

# Planning Advice Note 6

## Planning Advice Note for Agricultural, Forestry and Recreational Tracks in the North York Moors National Park

North York Moors National Park Authority

[www.moors.uk.net](http://www.moors.uk.net)

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## 1. Preface

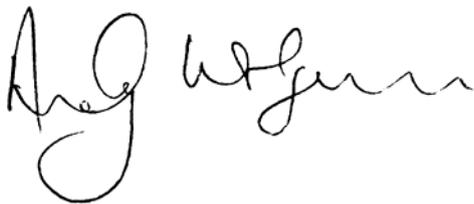
The National Park Authority is aware that the development of new tracks and the alteration or extension of existing tracks on upland moor and farm land can have significant benefits to the successful management of that land. Such developments can, however, have significant impacts on the landscape, ecology and archaeology of the National Park and therefore need to be carried out sensitively.

Planning in relation to track development is complex and is open to interpretation. Perhaps because of this, there is little in the way of guidance on the specific issue.

The public is becoming increasingly likely to complain where they see engineering operations and especially where these are in remote and sensitive locations. Planning authorities have to respond to such complaints or be open to sanctions by the Local Government Ombudsman.

Against this background, the Authority has undertaken to provide guidance about planning law as it relates to track development. As mentioned above, this is a complex field but the guide aims to set out the position that the Authority will take regarding the requirement to obtain planning consents.

We hope that this guidance will help to inform the public and developers and engender increased levels of discussion and liaison between developers and the Authority.

A handwritten signature in black ink, appearing to read 'Andy Wilson', written in a cursive style.

Andy Wilson  
Chief Executive (National Park Officer)

## 2. Introduction

The purpose of this advice note is to provide guidance on the development, alteration, maintenance and repair of new and existing tracks within the North York Moors National Park.

The National Park is the statutory planning authority for the National Park, it produces the planning policies contained within the Local Development Framework (LDF) and determines all planning applications, including applications for prior notification of agricultural or forestry development within the National Park.

The National Park is a special place and planning has an important role in safeguarding the natural and built environment. New track development, and alterations to existing tracks, can have significant effects on the landscape character, archaeology and biodiversity of the National Park. This advice note is provided to assist developers in planning for such developments. We do recognise however the need for viable land management businesses. This note simply sets out how the Authority understands the current law on the subject of tracks.

This advice relates to tracks required for agricultural, forestry or recreational purposes and does not relate to domestic or residential development.

This advice note provides;

- Information on relevant legislation pertaining to proposed track development and maintenance.
- An overview of the processes and procedures to assist in obtaining the relevant planning permissions, where necessary, for the development of, or work to, tracks.
- Guidance and direction on what other consents may be required from other statutory bodies in addition to those relating to planning control.
- Guidance to developers/land owners/agents which seeks to minimise the impact of new or upgraded tracks on the landscape.
- Information relating the National Park Authority's enforcement service should unauthorised work take place without the necessary planning consent.
- This note has been prepared by the North York Moors National Park Authority with collaboration with Natural England. Although it provides planning guidance only, reference will be made throughout to the need to consult with Natural England, as their own consent may be required for proposed work in addition to any planning consent or notification.
- The note is intended for planning guidance as an aid to land owners, land agents, environmentalists and planners, and it does not purport to be a definitive legal reference document or statement of the law. It has been prepared with the benefit of recent case law and is based on the Authority's interpretation of the current legislation. (As with any advice note these views may change in time as further case law on this subject emerges.)

### 3. Definitions and Abbreviations

‘Developer’ – Also includes the land owner, land agent, planning consultant and any tenant.

‘SSSI’ – Site of Special Scientific Interest

‘SAC’ – Special Area of Conservation

‘SPA’ – Special Protection Area

‘NPA’ – National Park Authority

‘NYMNP’ – North York Moors National Park Authority

‘LPA’ – Local Planning Authority

‘LDF’ – Local Development Framework



Mike Kipling

## 4. Planning Legislation and Background

This section provides an overview of the effect of the relevant legislation and case law on the development of, and works to, tracks for agricultural, forestry or recreational purposes.

