

Cairngorms National Park Local Plan Inquiry

Cairngorms National Park Authority Topic Paper 1:

Statutory National Park Context

Introduction

1. The purpose of this Topic Paper is to set out the statutory National Park context that has informed the preparation of the Cairngorms National Park Local Plan. It is important that there is a clear understanding of this context as the Local Plan has been prepared to comply with two areas of legislation, National Parks and Planning. This paper can be referred to when seeking clarification on this issue for any aspect of the content of the Deposit Local Plan as modified. ***The paper has been expanded on 2 occasions at the request of the Reporters to further clarify the relationship between National Park status, with the obligations that accompany it, and the requirements of the statutory planning system.***

The Statutory National Park Context

2. The Local Plan has been prepared with reference to the statutory role of the CNPA under the National Parks (Scotland) Act 2000, the “Act”, and The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003, the “Order”.
3. Section 1 of the Act lists the National Park aims:
 - a) To conserve and enhance the natural and cultural heritage of the area
 - b) To promote sustainable use of the natural resources of the area
 - c) To promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public
 - d) To promote sustainable economic and social development of the area’s communities.
4. Section 2 the Act sets out the conditions for designation of an area as a National Park:
 - a) That the area is of outstanding national importance because of its natural heritage or the combination of its natural and cultural heritage;
 - b) That the area has a distinctive character and a coherent identity, and
 - c) That designating the area as a National Park would meet the special needs of the area and would be the best means of ensuring that the National Park aims are collectively achieved in relation to the area in a co-ordinated way.
5. Section 9 of the Act states that the general purpose of a National Park authority is to ensure that the National Park aims are collectively achieved in relation to the National Park in a co-ordinated way. In exercising its functions the authority **must** act with a

view to accomplishing this purpose. If in relation to any matter it appears to the authority there is conflict between the first aim and the others, the authority must give greater weight to the first aim.

6. The Cairngorms National Park was designated by the Order in 2003 because the area met the conditions in Section 2 of the Act. The Cairngorms National Park Authority (CNPA) was established in March 2003 to fulfil the purpose stated in the Act.
7. Section 7 (1) (a) of the Order makes the CNPA the sole authority within the National Park in respect of functions in relation to local plans. In discharging this role the CNPA has to act in accordance with its statutory purpose as required by Section 9 of the Act. In other words the Local Plan **must** help ensure that the National Park aims are collectively achieved in a co-ordinated way.

Purpose and Status of the Cairngorms National Park Plan

8. Section 11 of the Act requires a National Park Authority to prepare and submit to Scottish Ministers a “National Park Plan” setting out its policy for managing the National Park, and co-ordinating the exercise of the functions of the authority and other public bodies/office-holders in relation to the National Park with a view to accomplishing the purpose in Section 9 of the Act.
9. Section 14 of the Act requires all public bodies and office holders to have regard to the adopted National Park Plan in exercising functions affecting a National Park.
10. Para. 18 of Schedule 5 to the Act inserted Section 264A into the Town and Country Planning (Scotland) Act 1997 requiring special attention to be paid to the desirability of exercising any power under the planning Acts consistently with the adopted National Park Plan. This creates a link between the two pieces of legislation.
11. Following consultation in the first half of 2006, the Cairngorms National Park Plan was approved by Scottish Ministers in March 2007 and adopted by the CNPA in April 2007. It is not a CNPA plan; it is a plan for the National Park. It was prepared by an inclusive process involving a wide range of partners who continue to be involved in delivery of the Plan. This is evident from the variety of logos displayed inside the document including all of the local authorities, HIE, Scottish Enterprise and Communities Scotland.
12. The National Park Plan provides the strategic context for all of the functions of the CNPA including the Local Plan. This was confirmed in a letter dated 6 December 2004 (CD 8.11) from the Scottish Executive stating that, among other things, the National Park Plan will provide an overarching context for planning policy within the area.

