
CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

Title: Update on Outdoor Access Casework

Prepared by: Fran Pothecary, Outdoor Access Officer

Purpose

To update the Forum on casework concerning upholding access rights and outdoor access casework.

A. UPDATE ON LEGAL ADVICE – PERMISSIONS AND LIABILITIES

Following the discussions that took place at the Forum meeting on 5 September and at both the land management workshops dealing with Core Paths Planning, the Cairngorms National Park Authority sought legal advice on 2 issues. These were:-

1. Where permission has been sought to be on land, does a higher duty of care fall onto the land owner in contrast to circumstances where no permission has been requested?
2. Does the presence of a Core Path on land lead to a greater exposure of the land owner to liability?

Issue 1

The advice received confirms that the duty to take reasonable care that persons entering the land are not injured is the same regardless of whether there is permission to be on the land or not. If an accident or injury did occur, a court would seek to analyse the whole set of circumstances of the case and the characteristics of the visitor in deciding liability. Whether the owner of the land knew the person in question was on the land is one of these circumstances, but this is not the same as the issue as to whether permission was granted to be there.

Issue 2

The same duty of care applies whether the path in question is a core path or not. Where a Core Path does exist there would obviously be a high expectation of public use and there is therefore strong merit in undertaking a risk assessment and management.

To assist in the understanding of the liability issue, a short question and answer note is being prepared which will be posted on the Cairngorms National Park Authority website.

B. GENERAL REVIEW OF ACCESS CASEWORK

This paper forms the review of outdoor access cases which are being dealt with by the Park Authority access staff. The numbers of the cases (e.g. Case 1) relate to the first column (No.) of the attached spreadsheet (Paper One Annex 1 Reporting sheet). Column B refers to cases which are either New (N) or on which an Update (U) is available – details are covered in this paper. An indication of sources (Rec=recreational user; Land=land manager) is also given along with status of case i.e. closed, live etc

STATUS

Status	Number of issues
Live	47
Closed	38
Dormant	1
Pending	2
Out of scope	2
TOTAL	90

NEW (N) CASES (see column B Annex 1)

Case 5 – recreational user reported obstruction across forest road track in popular location; “no unauthorised access” signs and no alternatives given. Land manager has concerns about health and safety during forestry operations and the public ‘ignoring’ signs. CNPA has arranged to meet with land manager late October. REC. Case *live*

Case 15 – local land manager reported issues of large groups of foreign students camping on estate and inappropriately using other people’s property. Advice given by CNPA and police involvement suggested, as well as contact with organising group. LAND Case *closed*

Case 20-21 – two issues were raised by community member at Core Path Planning drop-in session regarding routes close to settlement, one a “private no access” sign and the other a fenced off path. REC. Case *live*

Case 23 – issues of locked gate on land rover track raised by member of the public. Gate makes access by horse-riders, cyclists and those with child buggies impossible. REC. Case *live*

Case 24 – land-manager raised issues of recreational behaviour on estate. Predominantly for information only but watching brief will be kept as some issues may need specific intervention from CNPA. LAND. Case *closed*

Case 29 – path manager requested advice from CNPA regarding management of access around construction phase. Advice given and access managed appropriately. LAND. Case *closed*

Case 35 – Community Council identified issue of new fence blocking access to, and from, river in settlement with particular affect on young people and water users. REC. Case *live*

Case 40 – land-manager requested advice on legal position of person wild camping on hillside in winter. Advice given and watching brief will be kept. LAND. Case *closed*

Case 43 – possible access issue in relation to new house construction. No details as yet. REC. Case *live*

Case 45 –enquiry from police relating to whether access confrontations has been reported on estate. Matter concerned wildlife crime. No access issues reported therefore advice given. OFFICIAL. Case *closed*.

Case 47 – enquiry from members of public regarding horse-riding routes in Strathdon area blocked by locked gates. Complainant invited to send details of location and awaiting response. REC. Case *live*

Case 60 – organised event planned for next year requiring clarification of access legislation, and advice about natural heritage interest. Several parties involved in negotiation. REC. Case *live*

Case 63 – electrified deer fence proposed by estate. Details not known at time of writing but imminent meeting with estate and SNH. LAND. Case *live*

Case 70-71 – Issues were raised by local authority on two matters regarding inappropriate recreational use of access infrastructure; and health and safety concerns over a bridge. Advice was given. OFFICIAL. Case *closed*

Case 80 – issue of unauthorised motorbike use on an SSSI. Not clearly established whether SSSI in or out of Park. Issue out of scope. Advice given. LAND. Case *closed*

