



Cairngorms
National Park Authority

Ùghdarras Pàirc Nàiseanta a'
Mhonaidh Ruaidh

Item 6 Appendix 4 8 December 2023

Agenda item 6

Appendix 4

2023/0199/DET

Representations - objections

DATE: 09 June 2023

OUR REF: JW/LT

YOUR REF:

Direct email: jamiewhittle@r-r-urquhart.com

Recorded Delivery

Cairngorms National Planning Authority
14 The Square
Grantown-on-Spey
PH26 3HG

Also by email to: planning@cairngorms.co.uk

Dear Sirs

**Planning Application 2023/0199/DET (Highland Council ref 23/02000/FUL)
Proposed erection of owner's accommodation, 7 self-catering cabins and toilet/shower block at Boat of Balliefurth, Grantown-on-Spey**

On behalf of [REDACTED] we hereby object to planning application 2023/0199/DET (Highland Council reference 23/02000/FUL before being called in) being the proposed erection of owner's accommodation, self-catering cabins and a toilet/shower block. Our clients [REDACTED] to the proposed development and are therefore [REDACTED] affected.

We had objected to the initial planning application 2022/0354/DET (Highland Council reference 22/04644/FUL before being called in) ("Initial Application") for the erection of owner's accommodation, self-catering cabins and toilet/shower block, on behalf of our clients, with an objection letter dated 30 November 2022.

Although the Initial Application was withdrawn by the applicants, in our submission this renewed planning application still does not comply with the same policies referenced in our initial objection, and we therefore raise the same objections which we have again set out below, as well as a number of new objections.

The site is a particularly quiet, rural location and next to where our clients have made their home since 1986. Our clients witness on a daily basis an exceptional array of biodiversity including protected species, and the site is adjacent to the River Spey SAC and River Spey SSSI as well as being in close proximity to the Craigmore SPA and Wildcat Priority Area (ref: 20220204)

Documents relied upon by the applicants:

1. The applicants lodged a number of documents with the authority in support of the Initial Application.
2. The Preliminary Ecological Appraisal (dated 9 March 2022), which we consider more fully below, was not updated for this renewed planning application. Combined with our client's concerns with the

Appraisal noted below, the fact that the Appraisal is now over 14 months old means that the applicant should instruct a new appraisal or the Authority should give it little weight when considering this renewed application.

3. The same criticism can be made of the Arboricultural Impact Assessment which is also dated March 2022 and has had no subsequent update for the renewed application.
4. The agent for the applicants submitted a statement in support of the renewed application dated 18 April 2023 which contains the following passage:

"After discussions with the CNPA, the application was withdrawn whilst the manager's house was re-designed to be more sympathetic to the site and context. The house redesign, now single storey, reduced mass and removal of the detached garage has since been looked on more favourably for the purpose of the development."

Our clients are concerned at the suggestion that the CNPA might have already given the applicants advice that their revised application is now being viewed more favourably. Surely this cannot be correct. We trust that any views by the CNPA that may have been expressed to the applicant were done so in the context that the application requires to be considered through the normal planning process once the application has been submitted.

5. The authority has prepared an EIA Screening Opinion whereby it was decided that further environmental assessment was not required for the site. The reasoning offered throughout the Opinion, for example at clause 6, is that with sufficient mitigation any effects on the environment can be avoided. This may be the case, but no such mitigation can be found in the planning application and there is no suggestion as to what planning conditions may or may not be imposed.

At 6.2, the CNPA notes that: "there may be protected species within the vicinity of the site." To be accurate, there are protected species that frequent the site and its vicinity. Also, at 6.1 no reference is made to the Craigmore SPA or the Wildcat Priority Area and these should all have been considered. In our submission the EIA Screening Opinion drew the incorrect conclusion, in that this is a highly sensitive area which requires careful, thorough environmental assessment, and as such there are not the environmental safeguards that there should be.

Our clients are surprised that no further assessments have been made given the proximity of the site to an SAC and given the risks, also noted below, the authority should take a precautionary approach and insist upon adequate assessments. Only then can the authority make an informed decision and put in place appropriate conditions to mitigate the risk to the environment. **At this stage the risk to the environment has not been adequately assessed.**

Furthermore, at clause 9 of the Screening Opinion, the authority states that the site is accessed via the B970. This is incorrect, as we discuss below at paragraph 8 the site is accessed by a private unmade road, which contrary to the authority's assertion is not suited to an increase in volume of traffic. There will be a significant impact on the access route, which is particularly pertinent as our clients are one of a number of proprietors who are obliged to pay towards the maintenance of the road and there is no

maintenance agreement for the road supporting this proposed development. Also, the extent of use of the site by campers in addition to pod users is unknown and therefore, the impact and use of the private access road is unquantified, a point which we consider more fully below.

