

AGENDA ITEM 9

FOR INFORMATION

**APPEAL DECISION FOR
2020/0221/DET
(Planning Appeal PPA-001-2024)**

Appeal Decision Notice

Decision by Robert Seaton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-001-2024
- Site address: Land 400 metres south west of farmhouse, Killiehuntly, Kingussie, PH21 1NS
- Appeal by Wildland Limited against the decision by Cairngorms National Park Authority
- Application for planning permission 2020/0221/DET dated 6 August 2020 refused by notice dated 7 March 2022
- The development proposed: erection of bothy and associated service route
- Application drawings: listed in schedule 1 to this decision
- Date of site visit by Reporter: 18 August 2022

Date of appeal decision: 23 August 2022

Decision

I allow the appeal and grant planning permission subject to subject to the six conditions listed in schedule 2 to this decision notice. Attention is drawn to the three advisory notes in schedule 3 of the notice.

Preliminary

1. The planning authority issued a screening opinion under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. It was issued on the basis that the proposed development fell into the category of “holiday villages and hotel complexes outside urban areas” in schedule 2 of those regulations and that screening was required because the proposed development was in a sensitive area. The screening opinion indicated that environmental impact assessment was not required. I have found no reason to disagree with that assessment.
2. The planning authority also took the view that, on account of a likely significant effect on the River Spey Special Area of Conservation (SAC) appropriate assessment was required under the Conservation (Natural Habitats &c.) Regulations 1994. Again, I have no reason to disagree. I deal with the appropriate assessment in schedule 4 of this notice.
3. The sole objector requested that I should hold an inquiry or hearing into the decision. I have found nothing of such complexity in the nature of the material before me as would justify such procedure in respect of such a development.

Reasoning

4. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan, the main issues in this appeal are

- the proposed development's impacts on visual amenity and landscape and on the special landscape qualities of the national park (in particular its wildness),
- the impact on public access and (in particular) on access to a feature of the river used for wild swimming, and
- environmental effects of services associated with the proposed development.

Visual amenity, landscape and wildness

5. I agree with the committee report that the proposed bothy itself would be sympathetic to the surrounding landscape in its shape, small scale and proposed external finish. Given its proposed location among trees, there would be limited visibility from the east, south or north. While there would be somewhat greater visibility from the immediate banks of the river and from west of the river, the area of visibility would still be limited by woodland on the west bank. I do not consider that the proposed small timber-clad bothy, set among trees, would have any substantive adverse visual effect on walkers on the moorland beyond the woodland on the river's west bank.

6. The proposed staff access would extend rather over 200 metres from the existing Glen Tromie road and would consist partly of a surfaced track with a central vegetated strip and partly of a boardwalk. Near the river bank, it would be partially hidden by trees in views from the Glen Tromie road. I acknowledge that the immediate context is undeveloped, leaving aside the presence of the Glen Tromie road itself, but in the wider context of Killiehuntly farm and Glen Tromie, I consider the change to the landscape would be negligible.

7. I do not consider that the proposed development would have any substantive adverse impact upon landscape character. The effect on visual amenity would be minor and limited to the immediate context of the proposed development, largely for receptors on the Glen Tromie road itself.

8. The proposed development would not be in an area classified by NatureScot as wild land. There are aspects of wildness in the immediate vicinity of the proposed development. The banks of the river are undeveloped and the development is proposed amongst existing semi-natural woodland, largely out of view of other existing development. However, the road up Glen Tromie and the field walls and cultivated fields to its east are visible just a few paces from the proposed site of the bothy. The site is a brief walk from the farmhouse and cottage at Killiehuntly. Given the scale and nature of the proposed development, its discrete location and context, I do not consider that there would be any substantive reduction in the degree of wildness of the area, other than in its most immediate context.

9. It may be that paths or tracks have been created in the last few years elsewhere in Glen Tromie. I do not consider that the addition of a short length of path to the proposed bothy from the existing road would have any substantial cumulative effect on landscape, visual amenity or wildness.

Effect on public access

10. The Land Reform (Scotland) Act 2003 introduced a statutory public right to be on land for certain purposes and to cross land so long as those rights were exercised responsibly. Some land was excluded from the exercise of such rights, including – in relation to a house (which I understand the bothy would be for the purpose of the legislation) – sufficient adjacent land to enable persons living there to have reasonable measures of privacy and to ensure that their enjoyment of the house or place is not unreasonably disturbed. The

proposed development would be in trees by the river bank with the window of its living room looking out on the river and the bedroom window looking into trees. It appears to me, given the bothy's small scale and its particular situation, the area around it excluded from access rights would not be large. Little, if any, land to the bothy's east would be excluded from access rights. It may be that a person (exercising their statutory access rights) following the river bank would need to make a small diversion to go around the bothy's eastern side.

