

## CAIRNGORMS NATIONAL PARK AUTHORITY

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### **DEVELOPMENT PROPOSED:**

Construction of new link footpath/cycle route at Deeside Way  
Footpath A93 Ballater To Braemar Road Braemar

**REFERENCE:** 2023/0357/DET

**APPLICANT:** Mr Chris Rogerson

**DATE CALLED-IN:** 4 September 2023

**RECOMMENDATION:** Approve Subject to Conditions

**CASE OFFICER:** Ed Swales Monitoring and Enforcement  
Officer

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## **SITE DESCRIPTION, PROPOSAL AND HISTORY**

### **Site Description**

1. The application site is within the Charters Chest woodland, approximately one mile east of Braemar. Running from east to west the track begins half a mile northwest of the Invercauld Bridge and finishes 600m to the west at the edge of the Lion's Face woodland.

### **Proposal**

2. The drawings and documents associated with this application are listed below and are available on the Cairngorms National Park Authority website unless noted otherwise:

<http://www.eplanningcnpa.co.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S0911CSI0CP00>

<b>Title</b>	<b>Drawing Number</b>	<b>Date on Plan*</b>	<b>Date Received</b>
<b>PLANS</b>			
Cross Sections (1 of 2)	221085-000-CAM-DR-C-280	07/03/23	31/08/23
Cross sections (2 of 2)	221085-000-CAM-DR-C-281	07/03/23	31/08/23
Longitudinal Section (3 of 3)	221085-000-CAM-DR-C-222	07/03/23	31/08/23
Longitudinal Section (2 of 3)	221085-000-CAM-DR-C-221	07/03/23	31/08/23
Longitudinal Section (1 of 3)	221085-000-CAM-DR-C-220	07/03/23	31/08/23
Location Plan			31/08/23
Aerial/Location Plan			31/08/23

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Plan of Footpath (Sheet 1 of 5)	221085-000-CAM-DR-C-200	07/03/23	31/08/23
Plan - Plan of Footpath (Sheet 2 of 5)	221085-000-CAM-DR-C-201	07/03/23	31/08/23
Plan - Plan of Footpath (Sheet 3 of 5)	221085-000-CAM-DR-C-202	07/03/23	31/08/23
Plan - Plan of Footpath (Sheet 4 of 5)	221085-000-CAM-DR-C-203	07/03/23	31/08/23
Plan - Plan of Footpath (Sheet 5 of 5)	221085-000-CAM-DR-C-204	07/03/23	31/08/23
Plan - Site Plan (Sheet 1 of 3)	221085-000-CAM-DR-C-005	07/03/23	31/08/23
Plan - Site Plan (Sheet 2 of 3)	221085-000-CAM-DR-C-006	07/03/23	31/08/23
Plan - Site Plan (Sheet 3 of 3)	221085-000-CAM-DR-C-007	07/03/23	31/08/23
Plan - Construction Details	221085-000-CAM-DR-C-270	17/08/23	31/08/23
<b>SUPPORTING INFORMATION</b>			
Supporting Statement	V1	17/08/23	31/08/23

\*Where no specific day of month has been provided on the plan, the system defaults to the 1<sup>st</sup> of the month.

3. The application is part of a wider project to link Braemar with the Deeside Way. This application is to vary the approved route from the application approved under reference 2018/0375/DET. The application is for a 2 metre wide footway/cyclepath, 600 metres long and constructed with a Type 1 sub-base, topped with quarry grey granite dust. The current proposal is to site the path closer to the roadside as the approved original route includes too many hard rock sections that has made the project cost prohibitive in terms of linking in with the previously approved track.

## History

4. An application was previously submitted in 2017 (2017/0237/DET) but owing to a lack of information was withdrawn.
5. In 2018 an application (2018/0375/DET) was submitted for a 2.5km section of 2m wide track that included the part within this application, albeit further up the hill and away from the roadside.

## HABITATS REGULATIONS APPRAISAL

6. A Habitats Regulations Appraisal [HRA] has been undertaken to consider the effects of the proposal upon the conservation objectives of the European Sites as listed within the document - attached at **Appendix 2**. The European sites potentially affected are the River Dee and Ballochbuie Special Area of Conservation as well as the Ballochbuie Special Area of Conservation.
7. An HRA was carried out for the previous application in 2018, which was approved and concluded that the site integrity for River Dee SAC, Ballochbuie SAC & Ballochbuie SPA would not be adversely affected by the previous proposal.
8. The current HRA concludes there is potential for short term disturbance to Atlantic salmon and freshwater pearl mussel during construction and possible long-term effects from recreation activity within the River Dee SAC. Within the Ballochbuie SAC there is likely significant effects to the Caledonian forest, blanket bog, wet heathland, lichen and otter. Within the Ballochbuie Special Area of Protection there is likely significant effects to capercaillie and Scottish crossbill, depending on when construction occurs.
9. A number of measures for mitigation are suggested within the HRA and will be conditioned for any approval of this application.