The development proposal is not supported by the Cairngorms National Park Authority's Local Development Plan 2021 ("the Plan") and should therefore be refused. Examples of this lack of support include:

Impacts on neighbouring amenity:

6. Policy 1.3 (Other housing in the countryside) requires proposals that a) reinforce the existing pattern of development, b) are necessary for an active business or c) which are on a rural brownfield site. This development will not be part of an existing pattern of development, is not linked to an active business and is on a greenfield site.
7. Policy 2.2 (Tourist accommodation) requires that a development has no adverse environmental or amenity impacts on the site of neighbouring areas. As highlighted below, the environmental impacts in a site where protected species are present and which lies adjacent to designations of international significance have not been adequately assessed. Furthermore, the impact on our clients' amenity as the immediately neighbouring property will be extreme; the development will transform an undisturbed location at the end of a private track to a busy site frequented by tourists, changing the character of the place significantly including through noise, light, smell and traffic. Reference is made to the photograph annexed to this letter taken on 12 November 2022 showing the immediate proximity between the site and our clients' house and property.
8. Policy 3.3 (Sustainable design) states that developments must protect the amenity enjoyed by neighbours including minimisation of disturbance caused by access to the development site, include an appropriate means of access and egress, and create opportunities for further biodiversity and promote ecological interest. As mentioned above, the amenity of our clients will be disturbed to an unacceptable level. The applicants, in their supporting statement referred to above, reference the likely heavy use of the application site by wild campers, various outdoor groups and the occupants of the pods all in close proximity to our clients' property. Despite this, the application fails to adequately demonstrate how the applicants will mitigate the impact of this increased use and the inevitable interference on our clients' enjoyment of their property, as is required by Policy 3.3(i).

Also, the private track leading to the site is inadequate for the proposed access and egress. The proposed access route is a private track that serves three existing houses and is narrow and untarred. It was not designed with commercial purposes in mind and currently has no existing passing places. There will be a significant increase of the burden on the untarred track. The planning application fails to disclose any plans to mitigate the effect of an increase in traffic on the track surface that will inevitably occur if a house and 7 self-catering cabins are erected. Also, the proposed visibility splay is not compliant.

Although the application is for 7 self-catering cabins, reference is also made to use of the site by other campers, however, there is no consideration of the cumulative impact that the existing camping site and the proposed cabins will undoubtedly have on our clients' property. The application fails to disclose the

maximum number of pitches that will be available at the campsite. The proposed parking spots are unlikely to be sufficient for the volume of traffic generated by the development and our clients are concerned at the potential of users of the site parking near or on the boundary of their property.

Furthermore, wildlife (including protected species present on the site) will be disturbed as a result of the volume of people potentially staying at this site, and so it cannot be said that this development will promote biodiversity and ecological interest.

9. Policy 10.1 (Water resources) states that a development should not have a significant adverse impact on existing or private water supplies, however this development, if permitted, will strain the water supply used by our clients to an unacceptable level. Also, the site lies in close proximity to the River Spey, and the impact on water quality has not been adequately addressed by the applicant.

Impacts on the environment:

10. The Preliminary Ecological Appraisal dated 9 March 2022 submitted on behalf of the applicant is not only preliminary but very limited in scope and substance. Its assessment in the field consisted of one day's appraisal in March, and therefore took place when a number of fauna and flora would not have been present. It also consists mainly of desktop analysis. It does not comply with the requirements of Policy 4.6 (All development). There is no basis for the authority to reach a conclusion that the development will have limited impact on the environment given the lack of assessment forming that Appraisal. In our submission this Appraisal cannot be given any weight.
11. This location and its immediate area is one frequented by an array of protected species which our clients have witnessed including badgers, pine martens, wildcat, water voles, pipistrelle bats and red squirrels, and then barn owls, tawny owls, golden eye duck, heron, red-throated divers, white-tailed sea eagle, peregrine falcon, osprey and red kites. Accordingly Policy 4.4 (Protected species) must prevail.
12. Similarly, Policy 4.5 (Other biodiversity) requires special consideration to be given to protecting biodiversity, and the Park Authority is required to meet the obligations of a public body in terms of section 1 of the Nature Conservation (Scotland) Act 2004. The site is home to an array of biodiversity, and is located at the interface between river, field and woodland ecosystems.
13. Policy 4.1 (International designations) requires the Park Authority to have particular regard to the qualifying interests of Natura sites that may be affected, with the site being adjacent to the River Spey SAC and the Craigmore SPA. Also, Appropriate Assessments would require to be carried out in terms of the Habitats Regulations. But more fundamentally, the close proximity of the development to these protected areas has not been adequately assessed.
14. The same applies with Policy 4.2 (National designations) where impacts on the River Spey SSSI and Wildcat Priority Area (within 250m of the proposed site) require to be properly considered.

