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Screening direction by Robert Seaton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-001-2020
- Site address: Land 40 metres north west of The Spinney, Inverness Road, Carrbridge, PH23 3AB
- Appeal by Mac Infrastructure Ltd. against the decision by Cairngorms National Park Authority
- Application for planning permission 2019/0034/DET dated 7 January 2019 deemed to be refused upon appeal dated 5 April 2019
- The development proposed: formation of a car park
- Application drawings: Drawing number 1737-103 revision A
- Date of site visit by Reporter: 13 May 2019

Date of screening direction: 24 July 2019

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## Decision

I direct that the development for which planning permission is sought is EIA development.

## Preliminary

1. The determination of the appellant's appeal against refusal of planning permission for the proposed development has been delegated by the Scottish Ministers to me. Regulation 2(7) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (referred to below as "the Planning EIA Regulations") provides that I also exercise the Scottish Ministers' functions under those regulations in respect of the appeal. The appellant's former agent requested a screening direction from the Scottish Ministers in respect of the proposed development that is the subject of the appeal. It is therefore my role to provide the screening direction in respect of the planning application.

2. I have no function in respect of the enforcement notice issued by Forestry Commission Scotland under the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 in respect of felling of trees at a site that includes the appeal site. The issue of that notice is, however, relevant to my consideration of screening for the proposed development (the notice is referred to below as "the enforcement notice" and the regulations as "the Forestry EIA Regulations").

## The proposed development



3. The development proposed is a car park intended to serve a hotel in Carrbridge, as shown in drawing number 1737-103 revision A provided with the application. The car park would provide spaces for 39 cars and four coaches.

4. The proposed development would require removal of existing planting and earthworks to level the site. It would result in an increase in hard surfaces. The proposed car park surface would cover about 1876 square metres, to be finished with type 1 hardcore. There would be consequent construction waste. There would be some traffic associated with construction. The operation of the car park would generate traffic and noise typical of a car park of this scale. The car park would be lit by motion-activated lighting. The site would be drained by a sustainable urban drainage system. Non-permeable bunds with security barriers would be formed at the site perimeter to prevent ground contamination.

5. The appellant states that need for the proposed development arises from a change in the nature of the hotel's business, involving the hosting of conferences, functions and events. This requires increased car parking. The appellant claims that since the car parking is essential to support the hotel's business model, it will have a consequent economic benefit.

6. A plan showing six trees to be removed and measures to protect remaining trees and a juniper patch has also been provided. Cross-sections were provided with the application as originally submitted, although it is not clear if they also apply to the revised proposal as shown in drawing number 1737-103 revision A. Planting is proposed on the remainder of the site, but no replacement planting is proposed elsewhere.

### **The appeal site**

7. It is just beyond the defined settlement boundary of Carrbridge. The site bounds the garden of a private house to the south east. The A938 runs along the southern boundary. The access road to several houses lies directly to the south across the road while a number of other houses lie across the road to the south east and south west.

8. The planning authority states that the appeal site lies within the Cairngorms National Park, and is therefore in a sensitive area. It has no designations itself. It is within 100 metres of the River Spey Special Area of Conservation (SAC), designated for qualifying interests of otter, Atlantic salmon, sea lamprey and freshwater pearl mussel.

9. There are no records of cultural heritage assets within the immediate area that would be impacted by the proposal.

10. Native woodland of Baddengorm woods lies to the north and west. There is a wetland pool to the north of the site in the adjoining woodland. There is an informal path from the north of the site to the golf course.

11. The site is undulating and has relatively recently been cleared of trees, the timber from which at the time of my site visit lay in piles on the site. No further work had been done to remove stumps or level the site and the forest floor was still present.

12. The trees were cleared without the relevant consent. The Forestry Commission Scotland served the enforcement notice in respect of that felling. The notice required the felling to cease and either an application to be made for consent for the felling (which the notice stated was an EIA forestry project) or for the site to be replanted to a specified standard.

13. Although an appeal has been made against the enforcement notice by certain of the parties upon whom it was served, I do not understand any party to have questioned the notice's substantive requirements or the basis upon which it was issued. I understand that the challenge relates, rather, to whether it ought to have been issued to certain of the parties who received it. I understand that the enforcement notice issued to Halle Enterprises Ltd. has taken effect.

### **Whether the proposed development is a schedule 2 development**

14. "Urban development project" is a description in paragraph 10(b) of column 1 of the table in schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations ("the Planning EIA regulations") of a type of project that comes into contemplation as requiring environmental impact assessment ("EIA").

