



<b>PLANNING AND ACCESS COMMITTEE</b>	
<b>MEETING: NPAPC/PC/02/2015</b>	<b>DATE: 2 March 2015</b>

<b>SUBMITTED BY:</b>	<b>Head of Planning &amp; Rural Development</b>
<b>APPLICATION NUMBER:</b>	<b>2014/0303/DET</b>
<b>APPLICANT:</b>	<b>Mr Iain Methven</b>
<b>LOCATION:</b>	<b>Land to the Rear of Gartocharn Church</b>
<b>PROPOSAL:</b>	<b>Construction of agricultural access track and retrospective ground engineering works associated with development of agricultural shed</b>

<b>NATIONAL PARK WARD:</b>	Ward 5
<b>COMMUNITY COUNCIL AREA:</b>	Kilmarnock Community Council
<b>CASE OFFICER:</b>	Name: Erin Goldie Tel: 01389 722137 E-mail: <a href="mailto:erin.goldie@lochlomond-trossachs.org">erin.goldie@lochlomond-trossachs.org</a>

**1 SUMMARY AND REASON FOR PRESENTATION**

- 1.1 This application is for the construction of a track to access an agricultural shed and retrospective ground engineering works relating to the construction of the shed.
- 1.2 This application is being presented to the Planning and Access Committee as a result of a formal objection submitted by Kilmarnock Community Council. The Scheme of Delegation requires all such applications to be referred to the Committee for determination.

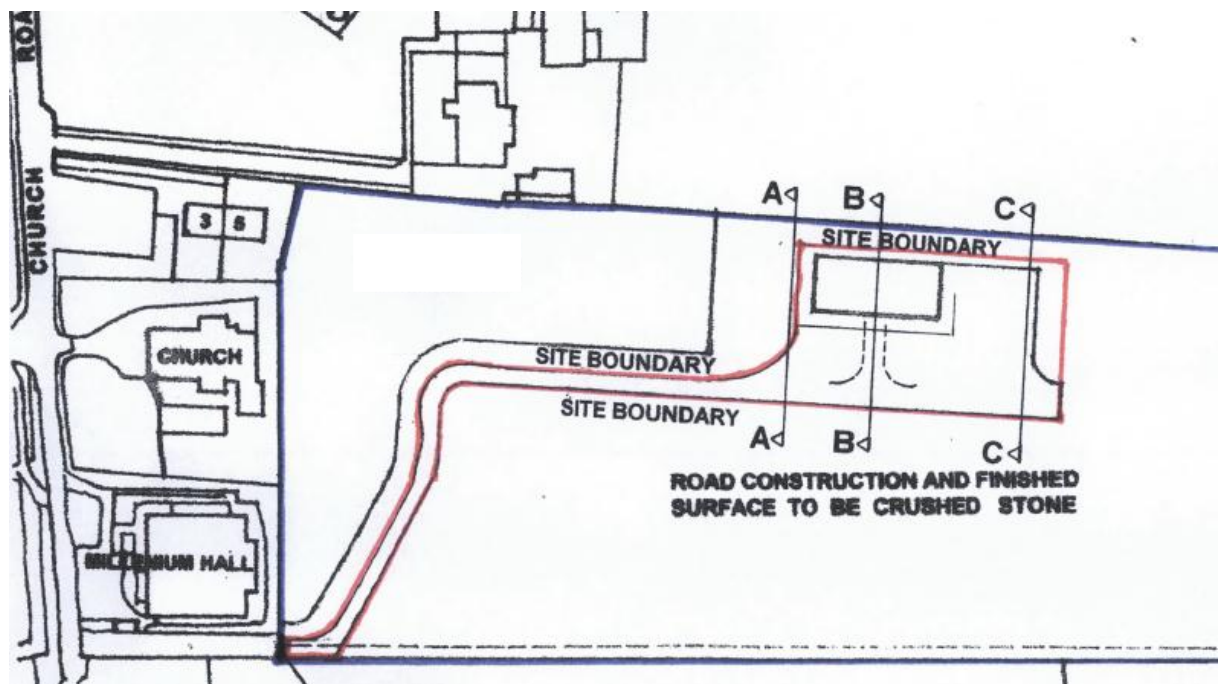
**2 RECOMMENDATION**

<p><b>That Members:</b></p> <p>1. <b>APPROVE</b> the application subject to the imposition of the conditions set out in Appendix 1 of the report.</p>
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### 3 BACKGROUND