Notwithstanding the above, and even if the access issues could be satisfactorily overcome, there are other locations of land owned by the applicants which would form a better site for what they propose to do, and they should explore alternative sites on their land instead of seeking to locate this in close proximity to our clients'

property.

Against the above, we submit that the proposed development is not supported by the Plan, and that there are no material considerations capable of overriding the Plan. We therefore urge the Authority to refuse the application in line with section 25 of the Town and Country Planning (Scotland) Act 1997. This location is a particularly sensitive site, both in terms of its environmental qualities and also given the immediate proximity to our clients' secluded home where the amenity will be adversely affected to an unacceptable extent.

On behalf of our clients, we request that the Authority makes a site visit. In the event of a hearing, our clients request that they be permitted to address the Planning Committee via us as their agents.

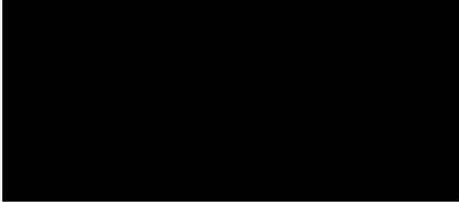
Yours faithfully

[Redacted signature block]

Jamie Whittle
Partner



Photograph of Boat of Balliefurth – 12 November 2022 – [Redacted]

12th June, 2023

Planning Department,
Cairngorms National Park Authority,
14 The Square,
Grantown-on-Spey,
PH26 3HG

Dear Sir/Madam,

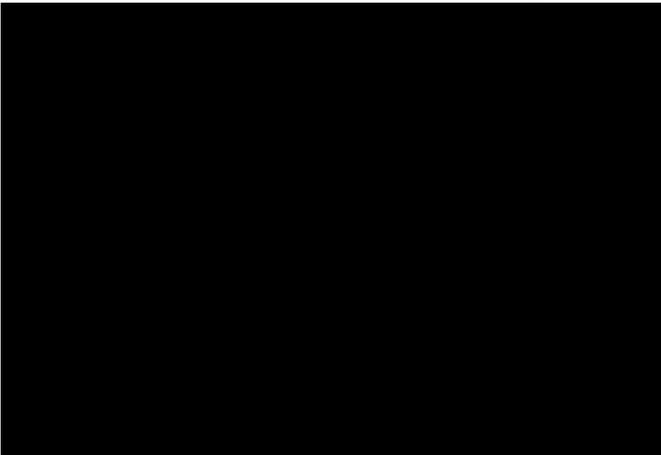
Proposed house and pods at Boat of Balliefurth – 2023/0199/DET

We are concerned about this development for the following reasons:-

1. The River Spey catchment is a SSSI and we believe the land adjacent to the river should have minimal development.
2. The section of river in question is outstandingly beautiful. We believe the current layout will detract significantly to the amenity of the area, particularly for those who live closest to the proposed site.
3. The CNPA's Local Development Plan 2021 in Policy 2 paragraph 4.35 refers to the development of "custom-built tourist accommodation" but with the proviso there is "no adverse impact on their surroundings." We believe there will be adverse impacts on wildlife (particularly protected species such as pine marten and badgers) and people who live nearby.
4. The Location Plan included in the application has marked on it the access road from the B970. This access road is owned by Balliefurth Farm from the B970 to beyond Balliefurth Wood Cottage. According to the "Land Ownership Certificate" section in the Application we should have been served notice as owners of part of the access road. We have had one meeting with Ronald Macpherson where

some ideas were discussed and we have received one email with proposed works at the road end. We have not received any notice.

