

Fergus Ewing and the unlawful felling of trees at Carrbridge

Description

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Looking back across the felled trees and the road towards Carrbridge. Photo Credit Badenoch and Conservation Group ([see here for more of their photos on the felling](#))

[NB this post has been updated since first issued to correct I mistake. I had stated a planning application to build a car park in the site above had been refused in April. I have removed that and related comments and inserted correct sequence of events]

Rob Edwards from the Ferret has continued to monitor what has been happening at the site where trees were unlawfully felled at Carrbridge, ([see here for parkswatch coverage in March](#)) and ten days

ago reported the Developer had been forced by forestry officials to replant the site ([see here](#)). This is significant because it establishes without doubt that the trees were felled illegally.



According to the Ferret 300 pine and birch saplings have been planted on the site. Photo credit Badenoch and Strathspey Conservation Group

Replanting is not the same, of course, as restoring what was an ancient woodland site. The ecology of the site will have been affected by the clearfell and that is clearly demonstrated by the grasses that have taken open. The very act of planting disturbs soils and the whole site has been covered with tree protectors to help ensure the saplings survive – lots of plastic which we shouldn't be using in the countryside. Arguably too, in ecological terms too much of the felled wood (a food source) has been left on site. Piles of logs, such as you can see in the photos don't occur naturally – though its probably right that Colin and Teresa Watt, the owners of the Carrbridge hotel, who were responsible for the felling (through their company Halle Enterprises) shouldn't be able to benefit by also selling it off.

Having said that, however, the action taken to enforce the replanting should be celebrated. This is a rare example of a public authority enforcing the law against landowners and managers (think of all the unlawful hill tracks in the Cairngorms National Park against which no action has been taken). Not only that but officials in both Forestry Scotland and the Cairngorms National Park Authority have stood up to Fergus Ewing, who as the Cabinet Secretary responsible for Forestry had backed the Developer responsible for the unlawful felling. That takes courage and principle. It also provides an all too rare example of good communication between different public authorities. If I believed in the honours

system, I would be suggesting all the staff concerned deserve knighthoods!

Fergus Ewing's intervention in the case

After ignoring advice from his own officials not to intervene and his outburst against the National Park Planning system in the Strathy in July ([see here](#)), I found out through a Freedom of Information Request that Fergus Ewing had asked Grant Moir, CNPA Chief Executive, to meet with him and a person who could only have been Colin or Teresa Watt at the Carrbridge Hotel:

From: Dixon RI (Rebecca) [mailto:Rebecca.Dixon@parliament.scot]

Sent: 31 July 2018 11:34

To: Grant Moir <GrantMoir@ Cairngorms.co.uk>

Subject: FW: Carrbridge Hotel parking

Dear Grant,

Fergus would like to invite you to a meeting with [name deleted by CNPA for Data Protection purposes as personal reference] and himself at Carrbridge Hotel at 9am on the 24th April {emails supplied show this was an error and should have read August}, would this work for you?

With kind regards,

Rebecca Dixon

**Senior Parliamentary Assistant to Fergus Ewing MSP for Inverness and Nairn
Cabinet Secretary for the Rural Economy**

That meeting appears to have taken place but the CNPA appears to hold NO written information about it. In other words, no record was taken of what was said by Colin or Teresa Watt, Fergus Ewing or how the CNPA officers present responded. I believe that is wrong, not just because it makes it very difficult to hold MSPs and Ministers to account – there is no proof about anything that was said – but also because it makes it almost impossible for officials in public authorities to complain about bullying behaviour by politicians.

It appears fairly clear, however, that Grant Moir, and whoever else from the CNPA attended, stood their ground because in February 2019, Mr and Mrs Watt, submitted a Planning Application through a new company, Mac Enterprises Ltd, to create a car park on the site. The Strathy had reported in July 2018 that the CNPA had refused to change the draft Local Development Plan and allocate the site for development as a consequence of the unlawful felling but had indicated to Mr Ewing and Colin Watt that Mr Watt always had the right to submit a Planning Application.

