

**Response from Scottish Environment LINK
to the Independent Review of the General
Permitted Development (Scotland)
Amendment (No.2) Order 2014**



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**Issues arising from monitoring of Prior Notifications in individual planning
authorities from 24th August 2015 to 30th January 2016**

Note these points relate to Prior Notifications [PN] where Hilltracks are involved, but they equally reflect on the practice used in different local authorities [LAs] with respect to public information access and the helpfulness or otherwise of their online portals. Our data has been gathered since 24/08/2015 and is sent to LINK weekly by a team of volunteer monitors. These are deployed over 11 local authorities and the 2 national parks. Cases of concern are investigated and the local authority has been contacted in several cases.

We have not commented on any forestry tracks. The monitors regularly draw our attention to these, and we do scrutinise them, but to date none has been of sufficient concern to warrant any action.

The legislative change brought in at December 2014 means that Applicants now have to justify to planning authorities their proposals for tracks which are permitted development [PD]. This is a step forward over the previous arrangement. However, there are some problems, and these are detailed below:

1]. **No opportunity to refuse a development** At the moment there is a reliance on local authority staff having the time and resources to scrutinise submissions from Applicants, which would involve identifying any designations and assessing whether a track is PD and a PN is justifiable, or whether a Prior Approval submission is necessary, within the limited 28 day period. If a planning authority accepts a track as PD, then it cannot actually STOP it going ahead even if it is in a sensitive area. On the other hand if tracks required full planning consent then they could be rejected if they were deemed to be intrusive in a sensitive landscape or if a designated site were to be involved. There is obviously scope here for some undesirable tracks to "slip through the net".

Proposed developments in NSAs need a full planning application. We believe that SNH has to be notified of any development, including tracks, on SACs, SSSIs etc and their views have to be acted on but full planning applications aren't necessarily involved, if the applicant can agree to suggested mitigation measures. We pointed out in our report "Track Changes" that even though

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this affords a measure of scrutiny, landscape is not always the feature that SNH is considering – this could be a particular habitat characteristic for example, that can be protected by suitable mitigation measures- and of course then there is no need for public consultation.

2]. **Short time frame** The legislative change means that planning authorities can require that tracks follow the best line, and are constructed to a better standard than those we have seen in both the recent past and over the years, and do not have the potential to cause disruption to sensitive habitats. However, there are concerns over i] whether all LAs have the time and resources to do this within the stipulated period, ii] that potential problems are spotted [such as designated sites] and iii] that there is no monitoring of construction standards and practice.

3]. **Listing Prior Notifications:** The listing of PNs on planning authorities' websites is very variable. At an early stage it was realised that not only does each LA adopt a different system, but also many do not list PNs with other full applications. The way the LA's reference number is constructed has to be known [eg Angus, where 15/16PRIORN is the search word] and the monitor has to search both the full application list as well as whatever alternative each LA is using. If a member of the public is unaware of this, then they will not be aware of PN applications. A minority of LAs list all together, which is helpful. Problems have been found; with Angus Council and Scottish Borders Council, where the online portal states against every listing that no public comments are being accepted; and, particularly with Perth and Kinross Council which does not list PNs once validated on the public access portal and they are not in fact listed until the PN or PA has been fully dealt with, with no scope for public involvement. Of the LAs we are monitoring, Perth and Kinross is by far the least forthcoming.

We wrote to all the LAs we are monitoring in August asking them how they displayed PNs so that the public could scrutinise etc them. Only 7 out of 14 LAs/NPs replied.

Thus, the changes have reduced to some extent the democratic deficit which existed previously in that most of the 11 LAs are putting PNs on their websites timeously [even though they may be difficult to find] and some are at least accepting comments of concern from the public. The Highland Council is perhaps the best performer to date. We feel that the Scottish Government has a role here in trying to achieve a uniform system that reflects good practice across the board, including the opportunity for public scrutiny and comment at an early stage.

