity of the development site:

- Small Heath (*Coenonympha pamphilus*) UK BAP priority species
- Cousin German (*Protolampra sobrina*) UK BAP species
- A mining bee (*Andrena marginata*) Nationally scarce
- Slender Groundhopper (*Tetrix subulata*) has been found onsite. This species has a restricted territory and was previously thought not to be found in Scotland. For this reason its optimal habitat

in Scotland is not known and it is therefore not possible to discount it from the site as has been done by the MBEC survey.

- Lemon slug (*Malacolimax tenellens*) notable species

The presence of BAP species, Scottish Biodiversity List species, nationally scarce species, notable species and populations of wood ant species are all indicators of the potential value of the site. This should also guide the specialist species surveys needed to assess the development impact – in this situation surveys looking at Hymenoptera, Lepidoptera and Molluscs should be carried out.

It would also be useful if the Appendix 1 Survey report that is referenced in the Ecology and Nature Conservation Report was included with the application as this will have more information on how the surveys were carried out and to what level. Again without this information it is difficult for the National Park Authority to judge the impact of this development and thus satisfy its duties.

Yours sincerely

Alice Farr
Planning Manager

Miltonburn
Aviemore
Inverness-shire
PH22 1RD

4th May 2013

Dear Sir,

Ref: 2013/0115/DET Application for 32 houses at Boat of Garten

I am writing to object to the above planning application on the following grounds:

The area has been found to be used regularly by protected wildlife such as red squirrels, crested tits and capercaillie; and it has recently been discovered by survey, that in terms of density, it supports a very high number of capercaillie for such a small area of woodland. I question that in the CNPA draft local plan, this area is being considered for housing, when it has been found to be so rich in these protected species. It would seem appropriate for a body such as the CNPA, which is supposed to be working in the interest of wildlife and biodiversity, to review the use of this area in the draft local plan, as it is especially rich in these species, rather than to be recommending this area of woodland for housing. I can't see that the mitigation measures proposed to apparently safeguard this area, would make any difference to reducing disturbance to these species, as the erection of housing within this small woodland would undoubtedly cause much of the wildlife to abandon the area.

In a recent publication (2013) of the village map for Boat of Garten, I see the artist has drawn on the spot that is currently being considered for housing, a capercaillie lek. It may be considered artistic impression, but I did wonder if this may cause undesirable human disturbance by bird-watchers, or even by those who may prefer that these special birds were not present. Does the park intend to update this map in the near future, replacing the capercaillie lek with an impression of 32 houses?

I believe that this village, like many similar small villages, does require low cost housing, but not at the cost of the very thing that visitors and locals alike, come to the village to enjoy - the peace, solitude, and residing wildlife, that the woodlands provide. There have been other areas pinpointed within the village that would support small scale housing in the village, which is much more in line with the number of houses that local families require, but it appears that these large-scale housing applications are given priority for reasons of huge profit, and in my mind are inappropriately large for the special area and wildlife within.

Yours sincerely,
Laura J Cannicott

Medder

From: Medder
Sent: 6 May 2013 16:47:28 +0100
To: Planning
Subject: No more Building on the National Park! AWAITING MORE INFO

Dear

Sir/Madam,

I am outraged about the proposed building of new homes on a National Park where such an area should be left well alone! Isn't there enough destruction in this world today without cutting down and destroying more trees and not only that, the environment is suffering, animals and wildlife that surrounds it too! The chopping down of Scots Pine woodland will severely have an effect on a lot of the Wildlife, the Capercaillie which is a highly protected bird will also be affected! How can anyone say that it will be a development when it will only cause destruction! I am totally against this development as it will adversely affect wildlife such as the capercaillie, this has all got to stop! It's a beautiful place and should be left well alone!

I would like an acknowledgement to my email please.....

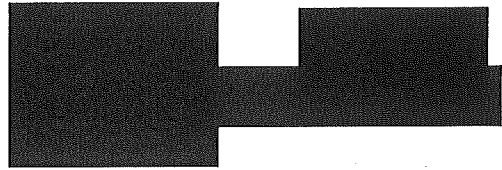
Your Sincerely

Carol Medder

1 MORELAND COTTAGE
CRAIG STREET
ST HELIER
JERSEY
JE2 4TS

Colin Ormston

32 Craigie Avenue, Boat of Garten, PH24 3BL



ePlanning Centre

The Highland Council

Glenurquhart Road, Inverness IV3 5NX

OBJECTION TO PROPOSED ERECTION OF 30 HOUSES, 2 HOUSE PLOTS, associated roads and footways

Land 200m west of Boat of Garten Football field Craigie Avenue, Boat of Garten

Planning Application Number: 13/01267/FUL

Dear Sir,

I am writing to you to object to the proposed housing development identified above. I previously understood that the Cairngorm National Park Reporter had concluded that this was a totally unsuitable site for housing development in the village, and have only recently found out that a new application was being submitted, despite the previous one being refused.

The reasons for my objection are two-fold:

1. Firstly, the proposed mitigation measures (contained within supporting document 'Mitigation Measures') aimed at minimising disturbance to capercaillie are inappropriate and ultimately unworkable.
 - a. The developer claims that scarification work (in an attempt to promote natural regeneration of Scots pine) has been carried out as part of the Estate thinning operations carried out over the winter. This is in fact misleading, as on visual inspection no scarification work has been carried out. What has been done is a fairly brutal attempt by the forestry operations team to create heavily used trackways that has resulted in deep rutted forestry machine tracks that have become heavily compacted. Furthermore, there is still a large level of shading that will limit any regeneration – Scots pine does seedlings do not develop well when shaded by larger trees. Therefore it is extremely unlikely that any regeneration will take place along these tracks.
 - b. Whilst the thinning operations are an important part of managing the forestry resource and ensuring a mixed age forest that will continue to be harvestable for generations to come, the work has opened up the forest significantly – it is now possible to see and be seen much further into the core of the woods from the existing path network.
 - c. The developer has claimed that planting of holly and juniper will provide natural screening in selected areas. What has actually been done is a poor attempt using limited resources. Piecemeal planting of holly and juniper seedlings is ill advised for

