

---

## CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

---

- Title:** An analysis of long term access casework
- Prepared by:** Fran Potheary
- Purpose:** At the last Forum meeting, members raised a query about long term access cases that appeared not to have been resolved. Officers agreed to return to the Forum in February and present these cases and the challenges they have presented in reaching a resolution.

### Advice Sought

The Forum is asked to:

- a) note the complexity of the issues involved; and
- b) give views on the additional steps that might help move these cases forward

### Background

1. Generally access issues are reported to the Park Authority Outdoor Access Officers by members of the public. The Access Officer will do a site visit and establish contact with the land owner and others - including the complainant - with a direct interest. Once competing issues are aired, solutions are sought, agreed and implemented. Cases are assessed as either higher or lower priority and the extract below from the casework protocol (see Paper 2 Annex 1) illustrates how they are taken forward:
2. Higher priority cases will engender an initial investigation within one month of the complaint being received. Subsequent correspondence will be determined on a case by case basis but there should be no undue delay in dealing with high priority cases. Low priority cases will be dealt with as and when resources permit and complainants will be made aware of the likely timescales for action. Low priority cases should however be initiated within a six month period. Complainants will be updated every six months or at significant points of resolution and notified when a case is closed.
3. Initiating case work investigation within these deadlines is generally achievable – however in a very small number of cases, resolution may take months if not years especially if facts, ownership and responsibility are difficult to establish, or other resolution requires much larger changes to be effected (which may be beyond the scope of the protagonists or the Park Authority) or simply if change is met with deep intransigence.

### Section 14 Orders

4. The ultimate tool for dealing with access obstructions is a Section 14 Order. In order for a Section 14 to be successful, it has to be proved that an obstruction is in place for the *main* purpose of deterring access. Given the resources that have to be committed, the effect on land manager relations (and potential wider ramifications for the CNPA

and partners) and low seriousness of most access issues reported, the CNPA do not consider S14 in any but the most pressing situations. Indeed our current record 'low' of live cases and the recognition that despite lengthy time spans, access issues are generally solved in the end, leads us to take a long-term, 'softly-softly' approach. A change of land ownership, a change of heart, a change in land management objectives may move a land owner from a position of recalcitrance to do something about an issue, to one of co-operation. There is no doubt that having a small budget which allows us to pay for the capital cost of a gate or signage – especially where no other public sources of funding are available such as SRDP - has helped in several cases.

5. The cases below are ones which were reported in some cases more than three years ago but remain on the books as 'live' cases.

### **Aviemore**

6. The area between Aviemore and Carrbridge is a Special Protected Area (SPA) for capercaillie, and is ringed by a long deer fence, punctuated along its length by locked vehicles gates and high stiles – some of them 7-8 feet high – where tracks transect it. The Estate over the past two to three years have improved the stiles and also replaced half a dozen in the northern section with self-closing deer gates under an SRDP application. The remaining stiles mainly above Aviemore present an inconvenience but are not impassable to bikers; they are a full obstruction to horse-riders but they gain access by getting a key from the Estate. Walkers can more easily negotiate the stiles but they are an issue for anyone who has a dog with them.
7. Most bike use is below the fence line largely due to proximity to Aviemore, the lower woodland being where the best single track terrain is, and because the terrain and vegetation cover above the fence line is less attractive to bike use (connecting tracks here are largely grown over). Nevertheless the pressure to put in side gates has come predominantly from mountain bikers.
8. The issue here is the management of the site for capercaillie, and the Estate's responsibility to ensure the integrity of the SPA. A concern has been expressed by SNH that increased accessibility will mean increased disturbance.
9. There is no doubt that somewhat of an impasse exists between the desire for easier access, and the need to protect capercaillie from increased disturbance. Work between the Park Authority, the Estate and SNH is now focusing on bottoming out the amount and type of recreational use in the area, and the location of key habitat for caper with a view to looking at what management interventions can be successfully applied. The extensive work that has been taking place in the Boat of Garten woods is proving to be of assistance in developing our collective thinking on workable solutions.

### **Ballater**

10. The Forum will be familiar with the issues here as this is our longest standing case, albeit both action on it and complaints have been in abeyance for over 2 years. In response to complaints about the previous stiles and locked gates, the Estate put in kissing gates. These are negotiable by walkers but very difficult for bikers and impassable for horses. Any horse access here is negotiated on a local level by acquiring a key and the CNPA do

not know the extent of this. Notwithstanding the limited improvements afforded by the kissing gates, the CNPA made numerous approaches to the Estate, all to no avail and engaged the assistance of a former Board member and local contact in making approaches. The latest attempt to mediate was carried out by a local Ranger, again with no effect.

11. We have been for some time at a point of stand-off with the Estate on this one – we do not feel that the case meets the rigorous tests that would allow a Section 14 Order to be successful, or that the case merits the time and resources to prosecute it. The last complaint was March 2012 and the one before Sept 2009. All the complainants have received responses from the CNPA explaining the difficulties encountered.

