

# APPROVED MINUTES 22 JULY 2011

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## CAIRNGORMS NATIONAL PARK AUTHORITY

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### MINUTES OF THE PLANNING COMMITTEE

held at The Albert Hall, Ballater  
on 22<sup>nd</sup> July 2011 at 10.30am

#### PRESENT

Peter Argyle  
Dave Fallows  
Katrina Farquhar  
David Green  
Kate Howie  
Marcus Humphrey  
Gregor Hutcheon  
Eleanor Mackintosh

Ian Mackintosh  
Mary McCafferty  
Willie McKenna  
Gordon Riddler  
Gregor Rimell  
Brian Wood  
Allan Wright

#### IN ATTENDANCE:

Robert Grant  
Mary Grier  
Bruce Luffman

Andrew Tait  
Pip Mackie  
Hamish Trench

#### APOLOGIES:

Duncan Bryden  
Angela Douglas

Jaci Douglas  
Bob Kinnaird

#### AGENDA ITEMS 1 & 2:

##### WELCOME AND APOLOGIES

1. Peter Argyle, Vice-Convenor welcomed all present.
2. Apologies were received from the above Members.

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## **AGENDA ITEM 3:**

### **MINUTES & MATTERS ARISING FROM THE PREVIOUS MEETING**

3. The minutes of the previous meeting, 24 June 2011, held at The Duke of Gordon Hotel, Kingussie were approved.
4. There were no matters arising.
5. Peter Argyle provided an update on the Action Points from the previous meeting:
  - Action Point at Para. 26: The Planning Officer had written to the Applicant and was awaiting their response.
  - Action Point at Para. 39: The consultation response had been submitted to Highland Council.
  - Action Point at Para. 51: The consultation response had been amended to reflect the discussion at the Committee and had been submitted to the Scottish Government.
  - Action Point at Para. 56: The Service Improvement Plan had been submitted to the Scottish Government.
  - Action Point at Para. 65: Murray Ferguson was currently on annual leave and an update would be provided at a future meeting.

## **AGENDA ITEM 4:**

### **OUTCOME OF ELECTRONIC CALL-IN**

6. The content of the Outcome of the Electronic Call-in held on 8<sup>th</sup> July 2011 was noted.

## **AGENDA ITEM 5:**

### **DECLARATION OF INTEREST BY MEMBERS ON ANY ITEMS APPEARING ON THE AGENDA**

7. Peter Argyle & Marcus Humphrey (Aberdeenshire Councillors) declared a direct interest in Item No. 11 (Paper 6) on the Agenda.

## **AGENDA ITEM 6:**

### **REPORT ON CALLED-IN PLANNING APPLICATION FOR RELOCATION OF GARAGE FROM APPROVED SITE PLAN (REF: 08/312/CP) AT FESHIEBRIDGE COTTAGE, FESHIE BRIDGE, GLENFESHIE, KINGUSSIE (PAPER 1) (11/146/CP)**

8. Peter Argyle informed Members that a request had been made to address the Committee from –
  - Objector: Norrie Dudgeon

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9. The Committee agreed to the request.
10. Mary Grier advised Members that a representation had been received outwith the required timescales from the Applicant, Mr John Ardill, and as such it had not been presented to Members. However, Mary Grier provided an update from the Applicant that he maintained that the garage was located within his site and was consistent to the approved planning permission and he also disputed the accuracy of the current site layout plan, located at figure 4 (submitted by his Agent), in the planning report.
11. Mary Grier introduced the paper for determination.
12. Bruce Luffman advised the Committee of his involvement in the application process.
13. The neighbours initially contacted the CNPA with concerns on 13 October 2010.
14. Bruce Luffman visited the site on 14 October 2010 and contacted the Architect on 20 October 2010.
15. Bruce Luffman advised the Architect that all work on the site should cease.
16. Bruce Luffman attended a meeting with the new agent for the development on 1 November 2010 and differences between the approved plans regarding the position of the garage with the Non Material Variation (granted in June 2009) were pointed out.
17. Bruce Luffman contacted Highland Council Building Standards and the CNPA were advised that the approved Building Standards plans were different to the CNPA approved plans for the planning permission. At this point 3 different sets of plans had been submitted by the Architect, Les Hunter.
18. Bruce Luffman visited the site on 22 February 2011 and took detailed measurements.
19. On 23 February a meeting was attended by the Agent, Builder and Bruce Luffman. Further measurements of the garage position were agreed and a fourth set of Architect drawings were produced by the Builder.
20. Bruce Luffman & Mary Grier met the new Architect and Agent on 31 March 2011 and advice was discussed regarding the Local Plan policies and enforcement issues.
21. Mary Grier continued the PowerPoint presentation recommending that the Committee refuse the application for the reasons stated in the report and support a recommendation to pursue formal enforcement action against the unauthorised development. Mary Grier informed Members that a consultation response had been received from Kincaig Community Council and had been taken into account during the assessment of the application. However, reference to the response had inadvertently been omitted from the Planning Report.
22. The Committee were invited to ask the Planning Officer points of clarification. No points were raised.
23. The Committee decided that after reading a very comprehensive planning report, watching the PowerPoint presentation and having attended a Site Visit there was no need to hear from the Objector, Norrie Dudgeon.

