

---

## CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

---

**Title:** Upholding access rights – an examination of current issues

**Prepared by:** Fran Potheary, Outdoor Access Officer

### **Purpose**

To update the Forum with some examples of access issues currently under investigation in the Cairngorms National Park.

### **Recommendations**

**The Forum are invited to comment on the issues raised**

### **Background**

1. Under Section 13 of the Land Reform (Scotland) Act, the Cairngorms National Park Authority has the duty to uphold access rights. 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. Earlier in the year, the CNPA developed a set of procedures to govern their response to access issues raised.
2. Between February and early November 2005, CNPA had received correspondence from 33 members of the public regarding 36 different issues in 23 locations. **Up to mid January 2006, CNPA has received correspondence from 52 members of the public regarding 55 different issues in 32 locations.** The rise in reported cases may be in part to do with increased awareness and understanding of access rights and responsibilities.
3. The following is an update on previous issues raised (see LOAF Paper 3 15 November 2005):
  - 3.1 *Case 1 – Electric Fence*  
This concerned a long (7.5km), high-voltage electric fence traversing remote hill-country with scant opportunities for crossing in a safe way. Following the site visit and positive discussion with the land owners, they have agreed to undertake certain steps next spring to ensure the fence is 'access' friendly.
  - 3.2 *Case 2 – Access to water*  
This concerned the desire of some local groups to access a loch which lies within a National Nature Reserve. A meeting with the recreational users to discuss the issues of responsible access in an NNR has been proposed for February, prior to expected renewed interest in the site for recreation in the spring/summer. A meeting with the land manager is also being sought independent of this meeting.
  - 3.3 *Case 3 – Locked Deer Gates, fenced track and stile*  
This concerned two locked gates; a 'fenced over' track and a large and difficult stile, all on popular access routes in a particular estate. To date, two letters have been sent to

the land manager and two responses have been received. We have heard through a reliable third party source that the land manager is *extremely* resistant to meeting with Park Authority staff, and neither of the responses have been forthcoming in acknowledging responsibilities under the access legislation. However access staff believe that we need to continue to persist in arranging a meeting, on neutral ground if necessary, and to offer examples of practical solutions which would assist in facilitating access for cyclists and horse-riders (in addition to walker) whilst guarding against the estate's concern over the migration of red deer between estates.

#### 3.4 Case 4 – Cattle grid

This concerned an unavoidable cattle grid on an old military road used for horse trekking. The estate have been asked to remove the grid or make arrangements for people to be able to circumvent it, however there has been no response to the latest letter reminding them of their responsibility which was written in November 2005

#### 3.5 Case 5 – Management of the Riverside Walkway

This concerned an impasse between a Community Council and a local land owner over an agreement for the creation and maintenance of a local walk. Following a meeting between the council, their legal advisors and CNPA, the council have submitted another letter rejecting the draft agreement on the basis of the excessive burdens laid on it in respect of liability; reinstatement works and the extent of fees. It is expected that the route will figure prominently during the Core Path Planning process.

#### 4. The following are further examples of cases under reviews and at differing stages of resolution

##### 4.1 Case 1 – Golf course access

Two independent complaints were received from members of the public about intimidating behaviour from a golf course employee. The people were exercising their dogs in a local grass field, historically used for this purpose. The field, though not part of the golf course, has recently been rented by the club for practice and the local residents were asked to leave and told they had no rights of access. Attention has also been drawn to inaccurate signs regarding dogs on leads and skiing. Access staff met with the golf club manager and positive action is proposed to remove and alter signage, and further make club staff aware of people's access rights and responsibilities.

This case, and two others where advice has been sought about signage, has highlighted the importance of the Code as the primary source of guidance. The Park Authority are encouraging land managers to use the wording and advice in the Code – for example "dogs on leads or under close control" – in an effort to reduce ambiguity and ensure consistency of messages not only within the Park but elsewhere they might be encountered in Scotland.

##### 4.2 Case 2 – Erection of wicket 'swing' gates

This is a slightly more unusual case as the site is essential in an 'urban' setting on a piece of council owned amenity ground between a housing estate and a road. A grass vennel, once free from obstructions now features barrier fences and a narrow wicket gates at either end. The effect has been to severely reduce the accessibility of the vennel particularly to disabled users, cyclists and those pushing child's buggies. The local authority has been responsible for the new structures and will be approached by CNPA in due course. In the meantime, local users are gathering evidence of the detrimental effect of the new gates to persuade the authority to remove them.

##### 4.3 Case 3 – Residential privacy and denied access for conservation reasons

This case involves a gradual erosion and removal of access opportunities on a small riverside estate. An old track to the river, popular with fisherman, walkers and cyclists has been tarred over as an apparent means of making it part of the privacy zone of a new house. Signs are present further into the estate stating “Conservation area – no access” and the complainant has been challenged by the land owner on several occasions. Copies of correspondence from the land owner reveal some serious shortcomings in his understanding of access rights – for example the demand for users to keep to paths; to keep dogs on a lead and to remain away from certain places. A site visit is planned for early February and on the basis of this, the matter will be raised with the landowner.

### Overall Conclusion

5. There are a number of other issues that require site visits in lieu of deciding on future courses of action. Many of them concern physical blockages e.g. locked gates lacking an alternative; and signage especially in relation to dogs. Site visits help to ascertain that information is correct and can be plotted correctly as GIS data, it can also help establish land ownership issues. Visual images obtained can be of great help when referring back to issues at a later date.
6. Only one or two issues have been raised by land owners regarding irresponsible behaviour; although we have had some contact requesting help with signage guidance directed particularly at dog owners in relation to breeding birds. We have had no contacts from recreational users in conflict with other recreational users, despite this being a perceived ‘knock-on’ effect of the legislation. However there is positive thinking on how to help users integrate in areas of particular pressure – for example, we have been invited by the Forestry Commission as recreation managers to join a discussion of different users on how to achieve this successfully.
7. The Forum are invited to comment on the issues raised.

**Fran Potheary**  
**Outdoor Access Officer**  
**24 January 2006**  
[franpotheary@ Cairngorms.co.uk](mailto:franpotheary@ Cairngorms.co.uk)