

Cairngorms Planning Advice Note

Planning Permission and Permitted Development Rights for Agricultural and Forestry Private Ways

Updated: September 2022

The planning system and private ways

Private ways - often referred to as 'tracks' or 'hilltracks' - are an essential part of the infrastructure of the National Park. They help land managers to do their work and the public use them for recreation and enjoyment.

Private ways that are for agriculture or forestry purposes are classed as 'permitted development' in planning law and don't normally need planning permission to be formed or altered. However, the planning authority must be told about the proposed private ways on agricultural or forestry land before they are created or changed and can decide that it needs to approve the proposed ways before any work can take place.

The Scottish Government has produced comprehensive guidance on prior notification and approval requirements for private ways in [Circular 2/2015](#). This Planning Advice provides guidance in respect of applications for private ways within the Cairngorms National Park.

All private ways that are not on agricultural or forestry land and are not for agricultural and forestry purposes need planning permission to be formed or altered.

Ask your planning authority

The rules about planning permission, permitted development and private ways are complicated so you should always speak to your local authority about what you'd like to do before you act. You should also refer to [Circular 2/2015](#) for guidance. Your local authority planning team can explain whether your proposal is likely to need planning permission or other consents.

If you undertake work without the correct approval or consent, the planning authority may take enforcement action. This could cost you significantly more time and money than if you had followed the correct process.

Prior notification

It is a legal requirement¹ for anyone who intends to form or alter an agricultural or forestry way to make a 'prior notification' application to the local planning authority.

A prior notification application for a private way within the Cairngorms National Park must include:

- Relevant agricultural holding/crafting/forestry registration number
- Description of agricultural activities carried out within the agricultural unit
- Description of the proposed use of the private way
- Scaled location plan showing the full extent of the agricultural or forestry unit and the proposed private way therein
- Scaled plan (or plans) showing and encompassing the full extent of the proposed private way, including all areas of cutting or filling (or both), route edges, water crossings and other operations
- Full details (including scale drawings, as necessary) of the design and means of construction of the private way (including proposed materials and finishes,

¹ under the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2014

construction methods, seeding and verge reinstatement etc)

- Full details (including scale drawings, as necessary) of all engineering operations, surface water drainage provision and any on-site proposals to dispose of waste material resulting from the formation of the private way
- Screening Opinion for Environmental Impact Assessment (EIA)

In addition, further detail will be required in circumstances where;

- Water courses or bodies will be crossed - Full details (including scale drawings, as necessary) of the design and means of construction of any culverts, bridges, or other water crossings will be required.
- Water courses/bodies, other water environment resources and peatland may be affected – A scale plan showing the location of any water courses, lochs/lochans, wetlands, flushes, groundwater-dependant terrestrial ecosystems (GWDTE), peatland, groundwater resources and private water supplies will be required.
- Cutting or filling (or both) is required or private ways will be formed on a gradient – Full detail (including scale drawings, as necessary) of all cutting or filling (or both) or other engineering operations will be required.
- Cutting or filling (or both) is required or private ways will be formed on a gradient – Cross-sectional scale drawings for all sections of the private way where (i) with regard to cutting or filling (or both), the cut and/or fill exceeds 0.5m in height/depth; and (ii) the existing gradient of the land exceeds 1 in 5/20%//11.31 degrees will be required.

The planning authority will use that information to decide whether 'prior approval' is needed. If sufficient detail is **not** provided, Prior Approval will be required.

You can continue with your development in accordance with details submitted if you:

1. get written notice from the planning authority confirming that prior approval is not needed; or
2. have not had any response from the planning authority within 28 days of the date they received your application.

The 'maintenance' of private ways includes routine repairs and does not require prior notification. However, works including small alterations, re-surfacing, widening or re-routing and changes to drainage are considered to be 'alterations' and will require Prior Notification. Further clarification can be found in Para. 17 of [Circular 2/2015](#). You should get advice from your planning authority before undertaking maintenance to an agricultural or forestry way.

