

## The hill track and destruction at Cairngorm – a test case for the National Park

### Description



Lower Coire Cas Saturday 21st January. The Shieling Hill track, the line of green in the centre, is to be discussed by the CNPA planning committee but the swathe of destruction in the foreground, has not been subjected to any planning controls.

The retrospective planning application for the unlawful hill track at Cairngorm ([see here](#)) and ([here](#)) will be considered by the Cairngorms National Park Authority Planning Committee on Friday ([see here for all papers](#)). In contrast to the initial planning application to replace the lift at the Shieling, which consisted of just five documents ([see here](#)), the retrospective application consists of an incredible 83 documents. This is a consequence of the public protests at the way Natural Retreats has been

managing Cairngorm, which have included a significant number of objects to the application, which in turn has forced Natural Retreats to produce further plans. Whatever happens on Friday, the protests have forced Natural Retreats to undertake a series of remedial measures and improvements on the site. The scandal is that without the public protest, none of this would ever have happened. This post considers the failures of our public authorities to safeguard Cairngorm the future of which is central to the future of the National Park..

## The policy context

The Cairngorms National Park Authority has a number of policy documents and plans which should have informed how it responded to the planning application which are NOT referred to in the officers report to the Planning Committee ([see here](#)). This wrong because the Local Development Plan, approved in 2015, explicitly states in paragraph 1.20 that:

*“The National Park Partnership Plan provides policy priorities and programmes of work to deliver the vision and long term outcomes. The Local Development Plan helps to deliver them by implementing those policies”*

So, its quite clear in policy terms that the planning section should be helping to deliver the CNPA's wider objectives. I will highlight here two pollicies/strategies which are very relevant to the current planning application.

In September 2016 the CNPA Board approved the Cairngorm and Glenmore Strategy ([see here](#)). A number of commitments from that strategy should have affected how the current planning application has been dealt with:

- *“The purpose of the Partnership is to collaborate in the strategic management of these landholdings in order to deliver: An exceptionally high quality natural environment”* **Comment:** the Committee Report fails to explain how the destruction and poor restoration work in Coire Cas contributes to that purpose?
- *“Ensure enhancements within the ski area are implemented to high quality standards appropriate to the sensitive environment”* **Comment:** so does the CNPA Planning Committee really believe the works associated with the Shieling Ski tow have been of an acceptable quality?
- *“1. Management interventions will improve the natural environment, landscape and visitor experience and retain the sense of wildness and space found in the area”.* **Comment:** Natural Retreats has used claims that removal of the old bulldozed uplift track and bulldozing of the bank below the Shieling have improved the landscape to justify everything it has done. Both claims are questionable. Yes, the old uptrack was highly artificial, but so is the smooth slope that has replaced it with hardly a sign of the many boulders which used to cover this glacial landscape.



How has burying boulders, posts and peat made the landscape more natural? The Method Statement said Natural Retreats would recycle, not bury wood. Photo Credit Alan Bratney

- *“Natural Retreats and partners to develop and deliver masterplan for Cairngorm Mountain”*  
**Comment:** how can the Planning Committee decide on agreeing to this track if there is no masterplan? Agreeing to the track will set a precedent for new tracks alongside every ski lift at Cairngorm. Is that really what the CNPA want? Its clearly not needed as skiing operations have been managed for over 50 years with a more limited track network.

The second policy relevant to the current planning application is flood prevention and management. Again, there is no mention of this in the Committee Report despite it being one of the 9 Big Issues in the draft Partnership Plan. That document explicitly says hill tracks can lead to increased flooding and also:

*One of the most important factors with respect to managing flood risk is the maintenance and enhancement of vegetation cover, which may disrupt overland flow and reduce through flow.*

There is also no reference to the Spey Catchment Initiative which states *“the ability to manage land, particularly in the uplands, in a way that attenuates rates of runoff will be crucial to this process”* (of

flood prevention).

