

Scottish Parliament Region: Highlands and Islands

Case 200500245: Cairngorms National Park Authority

Summary of Investigation

Category

Local government: National Park Authority; Planning

Overview

The complainant (Mr C) raised concerns that the Cairngorms National Park Authority (the Authority) failed to treat his planning application in a fair and consistent manner, in that it called in his application but had not called in a similar one; that the time taken to decide the application was excessive; and that the Authority failed to decide the application at the site visit after saying they would.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) failure to treat Mr C's application in a fair and consistent manner compared to another (*not upheld*); and
- (b) the time taken to determine the application was excessive and the Authority failed to make a decision at a site visit after saying they would (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. Mr C complained to the Ombudsman about two planning applications initially made to The Highland Council (the Council). The first was for the erection of a pony shelter for a new pony trekking establishment. The other was Mr and Mrs C's application to erect equestrian and tourist accommodation. Both applications were made to the Council and both were within the Cairngorms National Park. The Authority has the right in these circumstances to call in planning applications within the park area and to determine the applications themselves. The authority did not call in the first application, which was duly approved by the Council within three months of the application. Mr and Mrs C's application, however, was called in by the Authority and was determined 18 months after the application was made. The application was refused by nine votes to eight. Mr C said that his complaint was not that his application had been rejected. He accepted that he had an alternative remedy in that regard. He considered, however, that the two applications were similar but had been treated in a very different manner and, as a result, he and his wife had been treated unfairly.

2. Mr C said that both applications aimed to provide an equestrian experience for tourists and both were situated in sensitive capercaillie habitat. Mr and Mrs C spent 18 months agreeing access procedures with landowners, including the RSPB, and had entered into detailed agreements with Explore Abernethy, the Forestry Commission and the RSPB to curtail and manage the business's access to the countryside in order to mitigate environmental impact. The other application, however, because it was not called in, had not been rigorously assessed for environmental impact and so those applicants had not had to enter into any similar agreements.

3. Mr C also complained that his planning application was with the Authority for nearly 18 months. It was called in on 12 March 2004 but had been with the Council for two months before that. Mr C said he had been told that the application would be determined at a site meeting in December 2004 but that had not happened.

4. Mr C said that he and his wife ran an existing pony trekking business. The new venture was only five miles away and would impact negatively on their business. He accepted that all businesses had competition but, as it was called in, his application was assessed by the economic team at the Authority to consider both its economic viability and whether there would be any economic displacement of existing businesses. Although the new venture would displace economic activity in the area and affect both their own establishment and a further one locally, this had not been considered in relation to that application. Mr C said that one of the three reasons given for the refusal of his application was the risk of disturbance of the capercaillie habitat but the new venture would also take place within a high density capercaillie habitat. Mr C considered that his and his wife's application had been treated unfairly.

5. Mr C said that he had complained to the Authority but remained dissatisfied with their response.

6. The complaints from Mr C which I have investigated are:

- (a) failure to treat Mr C's planning application in a fair and consistent manner compared to another; and
- (b) the time taken to decide the application was excessive and the Authority failed to make a decision at a site visit after saying they would.

Investigation

7. In investigating this complaint I have had access to the planning papers in respect of both applications, identified relevant legislation and protocols (Annex 2 and 3) and corresponded with the Authority.

8. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Authority were given an opportunity to comment on a draft of this report.

(a) Failure to treat Mr C's planning application in a fair and consistent manner compared to another

9. The first application was for a lean-to roofed area to the rear of a garden wall to shelter trekking ponies, which would use the existing wall, have open front and sides, a concrete floor and corrugated iron roof.

10. This application was considered by the Authority at the Committee meeting on 28 January 2005. It was decided not to call in that application.

11. In deciding not to call in that application, the Authority said:

'The Authority raises no objection to the erection of this pony shelter, however, the surrounding woodland in the area is known to contain capercaillie habitats. If this proposal relates to the development or intensification of a commercial pony trekking business, then in the interests of conserving the natural heritage of the area the Authority would hope that any development or intensification of a pony trekking operation should be considered in the light of minimising recreational disturbance to capercaillie habitats.'

12. In response to this advice, before making their decision the Council sought advice from Scottish Natural Heritage, enclosing plans of the proposed trekking routes. Scottish Natural Heritage responded that it considered that the trekking routes proposed would not have a significant impact on capercaillie or the habitats they require.

13. Mr and Mrs C's application was for a four bedroom house, stable block (including tack room and feed room) and enclosed all-weather outdoor school on 12.5 acres of land.

14. It was considered at a meeting of the Authority on 12 March 2004. They decided to call in the application for the following reasons:

'The proposal represents the erection of a new dwelling house and the formation of a recreation based business in a prominent restricted countryside area. The site is located close to a tributary of the river Spey which is designated as a Special Area of Conservation (SAC), and within close proximity to buildings of historical and cultural interest. As such the proposals may raise issues of general significance to the collective aims of the National Park.'

15. Mr and Mrs C's application was ultimately rejected by the Authority for the reasons given in the Planning Officer's report. One of those reasons was that:

'The proposal fails to demonstrate that it could provide adequate protection to capercaillie populations in both Craigmore Wood and Abernethy Forest. It is, therefore, contrary to European Conservation Legislation, the advice of Scottish Natural Heritage and Policy G2 Design for Sustainability of the Highland Structure Plan 2003 and Policy N1 Nature Conservation of the same document.'