#### *Site Description:*

- 3.1 The application site forms part of the field to the rear of Gartocharn Church and the Millennium Hall. The field is on a gradual sloping gradient that falls in a north westerly direction.
- 3.2 The site is within the Loch Lomond National Scenic Area (NSA) and is approximately 1 km to the south west of the designated Loch Lomond Special Protection Area (SPA) of which qualifying species are the Greenland White- fronted (GWF) goose and Capercaillie.\* The favoured feeding fields for the GWF geese are approximately 300-400m away in the 'lower' fields of Mid Gartocharn Farm to the north east and a further field to the north west close to Burnbrae Farm house.
- \* It should be noted that in 2013 SNH advised the NPA that there was no longer a viable population of Capercaillie in this area however the European legislation protects the habitat and the site is still protected for Capercaillie.
- 3.3 A core footpath known as the 'Aber Path' traverses the north eastern boundary of the field from the Millennium Hall and leads to the Loch Lomond National Nature Reserve (NNR).



**Fig. 1: Site Location Plan**

#### *Environmental Impact Assessment (EIA):*

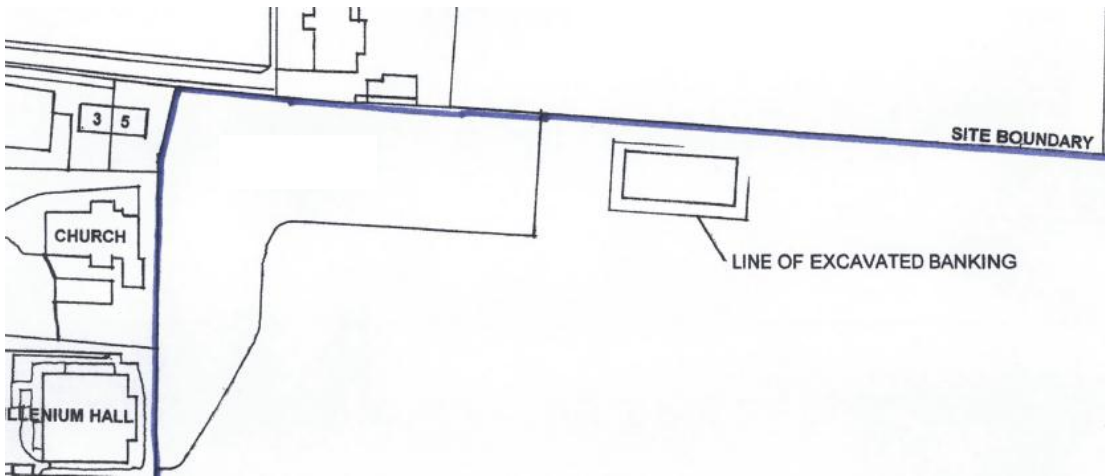
- 3.4 For the purposes of the Environmental Impact Assessment (Scotland) Regulations 2011 the National Park is identified as a 'Sensitive Area'. As a 'Competent Body' the National Park Authority has a statutory duty to consider whether proposals for development should be subject to the EIA process. In this particular instance it has been determined that an EIA is not required as there would be unlikely 'significant' environmental effects as a

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result of the proposed development.

**Description of Proposal:**

- 3.5 The proposal is for the construction of a 3 metre wide access track with a grassed central strip for connecting the existing access to the field, adjacent to the Millennium Hall, to the agricultural shed. Rock was discovered during the excavation, necessary to form a level foundation for the agricultural shed, and so there is a substantial amount of this material currently in the field which the applicant proposes to use, at least in part, to construct the track.
- 3.6 The application also seeks retrospective planning permission for ground engineering works relating to the shed as detailed in section 3.9 below.
- 3.7 The shed referred to in section 3.5 above has been built under the permitted development provisions that the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 enables for agricultural buildings. For development of this type, there is an associated notification procedure required to be undertaken with the Planning Authority and the details of the notification concerning the shed are in section 3.11 below under section 'planning history.'
- 3.8 The proposed track requires to be the subject of an application for planning permission by virtue of the sites location within the National Scenic Area and the wording of the relevant legislation in this regard.
- 3.9 The section drawings submitted with the Prior Notification (ref. 2014/0206/NOT) relating to the construction of the shed illustrate that it was proposed to be 'cut' into the field with finished ground levels sloping away from the shed on a natural and gradual gradient. Instead, because of the difficulties with cutting rock, the shed as built, is effectively in a hollow surrounded by much steeper banking as illustrated in figure 2 and the visual in figure 3 below. The planning application seeks to address this deviation from the previously submitted plans.