## DEVELOPMENT PLAN CONTEXT

### Policies

<b>National Policy</b>	National Planning Framework 4 (NPF4) Scotland 2045 <b>Officer will delete policies that are not relevant</b>
POLICY 1	Tackling the climate and nature crises

POLICY 2	Climate mitigation and adaptation
POLICY 3	Biodiversity
POLICY 4	Natural places
POLICY 13	Sustainable transport
POLICY 14	Design, quality and place
POLICY 20	Blue and green Infrastructure

<b>Strategic Policy</b>	Cairngorms National Park Partnership Plan 2022 – 2027	
<b>Local Plan Policy</b>	Cairngorms National Park Local Development Plan (2021) Those policies relevant to the assessment of this application are marked with a cross	
POLICY 1	NEW HOUSING DEVELOPMENT	
POLICY 2	SUPPORTING ECONOMIC GROWTH	X
POLICY 3	DESIGN AND PLACEMAKING	X
POLICY 4	NATURAL HERITAGE	X
POLICY 5	LANDSCAPE	X
POLICY 6	THE SITING AND DESIGN OF DIGITAL COMMUNICATIONS EQUIPMENT	
POLICY 7	RENEWABLE ENERGY	
POLICY 8	OPEN SPACE, SPORT AND RECREATION	X
POLICY 9	CULTURAL HERITAGE	
POLICY 10	RESOURCES	
POLICY 11	DEVELOPER OBLIGATIONS	

10. All new development proposals require to be assessed in relation to policies contained in the adopted Development Plan which comprises National Planning Framework 4 (NPF4) and the Cairngorms National Park Local Development Plan 2021. The full wording of policies can be found at:

<https://www.gov.scot/publications/national-planning-framework-4/documents>

and at:

<https://cairngorms.co.uk/wp-content/uploads/2021/03/CNPA-LDP-2021-web.pdf>

## **Planning Guidance**

11. Supplementary guidance also forms part of the Local Development Plan and provides more details about how to comply with the policies. Guidance that is relevant to this application is marked with a cross.

Policy 1	Housing Supplementary Guidance	
Policy 2	Supporting Economic Growth Non-Statutory Guidance	
Policy 3	Design and Placemaking Non-Statutory Guidance	X
Policy 4	Natural Heritage Non-Statutory Guidance	X
Policy 5	Landscape Non-Statutory Guidance	X
Policy 7	Renewable Energy Non-Statutory Guidance	
Policy 8	Open Space, Sport and Recreation Non-Statutory Guidance	
Policy 9	Cultural Heritage Non-Statutory Guidance	
Policy 10	Resources Non-Statutory Guidance	
Policy 11	Developer Obligations Supplementary Guidance	

## **CONSULTATIONS**

### **Summary of the main issues raised by consultees**

12. **Historic Environment Scotland** state the application will not raise historic environment issues of national significance therefore do not object.
13. **Police Scotland** have no comments regarding the application.
14. **Scottish Forestry** comments that their records show that the development partially falls within an area of woodland that the Ancient Woodland Inventory identifies as Ancient Woodland of semi-natural origin. The proposed development is small scale and there are no trees proposed for removal. However, it is recommended that a tree survey and tree protection plan should be provided to protect individual trees and minimise the impacts of the development on the woodland.
15. **Aberdeenshire Archaeology** states the application requires no archaeological mitigation and do not object.
16. **Aberdeenshire Council Flood risk** have no comments regarding the application.
17. **CNPA Ecology Advisor** states that there are a number of ecological/environmental issues that require mitigation to be submitted prior to works commencing on the new section of track. The proposed development lies within the Creag Clunie and Lion's Face SSSI which are designated for bryophytes, lichens (Elm Gyalecta), capercaillie, pinewoods and Scottish crossbill. A Construction Method Statement is

required to ensure measures are undertaken for the protection of these features and to incorporate pollution prevention measures in terms of protecting adjacent water courses. The site's proximity to the Ancient Woodland requires tree protection measures and a method statement as well as full protected species and breeding bird surveys and associated protection plans to be overseen by an Ecological Clerk of Works.

