

20th November 2014

Proposed guidance on assessing proposals for private ways for the purposes of agriculture or forestry (commonly referred to as 'tracks')

This guide is intended to assist land managers, developers and planning authorities in their consideration of proposals for the construction, upgrading or change of use of tracks for the purposes of agriculture or forestry in light of the introduction of a prior notification and approval process.

Purpose of the private way

Permitted development rights only apply to private ways for agricultural or forestry purposes. Private ways, or the use of a private way, for other purposes (such as recreation or game management) do not benefit from permitted development rights and a planning application is therefore required for any works to a private way, or any use of a private way, for non-agriculture or forestry purposes unless works or use are so minor as to be clearly *de minimis*. If there is any doubt about intended or actual use, a planning application must be required.

Change of use of existing private ways

A change of use of an existing private way, for example from exclusively or overwhelmingly agricultural to other uses, may result in significant changes to the nature and frequency of use and have direct and indirect environmental impacts on the wider environment. Because use for non agricultural or forestry purposes does not benefit from permitted development rights, planning authorities must ensure that planning permission is sought whenever private ways may be being used for other purposes.

Representations

Planning authorities should ensure that a mechanism is in place to promptly publicise the submission of a prior notification application, ideally on the weekly list of planning applications. Planning authorities should accept and take into account any representations received in relation to applications for prior notification.

Issues to consider in determining whether prior approval and conditions are required

If there are any doubts as to the possible impacts of a track, prior approval should be required. In determining whether prior approval is required and what conditions should be applied, a planning authority should consider any relevant material considerations, but in particular:

- The use of the new or altered track. An estimate of the nature and likely frequency of use of the track should be required from the applicant to assist. Other than incidental, *de minimis*, use for other purposes this must be exclusively for agriculture or forestry purposes or a planning application will be required as the track will not qualify for permitted development rights.
- The clarity and precision of plans submitted.
- The need for the new or altered track and the route and design chosen. Clear evidence should be provided to justify any works proposed. Temporary or time limited consents will be appropriate in some instances.
- The scale and design of the proposed track.
- Plans for restoration, including funding future restoration works.
- Details of how erosion and water run off will be minimised.

- Details of how the construction will be monitored and high standards ensured.
- The (in-combination) or cumulative effects of the proposed way with existing routes and land uses.
- The possible direct and indirect (for example, through increasing water run off or making access to previously undisturbed areas more easy) impacts on landscapes, visual or recreational amenity, land, soil, water, biodiversity.
- The sensitivity of the area that would be affected, in particular:
 - the relative abundance, availability, quality and regenerative capacity of the environment (including landscape, soil, land, water and biodiversity) of the area;
 - the capacity of the environment to accommodate the proposed track without harm, paying particular attention to the following areas:
 - wetlands (including peatlands), burns, rivers, lochs;
 - coastal zones;
 - mountain and forest areas (including scrub);
 - wild land;
 - National Parks and other protected areas;
 - areas with visual or physical connectivity to sites designated for landscape or natural or cultural heritage (proposals within designated sites are likely to automatically require planning consent);
 - areas where there are impacts from existing tracks or other infrastructure;
 - landscapes and sites of historical, cultural or archaeological significance.



The Mounaineering Council of Scotland, while not a member of LINK, also supports this campaign.

Contact details

Helen Todd, Co-convener LINK hill tracks campaign group and Campaigns & Policy Manager, Ramblers Scotland. Tel: 01577 861222, Mob: 07733 118289, Email: helen.todd@ramblers.org.uk

Beryl Leatherland, Co-convener LINK hill tracks campaign group, Scottish Wild Land Group. Email: beryl@chway.plus.com

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Registered HQ office: 2 Grosvenor House, Shore Road, Perth PH2 8BD tel 01738 630804 email enquiries@scotlink.org
 Parliamentary office: 3rd Floor, Gladstone's Land, 483 Lawnmarket, Edinburgh EH1 2NT tel 0131 225 4345 email parliamentary@scotlink.org