

Dear Nicola.....your party needs to stand up to landowners on hill roads

Description



Unlawful road construction in progress – digger left of centre – Fraoch Coire Beinn Udlamain October 2018. Despite being in a Special Area of Conservation and reported to Scottish Natural Heritage, no planning application has been submitted for this road. An example of the Scottish Government’s “rigorous” planning system

After my post on [The Scottish Planning Bill, hill tracks and our National Parks](#) a reader sent in what appears to be a standard letter which SNP MSPs have been sending to constituents who have lobbied them. With Andy Wightman’s amendments to bring most hill roads into the planning system due to be debated in the Scottish Parliament today, this post explains why whoever drafted the SNP’s position on

hill roads has got it badly wrong.

Letter and commentary

“Thank you for contacting me to express your views about the amendments lodged by Andy Wightman MSP to the Planning Bill.

At present, there is a rigorous procedure for applying to create private ways on land: applicants must submit notice of their intention to form or alter a private way to the relevant planning authority. The authority then considers the proposal and may require changes to such matters as the design, layout and method of construction of the private way.”

Comment: its not true that there is a rigorous procedure for applying to create “private ways”. That is the whole issue at stake. Dozens of roads have been created by landowners over the hills over the last thirty years without any application or notice to Planning Authorities and without any subsequent enforcement action. The creation of new roads has continued unabated after the introduction of the Prior Notification System for agricultural and forestry roads in December 2014. Two examples from the Cairngorms National Park, which both happen to be from the Angus North Constituency of the Environment Minister, Mairi Gougeon, are the road behind the Glen Clova Hotel ([see here](#)) and the new roads at the head of Glen Prosen ([see here](#)). If the procedures for creating private ways are so rigorous, why two years after these unlawful roads have been reported to the Planning Authority has no enforcement action been taken?

“The Scottish Government has been proactive on this issue, addressing concerns in 2014 by introducing the requirement for agricultural and forestry private ways to be notified to planning authorities.”

Comment: it would be truer to say the Scottish Government has gone backwards since 2012 when in its consultation on the review of Permitted Development Rights it stated there was “compelling evidence” to bring hill tracks into the Planning System. It then announced that further evidence of the problem was required (when it is obvious to anyone who has ever walked the hills or travelled through the Drumochter and looked at the hills on either side). The most likely explanation for this about turn was landowner lobbying.

Then, in response to the compelling evidence in the report produced by Scottish Environment Link hill tracks group in 2013 ([see here](#)), instead of removing Permitted Development Rights it introduced the Prior Notification system. This has effectively allowed landowners to continue to build forestry and agricultural tracks anywhere, apart from National Scenic Areas, so long as they notified the Planning Authority first. While Planning Authorities can “call-in” Prior Notifications and require “prior approval”, they have been very reluctant to do so because of the work involved, the fact they get no fees and this distracts them from trying to process full planning applications according to Scottish Government targets. Earlier this year the CNPA sent me a list of 64 Prior Notifications in the Cairngorms National Park since 2014 – in only three of these cases had prior approval been required. Partly as a consequence the Prior Notification system has been widely abused, with sporting estates using the presence of a few sheep or trees to claim new roads or road upgrades for deer stalking or grouse

shooting don't require planning permission.. A good example is the many tracks created on the Invercauld Estate (see top link).

We must consider the needs of farmers and foresters who need access to their land. Removing permitted development rights for private ways would have significant operational and cost impacts on agricultural businesses and could delay planting and harvesting operations and limit access to remote grazing areas.

Comment: farmers and foresters' have now had over thirty years of cheap access to heavy machinery to construct networks of roads over their land. The need for new tracks, for example to access a new grazing area or to fell trees, doesn't suddenly arise, its predictable. Road extensions are part of business planning and in the case of forest roads for felling can often be anticipated years in advance. Removing permitted development rights is therefore extremely unlikely to have any operational impact on any farmer or forester who is half competent. And as for the cost impact on farmers and foresters, this would be entirely within the control of the Scottish Government who could set different rates for such Planning Applications.

What the SNP letter fails to mention is the much bigger cost to the landscape, wildlife, recreation and tourism of poorly designed and inappropriately located roads. Is that really of no concern to SNP MSPs?

