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NOTE OF STIRLING AREA LOCAL ACCESS FORUM HELD IN THE COUNCIL CHAMBERS, VIEWFORTH, STIRLING, on WEDNESDAY 6 DECEMBER 2006 at 7.00 p.m.

Present:-

Niall Bowser
Cheryl Campbell
Paul Davison
Michael Gray
Simon Hart
Linda Howson
Duncan McEwen
David Petch
John Pitt
Roderick Ross (Chair)
Graham Taylor,
Councillor Gillie Thomson
Robert Sparkes

Officers:-

Donald Balsillie, Service Manager, Environment Services
Richard Barron, Senior Access Officer, Environment Services
Ann Dromgoole, Committee Officer, Corporate Services (Clerk)
Robert Hunter, Countryside Development Officer, Environment Services
Penny Stoddard, Access Officer, Environment Services
Alison Perry, Community Access Officer, Environment Services

Also Present

D Canavan – Concerned resident of Sauchieburn (Paragraph 24 only)
Stuart Davies, Scottish Natural Heritage
Ali Hibbert, The Paths for All Partnership
Sylvia Jackson MSP
A Kennedy – Old Sauchie Resident's Association (Paragraph 24 only)
I Macfarlane – Representing other concerned residents of Sauchieburn (Paragraph 24 only)

Apologies for absence were received from Councillor Tony Ffinch and Scott Nisbit.

23 NOTE OF MEETING –30 AUGUST 2006

Decision

To approve the Note of Meeting of 30 August 2006 as a correct record of the proceedings.

24 LOCKED GATE AT OLD SAUCHIE - HEARING

On 30 August 2006 the Forum had agreed to hear a complaint from Mr D Canavan, concerning locked gates at Old Sauchie. The complaint arose from

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a response to a Talkback Stage 3 complaint on the decision of the Council's Access Officer that access rights were not exercisable on land. The Forum agreed that a representative from Old Sauchie Resident's Association and the Estate of the late Mrs Gay Stafford also be invited to speak. Members of the Access Forum had undertaken a Site Visit to Old Sauchie on 22 September 2006.

A copy of the correspondence in respect of the Hearing had been included with the agenda papers. These papers had also circulated to the Mr Canavan, Baird Lumsden (Estate Factors) and the Chairperson of Old Sauchie Resident's Association at the time that the agenda had been issued on 24 November 2006. The papers included a copy of the Note of the Site Visit held on 22 September 2006.

There was also tabled at the meeting (a) copy of submissions from (i) Mr A Kennedy, on behalf of Old Sauchie Residents Association (ii) submissions dated 29 November 2006 received from Mr I Macfarlane on behalf of 13 concerned residents of Sauchieburn (who were also affected by the closure of the Gate) and (b) letters dated 28 November and 30 November 2006 from the DMH Baird Lumsden (Estate Factors) and Sylvia Jackson MSP respectively. Arising from Mr Macfarlane's submissions the papers on the matter had also been circulated to him.

Baird Lumsden had asked that following the Hearing the Forum postpone a decision to their next meeting to allow the new owners of Sauchie Estate to consider the position and perhaps reach agreement with the Council's Access Officers to resolve the situation.

Sylvia Jackson supported the constituents who had objected to/expressed concerns about the presence of the locked Gate.

The Chair advised of the procedures under which the matter would be considered.

All of the Parties welcomed the opportunity to speak.

Mr Canavan advised that he was speaking as a resident with the Stirling Council area and not as a Member of the Scottish Parliament. He provided background information on the erection of the Gate and confirmed that his objection was on an important matter of principle concerning rights of access to the countryside under the 2003 Act. Access to the Estate was generally very good. When the Gate was first erected he was still able to climb over or around the side of it. However when the Gate was later surrounded by barbed wire this made it impossible to access. He had decided to delay lodging an objection at that time until implementation of the Land Reform (Scotland) Act. The barbed wire Gate to which he was objecting was the only serious obstruction to access that he had encountered in the entire Estate. He explained where the obstruction was located and that it consisted of a Locked Gate surrounded by barbed wire, about 2 metres high. Access to and from the Estate was obstructed at this point unless the person seeking access had a key. The Gate had been erected in 1998, without Planning permission prior to the conversion of the buildings at Old Sauchie to residential use.

