

## CAIRNGORMS NATIONAL PARK AUTHORITY

**Title: REPORT ON CALLED-IN PLANNING APPLICATION**

**Prepared by: MARY GRIER (SENIOR PLANNING OFFICER, DEVELOPMENT MANAGEMENT)**

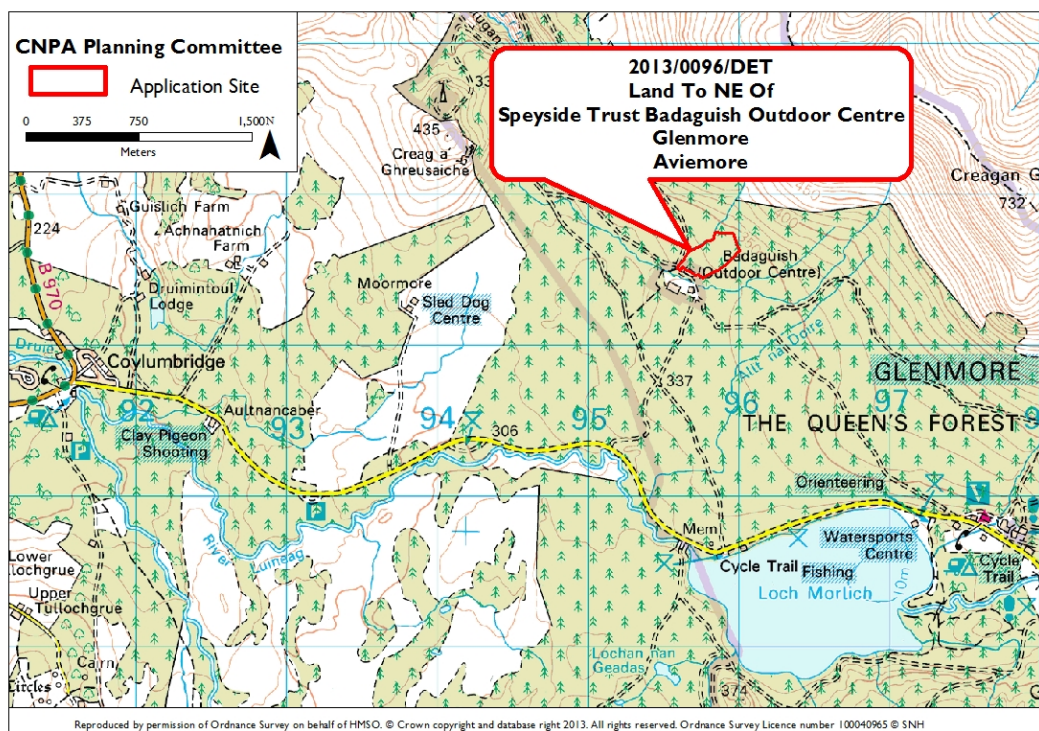
**DEVELOPMENT : APPLICATION UNDER SECTION 42 TO VARY CONDITION 3 OF PLANNING CONSENT 2011/0206/DET ON LAND TO THE NORTH EAST OF SPEYSIDE TRUST, BADAGUISH OUTDOOR CENTRE**

