
CAIRNGORMS NATIONAL PARK AUTHORITY

FOR INFORMATION AND DECISION

Title: PLANNING ENFORCEMENT REVIEW

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Purpose of Report

This paper provides an overview of the monitoring and enforcement activities for the last year. It also makes recommendations to agree delegation of some enforcement powers to Officers.

Recommendation

That the Planning Committee:

- (a) Note the content of this report for information**
- (b) Agree delegation of powers to Nominated Officers to serve Planning Contravention Notices, Section 33A Notices and Breach of Condition Notices and associated Temporary Stop Notices**

Background

1. This report covers the period from April 2016 onwards as part of an annual cycle of reporting introduced in 2009. In future it is intended that reporting will be biannually at the May and December meetings to tie in with the reporting on the Planning Performance Framework. This report will also refer to some monitoring and enforcement matters that have been dealt with from April 2017 up to the date of this report.

Summary of Planning Monitoring Activity

2. Much of the Monitoring and Enforcement Officer's (MEO) work involves regular monitoring of planning consents being implemented, in particular checking that any planning conditions that were imposed are complied with. Regular monitoring is also important to ensure that any potential to carry out unauthorised development is caught early on, thereby avoiding any significant harm being caused and the need for enforcement action. The CNPA only monitors those cases that have been granted

permission by the CNPA. Developments that are given consent by the five local authorities are monitored by the relevant local planning authority.

3. The monitoring workload is variable depending on when sites are implemented and how quickly they are progressed and completed. In practical terms, it is also linked to the level of compliance with the approved plans and conditions. The CNPA currently has 110 live development sites (at various stages of work) that require monitoring. If a developer is fully complying with the terms of the permission, monitoring will only involve regular but brief site checks. However, if a developer has not submitted any or some of the details to discharge conditions or carries out a different development on site then the work will involve close monitoring through regular site inspections, provision of advice, regular communication and the involvement of other planning officers.
4. Some of the significant sites that have been and are currently being monitored include:

a) Beachan Court, Grantown-on Spey

This is a housing development with permission for roads and plot layout for 53 houses (and full permission for 10 affordable units granted in October 2016 and included a range of conditions dealing with SUDS provision, levels, tree protection and measures for species protection. The opening up of the site, significant infrastructure works and interaction between different conditions has required monitoring to ensure conditions are complied with and development commences in a satisfactory way. The CNPA has investigated a number of enforcement enquiries raised by the public on the site.

b) Boat of Garten Housing

This is a housing development for 32 houses (including 10 affordable units) within woodland on the edge of the settlement which was granted permission in October 2014. Removal of the woodland commenced in 2015 and the development has since begun on the ground with the first properties now being occupied. The development of the site was also tied to innovative measures to mitigate for potential disturbance to capercaillie in neighbouring woodland.

c) Ballater Bus Depot

Works commenced on site in November 2015 for a newly located bus depot with development was completed in July 2016. Monitoring of the site identified some issues in relation to boundary treatment and landscaping that was subsequently undertaken.

d) Royal Station Ballater

The reinstatement of the Royal Station development began earlier this year following approval in September 2016. This site has been regularly monitored and there has been full compliance with the conditions for a complex development.

e) Braemar Housing

In 2007 a number of applications were received and subsequently approved in 2014 for the erection of 56 dwellinghouses in Braemar. The first to be built, for 25 houses

(including 6 affordable) off Glenshee Road on the edge of Braemar, was significantly completed in 2015. Flooding issues caused by Storm Frank meant that monitoring continued to ensure neighbouring properties were unaffected by the development. Earlier this year sign off was achieved. Two other developments, St Andrews Terrace (30 houses) and Kindrochit Court (5 houses and 6 flatted units, all affordable units) were inspected and deemed to have commenced earlier this year, although further building works have not subsequently started on the ground.

5. A number of hydro schemes are also active and require close monitoring by the MEO, planning officers and heritage team officers due to their sensitive locations and the potential for significant impacts upon the landscape and ecology. These schemes include:

a) Bruar

This 1.5 Mw scheme was approved in August 2012 and work commenced on site in 2014. The reinstatement of the buried pipeline was considered to be of poor quality and did not comply with the reinstatement condition. A change of agent for the development meant there were delays to securing mitigation, but in 2017 an experienced local contractor carried out substantial works to ensure a substantially better outcome. There is further work to be done on this site but so far the works have been acceptable. Other issues here required enhanced reinstatement around the powerhouse as well as improvements by the intake.