He rejected the argument that Section 6(1)(b)(iv) of the Land Reform (Scotland) Act 2003 applied in this case and referred to Paragraph 3.15 of the

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Scottish Outdoor Code which stated that houses might be located right next to a road, track or path.

He suggested a compromise, without resort to enforcement and that the Gate could remain locked but that the barbed wire be removed and a gap or narrow Gate provided at the side of the main Gate to enable access for pedestrians and horses.

Mr Macfarlane spoke to his tabled Submission on behalf of the concerned residents of Sauchieburn. He expressed regret that he had not been given sight of Mr Kennedy's response (on behalf of the 8 members of Old Sauchie Resident's Association). This was clearly unsatisfactory since Mr Kennedy's tabled Submission contained personal and inaccurate information about him. Mr Macfarlane stated the concerns were not about personal rights but wider public rights. The Gate had been erected to stop vehicular traffic. The houses in Old Sauchie were no different from the other houses on the Estate. The situation of a private cul de sac was untenable. It was discriminatory to deny wider access and represented an affront to the Access Act and Code. – Servitude rights were not based on personal rights. The homes at Old Sauchie had been purchased knowing that Servitude rights existed. The concerned residents sought justice. The claim before the Forum was not based on servitude rights but under the 2003 Act. Mr Macfarlane had no wish to personalise the issue but wished the Forum to endorse the spirit of the Code in the interests of equality.

Mr Macfarlane also expressed regret that none of the concerned residents of Sauchieburn had been advised of the Site Visits that had previously taken place.

The residents of Old Sauchie had been given a concession not afforded to any one else who used the road. The concerned residents would be willing to consult with the residents of Old Sauchie on seeking a resolution.

Mr Macfarlane also stated that his personal access to the Estate from his garden did not form the basis of the claim since he was speaking not as an individual but on behalf of other residents of the Estate. People walked past his own home. The spirit of neighbourliness was being defeated. The garden of Old Sauchie residents has always been on the other side of the road. Reference was made to the 3 families who had previously lived on the site prior to its development; (1 house still remained). The road had always bisected the gardens of these houses. An open Gate would not change the present privacy levels of the people now living on the site. The Locked Gate was an affront to the intention of the Access Act. People could not walk without impediment. Testimony had been provided that exercising access through this part of the Sauchieburn Estate had been undertaken and in particular through the Gates of Old Sauchie for a period in excess of ten years. The concerned residents were seeking pedestrian/horse access to Old Sauchie – the right to roam in a spirit of compromise.

There was unimpeded access from other Gates into the Estate. The route that was now closed had been used for centuries. A request to the Superiors to have the Gate removed was not unreasonable. An alternative route could be found to allow access.

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Mr Kennedy referred to his tabled Submission. He advised that he had lived in his house for 4 years. He indicated that the argument submitted by Old Sauchie residents was that the right of access afforded to members of the public by Sec 1 of the Land Reform (Scotland) Act 2003 was not absolute – it was subject inter alia to the exceptions in Section 6. Old Sauchie residents submitted that both the exceptions found in Sec 6(1)(b)(iv) and 6(1)(c) applied here. The houses were privately owned, with certain parcels of land held privately. In addition residents communally owned the remainder of the garden ground not allocated to a specific house. The Estate track which run through the development formed part of the communally owned ground.

Reference was made to Section 6(1)(b)(iv) of the 2003 Act – access rights are not exercisable on land which comprises, in relation to a house, sufficient adjacent land to enable persons living there to have reasonable measures of privacy in that house and to ensure that their enjoyment of that house is not unreasonably disturbed. Mr Kennedy argued that access rights were not exercisable on land which comprised, in relation to a house, sufficient adjacent land to enable persons living there to have reasonable privacy. The track over which general, public access was being sought ran immediately adjacent to a number of dwellings and in his case directly past a bedroom window on the ground floor. He contended that circumstances now existed whereby to permit public access over the track would breach residents right to reasonable measures of privacy in terms of the Land Reform Act.