**REFERENCE: 2013/0096/DET**

**APPLICANT: SPEYSIDE TRUST C/O BRACEWELL STIRLING CONSULTING, INVERNESS**

**DATE CALLED-IN: 25 MARCH 2013**

**RECOMMENDATION: APPROVE WITH CONDITIONS**

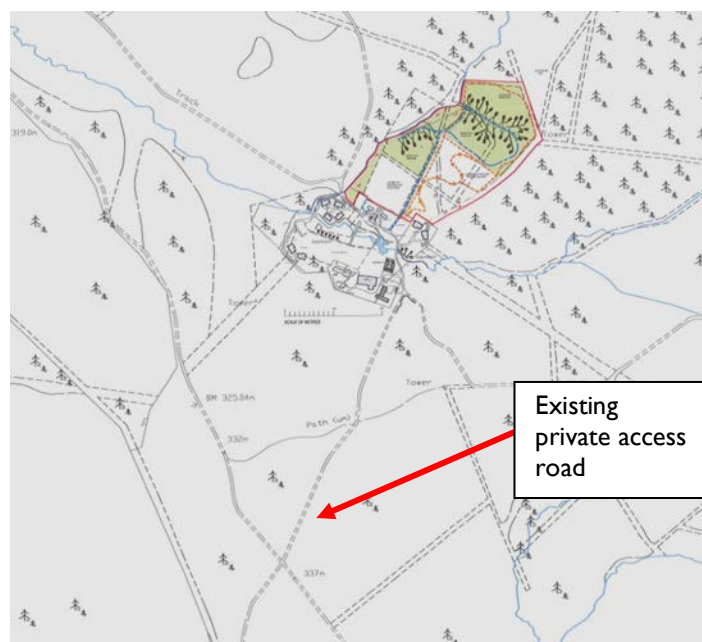


**Grid reference : 295818 811613**

**Fig. I - Location Plan**

## SITE DESCRIPTION AND PROPOSAL

1. This application has been made under Section 42 of the Town and Country Planning (Scotland) Act 1997.<sup>1</sup> Permission is sought to vary Condition 3 of a consent which was granted on the land at the Badaguish Outdoor Centre in Glenmore in January 2012 (CNPA planning ref. no. 2011/0206/DET refers). Planning permission was granted under that consent for the erection of 35 wigwams, an on-site activity area / canvas tent area and a mountain bike free ride trail. The site area in which the development would take place is immediately adjacent to the north of the existing Outdoor Centre complex. Access to the complex and the new development site is from the existing private access road, which extends over 1.6 kilometres from its junction with the Glenmore Road to the core area of the Outdoor Centre.



**Fig. 2 : Wigwam / campsite / mountain bike skills area to the north of existing Centre**

2. Condition no. 3 of 2011/0206/DET stipulated that “no development shall commence on site until all works permitted under CNPA planning ref. no. 09/295/CP have been completed and are available for use. For the avoidance of doubt the works include the formation of a walk / cycleway adjacent to the access road from the public road to the Badaguish Outdoor centre, the provision of passing places on that access road, and the provision of additional car parking facilities at the Centre.” This condition was included “in the interests of traffic safety and public safety and in order to avoid congestion and conflict between users of access routes in the vicinity.”
3. Instead of the current requirement to complete the works permitted through CNPA planning ref. no. 09/295/CP prior to the commencement of the development of the wigwam / campsite/ mountain bike skills area, the applicant

<sup>1</sup> Section 42 applications refer to the determination of applications to develop land without compliance with conditions previously attached.

is seeking to vary the specific condition and proposes that the varied condition should state that “none of the facilities or accommodation within this consent shall be put in use until all works permitted under CNPA planning ref. no. 09/295/CP have been completed and are available for use. For the avoidance of doubt the works include the formation of a walk / cycleway adjacent to the access road from the public road to the Badaguish Outdoor centre, the provision of passing places on that access road, and the provision of additional car parking facilities at the Centre.”

4. Work has recently been undertaken to develop a significant portion of the separate walk / cycleway approved under CNPA ref. no. 09/295/CP. The walk / cycleway is now in place from the junction of private access road and the northern off road section of the Old Logging Way, and extends in an northeasterly direction to its termination close to the core area of the Outdoor Centre. New passing places have also been created on the vehicular access route. The car parking area has not yet been developed, although in the course of a recent site visit it was noted that some tree felling has recently been undertaken on the site. No work has yet been undertaken on the southernmost section of the approved separate walk / cycleway, over a length of approximately 300 metres, over land which is in the ownership of Rothiemurchus Estate. This area is also the subject of a current planning application by the applicant, Speyside Trust (CNPA ref. no. 2013/0098/DET) in which permission is being sought to alter the design proposals to provide safe dual usage of the existing road through the introduction of lay bys and ‘step off’ areas instead of creating the separate parallel walk / cycleway.



