



Planning Guidance:
Creation of New Tracks and Alteration of Existing
Tracks

January 2017

1. Introduction

- 1.1 The Peak District National Park Authority is the local planning authority for the National Park. It produces planning policies and determines planning applications, including applications for prior notification of agricultural or forestry development within the National Park.
- 1.2 We acknowledge that the provision of new tracks and alterations to existing tracks can often help in the sustainable management of moorlands, grasslands and woodlands, for example. However, in many cases planning permission will be needed and new and altered tracks can have significant effects on the character and appearance of the landscape and the archaeology and biodiversity of the National Park. The National Park is a special place and it is important that in working with landowners we strike a balance between the need for access and safeguarding the Park's valued characteristics.
- 1.3 This advice note aims to assist landowners, and others, who may be considering such works and sets out the Authority's understanding of the current planning legislation. It also provides guidance to developers/land owners/land managers/farmers/agents which seeks to minimise the impact of new or altered tracks on the landscape. It does not purport to be a definitive legal reference document or statement of the law. However, it has been prepared with the benefit of relevant case law.
- 1.4 The advice does not apply to maintenance works carried out by the Highway Authorities on public rights of way as these are covered by separate legislation. If you are planning works which may affect a public right of way you will need to get the consent of the Highway Authority before starting. The National Park Authority can give guidance on such works, including suggesting ways in which public access can be safeguarded or improved.
- 1.5 We recommend that, other than minor localised repair works on existing tracks, proposals are discussed with the Authority prior to commencing any work, due to the complexity of the planning legislation, and the particular circumstances of each individual case. This will reduce the risk of damaging important features of interest and carrying out abortive works. The Authority can give free advice on whether planning permission is required and, if permission is needed, we offer pre-application advice to help guide you through the process (see <http://www.peakdistrict.gov.uk/planning/advice>).

2. Planning Legislation

- 2.1 This section provides an overview of the relevant legislation and case law. Planning legislation is complicated and the interpretation of the legislation is a result of emerging case law. This section of the advice note aims to provide a brief overview of the most relevant extracts of planning law relating to track development. At the end of this advice note there is a flowchart which can be used as a guide to whether planning permission is required.

2.2 In section 55 of the Town and Country Planning Act 1990 (the 1990 Act), 'development' is defined as;

'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.'

2.3 The creation of a track or the alteration of a track on land is usually defined as an 'engineering operation' and is therefore regarded as 'development' for planning purposes. This would normally include tracks constructed of plastic matting, or similar materials, as well as more conventional tracks constructed of crushed stone, for example.

2.4 Planning permission is required for almost all development. This is usually through an application made to the local planning authority, or it may be a general permission given by a Development Order – usually by the Government. The most significant Development Order is the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"). This grants permission, subject to specified conditions and limitations, for a wide range of development, commonly known as 'permitted development', the details of which are set out in Schedule 2 of the Order. If development is permitted by the GPDO it does not require an application for planning permission to be made to the local planning authority.

2.5 However, it is important to note that where works proposed to be carried out as 'permitted development' are likely to have a significant effect on European Sites (these are sites such as Special Areas of Conservation which are designated under the European Union's Habitats Directive) the works must not begin until the developer has received written notification of approval from the Authority. The relevant statutory provisions can be found in Regulations 73 – 76 of the Conservation of Habitats and Species Regulations 2010.

2.6 Broadly speaking, the permitted development rights for permanent works to create or alter tracks might fall under Part 6 (agricultural and forestry) or Part 9 (repairs to un-adopted streets and private ways) in Schedule 2. Permitted development rights for temporary tracks fall under Part 4.

2.7 If agreement cannot be reached on whether works that are proposed constitute permitted development it is open to a developer to submit an application to the Authority for a Lawful Development Certificate. Advice on submitting such applications is provided on the Planning Portal (www.planningportal.gov.uk) and the necessary forms and guidance can be found on our website.