5. We are concerned by the significantly increased level of traffic that will come due to the additional buildings (8). Initially this will be in the form of construction vehicles. Thereafter users and service vehicles (refuse lorries, suppliers etc). At a minimum the increase could be in the region of 30 vehicle movements a day (15 car parking spaces x 1 in and out a day) and is very likely to be more. The current surface of the road is considered to be adequate for the current level of traffic but we don't believe it is adequate for the anticipated increased level of traffic. We currently use the road for access to the cattle feeding area in the woodland with tractors and trailers, there are limited passing places on the road. The current use is light but that could change depending on our farming practices. There is a potential for increased risk of a safety hazard whereby a tractor and trailer may have to wait on the B970 for vehicles exiting the access road onto the B970. This latter point has been discussed with the applicants.
6. There is no information as to where the water supply is coming from but we are presuming this will be off the current supply which also supplies the farm and associated buildings. We suggest Scottish Water assess if the current supply is adequate for the increased number of buildings on the supply.



Emma Greenlees

From: BSCG info <info@bscg.org.uk>
Sent: 12 June 2023 23:49
To: Emma Bryce; Planning
Subject: 2023/0199/DET Comment

Categories: Request to Speak, Comments

Badenoch & Strathspey Conservation Group Fiodhag, Nethybridge, Inverness-shire PH25 3DJ

Scottish Charity No. SC003846

Email info@bscg.org.uk

Website bscg.org.uk/

Emma Bryce
CNPA Planning

12 June 2023

Dear Emma Bryce

2023/0199/DET Erection of 7No. self-catering cabins, toilet and shower block, erection of managers' house at Land 110M SE of Boat of Balliefurth, Grantown on Spey

We wish to object to the above application and request the opportunity to address the planning committee when they consider this application.

This application is in a particularly important location for natural heritage. Riparian habitats are recognised as highly important for much biodiversity, and important in providing connectivity. There is increasing recognition of the importance of networks and corridors, and the role of these in contributing to resilience.

Scenic Quality of Proposal Site

The proposal site and the surrounding area are of exceptionally high scenic value and provide a highly attractive landscape setting. Especially given the standard of finish proposed for the camping pods, we do not consider the proposal to be in line with the CNPA LDP Policy 5 Landscape, conserving and enhancing the special landscape qualities of the National Park (5.1).

Birds

The Spey riparian zone in the general vicinity of the proposal is used by Whooper swans (Amber list of birds of conservation concern), geese such as Pink-footed (Amber list) and Greylag (Amber), ducks including Goldeneye (Red list of birds of conservation concern) and Wigeon (Amber list), Red throated diver, Kingfisher, Lapwing (Red list), Oystercatcher (Amber), Snipe (Amber), Curlew (Red list), Redshank (Amber), Common sandpiper (Amber list), Goosander.

Breeding waders are well known as a special feature of the National Park. Nationally, waders are facing challenges and the CNP can be viewed as a key area for helping declining populations recover.

Lapwing are on the UK Red list of birds of conservation concern. They can use land in the vicinity of the proposal site which can be viewed as part of an important area for the wider breeding population and may offer particular benefits in cold snaps early in the breeding season, especially when feeding conditions are more favourable close to the river than on colder sites.

Oystercatchers (on the Amber list of birds of conservation concern) similarly make use of the riparian zone, especially at a critical time at the start of the breeding season.

The Spey in the vicinity of the proposal is used by Goldeneye throughout much of the year. There are Goldeneye nest boxes near the river a short way upstream from the proposal site, indicating the potential for goldeneye to breed in the immediate vicinity. Goldeneye are among the ducks that feed in the river during the winter.

Due to highly pathogenic avian flu, some of the birds using the area, including relatively long-lived waterfowl, are facing heightened challenges.

A potential impact of the development is the intentional feeding of ducks. This is likely to lead to such problems as promoting spread of disease between birds, such as avian flu; reduction in water quality. Other potential unintended consequences include that it may attract opportunistic predators, for example of ground nesting and hole nesting birds; and lead to issues with rats and potentially predators of rats like barn owls that are susceptible to rat poisons.

Otter, Brown hare

Otter is a European Protected Species and would be potentially subject to significantly greater levels of human disturbance from the pods which sleep a maximum of 28 people, in addition to the tent camping area, and the manager's house that sleeps 8.

There is not good information on the population size of the otters of the Spey, which has not been estimated. Brown hares are a Priority Species and well known to use the riparian zone of the Spey. They may be detrimentally impacted through increased disturbance as a result of the proposal.

Dogs

The development is likely to lead to an increase in the use of the area by dogs.

There may be a significant increase in disturbance to wildlife from dogs within the riparian zone and nearby fields and woodlands, resulting from the proposal.

Dogs entering the Spey would be likely to introduce toxic pollutants, especially from tick and flea collar and treatment, damaging to water invertebrates, fish, birds and mammals ([New research reveals widespread contamination of English rivers with pesticides commonly used as flea treatments : Broadcast: News items : University of Sussex](#)).

