

**CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM**

**Title:** *Abergeldie Estate*

**Prepared by:** *Bob Grant, Senior Outdoor Access Officer*

**Purpose:** This paper sets out to seek the Forum’s advice on longstanding access issues on Abergeldie Estate, near Ballater

**Advice Sought:**

1. The Forum are asked to advise on the process undertaken by the Park Authority to date in resolving this issue, and the next steps

**Background:**

2. Access issues on Abergeldie Estate, Ballater were first raised in April 2005 and there have been a steady stream of queries and complaints since. The issues predominantly revolve around the presence of obstructions in the form of locked gates, stiles and kissing gates creating barriers to legitimate access takers. The Park Authority has tried several tacks to engage with the land manager with very limited success. Some progress has been made in encouraging modification of the structures but they remain as an effective barrier to horse use, and to all but the most athletic of cyclists.

**Table 1 - Complaints raised by members of the public**

<u>Method of contact</u>	<u>First date of contact</u>	<u>Issue</u>
Male A – phone call and letter	21 April 2005 2 November 2005	<ul style="list-style-type: none"> <li>• Creag Ghiubhais track east and west</li> </ul>
Male B – phone call and email	5 May 2005 29 March 2006	<ul style="list-style-type: none"> <li>• Glen Girnock</li> </ul>
Male C - email	5 July 2005	<ul style="list-style-type: none"> <li>• Coyles of Muick</li> </ul>
Female A (unidentified) – in person to Ballater office	22 Aug 2005	<ul style="list-style-type: none"> <li>• Glen Girnock</li> </ul>
Female B - email	25 Jan 2006	<ul style="list-style-type: none"> <li>• Glen Girnock</li> <li>• Buailteach track</li> <li>• DofE group refusal (pre-legislation)</li> </ul>
Female C – visit to office and follow up phone call	5 July 2006	<ul style="list-style-type: none"> <li>• Glen Girnock</li> <li>• Buailteach track</li> </ul>
Male D – phone calls	29 Aug 2006 30 April 2008	<ul style="list-style-type: none"> <li>• Glen Girnock</li> </ul>
Female D – notified by UDAT staff	16 April 2007	<ul style="list-style-type: none"> <li>• Creag Ghiubhais (west)</li> <li>• Balnacroft track</li> </ul>
Female E – phone call	29 Feb 2008	<ul style="list-style-type: none"> <li>• DofE group - camping refusal</li> </ul>
Male E – notified by UDAT staff; follow up phone call	5 March 2008	<ul style="list-style-type: none"> <li>• Glen Girnock</li> <li>• Coyles of Muick</li> </ul>

**Issues – please see map for locations**

3. Location 1 - Glen Girnock – originally ‘tree-house’ type stile; replaced with deer fence high narrow kissing gate (sometime after August 2006)
- Location 2 - Coyles of Muick – originally locked deer gate; replaced with deer fence high narrow kissing gate (early 2008?)
- Location 3 - Creag Ghiubhais track (East) – originally old gate; then post and wire fencing across; then narrow kissing gate installed (as indicated in letter from land manager of 26 Feb 2006)
- Location 4 - Creag Ghiubhais track (West) – originally locked deer gate; replaced with narrow kissing gate (as indicated in letter from land manager of 26 Feb 2006)
- Location 5 - Balnacroft track to Creag Ban – locked gate
- Location 6 - Duke of Edinburgh groups – access has been refused for Duke of Edinburgh groups wishing to camp on and pass over estate land on two occasions (one before and one since access legislation)
- Location 7 - Buailteach track – locked deer gate on the route from Lochnagar Distillery over to Glen Muick, narrow kissing gate stile in place

**Prioritising casework in upholding access rights**

4. Table 2 below is taken from a paper presented to, and agreed by, the Cairngorms Local Outdoor Access Forum in June 2006. It is evident that the issues on Abergeldie merit a **high** priority for resolution (the relevant ones are italicised) – there have been 10 complaints from different individuals in total over the past 3 years (see Table 1). **It is worth noting that this is more than any other access case in the Park.**

**Table 2**

<b>Higher priority</b>	<b>Lower priority</b>
<ul style="list-style-type: none"> <li>• <i>Repeated reporting of the same issue from more than one source</i></li> </ul>	<ul style="list-style-type: none"> <li>• A long-term issue that has remained unresolved for some time</li> </ul>
<ul style="list-style-type: none"> <li>• <i>Recent or imminent loss, (or a change resulting in loss), or significant reduction of access rights (e.g. physical barriers and signage)</i></li> </ul>	<ul style="list-style-type: none"> <li>• Temporary or existing discouraging signage</li> </ul>
<ul style="list-style-type: none"> <li>• <i>Existing complete physical barriers or blockages</i></li> <li>• <i>Barriers that are passable, but only with difficulty or discriminate against specific classes of users.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Barriers where alternatives are available</li> </ul>
<ul style="list-style-type: none"> <li>• <i>Issue affects high numbers of people ( e.g. close proximity to communities) or sites with significant demand for access</i></li> </ul>	
<ul style="list-style-type: none"> <li>• Presents a significant safety issue</li> </ul>	
<ul style="list-style-type: none"> <li>• Casework associated with planning applications</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary land management practices</li> </ul>