**Fig. 3 : start of developed walkway**



**Fig. 4 : end of walkway at Centre**



**Fig.5 : Section of existing vehicular access route (view from junction with the northern section of the Old Logging Way, looking towards the junction with the public road)**

### **Background to the current proposal**

5. A Supporting Statement has been submitted with this application. Reference is made in the document to the other current planning application (CNPA ref. no. 2013/0096/DET as referred to in paragraph 4 above), and it is stated that the alterations proposed in that application have been agreed with Rothiemurchus who are the adjoining landowner and the applicant “cannot complete this last part of the works until this alteration has been ratified through the planning process.” It is suggested in the Supporting Statement that the works and the new car park can be completed prior to September 2013. September 2013 is a critical date for the applicants as it is stated that this is “the last opportunity for the Forestry Commission to remove the timber from the proposed new campsite.” The overall project (i.e. campsite/wigwams/mountain bike skills area and the access improvements and car parking provision) is required to be completed by December 2014 in order to benefit from approved European funding.
6. It is stressed in the supporting statement that this current request to vary Condition no. 3 of the planning consent is “not an attempt to avoid carrying out any of the improvements but merely to ensure that we can meet the funding window.” It is also stated that this variation application is a ‘fall back’ position to allow for unforeseen delays in the processing of the application for the path alteration<sup>2</sup> or in the works being undertaken.

### **Section 42 planning applications**

7. Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended, is a mechanism which allows for the submission of a planning application for the development of land without complying with, or varying conditions pertaining to the previous planning permission. Section 42 of the Act stipulates that in this type of application “the planning authority shall consider only the question of the conditions subject to which planning permission should be granted.” Therefore in the context of this application, the only matter which is required to be considered is the appropriateness and acceptability of varying condition 3 of the original consent.

## **DEVELOPMENT PLAN CONTEXT**

8. The consideration of the planning consent for the wigwam / campsite / mountain bike skills area, as well as the earlier consent for the associated walk / cycleway and new car parking area involved detailed consideration in the context of all applicable planning policy, and that no new development is being proposed in this application as it relates simply to a request to vary timescales imposed by a condition, the following planning policies are provided in list form as background information. The full extent of text can be found in the previous planning papers at <http://cairngorms.co.uk//park-authority/about-us/meeting-papers/committee-papers/?meetingID=691&typeID=2> (Paper 2 – CNPA ref. no. 2011/0206/DET) and

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<sup>2</sup> The application (CNPA ref. no. 2013/0096/DET) is scheduled for determination at the CNPA Planning Committee meeting on 26<sup>th</sup> April 2013, having been called in on 25<sup>th</sup> March 2013.

<http://cairngorms.co.uk//park-authority/about-us/meeting-papers/committee-papers/?meetingID=542&typeID=2> (Paper 8 – CNPA ref. no. 09/295/CP).

### **National Policy**

9. **Scottish Planning Policy<sup>3</sup> (SPP)** is the statement of the Scottish Government's policy on nationally important land use planning matters. Policies against which the proposals were assessed include :
- Economic development;
  - Rural development; and
  - Landscape and natural heritage.
10. **Scottish Planning Policy** concludes with a section entitled 'Outcomes' in which it is stated that the "planning system should be outcome focused, supporting the creation of high quality, accessible and sustainable places through new development, regeneration and the protection and enhancement of natural heritage and historic environmental assets."

### **Strategic Policies**

#### **Cairngorms National Park Partnership Plan 2012 - 2017**

11. The Cairngorms National Park Partnership Plan 2012 – 2017 is the management plan for the National Park for the next 5 years. The Partnership Plan was adopted after the previous planning applications at Badaguish had been approved. The previous applications were determined with regard to the Cairngorms National Park Plan 2007.
12. The Cairngorms National Park Partnership Plan 2012 – 2017 is now the adopted Plan and it sets out the vision and overarching strategy for managing the Park and provides a strategic context for the Local Development Plan. Three long term outcomes have been identified to deliver the vision for the Park, to continue the direction set out in the first National Park Plan and to together deliver the four aims of the National Park. The outcomes are :
- A sustainable economy supporting thriving businesses and communities;
  - A special place for people and nature with natural and cultural heritage enhanced; and
  - People enjoying the park through outstanding visitor and learning experiences.

### **Structure Plan Policy**

#### **Highland Council Structure Plan (2001)**

13. **Highland Council Structure Plan** under which the previous planning applications were considered include
- Policy NI – Nature Conservation;
  - Policy L4 – Landscape Character;
  - Policy G2 – Design for Sustainability.

