
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATION

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(DEVELOPMENT CONTROL)

DEVELOPMENT PROPOSED: ERECTION OF DWELLING AND STABLE BLOCK; USE OF LAND AS AN EQUESTRIAN CENTRE, FIELD EAST OF B970, OPPOSITE BALLIEMORE, NETHY BRIDGE (AMENDED PROPOSAL)

REFERENCE: 04/109/CP

APPLICANT: ALASTAIR AND INGRID KENDALL

DATE CALLED-IN: 12 MARCH 2004



Fig. 1 - Location Plan

SITE DESCRIPTION AND PROPOSAL

1. This application was deferred at the Dinnet Planning Committee meeting in May 2004 and subsequently members of the Planning Committee made a site visit to assist in the consideration of the proposal. The scheme has been amended to re-site the buildings.
2. The site to which this application relates is to the east side of the B970, approximately 1 kilometre north of Nethy Bridge, opposite Balliemore, Abernethy Church (listed building) and Castle Roy (Scheduled Ancient Monument). The site is also close by the Craigmore Wood SPA which is an important Capercaillie site. The site consists of an open field that is understood to be part of an agricultural holding. There are no buildings on the site. The Allt Mhor burn, flowing into the Spey, forms the southern/south eastern boundary of the site, beyond this is the Abernethy Outdoor Activities Centre and the Golf Course. To the east of the site is a dwelling known as Milton. The site itself is largely grass and slopes upwards from the B970. The applicant's currently run an established trekking business at Alvie called "Adventures on Horseback" which has built up into a small but profitable business. It is considered that there is both a market and seasonal need to develop the business, however circumstances dictate that the business is unable to expand at that site. The proposal provides justification in the form of a business plan and a strong analysis of the local market, which indicates opportunities in the tourist market for trail riding holidays. The proposal's intention is to offer trail riding facilities for a small group of 6 people each week, the accommodation consists of 3 private en-suite bedrooms upstairs, catering will be "family style" in the large dining room. The intention is that that the applicants would live at the house and manage the business from it.
3. In physical terms the original proposal consisted of house/guest accommodation with equestrian facilities, accessed mid way along the site frontage with the B970 with the access track leading towards the south eastern side of the field. The structures would consist of a four-bedroom house on 12.5 acres of grazing land to be divided into four paddocks. A barn was proposed to house horses, including a tack room and feed room. An outdoor ménage was also included in the proposal. The house was to be on the south side of the area to be developed, would be two-storey (first floor in roof space) with a central ridge height of 7.4 metres. The house being primarily designed along a rectangular footprint with a through gable providing a central feature on each main elevation. Other materials would include timber panelling with stone features for external facings and a slate roof. The barn would be of a steel framed portal construction with timber facings and profiled roof with translucent sections allowing light into the barn. The ménage was proposed to the east of the barn and measured 45 by 25 metres and enclosed by post and rail fencing. The area enclosed is drained and filled to a depth of 6 inches with an all weather-riding surface.

4. As a result of concerns raised by the Planning Committee the buildings have been re-sited to the north eastern corner of the field with the house (same design as previous) sited between the stable block and the ménage. A new access point will be formed opposite the Abernethy Church entrance (as agreed with the highway engineer). As previously noted the size and design of the house is as before as are the dimensions for the ménage. The stable block is of a similar footprint as before (19 by 11.5 metres), with 8 loose boxes incorporated and sited behind the house. Concerns were raised with the applicant regarding the height of the barn and because of this the ridge height of the barn has been reduced to an overall height of 6.4 metres with an eaves height of 3.65 metres. The materials are as per the earlier scheme.
5. The applicants have provided a revised justification for the proposal, together with details relating to sustainability stating that a wood chip boiler will be used and that some building materials would be sourced locally together with a response to the objections raised to the revised proposal.
6. At the earlier meeting the Planning Committee raised concerns regarding the true nature of the proposal in terms of the intensity of activity that would be taking place at the site. The application is essentially for the business provision of riding holidays for experienced riders catering for up to 6 guests per week in three double bedrooms of the house. The riding will be between the site and the applicants existing business premises at Alvie, with a round trip route from the site to Bridge of Brown.
7. Supporting information points out that that other equestrian activities may form part of the future business development of the site at Nethy Bridge to include tuition, the breaking and schooling of horses and possibly livery together with a schooling service.
8. With regard to potential trekking routes the applicants have confirmed that they would not use Craigmores Wood (SPA). The applicants have pointed out that they have met all of the major land owners and have agreed a management approach to ensure that dung is removed from Loch Morlich to avoid nutrient build up and to avoid a sensitive section of track, which has been highlighted. The applicants are mindful of concerns raised by Nethy Bridge Community Council and would be happy to open the facilities to the local community on a limited number of days a year.

