An Camas Mor, popular opinion and the Cairngorms National Park

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'No new town in nati

BY ROB EDWARDS

FAR more people oppose building a new town in the Cairngorms National Park than are in favour, according to a new opinion poll.

More than 44 per cent of those questioned by pollsters Survation said they opposed a plan for 1,500 new houses at An Camas Mòr, near Aviemore. Just under 25 per cent said they supported the idea, and the same proportion said they neither opposed nor supported the plan. The development

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Sunday Herald 17/09/17 – inset to piece on Greenbelt poll

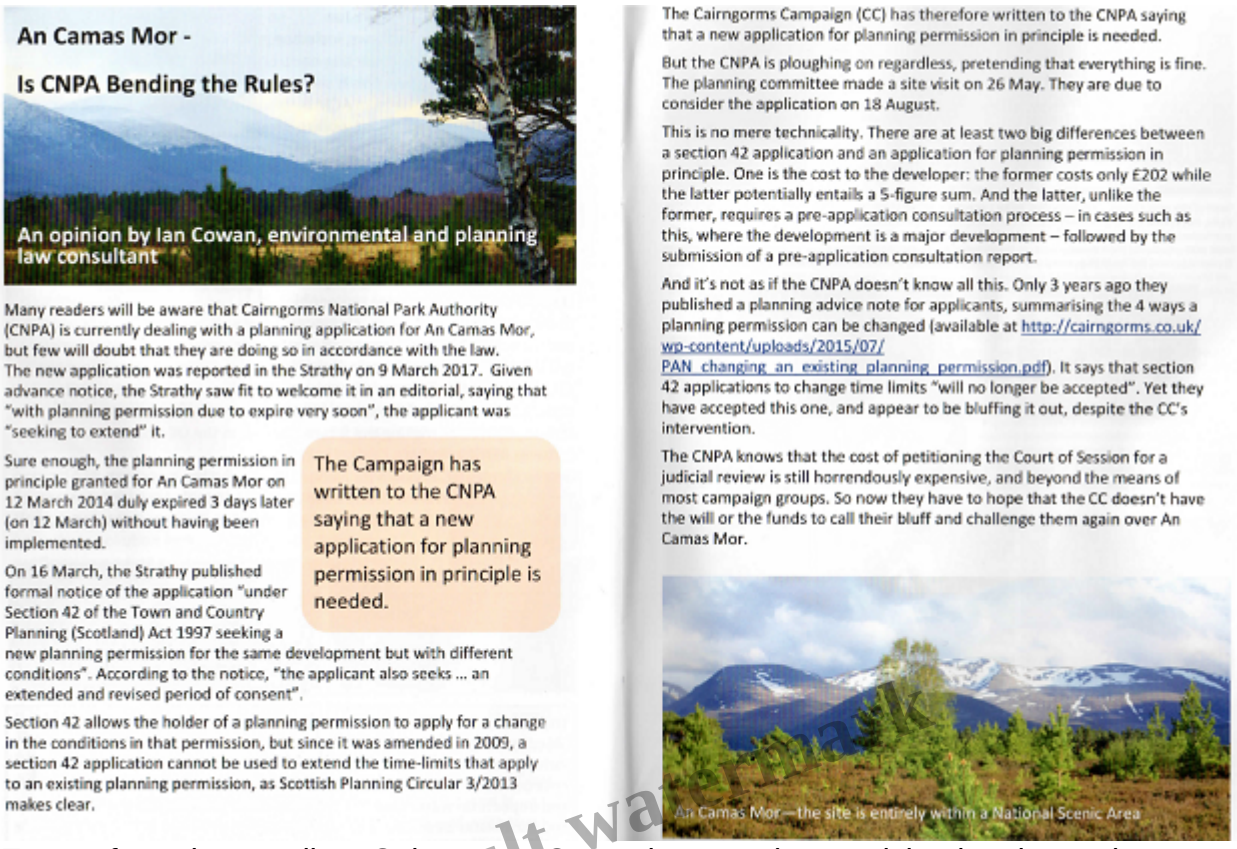
Badenoch and Strathspey Conservation Group recently had the bright idea of playing the political parties at their own game and commissioning Survation, who conduct weekly national polls, to ask what people in Scotland thought of the proposed development at An Camus Mor. For those who care about the future of our National Parks it is very re-assuring to find that significantly more people are opposed to a new town in the Cairngorms National Park than support it. And this despite all the effort that has gone into promoting development. I suspect if those polled had been shown photos of what would be destroyed if the development ever goes ahead (see here), the level of opposition would have been far higher.