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<sup>3</sup> February 2010

**Local Plan Policy**  
**Cairngorms National Park Local Plan (2010)**

14. The Cairngorms National Park Local Plan was formally adopted on 29<sup>th</sup> October 2010. The full text can be found at :  
<http://www.cairngorms.co.uk/parkauthority/publications/results.php?publicationID=265>
15. Local Plan policies against which the previous planning applications were considered include :
- Policy 1 – Natura 2000 sites;
  - Policy 2 – National Natural Heritage Designations;
  - Policy 4 – Protected Species;
  - Policy 5 – Biodiversity;
  - Policy 6 – Landscape;
  - Policy 16 – Design Standards for Development;
  - Policy 18 – Developer Contributions;
  - Policy 25 – Business Development;
  - Policy 33 – Tourism-Related Development;
  - Policy 34 – Outdoor Access; and
  - Policy 35 – Sport and Recreation Facilities.

**Supplementary Planning Guidance**

16. In addition to the adoption of the Cairngorms National Park Local Plan (2010) on 29<sup>th</sup> October 2010, a number of Supplementary Planning Guidance documents were also adopted. Guidance of relevance in the consideration of the earlier planning applications included the CNP Sustainable Design Guide, Natural Heritage SPG and Developer Contributions SPG.

**CONSULTATIONS**

17. A variety of consultation responses were received in connection with the previously approved development for the wigwam / campsite / mountain bike skills area. Due to the limited nature of the current application seeking only to vary a time related element of one condition of the permission, the consultation process has not been as extensive. However, for background the following paragraph provides a brief summary of consultation responses received in connection with the earlier proposal.
18. - Scottish Natural Heritage (SNH) : no objection, although advice was provided in respect of measures to safeguard against negative impacts on natural heritage features;
- SEPA : no objection, subject to certain conditions;
  - Highland Council's TEC Services : no objection, subject to a number of conditions;
  - Highland Council's Environmental Health Officer : no objection;

- Planning Gain : recommended that developer contributions were required in connection with environmental and access improvements;
  - Rothiemurchus and Glenmore Community Association : objection to the proposal, expressing concern that the Badaguish Outdoor Centre is expanding too much to be in keeping with the surrounding area;
  - Aviemore and Vicinity Community Council : no objection, but suggested for public safety reasons that a condition should be included that the development cannot proceed until the separate walk / cycleway and passing places are in place;
  - CNPA Economic Development : no objection;
  - CNPA Access Officer : no objection, but reference was made to the fact that a small section of the access track leading to Badaguish Outdoor Centre is shared with the Old Logging Way<sup>4</sup> and highlighted the need to address any potential congestion or conflict between users of that route and any increased user numbers of the Outdoor Centre;
  - CNPA Landscape : no objection subject to the receipt of a revised landscaping plan and a landscape management statement;
  - CNPA Ecology : no objection, subject to the inclusion of a number of conditions, including a requirement for a pre-construction survey to be undertaken in advance of the commencement of development.
19. In the course of the current planning application, a consultation response was received from Aviemore and Vicinity Community Council in which it is stated that the Community Council “support the planning application.”

## **REPRESENTATIONS**

20. One letter of representation has been received in response to the party being notified of the planning application by the applicant / agent as part of the Land Ownership Certificate notification process. Mr. James Higgins on behalf of the Forestry Commission Scotland (FCS) confirms support for the Section 42 application to vary condition no. 3 of the planning permission. Reference is also made in the submission to the fact that any felling operations require a suitable lead in time and in order to meet the funding and development timescales put forward by the Speyside Trust “FCS has programmed the felling operations for the autumn of 2013.” The extent of the felling is such that it needs to be completed in September / October so that it can be completed outwith the squirrel breeding season.

## **APPRAISAL**

21. In determining this planning application regard is to be had to the development plan and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. Crucially as this is an application made under Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended, the matter on which the Planning Committee are being asked to decide is very specific, concerning only a variation to condition no. 3

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<sup>4</sup> The recently developed cycle route between Aviemore and Glenmore.

of the original consent, to provide for an alternative timescale within which the associated works (for a separate walk / cycleway and car parking area) permitted through CNPA ref. no. 09/295/CP must be completed. Given that a separate application has also been made by the applicant at this time for alternative works along the southernmost 300 metres of the private access road (to provide lay bys and 'step off' areas in lieu of the separate section of walk / cycleway), it is also necessary to take into account the works proposed in that application in the context to considering whether or not to agree to the time request.