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 definitions of *'development'* and *'agriculture'* and to provide a brief overview of the most relevant extracts of planning law and cases relating to track development.

### Development

Under The Town and Country Planning Act 1990, *'development'* means;

*'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.'*

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.

Planning permission is required for almost all development. This may be given as the result of an express application made to the relevant Planning Authority, or it may be conferred by a Development Order. Permission conferred by the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO") is commonly known as "permitted development". Further advice on permitted development will be provided in detail below. Broadly speaking, the relevant permitted development rights might fall under Part 6 (agricultural buildings and operations) Part 7 (forestry buildings and operations) or Part 9 (repairs to unadopted streets and private ways)

### Agriculture

At the outset it is also important to set out the definition of what constitutes *'agriculture'*. The Town and Country Planning Act 1990 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.'*

It has long been accepted by planning authorities that the management of land for sporting shooting is not considered to be 'agriculture' but a recreational pursuit. The decision of the House of Lords (Earl of Normanton v. Giles 1980) gives some clarity on this point. (Annexe 3)

For this reason developers are advised that if the primary purpose of the new track or the proposed work to the track is not 'reasonably necessary' for the purposes of agriculture or forestry and is required to enhance or manage the use of the land for a shooting ie. recreational purposes then the developer cannot benefit from the permitted development rights provided for under Part 6 and 7 of the GPDO which are set out below and which solely relate to tracks required for agriculture or forestry. Part 9, also dealt with below, relates only to works of maintenance or improvement to existing tracks.

**Under these circumstances planning permission will always be required for all new tracks, alterations and extensions to existing tracks on land required primarily for recreational purposes.**

Planning application forms and further guidance on submitting your application can be obtained from the National Park Office or be downloaded from the Authority's web site [www.moors.uk.net](http://www.moors.uk.net). Any planning application will be considered against the policies contained

in the LDF (<http://www.nym-web.co.uk/ldf/index.html>) and national planning policy, primarily PPS7 Sustainable Development in Rural Areas.

Further general advice in relation to planning matters can be obtained from the National Planning Portal ([www.planningportal.gov.uk](http://www.planningportal.gov.uk))

New tracks or alterations to existing tracks reasonably necessary for agriculture or forestry purposes constitute 'development' and will benefit from 'permitted development rights' as explained below.

The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) (Schedule 2 Part 6 & 7) provides a general planning permission known as 'permitted development rights' for certain types of development. The GPDO and the permitted development rights provide for the construction of new tracks or the alteration of existing tracks, on agricultural or forestry land provided the proposals are *'reasonably necessary for the purposes of agricultural or forestry within the unit'*, subject to the compliance with conditions including the following;

- The developer shall before starting work apply to the NPA as local planning authority for a determination as to whether prior approval of the authority will be required to the siting and means of construction of the private way. The Authority has 28 days to respond.
- Where the development involves the extraction of any mineral from the land or the removal of any mineral from a mineral-working deposit, the mineral shall not be moved off the unit.
- On a site designated for nature conservation tracks can only be constructed if the development is not likely to have a significant effect on the European site (either alone or in combination) and is not directly connected with or necessary to the management of the site (for nature conservation). Other consents will still be required from Natural England (see Annexe 1)

The necessary forms, schedule of fees and guidance for an application for prior notification can be obtained from the National Park Office by phone or on [www.moors.uk.net](http://www.moors.uk.net) (see Annexe 2 for contact details)

In assessing any notification the National Park will consider the design, siting materials and there is a statutory duty to consider effects on the historic environment (including scheduled ancient monuments, listed buildings and their settings), landscape in terms of visual amenity and biodiversity having regard to sites of recognised nature conservation value eg SSSIs. Policies in the Local Development Framework (<http://www.nym-web.co.uk/ldf/index.html>) will be taken into account in assessing notifications together with the national planning policy (particularly PPS7).

If the details are refused or conditions attached there is a right of appeal to the Planning Inspectorate. ([www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk))

It should be noted that permitted development rights **do not** extend to:

- Tracks or works to tracks, other than that provided for in Part 9 of the GPDO (see below), within 25 metres of a classified road.
- Works not reasonably necessary for agriculture or forestry purposes.