DEVELOPMENT PLAN CONTEXT

9. **Policy G2 (Design for Sustainability) of the Highland Structure Plan** states that developments will be assessed on the extent to which they, amongst other things, impact on resources such as habitats, species, landscape, scenery and are in keeping with the local character and the historic and natural environment. **Policy H3 (Housing in the Countryside)** states that new housing and conversions of non traditional buildings in the open countryside will not be permitted, unless it can be

demonstrated that they are required for the management of the land and related family purposes. **Policy L4 of the Highland Structure Plan** indicates that the Council will have regard to the desirability of maintaining and enhancing present landscape character in the consideration of development proposals.

10. **Policy H3 of the Highland Structure Plan Housing in the Countryside** considers that new housing will generally be within existing and planned new settlements and that new housing will not be permitted unless it is required for the management of land and related family purposes.
11. **Highland Council Development Plan Guidelines (April 2003)** defines what is meant by management of land and required family purposes as being for farmers, retired farmers and their spouses. With regard to business enterprises the guidelines state that. "For other business enterprises evidence must be provided that the business has been established for at least two years before consideration will be given to any application for associated housing".
12. **Policy T2 (Tourism Developments)** states that the Council will support high quality tourism development proposals, particularly those which extend the tourism season, provide wet weather opportunities, spread economic benefits more widely, are accessible by means other than private vehicles and provide opportunities for the sustainable enjoyment and interpretation of the area's heritage.
13. **Policy T3 (Self Catering Tourist Accommodation)** states that permission for tourist accommodation proposals will be granted only on the basis of the development not being used for permanent residential accommodation. This will be secured by means of an appropriate occupancy condition
14. **Policy N1 Nature Conservation of the Highland Structure Plan 2003** considers that new developments should seek to minimise their impact upon nature conservation and enhance it where possible. The Council will seek to conserve and promote all sites. With regard to sites and species of international importance-developments which would have an adverse effect on the nature conservation interests for which a site has been designated will only be permitted where there is no alternative solution and there are imperative reasons of over-riding public interest, including those of social and economic nature. Where a priority habitat or species (as defined in Article 1 of the Habitats Directive) would be effected, prior consultation with the European Commission is required unless the development is necessary for public health or safety.
15. **Policy 2.1.2.3 (Restricted Countryside Areas) of the Badenoch and Strathspey Local Plan** states that there is a strong presumption against the development of houses within the Restricted Countryside Area. Exceptions will only be made where a house is essential for the management of land and related family and occupational reasons.

Restrictions on the subsequent occupancy of such houses will be enforced. The Local Plan under **Policy 2.1.2. (Housing in the Countryside)** also states that new houses in the countryside should be sited to reflect the characteristic scatter of established development.

16. The **Badenoch and Strathspey Local Plan** allocates certain sites for housing. However, the site proposed by this application lies outwith these allocations, to the north of the village beyond the Golf Course. The Local Plan states that the Council will safeguard Castle Roy and its immediate environs and ensure adequate separation from overhead transmission lines. One of the principles of the local plan seeks to avoid encroachment of development onto open land outwith Nethy Bridge.
17. **National Planning Policy Guidance 5 Archaeology and Planning** states that Scheduled Ancient Monuments are of national importance and that it is particularly important that they are preserved in situ with an appropriate setting and goes on to state that developments which would have an adverse effect upon the integrity of their settings should not be permitted unless there are exceptional circumstances.
18. Most recent planning advice in the form of **Scottish Planning Policy 15 (SPP15) "Planning for Rural Development"** para 11 considers that in less populated areas there is scope for more innovative planning policies and encouraging diversification eg by delivering tourism and recreation projects and developing activities such as aquaculture and equestrianism.
19. **(SPP15) para 26** points out that there are many areas in Scotland which are special in terms of the natural environment where change has to be managed with great care. The protection and management of these assets, including the need to further the interests of bio diversity are important considerations. Many areas such as those containing protected habitats and landscapes are special in European and National terms and they have to be cared for as part of the good stewardship of the wider countryside.