Colin Ormston

32 Craigie Avenue, Boat of Garten, PH24 3BL

- two reasons – they are both extremely slow growing, and neither do well in pine wood environments. A random walk through the current forest would show the scarcity of both species, and the few juniper bushes that are present are 'leggy' and low growing. Juniper will not form an effective screen, and holly will take 10-15 years to start becoming a screen – what are the capercaillie supposed to do until then?
- d. Controlling useage of the woods by appropriate signage, seasonal warden and 'community involvement' will have no impact on how people access the woods, what they use it for or where they go, be it running, dog walking, cycling, mountain biking, horse riding, orienteering, random acts of vandalism, bird watching or 'nocturnal activities'. It is human nature to cross boundaries and explore, that is what made us what we are and a few signs (please, no more signs, we are surrounded by signs telling us what we can and can't do) or well intentioned words from a random warden will not stop where we go, what we do or how we do it.

For these reasons, I fail to see that the proposed mitigation measures will ensure that the current levels of disturbance will not increase as a result of this development. There is only so much suitable woodland habitat available for capercaillie, and this constant erosion of woodland edges will do nothing but lead to the eventual (second) extinction of a species that needs large tracts of forest. The developer should have been making a firm commitment to expanding the woodland resource available for this and many other iconic species (species that have generated a tourist industry upon which this village depends).

The original position of my main objection has not changed – the capercaillie population within Boat Woods still forms an important part of the meta-population within the Strath, and as such is associated with SPA populations from Kinveachy SPA and Abernethy. As such, an Appropriate Assessment still needs to be carried out as required by current EU Habitat Regulations.

I can do no worse than to repeat an excerpt from my objection letter to the National Park from the last housing application by the developer

'In summary, I believe that the developer has failed to meet the mitigation criteria set out by SNH and the National Park. I believe there are question marks over the suitability.... and enough uncertainty over the effectiveness of the outlined mitigation measures that I object to the proposals described by the developer, and call for the National Park to maintain their original position identified in their own Appropriate Assessment:

'On the basis of information currently available, CNPA consider that the mitigation is insufficient and that even with significant revisions (my underlining), is unlikely to be able to demonstrate that no further negative impacts will be experienced by the capercaillie population. CNPA consider that this proposal could adversely affect the integrity of the SPAs.'

Furthermore, the first aim of the National Park is to conserve and enhance the natural and cultural heritage of the area. Where the fourth aim (to promote sustainable economic and social development) conflicts with this, greater weight must be given to the first aim (the Sandford Principle) because this is the main justification for national park designation. Where the effects of development could potentially result in damage or loss to special

Colin Ormston

32 Craigie Avenue, Boat of Garten, PH24 3BL

qualities of the park, but where uncertainty over the nature of the likely impacts (as I have demonstrated is the case with this development) the precautionary Principle must apply and such developments must be refused.

2. Secondly, my objection stems from a purely selfish but still valid viewpoint – I am after all allowed to express my opinion, even though it flies in the face of what some mistakenly believe is progress:
 - a. The proposed development will completely alter the woodland character of my property, it being surrounded on two sides by woodland that will now be potentially replaced by the proposed development. This is the main reason we purchased this property, and certainly had an impact on the eventual price we paid for the house. Now, not only have we to contend with negative equity, but we are now faced with the very real threat that the value of our house will drop even further should this development go ahead.
 - b. The nearest houses will be c15m away from my boundary, which is far too close for comfort, and will completely remove the woodland setting and replace it with fencing, rooftops, increased noise from people and traffic and light pollution at night – that will be lovely, thanks!. Our personal quality of life will drastically change for the worse should this development go ahead.
 - c. If the development is approved and we decide to sell and move on it will certainly make selling our property harder in these difficult times, given the charming view of the fence line and houses. In the meantime we'll just live with the stress and anxiety that is hanging over our heads thanks very much.

Given the proximity of the proposed development to my property, it would have been nice for the developer to come and talk to us before submitting the plans. Although there was an open meeting at the Community Hall, this finished at c7pm – obviously this was not aimed at those members of the local community who have full time jobs.

In conclusion, I reiterate my objection to this proposal. Although I appreciate the need for affordable housing in the strath, I do not consider this a suitable location for a housing development of any size.

Indeed, given the plans for a significant housing development at An Camus Mor, I do not consider there to be a need for any further housing development in Boat of Garten

Yours

Colin Ormston BSc MIEEM

From: [REDACTED]
To: [REDACTED]
Subject: Objection
Date: 06 May 2013 23:52:47

Badenoch & Strathspey Conservation Group
Fiodhag, Nethybridge, Inverness-shire PH25 3DJ

[REDACTED]
Scottish Charity No. SC003846

Email info@bscg.org.uk

6.5.13

Dear Mary Grier

Application reference: 2013/0115/DET. Erection of 30 houses, 2 house plots, associated roads & footways. Land 200M West Of Boat Of Garten Football Field, Craigie Avenue, Boat Of Garten.

I am writing to object to the application to build 30 house and 2 house plots in Boat of Garten wood. BSCG requests to speak to the CNPA at the meeting when this application is determined.

BSCG's reasons for objection include the following.

Restoring the capercaillie to 'favourable conservation status'

The capercaillie *Tetrao urogallus* population has to increase, not merely remain static, in order to achieve national goals.

The CNPA recognizes that "Strathspey is the last refuge of the species containing c.75% of the UK population, with populations still in decline in all other areasthe national population is still small and its range is contracting significantly" (CNPA Appropriate Assessment for LDP MIR 24 Feb 2012).

