

CLOSING REMARKS

by

SENIOR COUNSEL

on behalf of

CAIRNGORMS NATIONAL PARK AUTHORITY

in relation to

Local Plan Policy 7: Landscape

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1. Sir, as I set out yesterday, the starting point for consideration of Policy 7 is the strategic context set out in the Park Plan.

The Strategic Objectives for Landscape, Built and Historic Environment are set out on pages 38 and 39 of the Park Plan.

Strategic objectives (c) and (d) are of particular importance. Objective (c) is to “Ensure development complements and enhances the landscape character of the Park”. The outcomes that the strategic objectives for landscape seek to achieve are set out on page 91 of the Park Plan. Outcome (iii) is that “the location, scale, layout and design of all new development will make a positive contribution to the natural, cultural and built landscape of the Park and the adverse impacts of some existing development will be reduced”.

2. Policy 7 of the Local Plan provides the planning mechanism for achieving the objectives and outcomes of the Park Plan in relation to the landscape by firstly placing a presumption against development that does not make a positive contribution to the landscape character of the Park and secondly only allowing development which would have an adverse effect on the landscape character of the Park where there is no better alternative solution and where all the adverse effects have been mitigated.

3. The suggested alternative wording to Policy 7 put forward by SSE in its letter of May 15th would not achieve fully the objectives and outcomes set out in the Park Plan.

Whilst it presumes in favour of development that makes a positive contribution to the landscape character, it does not place any presumption against development which has a less than significant adverse effect on the landscape character of the Park. Accordingly, it does not restrict development which would have an adverse effect but not a significant adverse effect, on the landscape character of the Park.

I submit that cannot be consistent with the strategic objectives of the Park Plan to ensure development complements and enhances the landscape character. It allows for development that would have a negative effect on the landscape character of the Park without requiring mitigation.

4. In conclusion, on the SSE policy wording, the first part of its policy presumes in favour of the obvious. The second part of its policy wording follows part of paragraph 25 of NPPG14. Sir, as we have already discussed the NPPG was published before the 2000 Act came into force and before the Park Plan was approved by the Scottish Ministers.
5. Sir, yesterday, there was some discussion on landscape character and it is relevant to consider this now in order to put the policy wording in context. Mr Matthew Hawkin's position - which I do not think was disputed by Mr Turnbull - was that, for there to be any adverse change to landscape character there would have to be significant change to the features that influenced the landscape character.
6. Moving to the second part of Policy 7 as drafted, it allows for development that would have an adverse effect on the landscape character of the Park to be permitted only where it satisfies both (a) and (b) of the Policy.
7. Part (a) requires there to be no better alternative solutions - and the Park Authority has confirmed in its rebuttal statement that alternative here means a real practical alternative.

SSE accepts in its statement of case that when planning authorities determine planning applications it may be relevant and indeed necessary to consider whether

there is a more appropriate alternative elsewhere (I refer to paragraph 2.3.18 and footnote 5 of the SSE statement of case).

As we discussed, paragraph 42 of NPPG14 sets out that in relation to Natura 2000 areas development which would have an adverse effect on the conservation interest for which the area has been designated should only be permitted where - “there is no alternative solution”. This requirement to investigate alternatives is not unique to this plan and NPPG14 and we discussed other examples of such a requirement yesterday.

The Park Authority’s position is that because of the 2000 Act and the Park Plan it is appropriate to require developers to consider real practical alternatives to a proposal that will have adverse effects on the landscape character of the Park. This would involve considering alternative sites and alternative forms of development.

8. Part (b) requires adverse effects to be mitigated.
9. In relation to the suggestion that the policy does not direct development to specific locations. The Supplementary Planning Guidance referred to in Topic paper 2, Section 5 will assist in providing locational guidance.

As we have seen in the site specific sessions of the Local Plan Inquiry the Plan does provide specific locational guidance in relation to planned development in the Park.

10. Finally in relation to Mr Turnbull’s remarks on the middle paragraph of Policy 7 and the reference to the distinctive landscape features, scenic qualities, natural beauty, amenity, historic landscape elements or qualities of wildness, a similar list is used in the SSE suggested wording and the Park Authority’s understanding is that the SSE had no objection to that list in the Local Plan Policy. Mr Turnbull’s evidence should be considered having regard to that background. The Park Authority does not propose any changes to this section of the policy in light of Mr Turnbull’s evidence.

Procedural Points

1. Sir, in relation to my learned friend's submissions on behalf of SSE I do have a procedural point I would wish to raise now.
2. Whilst I do not object to my learned friend setting out in detail in his submissions his position on the 2000 Act and in particular Sections 1, 9 and 11 as background to his submission, I do not recollect them being discussed in any detail yesterday. I do not take an issue on this point on the understanding that this is set out as background. I will be setting out my position on behalf of the Park Authority on these issues in the submission that you requested at an earlier session.
3. I do take issue with my learned friend setting out examples which were not included in the discussions and were not used yesterday.
4. In particular at paragraph 8 of my learned friend's submission, beginning on page 3 and going over on to page 4, my learned friend uses the example of a high voltage overhead electric line - at the top of page 4. I have no recollection of that example being discussed at yesterday's session and certainly no recollection of it being set out in such detail. I have also confirmed with my instructing solicitor that she has no note of a discussion of this matter in her detailed notes.
5. On page 9, paragraph 17, there is also discussion of an example which I do not recollect being discussed and reference to policy 16 which was mentioned yesterday but which you indicated should be considered today.
6. My understanding of the purpose of the remarks you requested was to summarise the discussions which took place yesterday.
7. I accordingly object to the reference to the examples that I have referred to being included in the SSE submission.

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