The Cairngorms National Park , Existing Structure Plans and the New Development Plan System

13. The Cairngorms National Park embraces parts of the local authority areas of Highland, Aberdeenshire, Moray and Angus. Until such time as the new development plan

system is fully in place, structure plans will continue to be relevant within the National Park. This is not the long term intention of the Scottish Government, but a simple legal fact as the planning system evolves. The structure plan coverage is currently as follows:

- The Highland Structure Plan 2001
- North East Scotland Together (NEST) 2001
- The Moray Structure Plan 2007
- Dundee and Angus Structure Plan 2002

14. Circular 3/2008 "Strategic Development Plan Areas" determined that Aberdeen City and Shire is a Strategic Development Plan Area and this does not include the National Park. NEST will therefore be replaced by a new strategic development plan that will not include the National Park. This strategic development plan (SDP), the Finalised Aberdeen City and Shire Structure Plan, was submitted to Scottish Ministers on 27 February 2009 to allow an eight week period for any objections or representations to be lodged with them. The consultation period closed on 24 April 2009 and Scottish Ministers will now consider any objections and determine whether an Examination in Public (EIP) is needed. If an EIP is not required the SDP authorities hope that approval will take place before the end of 2009.
15. The Dundee and Angus Structure Plan 2002 will in due course be replaced by a SDP for Dundee, Perth, Angus and North Fife which has been designated as the SDP Area. That Plan will not include the National Park. Moray and Highland are not within a SDP Area so these structure plans will remain for the time being, until the Local Development Plans are in place for the parts of the authorities excluding the National Park.
16. The Cairngorms National Park Local Plan still has to conform to those structure plans in place. The CNPA in 2004 sought clarity on the relative status of structure plans and the National Park Plan. The letter CD8.11 referred to in 12. above, clearly states that all of the structure plans predate the National Park and it will be for the CNPA to justify differences in policy direction in the National Park Plan and Local Plan and whether these, as material considerations, outweigh the policies in existing structure plans. It points out that this is no different from past situations where new policy issues or directions overtake outdated plans. The advent of the Cairngorms National Park clearly raises new policy issues and direction as a result of the national designation and the approval by Scottish Ministers and subsequent adoption by the CNPA of the National Park Plan.
17. Within this context, and given that the CNPA and others have very specific obligations under the Act, there is consequently a clear mechanism for justifying any difference in content or emphasis between the Local Plan and existing structure plans. Having said that, the CNPA considers that there is conformity with the structure plans and points out that there are no objections to the Local Plan from the structure plan authorities on conformity or any other issues.
18. Furthermore, the provisions of Section 264A of the Town and Country Planning (Scotland) Act 1997, requiring special attention to be paid to the desirability of exercising any power under the planning Acts consistently with the adopted National

Park Plan, are enshrined in primary planning legislation. Section 14 of the National Parks (Scotland) Act 2000 has a duty of regard that applies, inter alia, to any public body or office holder taking decisions in relation to planning matters within the Park. All of this adds to the weight given to the National Park Plan as a material consideration under Section 25 of the Town and Country Planning (Scotland) Act 1997.

19. The CNPA will be preparing a Local Development Plan for the National Park. The published Development Plan Scheme programmes work to commence in September 2009, with consultation on a Draft Plan in summer 2010 and adoption in November 2011. The constituent local authorities will prepare Local Development Plans for those parts of their areas outside the National Park. The context within the National Park will become the Cairngorms National Park Local Development Plan along with the National Park Plan: a clear and well defined structure. The current situation should therefore be seen as work in progress, a transition towards this eventual state of affairs.