b) Glen Esk

Three schemes were approved in December 2014 for a total of 240kw and commenced in March 2016. Throughout the project Officers have had good engagement with the developer who has been receptive to suggestions to ensure the three projects have been problem free. The application benefited from receiving regular Ecological Clerk of Works reports and supervision as required by condition.

c) Corriemulzie

This 100kw scheme led by Braemar Community Hydro was approved in December 2013 and commenced in September 2015. A borrow pit was opened during the works up that did not form part of the original application and has not yet been satisfactorily reinstated. Although the work to achieve a satisfactory outcome has been protracted, the works are now happening and full compliance is expected in Spring 2018. Other issues relating to the final finishing of tracks and laydown areas are also being progressed.

d) Tulchan

This 100kw scheme was approved in June 2014 and commenced in August 2015. In this development, the working corridor was much larger than the one agreed within the Construction Method Statement, leading to significant additional ground disturbance. It took a long time to secure adequate reinstatement works and the additional work is required to complete satisfactory planting and landscaping.

e) Fealar

This 100kw scheme was approved in September 2013 and commenced in September 2015. While the construction of the pipeline was started relatively quickly, the project was delayed by funding issues. Some of the works, including areas of exposed pipe that will be required to be covered as well as issues around mitigation and compensation planting have required intervention from officers. The reinstatement works are now expected to be completed during Spring 2018.

f) Glen Muick

This 25kw scheme was approved in September 2016 for 25kw and commenced in June 2017. This is the smallest of the schemes recently approved and there were no issues during construction. Officers were kept regularly updated by the Ecological Clerk Of Works throughout the project. The reinstatement has been completed to a good standard.

6. Common problems that have occurred during the monitoring of hydro scheme developments have been:
 - a) The lack of involvement of an Ecological Clerk of Works from the beginning of the project;
 - b) Working corridor widths not being adhered to during construction;
 - c) Lack of clear sections at relevant points along the penstock route.
7. Officers have been working closely with developers to resolve these matters and have reduced their incidence in more recent hydro schemes by:
 - (a) Ensuring more detail is provided with the planning applications to improve control over the development on the ground and to reduce the imposition of conditions ;
 - (b) Tightening the wording of conditions imposed on planning permissions; and
 - (c) Increased presence through regular targeted site visits by MEO, planning and heritage team officers during construction.

Summary of Planning Enforcement Activity

8. The CNPA investigates potential breaches of planning on cases that it has either given planning permission for, or would have called in and determined had a planning application been made. Case can be identified by CNPA officers, information from other public bodies or from members of the public who play an important role in identifying potential breaches, particularly in remote locations where CNPA staff would not routinely visit.
9. Since April 2016, an average of just over one case per week (69 during the 12 month period from April 2016 to March 2017 and 42 cases during the period from March to November 2017) has been brought to our attention. Fourteen of those cases have been referred to the relevant local authority for investigation. Fifty-six of these cases have been closed since no breach was found or any issues were resolved before formal action was required. During the period since April 2016, some of the significant cases investigated included:

a) Badaguish

Since the Beginning of 2016, the outdoor centre has been compliant with planning control, with minor breaches investigated but quickly resolved. During the reporting period there have been four applications submitted by the centre with three being called in. These have all been in relation to other applications on the site. The site is regularly visited by CNPA staff to assess progress with delivery of conditions.

b) Cairngorm Mountain

In developing a replacement ski tow given planning permission by the CNPA, an unauthorised maintenance track was created. A retrospective application was sought for the track and for additional mitigation on the site and subsequently approved in February 2017. Regular visits have followed to ensure compliance with the permission as part of ongoing monitoring work, with the track and surrounding habitats now revegetating well.

c) Dinnet Tracks

A long running enforcement case was effectively brought to a close in March 2016 when the estate applied for planning permission to improve the track network. This application was approved in July 2016 with works commencing earlier this year in full compliance with the conditions imposed. Regular contact with the estate through their Landscape Clerk of Works continues to ensure ongoing compliance.

d) Cluny Track

An enforcement notice was served that required the removal of a 750m section of unauthorised track and restoration of borrow pits. The Committee are aware that the enforcement notice was not complied with in time but that the estate's new factor has informed the CNPA of their intention to comply with the physical works as soon as the snow leaves the hill in 2018. The case remains live.