### **Kincraig**

12. There have been two issues on this Estate, one relating to low ground gates and one to hill tracks.
13. The first one concerns a kissing gate on a route leading through a residential caravan park towards Speybank. Two complaints were received in 2009 from cyclists about the difficulties they presented. The CNPA suggested to the Estate that one of the kissing gates was replaced with a self-closing deer gate. The land owner was amenable but wanted to retain a half metre high 'step over', to deter quad bikes and also allow rabbit proof netting to be put in place. The Park Authority (who had offered to install the new gate) did not regard this as a good solution, in that it would create another form of obstruction in place of the first, and would interfere with the gate closing mechanism. No further progress was made at the time but a recent site visit has shown that one of the gates is now open so that one of the through routes to Speybank is accessible.
14. The second issue concerns at least one locked deer gate (without alternative side access) across the hill tracks around the Estate. We are awaiting further details from one complainant regarding the location of other gates. There have only been a couple of complaints over the years but as the Estate neither promotes access to the general public nor is it easily accessed – there is no publicly available car parking for example – there are fairly low levels of access taken here, certainly relative to other Strathspey locations. There are several businesses on the Estate – horse-riding and a zip wire are two examples - but access for their clients is arranged through the business.
15. The land owner was resistant to putting in the type of side gate that has been successfully negotiated with Seafield and Kinrara. He was concerned about increased impact on sporting activities, risk of quad bike access and deer movements between in-bye and high ground. So far the CNPA have been unable to persuade the land manager to trial new gates on the hill tracks. A recent letter was sent to the land owner opening the way for further dialogue.

### **Dalwhinnie**

16. Two locked gates were reported by single independent complainants in each case – one by a horse-rider in June 2009 and one by a cyclist in November 2010. The gate at the north end is a locked stock gate off the A9 which leads to Meall a Cuaich, a Munro. The gate at the south end gives access to a track which follows a leat up from Dalwhinnie to

meet the Munro track. Neither gate has an alternative, although both are of stock height, rather than deer gate height. The north end access is heavily used, as it leads to a Munro – the lay-by off the A9 is frequented by hill-walkers' cars. Many people bike up the track and it is assumed that most people simply lift their bikes over the stock gate.

17. The situation is complicated as the leat track is managed by Scottish and Southern Electricity who is also working on the pylon lines and hence controlling access to the track which has become an operational site. The Estate does not have an issue with alternatives being provided but SSE are concerned about unauthorised vehicle access and liability and have suggested that the Park Authority indemnify SSE against third party claims. We responded saying that responsibility for managing the public remained with the land managers – in the case of the hydro access track, that being SSE, and suggesting self-closing pedestrian gates as an alternative. Nothing further was heard despite four further emails being sent in July, October and November 2011 and March 2012 by the CNPA. At the time of writing, one of the original complainants has just been back in contact with the CNPA again, noting that the gate is still unchanged. Fresh contact has been initiated with SSE and we have learnt that our main contact has been on long-term sick leave. Certainly the possibilities for resolution in this case have not been exhausted and we will give an update at the meeting.

### **Laggan**

18. The issues on the Estate relate to signage, rather than obstructions. In October 2010 we received a complaint from a member of the public about a hill-walking incident that was related to inaccurate and slightly intimidating signage. The local authority ranger confirmed that there were a plethora of signs in place that were out-dated and not Code compliant. The Park Authority have written on two occasions and offered to help with signage. We have never had any acknowledgment of our letters. The gates are open and a Right of Way runs unobstructed over the land to Newtonmore. We have had no further complaints from members of the public so assume that people are taking access regardless of the confusing signage. The use is largely local and not promoted – for example, there is no car park at the Laggan end where the route emerges onto the A85.
19. The challenge with this case is its low level of significance and limited ability of the CNPA to effect change if the Estate is not willing to discuss matters. Until such time as there is an increase of complaints, we are minded to let the case lie, with an annual letter to the Estate to offer assistance.

### **Existing guidance**

20. There are numerous publications now developed over the past ten years on managing access available on the Code website and through many other channels. These include the following:
- Public access and land management
  - Signage guidance for outdoor access: a guide to good practice
  - Signs guidance for farmers and other land managers
  - Stalking and public access: signs guidance for land managers

- Towards responsible use: influencing recreational behaviour in the countryside
21. In looking to resolve access issues, the Park Authority promotes this guidance and some of our own initiatives such as Easy Signage, Tread Lightly, Deer Awareness signage and intervention through Rangers.

## **Conclusion**

22. Overall our success rate for resolving access issues is very high and is achieved through co-operation with few negative repercussions. The concern that some issues take a while to resolve should be also read against the lack of pressure from complainants for quick resolution. Most people appear to be content that their complaint has been listened to, lodged and are confident that it will be dealt with in due course. A clear indication of our casework protocols and regular reports back to complainants by access staff every six months is helpful in confirming this.
23. Reported access issues have declined in the last couple of years, and the Park Authority has become more effective in assessing and dealing with cases. This has allowed us to focus more on the developmental work of providing high quality opportunities for outdoor access.
24. The Forum is asked for comments and suggestions to assist in concluding these cases.

**Fran Potheary**  
**Outdoor Access Officer**  
[franpotheary@cairngorms.co.uk](mailto:franpotheary@cairngorms.co.uk)