Legislative Requirements for European Sites

20. For Craigmore Wood the sites status as a classified SPA under the EC Directive 79/409/EEC on the Conservation of Wild Birds (the "Birds Directive") means that the provisions of the Revised Circular 6/95 and the conservation (Natural Habitats &c) Regulations 1994 (the "Habitats Regulations"), apply. For the River Spey, the sites status as SCI under the EC Directive 92/43/EEC on the Conservation of Natural Habitats and the Wild Flora and Fauna (the "Habitats Regulations"), apply means that the provisions of the revised Circular 6/95 apply. The Circular (page 3 para. 12) sets out the obligations of the EC Directive 92/43/EEC on the Conservation of Natural Habitats and the Wild Flora and Fauna (the "Habitats Directive"), which applies a common protection regime to all European sites.

21. "The Regulations require that, where an authority concludes that a development proposal unconnected with the nature conservation management of a Natural 2000 site is likely to have a significant effect on that site, it must undertake an appropriate assessment of the implications for the conservation interests for which the area has been designated".
22. Paragraph 13 of the Circular states that the need for an appropriate assessment extends to plans or projects outwith the boundary of the site in order to determine their implications for the interest protected within the site.
23. Under Regulation 48, this means that the Cairngorms National Park Authority, as a competent authority has a duty to:
 - A, determine whether the proposal is directly connected with or necessary to site management for conservation; and if not,
 - B, determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and if so then
 - C. make an appropriate assessment of the implications (of the proposal) for the site in view of that sites conservation objectives.

CONSULTATIONS

24. **Highland Council Area Roads Manager** has no objection to the revised access in principle, but requests that warning signs be situated in the vicinity of the site to alert drivers to the presence of horses and use of road routes where possible. In addition a range of standard highways conditions are proposed with regard to visibility and parking at the site.
25. **SNH** comments (full copy at back of report) on the sites proximity to Craigmore Wood Special Protection Area (SPA) and Abernethy Forest (SPA) and also close to the River Spey Site of Community Importance (SCI), potential landscape impacts are also considered.
26. **SNH** note that Craigmore Wood holds a particularly valuable capercaillie population, which may be up to 8% of the national population. While SNH has no particular concern about the buildings from a nature conservation point of view, SNH's advice is that the impact of the proposal on these designated sites is likely to be significant, the concern essentially relates to the potential for disturbance to the capercaillie population from recreational activity in the form of horse riding in the countryside, in particular Craigmore Wood and Abernethy SPA's.
27. **SNH** consider that a Section 75 Agreement or similar mechanism should be made to manage access by the applicants and their clients to Craigmore Wood SPA and Abernethy Forest SPA. This agreement should include the following points:

28. That if the applicants wish to take or direct groups to Craigmore Wood or Abernethy Forest, they should carry out a full risk assessment of their activities in relation to potential disturbance to capercaillie in terms of the Scottish Outdoor Access Code. This should be reviewed regularly and possibly annually and include discussing their plans with land managers and planning their activities in ways that minimise possible impacts on the environment. Groups run commercially or for profit should not use Craigmore Wood SPA except with the permission and advice of landowners. Groups taken elsewhere should follow main tracks and established rights of way; a wide variety of routes should be used, with as many as possible outwith capercaillie woodlands; in woods with capercaillie present, there should be no visits before 8.30am from 15 March-15 May in sensitive areas. The capercaillie project officer should be consulted to establish what areas have capercaillie and are sensitive; no dogs should accompany groups of riders unless by agreement with the landowners.
29. **SNH** point out that should such conditions not be applied to any consent then their view should be considered as an objection to the application **(this means that if the CNPA are minded to grant permission this intention would have to be notified to Scottish Ministers)**.
30. With regard to the adjacent Allt Mhor tributary of the River Spey (SCI) **SNH** note that the proposal is not considered to be part of the nature conservation management of the site and raise limited concern with regard to the septic tank. However, subject to approval by SEPA it is considered that any qualifying feature would not be affected by the proposal.
31. **SEPA** comment that a single soakaway approach in terms of roof water would seem appropriate. However, two levels of treatment would be required in relation to run off from the stables, this could be achieved by a combination of filter trench and soakaway. (it is noted that satisfactory percolation test results have been achieved at the site).
- 32. Highland Council Archaeology Unit** makes no comment.
33. **The CNPA Natural Resource Group** notes that the recently published Delphi Report reached a consensus amongst researchers and practitioners that capercaillie are highly susceptible to disturbance and that this should be avoided or mitigated where possible. NRG note that the Badenoch and Strathspey Conservation Group have provided a letter highlighting the importance of Craigmore, and that in particular that the bird has been noted breeding after 8.30 am. This has particular relevance to SNH's response in para 27 above. NRG also raise general concern that allowing any disturbance at or near the site could be in breach of EU legislation.

34. **NRG** note that the revised proposal is better in terms of mitigating landscape impact, but this is still considered to be a visually intrusive development out of character with the open, undeveloped landscape around the site

REPRESENTATIONS

35. **Nethy Bridge Community Council** agreed that while it had no comment on the plans for the development, they were minded to point out that they felt an equestrian centre open to the public (eg not private) could add to the visitor appeal of the village. A subsequent letter asked that consideration be taken of the potential for erosion of the pathways around the village because if the plan is to go ahead the use of the paths by horses could damage them and it may be that we would need to discuss with the landowners to pay maintenance for the upkeep of the paths.
36. The original proposal prompted letters of objection raising the following concerns:-
37. Potentially dangerous access, close to the access to Balliemore on the opposite side of what is considered a narrow road. The only potential access from the site for riders is directly onto the B970 which only just permits two way working and is curved, near a narrow bridge over the Allt Mhor and also gives access to the car park for the adjacent church and Castle Roy, it is considered that this combination could result in potential dangers for both riders and passing traffic. In addition, to gain access to quieter roads it is considered that the riders would have to stay on the road for half a mile or so before being able to access quieter roads. One writer points out that the adjacent access to the property known as Milton is not a right of way and riders would not be permitted on it.
38. The ridge height of the buildings at 7.5 metres for the dwelling and 8.5 metres for the stable block would result in the buildings being undesirably prominent in the landscape, particularly as the field rises above the B970. The buildings/ménage are considered out of character with the area and would diminish the character of the adjacent Victorian farmhouse, the listed parish church and the Scheduled Ancient Monument of Castle Roy. One writer suggests siting the buildings to the south in a fold of land, rather than right in the centre of the open ground.
39. The buildings proposed lie within a narrow cone of vision when seen from Balliemore and it would be better if the buildings were positioned further north in the field.
40. The outfall from the proposed septic tank cuts across the line of a private water supply