### **Whose access is being obstructed?**

5. In the case of Abergeldie, complaints have come forward from people who have *volunteered* the information that they are cyclists and walkers and have experienced further difficulties in managing trailer bikes, child buggies or dogs through the obstructions. None of the complainants have identified themselves as horse-riders but as we do not specifically request user information from them, it may be that one or several or none of them could be. We speculate that most horse-riders either avoid the area, or locals 'in the know' access a key through the neighbouring estate.

### **Communication with the land manager to date**

6. Letters have been written to the land manager regarding these issues with a full explanation of the role of the CNPA, an explanation of the access legislation, an appreciation of the issues that he faces and on each occasion, expressing a desire to meet and discuss solutions and funding options.
7. Letters were sent on the following dates: 26 October 2005, 20 December 2005, 8 February 2006, 31 March 2006, 31 August 2006<sup>1</sup>, and 6 March 2008<sup>2</sup>

### **The Concerns of the Land Manager**

8. Three letters have been received back from the land manager on the following dates: 30 October 2005, 28 December 2005 and 26 February 2006.
9. The main concern of the land manager revolves around deer management and the risks posed by having gates that could be left open thus allowing deer onto farm land, forestry, amenity hardwood trees and house gardens. Changes have been made through the installation of kissing gates which enabled better access by walkers, but given that this group of users were less affected by the nature of the previous obstructions e.g. the big stile, it is regarded as only a partial success. There have been issues in the past of irresponsible behaviour – namely, a large fire which burnt a local hill a few years ago – but apparently not of motorised vehicles.

### **Perspectives of land manager representatives – Anne Gray, SRPBA and Jamie Williamson, Alvie Estate**

10. As part of trying to resolve this issue, the CNPA invited the assistance of other land manager's in trying to smooth the way, feeling that they might be regarded with more sympathy. Anne Gray, Access Officer with the SRPBA and Jamie Williamson kindly agreed to help out and visited the site.
11. Anne and Jamie have reiterated the need to find a balance between upholding access rights and the rights of a landowner to manage land, and to find a pragmatic and sensible solution. They both alluded to the fact that a system does not exist that allows

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<sup>1</sup> CNPA staff asked a locally based CNPA Board member who knows the land owner whether he would be happy to intercede on the Park Authority's behalf. This happened in August 2006 and the land owner invited further communication from the Park Authority as a result of it.

<sup>2</sup> The gap between the last two letters was an attempt to see if the steps that the land owner had taken would satisfy access takers and visitors in the area. Unfortunately fresh complaints were received and therefore further contact was initiated in March 2008. The most recent complaint was on 30 April 2008

access for bikes and horses but that is not prone to abuse (gates being left open or allowing access to motorbikes)

### **Perspective of the CNPA**

12. The CNPA has the duty to uphold access rights. The trigger for the CNPA in taking action under our duty in the Land Reform Act to 'uphold access rights', is firstly that an access issue is valid (i.e. it exists on the ground) and secondly that it is in contravention of people's ability to exercise legitimate access by any of the forms of non-motorised access specified in the legislation. There is no base-line measure of *significance* of a problem i.e. threshold numbers of people reporting an issue, but in the case of Abergeldie, the Park Authority is of the opinion that this case merits its high priority status. The latest query from a member of the public over progress was received in early May 2008.
13. The Park Authority recognises that the land manager has made efforts to accommodate access, but is disappointed that despite our best efforts, he did not come to talk to us as he has incurred extra expense for himself, and in the process access has not improved substantively.
14. In this case the owners' concern relates to the potential for problems to occur in the future, rather than the fact problems that already exist. Whilst understandable, the legislation is predicated on the fact that access right can only be limited when *existing* behaviour is giving rise to problems and other measures have been found to fail. The findings of the Tuley case support this logic.

### **CONCLUSION**

15. The Park Authority have reached step 8 on the flow chart below. The next step would involve the issuing of a Section 14 Notice in the absence of any other course of action which might emerge from this meeting.

**The Forum are asked to advise on the process undertaken by the Park Authority to date in resolving this issue, and the next steps**

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## **SECTIONS 14 AND 15: UPHOLDING OUTDOOR ACCESS RIGHTS**

**CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM**  
**Paper 2- Abergeldie Estate 20 May 2008**

Sections 14 and 15 give specific powers to the Park Authority to take action against land managers who utilise prohibition signs, obstructions and dangerous impediments, etc for the main purpose of deterring or preventing the exercise of access rights.