Ownership and Rights of Access were two different things. The residents of Old Sauchie did not have keys to the Gate, which had been up for 8 years. The Resident's Association comprised 8 households.

The Gate was erected before the Land Reform Act was enacted and so the concept of "access rights" as envisaged by the Act was not in contemplation. It could not be argued that such rights were infringed when the Gate was erected.

The track over which the Gate had been erected had never been recorded as a right of way.

The tarmac outside his own house was part of his garden. A servitude right did not confer any right of the public at large and did not equate to a right of public access in terms of the Land Reform Act.

Mr Kennedy had no authority to speak on behalf of the Old Sauchie residents concerning a compromise.

Mr Canavan, Mr Macfarlane and Mr Kennedy responded to questions from Forum Members. Mr Canavan and Mr Macfarlane took the opportunity to sum up.

During the general discussion the following comments were made by Forum Members:-

An option be explored which with a relatively small effort would make the route practicable. This would require one Gate to be altered whereas the route explored at the Site Visit on 22 September 2006 would need 3 Gates and a Bridge.

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Residents of the Estate have a legal right of access to the Gate whereas other walkers do not; there was an issue about public access as well as access by local residents.

There is a different interpretation of what constitutes road and garden ground; curtilage applies.

At the request of Old Sauchie Resident's Association the Estate Factor had refused the suggestion that the Gate be unlocked or that a minor Gate be erected to enable access by pedestrian and horses.

The primary solution would be to put in a small Gate (unlocked) at the side of the Large Gate. The Resident's Association were unwilling to consider the suggestion of a locked Gate with a small access gate for walkers and horses.

It is questionable that Access Rights applied given curtilage and that there was not regular usage of this part of the road by walkers (other than the local residents) who had a right of access.

By agreeing not to Uphold the Officer's decision the Forum could be encouraging people to break the law by trespassing.

Opening the Gate would not be detrimental to Old Sauchie Residents.

The road was not part of the Estate that was up for sale.

The Gate had been erected illegally in 1998 and the residents of the Estate should have access via the Gate.

If the Estate removed the Gate Old Sauchie Residents could argue for its continuance on the grounds of curtilage.

The New Estate owners may take the Gate down and seek to erect some other type of barrier.

Mr Kennedy indicated that the residents of Old Sauchie were in the process of negotiating the purchase of a piece of land from the Estate which could provide a By-Pass. He had no authority to speak on behalf of Old Sauchie residents on any compromise proposal and would need to defer to them on any suggestion of a compromise.

The provision of a By-pass solution, which everyone could live with, would be a cheaper option than going to litigation.

The Forum had a power to solve the problem either by negotiation or a request to the Council to take the necessary steps for enforcement. There was a case for access via the Gate – provision of a small opening for adults/horses was a reasonable solution. Could not accept that the road formed part of the garden at Old Sauchie. To open the Gate would not be to the detriment of the Residents there.

The decision not to challenge the erection of the Gate in 1998 had compromised things.

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The role of the Access Officer in deciding issues concerning access and the delegated authority to the Access Officer to do so.

Comments invited from others present included:-

All traffic from the Craigs came via other residents' properties; residents had not challenged the Gate until the barbed wire had been erected that made the route non-negotiable; the road had always bisected the houses. It was not a track but a tarmac road.

The Chair advised that the options before the Forum were (a) Uphold the decision of the Access Officer and take no further action; (b) find a solution to the impasse or (c) request Stirling Council to take further action.