15. The appellant's former agent argued that the proposed development does not fall within that description, on the basis that it is a "rural development project", rather than an urban development project. I acknowledge that "urban development project" appears to be a term open to a range of interpretations. "Car park" is, however, one of the examples given in the EIA regulations of an urban development project.

16. The European Commission has provided guidance on the interpretation of definitions of project categories in annex I and II of the EIA Directive (the equivalent of schedules 1 and 2 of the EIA regulations). This states: "In interpreting the scope of [the reference to "urban development project" in Annex II(10)(b) of the EIA Directive], the "wide scope and broad purpose" of the EIA Directive should be borne in mind." The guidance goes on to say that in relation to project location, an urban development project should be seen as a project that is urban in nature, regardless of its location.

17. Notwithstanding the location of the proposed development on the edge of a village, since it is a car park proposed to serve a hotel, and would extend the urban area of the village beyond its existing limit, I consider it is clearly urban in its nature. I therefore consider that it falls within the category of "urban development project".

18. Since the proposed development is in the Cairngorms National Park, it is within a sensitive area and the threshold in column 2 of schedule 2 of the EIA regulations does not apply. The proposed development will require EIA if it is likely to have significant effects upon the environment.

### **Determining the baseline for the purpose of screening**

19. In order to determine whether the proposed development would be likely to have a significant effect upon the environment, I must understand the baseline condition of the site upon which the proposed development would have an effect.

20. The application for the car park was made at a time when trees had already been removed from the site. The normal approach for EIA is to assess the baseline condition of the site as it is before permission is granted (in this case after the felling), rather than at any earlier time (in this case before the felling).

21. Given the felling had been unauthorised, though, and an enforcement notice had been issued, I was in some doubt as to what I should take to be the baseline condition of the site. If I was to take as baseline the condition of the site before the unauthorised felling, the relevant considerations for screening would be quite different. I sought parties' views on this.

22. Scottish Forestry (an agency of the Scottish Ministers, and the successor to Forestry Commission Scotland's regulatory role) gave the opinion that the baseline for screening should be the site in the condition in which it was prior to the felling of the trees. This was also the view of the appellant's present agent.

23. The National Park Authority took the view that the baseline for screening should be the current condition of the appeal site, while taking account of the facts that the woodland would in time regenerate particularly with the replanting required under the enforcement notice. It provided a screening opinion applying this baseline and came to the conclusion that EIA was not required.

24. I consider that the site before felling should be taken as the baseline position for the purpose of screening. I understand the enforcement notice's purpose was to nullify the effects of the unlawful felling. The required planting will take time to grow and the woodland will take time to regenerate. The effects of the unlawful felling have not yet been nullified, and it will be some time before they are. In this context, I agree with Scottish Forestry that the principle in the case of *R (Ardagh Glass Ltd) v Chester City Council* [2010] EWCA Civ 172 can be applied by analogy. But for the unlawful felling, in respect of which the enforcement notice was issued, that felling would have been a necessary element of the proposed development. The developer (the appellant) should not obtain what appears to be an advantage that felling is not considered under the Planning EIA Regulations along with other elements of the proposed development, nor should the public lose the opportunity to form and advance their views on the felling in that context.

25. I recognise that the appellant (a private limited company) is not one of the persons upon whom the enforcement notice was served. Nonetheless, a person in the appellant's position in making an application for the proposed development would (or should) have been aware of the enforcement notice, including the reasons for it and its purpose of nullifying the effects of the unlawful felling. I do not consider that the fact the appellant is not the person who felled the trees in such circumstances negates my reasoning above.

26. I had asked parties about the effect of a grant of planning permission upon the enforcement notice. I find, however, that that is a point I do not need to determine for the purpose of this screening direction. I understand my position in respect of the baseline for the present application would be consistent with the basis upon which Scottish Forestry would give any necessary consideration to the continuing effect of the enforcement notice following a grant of planning permission for the proposed development.

27. Notwithstanding my determination regarding the baseline for EIA, the effect of the proposed development on the site in its present condition remains a material consideration in the determination of the appeal.

### **Pre-felling baseline for forestry and ecology at the appeal site**

28. I understand the area covered by the enforcement notice to be broadly the same as the appeal site, although the infrastructure of the proposed car park would only occupy part of the appeal site. The condition of the site before the unauthorised felling was described in the enforcement notice on the basis of a survey carried out in 2009.