The CNPA decided to call-in the Application, which had been lodged with Highland Council, because it “raises a planning issue of ‘general significance’ to the Cairngorms National Park aims under section 1 of the National Parks (Scotland) Act 2000”. The CNPA has informed me that the applicant then exercised their right of appeal on the grounds that the Park Authority had not determined this “local” application within two months and has supplied the following information.

“At that time of the appeal we were waiting for the applicant to provide further information that they said they wanted to supply but would need more time. The applicant had been offered a processing

agreement and indicated they would be willing to agree one, but clearly chose to appeal at the first opportunity. The DPEA dismissed an earlier appeal submitted 2 months after the date that Highland Council validated the application on the basis that it was invalid (appeal ref PPA-001-2019)."

This information is not available on the planning portal (but CNPA staff supplied it after I had mistakenly claimed the planning application was refused in April). The Planning Portal, does however then show correspondence dated 16th August from the Scottish Government's Planning Appeals Unit to the CNPA saying that they had had a letter from "DC2 Planning advising that they do not wish to proceed with this [planning] appeal".

No wonder its hard for the public to understand what is going on in the planning system when developers act under so many different guises and through different agents. In this case Halle Enterprises, Mac Infrastructure Ltd and DC2 Planning.

While the Ferret revealed the replanting is a consequent of Halle Enterprises withdrawing its appeal against enforcement action by Forestry Scotland, it also revealed that Mr and Mrs Watt have not withdrawn the appeal against the enforcement action taken against them personally (they are both Directors of and own Halle Enterprises). In cases of unlawful tree felling Forestry Scotland can issue enforcement notices against various parties whom they believe to be involved ([see here](#)) but why Colin and Teresa Watt have decided to appeal one of the notices and not the other is unclear.

Where does the Carrbridge tree felling leave Fergus Ewing?

After the Ferret's revelations in March, two MSPs submitted complaints that Fergus Ewing had breached the Ministerial Code of Conduct. Nicola Sturgeon took just two weeks to find ([see here](#)):

"The Scottish ministerial code provides that ministers may represent the views of their constituents, so long as they make it clear that the views they put forward are ones expressed in their capacity as the MSP representing a particular electorate," she said.

"I am satisfied that Fergus Ewing was clear that the comments he made about this matter were being made as the constituency MSP and not as a minister."

She, and Mr Ewing, will no doubt claim that the fact that Forestry officials are seeing through the enforcement action against Colin and Teresa Watt shows that he has NOT tried to intervene in his Ministerial capacity but only as a local MSP.

Other evidence, however, contradicts this.

First, having been advised by his officials NOT to intervene, because the felling was subject to investigation by his own department, it was surely incumbent on Mr Ewing to ensure that in any public utterance he made it clear he was intervening only as an MSP and not as Minister. That message, however, does not appear to have been conveyed to the Strathy as their article was headed "Minister backs hotel boss" and the caption under the photo describes Mr Ewing as "Rural Economy Minister"

Minister backs hotel boss in call for more village parking

By Tom Ramage
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SCOTLAND'S rural economy minister has given his backing to a Strathspey hotel in its bid to zone a corner of a field for car parking to enable the business to expand.

Colin Watt, owner of the Carrbridge Hotel, claimed he has been frustrated by the Cairngorms National Park Authority in moving things on with developing the conference and events side of the operation.

He had applied for a section of land measuring 38 metres by 65 metres by the village's golf course to be rezoned in the Local Development Plan (LDP), due to be adopted in 2020 near to the hotel, to allow for car parking at Carrbridge on the Local Development Plan.

He said: "The CNPA declined the request, recommending that the hotel proceeds with a full planning application - even though they had already rejected a pre-application.

"We're very disappointed with the

outcome of Friday's planning meeting on the LDP in Nethy Bridge and feel that the board members had not been fully briefed as to our circumstances here.

"We are raising the matter with the Scottish Government, the CNPA and our local elected members to see if any flexibility can be found because this no-go approach is unhelpful to sustainability and development and may well thwart what in effect would be a multi-million pound investment in the hotel's amenity and facilities."

Mr Watt wants the hotel to build on recent success: "To do so we need more parking spaces. This would allow us to operate throughout the year and combat the shoulder season problem. We need practical help to do that so why won't the park leadership help?"

