

**The Mountaineering Council of Scotland
Access & Conservation Committee**

**INVERCAULD HILL TRACK PLANNING DECISION
A Report by Mike Newbury**

This case concerns 1.5 km. of vehicular hill track in Gleann an t-Slugain which lies across the River Dee north of Braemar and penetrates into 'wild land' south of Ben Avon. The track was cut without planning permission, which was refused on retrospective application. An appeal against the refusal was granted on determination by the Scottish Executive Reporter on 13 November 2006.
(http://www.scotland.gov.uk/Topics/Planning/Appeals/Details/Q/Case_id/615)

The MCofS Access & Conservation Committee are disappointed at the failure to prevent this further penetration of the core of the Cairngorms National Park. An area that should be sacrosanct has been violated.

However, the decision is in some ways encouraging, and a number of important issues were raised.

1. The Reporter relied heavily on consistency with the structure plan and local plan, and 'did not attach much weight to' the general presumption against the formation or upgrading of hill tracks in the Consultative Draft Cairngorms National Park Local Plan because the Plan was not final.

2. SNH largely confined their objections to the effects on the River Dee Special Area of Conservation (SAC), and failed to object on 'wild land' grounds notwithstanding National Planning Policy Guideline (NPPG) 14 para 16 (protection of sensitive remote areas from intrusion) and their own Policy Statement 'Wildness in Scotland's Countryside'.

3. The Reporter considered the effects on the SAC notwithstanding that the development is outside it. This could be applied to other designations eg hill tracks close to National Scenic Areas.

4. The Reporter was firmly of opinion that the track needed planning permission and agricultural exemption was not contended for: sheep numbers were discussed but the primary sporting use prevailed. This could be useful if dubious agricultural exemption is claimed elsewhere!

5. The Reporter heavily criticised the Estate for forming the track without planning permission when they should 'have had the expertise to realise that works of this nature would require to be authorised'.

6. 'Whether the track is needed for agricultural purposes' is 'beside the point'. Presumably this means that the effect is what counts, whatever the reason for it. I have used this argument in contending on behalf of MCofS against agricultural exemption in the Review of the General Permitted Development Order.

7. 'Other material considerations' affecting the decision are dealt with in the planning conditions remedying the erosion scars. These conditions are quite detailed, and this is a useful pointer to what may be required in other cases. The Reporter refers in the Decision to the SNH Guideline on vehicle tracks (in which I had found some defects) but the planning conditions are free-standing.

8. The requirement for 'an appropriately qualified path worker' to supervise could be useful elsewhere.

9. A maintenance schedule and a requirement 'to maintain in perpetuity' is welcome in view of our longstanding complaints on this score in so many cases, but it is confined here to silt traps – presumably because they are most vulnerable to neglect.

Mike Newbury