

## An Camus Mor – time to develop an alternative

### Description



Some of the protesters who attended the CNPA planning meeting on Friday. Protests by local people are likely to increase greatly in future due to the implications of the proposed Recreation Management Plan. Badenoch and Strathspey Conservation Group

On Friday, to no-one's surprise, the Cairngorms National Park Authority unanimously approved the revised planning application for An Camas Mor and in effect gave Johnnie Grant a further three years to meet planning requirements. Paradoxically, this new decision, I believe makes An Camas Mor less likely than ever to go ahead. This is mainly because of the measures proposed in the Habitats Regulations Assessment regarding access and the requirement for a Recreation Management Plan.

It's worth recalling here that the development of land for housing on the east side of the Spey in the area of ACM was first proposed by Aviemore Community Council in 1987 and that every Scottish Government since the Scottish Parliament was created have supported the development. The original proposal from the old Highland Council development plan was transferred into the first Cairngorms National Park Authority Development plan and has been there ever since. Despite this – and despite

strong ongoing support from elements of the current Scottish Government, support which the CNPA is not strong enough to challenge – so far the development lobby have achieved nothing. Not a single house built. On balance, I don't think that is going to change. What follows explains why.

## **The flawed decision-making process**

Despite the extensive implications of An Camas Mor for access, for both local residents and visitors, ([see here](#)) and ([here](#)) there was not a single objection to the application on the grounds that it would have an adverse impact on access and recreation. The reason for this is no-one knew there would be implications until the CNPA published its secret Habitats Regulations Assessment last week, four days before the planning committee. The Ramblers Association then issued a press release ([see here](#)) the day before the Committee Meeting raising serious issues about the proposals and Dave Morris, their former Director, wrote to every single Board Member on the day of the meeting ([see here](#)), but this was all too late. The CNPA denied the recreational community the opportunity to have any formal say in the planning decision. This is fundamentally wrong and will, I believe, come back to haunt both the CNPA and the Scottish Government.

To make matters worse, it is clear the CNPA were aware of the recreational implications of ACM over a year ago. Appendix 5 to Habitats Regulations Assessment is dated August 2016 and titled *"Identification of woodlands with potential for significant recreational disturbance to capercaillie arising from An Camas Mor, and specification of the mitigation required to avoid such disturbance"*. This document therefore had been finalised a month BEFORE the CNPA Board approved the Cairngorm and Glenmore Strategy, yet the CNPA were quite happy for that strategy – which had been subject to consultation with recreational interests – to be approved without any indication that it was already out of day because of what they were planning to mitigate the impacts of An Camas Mor. That should hardly inspire trust in the CNPA from outdoor recreation interests.

## **The implications of the proposed An Camas Mor Recreation Management Plan**

While the Habitats Regulations Assessment was produced without consultation, the new planning condition which sets out the requirement for a Recreation Management Plan is very strong in terms of what it requires the developer to do to ensure the protection of Natura sites, particularly in respect of capercaillie. Condition 11 reads:

*“No development shall commence on site (other than site investigation works) until a Recreational Management Plan (RMP) that delivers the outcomes within the Habitat Regulations Appraisal that accompanies this decision and demonstrates that there will be no adverse effect on site integrity of any Natura sites, has been submitted to and approved in writing by the CNPA acting as planning authority.”*

This was re-inforced by the CNPA [Press Release](#) announcing the decision which states the applicant will have *“to prove there will be no significant adverse effects to capercaillie in Badenoch and Strathspey as a result of the proposals before any development can start.”*

Prove is a very strong word and proving that the creation of a further 1500 households, most of whom will have an interest in outdoor recreation, right in the heart of capercaillie country, will have no adverse impact on capercaillie will in my view provide an enormous challenge to the developer. Moreover proving that the soft mitigation measures outlined in the Habitats Regulation Appraisal (such as revegetation of certain paths) will be sufficient to keep visitor numbers at current levels will be impossible to demonstrate. As a result, I believe the applicant will only be able to prove they can mitigate the impacts of the development for capercaillie, if they can show they have plans to put in place powers of last resort to limit visitor numbers. And that requires byelaws.