Officers have not only ignored their own policies, they have also made the following extraordinary statement in the Committee Report:

*47. In terms of objections raised regarding the need for the track, Local Development Plan policy supports in principle the extension and diversification of existing operations. Objectors have raised the issue of no need being demonstrated for the retention of the track. In this regard it is generally considered, in the context of a track within an existing long established ski resort that the party best placed to determine the operational needs of their business are the applicants. In any case, the need for the track is not required to be demonstrated as it is not a requirement of policy. The role of the Planning Authority is to consider the land use impacts and merits of the proposal, assessed against policy.*

The implications of this are that not only should the CNPA abdicate any role on Cairngorm, as Natural Retreats as operator are deemed best placed to decided operational requirements, but also that every landowner in the National Park would be given free rein to install new hill tracks wherever they want. It puts operational management before the natural environment. This is totally wrong. Cairngorm is part of a National Scenic Area and the statement is contrary to CNPA's statutory objectives as a National Park.

## **The failure of the Cairngorms National Park Authority to take appropriate enforcement action**

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This photo clearly shows that no vegetation was being stored by Natural Retreats as required (in their latest submission to the planning committee Natural Retreats again asserted that all vegetation was stored for re-use despite all the evidence to the contrary).

The photo above was one of five that Alan Bratney sent to the CNPA on 4th September 2015 along with the following email:

**From:** alantbratney

**To:** Katherinedonnachie

**Sent:** Fri 4 Sept 2015 13.26

**Subject:** Removal of Sheiling Ski Tow on Cairn

Good afternoon Katherine. I've concerns about t  
in the Sheiling area of Coire Cas on Cairn Gorm  
removal of the Sheiling Ski Tow and replace wit  
would be taken to undertake some modest re-pro  
tow which would involve a suitable excavator un  
maximise the area of piste to be served by the re  
site, that more than "modest re-profiling" and "so  
that there has been no attempt to protect the sur  
vehicular access. In addition, earthworks have be  
where a large hole was dug and filled with spoil  
was under construction, considerable efforts had  
extent of hand digging foundations and replacin  
been removed. Are these environmental protecti  
ground works are undertaken on Cairn Gorm. K

The email was passed to Planning Enforcement and when after four weeks Alan had heard nothing more he emailed planning enforcement on 5th October to try and find out what was happening. He eventually received a reply on 29th October which indicated that a member of staff had visited the site and thought there was no problem (I have all the emails). Alan then contacted the Head of Planning Gavin Miles and, on 8th December, the CNPA told Natural Retreats to stop the works immediately – three whole months after they had been notified of the problem. Despite knowing what was going on, CNPA staff allowed Natural Retreats to ignore planning requirements until it was too late and all the damage had been done. One could speculate whether this was a result of lack of skills and knowledge of the staff concerned (planning staff in our National Parks would appear to need more training on issues such as good track design, management of vegetation, flood risk etc) or a management decision not to challenge Highlands and Islands Enterprise on anything that goes on at Cairngorm, but whatever the case, lessons could be learned. The CNPA has a planning enforcement charter and extensive enforcement powers [160722PlanningEnforcementCharterFINALAPPROVED](#) and it would have taken nothing for staff to have told Natural Retreats to suspend all work until they had clarified what was going on and reached agreement on a way forward. They did not do so. There is of course no mention of these failures in the Committee Report.

The failure goes further than that though. This is part of what Gavin Miles wrote to Alan Bratney in December:

We want to resolve the scale of works and damage by the end of the year we don't expect to conclude matters until the reinstatement works that have not already been undertaken next year when ground conditions are more suitable. We want to know what's been done and any further mitigation needed.

Waiting to the Spring was fair enough but, over a year later, there is no evidence that the Park has undertaken a proper re-assessment of what Natural Retreats had actually done. The Committee Reports confines its considerations to the hill track and bank and provides NO assessment of the wider destruction and the impact that this has had.

### **The role of HIE in the Sheiling Hill track**

I received a helpful email from HIE earlier this week which helps explain their role in the replacement of the Shieling ski tow.