As such planning permission will be required. Any planning application will be considered against the policies contained in the LDF and national planning policy. (particularly PPS7)

**The Town and Country Planning (General Permitted Development) Order 1995 (GPDO)**  
**(Schedule 2 Part 9 of the GPDO 1995)** relates to works or repairs to unadopted streets and private ways. It allows the carrying out of work 'within the boundaries' of an unadopted street or private way for the maintenance or improvement of the street or way without the need for either planning notification or planning permission. Further advice on what constitutes 'maintenance or improvement' is provided in section 5 below.



## **5. What is Likely to Constitute the Development of a New Track, Alteration to an Existing track or Track Maintenance or Improvement?**

This part of the advice note provides developers with specific guidance on what type of work to a track may require planning permission or prior approval under permitted development rights.

As with any advice it is always wise to consult the National Park Authority prior to commencing any work due to the complexity of the planning legislation and the particular site circumstances of the land or development.

### **i) Proposed New Track Creation**

The formation of a new track involving the excavation, scraping and laying a hard surface whether that be full surface width or the laying of twin trods, where there has previously been no form of surfacing constitutes the creation of a **new track** and will always require either prior notification, if it is for agricultural or forestry purposes, (Part 6 and 7 GPDO) or full planning consent if it is not required for an agricultural or forestry purpose or if it 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 3 above.

**If the new track is required to facilitate or to enhance recreational shooting full planning consent will always be required.**

Even if there has been an 'historical route' used by vehicles, if there is little evidence of this on the ground and there is no conclusive evidence that supports this, works such as excavation and/or the laying of surfacing etc would constitute a new track in planning terms, as an 'engineering operation', and will either require prior notification, if for agricultural or forestry purposes, or planning permission as set out above.

It is always wise to seek the advice of the Area Planning Officer prior to the submission of either an application for prior approval or for planning permission for a new track as they will be able to offer you advice on the likely outcome of the notification or application or suggests ways to minimise its landscape/biodiversity/archaeological impact. Contact details for the Planning Officers are provided in Annexe 2 and the relevant forms and guidance on fees, submission of plans and supporting information etc can be obtained from [www.moors.uk.net](http://www.moors.uk.net)

**Please note;**

**A)** If a new track is required for the purposes of agriculture or forestry, the submission of a notification is required to allow the planning authority 28 days to consider whether prior approval of the proposals is required, and to undertake the necessary consultations to assess its likely impact on the landscape, archaeology and biodiversity.

**B)** In assessing any consultation, application for prior approval or planning application for proposed work in an SSSI, SAC or SPA (see Annexe 1) the National Park Authority will consult Natural England as part of the consultation process and their advice will be a material consideration in reaching any decision.

### **ii) Proposed Alterations to Existing Tracks**

This is the area where there is least clarity in the legislation and as such it is advisable to seek early consultation with the Area Planning Officer to clarify the extent of the works and the planning position in advance of any work taking place. (Contact details in Annexe 2)

It is however clear from the wording of Parts 6, 7 and 9 of the GPDO that works requiring notification or planning consent from the NPA, if not reasonably necessary for agricultural or forestry purposes, include the following;

- The widening of an existing track or private way outside the boundaries of the existing track or private way.
- The provision of turning circles or areas of hard standing for the parking of vehicles outside the boundaries of the existing track or way.
- The digging of new drainage ditches adjacent to an existing track or private way outside the boundaries of the existing track or way.
- Works within 25 metres of a classified road will require planning consent.

In addition track alterations or upgrades requiring planning permission or prior approval, if reasonably necessary for agricultural or forestry purposes, may also include the following;

- 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 camber.

These alterations above, depending on the extent and scale of the proposals, are likely to constitute development as an engineering operation which will require either planning consent or prior approval, (Part 6 and 7 GPDO) depending the purpose of the works and would not fall within Part 9 of the GPDO.