11. It does not appear to me that the bothy would cause any material impediment to public access to the wild-swimming location described by the objector to the south of the proposed development. The creation of a path to the proposed log store from the Glen Tromie road is likely to make public access to the swimming location easier, since the proposed new path would itself be subject to access rights.

Environmental effects of the proposed development's services

12. In schedule 4 to this notice, I find that – subject to the imposition of certain conditions – there would not be an adverse effect on the integrity of the River Spey SAC.

13. As regards the proposed development's water supply, the council has proposed a condition for approval before commencement of development of details of a piped supply of wholesome water. There is nothing in the submissions that suggests to me this is unlikely to be achievable.

14. A urine-diverting dry toilet is proposed, to be managed by the estate. A treatment system is proposed for waste water. The Scottish Environment Protection Agency, the body responsible for licensing discharges to the water environment, has not objected. NatureScot, which is responsible for protection of the River Spey SAC, has not objected either. The discharge would be subject to authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. In view of this, I do not find that the proposed waste-water system presents an impediment to grant of permission.

Other matters raised

15. As regards other matters raised by parties:

- The appellant is not required to demonstrate demand for use of the bothy. I consider it very likely that there would be such demand in any case.
- I find nothing objectionable in respect of the distance of the proposed log store from the bothy.
- The nature of the occupation and use of Killiehuntly farm before 2016 is not material to determination of the appeal.
- It is a matter for an operator of the proposed development to find staff necessary to run it. Kingussie is about 3 miles from the proposed development, within relatively easy reach by bicycle along an off-road cycle path for most of the way, so I doubt that this would represent a difficulty.
- The interests of members of the planning authority's committee and the question of whether they were properly declared are not matters material to the determination of the appeal.

Policy assessment

16. The development plan is comprised in the Cairngorms National Park Local Development Plan 2021. I agree with the committee report that the following policies are relevant:

- Policy 2 – supporting economic growth

- Policy 3 – design and placemaking
- Policy 4 – natural heritage
- Policy 5 – landscape
- Policy 10 – resources.

17. Policy 2 provides support for tourist-related accommodation subject to several criteria. The proposed development would clearly contribute to the provision of a wide range of visitor accommodation options and would contribute to the year-round economy. In view of my findings above in respect of effects on landscape, visual amenity and the environment, I consider it would also meet the policy's requirement that development should have no adverse environmental or amenity impacts on the site or neighbouring areas.

18. Policy 3 deals with design and placemaking. It appears to me that the proposed development would use materials and landscaping that would complement its setting, and the development would be sympathetic to the character of the surrounding area, would make sustainable use of resources, would include appropriate means of access, would maintain and maximise opportunities for outdoor access, and would promote health and well-being. It would have minimal impact on climate change.

19. The National Park Authority accepted the evidence supplied by the appellant that, subject to conditions, there would be no adverse effect on any national or international designation or protected species or any other adverse effect on biodiversity contrary to policy 4. I see no reason to disagree.

20. As regards policy 5, I consider that the proposed development would conserve landscape character and the special landscape qualities of the Cairngorms National Park and would not adversely affect its setting in Killiehuntly farm and in Glen Tromie.

21. Since the proposed waste-water system is subject to licensing, and there is no suggestion from the regulator that it poses a risk of a detrimental effect, I find that the proposed development accords with policy 10 on resources.

22. I find that the proposed development accords with the relevant development-plan policies, and has the support of policy 2. No substantial material considerations other than the matters I have discussed above have been drawn to my attention. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission.

Robert Seaton

Reporter

Schedule 1: application drawings

Title	Reference	Dated
Proposed site plan	826 02 102	20 11 2019
Proposed location plan 2	826 02 103	01 09 2020
Proposed floor plan	826 02 201	20 11 2019
Proposed front elevation	826 02 401	20 11 2019
Proposed back elevation	826 02 402	20 11 2019
Proposed side elevation 1	826 02 403	20 11 2019
Proposed side elevation 2	826 02 404	20 11 2019
Proposed log store	826 02 405	27 09 2021

Schedule 2: conditions

1. No development shall commence on site until the following information has been submitted and approved in writing by the Cairngorms National Park Authority:
 - a) Information on the proposed water-supply type, water source, owner of any land where abstraction would take place, any other property using the water source, any connection into an existing private supply, and legal responsibility for provision and maintenance of the supply (all as set out in the Highland Council Private Water Supplies Questionnaire in its planning advice on private water supplies or any such subsequent advice or guidance).
 - b) A plan of the development and water supply.
 - c) A report from a competent person which demonstrates that there will be a sufficient piped supply of wholesome water to meet the demands of this property.

Where the report identifies a need for water treatment, it shall be put in place before the development is occupied.

Reason: Ensure suitable provision of water for visitors to the bothy in accordance with policy 10 (Resources) of the Cairngorms National Park Local Development Plan 2021.