Strathspey MSP Fergus Ewing said: "I am concerned and disappointed that the reasonable requirements of the Carrbridge Hotel have not found favour with the CNPA. The park authority has a statutory duty to advance



IN THE ZONE: Rural Economy Minister Fergus Ewing (left) and Mr Watt have seen eye to eye on the question of re-zoning a small patch of land for a car park which the hotelier says would help increase the village's earning potential.

economic and social development. There need be no conflict between helping business operate and fulfilling their conservation role.

"The hotel has practical needs for parking space and with a bit of

common sense, goodwill and positive, proactive effort surely these can be accommodated."

I have no issue with the good work that the staff of the CNPA carry out. However the leadership of the park

must be more proactive in and focussed on delivering outcomes for people and businesses locally."

Murray Ferguson, the CNPA's director of planning and rural development, said: "We're aware of the recent felling of trees at a site connected to the Carrbridge Hotel and that this matter is currently being investigated by Forestry Commission Scotland.

"The hotel already has planning permission to extend the hotel and the provision of car-parking was very carefully considered in granting the approval.

"We met the owner recently and have advised that if they now require additional parking, the best way forward is to submit a planning application which can then be considered by either ourselves or Highland Council. We have already given pre-application advice on the site concerned so the owner is fully aware of the issue that need to be addressed."

A Forestry Commission Scotland spokesman confirmed they were investigating an alleged illegal felling,

Second, I don't recall Mr Ewing then writing to the Strathy to complain about their headline or to demand they issue a correction pointing out he was only speaking as an MSP. This suggests that Mr Ewing was only too happy to be portrayed as intervening as a Scottish Government Minister on behalf of his constituent and against the CNPA.

Third, although the request for the CNPA to meet him and Mr Watt (for a second time, the Park has already met Mr Watt earlier in the year) was made by his parliamentary assistant, how many ordinary MSPs are able to get Chief Executives out of their offices to meet constituents elsewhere?

And fourth, without a minute of the meeting with the CNPA, how on earth can Nicola Sturgeon be satisfied that Fergus Ewing made it clear that everything he said at the meeting was said as an MSP and not in a Ministerial capacity?

What needs to happen

For the reasons given above, I was pleased to be quoted in the Ferret as saying that I believed Nicola Sturgeon should re-open the case. Arising from that the Scottish Government surely needs to take a further look at the distinction between "acting as a Minister" and "acting as an MSP" and issue guidance to Ministers on this.

What the Scottish Government shouldn't need to do, however, is to issue guidance about the implications of advocating for businesses which have been accused of committing illegal acts before investigations have run their course. That should be obvious. Any MSP or indeed senior public

official with integrity would keep well clear of such matters and allow the legal system to run its course (unless they had very strong evidence that a miscarriage of justice might be about to occur). Indeed the CNPA Chief Executive was very guarded about what he said for precisely this reason – quite a contrast to Fergus Ewing who decided to intervene against the advice of his own officials.

When it comes to deciding the acceptability of behaviour from Ministers and MSPs, I no longer believe this should be solely decided by other politicians, the Courts or any public authority set up for the purposes of adjudicating what politicians do. The system is clearly not working, whether this is Boris Johnson at the UK level or Fergus Ewing (and more than a handful of others) in Scotland. Politicians need to be brought back under control by giving the electorate far more power.

A key means of doing this would be to create a general right for electors to trigger by-elections at all tiers of government, including National Parks, when they get fed up with their elected representatives. In the UK, unlike other countries, the right of recall which was created in 2015, is limited to MPs convicted of certain offences. In those specific circumstances, a recall petition with sufficient signatures triggers a by-election. We need something much broader which encompasses the right to challenge the ethical behaviour of politicians (as in this case) and also requires politicians who jump political party to seek re-election.

The electors in Inverness and Nairn should have the right to petition for Mr Ewing's removal and, if sufficient numbers signed, for a by-election to be triggered. Whether or not enough would choose to do so after what has come to light through the unlawful Carrbridge fellings would be up to them. However, unless politicians face the real possibility of being held to account they will continue to abuse their position.

Category

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Tags

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2. Forestry Commission Scotland
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Date Created

September 8, 2019

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