**Fig.2.** illustrating footprint of shed and outer line of excavated banking

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**Fig.3.** View to shed from north east illustrating ground profile. France Farm in background.

### **Planning History:**

- 3.10 Planning Permission in Principle application (ref.2011/0256/PPP) for a housing development on the field was refused on 28 June 2012 and an appeal against the decision was submitted on 27 September 2012 and was dismissed by the reporter on 7 December 2012.
- 3.11 A Prior Notification (2014/0206/NOT) for the erection of an agricultural shed was submitted on 7 August 2014. On 5 September 2014, the Planning Authority determined that Prior Approval was not required. In other words, the applicant can exercise their agricultural 'permitted development' rights in accordance with Part 6, Class 18 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. Construction of the shed and the associated ground works started shortly after this decision. The shell of the building has been erected as can be seen from figure 3 above but the inside has still to be completed.

## **4 CONSULTATIONS AND REPRESENTATIONS**

### **Summary of Responses to Consultations:**

#### Scottish Natural Heritage:

- 4.1 The proposal could affect the Loch Lomond Special Protection Area (SPA) classified for its Greenland white-fronted goose and Capercaillie interests. Consequently, Loch Lomond & the Trossachs National Park Authority is required to consider the effect of the proposal on the SPA before it can be consented (commonly known as Habitats Regulations Appraisal). SNH, advises, in their view, based on their own appraisal, that the proposal will not adversely affect the integrity of the site.
- 4.2 Kilmarnock Community Council was consulted on the application and have submitted an objection to the proposals. Their comments have been captured under section 4.4 below.

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### **Summary of Representations Received:**

- 4.3 3 letters of objection (including that from Kilmarnock Community Council) and 8 letters in support of the proposal have been received and can be summarised as follows:

4.4 **Point of Objection and planning response:**

- The proposal is described (in the application form) as 'upgrade to an existing agricultural track' but this is a new route across an undeveloped field recently turned into a sea of mud by taking vehicles from the lane beside the Millennium Hall to the shed.

*Response: It is acknowledged that the proposal is for a new track.*

- The previous plan for a road, with the same alignment, in this location was rejected  
*Response: The 'previous plan' referred to relates to Planning Permission in Principle application (ref. 2011/0256/PPP) for an access road to a residential development which was subsequently refused. The current application, however, relates to an agricultural track for access to an agricultural shed.*

- The lane beside the Millennium Hall is not included on the application. It would be expected that access tracks extend to the public road (in this case Church Road).

*Response: Applicants are required to delineate the complete 'planning unit' to which the application relates such as in this case. There is no requirement for the applicant to extend the red line boundary to Church Road.*

- The applicant widened and upgraded the lane beside the Millennium Hall without planning permission. The Planning Authority has never answered complaints about this unauthorised work.

*Response: This is a separate matter and not part of the consideration of this application.*

- Inadequate turning space from the lane beside the Millennium Hall to the field.

*Response: It is understood that construction vehicles effectively negotiated this route during the erection of the shed.*

- Church Road is not suitable for heavy vehicles.

*Response: Church Road already serves as access to France Farm and Mid Gartocharn Farm as well as surrounding agricultural fields. The operation at the application site is small scale by nature and limited by the size of the agricultural unit therefore any intensification of agricultural traffic is not expected to be significant.*

- It was previously stated through the Prior Notification submission (2014/0206/NOT) that the track was not required and the Planning Authority agreed.

*Response: See sections 7.2 and 7.3 below in 'planning assessment.'*

- The track would create a further blight on the landscape and spoil the amenity of the area for users of the Millennium Hall, wider community and visitors. The National Park must hold to its aims, particularly the first and overarching aim to conserve and enhance the natural and cultural heritage of the area and enhance visitor experience.