Decision

The Forum agreed:-

- 1 to defer a decision and remit to the Chair in consultation with the Access Officer to facilitate discussions amongst the representatives of the Estate and the 3 Parties to reach a solution;
- 2 the representation from the Parties comprise:-
Old Sauchie Resident's Association (seeking to retain privacy) (3)
Concerned residents of Sauchieburn (seeking access) (3)
Representatives of the new owners of Sauchie Estate (3);
- 3 the outcome of the discussions be reported to a future Forum meeting;
- 4 the issues for discussion amongst the participants include public access through the Locked Gate as well as access by local residents;
- 5 to note that the meeting could not be convened until such time as the new owners of the Estate were known.

(Reference – Paragraph 14 of 30 August 2006)

Action – Clerk

25 CORRESPONDENCE

(a) Consultation on Proposed Core Paths – The Forum considered an e mail from Daye Tucker dated 6 September 2006 expressing concern with the medium and method used by Stirling Council to consult with Land Managers on the proposed Core Paths Plan. These concerns had been submitted in her capacity as (a) an Access Taker (with special interest in riding routes); (b) Landmanager; (c) Landmanager Liaison of the Killearn Paths Group and (d) Vice-Chairman of the Port of Menteith Branch of the NFU.

Whilst supporting the Land Reform Act and the Rights of Responsible Access enshrined within the Act Ms Tucker expressed the view that those in positions of authority had the greatest responsibility to be even handed with both Access takers and Land Managers. She believed that at this early stage of consultation whilst it maybe acceptable financially and practically to use the

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medium of the Council's website, local newspapers, Community Council and Notice Boards to inform the public (fulfilling a statutory duty) this was an unacceptable method with which to inform Land Managers.

The Forum was advised of the various forms of consultation, which had taken place including distribution to all Stirling Council householders' view the Council's Newsletter, information via Community Tax Payers, advertisement in the Stirling Observer, information to Community Councils and Public Libraries. 87 people had attended the meeting in Killlearn.

Decision

The Forum agreed:-

(i) to note Ms Tucker's comments and also the update provided by Richard Barron;

(ii) to request Richard Barron to respond to Ms Tucker.

(Reference – E mail from Daye Tucker dated 6 September 2006 submitted)

Action – Senior Access Officer

26 ACCESS ISSUES UPDATE

A report by the Senior Access Officer, Environment Services, provided an overview of the numbers and types of issues reported to the Countryside Service since the enactment of The Land Reform (Scotland) Act 2003 on 9 February 2005.

Appendix 1 to the report listed the issues logged and resolved since the introduction of the Act.

Appendix 2 to the report provided an overview of the types of issues logged and resolved since the start of the Act.

The report advised that The Land Reform (Scotland) Act 2003 places a duty on all Access Authorities to uphold access rights. The main tools provided under the Act are Section 14 which deals with 'prohibition signs, obstructions, dangerous impediments etc', Section 15 which deals with 'measures for safety, protection, guidance and assistance', and Section 23 which deals with 'ploughing etc'.

The Forum was advised that the Countryside Service, Environment Services logs each issue received via its Countryside Access Management System (CAMS), which records all actions on the issue until its resolution. Stirling Council had established set procedures for dealing with issues falling under Sections 14, 15 and 23. These procedures had been passed through Committee.

The Countryside Service had recorded 500 issues since the Act came into operation. These include locked gates, inappropriate signage, damage to the surface of paths and obstructions. Stirling Council was currently the third Access Authority to serve Notice on a Landowner to uphold access rights.

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Other access issues such as overgrown vegetation, fallen trees and repairs to countryside infrastructure still constituted a high percentage of the access issues dealt with by the Council.

Decision

The Forum agreed to note the progress to date.

(Reference – Report by Senior Access Officer, Environment Services, Stirling Council (undated) submitted.)

27 THE DRAFT STIRLING COUNCIL CORE PATHS PLAN – UPDATE

A report by the Senior Access Officer, Environment Services provided an update of the progress so far on the draft Stirling Council Core Paths Plan.

The Forum was advised that 179 copies of the Draft Stirling Council Core Paths Plan had been distributed and that the consultation process had nearly reached the halfway stage. The full Plan, including comments received, was also available on the Council website. The programme of Community Council Area Open meetings had visited 22 areas with 461 people attending.