41. One writer considers that this is exactly the sort of proposal for any village in the area and would provide a leisure facility appropriate to the national park and depending on management one that could greatly benefit the local community, particularly the youngsters of the village. The writer is greatly in favour of the principle of this type of development in Nethy Bridge. However, the writer considers that the field provides exactly the wrong location as the undisturbed contours provide a classic setting and visual context for Castle Roy and Abernethy Old Kirk which is essentially considered part of one of the best loved views of the Cairngorms ranges from this part of the strath.
42. **Re-consultation** on the revised siting for the proposal has resulted in a number of letters (all attached at the back of the report) of objection raising similar concerns to those outlined above but raise extra concerns particularly relating to highway safety, the applicant has offered to provide parking for the Church on their side of their side of road but this has been rejected due to highway safety concerns.
43. A range of landscape concerns are expressed with particular regard to the setting of Castle Roy and the Church.
44. A concern not expressed previously relates to nature conservation issues and in particular the presence of capercaillie in the adjacent Craigmore Wood. It is pointed out that the woods is one of the most important woods for this species and is vital to their continued survival. The writer points out that new access legislation appears to guarantee equine access into Craigmore Wood and that such access could result in conflicts between recreational use and protection of Capercaillie.
45. In relation to this issue, the RSPB as owners of Craigmore and Abernethy have no objections to the buildings proposed, concern is raised at potential disturbance to Capercaillie in Craigmore Wood where there is a high concentration in a small area with a high number of landrover tracks. The letter considers that the applicant fully recognises these sensitivities and has given an undertaking not to develop rides through Craigmore Wood. The routes envisaged would be likely to go through Abernethy on established rights of way. However, the applicant has agreed not to take dogs on these tracks and not to traverse the reserve prior to 08:30 am, particularly in April and May. However, the RSPB wish their response to be considered as an objection unless the measures outlined are secured by condition or by a legal agreement.
46. A full and detailed response from the **Badenoch and Strathspey Conservation Group** has been received which makes particular reference to the potential for disturbance to capercaillie from the proposal (this letter has been reproduced in full at the back of the report)

47. One writer attaches a copy of the Local Plan profile document for Nethy Bridge and points out that it includes photographs of the environs of the site including the Church and Castle and pointing out that these are indicated as places of interest on the profile document.
48. Another writer points out that the new vehicular entrance is directly opposite the churchyard entrance where funerals enter and leave, the writer considers that this could seriously compromise an important aspect of local life and that if this point is not appreciated there could be long term local resentment at planners.
49. A letter has been received from the Abernethy Trust who run an outdoor centre adjacent to the site and they point out that the revised positions for the house and stables may receive disturbance from the lights of their floodlit dry ski slope. The letter also points out that the revised plan directly places the house in the line of site from one of their time share lodges to Castle Roy. Concern is also raised that the ménage is not covered in any way by larger buildings.
50. The applicants have provided a supporting statement and response to these objections attached at the back of the report and have also supplied an extract from a book which points to the historic precedent and culture of pony trekking in the Highlands and Badenoch and Strathspey and its importance to the area in terms of early tourism. The Badenoch and Strathspey Riding Club have expressed support for the proposal. A letter has been received from Explore Abernethy as a result of a meeting between the applicants and the organisation where it was agreed that the local path network would not be used. This is in response to points raised by the Community Council. The applicants have also met with the RSPB and agreed not to use Craigmore Wood. Some sections of the original justification for the proposal including an extract from the business plan have been attached at the back of the report.

APPRAISAL

Introduction

51. The key issues relating to this application are the principle of a house/tourism development, its landscape impact in terms of siting, general highway safety considerations and finally issues with regard to natural heritage/protected species.

Principle of Housing/Tourism Development at the site.

52. The site lies within a Restricted Countryside Area where new dwellings are not normally allowed without a land management justification. In essence, the justification for the house is the equestrian centre. Therefore, what is being considered is a combined application for a house in open

countryside that is being justified by the equestrian business, including holiday accommodation that the house would provide for visitors. Justification has been provided in the form of a business plan, which has been submitted as supporting information with the application. **Policy H3 of the Highland Structure Plan (Housing in the Countryside)** as further defined in **Development Plan Policy Guidelines 2003** and as reflected in **Policy 2.1.2.3 (Restricted Countryside Areas)** of the **Badenoch and Strathspey Local Plan** considers that new housing and conversions of non-traditional buildings in the countryside will not be permitted, unless it can be demonstrated that it is required for the management of the land and related family purposes. What is meant by land management and related family purposes is explained by the Development Plan Policy Guidelines (2003) document as relating to farmers managing the land, retired farmers and farmers spouses. The guidelines go on to consider that for other business enterprises, (such as the one proposed here) evidence should be provided that the business has been established for at least 2 years. In this case, the justification for the proposal has been based upon an equestrian tourism business, one that does not have an existing link to the management of this piece of land which is understood to be part of an agricultural holding. In addition, there is no evidence of a search for alternative sites. Given this, the proposal cannot be considered as relating to the management of the land but is related to the management of a future, brand new business at the site, which while being well thought out, justified and presented does not result in a reason for departing from the prevailing policy context of restraint in areas of open countryside. Recent policy guidance in the form of the Scottish Executive's **Planning Policy 15 on Planning for Rural Development** makes direct reference to this type of development, which the agent refers to. The paper offers advice that in less populated areas there should be greater scope for more innovative planning policies and that Scottish Ministers see considerable potential for encouraging diversification, distinctiveness and individuality e.g. delivering tourism projects including equestrianism