While the poll does not necessarily reflect local opinion, there is a message here I believe for our National Park Authorities. The "many" really do care about what happens in our National Parks and, if our National Park Authorities were to show more leadership, advocate for the principles which led to the creation and use these to take decisions, whether on new towns, gold mines or raptor persecution, I suspect they would be widely supported and popular.

Instead, the evidence shows that our National Park Authorities are constantly being forced to compromise in the interests of the few, even when this means ignoring their own (fairly weak) policies. The recent An Camas Mor Section 42 planning application made under the Town and Country (Scotland) Planning Act 1997 provides a good illustration of this.

Section 42 applications, which allows developers to ask for planning conditions attached to consented developments to be changed, involve fixed fees (currently £202) and the applicant is NOT required to conduct a pre-application consultation with the public. This explains why the public, the "many", were kept in the dark about the potential implications of the Section 42 application for An Camas Mor (see here) until a few days before the planning committee.

In the period between receiving the application in March and taking the decision to approve it in August, the Cairngorms National Park Authority incurred considerable costs. They produced a Habitats Regulations Assessment, all 240 pages of it, which involved research, liaison with landowners as well as writing it up and, as far as we know, free help from another public authority, SNH. They almost certainly will have had to obtain legal advice as a result of the questions asked by the Cairngorms Campaign and the potential for legal challenge:



An Camas Mor -

Is CNPA Bending the Rules?

An opinion by Ian Cowan, environmental and planning law consultant

Many readers will be aware that Cairngorms National Park Authority (CNPA) is currently dealing with a planning application for An Camas Mor, but few will doubt that they are doing so in accordance with the law. The new application was reported in the Strathy on 9 March 2017. Given advance notice, the Strathy saw fit to welcome it in an editorial, saying that "with planning permission due to expire very soon", the applicant was "seeking to extend" it.

Sure enough, the planning permission in principle granted for An Camas Mor on 12 March 2014 duly expired 3 days later (on 12 March) without having been implemented.

The Campaign has written to the CNPA saying that a new application for planning permission in principle is needed.

On 16 March, the Strathy published formal notice of the application "under Section 42 of the Town and Country Planning (Scotland) Act 1997 seeking a new planning permission for the same development but with different conditions". According to the notice, "the applicant also seeks ... an extended and revised period of consent".

Section 42 allows the holder of a planning permission to apply for a change in the conditions in that permission, but since it was amended in 2009, a section 42 application cannot be used to extend the time-limits that apply to an existing planning permission, as Scottish Planning Circular 3/2013 makes clear.

The Cairngorms Campaign (CC) has therefore written to the CNPA saying that a new application for planning permission in principle is needed.

But the CNPA is ploughing on regardless, pretending that everything is fine. The planning committee made a site visit on 26 May. They are due to consider the application on 18 August.

This is no mere technicality. There are at least two big differences between a section 42 application and an application for planning permission in principle. One is the cost to the developer: the former costs only £202 while the latter potentially entails a 5-figure sum. And the latter, unlike the former, requires a pre-application consultation process – in cases such as this, where the development is a major development – followed by the submission of a pre-application consultation report.

And it's not as if the CNPA doesn't know all this. Only 3 years ago they published a planning advice note for applicants, summarising the 4 ways a planning permission can be changed (available at http://cairngorms.co.uk/wp-content/uploads/2015/07/PAN_changing_an_existing_planning_permission.pdf). It says that section 42 applications to change time limits "will no longer be accepted". Yet they have accepted this one, and appear to be bluffing it out, despite the CC's intervention.

The CNPA knows that the cost of petitioning the Court of Session for a judicial review is still horrendously expensive, and beyond the means of most campaign groups. So now they have to hope that the CC doesn't have the will or the funds to call their bluff and challenge them again over An Camas Mor.

An Camas Mor – the site is entirely within a National Scenic Area

Extract from the excellent Cairngorms Campaign newsletter raising legal questions about the S42 application. On the timing of the application, the CNPA in their Committee report stated that because it had been received by Highland Council before the deadline it was valid.

Board Members took another visit to the site, along with senior staff (£200 a day fee each, plus salary costs of staff accompanying them) and then there was the Committee meeting itself. Someone could ask the CNPA to cost all the work it had conducted on behalf of the developer. I would be very surprised if it came to less than £20k and is probably worth more than twice that. The S42 application though cost An Camus Mor LLP, the development vehicle of the landowner Johnnie Grant, just £202. When do ordinary people get subsidised by public authorities like this? The truth is ordinary people pay money to the state in the form of taxes which is then redistributed to promote the interests of the rich and powerful. The S42 costs the same whether you are a home owner, who wants to vary a condition attached to the development of your property, or a large property developer. Our National Parks could be using these resources on much better things.