16. In response to my enquiries, the Authority's Head of Corporate Services wrote that, while the Authority sought to apply consistent administration of all planning applications, each application required a final decision on its own merits. Comparison of applications and decisions even for similar forms of development were, therefore, not valid means of assessing whether a decision was fair.

17. In deciding to call in an application, the Authority is obliged to consider whether the proposal conformed to the aims of the National Park which are set out in section 1 of the National Parks (Scotland) Act 2000:

- to conserve and enhance the natural and cultural heritage of the area;
- to promote sustainable use of the natural resources of the area;
- to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public; and
- to promote sustainable economic and social development of the area's communities.

18. Specific guidance is contained in the Development Control Protocol, which is an agreement between the Authority and the four local authorities (Aberdeenshire, Angus, Highland and Moray) which have areas within and adjacent to the National Park. Section 4 of the Protocol sets out the criteria for calling in and is contained in Annex 3 to this report.

19. I note that the Minutes of the Planning Committee specifically explained why the proposal may have raised issues of general significance to the collective aims of the National Park.

(a) Conclusion

20. In writing this report, it is not my intention to review the Authority's decision but rather whether it correctly followed its own procedures in making the decision and took the appropriate facts and legislation into account.

21. It is clear that the applications, although both designed to provide pony trekking, were for two entirely different things. Mr and Mrs C's application was on a much larger scale and aimed to provide accommodation for visitors in addition to pony trekking. In his letter to Mr C on 18 March 2005, the Planning Officer pointed out that all applications for new houses in the area zoned as restricted countryside in the Badenoch and Strathspey Local Plan had been called in by the Authority. The application for a pony shelter did not include accommodation and was not considered significant in terms of the aims of the Park. I am satisfied that the situation with capercaillie habitat was also different in each case. I, therefore, do not uphold Mr C's complaint that the Authority decided similar applications in a different manner.

(b) The time taken to decide the application was excessive and the Authority failed to decide the application at the site visit after saying they would

22. Mr and Mrs C's application was first considered at the Authority's Planning Committee meeting on 21 May 2004. The meeting decided to defer the decision, to allow further discussion between the applicants and the planning officers regarding the siting of the proposal, after which the Committee would attend a site visit. The proposal and any amendments would then be brought before the Committee for a decision at a later date. The application was subsequently amended to re-site the buildings and further information was provided by the applicants to answer concerns raised at the Planning Committee meeting. Following the site visit in December 2004, the planning officer prepared a further report about the amended proposals. This was considered at the Committee meeting on 22 April 2005, when the application was refused.

(b) Conclusion

23. Mr C complained to the Ombudsman that the time taken to consider his application was excessive and that the Authority failed to make a decision at the site visit in December 2004. I note, however, that Mr and Mrs C's application was

deferred specifically to allow discussion between Mr and Mrs C and the Planning Officers and was, in fact, amended prior to the site meeting. A further report was, therefore, necessary in order to consider the amended application. This inevitably extended the time that it took to decide on the matter but I can find no evidence that the time taken by the Authority was excessive. I also note that the minutes of the meeting at which the application was originally discussed said that after the site visit, the application would be brought back before the Committee for a decision at a later date. There is no evidence that it was ever the intention to make the decision at the site meeting itself. I, therefore, do not uphold this complaint.

31 October 2006

Explanation of abbreviations used

Mr C	The complainant
The Council	The Highland Council
The Authority	Cairngorms National Park Authority
RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
'Calling in'	The National Parks Authority have the ability, under certain circumstances, to take on planning applications and determine the outcome

List of legislation and policies considered

Town and Country Planning (Scotland) Act 1997

National Parks (Scotland) Act 2000

Park Authority Planning Procedures (Standing Orders) of the Cairngorms
National Park Authority

The Highland Structure Plan 2003

CAIRNGORMS NATIONAL PARK: DEVELOPMENT CONTROL PROTOCOL

This is an agreement between the Cairngorms National Park Authority and the four Local Authorities [Aberdeenshire Angus, Highland, Moray] about the exercise of development control functions within and adjacent to the Cairngorms National Park.

4. Criteria for Call-In

4.1 The types of planning applications which may be called-in by the CNPA will be those that raise a planning issue of 'general significance' to the Park's aims under section 1 of the National Parks (Scotland) Act 2000. The exercise of call-in will always be discretionary. Call-in need not be triggered automatically by 'general significance'. Scale will not always be the determining criterion. Issues of principle, precedent or cumulative effect could also arise. The full and proper locus for call-in will evolve and clarify over time and in practice.

4.2 Although the CNPA has discretion to call-in any planning application of 'general significance' to the Park, the CNPA believe that it is useful to indicate from the outset the kinds of applications it is likely to take an interest in. The following list is not exclusive although attention will focus on those applications which:

- by their nature and scale, may be incompatible with Park aims;
- may adversely affect nationally important natural and cultural heritage interests;
- are significantly contrary to a Structure Plan or Local Plan to the extent that they may be incompatible with Park aims;
- are subject to the Environmental Impact Assessment (Scotland) Regulations 1999;
- individually or cumulatively may have a clear and important adverse impact on the Park.

4.3 Consequently, and again bearing in mind Park aims, the types of proposal which, by their nature and scale, the CNPA would examine for call-in are listed below. The list is indicative only and by no means exclusive. The CNPA would not

expect to call-in every single occurrence of such proposals but would consider each in terms of Park aims:

- renewable energy schemes;
- mineral extraction;
- telecommunication installations;
- vehicle tracks other than those associated with approved afforestation schemes;
- recreational and tourism developments of more than local significance;
- housing, business and retail developments which may have a significant adverse impact on settlements or the countryside.