

SUBMISSION

by

DOUGLAS ARMSTRONG, QC

on behalf of

CAIRNGORMS NATIONAL PARK AUTHORITY.

**Subject: The relationship between the National Park Plan and
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1. I shall set out in this submission the functions of the Park Plan and its relationship with the Development Plan.
2. Section 11 of the National Parks (Scotland) Act 2000 (“the 2000 Act”) requires a National Park authority to prepare and submit to the Scottish Ministers a National Park Plan setting out the National Park authority’s policies for -
 - “(a) managing the National Park, and
 - (b) co-ordinating the exercise of -
 - (i) the authority’s functions in relation to the National Park, and
 - (ii) the functions of other public bodies and office-holders so far as affecting the National Park,with a view to accomplishing the purpose set out in Section 9(1).”
3. Section 9(1) of the 2000 Act sets out the general purpose and function of the Park authority. It states,

“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.”

4. Section 14 of the 2000 Act sets out that:

“The Scottish Ministers, a National Park authority, a local authority and any other public body or office-holder must, in exercising functions so far as affecting a National Park, have regard to the National Park Plan as adopted under Section 12(7)(a).”

5. The 2000 Act in Schedule 5 amends the Town and Country Planning (Scotland) Act 1997 by inserting Section 264A which states:

“In the exercise, with respect to any land in a National Park, of any power under the planning Acts, special attention shall be paid to the desirability of exercising the power consistently with the National Park Plan as adopted under Section 12(7)(a) of the National Parks (Scotland) Act 2000.”

6. The Park Plan:

- sets out the Park authority’s policy for the management of the Park and for co-ordinating the exercise of the authority, other public bodies and office holders functions so far as affecting the Park;
- assists in ensuring that the aims of the National Park are put into effect by the Scottish Ministers, the Park authority, local authorities and any other public body or office holder when exercising functions so far as affecting the National Park;
- sets out the strategic contexts and, objectives and outcomes for the Park; and
- is not a planning policy document or plan. It does not form part of the development plan. However it does have an input into the development plan and planning decisions as it provides an overarching context for development planning and management within the National Park.

7. Under Section 11 of the Town and Country Planning (Scotland) Act (prior to the amendments in the 2006 Act) (“the 1997 Act”), the planning authority is required to prepare a local plan,

“... formulating in such detail as the planning authority thinks appropriate the authority’s proposals for the development and other use of land ... including in either case such measures as the planning authority think fit for the conservation of the natural beauty and amenity of the land and the improvement of the physical environment ...”

The Park Authority is the planning authority for the purposes of preparing the Local Plan for the Park Area.

8. When preparing that Local Plan the Park authority must ensure that the National Park aims are collectively achieved in relation to the National Park in a co-ordinated way and must have regard to the Park Plan and pay special attention to the desirability of exercising power consistently with it when drafting and adopting the Local Plan.

9. CD8.11 helpfully sets out the position of the Principal Planner at the Scottish Executive on the relationship between statutory plans. The following extracts from the letter are of particular relevance:
 - “You indicated that it was your intention to prepare a Cairngorms National Park Local Plan in the interim. This would be prepared broadly in tandem with your National Park Plan taking its objectives and policy direction.
 - National Park Plans will set out policy for managing a National Park and co-ordinating Park Authority functions and the functions of other public bodies and office holders so far as affecting the National Park. It is envisaged that this, among other things, will provide an overarching context for planning policy within the area. ...
 - There is the outstanding issue of compatibility with existing structure plans. All of these plans pre-date the establishment of the Cairngorms National Park. It will be for the Park Authority 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. This is no different to past situations where new policy issues or directions overtake outdated plans, both structure and local. The proposed new development plan system will supersede and remove the requirement for conformity with structure plans.”

10. Not surprisingly this approach is consistent with the remarks made by the Minister for Transport and the Environment in the discussion on the National Parks (Scotland) Bill in the Rural Affairs Committee of the Scottish Parliament and it is consistent with the approach set out in the Cairngorms National Park Plan which has been approved by the Scottish Ministers.

At the Rural Affairs Committee meeting on 7th June 2000 the Minister for Transport and the Environment, when discussing the role of a park plan, stated the following:-

- “The national park plan is clearly central to ensuring that the aims of the national park are achieved.”