*Response: See sections 7.8 and 7.9 of this report addressing landscape considerations relative to the proposals.*

- The application site is not a farm. It is one shed on a field. The naming of the field 'Hidden View Farm' is an attempt to persuade that a real farm exists.

*Response: It was established during the consideration of the Prior Notification (2014/0206/NOT) that the necessary provisions were in place for the land to be*

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*regarded as in use for an agricultural purpose.*

- The inside of the shed is incomplete and the shed is therefore not capable of housing animals. It is not of robust construction.

*Response: It is acknowledged that the inside of the shed remains incomplete. The applicant has advised that the inside of the shed would be completed once a track is constructed for ease of access by construction vehicles.*

- The Aber Path has been adversely affected by the deep mud created by construction vehicles, removal of stepping stones and degraded drainage.

*Response: The churned up ground conditions at the access to the Aber Path and the mid section of the path through the field are acknowledged. It should however be noted that the access to the Aber Path, adjacent to the Millennium Hall, is separated from the field by a gate and fencing so this area would not have been directly affected by construction vehicles. The NP Access Adviser is in separate discussion with the applicant regarding the damage to the mid section of path.*

- The cows have been out of the field for the last several months and are still absent.

*Response: The presence or otherwise of the cows is not a consideration of this application for an access track. Nevertheless, the applicant has indicated they have been temporarily relocated to the adjacent field.*

- The history of this field should be considered. This includes plans for housing, associated appeal, plans for sheds and now an access track. This is part of a campaign to get planning permission for a house/housing in the field.

*Response: The planning history is acknowledged in section 3.10 and 3.11 of this report.*

- The applicant suggests that his agricultural business will create local job opportunities but this is completely overstated given this tiny operation.

*Response: This is not a material consideration of this application.*

- Animal welfare is put forward as the reason for this application. Something that the applicant ignored when considering the Prior Approval application (for a shed without an access track). Animal welfare has not been demonstrated by the conditions in which the pigs in the field have been kept. RSPCA and Animal Welfare Personnel have visited the site. The cows have devoured the majority of the quick growing hedges the applicant planted which would indicate lack of suitable fodder.

*Response: These are separate considerations and not material to the determination of the planning application.*

- The applicant has gone a long way to wrecking this previously unspoiled scenery of field by the planting of trees and hedgerows and by way of erecting fencing, mud housing pigs and camera installation.

*Response: These points are acknowledged but are not subject to planning control.*

### 4.5 **Points of support:** (note that a response to the points of support is not considered necessary).

- The construction of an access track would improve the current poor condition of the field and restore the view of the field and surrounding area
- The access track would benefit the applicant as well as ensuring legal compliance stated within the various supporting statements forming part of the planning application
- Access to the field for the pigs is not currently fit for purpose. The track would improve

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- access to attend to the pigs and cows.
- The SSPCA, animal welfare personnel have visited the site and on no occasion was there an animal welfare issue
- The access would allow the applicant to grow his new agricultural business
- The access to the Aber Path is currently a health and safety hazard and the formation of a track would address this
- The current condition of the field is restricting the applicant from completing the construction of his shed
- The absence of a track to the shed breaches animal welfare legislation in terms of getting any animal to or from the site during calving for example
- The cows are currently in the adjoining field and have been since they went off site

### 5 POLICY CONTEXT

#### ***National Park Aims:***

- 5.1 The four statutory aims of the National Park are a material planning consideration. These are set out in Section 1 of the National Parks (Scotland) Act 2000 and are:
- (a) to conserve and enhance the natural and cultural heritage of the area;
  - (b) to promote sustainable use of the natural resources of the area;
  - (c) to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public; and
  - (d) to promote sustainable economic and social development of the area's communities.
- 5.2 Section 9 of the Act then states that these aims should be achieved collectively. However, if in relation to any matter it appears to the National Park Authority that there is a conflict between the first aim, and the other National Park aims, greater weight must be given to the conservation and enhancement of the natural and cultural heritage of the area.