First, the new Shieling ski tow, like the other ski lift infrastructure belongs to HIE but they decided to get Natural Retreats to install it because:

*It is no exaggeration to say that Cairngorm is an exceptionally challenging environment, where contractors need to be highly flexible and ready to work carefully and quickly, often amid rapidly changing weather and ground conditions. Exceptionally, therefore, HIE agreed that it was appropriate for our tenant to manage the works to improve these HIE-owned assets, since they are in control of the assets, hold the health & safety responsibilities across the whole site and have the necessary specialised staff on site*

The reason for this explanation is I suspect that under the procurement rules and their own procedures, HIE should have put the works at Cairngorm out to public tender (because of the estimated cost of £83k) instead of handing this to Natural Retreats. HIE are concerned they might be legally challenged on this, hence the first sentence. What should be quite clear to HIE now in view of what happened – works undertaken at the wrong time of year and without any regard being given to the Method Statement – that Natural Retreats do NOT have the “necessary specialised staff on site” to undertake such works properly. All work that is paid for in future by HIE to upgrade or maintain its own assets therefore should go out to public tender.

*As explained in my previous reply, CML were reimbursed by HIE for payments made against evidenced invoices paid by CML, with HIE checking the progress of the works. There is an overall project budget and estimates for each item are made within that. We have flexibility in how we manage the works and have not set a specific limit to spend as the scale of works is relatively small. I would stress, however, that works are discussed in advance and monitored carefully.*

What this confirms is that HIE knew about the destruction but did nothing. What’s more, they paid Natural Retreats for works done in contravention of the planning approval:

*“The estimate for groundworks was £83,000 excluding VAT. The final figure paid for groundworks was in fact £77,453 excluding VAT (correcting the figure of £78,353 excluding VAT given in the earlier Fol response).*

*I can confirm that CML will be repaying HIE for the value of the works undertaken to alter the bank without planning consent, which is £2,000.”*

I am delighted that HIE has now, after I brought this to their attention, realised that they should not have paid for unlawful works and for the first sentence in the following statement:

*HIE indeed requires those carrying out works it is funding to observe and abide by planning regulations, and we regret that this did not happen in this particular instance. To be clear, the creation of the track on the line of the old tow track was part of the works covered by the Planning Permission and was included in the method statement; the track was required to undertake the project. It is the proposed permanence of this track (rather than its reinstatement as authorised in the planning consent) that is now at issue and is included in the retrospective planning application.*

The second part of this statement though appears wrong. The Construction Method statement [2014\\_0251\\_DET-METHOD\\_STATEMENT-100105315](#) is vague and contains no drawings but its quite



clear from the photo above that NO temporary track was put in in order to undertake the works as HIE suggests. The track referred to in the application appears to be the old ski uptrack which of course did need to be restored and which appears to have been used by the diggers to access the site. So, its not true to calim that “it is the proposed permanance of this track that is now at issue”.

HIE appears to still be on the defensive. If they really cared about Cairngorm they could use this clause in their lease to take action against Natural Retreats.

9.3.6 in relation to any contractors or sub-contractors employed by the Tenant (or their contractors) to carry out any works to the Premises, to ensure that only those contractors or sub-contractors who are suitably qualified and insured are so employed and that they carry out all such works with due skill and attention; and

All HIE have done so far is reclaim the £2000 they had paid out for unlawful works.

## What needs to happen

The Planning Committee on Friday needs to ask some much broader questions than those covered in the Committee Report. I have suggested here this should include:

- How the planning applications supports the wider policy and plans for the National Park
- The failure of CNPA to take appropriate enforcement action and the lessons which could be learned from this
- HIE’s role, as a public authority, in supporting the National Park to achieve its objectives.

In my next post I will demonstrate there is ample evidence on the ground to show why the current application should be rejected.

## Category

1. Cairngorms

## Tags

1. CNPA
2. hill tracks
3. natural retreats
4. planning
5. restoration

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