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24. The Committee discussed the application and the following points were raised:
- a) The previous Site Visit which Members had attended.
  - b) The adverse impact of the development on the neighbours and their amenity.
  - c) The adverse impact of the development on the general amenity of the Feshiebridge area.
  - d) The number of breaches which had occurred, meaning the development could no longer meet the terms of the original approved planning permission.
  - e) Clarification that the reasons for refusal were not on the basis of land ownership. Mary Grier confirmed that the site boundary was not in dispute. In the approved plans the garage was to be located 1m from the boundary. The submitted site plan for the already constructed garage showed it to be located on the boundary – therefore not complying with the original approved permission, not leaving room for boundary treatments and adversely affecting neighbouring and visual amenity.
  - f) The number of subsequent produced plans diminishing the original approved permission.
  - g) Usual planning practice being for the Applicant/Agent to discuss any building difficulties (regarding compliance with approved planning permissions) with the Planning Authority and had any such approach been made in this instance. Mary Grier stated that apart from the discussion regarding the non material variation for the width of the house no other approach had been made to the CNPA. The Planning Officer who dealt with the non material variation had explicitly stated in their letter that the approval was only for that particular amendment to the development.
25. The Committee agreed to refuse the application subject for the reasons stated in the report and supported a recommendation to pursue formal enforcement action against the unauthorised development.
26. Peter Argyle thanked the speaker for attending the meeting.
27. The Committee requested clarification regarding the type of enforcement activity and the expected timescale for such a procedure.
28. Bruce Luffman responded that the Applicant had the opportunity to appeal the determination decision made by the Committee to the Scottish Government Directorate for Planning and Environmental Appeals (SEDPEA). Bruce Luffman advised that he did not have a definitive timescale for enforcement taking place as legal advice would be sought by the CNPA prior to issuing any Enforcement Notice in order to ensure that correct procedure was followed. He informed Members that an Enforcement Notice could also be appealed to SEDPEA. Bruce Luffman advised that the Applicant was also entitled to resubmit an application for the site within a specified time frame from the determination Decision Notice being issued.

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29. **Action Points arising:** Bruce Luffman to seek legal advice regarding enforcement activity from the CNPA Legal Advisors.

### AGENDA ITEM 7:

#### **REPORT ON CALLED-IN PLANNING APPLICATION FOR ERECTION OF BOUNDARY FENCE AND SCREENING TO GROUND RETENTION SYSTEM AND CHANGE OF USE FOR PART OF SITE FROM FORESTRY TO RESIDENTIAL USE AT FESHIEBRIDGE COTTAGE, FESHIE BRIDGE, GLENFESHIE, KINGUSSIE (PAPER 2) (11/147/CP)**

30. Peter Argyle informed Members that a request had been made to address the Committee from –

- Objectors: Norrie Dudgeon

31. The Committee agreed to the request.

32. Mary Grier introduced the paper for determination.

33. Bruce Luffman advised the Committee of his involvement in the application process stating that his role was similar to that of the previously determined application.

34. Bruce Luffman wrote to the Agent advising that a non material variation was granted in June 2009 for a wider house, but a further application would be required for the other changes on the Architects plan, as well as pointing out the difference in the continued construction of the development to the approved plans. By this point the stones, groundworks and new entrance had been formed.

35. Mary Grier continued the PowerPoint presentation recommending that the Committee refuse the application for the reasons stated in the report.

36. The Committee were invited to ask the Planning Officer points of clarification. No points were raised.

37. The Committee agreed to refuse the application subject for the reasons stated in the report and supported a recommendation to pursue formal enforcement action against the unauthorised development.

38. Peter Argyle thanked the speaker for attending the meeting.

39. **Action Points arising:** Bruce Luffman to seek legal advice regarding enforcement activity from the CNPA Legal Advisors.