Current Context for Planning Decisions Within the Cairngorms National Park

20. It is pertinent to set out the current arrangements for the Development Management function within the Cairngorms National Park. Whilst the CNPA is the planning authority for the preparation of a Local Plan, it is not a planning authority for all planning applications submitted within the National Park. Under the terms of the 2003 Order, planning applications are submitted to the relevant local authority as planning authority. They are obliged to notify all applications received to the CNPA, and the CNPA has to determine if an application raises issues of significance for the aims of the National Park. If it is decided that an application does raise issues of significance then the CNPA has power under the Order to “call in” the application and determine it. When an application has been “called in” by CNPA then it becomes the planning authority as far as that particular planning application is concerned.
21. The relevant local authority remains the planning authority for those applications not “called in”. When deciding not to “call in” an application the CNPA may make comments that it would like to have taken into account. The local authority then determines the application in the normal way, although taking account of CNPA comments and the duty of regard for the National Park Plan.
22. There is a development control protocol between the CNPA and the 4 local authorities to enable this distinctive arrangement to be implemented and monitored. Annual meetings are held to discuss how it works in practice and address any problems.
23. In the absence of a Cairngorms National Park Local Plan, the CNPA has to date been taking decisions with regard to the existing development plan and relevant material considerations. Prior to the adoption of the National Park Plan the aims of the National Park were the significant material consideration. Following assessment of a proposal against the development plan, and account taken of other material considerations, it would be finally assessed against the 4 aims, before a recommendation was made and a decision taken. Since the National Park Plan was adopted it has been included within the assessment against policy, and the assessment against the 4 aims remains as the final consideration before recommendation and decision. In cases where planning permission is refused there is often reference to the National Park Plan and the aims alongside planning policy in the reasons for refusal.

24. It is hoped that this demonstrates the clear linkage between the two statutory contexts, National Parks and Planning, and that it is both necessary and possible for them to be applied together in plan making and planning decisions.

Relationship Between the National Park Aims, the National Park Plan and the National Park Local Plan

25. Sections 1 and 2 of the National Parks (Scotland) Act 2000 respectively set out the statutory aims and conditions for designation of National Parks. Section 9 of the Act establishes the purpose of the National Park Authority to collectively achieve the aims in a co-ordinated way. Paras. 2 – 7 of this Paper set this out in detail.
26. In preparing the National Park Plan as required under Section 11 of the Act (see para. 8 above), the CNPA did so with a view to securing the collective achievement of the aims in a co-ordinated way. The National Park Plan was organised under 3 overarching themes: Conserving and Enhancing the Park, Living and Working in the Park, and Enjoying and Understanding the Park. These themes taken together embrace the 4 aims of the Park. The Strategic Objectives and Priorities for Action in the National Park Plan are all grouped under them to co-ordinate activity with a view to securing collective achievement of the aims. The National Park Plan based on this approach has been approved by Scottish Ministers.
27. The CNPA is a planning authority for the preparation of a Local Plan. The statutory purpose of the CNPA under the Act has been outlined above and it's other statutory functions, including those relating to planning, have to take place within the context of that overall purpose. The Local Plan is one of the mechanisms for contributing to delivery of the National Park Plan and hence to the collective achievement of the aims of the Park. In the interests of consistency with the National Park Plan, and to clearly demonstrate the “thread” leading from the aims in Section 1 of the Act, it was decided that the Deposit Local Plan should have policies grouped under the same 3 overarching themes: Conserving and Enhancing the Park, Living and Working in the Park, and Enjoying and Understanding the Park.
28. The Local Plan that has been the subject of scrutiny at this Local Plan Inquiry is therefore clearly founded in the context within which the CNPA has been established and is obliged to operate i.e. the National Parks (Scotland) Act 2000 and The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003. The Local Plan is key to delivery of the National Park Plan and the collective achievement of the Park aims.

Conclusion

25. This is a Local Plan for the Cairngorms National Park. Leaving aside Loch Lomond and the Trossachs NPA, it has a different statutory context from those prepared by other planning authorities. It has to comply with the requirements of two sets of primary legislation, neither of which has precedence over the other. It has been prepared by

the CNPA whose statutory purpose is clearly defined. The local plan function has to contribute to the achievement of that statutory purpose. The circumstances have been clearly and logically set out in this topic paper. This is therefore the context for the preparation of the Cairngorms National Park Local Plan and for consideration of objections in the Local Plan Inquiry.

26. Finally, in contributing to delivery of the National Park Plan, the Local Plan also conforms to the relevant structure plans and the provisions of the Town and Country Planning (Scotland) Act 1997, including Section 264A, as well as the Town and Country Planning (Development) Planning) (Scotland) Regulations 2008. Furthermore the Local Plan is in conformity with other relevant legislation including the Conservation (Natural Habitats, etc) Regulations 1994 (as amended), the Conservation (Natural Heritage, etc) Regulations 1994 (as amended), the Nature Conservation (Scotland) Act 2004, and the Environmental Assessment (Scotland) Act 2005.

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