Besides the political stushie that any proposal for byelaws will create, they also have serious resource implications. The Loch Lomond and Trossachs National Park Rangers Service is huge compared to that in the Cairngorms (over 50 staff who consume a large huge proportion of the National Park's resources) and have responsibility for enforcing the camping management byelaws. Yet visit any of the camping management zones where camping is banned and I can guarantee that on each occasion you will find people in breach of the byelaws. At Rowardennan on Sunday there was a tent on the beach – people weren't actually camping, they were using it to change in to go for a swim – but were nevertheless committing the criminal offence of pitching a tent in a management zone. The CNPA, in order to protect Natura Sites, could not allow such breaches to take place. It will therefore need a huge police/ranger force – unless of course people are banned from Glenmore completely, which would destroy Aviemore as a tourist destination – to ensure people to keep to the paths, the outcome it says the Recreation Management Plan must deliver.

How will this be paid for? The developer is now proposing that the future residents of An Camus Mor will pay for visitor management measures through ground rent or as the CNPA puts it “*long-term funding for recreation management through the annual household service charge*”.. The financial implications for future residents are significant, could well make the 25% of ACM that the CNPA says will be reserved for social housing completely unaffordable and is likely to act as a deterrent to potential purchasers. The proposed Recreation Management Plan therefore significantly increases the financial risks associated with the development.

## **Implementing the Recreation Management Plan**

The proposed Recreation Management Plan will have to cover not just An Camus Mor itself and Johnnie Grant’s remaining land at Rothiemurchus, it will have to cover much of Badenoch and Strathspey from Creag Dubh to Boat of Garten. This includes land owned by other landowners, namely Forestry Commission Scotland, RSPB and Seafeld Estates. The Habitats Regulations Assessment does not indicate what involvement those landowners had in drawing up the proposed mitigation measures or whether they have agreed to implement them – this information needs to be made public – but it would only take one landowner to refuse to implement the measures and the whole Recreation Management Plan, and therefore the development, would fall apart.

What’s more, those landowners are entitled to ask for re-imbursement for all the costs of implementing the Recreation Management Plan. RSPB have already indicated that they think the costs of this are considerable:

*Based on their own assessment of mitigation needed in the Abernethy SPA to reduce risks of disturbance to an acceptable level, they have estimated the capital costs of mitigation across the network SPA and supporting woodland in Badenoch and Strathspey to be in the region of £650k to £900k. They also estimate that a five to six person ranger service would be required in perpetuity to support recreation management.*

I think that these projected costs are likely to go up significantly once all the landowners start thinking through the implications and costing what they need to do.

Moreover, while I am sceptical enough to believe that the landowners involved might only be too happy to limit access – there are those in Forestry Commission Scotland who have always resented the removal of their ability to make byelaws controlling access since the Land Reform Act – whether they would be prepared to sign up to permanent recreation management measures on their land in

perpetuity which limit their right to take their own decisions is questionable. This would mean landowners signing away some of their rights to manage land – it would almost certainly need expensive legal agreements – which in planning terms normally requires compensation. The other landowners are thus in financial terms now in a position to hold the developer to ransom and name their price. This adds further significant risks to the financing of An Camas Mor.

It is also another reason why the only way that Johnnie Grant, as Developer, will be able to guarantee delivery of the Recreation Management Plan on other landowners' property is if he can show the CNPA has agreed to use its byelaw making powers, under either the Land Reform Act or the National Parks Act, to deliver the mitigation measures. This is because even if Johnnie Grant agrees a suite of measures and a price with other landowners, he also needs to show what will happen if these don't work. Will he, for example, be able to increase management charges for ACM residents to pay for whatever measures are needed? If there are any doubts about Johnnie Grant's ability to pay for delivery of the mitigation measures, then the only way he can guarantee they are delivered is if the CNPA agrees to use its byelaw making powers.