22. The purpose in including a condition requiring that various access and car parking works (as approved in the earlier, related planning application) was completed prior to the commencement of the larger development, was to avoid congestion and conflict between users of access routes in the vicinity and in the interests of traffic safety and public safety. Indeed reference had been made to this issue in the consultations responses from Aviemore and Vicinity Community Council and the CNPA's Access Officer in connection with planning ref. no. 2011/0206/DET. Both previous applications are inextricably linked and the provision of appropriate access and additional car parking is essential to serve the new wigwam / campsite / mountain bike skills area development.
23. The applicant has provided assurance in the supporting information accompanying this current Section 42 application that work would be undertaken to address access and car parking matters. It is anticipated that this could be done by September 2013, and this request to vary the time stipulation of Condition no. 3 is portrayed as being a 'back up' position in the event of unanticipated difficulties in timescales. On the basis of the information provided, there is a clear acceptance on the part of the applicant that works in connection with the access, as well as the provision of the new car parking area must be done before the new wigwam / campsite facility could commence operations. As such, it can be concluded that the same desired outcome can be achieved by varying the planning condition to require that the works be done prior to the first use of the new wigwam / campsite / mountain bike skills development rather than the current requirement of completing the works prior to the commencement of that development.
24. In agreeing to vary the condition relating to the timescale within which the path / car park works are required to be completed, it would also be necessary to vary the remainder of the condition. As quoted in paragraph 2, the latter part of the condition specifically detailed the works which were the approved through CNPA planning ref. no. 09/295/CP. Given that the clear preference of the applicant, as detailed in CNPA planning ref. no. 2013/0098/DET,<sup>5</sup> is now to undertake more minor works (the creation of lay bys and 'step off' areas) in lieu of the separate walk / cycleway along the final 300 metre southern section of the private access road, it would be necessary to vary those elements of the original condition to also make reference to those proposed minor works.

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<sup>5</sup> Paper 2 on the Planning Committee agenda of 26<sup>th</sup> April 2013.



## IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

### **Conserve and Enhance the Natural and Cultural Heritage of the Area**

25. The current planning application relates to a timing matter and as such has no impact on this aim.

### **Promote Sustainable Use of Natural Resources**

26. The proposal does not have any impact on this aim.

### **Promote Understanding and Enjoyment of the Area**

27. The completion of the new car parking area and either the separate walk / cycleway or the more minor works which are the subject of current CNPA planning ref. no. 2013/0098/DET, in advance of the first use of the new wigwam / campsite / mountain bike skills development at the Badaguish Outdoor Centre, would deliver the same benefits to users (for example improved safety and avoidance of traffic congestion) in the slightly longer term, as would have otherwise been achieved if those elements were completed prior to the commencement of the larger development.

### **Promote Sustainable Economic and Social Development of the Area**

28. In varying the timescale element of Condition no. 3 of the consent, the applicant would benefit from greater flexibility in being able to plan the development and construction programme, in order to ensure that the developments can all be delivered within timescales required in order to avail of European funding. In overall terms, this approach would be of benefit to both the social and economic development of the area.

## RECOMMENDATION

**That Members of the Committee support a recommendation to vary condition no. 3 of CNPA planning ref. no. 2011/0206/DET subject to the following condition :**

- I. This approval relates solely to the variation of condition 3 of CNPA planning ref. no. 2011/0206/DET. Nothing contained in this consent shall be deemed to affect or vary all other conditions imposed on the extant planning permission CNPA planning ref. no. 2011/0206/DET.

None of the facilities or accommodation within this consent shall be put in use until all works permitted under CNPA planning ref. no. 09/295/CP (or those works which have been approved under CNPA planning ref. no. 2013/0098/DET as amendments to CNPA planning ref. no. 09/295/CP) have been completed and are available for use. For the avoidance of doubt the works include the formation of a walk/cycleway adjacent to the access road from the public road to the Badaguish Outdoor Centre (**or** the altered design proposals to the existing access road approved under CNPA planning ref. no. 2013/0098/DET) **and** the provision of passing places on the access road, and the provision of additional car parking facilities at the Centre.

**Reason:** To ensure the conditions imposed by the previous consent remain applicable and in the interests of traffic safety and public safety and in order to avoid congestion and conflict between users of the access routes in the vicinity.

**Mary Grier**

[planning@cairngorms.co.uk](mailto:planning@cairngorms.co.uk)

**18 April 2013**

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