

## The Cairngorm National Park Authority's decision to approve the funicular repairs

### Description

Yesterday, following a last ditch post ([see here](#)) in the early hours (which I circulated to all Board Members), the Cairngorms National Park Authority Planning Committee nodded through Highland and Island Enterprise's planning application to repair the funicular. There was no formal vote. None of us who have been campaigning against the repair of the funicular, which prejudices the entire future of Cairn Gorm, expected any different. The National Park Authority has, since its creation, sadly proved incapable of standing up to HIE and creating the framework that is needed for managing development at Cairn Gorm, one of Scotland's finest and most popular mountains.

A few good things have emerged from the saga and I will touch on these first.

### The positives

The meeting was live streamed, a first for the CNPA and a consequence of Covid-19 and the legal requirement for public authorities to take decisions in public. That meant far more people observed the Planning Committee than normal - up to 40 were recorded as viewing and, even better, you can now watch the whole proceedings [HERE](#) thanks to the kind people who recorded it.

The CNPA has long resisted recording of its meetings. Indeed it ditched audio recording, which it used to do for minuting purposes, when campaigners started asking for the recordings under Freedom of Information laws. This was a consequence of certain minutes not reflecting what was actually said. I therefore wrote to the CNPA before the meeting asking that they make the recording available to the public as a webcast, as happens at Highland Council, but have had no response as yet. The video link included in the Planning Papers now says the video is "currently unavailable". I hope the fact that others have, in their own time, made the recording available to the public, will shame the CNPA into action. The public should have a right to be able to see, if interested, what is said at meetings and how decisions are made.

The second good thing was Peter Ferguson. He wasn't introduced but quickly declared he worked for Harper Macleod, the firm that acts as solicitors to both HIE and the CNPA. He stated he had had no contact with Harper Macleod's legal advisers who are helping HIE at Cairn Gorm (presumably on how to recover money from "Natural Retreats" rather than planning matters) and therefore that there was no conflict of interest. Leave aside the murky world of legal relationships in the Highlands, Peter explained the law very clearly and in ordinary language. More specifically he explained what work associated with a development requiring planning permission counts as "permitted". His explanation cut through all the jargon in the Committee Report about Class 14 developments and Section this and that. His contribution is worth viewing at 7mins 30 into the recording. The CNPA should learn from Peter and start writing Committee Reports that people without a planning degree can

understand. It might promote more informed discussion at the Committee.

The third good thing was that a few Committee members showed they do care about Cairn Gorm and realise that HIE have not been protecting the mountain environment in the way it deserves. One even referred to all the damaged ground she had witnessed walking around Coire Cas. As a consequence, the Committee did strengthen the conditions that had been recommended by officers and asked for it to be recorded that the CNPA as Planning Authority WILL take enforcement action if all the temporary tracks required for the repairs are not restored to how they are now.

What Committee Members failed to do, however, was to address the fundamental issues.

## **Manipulation of the planning process**

The Board's request to HIE to have a masterplan in place before any new planning applications were considered was dismissed on the basis that granting planning consent for the funicular repairs wouldn't compromise whatever the consultants come up with. That was nonsense because keeping the funicular means that any future development will have to have the funicular at the centre of whatever is done and it's been the cause of most of Cairngorm Mountain's problems.

No-one asked officers to answer the points raised in the Badenoch and Strathspey's Conservation Group's submission ([see here](#)) which was read out at the meeting. It included this:

*Through dividing up the application red line boundary into 65 different parts, the applicant has reduced the area of the application to be under 1 ha in size. The actual area impacted will be over 4ha. This salami-slicing of the red line boundary has the dual effect of bringing the application under 2 ha which is the threshold for a major application, which would have required a Pre Application Consultation; and of bringing the application under 1 ha which is the threshold for requiring an Environmental Impact Assessment.*

HIE deliberately manipulated what ground was included in the planning application to avoid the need for ANY public consultation it could have done this as part of the consultation on the masterplan and to get round the automatic requirement for an Environmental Impact Assessment.

The CNPA then unfortunately assisted this subterfuge by providing a screening opinion which has not yet been made public that stated an EIA wasn't needed to assess the impact of the temporary tracks needed to effect the repairs.