A Planning Inspector in 2006 (Planning Inspectorate Refs APP/W9500/C/05/2002297 & A/05/1175042) determined, as part of two concurrent planning and enforcement notice appeals within the National Park boundary, that the alteration to a former twin trod track within woodland to a full width surfaced track following the same route, within the same boundaries, constituted an engineering operation for which planning permission should have been sought. He considered that the 'scale and character of the works are such that I consider they amount to more than mere maintenance or improvement such as the filling in of potholes and the like.' (para. 12)

**If it is determined that any proposed work does not require the planning permission or prior approval of the National Park Authority, as LPA, a developer must have due regard to any other relevant legislation as set out in Annexe 1 that may be applicable to their development. It is the developer's responsibility to ensure that these other statutory requirements are met and not the responsibility of the NPA as LPA.**

**Please note** that the developer should be aware that information relating to proposed track developments/works may be shared to ensure consistency of advice between Natural England and the NPA, this however does not absolve the developer of his responsibility for obtaining the necessary consents from all the relevant Authorities set out in Annexe 1. (It is not possible for the LPA under existing law, to provide a single "consent" on behalf of other organisations as each organisation is responsible for determining and issuing their own consents based on relevant legislation).

### **iii) Proposed Track Maintenance or Improvement**

Part 9 of the GPDO permits a developer to carry out maintenance or improvement of an existing

unadopted street or private way as permitted development not requiring planning permission or prior approval.

There is no statutory definition of what constitutes ‘maintenance or improvement’, it is a matter of fact and degree and for the LPA to interpret. There is no requirement for this work to be reasonably necessary for the purposes of agriculture or forestry as there is in relation to Parts 6 and 7 of the GPDO.

- This work may include the laying of new surface materials where for example the existing surface materials have been washed away or worn out as permitted development without the permission of the National Park Authority as Local Planning Authority.
- The infilling of potholes in an existing surface.
- To be 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.
- Deciding whether works are of ‘improvement’ does not involve assessing whether they would be works of ‘alteration’ in Part 6 and 7 – the definitions are not mutually exclusive. But works will go beyond an ‘improvement’ if they result in a track of a different character. (See *Cowan v Secretary of Station* in Annexe 3).

For clarity engineering works constituting ‘development’ such as new drainage gullies alongside a track would not constitute repair and it is believed would require the permission of the local planning authority in this respect.

A developer may be required to provide **evidence** of the private way to support a case for works constituting permitted development. Map evidence, photographs showing surfacing or aerial photographs may be of help to the developer and the NPA.

Early consultation with the Area Planning Officer to clarify the extent of the works and the planning position in advance of any development taking place is always advisable. (Contact details are provided in Annexe 2)

It is open to a developer to submit an Application for a Lawful Development Certificate for a Proposed Use or Development (Section 192 of the 1990 Planning Act, as amended by Section 10 of the Planning and Compensation Act 1991) if agreement cannot be reached between the developer as to what constitutes permitted development under Part 9 of the GPDO. The onus of proof is on the Applicant and specific advice on submitting such applications is provided on The Planning Portal ([www.planningportal.gov.uk](http://www.planningportal.gov.uk)). The necessary forms and guidance can be obtained from the NPA’s offices or its web site.

**If it is determined that any proposed work does not require the consent of the NPA, a developer must have due regard to any other relevant legislation as set out in Annexe 1 that may be applicable to their development. It is the developer’s responsibility to ensure that these other requirements are met and not the responsibility of the NPA as LPA.**

**Please note** that the developer should be aware that information relating to proposed track developments/works may be shared between the NPA and Natural England to ensure consistency of advice between the two organisations, this however does not absolve the developer’s responsibility for obtaining the necessary consents from all the relevant Authorities set out in Annexe 1.

## 6. General Planning Advice in relation to New Tracks, Alterations to Existing Tracks or Repairs

New, extended or altered tracks or track maintenance can have a significant impact on the appearance of the landscape, archaeology and on the biodiversity of an area. The National Park is a specially protected landscape, new track development across an open landscape can appear as scar for many years and can be readily visible from many public vantage points.

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.

In planning new tracks, track extensions and alterations or track maintenance the following advice should be followed where possible. (We do appreciate however that practicalities come into play, and that much of this advice is being followed already.)

