

CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DISCUSSION

Title: Prior Notification of Agricultural and Forestry Private Ways – Review of CNPA experience so far.

Prepared by: Gavin Miles, Head of Planning
Jane Shepherd, Planning Manager

Purpose of Report

This paper provides an update on the CNPA's experience of using the new system of prior notification and prior approval for Agricultural and Forestry Private ways.

Background

1. In late 2014, the Scottish Government introduced new planning arrangements for Agricultural and Forestry Private Ways. Previously, Agricultural and Forestry Private Ways benefitted from permitted development rights and in effect, a deemed planning consent. All other new private Roads and Ways required (and continue to require) an application and consent for planning permission before they could be developed.
2. The new system was established partly in response to concerns that new tracks were developed in unsuitable locations, using poor construction standards in remote and sensitive parts of Scotland. The new two-tier system was intended to provide more scrutiny of proposals for new or significantly upgraded agricultural and forestry private roads and ways (mainly tracks).
3. The new system means that potential developers must submit basic details of any proposals to their planning authority in a 'prior notification' application. The planning authority then has 28 days to decide whether the proposal can go ahead as planned or whether more information or control over the proposals will be required. In those cases, the planning authority can tell the applicant that they require prior approval from the planning authority. This allows the planning authority to approve the proposal, with or without conditions, or to refuse the proposal.
4. The CNPA published a [Cairngorms Planning Advice Note](#) in April 2015, available on the CNPA website, that sets out the process and how it operates in the National Park as clearly as possible. In simple terms, the CNPA and local authorities have a notification and call-in system for such proposals that allows the CNPA to comment on prior notification applications and call-in prior approval applications.
5. It is also worth noting that the CNPA's key interest in private roads and ways is and has always been in new or significantly altered tracks in very visible locations. These tracks are normally used for a combination of some agricultural use and management as well as sporting uses and management. We frequently use the term hill tracks to describe

them, though in planning law they (like all private tracks or roads) are termed private roads or private ways.

Experience so far

6. To date, the CNPA has only been notified of 7 prior notification applications for agricultural or forestry private roads and ways. Each of those applications has been for agricultural use tracks and the CNPA has provided comments to the local authority where needed. Most of those comments have been to the effect that not enough information was provided to allow an assessment of the proposals. Officers recommended further information was sought along with prior approval. The CNPA is not yet aware of a prior approval application having been made in the National Park.
7. Most of the prior notification applications the CNPA has been told of were made in the summer of 2015. We suspect this is in part due to land managers discovering the new system requires more pre-planning work for them and is confusing. If a track requires prior approval, then it is likely that the applicant will need to submit much of the detail that would be required with a full planning application. That requires significantly more work and potentially cost to the applicant than previously required. This is a significant culture change for many land managers. Given that many didn't fully understand the requirements under the previous system, getting to grips with the complexity and additional requirements of the new system will be frustrating. We know of at least one land manager who has tried to use the system, found it confusing and inconsistent and delayed their project by many months.
8. We also know that planning authorities find the new system complicated. The system is in effect supposed to provide a screening system where most works run through the prior notification process smoothly, but where any poorly designed, prominently located, or otherwise harmful tracks can be managed and controlled by the planning processes. The change in processes towards checking each prior notification proposal closely for potential impacts when little information may be available will be a challenge.
9. The complexity is increased in the Cairngorms National Park both by the involvement of the CNPA and by the various additional designations in the National Park that can remove permitted development rights, trigger Environmental Impact Assessments, or link to Natura legislation. These are frequently relevant to development in the National.

Looking Forward

10. At this point in time, the CNPA's limited experience of the new procedures means we don't have many examples to draw on. The planning team will continue to make the system work as best we can with the five local authorities. We obviously have concerns that the new system will not practically address the issues that we consider important in the National Park.
11. The CNPA has always worked with land managers on raising the issues of track construction and how to plan and execute it well using best practice. Little has changed in that regard. The basic points about careful preparation by the land manager, the location, siting, design, construction methods and reinstatement are all vital to a good

track. When done well, it is unlikely that any planning authority will have many issues with a proposal. The CNPA's Heritage and Land Management team will continue to refer contacts to the CNPA's planning advice note on procedures and the best practice track construction guidance from Scottish Natural Heritage or the Forestry Commission where appropriate.

12. The Scottish Government are aware that the new system is challenging. They have commissioned a review of the system by external consultants and the CNPA will be contributing to that review. We will make the points illustrated in this paper to the review and continue to draw examples of where the system either works or fails or could be improved.

Gavin Miles and Jane Shepherd

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planning@cairngorms.co.uk