Permanent Agricultural and Forestry Tracks

2.8 On agricultural units of 5 hectares or more **Schedule 2, Part 6, Class A of the GPDO** provides for the carrying out of "*any excavation or engineering operations*" (including the formation or alteration of a private way) provided that they are

'reasonably necessary for the purposes of agricultural or forestry within the unit', and subject to compliance with conditions including the following:

"A.2 – (2) (i) the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to....the siting and means of construction of the private way...."

The Authority must make a determination within 28 days. This is often referred to as the Prior Notification Procedure.

2.9 For agricultural units of less than 5 hectares (but not less than 0.4 hectares) **Schedule 2, Part 6, Class B of the GPDO** provides for *"the provision, rearrangement or replacement of a private way"*. Again this is subject to the works being *"reasonably necessary for the purposes of agriculture within the unit"* and to a Prior Notification procedure as mentioned in the previous paragraph.

2.10 Section 336 of the Act defines agriculture as follows:

'agriculture includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly;'

2.11 For the sake of clarity, the management of land for sporting shooting does not fall within the definition of 'agriculture' as it is a recreational pursuit. The decision of the House of Lords in *Earl of Normanton v. Giles 1980* gives some clarity on this point (see Annexe 3). In many cases land is used for both agricultural purposes and shooting activities (and may also be open for public recreation and managed for conservation purposes) so vehicular access may be required for more than one reason. In these cases it is the primary purpose of the works which will determine whether permitted development rights apply.

2.12 On land used for forestry, including afforestation, **Schedule 2, Part 6, Class E of the GPDO** permits *"the formation, alteration or maintenance of private ways"* and *"operations on that land, or on land held or occupied with that land, to obtain the materials required for the formation, alteration or maintenance of such ways"*. Such works must be reasonably necessary for the purposes of forestry or afforestation and works consisting of the formation or alteration of a private way are subject to a Prior Notification Procedure.

Repairs to Un-Adopted Streets and Private Ways

2.13 **Schedule 2, Part 9, Class E of the GPDO** relates to repairs to un-adopted streets and private ways. It allows for the carrying out on land within the

boundaries of an un-adopted street or private way of works required for the maintenance or improvement of the street or way. Further advice on what constitutes 'maintenance or improvement' is provided in Section 3 below.

Temporary Tracks

- 2.14 The short-term provision of a track, typically for a period of weeks or months, to facilitate other construction works, for example, does not normally require the submission of a planning application to the Authority provided the track is removed once the other works are complete. It would, however, be useful if we were notified of proposals to lay temporary tracks so we could help minimise any potential adverse impacts
- 2.15 **Schedule 2, Part 4, Class A of the GPDO** permits the provision on land of *"..works...required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land."* In this context "works" would include the provision of a temporary track to provide access for vehicles and equipment which are involved in the operations.
- 2.16 Part 4, Class A development is permitted subject to the conditions that when the operations have been carried out *"(a) any..... works... permitted by Class A is removed, and (b) any adjoining land on which development permitted by Class A has been carried out is, as soon as reasonably practicable, reinstated to its condition before that development was carried out."*
- 2.17 Development is not permitted under Part 4, Class A if *"(a) the operations referred to are mining operations, or (b) planning permission is required for those operations but is not granted or deemed to be granted."*
3. What is Likely to Constitute the Creation of a Track, Alteration to an Existing Track or Track Maintenance or Improvement?

Creation of Tracks

- 3.1 The formation of a new track, typically involving laying a hard surface perhaps with prior excavation/scraping, where there has previously been no form of surfacing, will always require either prior notification, if it is for agricultural or forestry purposes (Part 6 of the GPDO), or full planning permission if it is not required for an agricultural or forestry purpose, or is within 25 metres of a classified road. Such work is considered to constitute an 'engineering operation' and therefore falls within the definition of 'development' as set out in section 2 of this note.
- 3.2 Even if a 'historical route' used by vehicles is thought to have existed or is marked on a map, there is sometimes little physical evidence of this on the ground due to the passage of time and often it will not be possible to determine its boundaries. In these circumstances works such as excavation and/or the laying of surfacing etc on that route would amount to a new track in planning terms, as an 'engineering operation', and would either require prior

notification (if for agricultural or forestry purposes) or planning permission as set out above. Such work is not likely to be permitted under Part 9 of the GPDO.