The flaw in the whole process is that Class 14 permitted development rights are temporary and, as Peter Ferguson clearly stated, only exist so long as development work is taking place. What this means is that to come under Class 14 ALL the temporary tracks, and any damage caused by repair works to the surrounding ground, would need to be fully restored by the time the repair works are complete. That clearly cannot happen at Cairn Gorm because vegetation there takes YEARS to recover and for restoration to succeed will require continued interventions AFTER the repair work is complete. Had an EIA taken place, vegetation recovery would have been highlighted as a major issue and the whole area would have had to be included in the Planning Application.

Environmental Impact Assessments are crucial here. They are why developments such as hydro schemes have always included "temporary" works like access tracks as part of the development, rather than as ancillary Class 14 permitted developments which sit outside of it. They help to explain why developers up until now haven't been able to use Class 14 as a means of avoiding the need for Planning Permission. Unfortunately, no-one on the Planning Committee questioned why an EIA had not required for these "temporary" works when their longer-term impact is obvious. In doing so they have unfortunately set a very dangerous precedent for the National Park.

Had the tracks been included in the development, the CNPA could then have imposed conditions that lasted for 5 years, enabling the restoration to be monitored and interventions made over time. Instead, having agreed to treat the tracks as permitted developments all the CNPA can do is state that they will take enforcement action if the tracks are not fully restored once the repair work is complete. Since it is blindingly obvious that the tracks CAN'T be restored by that date, even if the CNPA lives up to its word and decides to take enforcement action, this will result in a time-consuming and expensive process. That will be far more challenging than if the tracks had been included in the development area.

My prediction is that if the repairs go ahead, the CNPA won't take enforcement action, because it will be too difficult, and HIE will be allowed to get away with yet another botched restoration job.

## **A failure to consider the National Park's fundamental purpose**

As former Board Member Dave Fallows pointed out in his submission read out at the meeting, rather than treating HIE's Application as a minor "repair" to a functioning facility, it would be more appropriate to view the funicular as a heap of concrete and rusting metal that has blighted the mountain. Seen in that light, the whole application should have been considered in terms of the National Park's aims of conservation, promotion of outdoor recreation, wise use of resources and sustainable development.

To take the question of whether the £10m repair work is economically sustainable, as an example, while HIE's Business Case is still secret, two major bus tour companies in Scotland have collapsed in the last couple of weeks as a result of Covid-19, Urquhart's and Shearings. It's not just the lack of revenue that has precipitated this, it's that the whole tourist model of piling older people into coaches and taking them around the Highlands to stay in large hotels is now highly problematic. Older People are not going to get back into coaches any time soon and it's almost inevitable that more coach companies will collapse over the next few months. And what has the whole of HIE's business model for the funicular at Cairn Gorm been predicated on up until now? Coach tours! The business case for repairing the funicular has just totally collapsed. You would never know that might be an issue from listening to the Planning Committee.

Instead of our Planning System proactively driving sustainable economic development and helping to address what are very challenging issues, such as the very future of tourism in the Highlands, we have a neo-liberal model in which the priority is to approve any development presented by a business, however daft. Within this, the role of Planning Officers has sadly been reduced to processing whatever is presented to them and helping developers jump through lots of tokenist hoops designed to make the

planning system appear fit for purpose. It's all an expensive and bureaucratic smokescreen at the end of which Board Members are old they can only consider the technical issues, not the merits of an application.

The consequence for Cairn Gorm is that we have moved from a position where, during the construction of the funicular, any stone that was moved had to be marked and returned to its original position, to one where all such works are treated as "permitted developments". I think of all the work that Adam Watson did to try and protect the natural environment at Cairn Gorm and my heart bleeds.

While a few Board Members did try and speak out, unfortunately none addressed the fundamental issues. Power appears to lie with senior staff and certain members of the Planning Committee, like former Board Convener and Liberal Councillor, Peter Argyle, who described this as an "excellent application" until that is addressed the planning system in the National Park will continue to be unfit for purpose.

### **Category**

1. Cairngorms

### **Tags**

1. Cairn Gorm
2. CNPA
3. funicular
4. HIE
5. restoration
6. Tourism

### **Date Created**

May 23, 2020

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