18. **CNPA Landscape Advisor** states the proposal is unlikely to result in significant adverse landscape and visual effects on the National Park on the basis that the proposed mitigation is carried out sensitively.
19. **CNPA Outdoor Access** states this will make a significant contribution to creating a path network from Braemar to onward routes through Deeside by connecting other parts of the Deeside Way together. They support the re-design of the path through the challenging terrain and the aim to improve accessibility for path users. They have been consulted on the development of this section of path and are satisfied that the construction method is appropriate for the landscape conditions and it will be built to an acceptable standard.
20. **Braemar Community Council** have provided no comments regarding this application.

## REPRESENTATIONS

21. There have been no representations received.

## APPRAISAL

22. The main planning considerations are the principle of development, the environmental impacts and impact upon landscape.

### Principle

23. **Policy 1: Tackling the climate and nature crises** of NPF4 states when considering all development proposals significant weight will be given to the global climate and nature crises and **Policy 2: Climate mitigation and adaptation** states that development proposals will be sited and designed to adapt to current and future risks from climate change. **Policy 3: Design and Placemaking** of the Cairngorms National Park Local Development Plan 2021 seeks to minimise the effect of development on climate change in terms of siting and construction while using materials and the landscape to complement the setting of

the development and maximising all opportunities for responsible outdoor access.

24. **Policy 2: Supporting Economic Growth** of the Cairngorms National Park Local Development Plan 2021, paragraph **2.3: Other Tourism and Leisure Developments** supports development which enhances formal and informal recreation and leisure facilities; ... and improved opportunities for responsible outdoor access where it will have no adverse environmental impacts, makes a positive contribution to the experience of visitors and where it supports or contributes to a year round economy. **Policy 8: Open Space, Sport and Recreation** supports the enhancement of the quality and design of existing facilities where they maintain and maximises all opportunities to link into the existing path network.
25. Notwithstanding the principle of the proposal has already been accepted, the supporting statement accompanying the submission of the application provides sufficient justification that relocating this section of the path will ensure the construction minimises earthworks and therefore complies with Policies 1 and 2 of NPF4 and Policy 3 of the Cairngorms National Park Local Development Plan 2021. The path is part of a project to extend the Deeside Way beyond Ballater to Braemar which will improve an existing pathway network in accordance with policies 2 and 8 of the LDP. Subject to compliance with other relevant development plan policies, the principle of the development is considered to be acceptable.

### **Environmental issues**

26. **Policy 3: Biodiversity** of NPF4 states proposals for local development will include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development.
27. **Policy 4: Natural Heritage** of the Cairngorms National Park Local Development Plan 2021 seeks to ensure that there is no adverse impact upon protected species or biodiversity.
28. The impacts upon internationally designated sites have been fully considered in the Habitat Regulations Appraisal (HRA - see **Appendix 2**) which concludes that there will not be an adverse effect on the integrity of the site providing the recommended mitigation as described within the supporting information is carried out in its entirety.
29. Subject to the recommended conditions requiring a Species Protection Plan, Pollution Prevention Plan and breeding bird surveys along with

general ecological surveys submitted with the application the proposal complies with Policy 3 of NPF4 and Policy 4 of the Cairngorms National Park Local Development Plan 2021.

## Landscape Issues

30. **Policy 4: Natural Places** of NPF4 states development proposals that will affect a National Park will only be supported where any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental, or economic benefits of national importance.
31. **Policy 5: Landscape** of the Cairngorms National Park Local Development Plan 2021 presumes against development which does not conserve and enhance the landscape character and special qualities of the National Park and in particular the setting of the proposed development.
32. The landscape advisor has confirmed that the proposal is unlikely to result in significant adverse landscape and visual effects on the National Park. This is based on the developer following the proposed mitigation measures as described in the supporting statement. The mitigation involves the path following a winding route, no trees being felled and placing any additional boulders next to gabion baskets to break up their visual impact. Given the proposed mitigation and a condition requiring a Construction Method Statement the proposed development will comply with Policy 4 of NPF4 and Policy 5 of the LDP.

## Access and Design

33. **Policy 20: Blue and green infrastructure** of NPF4 supports development proposals for or incorporating new or enhanced blue and/or green infrastructure. Where appropriate, this will be an integral element of the design that responds to local circumstances.
34. Paragraph **3.3 Sustainable Design** of **Policy 3: Design and Placemaking** of the Cairngorms National Park Local Development Plan 2021 states all development proposals must be designed to maintain and maximise all opportunities for responsible outdoor access, including links into the existing path network and ensuring consistency with the Cairngorms National Park Core Paths Plan.
35. The alteration of the original footpath is an important continuation of the Deeside way, and also reconnects the previously approved track through the woodland.