There is an issue of cumulative impacts of dogs on the Spey SAC, in terms of both disturbance and pollutants.

Fires Policy and Woodland Protection

The many benefits of riparian trees and woodland are well established.

We note that the landowner at present permits fires in broadly defined locations near the river. The harmful impacts of fires include collecting of wood (dead wood and living) and so depleting this resource, damage to ground vegetation, and unattractive scarring of the ground.

With respect to deadwood,

One of the rare invertebrates potentially present on the site that has not been surveyed for is the Giant Sabre Comb-horn (*Tanyptera atrata*). This crane fly has been observed in June 2023 ovipositing in riparian, dead alder at a location on the banks of the Spey further upstream. Potential habitat exists for this rarity where there is alder or birch near the R. Spey, such as in the vicinity of the proposal site. We are concerned that this development would be likely to contribute to destruction of such habitat. Another rare invertebrate that potentially could be impacted negatively by the proposal is the Yellow-legged Water-snipefly (*Atherix ibis*) also known from the Spey further upstream from an observation in June 2023.

Design Standard

We do not consider that the standard of design of the proposed accommodation pods and toilet block, all of which are composed largely of dark grey corrugated (walls and roof) meets an appropriate standard for the CNP. This is an exceptionally scenic setting and any built development should be to a particularly high standard.

Lighting Issues.

We have not found any mention of lighting. However, it is likely that, over time, some outside lighting will be considered necessary. For example, at the toilet block, at every cabin, along the paths within the cabin and camping areas, Xmas-type seasonal lighting, as well as at the new house.

There is a growing body of scientific understanding that light pollution can significantly impact freshwater insects including the adult flying stages of riverflies which when dispersing are known to move some distance away from rivers.

A number of cold-adapted northern species, that are a feature of the Spey, emerge from the river to breed early in the year when nights, and the requirement for lighting, are long.

These include the Northern February red stonefly, an endemic for which Scotland has international responsibility, that has a stronghold in the river Spey and is one of the rare invertebrates of the Cairngorms, which can be on the wing as early as February.

The Dark Bordered Beauty moth is another rarity that is attracted to light. This moth is dependent on Aspen, which is present on and near the site. This moth is only known from 3 Scottish sites, one of which is only slightly over 1km from the development site.

Lighting may also impact other species of conservation concern, including bats and their invertebrate food supply. We are concerned that a precautionary approach should be taken to lighting.

EIA Screening Opinion

We are concerned at the approach taken to the screening opinion. At 6.2 (under Biodiversity) this states “There may be protected species within the vicinity of the site” and continues “Subject to appropriate survey work being undertaken and the recommended mitigation measures implemented, if necessary through the imposition of a condition on any consent, there will be no significant effects”. It is well established that there are protected species within the vicinity of the site and the designation of the River Spey is clear evidence of this. We can find no recommended mitigation measures provided in the EIA. The Ecology Response recommends that a pollution prevention plan is submitted as mitigation, but provides no indication of what sources of pollution the plan should aim to address, or whether the plan is intended to refer to pollution during the construction phase only or also the operational phase.

At 9.1 it is stated that the site is accessed via the B970, which is not the case.

Preliminary Ecological Assessment.

The walkover survey undertaken on a single March day’s site visit is too limited to provide sufficiently reliable information for a site of this quality, importance and complexity. It is disappointing that there has not been additional survey effort since the last application.

We are concerned at the statements in the PEA regarding the preferred nesting habitat of lapwing being “long, often damp, grass” (page 27). Whereas, the species shows a “preference for breeding on grasslands with short swards (Hayman *et al.* 1986, Devereux *et al.* 2004) and patches of bare soil (Johnsgard 1981)” and the nest is a “shallow scrape in short grass vegetation (del Hoyo *et al.* 1996)”.

The PEA also suggests that the “marshy grassland (8)” could be “given over to nesting birds such as snipe and lapwing”. This habitat is unsuitable for nesting lapwing due to the tall tussocky vegetation, but it is also unsuitable for nesting snipe and lapwing due to it being beside tall woodland, a habitat that is avoided by these species, as referred to in research undertaken for the CNPA in the Eastern Cairngorms Moorland Partnership Area. This states “Targets for forest expansion across Scotland can deliver conservation gains for woodland biodiversity and other environmental benefits but, in some areas, could also potentially further constrain breeding waders” (Jarrett *et al.* 2019, Investigating wader breeding productivity in the ECMP, BTO Research Report 723).

Yours sincerely