Legally, this creates lots of issues. It is highly questionable whether any public authority has the right to use its powers both to control how other land owners manage their land and to limit public rights of access when the only reason for this is to deliver a private development. While I believe the CNPA will eventually have to consult on the proposed Recreation Management Plan and when it does I predict a huge public outcry which will shake the politicians, in terms of the current planning decision it appears that the CNPA have acted ultra vires. As a result, there is a strong case that it could be legally challenged and called in by the Scottish Government.

### **The involvement of the Scottish Government and the financial risks associated with the development**

I have had it reported on good authority that at the Planning Committee on Friday Johnnie Grant's planning consultant said words to the effect that the Scottish Government has agreed to help fund the development if planning consent is given. While this helps explain the CNPA decision it also opens the door to questions now being lodged under the Freedom of Information Act asking about the Scottish Government's involvement in promoting and financing an inappropriate development in one of our National Parks.

In a post last week I drew attention to the high financial risks to the developer and in particular the need to meet costs up front. While the revised planning conditions no longer require the developer to pay for health infrastructure (the CNPA now say sufficient facilities are in place to cope with the new demand) in other areas the development costs have increased, for example, "*members agreed that a new bridge for pedestrians and cyclists must be delivered before 200 homes are occupied.*" That means more money the banks will have lend up front without any guarantee they will get it back.

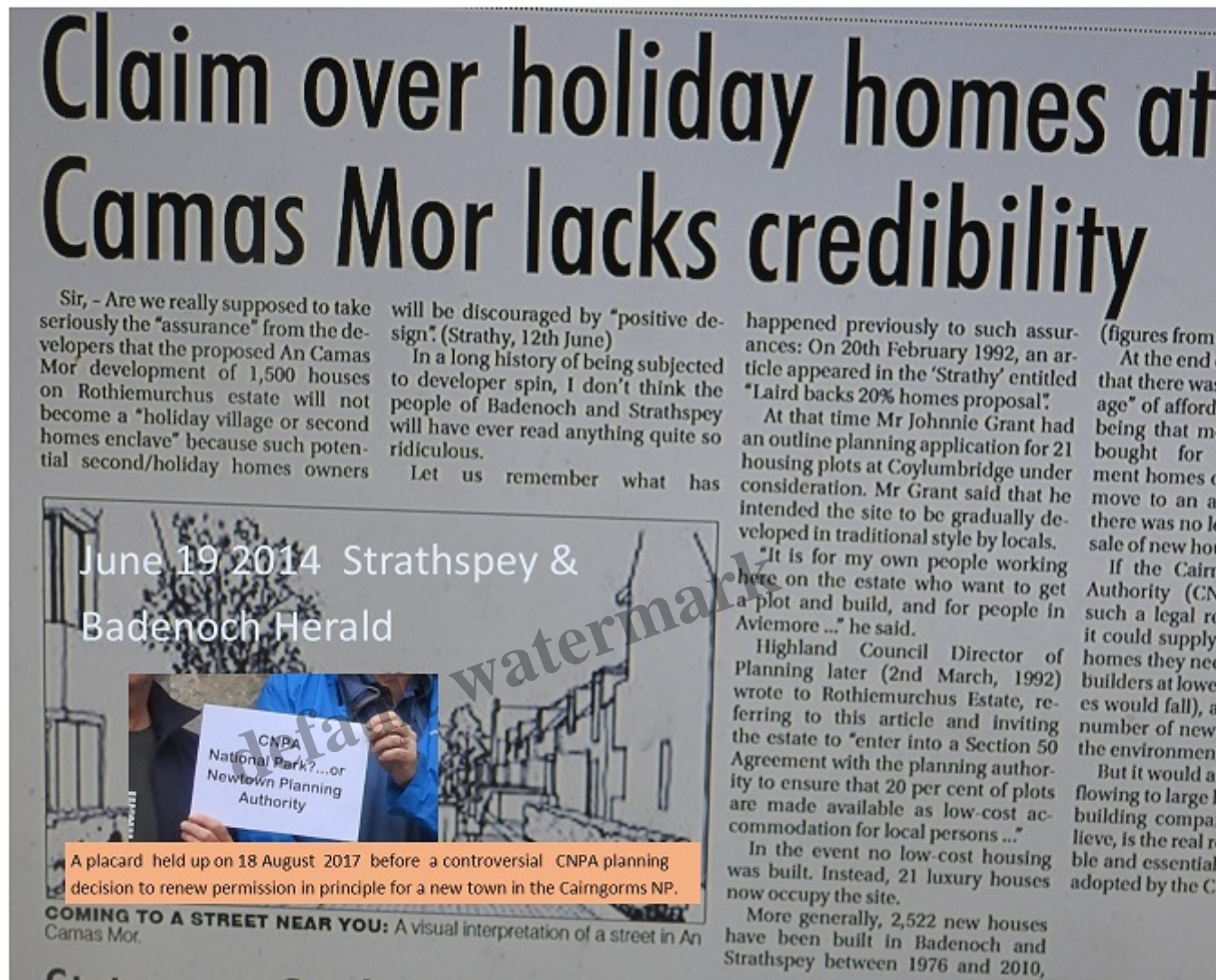
Meantime, due to the current crisis in our wider capitalist economy and the relentless downward pressure on wages, the number of people able to afford first or second homes at An Camas Mor are becoming thinner on the ground. This I believe helps explain why the Developer has been having discussions with the Scottish Government about helping to finance the development (the latest information I have had is that the £7.2m Johnnie Grant received from the Scottish Government to buy part of Rothiemurchus has already been spent and is not available to contribute to the development).

