

A tale of two Parks, secrecy and the planning system

Description

Following my posts on the Ledcharrie ([see here](#)), Coileasan ([see here](#)) Glen Clova and Glen Prosen ([see here](#)) and ([see here](#)) hill tracks I contacted the heads of planning in both National Park Authorities to find out what they were doing about this. The responses could not have been more different. The Loch Lomond and Trossachs National Park Authority treating my request under Freedom of Information, delaying their response and then refusing to divulge information. The Cairngorms National Park Authority answering my questions and promising to make information on their planning portal.

The LLTNPA response to Ledcharrie

On 11th June ([see here](#)) I asked Stuart Mearns, Head of Planning (and copied in the Park's Convener of Planning Petra Biberbach) for all the information required by the Park's Decision Notice approving the Ledcharrie scheme in principle, the dates of monitoring visits and any correspondence/information about enforcement. On Friday, I received this unsigned refusal [EIR 2017- 050 Response Ledcharrie](#) from someone, they have not put their name to the letter, claiming to be a Governance Manager.

The LLTNPA's reason for refusing the information, would if accepted, represent a massive step back for the planning system:

The documentation submitted by the developer to comply with conditions set out in the planning decision has been withheld from release under R10(5)(b) of the EIR's as the information relates to live operational activities which are currently being monitored by the Park Authority. Not all conditions have been discharged.

Section R10 (5) b of the Environmental Information Regulations reads:

(5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially–

(b) the course of justice, the ability of a person to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature;

The Park is in effect is claiming that to make public any information required by a Decision Notice could interfere with the course of justice – presumably a reference to potential enforcement action. Leave aside the fact that the LLTNPA has almost never taken enforcement action, this is complete and utter rubbish. The Decision Notice of 2015 required the Developer to provide lots of further information including construction methods for all aspects of the scheme, detailed landscape mitigation and restoration techniques, a turve protection plan, a peat protection plan, a raptor survey, etc before any work started. A commendable list. If these had all been supplied as required and approved by the Park Authority there is no reason at all why they should not be made public, as they form part of the approval, nothing to do with enforcement. That is a separate matter which comes afterwards as is about whether the Developer kept to the conditions that had been agreed. Indeed making such documents public would have enabled interested parties to judge for themselves whether the conditions had been adhered to and report potential breaches to the Park.

If the Developer had not provided all the information required – and the Park has refused even to say whether the Developer has or hasn't done this – the Park should not have allowed construction to go ahead. What the Park appears to be saying is that none of the detailed specifications for developments should be made public until the file is closed (once monitoring is complete). This makes the Park as Planning Authority almost totally unaccountable and would be a retrograde step for the planning system.

The Coileissan track

In response to my questions on the Coileissan track on 28th June ([see here](#)), and in particular whether Forestry Commission Scotland had told the Park about this under the Prior Notification System, I have had an email from Stuart Mearns saying I should get a response by 26th July. That's almost a month but at least Mr Mearns responded himself rather than passing straight on to the Park's Secrecy Department.

The CNPA's response to information requests on enforcement and hill tracks

The contrast to the CNPA's response to my emails on the Glen Prosen and Glen Clova tracks could not be greater. Here are some extracts from Gavin Miles, Head of Planning's emails:

We are looking at the Glen Prosen Hydro tracks. The CMS [construction method statement] etc should be uploaded to our public access planning pages this week or next. If there's anything that doesn't get uploaded we'll let you know and will send it to you in the formal FOI/Environmental Information Request response format.

If the CNPA can add Construction Method Statements to their planning portal so the public can see what has been agreed in cases where enforcement action is possible, so can the LLTNPA. Well done the CNPA for being transparent!

Just to make things slightly easier for us to identify on the maps and aerial photography, it would be helpful if you could send an image of the map that shows the bits you walked or are concerned about if they don't appear to you to be part of a consent or application.

It gives you confidence when the Planning Authority asks for further information about exact locations (I had sent them photos and a general description of where I had walked). My mate who I was running with told me afterwards that if you use Strava, it not only plots your entire course, it can give the exact location for photos – a useful tip for anyone wanting to report on hill tracks.

The CMS we have for the Clova Hydro scheme will be uploaded to the public access planning pages. Just to be clear, we haven't taken any enforcement action against the Clova track at this point. The Planning Contravention Notice (PCN) is a fact-finding notice.

Honesty about what the CNPA is doing. Quite a contrast to the LLTNPA who want to keep everything secret.

A comparison between the two National Parks

The CNPA is far from perfect and I have criticised its planning department in a number of posts, particularly the way they handled the Shielling Hill Track at Cairngorm and also their decision to stop

recording planning meetings, which in my view was a retrograde step. I believe that as a National Park Authority they could do better but at present they are a country mile ahead of the Loch Lomond and Trossachs National Park Authority. Their Partnership Plan includes a presumption against new hill tracks, the LLTNPA draft plan says nothing. They are prepared to be open about what they are doing (at least some of the time), the LLTNPA reveals nothing unless its forced to. They are trying to put more information on the planning portal, the LLTNPA has been removing information post-decision saying the law does not require such information to be published.

One might not always agree with the CNPA but it is possible to have a dialogue. The LLTNPA does not do dialogue: if you don't agree with them, you get shut out of processes.

The explanation for this difference is not just about differences in staff (and who knows what pressure Stuart Mearns is under from his Chief Executive Gordon Watson), it is I believe about Board Members. Petra Biberbach was on the Scottish Government's independent review of the planning system which included these statements:

"Consistency and transparency of information are central to the reputation and smooth running of the development management system."

"The increasing use of social media and online portals is in our view a more resource efficient and effective way of communicating casework with the wider public."

So, why has she apparently done nothing to make the LLTNPA as planning authority more transparent?

Contrast this with Cllr Bill Lobban who is on the CNPA Board and was Highland Council Convener of Planning; he criticised the CNPA for not recording planning meetings as webcasts and argued that Councils were better placed to fulfil the planning function. In other words there are people on the CNPA Board who keep staff on their toes.

What needs to happen

I hope the refusal of LLTNPA staff to provide information about the Ledcharrie Scheme does not have to go to the Information Commissioner for Decision and that Petra Biberbach as convener of the

Planning Committee, insists the Park's Chief Executive Gordon Watson instructs staff to make the information public as recommended in the independent review of planning report which she co-authored "Empowering planning to deliver great places".

Category

1. Cairngorms
2. Loch Lomond and Trossachs

Tags

1. CNPA
2. Freedom of Information
3. LLTNPA
4. planning
5. Scottish Government
6. secrecy

Date Created

July 10, 2017

Author

nickkempe

default watermark