
CAIRNGORMS NATIONAL PARK AUTHORITY

CONFIDENTIAL FOR DECISION

**Title: AUTHORISATION OF USE OF PLANNING
ENFORCEMENT POWERS**

Prepared by: Gavin Miles, Head of Planning & Communities

Purpose of Report

To ask the Planning Committee to approve the use of formal enforcement powers to resolve an unauthorised track development behind the Clova Hotel, Glen Clova.

Recommendation

That the Planning Committee approve:

- a) the use of an enforcement notice to require remove the upper section of unauthorised track; and**
- b) the use of a S33A notice requiring a planning application for the lower section of unauthorised track.**

Background and Context

1. In 2017, a new track was constructed on the west side of the corrie burn behind the Clova Hotel, running generally north and northwest up Tom Baith and Meikle Tullock for c. 1km before running a further 600m north east beneath the Laird's Chamber back towards the corrie burn and King's Seat. The lowest section of c. 500m was an upgrade of an old farm track that had been present for many years (the lower section). Beyond that existing track was ground that had been driven over by vehicles in previous years but without the construction of a track (the upper section). The track is poorly constructed, with crude cut and fill, steep slopes, deep drainage ditches and significant debris dumped beyond the ditch margins. It is clearly visible behind the Clova Hotel from the valley floor and from surrounding hills. The track is entirely within the Cairngorms Massif Special Protection Area (SPA), designated for golden eagle.
2. The CNPA were notified by members of the public who saw the new line and construction machinery on the site. The CNPA served a Planning Contravention Notice (PCN) on the owner of the land to establish the facts of construction and both the CNPA's Enforcement and Monitoring Officer and Head of Planning and communities subsequently met the owner to discuss the track. The owner acknowledged that the track was unauthorised and has stated that they didn't understand that he couldn't create such a track without planning permission. They have indicated that they require

the track for land management purposes, stating that employees have always driven that line for deer stalking. They have said they will not remove the track but would be willing to make a retrospective planning application to authorise it.

Analysis and options

3. The CNPA's Planning Enforcement Charter notes that where a breach of planning control has been confirmed and action considered necessary, it will be considered against the policies of the Cairngorms National Park Local Development Plan (LDP 2015) to decide whether permission would be considered acceptable with the imposition of conditions or other limitations.
4. The full wording of policies can be found at:
<http://cairngorms.co.uk/uploads/documents/Park%20Authority/Planning/LDPI5.pdf>

Local Developmemnt Plan Policy	Cairngorms National Park Local Development Plan (2015) Those policies relevant to the assessment of this application are marked with a cross	
POLICY 1	NEW HOUSING DEVELOPMENT	
POLICY 2	SUPPORTING ECONOMIC GROWTH	
POLICY 3	SUSTAINABLE DESIGN	X
POLICY 4	NATURAL HERITAGE	X
POLICY 5	LANDSCAPE	X
POLICY 6	THE SITING AND DESIGN OF DIGITAL COMMUNICATIONS EQUIPMENT	
POLICY 7	RENEWABLE ENERGY	
POLICY 8	SPORT AND RECREATION	X
POLICY 9	CULTURAL HERITAGE	
POLICY 10	RESOURCES	X
POLICY 11	DEVELOPER CONTRIBUTIONS	

5. The construction of new track and upgrading of older track has created a visual scar on the hillside where previously there was little evidence of development. The development does not have a direct impact on the qualifying features (golden eagle) of the SPA, and while it has some impacts on habitats and on the water environment in the immediate vicinity of the track, these could be minimised and mitigated through further works, potentially conditioned via a planning consent. The track can also be used by the public for access and provides an additional route for some, although clearly as a wide vehicle track rather than footpath or open hill ground as was previously the case. In a simple assessment, the track is considered capable of complying with Policies 4 Natural Heritage, 8 Sport and Recreation, and 10 Resources, of the LDP 2015.
6. However, the significant impacts of the track are the visual impacts and impacts on landscape character. Policy 3, Sustainable Design of the LDP 2015 requires that development be sympathetic to the traditional pattern and character of the surrounding area, local vernacular and local distinctiveness. In the case of the hillside the track crosses, its distinctiveness was as a boulder strewn slope with few signs of development. It now has large track and construction corridor cutting up and across

those slopes, significantly changing the character of those slopes and of view up Glen Clova from approaches on both sides of the Glen. Although the lower section of track could be modified to reduce the most obvious impacts, the upper section of track could not so the development does not comply with Policy 3, Sustainable Design of the LDP 2015.

7. Policy 7 Landscape of the LDP 2015 presumes against development that does not conserve and enhance the landscape character and special qualities of the Cairngorms National Park, including wildness. If a development does not then it will only be permitted where any significant adverse effects on the landscape character of the National Park are outweighed by social or economic benefits of national importance and the adverse effects on the setting have proposed development have been minimised and mitigated through appropriate siting, layout, scale, and construction. The track does not conserve the landscape character of the area, does not provide social or economic benefits of national importance, and has not been designed to minimise impacts on the setting of Glen Clova. Although the lower section of track could be modified to mitigate the significant effects on landscape character and setting of Glen Clova, the upper section of track is not considered capable of sufficient mitigation so the development does not comply with Policy 7, Landscape of the LDP 2015.
8. In addition, Policy 1.3e of the Cairngorms National Park Partnership Plan 2017-2022 applies a presumption against new constructed tracks in open moorland. of
9. Given the scale of the adverse effect on landscape character, the setting of Glen Clova, and the focal point that this part of the Glen has for those travelling up it, we consider the development to have a significant negative effect on the amenity of Glen Clova and the special landscape qualities of this part of the National Park.

Recommendation

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May 2019

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