At the Rural Affairs Committee meeting on 19th June 2000 the Minister stated the following:-

- “... the park authority, in preparing its [park] plan, must identify a policy for co-ordinating the exercise of the functions of other public bodies with a view to accomplishing the purpose as stated ... in other words, the collective and co-ordinated achievement of the aims. If a public body has agreed to a plan that has been approved by the Scottish Ministers, it would be unreasonable for that body to act contrary to the plans, policies or actions that are set out in the plan. Such actions would be open to legal challenge, so more weight is added through that process.”
- “After all our discussions about how the national park plan will be put together and approved by Scottish Ministers, it seems most unlikely that the development plan and the national park plan will diverge in policy terms. Although there is a potential problem with timing in that both plans could go out of sync ...”

On the importance of the Park Plan and the difference in the status of Park Plans in England, the Minister stated:

- “... for parks south of the border. The national park management plans there do not have the same status as the proposed national park plans in our legislation for Scotland; south of the border, the plans are not approved by Ministers and there is no requirement for other bodies to take notice of them. Such bodies are required to have regard to the aims of the national parks, whereas we will require them to have regard to the national park plan itself. The way in which the responsibilities are identified is therefore different south of the border.”

- “It may help the Committee if I clarify that the term “special attention” was not dreamed up by us, but is used in respect of listed buildings. We felt that the phrase already had some legal weight and that it was a tried and tested formula that struck the right balance. We were trying to avoid saying that the national park plan was exactly the same as the development plans for an area, and we wanted to ensure that the plan was given enhanced status in respect of town and country planning matters ...”

11. As stated, guidance on the relationship between the Park Plan and the Local Plan is given in the approved Cairngorms National Park Plan (CD7.1) at paragraph 2.4 (page 14) which states:

“The National Park Plan provides an overarching context for development planning and management within the National Park. The Local Plan will set out detailed policies to guide development in ways that contribute to the strategic objectives of the National Park Plan. The National Park Plan is a material consideration in planning authority decisions.”

12. It is clearly the intention of the Scottish Ministers and of the 1997 Act and the 2000 Act that the Park Plan should input into the Development Plan and be seen as providing the “overarching context for planning policy within the area”.

This is achieved through Section 14 of the 2000 Act and Section 264A of the 1997 Act. The relevant objectives and outcomes of the Park Plan input into the policies of the Development Plan through the requirement of the Park Authority, the local authorities, the Scottish Ministers and any other public body or office holder exercising their powers with special attention being paid to the desirability of acting consistently with the Park Plan.

13. Accordingly, when exercising their powers either in drafting a local plan, setting out recommendations on a local plan, adopting a local plan or approving a Structure Plan, the relevant body or person is required to have regard to the Park Plan and pay special attention to acting consistently with the Park Plan.

The result of this process is that the objectives and outcomes of the Park Plan and the aims of the Park feed into the Policies of the Development Plan and are given Development Plan policy status.

The Development Plan through Section 25 of the 1997 Act has heightened status in that Section 25 requires determinations under the planning acts to be made in accordance with the plan unless material considerations indicate otherwise.

14. Accordingly, the Local Plan should:

- take its objectives and policy direction from the Park Plan;
- assist in achieving the objectives and outputs of the Park Plan; and
- not diverge in policy terms from the park plan.

In short, as the Principal Planner at the Scottish Executive set out, the Park Plan “provides an overarching context for planning policy” in the Local Plan. The Local Plan assists in achieving the aims and objectives of the Park Plan by setting out planning policy and directing development in accordance with the Park Plan’s objectives.

15. For Structure Plans approved prior to the Park Plan, the adoption of the Park Plan and the objectives of the Park Plan must be factors to take into account when considering the continuing relevance of the Structure Plans.

The Local Plan must conform with the Structure Plan (Regulation 4 of the Planning etc. (Scotland) Act 2006, Development Planning (Saving, Transitional and Consequential Provisions) Order 2008).

When considering the Local Plans’ conformity with the Structure Plans the fact that a policy in a Structure Plan is no longer applicable must be a consideration.