Alterations to Existing Tracks

- 3.3 As the position in relation to alterations is more complex, we strongly suggest early consultation with the Authority's Planning Service to clarify the extent of the works, and the planning position in advance of any work taking place.
- 3.4 The works listed below, depending on their extent and scale, are likely to constitute development, as an engineering operation, which will require either planning permission or prior notification (depending on the purpose of the works) and would not fall within Part 9 of the GPDO:
- The widening of an existing surfaced track outside its existing boundaries, including the creation of passing places
 - The provision of turning circles or areas of hard standing (for the parking of vehicles or storage of felled trees, for example) outside the boundaries of an existing surfaced track
 - The digging of new drainage ditches outside the boundaries of an existing surfaced track
 - Works within 25 metres of a classified road will require planning permission
 - Total or partial width surfacing where there is evidence of existing partial surfacing
 - The provision of full or part surfacing where there has not previously been surfacing
 - Engineering operations to alter the camber of an existing surfaced track

Maintenance or Improvement of Existing Tracks

- 3.5 There is no statutory definition of what constitutes 'maintenance or improvement'. It is a matter of fact and degree, and open to interpretation. There is no requirement for maintenance and improvement work to be reasonably necessary for the purposes of agriculture or forestry as there is in relation to Part 6 of the GPDO.
- 3.6 The National Park Authority considers that works of 'maintenance or improvement' would be limited to the laying of new surface materials, where for example the existing surface materials have been washed away or worn out' and the infilling of potholes in an existing surface

3.7 To be considered as permitted development under Part 9 a private way must be in existence – otherwise it cannot be ‘maintained’ or ‘improved’. A private way is defined in the GPDO to mean a highway not maintainable at the public expense, or any way that is not a highway. All proposed works must be within the boundaries of the existing private way so it follows that for a private way to exist it must be possible to determine its boundaries. The person proposing the works may be required to provide evidence of the private way to support a case for the works constituting permitted development. Map evidence, photographs showing surfacing or aerial photographs may be of help to the developer and the National Park Authority. Works will go beyond an ‘improvement’ if they result in a track of a different character. (See *Cowen v Secretary of State for Environment, Peak District National Park Authority* [1999] in Annexe 3).

4. Planning Policies

4.1 We recommend that proposed works are discussed with the National Park Authority prior to commencement, due to the complexity of the planning legislation, and the particular circumstances of each individual case. This will reduce the risk of carrying out work which does not have the necessary permission and which may damage important features of interest. If unauthorised works cause significant damage they may have to be removed and appropriate restoration carried out.

4.2 New, extended or altered tracks, or track maintenance, can have a significant impact on the appearance of the landscape, and on the archaeology and biodiversity of an area. The National Park is a specially protected landscape. New track development across an open landscape can appear as a scar for many years, and be readily visible to the public. This can be particularly relevant in upland areas with open public access.

4.3 All new development in the countryside should be well designed, in keeping with its location, and be sensitive to the character of the countryside and local distinctiveness. Through its statutory planning policies, the Authority has identified particularly important and sensitive landscape areas as Natural Zone¹ and in these areas the policies state that development will not be granted planning permission other than in exceptional circumstances, such as where the development is essential for land management or for the conservation or enhancement of the National Park’s valued characteristics. The Authority’s planning policies are contained in the Core Strategy (2011) and Local Plan 2001 see <http://www.peakdistrict.gov.uk/planning/how-we-work/policies-and-guides/core-strategy> and <http://www.peakdistrict.gov.uk/planning/how-we-work/policies-and-guides/the-local-plan>

¹ Natural Zone is defined in the Core Strategy as areas displaying a quality of ‘wilderness’; with relatively natural vegetation which is largely self-sown; few obvious signs of human influence such as field boundaries; ‘open country’ which has particular importance for certain types of recreation associated with adventure and contact with nature; high wildlife value; comprising habitats falling within the statutory Section 3 Map (arising from the Wildlife and Countryside (Amendment) Act, 1995) (or limestone dale) definition; and displays natural beauty, which in the opinion of the Authority, is particularly important to conserve.

