
CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

Title: Loch an Eilein – the next steps

Prepared by: Bob Grant and Fran Pothecary, Senior and Outdoor Access Officers

Purpose

To update the Forum on the access issue at Loch an Eilein and prompt discussion on the proposed course of action

Recommendation

To consider the evidence presented by the Estate and information gathered by the Cairngorms National Park Authority and to advise on the proposed course of action outlined in paragraph 12.

Background

1. A paper was presented to the Local Outdoor Access Forum at the September meeting regarding the alleged policy of “charging for access” for water users at Loch an Eilein. The Park Authority had not been satisfied following discussion with the Estate, that grounds existed to exempt the site under Section 6(1)(f) of the Land Reform Act, and had brought the matter to the Forum as part of consideration of further action.
2. The Forum noted the report on management of the site that had been prepared by officers, and a submission from the Estate tabled at the meeting. The Forum was clear that the loch could only be exempted from access rights if a charge had been levied, for no less than 90 days in a year, on all members of the public seeking to access the site prior to January 2001 and in every year since, as detailed in the Land Reform (Scotland) Act Section 1(6)(f).

Action taken subsequent to September meeting

3. Following the meeting it was agreed that the Park Authority would ask the Estate to take one of two actions: **EITHER** remove the signage at the site and instruct staff not to impede or obstruct non-motorised access to the water **OR** supply evidence to the satisfaction of the Park Authority that members of the public have been admitted to the loch only on payment over the time period specific in the legislation. The estate was asked to respond by December 15 2005. The Estate’s submission was received in a letter handed to Murray Ferguson on 16 November 2005. The estate’s evidence comprises:
 - Two statements: one from a former employee and one from a current employee confirming that access is only permitted on payment. The statements indicate that the charging regime was in place before January 2001 and continues to be in place;
 - A copy of a poster that indicated that permits were available for boating on rivers and lochs on the estate. Mr Grant has indicated that this poster pre-dates the 1980s;
 - A copy of a script advertising the loch as a wedding venue; and
 - Mr Grant’s own assurance that a charging regime applied.

Contact with recreational users

4. The evidence presented appeared to be at odds with the Park Authority's knowledge of the site and this prompted us to seek further information. The Park Authority therefore asked ten local users – individual businesses, outdoor centres and the Scottish Canoe Association to describe their understanding of the arrangements as had existed at Loch an Eilein prior to the inception of the Land Reform Act in early 2005. They were asked the following questions:
 - a) Were you aware of any scheme that allowed access to the loch for boats or canoeing when you went to the site? How did you find out about it?
 - b) Were you aware of any similar charging scheme in place before January 2001?
 - c) Have people attempted to take boats there in the past? What has happened?
 - d) Have you heard of others being charged OR of others using the loch without paying/when was that?
5. There was a good level of response to the letter. The Park Authority was also contacted by a small number of members of the public who had heard we were interested in peoples' experiences of using canoes or boats at the site.
6. The responses received strongly indicated that there was no awareness or knowledge amongst either the local or national canoeing fraternity of any management scheme that allowed or regulated access to the loch until very recently. Similarly, no information has come to light that admittance prior to 2001 was available on the basis of payment. Most respondents indicated that they had either been turned away directly, knew the loch was not a place where they were welcome to use their boats or had seen the sign at the site that until recently said "no boats".
7. Three respondents have indicated that they were explicitly informed by Rothiemurchus Estate staff (both at the loch and the Visitor Centre) that canoeing was not allowed on the loch.
8. There was some awareness that within the last year access for boats was now being granted for payment. Some people had been known to use the site on this basis but there were others who said they had refused to pay.
9. In summary, the information gathered is consistent with the signage that has been displayed at the loch up until the end of May 2005 which stated "No boats."

Contact with Rothiemurchus Estate

10. A meeting was held with the owner of the estate on 12 January to discuss the evidence that had been gathered. At that meeting the Park Authority provided a summary of the responses, a copy of the letter that had been sent to businesses, outdoor centres and the Scottish Canoe Association and a copy of the procedures for upholding access rights that have been agreed by the Park Board and the Forum. The meeting discussed all the evidence presented and the requirements under section 6 (1) (f) of the Land Reform Act to qualify for exemption. The meeting concluded with the Park Authority confirming that the issue would be discussed at the next meeting of the Cairngorms Local Outdoor Access Forum where views would be sought on the proposal to send a letter to the Estate summarising the evidence received and requesting removal of the sign in accordance with the duties laid out in Section 14 of the Land (Reform) Scotland Act.

Conclusion

11. On the basis of the evidence presented by the Estate and information collected from recreational users, the Park Authority concludes that there is no clear evidence of a charging regime having existed for the requisite period of time at Loch an Eilein and therefore the site is not exempted from access rights.
12. The Authority is of the view that the next step should be to write to the Estate highlighting the Authority's duty under Section 14 of the Land Reform (Scotland) Act. This would entail formally notifying the Estate of our decision and requiring that the signs be removed within such reasonable time as is so specified. If the owner fails to comply with the Notice, CNPA may take the action to remove the sign and may recover such reasonable costs as have been incurred. Under Section 14 (4) of the Act, the land-owner may, by summary application made to the sheriff, appeal against the Notice.
13. The Forum is asked to advise on the proposed course of action.

Bob Grant and Fran Potheary
Senior Outdoor and Outdoor Access Officer
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bobgrant@cairngorms.co.uk

franpotheary@cairngorms.co.uk