The UK BAP target for capercaillie, an Annex 1 and Cairngorms priority species, was 5000 birds by 2010 and this target has not been met by a huge margin with the national population having been estimated at 1285 birds (Ewing et al in prep., see CNPA Appropriate Assessment for LDP MIR 24 Feb 2012;

Cairngorms 2002 LBAP).

The CNPA's same Appropriate Assessment correctly identifies that the Strathspey capercaillie population is crucial to the long-term survival of the species in the UK and that the population elsewhere in Scotland "is now extremely vulnerable".

The UK BAP target for capercaillie requires that the population is very substantially increased. Realistically this has to happen in Strathspey. Outside Strathspey capercaillie populations are "more fragmented, numbers are lower and breeding success poorer" (CNPA Appropriate Assessment for LDP MIR 24 Feb 2012). To restore capercaillie to favourable status will require safeguarding of woodland habitat, especially areas already identified as important for capercaillie. Boat of Garten Wood is one of currently very few such areas.

Need for Appropriate Assessment

BSCG understands that there is as yet no Appropriate Assessment (AA) of the implications of this proposed development on European sites for the capercaillie (pers comm CNPA planner Mary Greir May 2013).

The lack of an AA is despite potential major implications from development at this location for the future of capercaillie in its current UK stronghold in Strathspey. BSCG considers that the case for an AA prior to the determination of this planning application is overwhelming.

Failure of the CNPA as the competent authority to undertake such an assessment with due diligence, could potentially lead to complaint and the EU pursuing the UK authorities. Before considering whether to approve an application or not, understanding what the implications of this might be to European interests is a matter the competent authority should fully ascertain, taking the best available advice as necessary.

Considering obligations with regard to AA for developments with implications for Natura sites we note that SNH, the SG's statutory adviser on conservation, recognizes that an appropriate assessment should be detailed and robust enough to answer the question - can it be ascertained that the integrity of these sites will not be adversely affected? - on the basis that there is no reasonable scientific doubt about the conclusion (our emphasis).

We note that as identified by the CNPA in relation to an earlier application in Boat of Garten Wood (with somewhat different features but including some of the same footprint) amongst issues identified for consideration were "Disturbance arising directly from the housing site once it is occupied" and "An increased number of people recreating in the wider woodland".

Lack of timely Appropriate Assessment

BSCG is concerned that no Appropriate Assessment has been provided in time for the public to take it into account in their submissions and to comment on it; this failure deprives respondees of relevant information at the only time in the process when the comments from stakeholders are timeous.

It can reasonably be viewed as poor planning practice that the CNPA opts for postponing such a fundamentally important assessment, and especially so given the gravity of the conservation status of capercaillie.

The possibility of significant post -application modifications can be claimed as a justification for deferring an AA. However, such modifications should require a new AA, rather than be used to justify delay.

Unwanted consequences of unsatisfactory assessment process

Self evidently failure to address the Natura obligations with due rigour is likely to cause costs to many parties. Arguably for example addressing issues in greater depth and with greater transparency early in the process potentially offers more clarity to the applicant reducing for example uncertainty and delays that might have been easily avoidable.

We note the need to secure basic baseline information in a manner that avoids suspensive conditions has been referred to in guidance relating to Natural Heritage Assessment and that advice to planning authorities has recognized that a suspensive approach is not good practice (see

<http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/natural-heritage/letter16May2006>

At Boat of Garten the conclusion drawn by previous AA has been dependant on mitigation measures. Mitigation measures can take time to be implemented and/or become effective.

We understand that CNPA is charged with exercising power in a manner consistent with ensuring "The general purpose of a National Park authority is to ensure that the

National Park aims are collectively achieved in relation to the National Park in a co-ordinated way." This is not achieved through delaying an AA.

Effectiveness of Mitigation

SNH state in their Natura Appraisal for the draft housing allocations at Boat for the LDP MIR (19.2.2012): "This conclusion for scenario 6 could be reviewed in future in the light of results from monitoring the success of the mitigation measures. These results would provide evidence for the efficacy of the mitigation, which could be used to inform a revised assessment". It is evident from SNH's statement "These results would provide evidence for the efficacy of the mitigation" that they do not know how effective the mitigation measures will be (this applies irrespective of the particular allocation).

The 2011 Appropriate Assessment (p9) states that mitigation must be "proven to be effective".

As far as BSCG is aware, the effectiveness of screening is untested. We know of no scientific studies on this subject, relating to the Scottish population or any other population of capercaillie. We note that an assertion is provided on screening in a LIFE publication (see <http://www.capercaillie-life.info/downloads/50119%20low%20res%20text.pdf>) but this claim is not supported by any scientific studies. It therefore appears to be a 'best guess' based on anecdote.

BSCG considers it unacceptable to rely on anecdotal, subjective claims that are unsupported by scientific evidence and open to legitimate scientific doubt.

If people don't keep their dogs on leads and stay on paths sufficiently, what realistically can be done? BSCG understands that in Anagach community woods there have been issues of caper disturbance and recreational users being entirely unwilling to comply with requests to use alternative paths at certain times of year. Signs can be unpopular and viewed with hostility.

The mitigation report does not reveal who wrote or contributed text to it. This lack of transparency is unhelpful in evaluating the authority and independence of the authors.

Development Sites in Boat

BSCG objects to development on this site owing to the value of the habitat.

Other sites have been identified by the CNPA as potential housing allocations in Boat of Garten. BSCG considers that other options realistically exist and that housing in the wood should not be considered as the only site where the small number of houses appropriate to meet genuine local need can be provided.

Current Local Plan and emerging Local Development Plan

The present proposal is out with the Local Plan. Approval would set an undesirable precedent.

An allocation of housing on the proposal site and adjoining land was taken out of the emerging CNPLP, apparently in response to the Reporters' Report which did not support an allocation in the wood on grounds of potential impacts on capercaillie interest among other reasons. This allocation appears as white land in the adopted CNPLP.