53. This advice is noted. However, while sections of the document encourage economic diversification, the guidance does not encourage residential uses in open countryside areas, except where small clusters of houses and mixed use sites may be identified through the Local Plan process. Allowing residential uses, contrary to policy to justify economic diversification in an ad-hoc manner on the basis of applications departs from the plan led approach that the guidance emphasises. In addition, **Tourism (T4)** policy within the **Highland Structure Plan** considers that tourist accommodation will only be granted on the basis of the development not been used for permanent residential accommodation.
54. Given the above policy analysis it is my view that given the lack of a existing business enterprise related to the site the development is contrary in principle to the prevailing development plan context and while latest advice encourages economic diversification in rural areas it does not justify a new residence for the applicants (although it may justify accommodation for their guests in accordance with **Policy T4** as set out above).

Issues relating to siting, landscape impact and design

55. The site for the development has been moved to the north eastern corner of the holding at the request of the Planning Committee and members visited the site last year. This takes the development out of the centre of the site and therefore, has much less impact upon the main view of the Cairngorms from the car park outside the church. The stable block has been reduced in height and set back to the rear of the ménage and house site. This significantly reduces the landscape impact of the proposal from the previous siting and the associated landscaping should help to mitigate against this. However, I still note that this area is a key open space in protecting the setting of the village and its openness is protected in principle by the Nethy Bridge section of the Local Plan. With regard to this setting it must be noted that equestrian ventures can often result in a range of associated items such as jumps and trailers occupying the wider site of such a venture. Such basic items are a material planning consideration and have been treated as such in other planning cases around the UK. Because of this, and the policy stance set down by the Local Plan I would still recommend refusal of the proposal based upon the local landscape impact of the scheme and its (although) now reduced impact upon the historic setting of Castle Roy and the Abernethy Church which is a listed building. The applicants point out that Historic Scotland have not objected to the proposal. However, they have not been consulted in this case given that the site is not immediately adjacent to those buildings. Despite this the buildings will have some effect on the wider setting of these historic features, particularly when viewed across the Strath from the A95.
56. While I am of the view that the buildings would still have an overall negative impact I have no particular concerns regarding the design detail of the buildings. The house incorporates materials such as natural slate with stone and render facings that are not untypical of the area. The design incorporates a chimney and has heavily overhanging eaves that would add texture to the elevations. The barn is of a standard timber agricultural design that would not be out of character with its intended use.
57. The proximity of the Allt Mhor Site of Community Importance is noted by both SEPA and SNH drainage details have been submitted and satisfactory percolation tests have been carried out at the site.

Highways Issues

58. A range of concerns have been raised regarding highway safety issues and the potential for conflict between equestrian and vehicular users of the surrounding road network. A new access has been agreed between the applicants and the Area Roads Manager Representative and this is agreeable subject to a range of conditions. However, it must still be recognised that this is a relatively narrow stretch of road and close to a bend. The Area Roads Manager has raised concerns regards potential conflicts between horses and vehicles and has asked the applicant for

specific routes which have been supplied. The response from the Roads Manager considers that horse users should minimise their use of roads wherever possible and agree signage to be provided close to the site to warn of the proximity of equestrian users. A separate horse/pedestrian access at the southern end of the field has been offered by the applicants to ensure that horses are only on the B970 for a short distance before turning into the road along the Golf Course. This element of the proposal is important as pointed out by an objector representation unfortunate conflicts could occur between funeral parties accessing the church and riding parties leaving the centre.