Prior approval

If the planning authority decides you need prior approval, they will tell you within 28 days of receiving your prior notification application and may ask you for more information. They may also consult other organisations about your proposal. They will decide your application and will send you either:

1. a notice granting prior approval for your proposal, with or without conditions; or
2. a notice refusing prior approval for your proposal with reasons for it. If your proposal is refused you have a right of appeal.

If you receive prior approval from the planning authority you can go ahead with your development as long as you comply with any conditions attached by the planning authority.

CAIRNGORMS NATIONAL PARK AUTHORITY

14 The Square, Granttown on Spey, PH26 3HG.

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The role of the CNPA

The CNPA 'calls-in' planning applications that are particularly sensitive or important to the National Park². The CNPA has an agreement with local authorities that means it can also 'call-in' prior approval decisions for agricultural or forestry ways that are 'significant' for the National Park.

The CNPA sees all prior notification applications that are submitted to a local authority within the National Park and will advise the local authority planning team if it thinks a proposal is significant and requires prior approval. The CNPA may call in and determine prior approval applications that are significant to the National Park.

Other things that will be considered in all cases

Environmental Impact Assessment (EIA)

All agricultural or forestry private ways in the Cairngorms National Park have to be screened to see whether an EIA is needed. You must ask your planning authority for a scoping opinion before or at the time of making a prior notification application.

If your proposal is for an agricultural way and needs an EIA you will have to apply for planning permission. If your proposal is for a forestry way and an EIA is needed under Forestry EIA regulations, it won't need a planning application but will need prior notification and possibly prior approval.

European Designated Sites

If an agricultural or forestry way is likely to have a significant effect on a European designated site (Special Area of Conservation (SAC) or Special Protection Area (SPA)), permitted development rights are removed until the planning authority gives written approval. This written approval is likely to come through a planning permission, a prior approval, or simply a letter from the planning authority. No development can start till that written approval has been given.

Almost half of the area of the National Park is covered by European designated sites. All the water courses including tributary rivers, streams and even ditches that are connected to the Rivers Spey, Dee, Tay and South Esk are SAC sites. This means that any development near to these water courses could have a significant effect on them. The planning authority can only give approval where it is certain that the proposal will not affect the integrity of the site.