BSCG understands that the reason the settlement boundary was not redrawn to exclude the formerly allocated area (thereby leaving the undesignated white land) was because the settlement boundary at this site appears not to have been an issue addressed in detail by the Reporters. Consequently a further Local Inquiry could have been required, leading to delay.

BSCG notes that the footprint of the present proposal has not been subject to a formal public consultation as an allocation.

BSCG notes that the emerging CNPDLP has not finished its public consultation nor been through the process of a local inquiry. Therefore it has limited weight as a material planning consideration.

CNPA's Position Regarding Previous Applications

CNPA planners recommended refusal for an application for 77 houses on the proposal site and adjacent ground in 2011.

The CNPA also spoke against another application in 2005 that was determined by HC. SNH also spoke against this application.

Findings of the 2009 Local Inquiry

The Reporters' report for the 2009 Local Inquiry did not support an allocation of housing in Boat wood, on grounds including potential impacts on capercaillie, landscape impacts and indefensibility of the settlement boundary. The Reporters concluded that "further

development would become more difficult to resist". They also expressed concern that "the

character of Boat of Garten would be diminished by the allocation".

Current Impacts of Disturbance on Capercaillie

In relation to a previous application, CNPA state (in their Natura Appraisal dated 16.12.2010) p9 "The current levels of disturbance at Boat of Garten woods are already having an impact on the capercaillie population using the area. There are areas of habitat being avoided. "

The same report continues p9:

"Signage requesting certain behaviour is likely to be ineffective in preventing any further increase in disturbance as there is already a pattern of use established by current Boat of Garten residents that include off-lead access with their dogs on informal paths....Even with a suite of measures compliance is unlikely to be 100%, therefore we cannot be sure beyond a reasonable doubt that there would not be an increase in recreational disturbance affecting the already disturbed capercaillie population".

BSCG is concerned that the CNPA take due account of the current vulnerability of capercaillie in Boat wood and are realistic about levels of compliance.

Monitoring methods

Monitoring to establish the effectiveness of mitigation in relation to capercaillie (e.g. numbers and distribution in the wood) is not addressed in the mitigation measures. This is a fundamental flaw in the proposals as it is the capercaillie that it is essential to monitor.

Displacement of Recreation Activities

The restrictions and screening in Boat wood could increase recreational disturbance in other woods, such as Abernethy which is an SPA for capercaillie and other interests. There appears to be no proposal to monitor these knock-on effects.

Effectiveness of alternative off-lead dog walking routes.

BSCG is concerned at the further promotion of the Fairy Hill area for off-lead dog walking. The distance of the Green Route, which is a Preferred Path around the Fairy Hill (on CNPA's map of preferred paths and sensitive areas) is only some 190m and 230m from the closest recorded locations of capercaillie droppings (Moss et al). There are also anecdotal reports of capercaillie sightings from the Fairy Hill area. Local reports suggest that use by caper of the Fairy Hill area was higher before the walks were so well used.

We do not consider it helpful to management of recreational disturbance to further promote a part of the wood for off-lead dog walking.

The Bonfire Field is not available at all times due to presence of livestock. Waders are seasonally present not far from the Bonfire Field and could be disturbed by increased off-lead dog walking.

The Fishermans Path by the Spey is a medium length walk, which may restrict its usefulness for quick daily walks before work etc. BSCG has concerns over potential impacts on the stand of exceptional Juniper at the south end of the field by the Spey next to the field immediately north of Wester Dalvout. Increased use by dogs off leads could impact on otters (there is a regularly used sprainting site right by the path) and birds using the Spey and its banks.

We note that all the proposed off-lead areas are already available to dog walkers. This raises questions as to how effective they will prove to be in changing the behaviour of dog walkers.

No Appropriate Assessments of impacts of promoting off-lead dog walking routes have been undertaken.

Red Squirrels

BSCG notes that it is SNH and not the planning authority who have authority to issue licences under the Wildlife & Natural Environment (Scotland) Act 2011 for some activities that would otherwise be illegal in relation to red squirrels. We note that SNH state that a survey for red squirrels "needs to determine conclusively whether there are red squirrel dreys present on site and, if so, where these are. This information should be presented on a map at 1:500 scale". For a licence to be granted we understand the development needs to be judged to be of "significant social economic or environmental benefit and alternative approaches need to have been considered and discounted" (see SNH 2012 squirrels and Development).

BSCG further notes that squirrel populations can fluctuate markedly in relation to such factors as harsh winters and cone crops and that squirrels are vulnerable to RTA, disease and predation by domestic cats. We also note that the CNPA's ecologist has identified "squirrel dreys can be quickly constructed and so drey surveys can quickly become out of date" pointing to the need for "an up-to-date survey for red squirrel dreys" (**see Hetherington 2013 Ecology response Kingussie Housing Master Plan: 2013/0058/DET**)

Self-evidently allowing development in woodland habitat including woodland edge habitat sometimes particularly favoured for feeding by red squirrels liable to visit Scots pine trees with good cone crops can be avoided by locating development outwith woodland habitat. BSCG also notes that squirrels in other woodlands in Strathspey (eg Carrbridge and Nethybridge) are facing potential habitat fragmentation or loss if approval is given to developments currently being proposed. It is estimated that Scotland has around 75% of the UK red squirrel

population and known that the population at Boat of Garten Wood is an area of high red squirrel density that may have suffered from two consecutive harsh winters.

There appears to be a lack of consideration by the applicant of ways to avoid or minimise adverse impact on red squirrels. We do not for example notice any proposals to create new habitat adjacent to the site to attempt to offset adverse impacts of the proposals although SNH mention this (see SNH 2012 squirrels and Development).