36. Given the full path was approved further into the woodland and this proposal connects the parts that have already been constructed the proposal complies with Policy 20 of NPF4 and Policy 3 of the Cairngorms National Park Local Development Plan 2021.

## CONCLUSION

37. Subject to the suggested ecological and landscape conditions the proposed path forms a small variation to a previously approved development and allows a continuation of that development. Therefore, the proposal complies with the relevant policies within NPF4 and the Cairngorms National Park Local Development Plan 2021 and accordingly, the recommendation is approval.

## RECOMMENDATION

**That Members of the Committee support a recommendation to approve the Construction of new link footpath/cycle route at Deeside Way Footpath A93 Ballater to Braemar Road subject to the following conditions:**

*Those conditions listed below in bold text are suspensive conditions, which require to be discharged prior to implementation of the development.*

### Conditions

1. **No development shall commence on site until a Construction Method Statement has been submitted to and approved in writing by the Cairngorms National Park Authority acting as Planning Authority. The construction method statement shall include but be limited to:**
  - a) **Measures for protecting features of the SSSI;**
  - b) **Details of standard pollution prevention;**
  - c) **If any works are to be undertaken during the bird breeding season, species protection plans for any birds that would be disturbed;**
  - d) **Details of pre-construction checks for protected species.**

**Thereafter the development shall be implemented in accordance with those approved details.**

**Reason:** To ensure the construction of the development has no detrimental environmental effects in accordance with Policy 3: Biodiversity and Policy 4: Natural Places of NPF4 and Policy 3: Design and Placemaking, Policy 4:

Natural Heritage and Policy 5: Landscape of the Cairngorms National Park Local Development Plan 2021.

- 2. No work shall commence on site until an Ecological Clerk of Works (ECOW) has been appointed by the developer who shall thereafter oversee the pre-construction site works and ensure compliance with the approved construction method statement during the construction. Prior to appointing the ECoW, a 'scope of works' for that person shall be submitted to, and approved in writing by, the Cairngorms National Park Authority acting as Planning Authority (CNPA) and thereafter details of the appointed person shall be supplied to the CNPA.**

**Reason:** To ensure that environmental impacts are reduced and mitigated in accordance with Policy 3: Biodiversity of NPF4 and Policy 4: Natural Heritage of the Cairngorms Local Development Plan 2021.

- 3. No development shall commence on site until details of site enhancement for biodiversity have been submitted to and approved in writing by the Cairngorms National Park Authority acting as Planning Authority.**

**Reason:** To ensure biodiversity enhancements in accordance with Policy 3: Biodiversity of NPF4.

- 4. No development shall commence on site until a revised Tree Protection Plan (to meet BS5837) has been submitted to and approved in writing by Cairngorms National Park Authority acting as Planning Authority. No development shall commence on site until the tree protection measures have been implemented on site in accordance with the approved plan.**

**Thereafter all trees shall be retained and maintained in accordance with the approved Tree Protection Plan throughout the lifetime of the development hereby approved unless otherwise agreed in writing by the Cairngorms National Park Authority acting as Planning Authority.**

**Reason:** To protect those trees which have root systems close to the areas of development during and after construction works in accordance with Policy 3: Biodiversity and Policy 4: Natural Places of NPF4 and Policy 3, Design and Placemaking, Policy 4: Natural Heritage and Policy 5: Landscape of the Cairngorms National Park Local Development Plan 2021.

## **Informatives**

1. The development hereby approved must commence within 3 years of the date of this decision notice. If development has not commenced within this period, then this planning permission will lapse.
2. The person undertaking the development is required to give the Planning Authority prior written notification of the date on which it is intended to commence the development. Attached to this decision notice is a Notice of Initiation of Development for completion and submission. Submission of this information assists the Cairngorms National Park Authority Monitoring and Enforcement Officer in monitoring active work within the area to ensure compliance with the approved details and to identify and correct any potential problems, as they arise, rather than later when it may be more difficult and more costly to rectify. Failure to give notice would constitute a breach of planning control which may result in enforcement action being taken.
3. Following completion of the development, a notification of the completion shall, as soon as practicable, be given to the Planning Authority. Attached to this decision notice is a Notice of Completion of Development for completion and submission. Submission of this form will assist the Cairngorms National Park Authority Monitoring and Enforcement Officer in making a final inspection and checking compliance with the approved drawings and conditions. If the development hereby approved is to be carried out in phases, then a notice of completion should be submitted at the completion of each phase.

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.