29. This description indicates that the woodland at the site was native pine woodland with 70% canopy cover. It was entirely comprised of native tree species. It had a semi-naturalness score of 100%, indicating that there was an absence of cultivation such as plough lines, mounding, scarification or drainage. Trees were a range of sizes and species and were unevenly spaced. The tree species were downy birch and Scots pine with some scattered regeneration of rowan and juniper. Part of the woodland could be considered bog woodland. Almost the whole site was made up of established maturing tree regeneration with an estimated age of up to 50 years, although there was a veteran Scots pine aged at approximately 140 years.

30. I do not understand this description to have been a matter of dispute. An aerial photograph of the site before felling has been provided as part of the protected species survey and appears to accord with the description. What I observed on my site inspection was consistent with the description.

31. The enforcement notice states that native pine woodland is a UK Biodiversity Action Plan priority habitat and that juniper is a priority species. The site was assessed as being of high ecological sensitivity.

32. The enforcement notice also assessed the woodland as having a cultural heritage significance as semi-natural pinewood in a national park. Given its location on the A938, the main tourist corridor between the A9 and Carrbridge, it contributed significantly to the character and setting of the settlement. The site was assessed as having high sensitivity with regard to cultural heritage and landscape.

33. Leaving aside woodland cover, I have limited information before me on the ecology of the site before felling.

34. A protected species survey has been provided regarding the site following felling. The survey was carried out in November. It indicates that this means it has limitations with regard to survey for certain species, including bats, red squirrels, pine marten, reptiles, amphibians and invertebrates. The survey found

- Given the suitability of habitat, red squirrel were predicted to be present in close proximity to the site and in the wider landscape
- There was suitable habitat for badger, otter and pine marten, though no field evidence was found

- The site provides highly suitable habitat for reptiles including common lizard and adder.
- The site provides suitable habitat for common amphibian species.

35. No specific bird survey has been supplied, though the protected species survey report states that attention was paid to signs of a particular protected bird species at the site. Although Scottish Natural Heritage (SNH) in its comments indicated that the surrounding woodlands, like any Scots pinewood, would have the potential to support capercaillie, the survey report indicated that no field evidence was found.

### **Characteristics of potential impact**

36. The enforcement notice reached the conclusion that the deforestation of the appeal site was likely to have a significant environmental effect on habitats and juniper as a species. The enforcement notice reached the conclusion that the deforestation of the appeal site was also likely to have a significant landscape effect, as a consequence of its effect on the setting and character of Carrbridge and on the A938 tourist corridor. I accept these conclusions.

37. In the absence of substantive information with regard to protected species on the site pre-felling, I consider I have to reach a precautionary view. Given the high value of native pinewood and bog pinewood as habitat and the suitability of habitat in the area for protected species including capercaillie, red squirrel, badger, otter, pine marten, reptiles and amphibians, I consider a significant effect likely also in respect of these protected species.

38. I note SNH's advice that the proposed development is unlikely to have a significant effect upon capercaillie taking the site's present condition as baseline. I also note the report from the protected species survey that suitable mitigation can be provided in respect of effects upon protected species arising from the development on the site in its current condition.

39. The proposed development would also have effects upon the adjacent built form, in terms of its impacts in respect of road safety and amenity. I agree with the planning authority that any such effects are likely to be localised in extent.

40. I note the Scottish Environment Protection Agency's advice that drainage can be designed to minimise impact upon wetland and SNH's advice that there is little connectivity between the site and the River Dulnain, part of the River Spey SAC. I do not consider that a significant effect upon the SAC or the water environment generally is likely.

41. Socio-economic benefits claimed to arise from the extended season of a business of the scale of Carrbridge hotel may represent a significant indirect beneficial effect of the proposed development in a settlement such as Carrbridge. There is, however, limited evidence on such effects, including their scale, and whether they could arise otherwise than by development of a car park at the appeal site.

## Conclusion

42. Having taken into account the criteria in Schedule 3 to the EIA regulations, I consider the proposed development would be likely to have a significant effect on the environment. Accordingly, I direct that the development for which planning permission is sought by appeal reference number PPA-001-2020 is EIA development.

43. The appellant is required to confirm within 21 days beginning with the date of this notice whether it will submit an EIA report. Under regulation 14(5) of the EIA regulations, if the appellant fails to give such confirmation, the reporter will be under no duty to deal further with the appeal.

44. Under regulation 28 of the EIA regulations, this screening direction should be placed on the part of the planning authority's planning register that relates to the application in question and also on its website for the application.

*Robert Seaton*  
Reporter