Deficient Survey

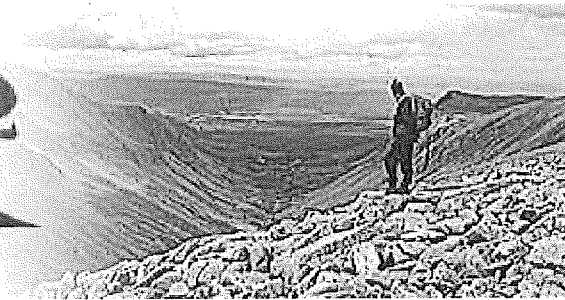
BSCG has already detailed some concerns relating to inadequacy of ecological survey with respect to scarce plants invertebrates and such protected mammals as badger, otter and bats in this wood within and near the application.

Amphibians include the two species of newts recently recorded using this part of the wood. Reptiles (e.g. we have recorded include lizard in the wood in 2013) and fungi also appear not to have been properly surveyed. We also have concerns about adverse impact on fungi both within and beyond the footprint and including for example such SBL species as the toothed fungus *Hydnum caeruleum*. We know of no mitigation that could be suggested to compensate for loss of such rare fungi (or such species as the lemon or slender slug *Malacolimax tenellus*).

Yours

Gus Jones

Convener



Scottish Charity Register number SC005523.

Constituted as a Scottish Company, number 179159, limited by Guarantee.

Planning Office,
Albert Memorial Hall,
Station Square,
Ballater
AB35 5QB

6 May 2013

Dear Sir,

With reference to Planning Application:

2013/0115/DET - Erection of 30 houses, 2 house plots, associated roads & footways, Boat of Garten

The Cairngorms Campaign (CC) hereby objects to this application.

The Cairngorms Campaign bases its objection on the ground below:-

1. Failure to Take Account of Ground Rules of Sustainable Tourism

It is distressing that the Cairngorms National Park Authority continues to fail to take account of all that has been learned on the management of development in the Alps, New Zealand and elsewhere. Emphatically, it has been acknowledged that giving out planning permission for large scale housing developments excludes the smaller more local construction firms from economic participation. The larger construction companies behind such schemes need further similar scale developments thereafter to sustain themselves leading to pressures for further similar scale developments and hence overdevelopment and damage to the basic resource of landscape and wildlife that forms the sustainable basis of the tourist industry. The result is consequent environmental damage and economic damage to indigenous communities.

This is contrary to the aims for which the Cairngorms National Park was established in particular to the 1st Aim of the national park, as established by the National Parks (Scotland) Act, 2000.

2. It is in Contravention of the Local Plan

The application is contrary to the adopted development plan

3. The Development Will be Damaging to Protected Wildlife on the Site

The CC considers that the proposed mechanisms for reducing disturbances to capercaillie are untested and can provide no guarantee that disturbance pressures from humans and dogs will not increase as a result of the increase in housing. This woodland is a key component of the Strathspey core area for capercaillie, which is the last stronghold in Scotland for this species. The CNPA should be concerned to be helping to bring all of the areas suitable for capercaillie within the national park into favourable status, not further eroding the size and suitability of such habitat, as granting this application would do.

4. The Development Would Breach the Habitats and Birds Directive

In view of 3. above, the CC considers that the CNPA cannot be certain that this application will not have an adverse effect upon the capercaillie population and that therefore granting this application would be contrary to the Habitats and Birds Directive.

Yours sincerely,

R Drennan Watson,
(On Behalf of the Cairngorms Campaign)
Brig o Lead,
Forbes,
Alford AB33 8PD



2nd May 2013

29 Craigie Avenue
Boat-of-Garten
Inverness-shire
PH24 3BL



FAO Mary Grier
Planning Department
Cairngorm National Park
Albert Memorial Hall
Ballater

AB35 5QB

Ref. 2013/0115/DET; erection 30 houses, 2 house plots, associated roads & footways on land 200m West of Boat-of-Garten Football field, Craigie Avenue, Boat-of-Garten

Dear Mary Grier

I wish to object to this application. Since 2002 permission to develop this woodland by the people behind Davall Developments has been deferred and refused twice already. The reasons concerning the disturbance of Nationally and Internationally protected wildlife (Capercaillie, Crested Tit, Scottish Crossbill, Red Squirrel, Pine Martin, etc.) plus the need to protect woodland within the National Park (NP), as cited by the Scottish Executive's reporter Philip Hutchinson re the 2002 application, and NP planners' re the 2008 application, are all still just as relevant today and remain ample reasons for refusal of this application.

Totalling the beds shown in the floor plans for all the different house types, this development of 30 houses would house 155 people, and if the 2 house plots are built on, and assuming 3 residents per plot, that is over 160 extra people, who are likely to use the woodland right on their doorstep- a huge increase in disturbance. If the occupants are not permanent residents this would reduce disturbance but I would argue that if the properties are to become holiday homes, which is a strong possibility for some of them, then we do not need this type of development as we certainly do not need any more holiday homes in Boat.

There is also the question of even more disturbance from the school if it were built at a later date and from the traffic driving through the woods to and from the Community Hall. As cars will be accelerating/decelerating in and out of the car park this will cause even more noise and air pollution, again disturbing the wildlife and residents alike. The air pollution from vehicles and house heating systems will also undoubtedly have an effect on the woodland flora.

My house is adjacent to the Community Hall and, even with the insulation of the windows and walls in my home, already I am kept awake by the noise any time there is a wedding, concert or party in the Hall. At least at the present that is mostly at weekends but the addition of vehicles accelerating/decelerating within metres of my bedroom will likely mean disturbed, or no, sleep any time the Hall is in use. There are times, due to illness, that I need to sleep during the day and I fear that will become impossible with this development and its resultant traffic noise pollution.

