

Report to the Scottish Ministers



LAND REFORM (SCOTLAND) ACT 2003 SECTIONS 17 & 18 CORE PATHS PLAN

Report by M J Culshaw, a Reporter appointed by the Scottish Ministers

- Case reference: CPP- 14
- Core Paths Plan for East Renfrewshire
- No of objections: 1
- Main issue raised by objection:
 - Effect of core paths on farming enterprise

Date of this report and recommendations: 2 April 2012

Recommendations

A That the Access Authority be directed to adopt the plan as drawn up under section 17 subject to the following modifications:

1. proposed paths DCP c19, DCP c20 and DCP c21 should be deleted from the core paths plan.
2. those modifications to paths DCP e05, DCP b20 and DCP a11 proposed by the access authority and indicated on plans which accompanied the authority's letter received 14 March 2012 should be incorporated in the core paths plan.

B That in relation to the application for an award of expenses by the objector no award be made.

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File reference: CPP- 14

The Scottish Ministers
Edinburgh

Ministers

1. In accordance with my minute of appointment dated 20 December 2011, I have conducted an inquiry in relation to the Core Paths Plan for East Renfrewshire.
2. After examining the single objection and associated papers and having regard to paragraph 14 of the Code of Practice for Local Inquiries into Core Paths Plans and Other Inquiries under Part One of the 2003 Act I decided that this objection could be dealt with through written submissions. I carried out unaccompanied site inspections of the paths which were the subject of the unresolved objection on 26 January 2012.
3. A Strategic Environmental Assessment of the East Renfrewshire Core Paths Plan was published in July 2010, and consultation was carried out in accordance with section 16 of the Environmental Assessment (Scotland) Act 2005. It concluded that the core paths were strongly aligned with the environmental objectives against which each path was measured, and that the core paths will have a generally positive impact on the environment as a result of the health and welfare benefits of increased walking, cycling and riding and reduced reliance on motorised transport. No modifications were proposed to the Core Paths Plan as a result of the assessment. The negative environmental impacts of paths which were identified were minimal. Where mitigation is required it is identified in the assessment and the lead authority responsible for its implementation also identified. I have taken the contents of the SEA into account.
4. The access authority's submission to the Scottish Ministers explains that preparation of the Plan followed stakeholder and public consultations including an extensive outreach programme at which potential paths were identified. Following the statutory formal consultation between July 10 and Sept 30 2010 the authority entered into discussions with objectors during which they explained their position and sought the withdrawal of objections. Following this resolution period from October 2010 to March 2011 only one objection had not been withdrawn, details of which were forwarded to the Scottish Ministers as part of the authority's submission. This referred to three sections of path on a single route. The Plan has thus attained a high degree of support and there have been no objections to the sufficiency of the proposed core path network.
5. The objector in response to the access authority's submission to the Scottish Ministers made further representations to which the authority responded in a submission dated 10 February, after which the objector had the final word. I have taken all these into account in my report and recommendation in paragraphs 7-22. The objector's submission included a list of links (but not hyperlinks) to *Youtube* videos. I have been unable to access these

videos using the links provided. For obvious reasons it has not been possible to provide hard copies of these videos and the objector has not provided any summary of their content. I have not therefore given them weight in my considerations. The objector has also made an application for an award of expenses to which the access authority have had an opportunity to respond. I report and recommend in relation to this application in paragraphs 23-30. Footnotes in the report provide references to documents referred to by the parties.

6. 3 objections received during the formal consultation period resulted in the authority proposing modifications to the Core Paths Plan, and they have requested that these proposals are taken into account. The council's full description of the proposed modifications and their reasons for seeking them were set out in a report attached to an email of 16 January 2012, which is in the file and shown on modified plans which were forwarded with a letter by the authority and received by DPEA on 14 March 2012. I have summarised the matters raised and provide my recommendation in paragraphs 31-37. On the basis of the modifications proposed the objections have been withdrawn. I also inspected these paths on 26 January 2012.

Unresolved objection

7. The objection is made by Alexander Park and Son (APS) who farm land at Patterton Farm and relates to paths DCP c19, DCP c20 and DCP c21. These three consecutive paths are intended to link the recently enlarged Patterton station car park to the Dams to Darnley Country Park. The route falls into the three sections represented by the three paths. DCP c19 crosses fields from the new car park at Patterton Station to the M77 motorway. DCP c20 consists of an accommodation bridge across the motorway and DCP c21 links from there to the footpath network in the country park.

