
CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

Title: Aviemore Highland Resort – Laurel Bank Lane fence

Prepared by: Fran Potheary, Outdoor Access Officer

Purpose:

To draw the Forum's attention a long standing planning matter regarding an obstruction to access in Aviemore, and to seek advice on how to progress that matter using duties and powers conferred on the authority by the Land Reform (Scotland) Act.

Advice sought:

Is the Forum content with the CNPA assessment that access rights are being obstructed and that in light of the case history, formal moves towards removal of the fence are taken as soon as possible?

BACKGROUND

The nature of the obstruction and significance of the route

1. This case involves a 2m wooden fence that was erected in 2004 by Aviemore Highland Resort preventing access between the collection of places, buildings and open spaces making up the resort, and the town centre of Aviemore. The specific route in question, which is blocked by a 4 m length of the fence (Laurel Bank Lane by Tesco's car park), used to be an extremely well-used link, also giving access to the Craigellachie National Nature Reserve. Its loss has meant significant detours for foot and cycle access between the resort and town. Its reinstatement has been a high priority for the community – it was one of the earliest issues reported as an access issue to the CNPA. The route was identified as a proposed Core Path in the Interim Draft Core Paths Plan, notwithstanding the existence of the current barrier.

The Role of the CNPA Development Management (Planning) Group

2. Up until very recently, the whole fence has been a planning matter which was being dealt with by the CNPA. The case has been the subject of two rounds of appeals and enforcement notices. On 15 October 2007 the Reporter for the Scottish Executive Directorate for Planning and Environmental Appeals judged that the 4m stretch of the fence at the end of Laurel Bank Lane (as above), is outwith planning permission. However it was deemed that there was permitted development rights for a fence of 1m in height. Aviemore Highland Resort was granted until 15 December 2007 to reduce the height of the fence. **On a site visit on 14 November 2007 I found that the fence had been reduced in height.**
3. Notwithstanding this reduction in height of the fence, a fence of **any** height here without a gap constitutes a barrier to access rights. Hence the matter may now be pursued in accordance with the powers and duties of the CNPA under Land Reform (Scotland) Act 2003.



The Reporter's comments relevant to outdoor access

4. The Reporter has made statements that are helpful to our case for re-instating access, and a strong lever to utilise access legislation in so doing.
 - a) He has rejected argument that fence was for security reasons
 - b) He has found no evidence that there is a compelling land management reason for the fence
 - c) He has concluded that the fence was erected for "prevention of public access on foot"
 - d) He concluded that 'curtilage' and 'privacy' could not apply to the whole resort and only to individual buildings and places

- e) The fence contradicts the Master Plan for the Resort which aimed at integration between resort and town
- f) He found that the section of road behind Tesco within the AHR is a road under the Roads (Scotland) Act 1984

What are the responsibilities of the access authority and land manager?

Responsibility of the Access Authority:

5. 13(1) *"It is the duty of the local authority to assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised".*

Responsibility of the Land Manager:

6. 14 (1) *The owner of land in respect of which access rights are exercisable shall not, for the purpose or for the main purpose of preventing or deterring any person entitled to exercise these rights from doing so –*
- a) *put up any sign or notice:*
 - b) **put up any fence** or wall, or plant, grow, or permit to grow any hedge, tree or other vegetation
 - c) *position or leave at large any animal*
 - d) *carry out any agricultural operation on the land; or*
 - e) *take, or fail to take, any other action*

The steps to securing access rights

7. After considering all relevant matters it is CNPA's view that access rights are being obstructed and that the following steps should be taken to secure access rights in line with principles of casework already approved by the CNPA Board:
- a) An informal approach by letter will be made, seeking an opportunity to meet and negotiate agreement on a course of action and timescale to remove the fence;
 - b) If no agreement is possible, we will move to formal procedures by serving a Notice to remove the obstruction with timescale for action; and
 - c) If the action decreed in the Notice is not undertaken in the stated timescale, CNPA may use its power to remove the obstruction and recover costs.
8. Given the history of the case, we feel it is very unlikely that the fence will be **voluntarily** removed. The Board have indicated at their planning meeting on 2 November 2007 that they were keen to see the Park Authority deploy their statutory powers if necessary in resolving this case.

Fran Potheary
Outdoor Access Officer
franpotheary@cairngorms.co.uk