Davall Developments say measures to stop disturbance will be taken but in reality they amount to putting up more signs, which I feel in itself will detract from the atmosphere of the woodland. We go out in to the woods/countryside to get away from the constant bombardment of being told how to live our lives, by the nanny state, not to be met with more signs doing just that. This signage can ask people to stay on paths and keep dogs on leads, etc. but it is still completely open to free-will, thus no guarantee of any compliance and there will always be people who refuse to comply. Enforcement is not possible, or desirable, so this is a huge unknown factor, hence it cannot be said that it will stop the increased disturbance to the wildlife, from the additional 160 residents. Let alone the huge disturbance to wildlife (and to people neighbouring the site) during the build phase. The only certain way is not to cause the situation in the first place. i.e. not to build these houses for an extra 160 people.

Other mitigation measures of Hessian and plastic fence screening could be detrimental to wildlife by blocking flight/travel lines and enclosing areas of the woodland. On consultation a large portion of the Boat-of-Garten Community gave a resounding 'no' to the use of Hessian screens, yet Davall Developers plan to ignore this and go ahead with using that very fabric.

A self-seeded Scots pine in my garden, immediately adjacent to the woodland, has taken 12 years to grow to a height of 7-8ft, which indicates the Scots Pine natural regeneration screening will not be effective for many years, so by the time it does have any effect the considerable disturbance during the building, followed by the additional disturbance from the occupants of the new houses (plus their pets), will have eliminated the very species the screening is supposed to protect. Also the screens will not prevent the noise pollution or its disturbance of the wildlife - noise is likely to cause animals/birds to flee an area long before the visual and I see no mention in the mitigation proposals of measures to combat the resultant noise and light pollution. Once the disturbance has caused the wildlife to move out of the woodland it is too late, so plans to put screens in place and monitor to see how it works seems akin to just 'hoping for the best' - and are totally the wrong approach. It will be too late by the time it becomes clear that the additional disturbance is detrimental and causing irreversible damage.

Male Capercaillie will congregate as far as a kilometre from their lek sites and this Development would be within that distance of a lek in Boat woods, so there would be disturbance of the lekking and by extension the breeding of Capercaillie in these woods. Photographic evidence taken by the seasonal Ranger Scott Henderson last summer proves there are breeding Capercaillie in these woods and they range over a large area so do need a buffer zone. Any encroachment by development of that buffer zone surely reduces there area for the Capercaillie to breed, feed and survive. As stated in my letter of objection to the previous application to develop this site, Capercaillie are on the World Conservation Union (IUCN) Red List of Endangered Species and are also protected under the Wildlife and Countryside Act 1981 (WCA), as are pine marten, red squirrel, crested tit and Scottish crossbills. Section 1 to 8 of the WCA relates to protection of birds and their habitats, **at all times**, which are listed on Schedule 1; the Capercaillie, Crested Tit and Scottish Crossbill are all Schedule 1 listed. Section 9 of the WCA safeguards places used for shelter and protection, by wild animals listed in Schedule 5, against intentional damage, destruction and obstruction, plus animals protected under section 9 must not intentionally be disturbed. Red squirrel and Pine marten are both Schedule 5 listed and are present in the area of the proposed house building. Felling any trees and/or building work in that wood would constitute intentional disturbance and intentional damage, destruction and obstruction of their place of shelter and protection. Thus would be an offence and should not be allowed.

This development proposes 10 of the 32 houses to be low-cost, and primarily we need low-cost housing in Boat. I understand there are government grants available so that developments can be 50% low-cost, hence why does this development not have 16 low cost houses? I can only think it is profit, I hope not greed, driven! We do need low-cost housing in the village but not as a one off development of the size proposed by Davall and certainly not in the Boat Woods. Apart from the presence of protected wildlife, we need trees as CO₂ sinks so should not be felling any woodland for developments. I've heard it said that the Seafield Estate is prepared to sell the woods, for development, because the trees are ready for felling for a crop anyway, but if this is true what an opportunity to increase the natural Caledonian Pine forest through natural regeneration. Rather than clear felling, successive glades could be cleared to encourage a Scots Pine & Vaccinium habitat. So if it is to be felled I would urge you to please encourage this option rather than allowing development. Seemingly the committee set up to find alternate sites for housing in the village identified 4 sites but Seafield are not willing to sell those areas of land. As it is the responsibility of the National Park to fulfil its aims and to prioritise protection of the areas' natural and cultural heritage when those aims conflict, then they should be protecting the woodland from destruction, and encouraging the building of low-cost housing on the other sites identified. If necessary compulsory purchase orders should be used because that would enable the required housing to be built, in smaller developments whilst sustaining the woodland. We could have the required low-cost housing and the woodland with its flora and fauna, which brings tourism to the area.

Previously when I worked as a Countryside Ranger the top 3 species visitors to the area enquired about seeing were Capercaillie, Red Squirrels and Crested Tits and many came to Strathspey because of the diverse and unique wilderness habitats they cannot see elsewhere in the UK, yet the planning department seems intent on concreting over those very habitats at every opportunity. It seems every time developers apply to build in woodland, within Badenoch and Strathspey, then the woodland loses out, e.g. developments allowed in Aviemore, Carrbridge, Kingussie, Nethybridge, Cambusmore etc. To date and for the past 11 years, planners have refused to allow building in Boat Woods but that seems to be the exception. Please maintain that exception and refuse permission for this development to go ahead?

According to the IUCN the largest threat to plants and animals on our planet is human activity causing loss of habitat through deforestation, urbanisation and agriculture, combined with climate change. Apart from agriculture the remainder of those causes would all result from this planning application being granted. Please do not let that happen? This proposed development is most definitely on the wrong site as well as the wrong mix of housing for the needs of local people; so I implore you to protect the valuable resource of this woodland please, with the resultant contribution to the protection of our environment and planet by refusing the requested planning application.

Yours sincerely

Dawn Smith.

From:

To:

Subject:

Date:

Boat of Garten Ref: 2013/0115/DET

06 May 2013 23:45:06

Sir,

I am writing to object to the proposed development of 30 houses and 2 plots in Deshar Woods at Boat of Garten.

The point of a National Park is to principally conserve the wildlife and while economic development is required it should not be at the expense of the natural heritage of the area and in this instance this is exactly what will occur.