Issues in relation to Craigmore Wood SPA and Capercaillie

59. Much concern has been raised since the last meeting regarding the proximity of the Craigmore Wood SPA to the site and the use of the Abernethy SPA as a route from this site to the applicants other business premises at Alvie both SPA's are of importance for capercaillie as reflected in the response received from SNH. There is no nature conservation objection to the buildings themselves, but there is concern, which forms an objection to the proposal if SNH's mitigation measures are not adopted. This is a difficult area, because the concern does not relate to the impact of the development proposal on site but potential impacts in terms of disturbance to capercaillie in Craigmore and Abernethy SPA's. The applicant has already agreed not to use Craigmore at all for trekking activities and a route through Abernethy has been suggested with a range of conditions attached. SNH have suggested a Section 75 Agreement or 'other' legal agreement to secure these issues. However, I do have some concerns with this general approach when it denies access to one party but would allow other commercial trekking businesses to use the sites unfettered by such an agreement. If a large scale trekking business was being proposed then impacts outside of the site would have much more material weight in terms of their planning consideration. However, this is a small proposal involving parties of 6 people/horses and the numbers of horses on the site can be conditioned. Having carried out research in relation to case law there is no definitive answer to this question as some Planning Reporters/Inspectors have placed more weight on the planning system than others as a means of protecting valued ecological areas from the potential impacts of horse related development. However, all decisions that I have found make reference to varying degrees that access legislation and local byelaws will also be relevant and perhaps more effective.

60. Because both Craigmore and Abernethy are SPA's the relevant legislation requires that the impacts of the development upon the site and outwith the site must be considered. Because of this, a reason for refusal based upon the application's failure to demonstrate protection of capercaillie (based upon SNH advice) populations is recommended. However, should the Planning Committee wish to approve the application the applicant has already confirmed that he would not use Craigmore Wood for trekking

operations and legal advice indicates that a Section 75 Planning Agreement could, in theory, be used to ensure that any uses of the surrounding countryside (including Abernethy) are in line with Scottish Natural Heritage's wishes. The applicant would be legally bound by such an agreement but I would point out the difficulties of effective monitoring and the equality of such an agreement given that the rights of other existing individuals and trekking businesses would continue unfettered. Such issues could perhaps be best be addressed through the Scottish Outdoor Access Code and it is noted that the permission of the relevant land manager is required for the running of a business over land affected by access legislation.

Conclusion

61. In many ways this perhaps could be viewed as a very well thought out and well justified proposal upon which much work has been carried out by the applicant and which meets several of the aims of the Park. However, it is still my view that this is the wrong site for the proposal and this is evident by the concerns expressed by a range of individuals and organisations over a range of issues with particular regard to the natural heritage aim of the park. The development of the site would set a precedent for residential buildings in this area and it is noted from one of the objector's responses that they are watching this application carefully with a view to developing their own land nearby. The Local Plan seeks to protect the setting of the village and one of the key elements of this setting is the surrounding woodlands and open spaces. In my view the proposal would set a precedent for the development of such sites around Nethy, making future proposals more difficult to resist.
62. With regard to the capercaillie issue I have some concerns regarding the extent to which the implications of the proposal upon capercaillie, can be fully assessed and considered particularly given the small scale nature of the operation and the fact that certain conditions could be applied to ensure that activity does not intensify unduly at the site (e.g. limiting the number of horses). However, should mitigation measures in the form of a legally enforceable agreement in line with SNH's wishes not be applied to any approval then any intention to grant permission would have to be notified to Scottish Ministers.
63. The applicant is willing to enter into an agreement restricting his use of Craigmere Woods (which in my view is only marginally justifiable in terms of protecting capercaillie) and the way in which other trails in Abernethy are used. However, any restrictions on timings of passage along forest tracks some of which are several miles away from the site are in my view onerous and disproportionate to the small number of horses involved (such mitigation should be achieved by negotiation between land managers and the applicant under access legislation). The Scottish Outdoor Access Code provides information regarding access and natural heritage and on a range of management measures that can be used to protect the natural heritage.