"As regards tracks for shooting, there are not currently, nor have there ever been, permitted development rights for private ways for the purpose of shooting or other field sports. The proposed amendments would therefore only affect agricultural or forestry businesses in the areas designated by the amendment. If a planning authority is not satisfied, on prior notification, that a private way is for agriculture or forestry use, it should require a planning application to be submitted for it."

Comment: this appears a wilful misreading of the current situation. The point is new roads for sporting purposes are still being built without constraint because all a landowner has to do is claim they are for agricultural or forestry purposes and it appears almost impossible for a Planning Authority to prove otherwise. That is why the Andy Wightman's amendment referred to requires any road that might ever be used for shooting to require planning permission. That would prevent the abuse of the Prior Notification system which has also been well documented by Scottish Environment Link in their report from last year, "Changing Tracks" ([see here](#)). Unfortunately, it appears that whoever drafted the SNP response, in unconcerned about the way the Planning System is being systematically abused by landowners.

"I understand the concerns that the creation of private ways can have the potential for negative impacts on visual amenity and the environment. The Scottish Government is committed to carrying out a review of the Order under which permission is allowed for such tracks after the completion of the Planning Bill. This is the appropriate place for considering concerns over private ways and will give all parties the chance to have their views heard. This ensures that any proposed changes will be subject to full public consultation"

Comment: this is best described as trying to kick the issue back into the long grass. The Permitted Development Order was reviewed in 2012 and we know what happened then. There has already been more than enough consultation, no more is needed. Good governments don't procrastinate.

The real issue is whether the SNP leadership is prepared to back their many party members and many members of the public who are concerned about Scotland's landscape or, if not, whether the SNP MSPs will break the leadership line. As I have commented before, bringing private roads more fully into the planning system is only the first step. Planning Authorities then need to be prepared to refuse inappropriate applications and insist on the highest standards of design and construction for the rest. That will need resources and with the ongoing programme of cuts to Public Authorities I suspect that explains some of the apparent reluctance of the SNP leadership to extend the Planning System. The answer, however, is to charge large landowners who are some of the richest people in the country fees that fully cover the cost of processing, monitoring and enforcing planning applications.

Wider issues with the Planning Bill

For any reader interested in the wider issues with the Planning Bill, Planning Democracy have produced an excellent summary of where the Bill is at and the key issues to be debated over the next two days ([see here](#)). It concludes with a section on the environment, which includes Andy Wightman's amendments and proposals to strengthen the Planning System in respect of climate change which is worth quoting in full:

"For supporters concerned with biodiversity and climate change here are a list of positive amendments we hope are successful. Planning Democracy are part of Scottish Environment LINK and as such have been working as part of their planning group to help achieve greater protection for the environment in planning."

1. Amendment 173 which make securing positive effects for biodiversity an outcome of the NPF
2. Amendment 181 which requires that net positive effects on biodiversity are to be considered in environmental assessment.
3. Amendment 201 that includes consideration of green infrastructure and community open space requirements in the granting of planning permission
4. Amendment 202 introducing cycling facilities.
5. Amendments 213 and 214 which include green and blue infrastructure in the definition of types which could be funded via the proposed infrastructure levy in Part 5 Section 29 of the Bill.
6. Amendment 207 requiring Forestry and Woodland Strategies.
7. Amendments 14 -18 requiring full planning control for the construction of vehicle tracks in upland areas
8. Amendments 186 and 200 strengthens commitment to existing strategies and targets on climate change with regard to assessment of environmental effects of national developments.
9. Amendment 209 which requires the automatic suspension of peatland extraction in certain circumstances and amendments 210 and 211 relating to the phasing out of commercial peat extraction.
10. Amendment 174 replaces amendment 35 and includes the preservation of peatland into the list of strategies to have regard for whilst drawing up the NPF which we welcome.
11. Amendment 174A strengthens the language to ensure the NPF is compatible with climate change and land use strategies."

Category

1. Cairngorms
2. Loch Lomond and Trossachs

Tags

1. climate change
2. grouse moors
3. hill tracks
4. landed estates
5. landscape
6. Minister Environment
7. planning
8. Scottish Government
9. scottish natural heritage

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