### **The need to develop an alternative plan**

The question then arises that if the Scottish Government is prepared to finance Johnnie Grant, why not use Scottish Government finance- rumours suggest this could be £9m – to fund an alternative plan?

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This letter from 2014, tweeted by the Badenoch and Strathspey Conservation Group summarises the letter and states that the group should be sceptical about whether An Camas Mor will deliver social housing

£9m could pump prime a significant development of social housing, which is what the National Park needs to meet the needs of the local workforce, who are according to National Park Plan paid significantly less than the national average. If our Public Authorities had spent the last 30 years bringing empty houses into use and promoting new affordable housing, instead of endless luxury housing for use as second homes and waiting for An Camas Mor to go ahead, the housing problems in the National Park would have been solved by now. The dualling of the A9 makes it is far less important that such housing be located in Aviemore as it opens the option of improved bus connections between settlements.

£9 could alternatively pay for the pedestrian/cycling bridge over the Spey and other recreational infrastructure, greatly extending opportunities for informal outdoor recreation for those living in Aviemore while reducing current impacts of residents on natura sites, without any need for the new development to go ahead. In other words the Scottish Government could pay to implement for the good ideas in the Habitats Regulations Assessment – and there are some – without any need for the development going ahead.

## **What needs to happen**

The recreational implications of An Camas Mor going ahead are enormous and very complicated and legally provide extremely strong grounds for the Scottish Government to call in the application, both because it appears that the CNPA has acted ultra vires and also because the proposed Recreation Management Plan is incapable of implementation. I hope conservation and recreational organisations now join together and call on Ministers to do this.

Its time too I believe for local residents and the conservation and recreational NGOs to get together and develop an alternative plan. Unfortunately I don't think the CNPA would be allowed to do this even though its exactly the sort of initiative it should be leading. An alternative plan should aim to deliver the housing that is needed by the local workforce, protect nature and promote outdoor recreation where this is appropriate. People should be demanding that the Scottish Government agree in principle to finance the implementation of such a plan, which would deliver considerable public benefits, instead of financing private developers to the overall detriment of the National Park.

## **Category**

1. Cairngorms

## **Tags**

1. CNPA
2. Development Plan
3. Forestry Commission Scotland
4. Governance
5. Scottish Government
6. secrecy
7. visitor management

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