It is well known that this woodland is a very important site for Capercaillie and while this has been recognised by virtue of the mitigation measures proposed for this development these same measures will in no way guarantee minimising or eliminating disturbance to this bird and are no more than hopeful possibilities. They are not backed up by science and any mitigation within a National Park should be done on sound scientific basis and not used to trial unknowns.

To 'request' people to keep dogs on the lead at certain times and put up signs is absolutely no guarantee that this will be adhered to and therefore does not protect the Capercaillie but relies on a hope that it will.

The precautionary principle applies here where if scientific data does not permit a complete evaluation of risk then recourse to this principle should be used. In a National Park this principle should be over-riding in its importance and in this particular case should be adhered to.

Aside from the issue of the Capercaillie this woodland holds many protected invertebrate species such as the Hairy Wood Ant (*Formica lugubris*) a Scottish Biodiversity Species and Cairngorms LBAP High Priority species, Small Heath butterfly (UK Priority species), the only confirmed record in Scotland of the Slender Groundhopper, the Grey Mountain Carpet moth (UK Priority species), the weevil *Otiorhynchus scaber* (Notable B species) and the net-winged beetle *Dictyoptera aurora* (Notable B species) as well as a multitude of other invertebrates including over 15 hoverfly species.

To assume that these mitigation measures will prevent any loss of natural heritage would be to ignore the core Aims of the National Park.

And all mitigations appear to be monitored after the building of this development which is very much a matter of closing the gate after the horse has bolted ... all mitigations should be shown to work PRIOR to any works being undertaken.

The mitigations outlined are essentially no different from the previous measures proposed which were rejected and still rely on spurious and unknown outcomes with no prior testing of said measures.

This is an important wildlife woodland site and immense care should be taken to ensure

that the natural heritage is not negatively affected and ideally actually benefits and if that cannot be absolutely guaranteed then this application should and must be rejected. I am sure I do not have to remind you that this is all happening in a National Park and the need for care for the natural heritage interest is paramount or one runs the risk of becoming a Development Park and not a National Park. Please reject this application and protect the wildlife that rightly deemed you worthy of being a National Park. Thank you.

Yours

Mr Tim Ransom

Flat 8,

1 St Saviours Crescent,

St Saviour,

Jersey

JE2 7XN

Note: Please could you ensure I receive an acknowledgement email ... thank you.

**Roy Turnbull
Torniscar
Nethy Bridge
Inverness-shire PH25 3ED
Scotland**

Ema 

Cairngorms National Park Authority
Station Square
Ballater

6th May 2013

Dear Sir

**2013/0115/DET | Erection of 30 houses, 2 house plots, associated roads & footways | Land 200M
West Of Boat Of Garten Football Field Craigie Avenue Boat Of Garten**

I wish to object to the above planning application for the following reasons:

1. The proposal is contrary to the provisions of the adopted CNPA Local Plan.

The findings of the Local Plan Inquiry, published December 2009, [reference PLI para. 56.1 – 56.34] and the CNPA response to the PLI with respect to this site led to the allocation for housing on this site being removed from the Local Plan.

The CNPA stated, [para. 1.5 p.244/5] “the CNPA can accept that the allocation of a large housing site at this location would not follow the advice given in the Landscape Capacity Study and can therefore agree that the site should be removed” and [para. 1.7 p.245] “In summary, in light of the landscape capacity constraints and the need to adopt the precautionary principle, CNPA can accept that the site does not meet the tests of effectiveness set out in SPP3. CNPA therefore accept that the site should be removed from the Local Plan.”

It is noted that the reasons given by the CNPA to accept the recommendations of the Reporters include considerations of landscape as well as application of the precautionary principle with respect to impacts on capercaillie.

Further, the CNPA appraisal of the previous application (08/272/CP) clearly sets out the manner in which development in this area is contrary to the development plan, namely:

Para. 131 “... this proposal results in substantial friction between the first aim to conserve and enhance the natural and cultural heritage and the fourth aim of promoting sustainable economic and social development. It is argued that there is an overwhelming need for the housing. However, the CNPA has allocated a significant amount of land for housing elsewhere in the housing market area and further options for Boat of Garten can still be explored. ... ”

Para. 132 “Given the emphasis and level of concern placed upon species of international and national importance as well as concerns about landscape and whether the proposal complements the character of the village this is a case where the first aim to conserve and enhance is in conflict with the fourth aim. With this in mind the approach to be followed is clearly set out in Section 9 (6) of the National Parks (Scotland) Act 2000. This states that ‘if in relation to any matter, it appears to the authority that there is a conflict between the National Park aim set out in section 1 (a) and other National Park aims, the authority must give greater weight to the aim set out in section 1 (a)’ (the first aim). The level of friction between the first and the fourth aim is

significant in this case given the consistent concerns of previous Scottish Government Reporters that have considered the site (and the capercaillie disturbance issue) and from the responses of consultees and CNPA officers. Consequently, there is no alternative but to make a clear recommendation that this application be refused."

And Para. 133 **Conclusion:**

"Given the arguments set out in this report the proposal causes a number of serious concerns with regard to natural and cultural heritage and the detailed policies that cascade from the first aim of the National Park. The Community Council considers there to be an overwhelming need for affordable housing and at no point does this report refute a serious need for such housing in Boat of Garten. However, there is a very strong body of evidence against this proposal. The site is not allocated in the Local Plan and is put forward in the face of substantial housing allocations being made elsewhere in the area, it offends a number of protective environmental policies of the plan and causes substantial friction between the first and fourth aims. This results in a clear recommendation for refusal of the application."

Whilst the present proposal for a total of 32 houses (against 77 previously) is clearly a significant reduction, this only reduces the above very strong considerations. It does not eliminate them.