4.4 Many upland areas are also designated as Sites of Special Scientific Interest (SSSI) and under European Directives may also be designated as Special Areas of Conservation and/or Special Protection Areas (for birds). Any development must take into account such designations and address any likely adverse effects on the ecological objectives or integrity of the designated sites. Works within a SSSI also require the consent of Natural England – guidance on when and if consent is required along with more information about SSSIs can be found at <https://www.gov.uk/guidance/protected-areas-sites-of-special-scientific-interest>. For more information about Special Areas of Conservation and Special Protection Areas see <https://www.gov.uk/guidance/conservation-objectives-for-land-based-protected-sites-in-england-how-to-use-the-site-advice>.

4.5 Where works are approved through the planning application process and as part of that process Natural England has been formally consulted and raised no objections then no additional consent is required.

5. Advice on Good Practice

5.1 When planning new tracks, track extensions and alterations or track maintenance we recommend that the following advice should be followed.

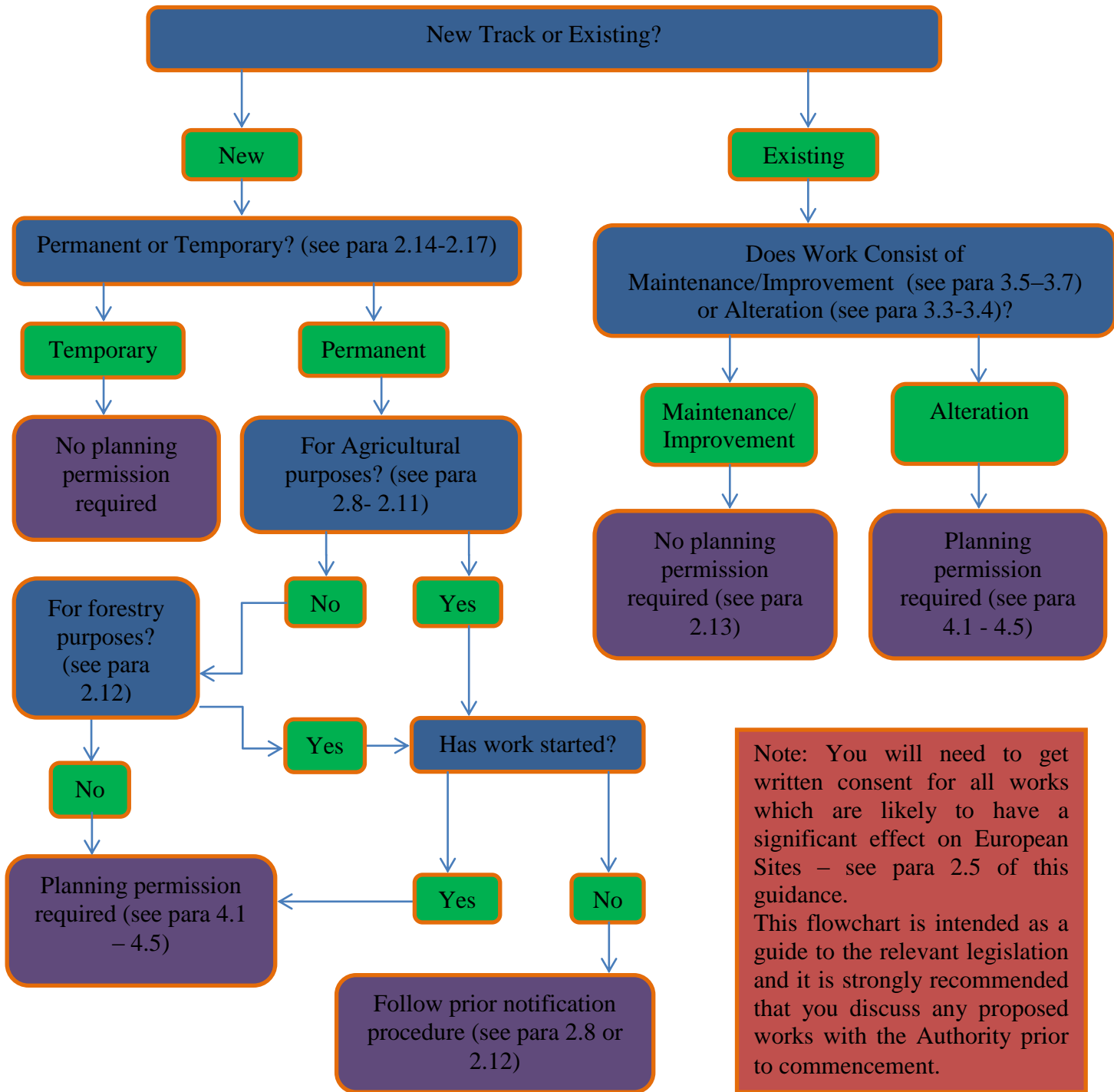
- Like for like surfacing should normally be used to ensure repair work is visually compatible with the existing track
- New or altered tracks should take the form of parallel twin trods with grass or heather between. We believe this option may often be the best compromise.
- Where appropriate (see next bullet point), local materials should be used for surfacing to avoid materials being transported onto site and to ensure compatibility with the local ecology and landscape character. The use or creation of 'borrow pits' for surface materials may however require planning permission and the consent of Natural England dependent on the scale and extent of the works.
- Light coloured surfacing such as limestone hard core should normally be avoided as it can increase the visual prominence of the track. Limestone can also adversely affect the ecology and soil characteristics, especially when used in gritstone areas which are naturally acidic.
- Where there is a requirement for vehicular access for a short period of time, typically a few weeks or months, it will usually be more appropriate to use plastic matting or similar materials which can be laid and removed more easily and will generally cause less disturbance/damage to the underlying surface than conventional materials such as stone.