4]. **Dates of validation:** when it has been decided that a PN has to become a Prior Approval it was found that in Highland the original PN validation date was used in one case. This is not satisfactory as then the period for public observation, scrutiny and comment is reduced. When enquiries were made to the planning dept they said there had been a delay in deciding the track justified PA so they gave the original validation date to compensate the Applicant for their own error. This example was at Tressady Estate, Rogart, Highland Council; ref: 15/03488/FUL, where there is an SPA for Hen Harriers. SNH were involved and the one condition set is that there must be no construction activity during the breeding season. There is concern that this may have resulted from the vigilance of just an observant local case worker, as SNH are not contacted for their views on PD proposals. The PA was approved.

5]. **Prior Approval:** There have been only two examples of LAs requesting that a PA be submitted in response to a PN. One is mentioned above at Tressady estate, the other is at Dunachton estate [see below] where the PA was granted. This was a good example of a LA thoroughly examining the case made by the Applicant, [but maybe this only resulted in response to our correspondence], and SEPA were also involved. SEPA originally objected but on provision of further information from the Applicant they withdrew their objection but the stream crossings

involved will be subject to a CAR licence. Following the progress of a PN that becomes a PA is a major issue as we have not yet been able to judge how this is handled by the range of LAs and what the outcomes are. There is also concern in this regard, that the LAs may ask for PA and when this comes in it is validated and given a different reference number, making it difficult to follow an individual proposal through the system. There is a lack of specific guidance on how LAs should progress a PN becoming a PA. Thus we have yet to see whether the additional and more detailed information which applicants have to submit under PA is routinely put on online portals of planning websites, and each case of PN progressing to PA needs to be followed up to ascertain this. In addition, the correspondence between the Applicant and the authority should be made available with the rest of the documentation for a particular planning reference, to enable scrutiny of the justification for reasons given and decisions taken.

6]. **Justification for PD:** We have major concerns regarding how LAs are interpreting the Applicants' justification for PN under the intended agricultural criteria. There are no universal and precise guidelines covering this point of course. This is compounded by some Applicants [3 to 01/11/15] using the fact that the land is on a registered agricultural holding as proof of "agricultural use" for every activity they wish to undertake. Some tracks are obviously primarily for shooting access, despite claimed agricultural purpose, such as being required for driving sheep or for access to facilitate feeding cattle. Such tracks are not covered by permitted development and should be proposed via a full planning application, otherwise the landowner/manager is misusing the system. Example: 15/02610/FUL; notably this was also a full planning application and not a PN, at Garrogie estate, Highland. The proposed track is in Wild Land Area 20. Due to various concerns, including inadequate construction specification proposals and justification for proposed agricultural use, North East Mountain Trust (NEMT) and LINK commented on and Scottish Wild Land Group (SWLG) objected to this application.

In the case of 15/03759/PNO, at Dunnachton estate, near Alvie in the heart of the Monadhliath, which was deemed to require PA by Highland Council, NEMT were concerned that, in the letter to the applicant saying that PA was required, the planners did not ask what agricultural use the track would be put to. In this case it is possible that because the estate claimed the track was to replace a previously existing washed out one the authority felt this may have been less relevant. SWLG were also concerned about the stability of the stream banks and the construction techniques used to protect them from damage. We raised these concerns with the planning authority. We felt that the planning authority possibly interpreted this as a repair of a pre-existing track. However, it **appeared** that the Highland Council only asked for information about the details of the agricultural purpose of the track **after** we had said that this important and essential point wasn't in the original application. They should, of course, have ascertained this at the outset as it is the sole consideration for PD justification. SEPA have since been involved in the consultations over this track and there is to be a CAR licence for the works affecting the stream; and the Highland Council have satisfied themselves over the purpose of the track. The PA has been granted.

Local authorities should be asking for more precise information in the form of justification/evidence on intended use. How do LAs check that what applicants say about intended agricultural use is indeed the case? How do they know that the use of sheep isn't just as tick mops and that the main intended use of the track is for sporting purposes?

In addition how will planning authorities monitor this over both the construction phase and over the use of the track with time? They do not have the resources [time or availability of staff to conduct site visits] to even check whether tracks have been constructed as detailed and proposed in the Prior Notification [or Prior Approval if that has been required]. Even if we have

monitors who could check these things on site visits, and could perhaps spot this and we could then raise problems with the local authority, this would be most unlikely to result in any action as the planning authorities do not have time or finance to do this.