2. No development shall commence on site until a pre-construction survey for otter of the proposed development site and a 200-metre buffer (in accordance with current NatureScot guidance on such surveys) has been carried out. The survey results shall be used to inform a Species Protection Plan setting out mitigation measures appropriate to the results. Development shall not commence until the survey results and proposed Species Protection Plan have been submitted to and approved in writing by the Cairngorms National Park Authority. Thereafter the plan shall be implemented in full and overseen by a suitably qualified Ecological Clerk of Works.

Reason: To avoid disturbance to otter (a qualifying interest of the River Spey SAC and a European Protected Species) and to avoid disturbance of protected species in accordance with Policy 4 (Natural Heritage) of the Cairngorms National Park Local Development Plan 2021.

3. No development shall commence on site until a pre-construction walk-over survey for protected species, such as, but not limited to, pine marten, red squirrel, badger, bats, Scottish wildcat and reptiles, has been undertaken in accordance with current NatureScot guidance for such surveys by a suitably experienced and licensed ecological surveyor. The survey results shall inform a Species Protection Plan detailing appropriate mitigation measures for any protected species found. No development shall commence until the plan has been submitted to and approved in writing by the Cairngorms National Park Authority.

Thereafter the plan will be implemented in full and overseen by a suitably qualified Ecological Clerk of Works.

Reason: To ensure the protection of protected species including breeding birds in accordance with Policy 4 (Natural Heritage) of the Cairngorms National Park Local Development Plan 2021.

4. If any preparatory or construction works are to be undertaken on site during March – August (inclusive), no such works and no development shall commence until a pre-construction walk-over survey for breeding birds has been undertaken in accordance with current guidance by a suitably experienced and licensed ecological surveyor. The survey results shall inform a Breeding Bird Protection Plan detailing appropriate mitigation

measures for any breeding birds found. No development or preparatory works shall commence until the plan has been submitted to and approved in writing by the Cairngorms National Park Authority.

Thereafter the plan shall be implemented in full and overseen by a suitably qualified Ecological Clerk of Works.

Reason: To ensure the protection of protected species including breeding birds in accordance with Policy 4 (Natural Heritage) of the Cairngorms National Park Local Development Plan 2021.

5. All works shall be undertaken in strict accordance with the approved Construction Method Statement (Rev B) submitted to Cairngorms National Park Authority on 6 October 2021, unless the Authority in writing permits otherwise.

Reason: To reduce the risk of pollution affecting the River Spey SAC and connected watercourses to a minimal level and to avoid disturbance to otter during construction.

6. The bothy hereby approved shall be used solely as temporary holiday-letting accommodation and for no other purposes whatsoever. In particular, it shall not be used as a permanent residence or any person's sole or main residence. The owner of the bothy must maintain an up-to-date register of the name of each occupier of the bothy, their length of stay and their main home address. This information must be made available on request at any reasonable time to the Cairngorms National Park Authority.

Reason: Change of use of the bothy to a permanent residence would require consideration of the effects of such a use, for instance in respect of availability of services such as education, public transport, and health services, its sustainability, and the requirement for contribution to such services and to affordable housing, and planning policy relevant to such matters.

Schedule 3: Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

Schedule 4: appropriate assessment of the effect on the River Spey SAC

The River Tromie, which flows past the application site, forms part of the River Spey SAC. Qualifying species include otter, freshwater pearl mussel, sea lamprey and Atlantic salmon.

The appellant's assessment found that the river offered suitable commuting, resting and foraging habitat for otter. Otter spraints were found in the survey area in the appellant's survey. The rocky riverbanks in the survey area were found to be of low suitability for otter holts. Although the river provided optimal habitat for otter, the assessment found that the proposed development was unlikely to affect the conservation status of the species, though – without mitigation – would be likely to cause temporary disturbance to commuting otter during construction. Mitigation measures proposed included pre-works checks for protected species, following good construction practice (such as providing means of escape from excavations), sensitive timing of construction and safe use and storage of chemicals.

The National Park Authority's committee report (with which NatureScot agreed) found that there was potential for sediment exposed during construction work to reach the SAC. This could adversely affect water quality by reducing oxygen levels and smothering habitats relied upon by qualifying species and their prey species. The committee report agreed with the appellant's assessment that there was potential for disturbance of otter during construction and operation of the bothy. NatureScot advised that the proposed waste-water treatment system and soakaway by a perforated pipe discharging into the ground and ending at the River Tromie would not have a significant effect on the qualifying interests of the SAC. I accept this evidence.

The appellant supplied a construction method statement setting out measures to reduce the risk of pollution occurring. I accept (as the National Park Authority did) that the application of such methods would render the risk minimal. I also accept (like the National Park Authority) that if a pre-construction survey is undertaken to identify whether otter are on site, measures can be taken to avoid their disturbance both during construction of the proposed development and during its operation. I consider that, subject to these measures being secured by conditions as proposed by the National Park Authority, there would be no adverse effect on the integrity of the River Spey SAC. I have consequently included the necessary conditions in schedule 2 to this notice.