- Wherever possible, new tracks should follow the routes of existing field boundary walls and hedges to avoid cutting across open fields and landscapes. It might also be appropriate to use landscaping and tree/shrub planting to minimise the visual impact of tracks, although this may not be appropriate in open landscapes with few existing trees or shrubs.
- Significant 'cut and fill' operations and changes in natural ground levels should be avoided
- Unless they are essential for drainage purposes, open ditches next to new or altered tracks should normally be avoided as these may be harmful to biodiversity and increase the visual impact of the track in the landscape
- Areas of known archaeological and/or ecological interest should normally be avoided

6. Planning Enforcement

- 6.1 In cases where we receive reports of new or altered tracks and we are not aware of the works and have received no planning application or prior notification we will investigate the matter as a possible breach of planning control. The National Park Authority has a statutory duty to investigate alleged breaches of planning control and take appropriate action depending on the outcome of any investigation. Enforcing planning control is vital to safeguard the quality of the landscape in the National Park and to demonstrate an objective and consistent approach to development.
- 6.2 Breaches of planning control can be resolved in a number of ways including a decision by the Authority that it is not expedient to pursue enforcement action; agreement by the developer to carry out agreed remedial work in an agreed timescale; an invitation to submit a retrospective planning application; the serving of a stop notice and/or enforcement notice; the taking of direct action to secure compliance with an enforcement notice and court proceedings, if a notice fails to be complied with.
- 6.3 What action is appropriate will depend on the severity of the breach, the landscape impact and the developer's willingness to remedy the breach. For more information see our 'Local Enforcement Plan' which is available on our web site (<http://www.peakdistrict.gov.uk/planning/planning-enforcement>). In order to avoid potential enforcement action, land owners/developers are encouraged to seek early consultation with the Authority.

Do I Need Planning Permission?



Note: You will need to get written consent for all works which are likely to have a significant effect on European Sites – see para 2.5 of this guidance. This flowchart is intended as a guide to the relevant legislation and it is strongly recommended that you discuss any proposed works with the Authority prior to commencement.