#### ***Development Plan:***

##### 5.3 National Park Local Plan (Adopted 2011)

Relevant Policies:

- L1- Conserving and Enhancing the Diversity and Quality of the Park's Landscapes
- D1- Design quality
- ED 3 – Economic Development in the Countryside
- ENV1 – European Sites (SAC's and SPA's)

Full details of the policies can be viewed at:

<http://www.lochlomond-trossachs.org/planning/adopted-local-plan/menu-id-904.html>

#### ***Other Material Considerations:***

##### 5.4 National Park Partnership Plan (2012-2017)

Relevant Policies:

RD Policy 3 : Rural Economy



## **6 SUMMARY OF SUPPORTING INFORMATION**

- 6.1 The applicant submitted the following supporting information which accompanied the submission of the planning application:
- 'Points of Clarity' statement clarifies the purpose of the application and the methodology for constructing the track.
  - 'Legislation Requirement Statement' references the 'Welfare of Animals During Transport' publication by the government department DEFRA (Department of Environment Food and Rural Affairs) which is an advice paper understood to have derived from a 2007 European Union Regulation for transporting animals. In addition, the statement highlights the current condition of the field access and that the shed cannot be accessed due to the current site levels surrounding the shed. An access ramp has to be dug through the field to gain access to the north east elevation of the shed where the vehicular and cattle opening is located. Current conditions restrict construction vehicles accessing the site to complete the inside of the shed and for future deliveries of food and bedding for the heifers.
  - 'Special Circumstances Request' statement asks for the planning application to be determined within the minimum timescale possible as the applicants cattle are pregnant and may need to be taken off site. Without a suitable track, it is stated that animal welfare would be at risk and the applicant would be in breach of legislative obligations relating to animal welfare and safe access.

## **7 PLANNING ASSESSMENT**

- 7.1 This application is for the construction of an agricultural access track and retrospective ground engineering works relating to an agricultural shed constructed using agricultural permitted development rights under Part 6, Class 18 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. As noted in section 3.8 of this report, there are no permitted development rights for access tracks in the National Scenic Area (NSA).

### **Proposed track construction**

- 7.2 When the Prior Notification for the construction of the shed was submitted in September 2014, the applicant advised that agricultural vehicles could access the shed over the existing grass field following the most accessible route that is dictated by the natural contours of the site and so there were no proposals for a track at that time.
- 7.3 During the erection of the shed, the access route through the field was churned up by construction vehicles and is currently in a poor condition as illustrated in figure 4 below. It is accepted that the current ground conditions would make it difficult for vehicles to access the shed to fully complete its construction and that in the absence of a track, there could be similar ground problems in the future with agricultural vehicles accessing the shed.



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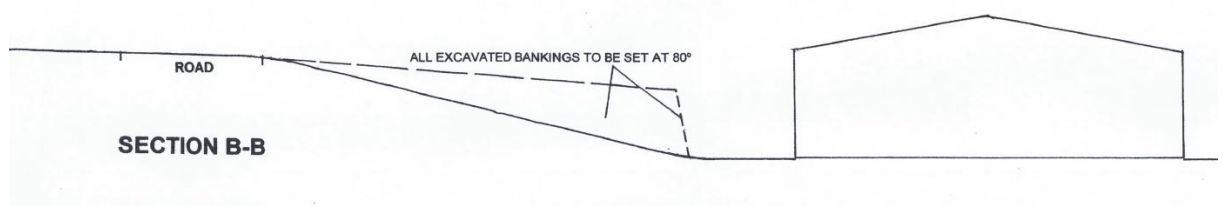
**Fig.4** current condition of access to field

- 7.4 Rock was discovered during the excavation of ground for the siting of the shed which presented difficulties in achieving the gradual gradients intended for the ground re-profiling and proposed at the time of the Prior Notification submission. As a result, the shed is effectively in a hollow and cannot be accessed by agricultural vehicles as demonstrated by figure 5 below.



**Fig.5.** View from shed showing excavated banking, the field and Millennium Hall.

- 7.5 Part of the track construction would involve cutting an access ramp through the surface of the field to the south east elevation of the shed where the opening for tractors and cattle is located. This would result in banking at either side of the ramp, similar to the banking shown in figure 5 above. This is further explained in figure 6 below.