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## AGENDA ITEM 8:

### REPORT ON CALLED-IN PLANNING APPLICATION FOR REFURBISHMENT, ALTERATIONS & EXTENSION TO DERELICT COTTAGE & SITING OF RESIDENTIAL CARAVAN DURING CONSTRUCTION PERIOD AT POLLOWICK COTTAGE, CROMDALE, GRANTOWN-ON-SPEY (PAPER 3) (11/155/CP)

40. Mary Grier presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.

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

- a) The commendable result achieved through negotiations between the Planning Officer and the Applicant.
- b) Clarification that the developer is liable for the costs involved in providing the historical record of the site (as required in Conditions 5 and 6) and the need for this to be made explicit to the Applicant.
- c) The new extension being quite a sizeable increase in scale in comparison to the existing cottage and its location on the side of the cottage instead of the rear elevation, where extensions were usually located. Mary Grier responded that the location of the extension was due to the unusual site boundary and the side elevation being the most appropriate for the location of the extension. Mary Grier confirmed that even with the new extension it would not have an adverse affect on the visual impact of the development, due to the change in ground levels between the road and the site.
- d) Clarification if any guidance was available regarding the acceptable level of increase of footprint to existing dwellings. Mary Grier replied that there was no specific requirement regarding this issue and increase in footprint was assessed on a case by case basis, it was a deliberate decision to avoid prescription in order to allow innovative building solutions.

42. The Committee agreed to approve the application subject to the conditions stated in the report.

43. **Action Points arising:** None.

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## AGENDA ITEM 9:

### REPORT ON CALLED-IN PLANNING APPLICATION FOR FORMATION AND WORKING OF BORROW PIT IN ASSOCIATION WITH BEAULY-DENNY OVERHEAD LINE PROJECT FOR ACCESS TRACK CONSTRUCTION AT SOUTH OF A86, STRATHMASHIE, NEAR KINLOCHLAGGAN, NEWTONMORE (PAPER 4) (11/060/CP)

44. Mary Grier presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
45. The Committee discussed the application and the following points were raised:
- a) Clarification that the works would not interfere with nearby water extraction from the River Mashie. Mary Grier responded that the CNPA had not been made aware of any impact on this issue, SEPA had been consulted on the application and had raised no concerns.
  - b) Clarification that no works will be started on site until Condition 8 (regarding site reinstatement) has been complied with. Mary Grier responded that the CNPA Monitoring & Enforcement Officer was already monitoring sites for existing works in the area on a regular basis and had been through an induction course by the Beauly – Denny Line Contractors which allowed him to access the works sites.
  - c) Clarification that the CNPA were confident that the site restoration works would be carried out in a timely manner without the need for a financial bond. Mary Grier responded that the CNPA Landscape Officer had been involved in discussion with the Landscape Consultants for SSE regarding this issue. Mary Grier advised that 2 previous Borrow Pit applications (at Spey Dam & Feagour), which had existing workings similar to the application currently under consideration, had been approved by the CNPA without a bond. Mary Grier stated that the reinstatement works required for the Borrow Pits was not of such a scale to warrant a financial bond.
46. The Committee agreed to approve the application subject to the conditions stated in the report.
47. **Action Points arising:** None.

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## AGENDA ITEM 10:

### REPORT ON CALLED-IN PLANNING APPLICATION FOR ERECTION OF 6 GRANITE CAR PARK DONATION BOXES AT VARIOUS LOCATIONS AT COIRE CAS CAR PARK AT RANGER BASE OFFICE, CAIRNGORM MOUNTAIN, GLENMORE, AVIEMORE (PAPER 5) (11/144/CP)

48. Robert Grant presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
49. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:
- a) Clarification that the Reason given for Condition 2, making reference to a 'proposed path' was correct. Robert Grant responded that the wrong reason had been inserted in error, and that this would be amended. Robert Grant confirmed that there were no new paths to be created as part of the application, as the donation boxes were to be all located within the existing car park area.
  - b) The possibility of including a requirement for interpretation advising the public of what the funds had / would be used for as recommended in the Cairngorms Outdoor Access Strategy 2007 (COAS). Concern was raised that private land owners may not agree with the contents of the COAS. Robert Grant confirmed that the Applicants had intimated that funds received would be used for environmental improvement and this would be in line with the statements within the COAS.
50. The Committee agreed to approve the application subject to the conditions stated in the report.
51. **Action Points arising:** Robert Grant to amend the Reason for Condition 2.  
Robert Grant to include reference to the COAS in Condition 2.