To give the CNPA credit, they do appear to appreciate this. The Scottish Government's consultation on the planning system earlier this year called Places, People and Planning asked about S42 applications. Here is the question and the CNPA response:

> *"33(b) Currently developers can apply for a new planning permission with different conditions to those attached to an existing permission for the same development. Can these procedures be improved?*
>
> *The current Section 42 application process is complicated and misunderstood by many stakeholders. The procedure is misused as a cheaper way of renewing planning permission with minor changes, or of turning an existing consent into a materially different permission. The rules about when S42 applications are legitimate, and a more appropriate fee structure should be considered to reflect the complexity of applications and work involved in processing them."*
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> https://consult.scotland.gov.uk/planning-architecture/a-consultation-on-the-future-of-planning/consultation/download_public_attachment?sqId=pasted-question-1467894590.05-55511-1467894590.71-30316&uuId=159369924

I think we can take it that the CNPA response was informed by An Camas Mor because at the time they were completing the response (April 2017) they were processing Johnnie Grant's application. The report to the Planning Committee, however, made no mention of the concerns of the CNPA – it couldn't without being seen to prejudice the process. What's happened at An Camus Mor, though, should give the Scottish Government all the evidence they need to end the current S42 system which enables developers to pass on costs to public authorities.

What the CNPA failed to mention in their response to the Government's planning consultation the were the serious implications which can arise from the lack of any public consultation prior to S42 applications being determined. Perhaps back in April, they didn't appreciate this because at Camus Mor those serious implications arise from the mitigation measures identified in the Habitats Regulation Assessment as necessary to protect capercaillie. These clearly state that byelaws to restrict access could be used as a last resort to prevent visitors numbers increasing or people leaving designated paths. It seems to me that Section 42 applications which have such implications should require public consultation.

The Developer has subsequently denied this on their Facebook page (see here) in a post dated 6th September:

> *An Camas Mòr will improve outdoor access for people living in Aviemore and Strathspey with new paths and beautiful riverside walks. In response to misreporting, we would like to re-state that no-one is going to remove your rights under the Scottish Outdoor Access Code.*

Some are opposed to the development of the area – they are trying to recruit people to their cause by suggesting that Rothiemurchus is going to remove people's access rights.

These claims are just false. Rothiemurchus Estate doesn't have the power to remove access rights but the CNPA does, through its byelaw making powers, and explicitly mentioned this as a measure of last resort in its Habitats Regulations Assessment. In fact, having stated that an increase in numbers of people visiting the pine woods from An Camas Mor could be mitigated if there was NO overall increase in visitor numbers, the only way the CNPA could guarantee this – and therefore approve the An Camas Mor development – was by stating that compulsory powers, ie byelaws, could be used to manage access. If removal of access rights is not on the table as a consequence of the proposed An Camas Mor development, why is it in the Habitats Regulations Assessment? If Rothiemurchus Estate disagrees with this, as it claims to do, why then didn't it object to the proposed mitigation measures at the planning committee meeting? Why indeed don't they appeal now to demonstrate their good faith to the public?

THE ORIGINAL PARAGRAPH WHICH FOLLOWED HAS BEEN CORRECTED FOLLOWING CLARIFICATION

The CNPA has confirmed with me, in response to a question (which I put as a potential FOI enquiry), that the applicants and other landowners whose land was covered by the Habitats Regulations Assessment saw the OBJECTIVEES of the Habitats Regulations Assessment. The developer has since clarified on Facebook that "An Camas Mor was not consulted on the inclusion of byelaws in the 'The Habitat Regulations Assessment'.

All of this could have been flushed out into the open if the S42 application had required Rothiemurchus and An Camas Mor LLP to conduct a pre-application public consultation. Instead, we are left in a ludicrous position where the CNPA has proposed byelaws as a measure of last resort to allow the development to go ahead but statutorily is bound to conduct a public consultation before it can approve any byelaws. The CNPA has put itself into the invidious position where either it will be accused of having made up its mind in advance to allow An Camas Mor to go ahead or at risk of being sued by the developer if, at a late stage, it decides those measures of last resort are not publicly acceptable. This situation could have been avoided if Rothiemurchus estate had been required to consult on the access implications of its proposals in advance (and note once again the costs of consulting on byelaws will fall to the CNPA, not the developer).

Category

1. Cairngorms

Tags

1. access rights
2. An Camas Mor
3. byelaws

4. CNPA
5. planning
6. Scottish Government

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