



LINK Hilltracks Campaign – background and update, April 2023

Summary

Vehicle tracks in the hills can cause huge damage to our fragile upland areas, especially if they're badly constructed. Currently, planning permission is not required for many tracks as land managers benefit from Permitted Development Rights (PDRs) for tracks if they are for agricultural or forestry purposes. This leaves a loophole whereby tracks which are primarily used for sporting purposes are being built under PDRs for other sectors.

Scottish Environment Link are asking for an urgent review of Permitted Development Rights for private tracks.

LINK has been campaigning for over a decade to bring such developments fully into the planning system and remove PDRs for private rights of ways for forestry and agriculture uses. We believe this would improve construction standards and bring about a measure of democratic oversight to all tracks.

In 2014 we were successful in getting the government to require developers to give Prior Notification (PN) to their local planning authority of any proposed new or upgraded tracks, and ascertain whether prior approval is required. However, having monitored the introduction of PN system for three years, we built evidence that the new process had not fundamentally reduced the environmental damage caused by some tracks. It also did not address the democratic deficit we had identified. Crucially, public comments are not invited for Prior Notifications or prior approvals and they are not subject to the same policy scrutiny as full planning applications.

The government decided not to use the Planning (Scotland) Act 2019 to rectify this situation but instead, recognising the high levels of public interest in the issue, committed to consulting on Hilltracks as part of a wider review of PDRs in 2020. This has not yet happened and inappropriate hill tracks continue to be built in fragile upland areas without full consideration of the need for the track or its construction methods through the planning system.

In the meantime, the political context has changed since our campaign started a decade ago. Hilltracks are recognised as being one damaging practice associated with intensive grouse moor management. This is now coming under public scrutiny following the government's acceptance of the recommendations of the Werrity Review. A new Wildlife Management and Muirburn (Scotland) Bill which could address some of these practices is currently being considered by the Rural Affairs and Islands Committee.

At the same time, the Planning (Scotland) Act 2019 has as its overarching principle:

(1)The purpose of planning is to manage the development and use of land in the long term public interest.

while the Fourth National Planning Framework has its focus set out in the Ministerial Foreword as follows:

putting the twin global climate and nature crises at the heart of our vision for a future Scotland will ensure the decisions we make today will be in the long-term interest of our country.

It is LINK's view that these wider circumstances, with their recognition of the need to re-balance the public and private interest in land use, as well as the damage that can be caused to fragile upland habitats including peatlands, mean that it is time to revisit the removal of PDRs for Hilltrack development.

At the same time, our upland habitats are facing a range of track-related developments including wind and hydro renewables, mobile phone masts and tracks for peatland restoration as well as use of All Terrain Vehicles away from tracks. Therefore we call on the government to use the opportunity of a PDR review to publicise NatureScot's good practice [guidance on upland track construction](#) and the Cairngorms National Park's [guidance on responsible ATV use](#) and raise awareness across the land management sector.



Background to the issue

Poorly constructed hill tracks cause landscape and environmental damage, and have been a concern to environmental and recreation bodies for decades. The LINK campaign grew from the growing concerns felt by environmental and recreation organisations in Scotland since the 1970s over the proliferation of new tracks in fragile upland locations built under PDRs.

Many of these had been badly constructed and were responsible for poor drainage, peat damage, erosion, biodiversity loss and adverse landscape impacts including scarring obvious from many miles distant.

No planning permission is required if they are for agricultural or forestry purposes, as there are extensive permitted development rights for private ways required for these purposes. Yet we were aware that many landowners were abusing this privilege and the primary purpose for many of these tracks was, in fact, for shooting and stalking activities. Without the need for a planning application there was no democratic scrutiny of the need for the track or its construction standards.

Tracks built primarily for shooting and stalking purposes do not benefit from permitted development and require a full planning application to be made with the opportunity for the public to comment – and for the application to be refused, or for it to be permitted but with safeguarding planning conditions attached.