- Like for like surfacing should be used to ensure repair work is visually compatible with the existing track.
- New or altered tracks should take the form of twin trods with grass or heather in between the wheelings taken from the working area. We believe this option may often be the best compromise.
- 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.
- Light coloured surfacing such as limestone or hard core should be avoided as it can increase the visual prominence of the track.
- The use or creation of borrow pits for surface materials may however affect local ecology and may require the consent of Natural England and planning consent dependant on the scale and extent of engineering works.
- New tracks should follow the routes of existing field boundary walls and hedges to avoid cutting across open fields and landscapes.
- Where it is not possible to follow existing field boundaries landscaping soft and hard (such as wall construction or hedgerow planting) may be required to help the track “fit” into the landscape.
- Open ditches adjacent to the new or altered track should be avoided as these are unsightly, are harmful to biodiversity and increase the visual impact of the track in the landscape.
- Areas of known archaeology should be avoided to protect this rich heritage.
- Early engagement with the National Park Authority’s planning officers and archaeologist is encouraged to resolve any concerns and to establish whether any form of planning consent is required.

## 7. Planning Enforcement Action

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 application for prior approval we will investigate the matter as a possible breach of planning control. The National Park Authority has to investigate alleged breaches in planning control as part of its planning remit, and to take appropriate action depending on the outcome of any enforcement investigation. Enforcing planning control is vital to safeguard the quality of the landscape in National Parks.

Breaches in planning control can be resolved in a number of ways including;

- A decision by the Authority that it is not expedient to enforce.
- Agreement by the developer to carry out agreed remedial work in an agreed timescale.
- An invitation to submit a retrospective planning application. (It should be noted that there is no retrospective mechanism for the prior approval procedure and so a retrospective planning application would be required in all cases where the works involve 'development'.)
- The serving of a stop notice and/or enforcement notice.
- The taking of direct action if a notice is not complied with.
- Court action, if a notice fails to be complied with.

What action is appropriate will depend on the severity of the breach, the landscape impact and the developer's willingness to remedy the breach.

In order to avoid any enforcement action land owners/developers are encouraged to seek early consultation with the Area Planning Officers in order to agree the extent of permitted development or to agree what form of planning consent may be required.

The National Park also works in partnership, either in a statutory or advisory capacity, with other enforcement bodies in their investigation and enforcement work. As part of this work, information may be shared with these agencies.

For the Authority's general approach to Enforcement Action please refer to the leaflet 'Your Guide to the National Park Authority's Enforcement Service' available from the National Park Office or via the web site ([www.moors.uk.net](http://www.moors.uk.net))

North York Moors National Park Authority

January 2010

## Annexe 1

### **Other Relevant Legislation and Contacts**

It should also be noted for completeness that large areas of the uplands in the National Park are designated as Sites of Special Scientific Interest (SSSI) under the **Countryside and Rights of Way Act 2000**. This Act requires that all Owners and Occupiers require, before undertaking an activity listed on the list of Operations Requiring Natural England's Consent, consent, or consent with conditions, in writing, from Natural England before listed activities can be lawfully undertaken. (See Annexe 2 for contact details)

Many of the areas designated as SSSI's are also designated as Special Areas of Conservation (SAC) and Special Protection Areas (SPA) under **The Conservation (Natural Habitats &c.) Regulations 1994**. This designation requires the competent authority (which could be the National Park Authority as Local Planning Authority or Natural England) to assess plans or projects which are likely to have a significant effect on a European site and are not directly connected with or necessary to the management of the site (for nature conservation) to determine their likely significant effect. Under the Habitats Regulations the competent authority cannot consent to activities which would adversely affect the integrity of the designated site. A land owner/developer may be required to complete a method statement pro forma which will provide Natural England with the information it will require in order to give an opinion regarding effects on landscape, biodiversity and the historic environment.

More information on designated sites can be found on Natural England's website [www.naturalengland.org.uk/information\\_for/ssi\\_owners\\_and\\_occupiers](http://www.naturalengland.org.uk/information_for/ssi_owners_and_occupiers).

Developments may also require consent from the relevant Highways Authority where developments affect Public Rights Of Way (PROWs), including footpaths and bridleways (the National Park Authority has delegated responsibility for PROWs within the National Park under **The Highways Act 1980**). The Act states that without lawful authority or excuse, a person may be guilty of an offence if they make a ditch or excavation in a highway which consists of or comprises a carriageway, removes any soil or turf from any part of a highway, except for the purpose of improving the highway and with the consent of the highway authority for the highway, or deposits anything whatsoever on a highway so as to damage the highway.