Such measures include voluntary agreements between land managers and recreational governing bodies, Scottish Natural Heritage can put signs up asking individuals to exercise rights in a particular way or a public body and SNH might introduce byelaws or other measures designed to prevent damage to the natural heritage. Of most significance it is noted that in organising an event or running a business the permission of the relevant landowners should be obtained. In my view this is the most appropriate mechanism for protecting the Craigmore and Abernethy SPA's in this instance. It is my view that applying such a planning agreement would be untenable, un-enforceable, and therefore perhaps not a proper use of the planning system, and also raise issues of equality with other users despite the willingness of the applicant to sign up to it. This means that given what I believe is the planning systems inability to deliver the mitigating measures required by SNH then any intention to grant planning permission would have to be notified to Scottish Ministers, unless a way forward can be identified through use of access agreements.

IMPLICATIONS FOR THE AIMS OF THE PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

64. The proposal would be likely to have a negative impact upon the natural and cultural heritage of the area, the revised proposal is an improvement but the prominence of the site in the wider landscape is significant and in my view the proposal would still have a detrimental effect. The proposal would also have a detrimental impact upon the cultural heritage, specifically regarding the proximity of Castle Roy and the Abernethy Church. Scottish Natural Heritage object to the proposal with regard to Craigmore Wood and Abernethy SPAs and the potential impact upon pony trekking upon capercaillie populations. In my view given the limited scale of the proposal such impacts can best be addressed through access legislation, but SNH's response the proposal indicates that the scheme may have impact upon a protected species of utmost importance in terms of European Conservation.

Promote Sustainable Use of Natural Resources

65. Some materials including stone from Alvie Quarry will be sourced locally and it is the applicants intention to utilise local food chain opportunities when catering for guests.

Promote Understanding and Enjoyment of the Area

66. The nature of the proposal as a visitor/tourism attractor would clearly contribute to promoting understanding and enjoyment of the area.

Promote Sustainable Economic and Social Development of the Area

67. The proposal would involve considerable investment and would promote the economic development of the area both in terms of its initial construction and the ongoing economic benefits of bringing investment into the area. In terms of social development some suggestions have been made by objectors that the centre could be open to local youngsters. However, the nature of the business proposal is one that is directly aimed at the tourist market. Despite this, the applicants consider that the site could be open to members of the local community on a small number of days per year.

RECOMMENDATION

68. That Members of the Committee support a recommendation to: **REFUSE Planning permission for a new dwelling and use of land as a stable block at Balliemore, Nethy Bridge** for the following reasons:-

- (i) The proposed development is contrary to National, Regional and Local Planning Policy as contained in Scottish Planning Policy 3 (Planning for Housing) Scottish Planning Policy 15 Planning for Rural Development, Highland Structure Plan Policy H3 (Housing in the Countryside), Development Plan Policy Guidelines 2003 and Badenoch and Strathspey Local Plan Policy 2.1.2.3. (Restricted Countryside Areas), all of which restrict new houses in the countryside unless particular circumstances are clearly identified in development plans or there are special needs in relation to land management. Neither of these exceptions applies in this instance.
- (ii) The erection of the dwelling house and associated stable block and ménage are set on a prominent site would result in a detrimental impact upon the local and wider landscape and the setting of the scheduled Ancient Monuments of Castle Roy and Abernethy Church when viewed across Strathspey from the A95 and the nearby Speyside Way. Approval would also act as an unacceptable precedent for further ad-hoc, sporadic and un-planned development into a restricted countryside area that is regarded in the Badenoch and Strathspey Local Plan as protecting the setting of Nethy Bridge. As such the proposal fails to comply with the Highland Structure Plan Policy G2 (Design for Sustainability), Badenoch and Strathspey Local Plan Policy 2.1.2.3 (Housing in the Countryside), Policy L4 of the Highland Structure Plan (Landscape Character).

- (iii) Without the inclusion of a planning agreement that is considered inappropriate and difficult to enforce, in this instance the proposal fails to demonstrate that it could provide adequate protection to capercaillie populations in both Craigmore Wood and Abernethy Forest. The proposal is therefore contrary to European Conservation legislation, the advice of Scottish Natural Heritage and to Policy G2 Design for Sustainability of the Highland Structure Plan 2003 and Policy N1 Nature Conservation of the same document.

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