A campaign in 2013 led by the LINK Hilltracks group gathered evidence from members of the public about the spread of upland tracks. This led to the publication of the Track Changes report (attached). We had some partial success in addressing the issue, in that since 2014 all land managers must give prior notification to local authorities of their intention to construct or alter new hill tracks for agricultural or forestry purposes. But full planning permission, involving greater scrutiny, is still not required.

Resourcing of planning authorities is an important factor to consider in this context. Planners tend to have high case loads and little time for detailed examination of Prior Notification submissions. Such development proposals do not incur a planning fee. There is also no formal opportunity for the public to comment, unlike with a full planning application. This means that the often useful and helpful contributions of people with a high level of understanding and knowledge of the issues involved are not sought; this is a disadvantage and adds further to the democratic deficit.

The LINK Hilltracks group monitored planning authority websites for three years to help ensure the new legislation was as effective as possible. The findings were set out in the [Changing Tracks report](#) in 2018.

Evidence showed that prior notification did bring a measure of public oversight to new tracks, but there was a defined process for landowners to follow and still no requirement to consult with neighbours or with environmental or recreation organisations. Given the difficulty in proving the main use of a track, there were still instances of many new or upgraded tracks being built without seeking full planning approval, even if the likelihood was that these tracks were being primarily used for field sports. The underlying issues relating to the lack of local democracy had not improved.

While this change in legislation in 2014 was welcome, we still consider that planning approval should be required. This is the only solution to reduce the level of damage that is being encountered in the Scottish hills and improve construction standards. It would help to uphold the public interest in the way land is managed, by enabling individuals and organisations to respond to planning applications. It would also give certainty to landowners over what is required from them.

We have continued to monitor local authority planning portals to ensure that we are aware of any new or upgraded track developments. Since 2018, LINK members have drawn the attention of planning authorities to unauthorised tracks and also responded to specific applications for new tracks when we believe there is a clear public interest to get involved.



Government action

In 2018 and 2019 we used the parliamentary process of the Planning (Scotland) Bill 2019 to raise the issue of hilltracks with Scottish Ministers. Following this, the Minister for Planning committed to holding a further consultation on the issue as part of a major review of PDRs following the Planning Act coming into effect, recognising the high levels of public interest in this issue.

This consultation was due to be published in March 2020 as part of Phase 1 of the review of PDRs. However, it was then delayed due to Covid and a subsequent commitment to include Hilltracks within Phase 3 has also not been met.

Sustainable upland management

As noted above, since 2014 the government has been moving forward with its land reform agenda to increase the public interest in land use and management. In addition, there is now a stated recognition that we are living with a climate emergency and biodiversity crisis which both need to be addressed through sustainable land use and management practices.

Added to this the lack of public accountability for land managers in the Prior Notification process for hilltrack construction and it's clear that there is a need to reconsider the PDR legislation for tracks.

Tracks are still built in the uplands for other legitimate purposes – including wind farm and hydro renewables development, peatland restoration works and to service mobile phone masts. While these tracks already require planning permission we have evidence that at times their construction methods are damaging to the environment and planning conditions are not strictly enforced.

One reason for this is lack of awareness by developers of the challenging conditions for constructing tracks in these locations without damaging peatlands or causing undue landscape scarring. In addition, mitigating any silt run off to watercourses is crucial.

All these techniques are set out in the NatureScot Guidance on upland track construction mentioned above, yet we are aware of contractors who have not heard of this guidance, never mind the requirement to follow it.

Therefore we call on the Scottish Government to take the opportunity of a review of PDRs for hilltracks to also promote understanding of the wider impacts of tracks and improve methods of construction across the entire sector. Promoting and publicising the NatureScot guidance as well as the Cairngorms National Park's guidance on responsible ATV use to the land management sector would contribute greatly to this aim.

This response was compiled on behalf of LINK Hilltracks Group and is supported by:

Association for the Protection of Rural Scotland	North East Mountain Trust
Badenoch & Strathspey Conservation Group	Ramblers Scotland
Cairngorms Campaign	RSPB Scotland
John Muir Trust	Scottish Campaign for National Parks
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Introduction to Scottish Environment LINK

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment. Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits. This consultation response was written by LINK's Hilltracks Group.



Scottish Environment LINK the voice for Scotland's environment



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