Key: ---- existing ground profile    ——— proposed ground profile

**Fig.6.** access ramp from track with excavated banking

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7.6 In view of the above, the proposed access track is considered to be reasonably necessary to facilitate access to the shed to complete construction works and the future growth of the agricultural operation in terms of ease of access for taking livestock on and off the site if necessary and for the direct delivery of ancillary goods and equipment including food and bedding. The access track is therefore, by virtue of enabling the agricultural operation, supported by policy ED3 (a) –Economic Development in the Countryside of the local plan which supports traditional rural based farming in the countryside provided proposals can demonstrate that (policy ED3 part b) there is no adverse impact on the special qualities associated with the particular location. The landscape assessment pertaining to the track is considered below.

**Visual and wider landscape impact of the access track**

7.7 The 3 metre wide agricultural track is proposed to enter the applicants field from the lane adjacent to the Millennium Hall (see figure 4 above) and cross the upper part of the field to the front of the hall and Kilmaronock Parish Church before snaking in a north westerly direction towards the location of the shed. Figure 7 below is an example of an agricultural track within the National Park of similar width and construction to the proposal.



*Fig.7. example of a track similar to the proposal*

7.8 Whilst this would be a new track in an undeveloped and conspicuous location within the National Scenic Area, the site and surrounding environment is largely agricultural in nature with examples of similar tracks in the vicinity. The track would be predominantly contained on the ‘upper’ section of the field to the front of the Millennium Hall and Church. This approach is considered to be the least visually intrusive way of accessing the shed. Potential landscape impact would be further reduced by the natural crushed rock surface of the track (sustainable reuse of the rock from the excavation of the shed) with a grassed central strip. Considering this assessment, the proposal would not be expected to have a significant impact on the distinctive qualities of the National Scenic Area. The NP Natural Heritage Planning Officer has reviewed the application with the planning case officer and is satisfied with the landscape considerations of this report. The proposal is therefore considered to be consistent with the requirements of policies ED3, L1 and D1 of the local plan.

**Retrospective ground engineering works associated with the construction of the shed**

7.9 Notwithstanding the unconventional construction of the shed surrounded by banking, the ground engineering works and exposed rock embankments cannot be seen from public view points and can only be seen by approaching or standing directly above the shed as can be

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appreciated from the images below. The visual impact of the ground engineering works from Ross Loan, a higher level public view point approximately 242 metres north west of the application site, is considered negligible. It is worth noting, with the rock ground condition in mind, requiring the applicant to implement gradients in accordance with the Prior Notification section drawings, would have a risk of creating a landscape impact and is not recommended.



**Fig.8** view from Aber Path nearby Millennium Hall and the access to the field



**Fig.9.** View from Aber Pat at mid section of the field.



**Fig.10.** View of the shed from Aber path at the lower end of the field

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- 7.10 Considering the above, the proposed ground engineering works accord with policy L1 of the local plan- Conserving and Enhancing the Diversity and Quality of the Park's Landscapes.

### **Access considerations**

- 7.11 It is recommended by the NP Access Adviser that planning conditions are imposed to ensure that access to the Aber Path is unaffected during construction of the track and advisory signage erected to forewarn users of construction vehicles.

### **Impact of proposal on the Loch Lomond Special Protection Area (SPA)**

- 7.12 Scottish Natural Heritage has considered the proposal and advised that, in their view, the proposal will not adversely affect the integrity of the designated site.
- 7.13 Although the application site is outwith the SPA, it is adjacent to a number of fields which provide supporting habitat for foraging white-fronted geese. Therefore, SNH advised that this proposal has the potential to have a significant effect on the Greenland white-fronted goose population. (SNH has advised that the proposal is unlikely to have a significant effect on the Capercaillie habitat). Consequently, Loch Lomond & the Trossachs National Park Authority is required to carry out an appropriate assessment in view of the site's conservation objectives for this goose interest.
- 7.14 An appropriate assessment has been carried out and considered the impact of the proposal with the following conclusions:
- Potential temporary visual disturbance from construction of the access track:  
Geese are known to feed in nearby fields approximately 200-300m from the development site. Most of this feeding area is out of view from the proposed development site therefore adverse visual disturbance would be limited and would not adversely affect the population of geese as a viable component of the SPA.
  - Potential temporary noise disturbance from construction of the access track:  
The scale and nature of the construction activities (a tractor, trailer, excavator and two anticipated staff) is expected to generate noise levels, which at a distance of 200-300m from the construction site to the goose feeding fields, is unlikely to cause significant disturbance. If there is any disturbance it is likely to be very minor and would only be for the estimated 10 day construction period. Therefore noise disturbance would not adversely affect the population of geese as a viable component of the SPA.
  - Potential noise disturbance from the use of the access track:  
The use of the track to access the shed and the field will not be greater, or significantly greater, than existing ambient noise levels associated with surrounding agricultural activity, as well as residential activity from Gartocharn village and the use of the Aber path, which lies between the development site and the feeding fields. Therefore the use of the track will not adversely affect the population of the geese as a viable component of the SPA.
- 7.15 Considering the appropriate assessment and the advice from SNH, the proposal is in accordance with policy ENV1 of the local plan.