Case 83 – organised event proposed over NNR. Land-manager reluctant to sanction event. Issues to clarify include whether event falls within access rights, and establishing impact of event on natural heritage and other people's enjoyment. REC. Case *live*

UPDATED (U) CASES (see column B Annex 1)

Case 2 – this case involved conflict between two seasonal commercial users operating on publicly owned land. After a site meeting with both groups, a solution was proposed and both groups operated harmoniously together on the basis of the advice received. REC/LAND Case *closed*

Case 3 – further communication was received from the complainant who asked for advice from the CNPA as regard access rights and responsibilities. This was offered but further dialogue is proposed between CNPA and land manager regarding the ground and activity in question. REC/LAND Case *closed*

Case 6 and 8 – this case involves fence which has been deemed to be contrary to planning permission. CNPA access staff have been asked to comment on material evidence presented in this re-determination and are awaiting the outcome of the appeal. REC. Case *live*

Case 12 – the information leaflet in question has been re-drafted and is now Code compliant. REC. Case *closed*

Case 25 to 27 – the obstructions in question have all been replaced by wicket gates of deer fence height. This shows a significant step in the right direction by the land manager but unfortunately access for horse-riders and cyclists (the two key interest groups) is not improved. It is proposed to try and involved an access representative from the SRPBA in a future meeting. REC. Case *live*

Cases 30 to 31 – this case concerns signage and privacy concerns on small estate. Staff met with the land owner and follow up letter suggested course of action. Land manager responded to the Park Authority by letter but changes on the ground not verified to date. REC. Case *live*

Case 48 – after extensive work to get legal agreement between estate and community council, estate representatives withdrew support for agreed text and presented fresh version. Local authority legal department will be involved with further advice from CNPA. CC. Case **re-opened and live**

Case 52 – this case involved fence and wicket gate erected by local authority which presented barrier to access within community area. CNPA met with LA reps who agreed to modify structure. REC. Awaiting action outcome therefore case still **live**.

Case 54 – this case concerned damaged infrastructure and obstructions on a riverside walk although details were very sketchy. The source has not responded to invitations for more information. Rec. Case **closed**

Case 65 – CNPA opinion sought on possibility of diverting right of way in built up area. View of CNPA that not desirable as too costly and difficult to replicate an easily accessible route on the alternative proposed line. This was communicated to applicant via local authority planning department. LAND. Case **closed**

Case 81 – this case involved a report of “no dogs” signs on a shooting estate. The signs were removed for several months but have been recently replaced with further signage. Rec. Case **live**

Case 84 – this case was brought to us by a land manager regarding privacy and curtilage. Advice was given over the phone and a meeting offered but source did not take up offer of meeting. LAND. Case **closed**

SOURCE

This describes a combination of whom, and in what context the issue was raised initially. Issues are raised predominantly by *recreational* users – these can be relayed to CNPA by individuals, community councils, officials, interest groups. *Land managers* also raise issues and again this may come from individual, community councils, officials or representative bodies. In a very few cases issues may be raised simultaneously by both land managing interests and recreational interests.

SOURCE	NUMBER
Recreational	69
Land Management	17
Recreation and Land Management	3
Official	1
TOTAL	90

LOCATION

Below is a list of community council areas and the number of access cases within. The numbers are based on **all** issues received since implementation of legislation (Feb 2005) and have been grouped into ‘cases’, based on individual land management units i.e. each farm, estate, golf course, development plot or street. Therefore if 3 separate issues are raised on one estate, for the purposes of these figures it is recorded as one access case. The 90 issues raised to date relate in reality to 45 land management units (or cases).

Community Council Area	Number of cases
-------------------------------	------------------------

CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM
Paper One - Update on outdoor access casework 31 October 2006

Aviemore	6
Ballater	6
Boat of Garten	2
Braemar	2
Carrbridge	4
Donside	1
Dulnain	1
Grantown	2
Inveravon	1
Kincraig	5
Kingussie	4
Kirkmichael and Tomintoul	1
Kirriemuir Landward East	2
Laggan	3
Mid Deeside	1
Nethybridge	4
Newtonmore	3
TOTAL CASES	48

TYPES OF ISSUE

Issue Type	Number of cases
Obstructions (includes physical barriers such as gates, fences, stiles, ploughed fields, dangerous animals, cattle-grids)	32
Information (includes signs, leaflets, other written information)	17
Behaviour (includes confrontation, on the ground conflict reported by either land manager or recreational user)	15
Groups (includes organised events, activity groups e.g. DofE, congregational camping)	9
Legal (includes rights of way, query over sections of the Act, planning, path agreements)	9
Privacy (queries about curtilage, reasonable privacy etc)	5
Water (any water based issues)	3
TOTAL NUMBER	90

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