Investigation of unauthorised hill tracks

10. The CNPA is currently investigating potentially unauthorised tracks or unauthorised and poorly executed upgrades to tracks in a further 12 cases and a total length of track of approximately 40km. In some cases, investigations lead to further breaches or unauthorised development being discovered. We cannot report the details of these cases as they are under investigation and may lead to formal enforcement action and potentially legal action.
11. The issue of unauthorised and poorly designed and constructed tracks is a priority for the CNPA and planning service to address. The recently approved Cairngorms National Park Partnership Plan recognises the visual impact that new tracks in open moorland can create and includes a policy presumption against the new constructed tracks in open moorland. The Main Issues Report for the next Cairngorms National Park Local Development Plan identifies land management in upland areas and hill tracks in particular as an issue to tackle.

Improvements to our service

12. Over the past few months the planning service has made a number of internal changes to improve our ability to manage enforcement caseloads, changing procedures and moving our monitoring and enforcement data to the Uniform planning system. The Planning Enforcement Register has been refreshed with additional information and links to the most recent notices. The Planning Enforcement Register is available at: <http:// Cairngorms.co.uk/wp-content/uploads/2017/11/170710PlanningEnforcementRegister.pdf>.

13. For 2018, the CNPA's Planning Enforcement Charter will need to be reviewed but the planning service has identified some additional specific areas of work that will improve our ability to deal with unauthorised hill track works in particular:

a) Mapping hill tracks from aerial photography

One of the tools that the planning service uses to identify where and approximately when, new tracks have been created is aerial photography. New, detailed and accurate aerial photography data covering much of the National Park is updated annually and is often our starting point in investigations. In 2018, the planning service will begin a project to identify where tracks have been constructed using that aerial photography. We will be able to build much more accurate baseline of the extent of tracks in any given year, be able to identify tracks that are unauthorised and where enforcement action can be taken and also where tracks are unauthorised but immune from enforcement action because works were undertaken more than four years ago.

b) Introducing a 'Hill Track Reporting' section to our planning pages

With the increased caseload of potentially unauthorised track works on open moorland, many appearing to have been constructed since the system of prior notification and prior approval was introduced, it is apparent that land managers and agents either do not understand the system or don't consider it necessary to work within it. The public and a number of voluntary organisations play an important role in reporting potential works to us and we can support that by making it easier to tell us and raising awareness that we welcome their information. We intend to review our planning web pages and add a section that will allow people to report new or recent works with the information officers need to investigate accurately. The section would also link clearly to our Enforcement Charter that explains the role of enforcement and limitations.

14. Our experiences over the past year have also illustrated that many decisions on enforcement need to be taken quickly or even routinely to allow thorough investigation and prevention of harm as quickly as possible. In particular, the issue of a number of notices, some of which constitute formal enforcement action, need to be made on a day to day basis.

15. Our current arrangements are that decisions should be made by the Planning Committee, or if necessary by the Head of Planning in consultation with the Convener or deputy Convener of the Planning Committee. There are four notices that we

request delegated authority to officers to issue if considered necessary, without Planning Committee or member approval. For each of the notices, we request that the Planning Committee delegate the authority to issue to the Head of Planning and Communities, or in their absence, either of the two Planning Managers, Director of Planning and Rural Development and Chief Executive. Officers would always report the issue of such notices to the earliest Planning Committee. The notices are:

a) *Planning Contravention Notice (PCN)*

This is not an enforcement notice. It seeks facts about potential breaches of planning and is an essential step if a case moves towards formal action, or later legal proceedings. We would like the issue of this notice to be a routine part of our investigation procedure.

b) *Section 33A Notice (S33A)*

This notice requires the recipient to make a planning application for works they have undertaken. It would only be used where a development would generally comply with the Local Development Plan and, but it allows the planning authority to impose conditions that would correct problems and also allows public comment on the planning application.

c) *Breach of Condition Notice (BCN)*

This notice is used where a developer has implemented a development without compliance with a condition, which was imposed on planning permission. A BCN requires the applicant to submit the required details and/or carry out works to comply with the condition within a defined timescale. It is used if it appears unlikely that the developer will voluntarily comply with the condition. There is no right of appeal against BCN.

d) *Temporary Stop Notice (TSN)*

This notice is used as last resort where a developer does not voluntarily stop works that are unauthorised and are causing harm. It may be used in combination with a BCN.

Conclusion

16. Planning enforcement is a discretionary function but one that is important to confidence in the planning system. The CNPA's approach to planning enforcement has evolved over time and is now better resourced and more efficient than it has ever been. However, the practical steps outlined in this paper, as well as a more assertive role in addressing with unauthorised track works should improve the CNPA's ability to enforce and to discourage breaches that could have been avoided.

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