Development Proposals and Outdoor Access

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The term development can have a multitude of meanings, but, in this context, it's the meaning of the term as defined in the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) that is important.

> ""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 buildings or other land".
>
> *Under Section 26(1) of the 1997 Act,*

When somebody wants to develop a piece of land or inland water, more often than not, permission will need to be obtained, prior to carrying out the development, by means of the approval of a

suitably documented planning application.

Where a development proposal is considered acceptable following assessment of an application, permission, known as planning permission, will be granted by the local planning authority for the area; either the council or the national park authority, dependent upon the location of the development.

Does every development need planning permission?

No. Some operations, such as works for the maintenance or improvement of the inside of buildings or which do not materially affect their external appearance, or the use of land and associated buildings for agriculture or forestry, are not considered to be development, so they don't need planning permission. Also, some forms of development enjoy the benefit of deemed planning permission, so do not need to be the subject of planning applications. To discover if the development proposed needs permission, you should talk to the local planning authority.

Does a development need to consider outdoor access rights?

Yes. Statutory access rights apply to the majority of land and inland water in Scotland and public rights of way, public roads, core paths, heritage paths, Scottish Hill Tracks, Scotland's Great Trails and desire lines may run through an area where a development is proposed.

As part of the process of planning to develop a site, it is advisable for the developer or his agent to review the current amount and type of public access across it and present this as an access statement (for small-scale proposals) or access management plan (for larger scale proposals). This should include identifying existing rights of way, core paths, other paths and tracks through and adjacent to the site, and take account of how the statutory right of access currently affects the site. The outdoor access statement/plan should set out how existing routes and access rights will be affected by the proposed development, what the developer proposes to do to minimise any adverse effects on them and what opportunities it proposes to take to enhance public access through the site.

How will the current level of public access be affected by the proposals? Will it make it worse, keep it the same or make it better? It's not just the effects post-development that should be considered. How will public access be affected during the construction phase of the project? What needs to be done to maintain the continuity of public access across the site whilst allowing the development to take place?

The impact of a proposed development on access rights, rights of way, core paths and other routes by which access rights might reasonably be exercised should be taken into consideration by the local planning authority when assessing the planning application for the development. However, the fact a development might adversely affect access rights does not necessarily mean planning permission for it will be refused.

Is there good practice guidance on managing public access?

There is no single source, but guidance can be found by industry, such as windfarm construction with NatureScot's "Good Practice during Wind Farm Construction, Part 8 Recreation and Access" and "Siting and Designing Wind Farms in the Landscape". General guidance is also contained in local development and core paths plans and at the national level, in documents such as the Scottish Government's "National Planning Framework 4" (2022) and "Part 1 Land Reform (Scotland) Act 2003: Guidance for Local Authorities and National Park Authorities" (2005); NatureScot's "A Brief Guide to Preparing an Outdoor Access Plan" (2010); and the National Access Forum's, "Managing Public Access in Areas of Wildlife Sensitivity in Scotland" (2023).

During the construction phase of the development, health and safety legislation requires people to think about how their work will impact others. In that regard, the Construction (Design and Management) Regulations 2015 have an important role to play. The Construction Phase Plan for the proposed development will need to show how public access will be managed. Although access rights are not legitimately exercisable over land on which building, civil engineering or demolition works are taking place unless, on a recognised right of way, it is not enough to simply say people will be excluded from the site, as people may ignore any signage and appear on site anyway. The Access Management/Construction Phase Plan needs to set out how such situations will be dealt with.

A development is proposed for my local area. What can be done to preserve access through the site?

You need to examine the planning application and see exactly what is proposed. You should be able to view the application and associated documents on the relevant local authority's online planning portal and see what they say about access. Will existing outdoor access be affected and if so, does the application recognise it and say how it will be managed? Will it make public access better or worse?

Where you have concerns about how the proposal will affect existing public access, you need to make your views known by commenting on the application. It is just as important to say how it might make things better as it is to say how it might make things worse.

Local planning authorities must make a decision on an application within a set time period. Thus, there is a set period of time for you to make your views known. Miss it and they are unlikely to be taken into account! The planning application portal will tell you the deadline for comments on a particular planning application.

Can access routes through the development site be moved?

Yes, but not until planning permission has been granted and any relevant conditions fulfilled. Even then, a separate application process may need to be followed to move or close a public road, right of way or core path. This will normally involve the developer in applying for an order under section 207 or 208 of the 1997 Act. The public has the right of objection to such orders.

In terms of the public right of access under the Land Reform (Scotland) Act 2003, as soon as planning permission has been granted and development is taking place in accordance with the terms of that permission, the land to which it applies is treated as if the development has been completed and relevant post-development access rights are exercisable over it.

How do I know if a proposed diversion is acceptable?

It is not always easy to see if a proposed diversion route will be better or no worse than what is there now. Currently, the Scottish Government policy (NPF4 Policy 13) is to “encourage, promote and facilitate developments that prioritise, walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably” and “Adequately mitigate any impact on local public access routes”.
Whilst a proposal may be considered against how it affects the sufficiency and integrity of the overall green/blue network (green network - greenspaces such as parks and open spaces, blue network – wetlands, rivers and water courses), it is also important to consider the characteristics of the individual route. For example, its historic, cultural, amenity, convenience or transport value e.g. an informal/unsurfaced shortcut through to a bus stop or an established recreational route offering a longer but more scenic alternative to a more direct, low-level route.
Particularly in cities, towns and villages, the grey space (lanes, vennels private roads, vacant & derelict land) routes are not always included when looking at public access, yet they are a vital component of the access network.

The criteria ScotWays uses to determine whether a proposed diversion is acceptable include:

- the diversion should be of at least an equivalent standard, e,g, in terms of surface material and width,
- it should not be significantly longer,
- it should be no less convenient,
- it should be accessible to at least the same categories of access taker as the existing route, and
- it should be available for use before the present route becomes unavailable.