An Camas Mor, Rothiemurchus Estate, Aviemore

A recommendation to approve a section 42 application goes before the Cairngorms National Park Planning Committee on 18 August. Should the committee agree this recommendation it is expected that a legal challenge or formal complaint to the European Commission will be initiated in order to prevent formal planning approval being granted. This may be delayed if the committee decides instead to carry out a public consultation on the paper entitled Habitat Regulations Assessment which appeared on the planning portal of the CNPA website on 10 August. No planning determination should be made until such a public consultation has been completed and conclusions drawn from its outcome.

In papers prepared for the committee officers have failed to mention an important aspect of the Habitat Regulations. These Regulations include the following statement as regards the responsibilities of the regulatory authority: *sub-clause, 4: (4) They shall also, if they consider it appropriate, take the opinion of the general public; and if they do so, they shall take such steps for that purpose as they consider appropriate.*

It is not clear why CNPA officers have decided that it was not appropriate to take the opinion of the general public on the HRA despite the fact that the HRA indicated a very wide range of proposed mitigation measures that would affect substantial tracts of land in many areas of the national park well outside the proposed development site at ACM. Such mitigation measures, if they came to pass, would have fundamental implications for public access rights over a substantial part of the national park, for all members of the public and not just those living in or visiting ACM properties. There is no other part of Scotland where such an impact on access rights enshrined in the Land Reform (Scotland) Act 2003 is under consideration. Many will feel that the absence of any public consultation on this is a dereliction of duty by the CNPA.

The appearance of the HRA paper on the CNPA website on 10 Aug was the first indication that restraints on public access to land outwith the ACM proposed development site was being considered as an integral part of the planning application for ACM. Prior to this the CNPA made no effort to consult with the public as a whole about these HRA measures or with any group representing outdoor recreation interests, including their own Local Access Forum. They appeared to have limited their consultation with non statutory organisations to the RSPB alone, who are objecting to the section 42 application. It is very likely that a wide range of outdoor recreation interests would also be objecting to this application if they had known about the contents of the HRA paper before 10 August. It is astonishing that no effort was made to consult in this way, given that the HRA paper has been available in draft form within CNPA for at least 12 months and was provided to the RSPB in March/April of 2017.

If the CNPA Board decide to approve this section 42 application on 18 August it is recommended that the Scottish Government is immediately informed of the situation prior to formal steps being taken in relation to the Scottish Courts and European Commission.

Dave Morris

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