Further, this application, if granted, would establish the principle of development within this woodland, which would make further applications harder to resist. That such future applications will be forthcoming if current trends are allowed to persist is a matter of simple arithmetic:

186 dwelling have been built in the Boat of Garten settlement area since 1976 (figures from Highland Council), an average of five or six per year. At the end of that period of unprecedentedly rapid growth there is still said to be an "overwhelming need" for more housing, which is a clear indication of two things. Firstly, that the policy of rapid growth, per se, does not solve the problem of housing for local people. Secondly, in the absence of an overall policy to control housing growth, that that overwhelming demand will continue, leading to even more pressure for more housing. The present application for 32 houses represents a mere six years of growth at the previous rate of 187 houses in 35 years. There is therefore an expectation that further applications will be forthcoming in the near future, putting even more pressure on landscape and wildlife and further eroding the setting and quality of Boat of Garten.

The continuing conflict between housing developments and the first aim of the park represent a massive policy failure for the CNPA that will only get worse. The present policy of allowing large housing developments is damaging villages and their communities, damaging landscapes, destroying wildlife and depriving small local builders of a sustainable livelihood, whilst feeding an unsustainable demand from large landowners and large building companies who generally do not use local workers. It is the very opposite of what should be occurring in a national park, as has been learnt from bitter experience elsewhere. Sooner or later the CNPA must grasp the nettle of appropriate control of development. How much damage will the CNPA allow to occur before then – to the park's villages, to its wildlife, to the reputation of Scotland as a country fit to manage national parks, before the CNPA policy is forced, by public outrage and perhaps legal action, to change?

2. The application is contrary to the provisions of the adopted Cairngorms National Park Partnership Plan

The **Partnership Plan Policy Policy 2.3** is to, "Conserve and enhance the special landscape qualities..." One of the landscape qualities inherited by the CNP is that of small villages nestled amongst extensive native woodlands. This proposal is one of many that is in the process of destroying that special landscape quality of the CNP. The CNPA has previously accepted that "the allocation of a large housing site at this location would not follow the advice given in the Landscape Capacity Study" and that therefore this site would not make a positive contribution to the natural, cultural and built landscapes of the Park. 32 houses and their associated footprint is still a large housing site, relative to the size of the village and the sensitivity of the site.

The **Partnership Plan Policy Policy 2.4** is to, "Conserve and enhance habitat quality and connectivity, with a particular focus on: a) woodland enhancement and expansion

Building a housing estate in woodland neither conserves nor enhances the woodland: it destroys it.

The **Partnership Plan Policy Policy 2.5** is to, "Conserve and enhance the species for which the Cairngorms National Park is most important, with a particular focus on: a) species whose conservation status is in decline or at risk;"

Such species include capercaillie, red squirrel and crested tit, all of which either occur upon or will be adversely affected by the proposed development.

3. The CNPA cannot be certain that the capercaillie disturbance mitigation measures will work

There is no guarantee that the measures involved will succeed in changing public behaviour, and I am not aware of any research to show that they would do so.

Planting holly and juniper to form a screen will likely take more than twenty years to become effective (I have a native holly growing in good light and good soil that was planted in 1997, which is presently about 1m tall, and a juniper planted c. 30 years ago that is no taller). Plants growing in poor woodland soils and partial shade can be expected to grow more slowly.

A responsible planning authority would require such measures to be put in place and shown to be working before any application to increase housing was considered.

4. Social and Economic Considerations

The 2001 Census records for Boat of Garten the following information (the relevant 2011 census records are not yet available):

75.5% of the Boat population said their health was "good". In Highland the figure was 70.8% and Scotland 67.9%.

89.1% of Boat households had one or more cars. In Highland the figure was 74.9% and Scotland 65.8%.

The population of Boat of Garten was 665, an increase of 16.5% on the 1991 figure. In contrast, Highland region population grew by 2.5% and Scotland by 1.3% during the same time.

17.7% of the Boat population was 14 or younger. In Highland the figure was 18.3% and Scotland 17.9%.

In short, Boat of Garten's population in 2001 was healthier, wealthier, was growing much faster and had about the same proportion of young folk as the rest of the Highlands or the rest of Scotland. I know of no reason to suggest that matters have substantially changed in these regards since 2001. In other words, Boat of Garten is an exceptionally fortunate community compared with the rest of Highland or Scotland.

Further, Highland Council's housing completion figures for Badenoch and Strathspey record that, between 1976 and 2011, 186 houses were built in the Boat of Garten settlement area. That is, over half of the 300 households in the Boat area (recorded in the 2001 census) were built during this time. It is not the case that Boat of Garten has been starved of housing development in recent decades.

These facts about the Boat of Garten settlement are relevant to the situation with respect to capercaillie interests and of the requirements of the Habitats and Birds Directive for Annex I species such as capercaillie.

5. The Habitats Directive

The Directive requires that **“A development that would have an adverse effect on the conservation interests for which a Natura 2000 site has been designated”** (in this case capercaillie) **“should only be permitted where:”**

- **“there is no alternative solution, and”**
- **“there are imperative reasons of over-riding public interest, including those of a social or economic nature”**

In this case, were the CNPA to be minded to grant planning permission, it would be required to show:

- i) Either that it was **certain** that there would be no adverse effects with respects to capercaillie from the development, or
- ii) that such **“imperative reasons of over-riding public interest...”** existed and that there were no **“alternative solutions”**.

In the latter respect, The Chief Executive of the CNPA is on record as saying that the An Camas Mor development would help to relieve development pressure on villages in Badenoch and Strathspey and in its response to the previous application (08/272/CP) Para 131 (see above) the CNPA acknowledges that alternatives exist. It follows that there are **“alternative solutions”** to this application.

In short,

- i) there is no certainty that adverse effects with respects to capercaillie can be avoided
- ii) there are no **“imperative reasons of over-riding public interest”** related to this application
- iii) **“alternative solutions”** exist

and it follows from the Directive that it should not be granted permission.

Yours sincerely, Roy Turnbull