Some developments on Common Land may also make relevant elements of **The Commons Act 2006**, particularly where construction activities inhibit access across a common or frustrate the ability of commoners to exercise their rights. Section 38 of the 'Act' concerning prohibition on works without consent, defines restricted works as works which have the effect of preventing or impeding access, works for the resurfacing of land, the erection of fencing, the construction of buildings and other structures, and the digging of ditches and trenches and the building of embankments. Works that do not need section 38 consent include resurfacing which consists only of the repair (with a similar surface) of existing lawfully constructed footpaths, roads and car parks. If you consider this to be relevant to the proposed work the Planning Inspectorate is responsible for issuing consent for restricted works. Guidance sheets on what constitutes restricted works and application forms can be found on the Planning Inspectorate's website at: [www.planning-inspectorate.gov.uk/pins/common\\_land/index.htm](http://www.planning-inspectorate.gov.uk/pins/common_land/index.htm)

Some track development may affect a Scheduled Ancient Monument and written consent (**Scheduled Ancient Monument Consent**) of the Secretary of State is required prior to the commencement of works. English Heritage is responsible for the administration of SMC and further advice in this respect can be found at: [www.english-heritage.org.uk](http://www.english-heritage.org.uk)

## Annexe 2

### Useful Contact Details

#### **North York Moors National Park Authority**

The Old Vicarage  
Bondgate  
Helmsley  
York YO62 5BP  
Tel 01439 770657  
Fax 01439 770691  
E mail [dc@northyorkmoors-npa.gov.uk](mailto:dc@northyorkmoors-npa.gov.uk)  
[www.moors.uk.net](http://www.moors.uk.net)

#### **National Planning Portal**

[www.planningportal.gov.uk](http://www.planningportal.gov.uk)

#### **Royal Town Planning Institute**

[www.rtpi.org.uk](http://www.rtpi.org.uk)

#### **Natural England (Yorkshire and the Humber Region)**

Alverton Court  
Crosby Road  
Northallerton  
North Yorkshire DL6 1AD  
Tel 0300 060 3788  
Fax 0300 060 1975  
E mail [northallerton@naturalengland.org.uk](mailto:northallerton@naturalengland.org.uk)  
[www.naturalengland.org.uk](http://www.naturalengland.org.uk)

#### **English Heritage (North East Region)**

Bessie Surtees House  
41 – 44 Sandhill  
Newcastle upon Tyne NE1 3JF  
Tel 0191 269 1200  
Fax 0191 261 1130  
E Mail [northeast@english-heritage.org.uk](mailto:northeast@english-heritage.org.uk)  
[www.english-heritage.org.uk](http://www.english-heritage.org.uk)

#### **Planning Inspectorate**

Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
Tel 0117 372 6372  
E mail [enquiries@planning-inspectorate.gsi.gov.uk](mailto:enquiries@planning-inspectorate.gsi.gov.uk)  
[www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

## Annexe 3

**Earl of Normanton v. Giles (1980).** In this case the House of Lords considered whether the raising of pheasant for shooting was 'agriculture' under the Rent (Agriculture) Act 1976. They decided it was not agriculture, but essentially to provide sport and enjoyment (for the guns) a recreational rather than agricultural use. The argument ran thus 'it may be the case that unless people in general were willing to eat pheasants and pay for that pleasure, shooting would become uneconomic, but it does not follow from this that pheasants are produced for food. If they were to be so produced many easier ways of rearing and killing them could be found'.

**Cowen v Secretary of State for the Environment (1999)** 3 PLR 108. In this case, an Inspector had determined that changes to form a hard-surfaced way in place of what had been a rutted track were not "improvements" under Part 9 but were akin to "alterations" under Part 6. The Court of Appeal said this was a false dichotomy – the two Parts are not mutually exclusive. The meaning of "improvements", said Sedley LJ, is limited to changes which do not alter the basic character of the thing which is improved. It is a question of fact and degree to be decided without reference to other Parts of the GPDO.