



## **Hill Tracks in the Scottish Uplands**

**Member's debate 9 June 2010**

RSPB Scotland welcomes Peter Peacock MSP's member's debate on Hill Tracks in the Scottish Uplands. We believe such tracks are an increasing problem in our fragile upland areas, and have detrimental impacts on flood management, soils and biodiversity. We have concerns about the cumulative impact of such tracks, and a lack of scrutiny within the current system. They have proliferated because planning permission is automatically granted to certain developments through the General Permitted Development (Scotland) Order 1992, usually because they are considered not to be of significant public interest. This includes many operations for agricultural or forestry works. Identical activities for other industries would require planning permission. Currently scrutiny is only required in designated sites, and even then it is inconsistent. Although some Permitted Development (PD) rights have recently been updated for householder development, we believe that the Scottish Government should undertake a full review of PD rights as soon as possible.

### **Permitted Development rights**

There is a need to review the scope and enforcement of PD under town and country planning legislation. PD effectively automatically grants planning permission to a range of prescribed types of development. Typically, works that can be considered PD are those that are very unlikely to result in issues of public interest. However, a number of activities that can be carried out under PD can result in significant impacts on the environment, and may therefore be of significant public interest. For example, development carried out as PD can include agricultural land drainage works, bulldozed roads, and mineral extraction, all of which can impact on the natural heritage. Unlike works that require a formal planning application, there is no, or only very limited, opportunity to scrutinise PD proposals or to make the public aware of the developer's intentions. Consideration of cumulative impacts is particularly difficult or impossible when there is no requirement for a formal consideration of environmental impacts.

Agricultural and forestry operations are often considered as PD, even where identical works carried out for other purposes would require planning permission. This inconsistent treatment is probably a result of efforts to avoid any additional regulation of these industries in the post-war period, when every encouragement was being given to increase agricultural and forestry production. However, as agriculture and forestry are now also valued for the other public goods they provide, such as environmental protection, it would seem appropriate to reconsider the extent to which these sectors benefit from PD rights.

The potential for environmental harm from PD was recognised until recently by Government policy such as NPPG 14, which says:-

*79. In certain circumstances, a planning authority may consider it necessary to promote a direction under Article 4 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 in order to withdraw permitted development rights in respect of certain classes of development within a designated area. This might be justified as a means of preventing damage to the natural heritage interest of the area by a range of otherwise unregulated works. However, permitted development rights should not be restricted without good reason and clear justification. The objective should be the minimum withdrawal of permitted development rights necessary to achieve conservation objectives.*

However, this relates only to designated sites and does not take into account the cumulative effect of continued or widespread activities under PD rights. Neither does it allow for a strategic, nationwide approach as will be required to mitigate the land use contributions to climate change, to adapt to climate change and to fully meet the aspirations of the Scottish Biodiversity Strategy. This was replaced by Scottish Planning Policy published in February 2010 with no reference to PD.

While local planning authorities do have the option of using Article 4 Directions to restrict permitted development rights, the Article 4 process is cumbersome and slow to implement. This undoubtedly deters many local planning authorities from using Article 4 Directions or from regularly reviewing existing directions to ensure they remain fit for purpose. Because Article 4 Directions are implemented locally, there are also difficulties in ensuring consistency, which creates uncertainty for developers and third parties.

There is some potential to consider the environmental effects of PD operations through Environmental Impact Assessment (EIA) and Natura legislation. For example, the Environmental Impact Assessment (Scotland) Regulations 1999 remove PD rights for certain types of development and the Conservation (Natural Habitats &c.) Regulations 1994 require that potential PD proposals be given additional scrutiny before they can be confirmed as PD. However, our experience is that developers and local planning authorities are not always well informed about these provisions and developments are often not properly considered against these provisions. The prior approval processes, in theory, also offer an opportunity for planning authorities to consider the implications of certain PD operations in more detail. However, in practice there is limited opportunity for public consultation or for other third parties to offer comment on proposals.

Further difficulties are caused by the wording of the General Permitted Development (Scotland) Order 1992. For example, Part 9 refers to “works required for the maintenance or improvement” of private roads or ways as being PD, without any restriction. Improvement can obviously include works of a significant scale that could result in adverse environmental effects. Similarly, Class 20 allows the “carrying out of any works required in connection with the improvement or maintenance of watercourses or land drainage works” to be considered as PD. Again, very significant environmental harm could obviously result from such activity both in the general countryside and which affect designated sites.

For these reasons, RSPB Scotland consider that the Scottish Government should undertake a comprehensive review of PD (especially those classes of PD affecting land use and the natural environment), assess the impact of these largely uncontrolled activities against Scottish Government natural heritage and climate change objectives, and report to Parliament on what changes it will make and, where no change is to be made, explain why. Such a review should perhaps be carried out every 5 years. This would broadly correspond to and complement the statutory review of the National Planning Framework and the new format development plans.

**We would accordingly welcome such a commitment from the Scottish Government.**

For further information please contact:

<p><b>Aedan Smith</b>, Head of Planning &amp; Development or <b>Julia Harrison</b>, Parliamentary Officer RSPB Scotland, 25 Ravelston Terrace, Edinburgh EH4 3TP Tel: 0131 311 6500 Fax: 0131 311 6569 Email: <a href="mailto:aedan.smith@rspb.org.uk">aedan.smith@rspb.org.uk</a> or <a href="mailto:julia.harrison@rspb.org.uk">julia.harrison@rspb.org.uk</a> <i>Registered Charity England and Wales Number 207076, Scotland Number SC037654 – JUNE 2010</i> <i>RSPB Scotland is part of the Royal Society for the Protection of Birds, the UK-wide charity which speaks out for birds and wildlife, tackling the problems that threaten our environment. Nature is amazing - help us keep it that way.</i></p>
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