## 8 CONCLUSION

The track would facilitate an access to an existing agricultural shed to assist the operation of a growing agricultural business. Therefore, it is accepted that the track as proposed is reasonably requisite for an agricultural purpose. The track would have a limited impact on the landscape character of the National Scenic Area and would not have a detrimental impact on the qualifying features of the SPA. The wider impacts of the ground engineering works are negligible. Having considered the merits of this case, the proposal is supported by policies ED3, L1, D1 and ENV1 of the Adopted Local Plan and does not raise a conflict with the 4 aims of the National Park. It is therefore recommended that planning permission is granted subject to conditions.

**Background** <http://www.lochlomond-trossachs.org/planning/>

**Documents:** *Click on view applications, accept the terms and conditions then enter the search criteria as 2014/0303/DET*

**List of Appendices:** *Appendix 1 Conditions and Informatives*

### Appendix 1

#### Planning conditions

1. **Restriction on track width:** Notwithstanding the approved plans, unless as may otherwise be agreed in writing by the Planning Authority, no part of the agricultural track hereby permitted shall exceed 3 metres in width.

REASON: To minimise visual and landscape impact and to avoid a track that is wider than reasonably necessary.

2. **Construction materials and methodology:** Before the development hereby permitted starts, confirmation of the materials to be used and the method of constructing the agricultural track, the link ramp to the shed entrance, any associated hardstanding and field drainage details, shall be submitted for the approval in writing of the Planning Authority. Thereafter, the track shall be constructed in accordance with the details approved under the terms of this condition.

REASON: To ensure the track is constructed sensitively to minimise visual and landscape impacts in the interests of the special qualities of the National Scenic Area.

3. **Restriction on the erection of enclosures:** No gate, fence, wall or other means of enclosure on the land to which this permission relates shall be erected without the prior written approval of the Planning Authority.

REASON: The Planning Authority considers that such development should be subject to formal control in order to safeguard the visual amenity and landscape character of the area.

4. **Access to Aber Path:** The access to, and route of the Aber Path through the land in the applicants ownership shall be maintained during and after construction of the agricultural access track. For the avoidance of doubt, it shall remain clear and without obstruction.

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REASON: In order to ensure the recreational route is not unnecessarily closed during the course of the development to accord with the third statutory aim of the National Park to promote enjoyment in the form of recreation of the special qualities of the area by the public and the terms of the Land Reform Act.

- 5. Advisory Signage:** Before the development hereby permitted starts, a plan shall be submitted that details the location, type and content of temporary advisory signage to forewarn users of the Aber Path of the potential dangers of construction traffic. Thereafter, the signage shall be erected in accordance with the terms of this condition and shall remain in place until the completion of the agricultural track.

REASON: To forewarn users of the Aber Path about the potential dangers of construction traffic.

### **Informatives:**

1. Duration of permission - In accordance with section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), this permission lapses on the expiration of 3 years beginning from the date of this permission, unless the development to which this permission relates is begun before that expiration.
2. Notification of Initiation of Development - Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. We recommend this is submitted 2 weeks prior to the start of work. A failure to submit the notice, included in the decision pack, would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.
3. Notification of Completion of Development - As soon as practicable after the development is complete, the person who completes the development is required by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give written notice to the planning authority of the completion of the building works. As before, there is notice for you to complete for this purpose included in the decision pack. In larger, phased developments, a notice of completion is to be submitted as soon as practicable after each phase is finished by the person carrying out the development.