
CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

Title: Privacy zone around Urrad House and staff annex, Killiecrankie

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Purpose

This paper provides a background to a current access issue and seeks the Forums advice on the extent of the privacy zone around Urrad House and the adjacent staff annex.

Advice Sought

Forum members are asked for their views on the extent of the privacy zone of Urrad House and the staff annex (see map 1) and to consider the following questions:

What is the Forums view on the extent of the privacy zone?

Background

- I. In October 2010 the issue of a locked kissing gate adjacent to the drive way of Urrad House was raised by a resident in Killiecrankie. The resident maintains that prior to the 24th of July 2010 the gate was open and that residents of Killiecrankie and the estate have freely walked along the path. He stated that:
 - a. Locals have used this path to walk from Aldclune to Killiecrankie school since the 1950's;
 - b. Locals have used the path to access a business on the estate (since moved);
 - c. As a resident in the area for 10 years he and family have used the route frequently to visit residents on the estate as well as at Garry House;
 - d. And that the path has been used for an annual memorial walk to the Battle of Killiecrankie site.

2. The complainant took the matter up with Perth and Kinross Council as the access authority at that time. The complainant also raised the issue with the Killiecrankie Community Council in February 2011. On the 18th of February 2011 solicitors for the estate wrote to Perth and Kinross Council setting out the estates positions as follows:
 - a. That public right of way does not exist in the vicinity of Urrad House. If the path was claimed as a right of way they would take the view that the criteria for such status could not be met;

- b. That until recently the route was not in use and it would appear that without the permission of the estate somebody cleared the area around the gate allowing it to opened;
- c. That residents with connections to the estate confirm that the route was never used as a through route and children on the estate used the route by express permission;
- d. The clear view of the house from the path would be a clear infringement of privacy;
- e. The route (further westwards) is within the curtilage of working buildings and poses a significant health and safety issue;
- f. The route passes close to a number of pheasant release pens and its use would mean excessive stress on the birds.

Site visit by Access Officer

- 3. The path in question was not identified as a candidate core path.
- 4. CNPA staff have undertaken three separate site visits and describe the path as such:

Urrad House is situated on what might be best described as a terrace of ground between the A9 to the northeast and the fields adjacent to the B8079 to the south west. Occupying the space between the garden of the house and fields adjacent to the B8079 is mixed woodland on a very steep slope. Separating the gardens from the woodland is an old fence and rhododendrons. The gardens are set out as lawn with a gravel drive in front of the house to the formal entrance which is at the southern end of the house. Starting from the old bridge over a burn to the south east of Urrad House there is a clear line of a route that is benched across the slope heading towards the southern corner of the gardens. Here the route is less distinct but the user follows a line parallel to the fence (picture A map 1 and annex 2). This line slowly rises' and approximately half way along you are afforded a view of the master bedroom at a steep upward angle (picture B map 1 and annex 2). A person in the bedroom would-be afforded a view of the head of the person on the path. Further along at approximately 10 metres from the gate you are afforded a view of the downstairs living room and formal dining room, through a bay window. The person on the path is still at a lower level (picture c map 1 and annex 2). You will also have a view of the common entrance and the front windows of the staff annex. Upstairs you would be seen from the guest bedroom and the on suite bathroom. At this point the person on the path is about 25m away from the corner of the house. From within the house you would see the upper torso and head of a person on the path because at this point the rhododendrons are very sparse. The same views are present at the site of the gate. From the gate there is approximately 5 metres of ground before you access the main drive. Here you would be direct line of sight of the commonly used entrance (picture D map 1 and annex 2). There is evidence that

the occupiers of the property are concerned about people seeing in as there are net curtains on all the downstairs windows.

Defining the extent of the privacy zone?

5. In deciding if the locked gate constitutes an obstruction we have to consider first of all whether the locked gate and the path either side is within the privacy zone of the property and therefore outwith of access rights. In deciding the extent of the privacy zone we have to consider the following factors :
 - a. It is the occupation of the house that defines the privacy zone;
 - b. Privacy is not solely defined by line of sight but also by reasonable expectation of those occupying the property that the public will be on the path.
6. Occupation- The owners of the estate occupy the house at all times as it is their main residence so therefore there is a constant privacy zone around the house.
7. Extent of privacy-The Land Reform (Scotland) Act 2003 states that *land in which access rights are not exercisable (6.1) comprise(s) in relation to a house or any other places mentioned (have) sufficient adjacent land to enable persons living there to have reasonable measures of privacy in that house or place and to ensure their enjoyment of that house or place is not unreasonable disturbed (6.1b)*. In determining the extent of the privacy zone the Park Authority needs to consider the occupiers use of the house and their expectation of whether the public will be present on the path.
8. The Scottish Outdoor Access Code states (page 100) that access rights do not extend to houses and gardens, to intensively managed polices of larger houses although less intensively managed parts of the polices would be covered by access rights. In judging where a garden ends the Code states that a clear boundary in the form of a fence, hedge, constructed bank or lawn and tended shrubs could be used as visual clues to the extent of the garden. It also advises that the public should use existing paths or tracks when you are close to a house.

What is the Forums view on the extent of the privacy zone?

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