In conclusion, the changes do bring some improvement in that some level of scrutiny can be taken, but a] if a track is deemed to be PD even if it is unsatisfactory in certain ways, it will go through, and b] if Applicants are basically being disingenuous in their stated purpose for the track, then tracks intended for sporting use [which require a full application] will slip through.

7]. **Construction techniques and specifications:** most applicants are not being precise enough and certainly over the length of the track, where the techniques used may differ depending on the terrain crossed, insufficient detail is given. They tend to just say they will follow the SNH guidelines – but they need to demonstrate this in their application documentation. Examples to date: Garrogie Estate, Highland ref: 15/02610/FUL; Dunachton estate, near Alvie, in the Monadhliath Highland ref: 15/03759/PNO. Highland Council decided that the latter should proceed to PA [see above]. Precise construction techniques must be specified and agreed with the LA so that a suitable track for the location is built and so that the outcome can be monitored on the ground, to demonstrate adherence to the original application conditions set. At best and in general PN applications seem to have one or more construction diagrams lifted from the SNH guidance document, or modified from this, but rarely give adequate detail of where this type of construction will be used or how the construction details will be adapted over the length of the track to take into account differing ground conditions and so on. Despite this, local authorities tend to validate them and put them on their websites, which is very concerning. There are very few examples of good practice in this respect and we have to say the majority are unacceptable. The SNH guidance [and there is currently revised guidance out for consultation] should be strongly promoted by LAs and the Scottish Government. The general impression is that Applicants are not at all familiar with what is required to construct a robust, non-intrusive and durable track in upland situations.

8]. **Tracks constructed without applying for PN:** It is a major concern that we do not always know whether tracks continue to be constructed without even a PN being lodged, or where a planning application would be deemed to be essential. Rothiemurchus estate in the Cairngorms National Park recently bulldozed an existing track to effect improved access without submitting any documentation whatsoever to the LA or CNPA, despite the land being in a designated area where such an alteration or improvement would require a full planning application to be submitted. We query whether LAs are keeping a record of new tracks constructed since December 2014 which they have not been notified about, and whether any action is taken as a result of this unregulated development.

9]. **Consideration of designations:** There is a risk that designations will be missed, this was close in the case of Tressady estate above, but if the public do not have easy access to PNs then these could be overlooked by planning staff in LAs where this is not their speciality. In this respect there is concern in the case of the Scottish Borders Council and Angus Council which do not accept comments on PNs from members of the public; of course we will submit comments if there are issues we have concern over in the case of a particular track to these LAs, but will they be considered – or even read?

10]. **Poor documentation:** Some of the submitted documentation is of pretty poor quality, especially of the maps used. Maps are often of an inappropriate scale, and not scaled and referenced to the OS system and it can be difficult to translate verbal location specification to an OS map. It has been spotted that there is a lack of supporting documents presented in a couple of PNs in the Scottish Borders. These have been validated despite this, though, so there is a

concern re level of scrutiny, examples are 15/01307/AGN and 15/01112/AGN, which has been queried by our volunteer. Since this LA says "not currently accepting comments from the public on this application" on the PA portal against each PN, how can we comment on aspects of siting and location?

11]. **National Parks:** Since the Cairngorms NP is not a full planning authority, the conterminous LAs seem to inform the park of applications that might affect it. However, is it specified anywhere that they should do this? The LLTNP is a planning authority in its own right.

12]. **Monitoring of construction** Once the weather has improved to enable construction, especially at altitude, there is a need to consider monitoring of those PNs and PAs that have been through the system and any conditions will need to be enforced. This will inevitably be resource intensive and we query whether any LAs are planning to undertake this work.

LINK members of the hill tracks campaign group are:

Association for the Protection of Rural Scotland
Cairngorms Campaign
North East Mountain Trust
Scottish Campaign for National Parks

Ramblers Scotland
National Trust for Scotland
RSPB Scotland
Scottish Wild Land Group