

The enforcement of long term planning conditions in the Cairngorms National Park

Description

There have been numerous recent reports of failures to enforce long term planning obligations within the Cairngorms National Park – these are conditions of planning permissions which remain in place after the permitted work or development has been completed. They often cover the re-instatement of temporary works after the work has been completed or the long term maintenance of landscaped areas within a development.

Last week Balfour Beatty's temporary works compound in Dalwhinnie hit the news.

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Strathspey
& Badenoch

HERALD

Blot in Dalwhinnie should have gone three years ago...

By Tom Ramage
t.amage@sherald.co.uk

A HUGE 'temporary' works compound in the centre of Dalwhinnie used for the big money Beauly-Denny pylon scheme is proving to be anything but.

The site was used by Balfour Beatty to service the project and should have been removed in autumn 2015 after the completion of the hugely controversial project.

Now angry community leaders are demanding to know why the planning condition has not been enforced by the Cairngorms National Park Authority (CNPA) and the land reinstated for the community's benefit as promised.

The village's watchdog has repeatedly raised its concerns but said it had received 'no satisfactory' explanation over the delay of nearly three years.

The site had at one time been home to a tourist information centre which had been vacant for many years before the pylon contractor moved in.

But it was still being used as a lorry stop at the time and one of the community's wishes is that the fenced-off land can be used for public car parking.

Former community council chairman Bill Carr said the concern is that in due course, some informal agreement between the CNPA and a potential user of the compound will be "quietly" reached.

He believes this could be presented to the community as a fait-accompli planning application with "commercial confidentiality" cited as justification for exclusion from discussions.

Mr Carr explained: "Community councillors are increasingly of the view that conversations concerning potential

uses of the compound are happening behind closed doors, and the community has been and is being deliberately excluded from these discussions.

"They believe that this is because the community would continue to press for the reinstatement of the public car park and landscaping as agreed as part of the original planning consent, and that this would be inconvenient to any discussions about the future use of the compound under way."

Badenoch and Strathspey Highland councillor Muriel

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■ The compound was approved for office accommodation for up to 30 people; a meeting room for up to 20 people; accommodation for a security office and welfare facilities with showers, toilets and canteen facilities; a covered storage area of 650 square metres; open storage facility of 0.6 hectares; accommodation for up to 25 caravans, and parking for up to 30 vehicles and an additional three lorries.

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Community councillors are increasingly of the view that conversations concerning potential uses of the compound are happening behind closed doors

Bill Carr



Strathy 7th June 2018

The report states that this compound should have been removed at the end of the Beauly-Denny

powerline work, but 3 years on CNPA Planning has failed to enforce a planning condition requiring its removal and ground restoration.

Other recent examples include:

- The disused quarry at Dalwhinnie ([see here](#)). The quarry was first granted approval in 1999 before the CNPA was created. Back in 2008, when the CNPA agreed to an extension to its operating life, a Section 75 legal agreement was supposed to be put in place to secure proper restoration of the ground when quarrying ended. The quarry is now disused but restoration has not happened.
- SSE's failure to restore the track on the Dalnacardoch Estate ([see here](#)). This is part of a much wider issue of temporary construction tracks used for the Beaulieu-Denny powerline not being restored or if restored the workmanship being of poor quality and appears to be the responsibility of the Scottish Government rather than the CNPA. Again enforcement of the related planning conditions has been severely lacking.

While Parkswatch is going to cover some positive news about the CNPA taking enforcement action in Glen Bancher in the next week, I have a concern over the risk of a similar future failure at the Beachen Court housing development in Grantown on Spey ([see here](#)) like what has happened around Dalwhinnie.

The potential enforcement issues at Beachen Court



Beachen Ct landscape plan

The developer, R S McLeod Ltd, has planning obligations to complete a large landscaping scheme and carry out landscape maintenance for a minimum of 10 years. Documents entitled “Proposed Soft Landscape Maintenance and Management Regime were approved as part of CNPA major planning permission 2016/0060/DET and the phase 1 of this development approved as part of CNPA planning permission 2017/0286/DET.

So what is the potential problem?

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Beachen Court development – view from the west. Photo Credit Gus Jones.

You might expect the developer will take on his obligations to complete the approved landscaping scheme and will maintain it according to the approved maintenance regime.

R S McLeod Ltd. (the development main contractor for this housing development) was incorporated in June 2015 with a share capital of £100. The latest accounts (to 30 June 2017) posted by R S McLeod Ltd. show that the company has a negative value balance sheet.

R S MCLEOD LIMITED

Registered Number

Micro-entity Balance Sheet as at 30 June 2017

	<i>Notes</i>	<i>2017</i>	<i>2016</i>
		£	£
Fixed Assets		390	585
Current Assets		407,089	38,896
Creditors: amounts falling due within one year		(414,146)	(38,671)
Net current assets (liabilities)		(7,057)	225
Total assets less current liabilities		(6,667)	810
Total net assets (liabilities)		(6,667)	810
Capital and reserves		(6,667)	810

- For the year ending 30 June 2017 the company was entitled to exemption under section 4 of the Companies Act 2006 relating to small companies.
- The members have not required the company to obtain an audit in accordance with section 474 of the Companies Act 2006.
- The directors acknowledge their responsibilities for complying with the requirements of the Companies Act 2006 with respect to accounting records and the preparation of accounts.
- The accounts have been prepared in accordance with the micro-entity provisions and delivered in accordance with the provisions applicable to companies subject to the small companies regime.

Approved by the Board on 27 March 2018

And signed on their behalf by:

Allan Gordon Hogg, Director

There is therefore a very significant risk that R S McLeod Ltd could default on its landscaping planning obligations. If this happens before the housing development is completed, there is a prospect that a company taking over the contract to build the remaining houses may take on the landscape planning obligations, however if the default happens at the end of the house building, then the obligation to complete the landscaping and maintain it would fall on public funds – probably Highland Council.

It is to prevent such risks to public funds that the generally accepted good practice for planning authorities is to require the developer to take out a bond or bank guarantee. This is like taking out insurance – this bond or bank guarantee will pay out in the event of the developer defaulting on his obligations. I have seen planning authorities even requiring such bonds from national house builders (with FTSE listings) to cover landscaping and associated long term maintenance obligations – far less from a negative value company like R S McLeod Ltd.

In my submission to the CNPA Planning Committee on both of the planning application hearings for the Beachen Court development, I reminded the Committee of the need for a bond or bank guarantee to prevent risk to public funds if the developer defaulted on these long term maintenance obligations. Incredulously, the only answer I got was, “we don’t do that sort of thing here”.

Thus, should we be surprised to read about so many defaults on long term planning obligations within the Cairngorms National Park? It’s not clear, for example, from the planning application for the Dalwhinnie compound, whether a S75 Agreement – which the Planning Committee at the time to its credit insisted on – was ever completed. This should be a matter of public record.

In my view, the CNPA Planning Authority’s track record falls well short of good practice in either:

- not enforcing such obligations and/or
- not putting in place the appropriate financial vehicles to protect the public purse or prevent landscape eyesores being created and left unrestored within our National Park.

Let’s hope that is about to change.

Category

1. Cairngorms

Tags

1. CNPA
2. Local communities
3. planning
4. restoration

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Author

gordon-bulloch