

CAIRNGORMS NATIONAL PARK AUTHORITY

FOR INFORMATION

TITLE: **NEW GUIDANCE AND PROCEDURE FOR AGRICULTURAL AND FORESTRY PRIVATE WAYS**

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Purpose of Report

To report on new guidance and procedure introduced following the introduction of The Town & Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2014 that came into force on 15th December 2014.

Summary

1. Before 14th December 2014, The Town & Country Planning (General Permitted Development) (Scotland) Order 1992 permitted developers unrestricted permitted development rights (PDR) for the construction of private ways on agricultural and forestry land under Classes 18 and 22 respectively, without the need to apply for planning permission.
2. While many private ways, particularly at low level, have been constructed without issue, an increasing number of tracks have been constructed or substantially altered in sensitive upland, highland and peat-land areas. This has led in recent years to many concerns in respect of the impact on the landscape, visual and environmental, flooding and drainage issues.
3. Following a lengthy consultation period, The Scottish Government has now revised the two classes under the PDR Order for private ways on agricultural land for agricultural use and on land used for forestry purposes. While PDR remains, Classes 18 and 22 may now be subject to conditions following a Prior Notification application.
4. From 15th December 2014 onwards, following the introduction of the above mentioned Amendment Order, private ways cannot be formed or altered unless the developer has completed a Prior Notification with the relevant planning authority.

5. The relevance of these changes to the CNPA is set out in this report, together with an update on new guidance and procedures that have been introduced so as to help explain and accommodate this new legislation.

Background

6. The consultation on the issue of uncontrolled track formation and alteration began in early 2011 on the back of the changes to the Householder PDR consultation and the discussions surrounding PDR in National Scenic Areas (NSA). The outcome of those consultations, in which the CNPA was heavily involved, produced a draft recommendation to the Scottish Government.
7. The CNPA had proposed the idea of using the Prior Notification (PN) process which had been used in relation to agricultural buildings for many years. The LLNP and SNH were proposing a slightly stronger way forward by seeking a planning application for new and altered private ways. Estates and the forestry industry were concerned by the recommendations and expressed their concerns to the Scottish Government. It was expected that the Minister would announce changes but in the event the PDR Order remained unchanged in 2012.
8. Examples of the impact on the landscape and media attention through prominent walking associations and other countryside users culminated in a presentation by LINK to the Scottish Government in October 2013. Most of the presentations were predicated on hill tracks rather than low level private ways.
9. The CNPA has always had a concern about the impact of hill tracks on the landscape in the Park and had produced a consultation draft for supplementary planning guidance (Interim Planning Policy No.3: Vehicle Hill Tracks) in 2004. Many of the then consultees made up the LINK representation in 2013.
10. This renewed pressure for changes in the legislation led to a new round of consultations with all interested parties but particularly with the two National Parks, some local authorities, FCS and SNH which finally culminated in the new legislation.

The CNPA Perspective

11. The issue of low land private ways and to a large extent the myriad of forestry tracks has not been a real concern. The main concern for the CNPA has and continues to be the impact of constructed hill tracks on the landscape. There have always been tracks across the hills for local access, droving of cattle to markets and the annual migrations to sheilings before the advent of the motor car. These hill tracks were specific in direction and thereby the numbers of tracks was quite limited.

12. The growth of field sports and particularly the rise of organized grouse shooting and stalking by shooting tenants and syndicates has required a more rigorous management of the hills. The need to manage the tic problem and the use of sheep as 'tic mops', the transportation of high paying shooters and general management by keepers in vehicles has required more new and upgraded/altered hill tracks to be established in a more intensive fashion.
13. The PDR Order 1992 addressed the issue of granting PRD to farmers/estates and also to the forestry industry which has a high level of control over its forest activities because their need was recognized. However the PDR Order did not address the issue of field sports under the guise of agricultural activities and this grey area has been widely exploited by the land managers and users. While there has been enforcement action by some Local Authorities and that includes within the Park, the compliance to the enforcement action has not been forthcoming and the breaches have not been followed through.
14. Many members of the public from individuals to the organizations such as Mountaineering Council of Scotland, North East Mountain Trust, Ramblers Association and FWAG have been concerned for a number of years and particularly in this National Park with its high hills and mountains which accentuate the intrusion of hill tracks in the landscape.
15. The Scottish Government's view is that the legislation was in place to take enforcement action and the CNPA has attempted to do that. However, the CNPA has been unable to enforce against a lot of inappropriate tracks in the Park because the land managers had been given permission by local authorities under Class 18 to construct or substantially alter tracks for agricultural reasons when they are primarily operating sporting estates.
16. It has always been the view of the CNPA that early advice before any works commence has been the best way forward to get cooperation and a better track. This has been evidenced in the recently approved applications for new and altered tracks on the Pitmain Estate near Kingussie.

CNPA Guidance and Procedure

17. The CNPA, led by the Head of Planning, has met with all five local authorities at Head of Service level, and a preferred procedure has been advocated concerning the PNs and our unique Call-in process. This procedure has been discussed and agreed in more detail with The Highland Council, and will be cemented within the revised Protocol Agreement which is shortly to be issued to all 5 local authorities, and which will cover a number of processes and procedures including those relating to agricultural and private ways.

18. The CNPA have prepared a Planning Advice Note (see Appendix 1) which is now available on the CNPA website and which has been disseminated within CNPA and with other stakeholders including SNH and Scottish Government. This Note sets out the process that an applicant needs to follow and the part that the CNPA may play in their application. All five Local Authorities have been sent the CNPA Advice Note that also includes a helpful flow chart.
19. CNPA have also reviewed their internal processes, introducing a Prior Notification Checklist and Procedure Note to help guide staff in how to process Prior Notification applications (see Appendix 2). This new process is still bedding-in, but appears to be working as anticipated. At the time of writing this report, the CNPA has received notice of a relatively small number of PNs for forestry tracks, although none have been deemed necessary for Prior Approval or called-in for determination by CNPA.
20. CNPA have also worked closely with The Highland Council in the preparation of their guidance for agricultural and private ways (see Appendix 3), and are encouraging other authorities to produce similar guidance, albeit that this can only be interim guidance until such time as definitive guidance has been received from Scottish Government. To that end, the Head of Planning at CNPA will shortly be meeting with Aberdeenshire Council to ensure consistency of approach and the introduction of consistent guidance for this part of the National Park.

Scottish Government Guidance

21. The need for change has been recognized by the Scottish Government through the recent legislation but, as highlighted above, they have not yet issued any guidance for planning authorities on how to implement the change in legislation.
22. The CNPA has responded to the latest consultation on the Scottish Government's preparation of the guidance. The main points raised are a need for:
 - a) Clearer understanding of the need for the legislation and how the success of the legislation can be assessed;
 - b) Clearer national guidance rather than planning authorities developing regional guidance;
 - c) Greater emphasis given to validation and that sufficient information is requested through a check list – this is important to the CNPA which uniquely does not receive applications and therefore validation is done by the five individual local authorities in the Park;

- d) Better correlation and interaction between this and other relevant corresponding legislation such as EIA, Natura sites and landscape qualities which has an impact within a National Park and PDR should be removed until the planning authority has approved the proposal;
- e) Evidence should be required at the outset of the PN of the purpose of the track and whether it is for agricultural or forestry purposes, if not then PDR is withdrawn;
- f) Clear statement within the guidance of the unique CNPA planning arrangements and how that should work with the five local authorities – ie. in line with our protocol agreement.

Recommendation

That Members:

- a) Note this report for information.**
- b) Seek an update on the legislation and Scottish Government guidance and how the protocol agreement is working after a six month period.**