143 people had responded to the Plan and made 282 comments. Of those that indicated a preference, 37% were happy with the Plan as it stood and 44% would like to see some type of alteration.

2699 copies of the Paths and Countryside Access Survey 2006/07 Questionnaire had been distributed with a 38% response rate.

Work was continuing to prepare for the surveying of all the proposed Core Paths in order to establish their condition and any work that may be required, as were discussions on the Strategic Environmental Assessment.

Decision

The Forum noted the position to date.

(Reference – Paragraph 15 of 30 August 2006; Report by Senior Access Officer, Environment Services of 17 December 2006 submitted.)

28 PATHS AND COUNTRYSIDE ACCESS SURVEY 2006/07 – RESULTS UPDATE

Over the past eight years Stirling Council had been developing networks of “Community Paths”. Following the passing of the Land Reform (Scotland) Act 2003 (referred to above) the Council was required to develop a Core Paths Plan.

A report by the Senior Access Officer, Environment Services summarised the findings of a Survey of Paths and Countryside Access, with responses from consultation event attendees and an on-line survey. These findings were compared with the responses received from the Stirling Sounding Board referred to in Paragraphs 3.17 and 3.18 of the submitted report. The work

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had been undertaken to inform the development of Stirling Council's Core Paths Plan.

Appendix 1 to the report provided location of all respondents to Paths and Countryside Access Survey.

Decision

The Forum agreed to note the results of the Survey and the differing priorities and requirements of the two main Groups consulted over countryside and access and path issues.

(Reference – Report by Senior Access Officer, Environment Services of 23 November 2006 submitted.)

29 ANTI SOCIAL BEHAVIOUR

At their previous meeting Members had been asked to undertake some work on seeking solutions to anti-social behaviour from amongst the Groups that they were affiliated to and to report any findings to the Forum.

It was reported that dog and horse fouling in the countryside were problems. The Forum was also reminded on the need to put pressure on Scottish Natural Heritage to redefine wild camping to exclude car parking. The Forum was reminded that the Council had an Anti Social Behaviour Unit and a Resolution Team in place to mediate on anti social behaviour. The Unit could log complaints on countryside access.

Decision

The Forum agreed to note the comments.

(Reference – Paragraph 17 of 30 August 2006 refers).

30 SALAF WORKPLAN

On 30 August 2006 the Forum had suggested that the Core Path Plan and Anti Social Behaviour could be included in the SALAF Workplan. The Forum had also agreed that Members come back to this meeting with proposals on what should also be included in the Workplan.

Decision

The Forum agreed to defer discussion on this item to a future meeting.

(Reference – Paragraph 18 of 30 August 2006)

31 NATIONAL/LOCAL ACCESS FORUMS – UPDATE

Roddy Ross and Robert Sparkes provided a joint report that gave an update on the National/Local Access Forums Joint Meeting held on 20 September 2006.

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It was suggested that other Members of the Group might be interested in attending this Event to provide a broad prospective of what was going on. It was also agreed that in due course the outcome of the Hearing on the Locked Gates at Old Sauchie would be reported to the National Forum.

Decision

The Forum noted the position.

(Reference – Paragraph 19 of 30 August 2006 refers; Joint Report by Roddy Ross and Robert Sparkes submitted.)

32 NEW PUBLICATIONS – VERBAL UPDATE

Forum Members were issued with following Publications:-

- The Paddler's Access Code.
- Local Access Forums – A Guide to Good Practice – 2nd Edition –SNH.

Decision

The Forum noted the position.

33 MEETING DATES FOR 2007

A report providing provisional dates and time of Forum meetings in 2007 was considered.

Decision

The Forum agreed the timing of meeting dates as follows:-

Thursday 22 February 2007 – 5.00 p.m.
Thursday 24 May 2007 - 7.00 p.m.
Thursday 30 August 2007 5.00 p.m.
Thursday 6 December 2007 7.00 p.m.

Action – Clerk

The Chair declared the meeting closed at 9.35 p.m.