## AGENDA ITEM 11:

### CONSULTATION RESPONSE REPORT ON PROPOSED WINDFARM – CONSISTING OF 10 TURBINES INC. COMMUNITY TURBINE AT LAND AT CAIRNBORROW & NORRY HILL, HUNTLY (PAPER 6)

52. Peter Argyle advised that due to declaring an interest an alternative person to chair the consultation response would be required.
53. Brian Wood took over the chair.
54. Peter Argyle & Marcus Humphrey, as Aberdeenshire Councillors, declared an interest and left the room.



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55. Robert Grant presented a consultation report and recommended the Committee approve the response for submission to Aberdeenshire Council
56. The Committee agreed the response of 'No Objection' for submission to Aberdeenshire Council.
57. Peter Argyle & Marcus Humphrey returned.
58. **Action Points arising:** Robert Grant to submit the consultation response to Aberdeenshire Council.

### **AGENDA ITEM 12:**

#### **REPORT ON CALLED-IN PLANNING APPLICATION FOR PROPOSED ERECTION OF 1 NO. 20KW WIND TURBINE AND 1 NO. TEMPORARY 20M HIGH WIND MEASURING MAST AT LAND 35M EAST OF THE WATERTANK, FAEBUIE, CROMDALE (PAPER 7) (11/071/CP)**

59. Andrew Tait presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
60. Andrew Tait advised that Recommendation A was no longer applicable, as the Defence Estates had responded to the consultation request and raised no concerns.
61. Andrew Tait advised that an additional condition was also recommended requiring the colour of the turbine to be agreed with the CNPA prior to the commencement of the development.
62. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:
  - a) Clarification of the colour of the proposed turbine. Andrew Tait advised that the proposed turbine was shown as white. However, after recent discussions with various specialists it was felt that due to the turbine being located against an existing landscape backdrop a darker colour would better help the development assimilate into the landscape. The colour would be agreed in conjunction with the Applicant.
  - b) Clarification if the Electricity Company had been consulted on the proposal. Andrew Tait responded that the Electricity Company had not been consulted. However, the location of the turbine had been agreed on with advice given by the Electricity Company and the turbine would not be able to be connected to the grid without their consent.
  - c) Clarification of how the development would comply with Highland Councils proposed policy which was currently out for consultation, particularly with regard to the nearest dwelling being located approximately 200 metres from the development site and the requirement in the consultation for there to be a greater distance between developments of this type and residential properties. Andrew Tait advised

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that the consultation only covered the Highland Council area and not the CNP. Andrew Tait advised that Highland Council Environmental Health Officer had been consulted regarding noise and safety and they raised no concerns regarding the development. Andrew Tait advised that the guidance was focusing on larger turbines than that being proposed.

63. The Committee agreed to approve the application subject to the conditions stated in the report.
64. **Action Points arising:** Andrew Tait to include an additional Condition regarding the colour of the proposed turbine to be agreed between the CNPA and the Applicant prior to the commencement of the development.

### **AGENDA ITEM 13: REPORT ON ADOPTION OF SUPPLEMENTARY GUIDANCE (PAPER 8)**

65. Robert Grant presented a report on the Adoption of Supplementary Planning Guidance (SPG) for Developer Contributions, Wildness and Carbon Sinks & Stores.
66. Robert Grant confirmed that reference to the John Muir Award had been included in the Wildness SPG.
67. The Committee discussed the Developer Contribution SPG.
68. The Committee discussed the report and the following points were raised:
- a) The potential for confusion between the terms 'Planning Gain' and 'Developer Contributions'. The inclusion of the words 'but not in addition to' in Paragraph 1.1 – so the text in the brackets would read (sometimes known, but not in addition to, Planning Gain).
  - b) The use of the term 'Assess Infrastructure' in Figure 1 and it not being used elsewhere in the text. The potential for the text in this box to be amended to 'Assess Local Amenity & Infrastructure' which is a term that has been used in the text. The language in this box needs to be clarified for the reader.
  - c) Paragraph 7.13 – Reference has been made to a Planning Gain assessment summary, should this summary be included in the SPG and incorporated into the flowchart at Figure 1.1.
  - d) Clarification in the document that Developer Contributions apply to a developer building several houses or an individual building one house – it is a policy that is applied to all and is now a common practice in Scotland.
  - e) The possibility of the term 'Planning Gain' to be renamed as 'Community Gain'.
  - f) Paragraph 2.3 requires rewording for clarification purposes.

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69. The Committee agreed the adoption of the Developer Contributions SPG subject to the above points in the document being amended.