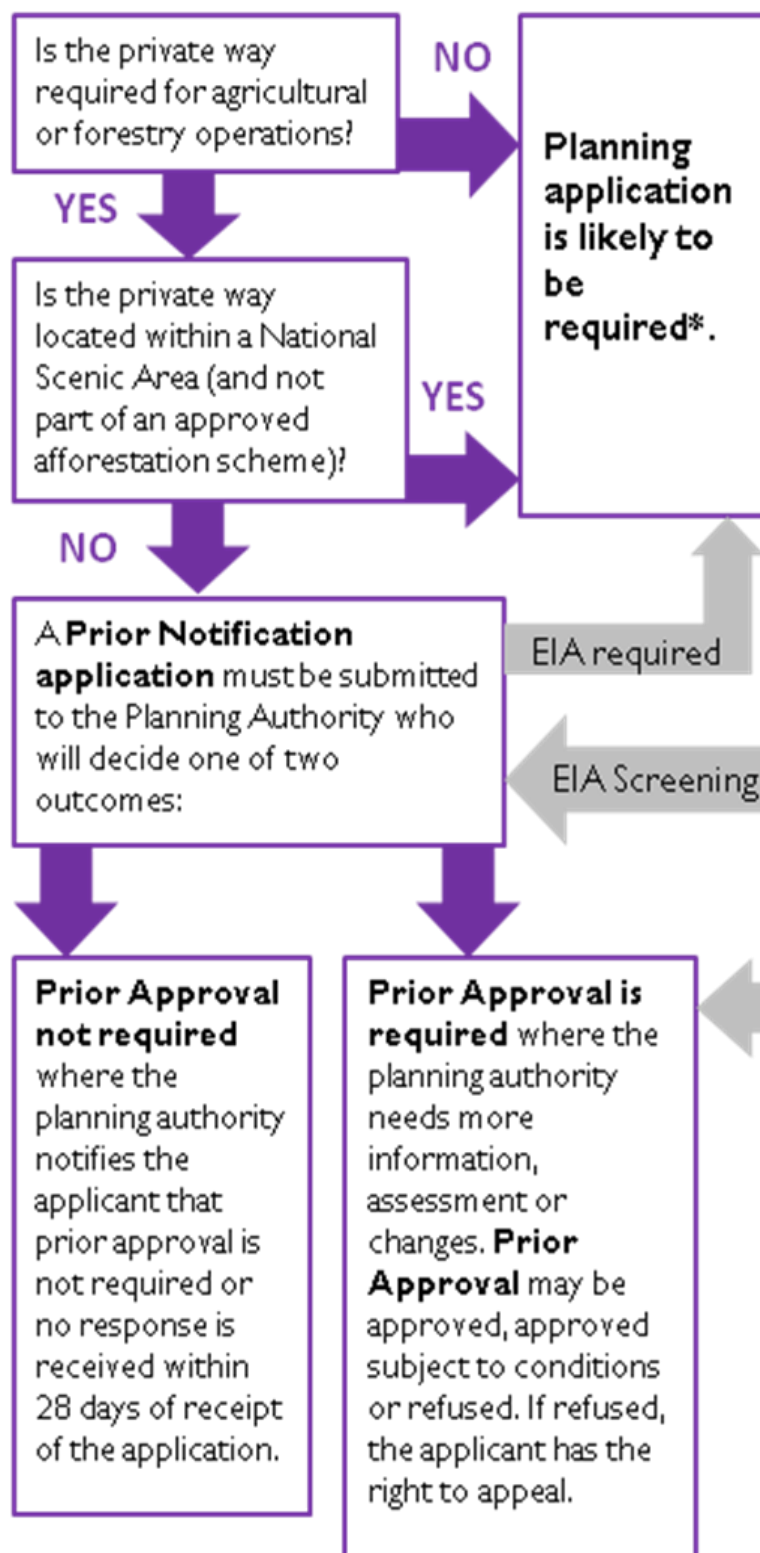
National Scenic Areas

All private ways (that are not part of an approved forestry scheme) in National Scenic Areas (NSAs) need planning permission. There are three National Scenic Areas with the National Park:

1. The Cairngorm Mountains NSA, that covers a large part of the central Cairngorms and the Inshriach, Rothiemurchus and Glenmore areas north to the railway line on the northeast side of the river Spey;
2. Deeside and Lochnagar NSA, that includes Deeside from the Linn of Dee in the west to close to Ballater in the east; and
3. Loch Tummel NSA that covers a small part of the National Park at Killiecrankie.

² See Cairngorms Planning Advice Note: *Applying for Planning Permission in the Cairngorms National Park*.

New or altered Private Ways and the Planning System:



Environmental Impact Assessment (EIA)

You must ask the planning authority for an EIA screening opinion for any private way proposals within the Cairngorms National Park before or at the same time as submitting a Prior Notification application.

*If a proposal needs an EIA then it also needs a planning application unless it is a forestry track covered by forestry EIA regulations.

European Sites & Habitats Regulations

If a proposal is likely to have a significant effect on a European designated site (Natura SPA or SAC), permitted development rights are removed until the planning authority has approved the proposal in writing.

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Further advice

If you need a new private way, to alter an existing way or to repair of an existing way, The Scottish Government's Circular 2/2015 Consolidated Circular on Non-Domestic Permitted Development Rights ([Planning circular 2/2015: non-domestic permitted development rights - consolidated circular - updated 2021 - gov.scot](#) (www.gov.scot)) provides comprehensive guidance on prior notification and prior approval requirements in relation to agricultural and forestry ways.

In addition, NatureScot's advice: Constructed Tracks in the Scottish Uplands, NatureScot, formally SNH, 2013 (updated, 2015) ([Constructed tracks in the Scottish Uplands | NatureScot](#)) will help you design in a way that is most likely to be given planning permission or prior approval.

The Cairngorms Planning Advice Note '*Applying for Planning Permission in the Cairngorms National Park*' explains more about planning permission in the Park.

You can contact the CNPA planning team for advice at planning@cairngorms.co.uk or

Tel: 01479 873535