70. The Committee discussed the Wildness SPG.

71. The Committee discussed the report and the following points were raised:

- a) Concern about the level of consideration that the SPG's will receive by the Planning Authorities during the determination of applications located in sensitive areas of wildness. Hamish Trench responded that adopted policies were in place in the CNP Local Plan for Landscape and Wildness. The issue of Wildness had been recognised as an area that required further specific guidance and the SPG should be used in the assessment purposes of applications in sensitive areas.
- b) The issue was raised of developments submitted under Prior Notification (for which the CNPA have no Call-In Powers), particularly in remote areas and the practicalities of applying the SPG to these developments. Hamish Trench advised that there may be some comparison between this issue and Permitted Development Rights on which the CNPA has recently responded to a Scottish Government consultation. The CNPA had responded that there may be a need to have a greater control over the Permitted Development Rights within the National Park, due to visual and landscape impact. Therefore, due to the change in status of the policies of the CNP, including the adoption of SPG's) there may be a requirement to further discuss the issue of Prior Notification with the Scottish Government.
- c) The need for the legend included in the map at Figure 1 to use the term 'Strength' instead of the term 'Value', to be consistent with the terminology in the rest of the document.

72. The Committee agreed the adoption of the Wildness SPG.

73. The Committee discussed the Carbon Sinks & Stores SPG.

74. No points were raised.

75. The Committee agreed the adoption of the Carbon Sinks & Stores SPG.

76.

**77. Action Points arising:** CNPA Officers to make the necessary changes to the Developer Contributions SPG.

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## AGENDA ITEM 14

### ANY OTHER BUSINESS

78. Robert Grant advised Members that Historic Scotland had visited the Tomintoul Croft property, which had been the subject of a planning application determined in May 2011. At which point it was intimated that the expected Listing of the Building would be category B. However, after assessing the property Historic Scotland now indicated that the Listing would be Category A, which was applied only to buildings of national significance. Robert Grant advised that this was a very positive outcome.
79. Mary Grier advised Members that the Scottish Government Planning & Environmental Appeals Department (DPEA) had recently issued a decision on the appeal for the site at School Wood, Nethy Bridge (for 40 houses and 8 business units). Mary Grier advised that the application had been appealed after refusal by the CNPA at the Committee meeting in January 2011, due to lack of adequate information being submitted, particularly on natural heritage issues which required a considerable amount more information to inform the layout of the development. Mary Grier informed Members that the Reporter had dismissed the appeal and had highlighted in their report (consistent with the CNPA) that Outline Planning Permission does exist on the site and it was not a case of whether the site would be developed, but how it could be developed and that ecology information was fundamental to the development of the site.
80. Clarification was sought on the time limit left for the Outline Planning Permission. Mary Grier responded that the Outline Permission included a number of time limit clauses. If a Reserved Matters application had been submitted and refused by the Planning Authority and then appealed and subsequently refused on appeal, it did allow the Applicants to submit a further Reserved Matters application for the development and in theory, get a 'second chance' for progressing the development.
81. Hamish Trench advised that the CNPA had received Court of Session hearing dates for the appeal against the CNP Local Plan. The hearing is to be held between 10 – 13 January 2012. Hamish Trench confirmed that the hearing has no bearing on the use of the CNP Local Plan except in the consideration of the 5 allocated sites which are subject to the appeal. Hamish Trench confirmed that the appeal had no bearing on the progress of the CNP Park Plan or the ongoing work for the CNP Local Development Plan.
82. Clarification was sought regarding the 5 allocated sites which were subject to the appeal. Hamish Trench stated that the 5 sites were - An Camas Mor, Kingussie, Carrbridge & 2 sites at Nethy Bridge. Of these sites 3 had existing Outline Planning Permissions and the other 2 have approved planning permission subject to the conclusion of Section 75 Legal Planning Agreements. As far as the CNPA were aware a change in the allocations of the CNP Local Plan would not affect the status of planning permissions previously granted.

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83. Andrew Tait provided Members with an update on the application for housing at Boat of Garten (08/272/CP), which had previously been deferred to allow for mitigation measures regarding Capercaillie to be further investigated. Andrew Tait stated that it had been hoped to bring the application forward for determination to the Committee meeting in August. However, the Applicant had indicated that they would be unable to submit the required information within the agreed timescale and therefore the application would have to be considered at a later date. Andrew Tait advised that a new timescale had been drawn up which should allow the application to be determined at the Committee meeting on 16<sup>th</sup> September 2011, scheduled to be held at Boat of Garten Community Hall.

84. **Action Points arising:** None.

### **AGENDA ITEM 15**

#### **DATE OF NEXT MEETING**

85. Friday 19<sup>th</sup> August 2011 at The Grant Arms Hotel, Grantown on Spey.

86. Committee Members are requested to ensure that any Apologies for this meeting are submitted to the Planning Office in Ballater.

87. The meeting concluded at 12.00pm.