8. Although Dams to Darnley Country Park is not a formally designated country park it is an area where public recreation is encouraged, and it seems to me entirely appropriate that the council should seek to link the park to a nearby and newly expanded public transport facility. This aim is referred to in the Management Plan for the country park. ¹The government's Guidance for Local Authorities and National Park Authorities on Part 1 of the Land Reform (Scotland) Act 2003 says that there should be a particular emphasis on the core paths network on the urban fringe providing connections with the wider countryside, and providing links through green corridors and public open spaces. I note that the objector has asked for their land to be excluded from the country park boundary², but even so the principle of creating a route on this line is one I support.

9. The main issue raised by the objection is whether the route would interfere with the objector's ability to manage the farm at Patterton³ or result in unacceptable hazards for path users.

10. Dealing first with DCP c19, the principle of a footpath from the station car park to the motorway bridge is already established. An agreement under section 69 of the Local

¹ OS2

² OS3

³ The extent of the farm is shown on OS1 and OS16

Government (Scotland) Act 1973 and section 75 of the Town and Country Planning (Scotland) Act 1997⁴ which is associated with a planning permission for the development of the Patterton Farm steading and associated land provides for the conveyance of land for, among other things, a footpath link which runs directly SE-NW across the field to the south of the now disused farm steading. The proposed core path DCP c19 follows a different line to that defined in the agreement, skirting the field edge rather than bisecting the field, but the fallback position for the access authority is clearly the route of the footpath link which is defined in the agreement. In my view the line shown on the draft Core Paths Plan is clearly preferable both for users and for agricultural purposes. However this path is of little use without a crossing of the M77.

11. Similarly, on the opposite side of the M77 DCP c21 although in places not yet constructed would appear to offer few insurmountable difficulties in providing a path to the other core paths in the country park. The government's Guidance for Local Authorities and National Park Authorities on Part 1 of the Land Reform (Scotland) Act 2003 says that any new path would need to be available for use at the time of adoption or reasonably soon after (say 1-2 years). A rough track already exists alongside Waulkmill Glen reservoir, which could be upgraded with relatively little effort, and while the stretch beyond the reservoir to meet DCP c20 would need to be properly constructed and crossings of field boundaries created, I can see no reason why this should be capable of being completed within the two years recommended in the Guidance.

12. The motorway bridge which constitutes DCP c20 and links these two sections is about 75-80m long and 4m wide. It is used by APS to herd cattle between parcels of land either side of the motorway and to move farm vehicles and equipment, since the land holding straddles either side of the motorway. It is therefore a vital link for the farm operations. The authority have cast doubt on whether in the longer term the farm will operate in its current form or at its current level of activity, but I can only judge the situation which is presented to me now. I accept that the situation is complicated by the fact that title in the land was in the past transferred to a developer who is now in liquidation, but the objector APS has an agricultural tenancy of the land. APS anticipates an increase in the number of trips across the bridge with cattle because of planned developments of the farm enterprise and although the authority have sought to cast doubt on that the assertion has been reinforced in the objector's further response.

13. The bridge is just wide enough for vehicle access, but is clearly not wide enough to provide segregated passages for use by pedestrians and vehicles or animals and this is accepted by the authority. The objector contends that there are no practicable arrangements which could be put in place to address the issues related to this bridge. However the authority have suggested an arrangement in their response to the objection. Essentially this would involve path users approaching from either side on segregated paths and joining the bridge through self closing stock proof gates. If animals were using or approaching the bridge path users would wait until they had passed within the separated path. Signage, as suggested in the HSE guidance Cattle and Public Access in Scotland⁵, could give the necessary instructions. Professor McGown who has written in support of the objection calculated that a clear sightline of 300 to 375m beyond the bridge would be required to ensure that walking path users did not meet fast moving cattle. He estimated that currently available sightlines are not greater than 120m. However the authority have

⁴ OS14, AA7, AA9 (copies of the same document)

⁵ AA3

pointed out that increased visibility could be gained by pruning some 20 poplar trees on the motorway embankment. They have not indicated by how much this would improve visibility, but this measure combined with a responsible approach by those driving cattle across a motorway bridge might ensure that any hazards were managed.

14. In my view this solution would be feasible if a relatively low level of use of the proposed route were anticipated. However it is clear that the authority anticipate more than a low level of use of the bridge. They clearly regard this as an important route into the country park, and the development and management plan for the country park refers both to the development of the Patterton car park and an easterly entrance to the park. The availability of the station car park which has already been provided through the agreement mentioned above would clearly be an incentive for people intending to access the country park to use this route - the authority's estimate is 192 visitors using the route per day at the busiest time. It is not clear whether they mean 192 two way trips - presumably the majority would use the route both to get to the country park and to return from it. The number of crossings of the bridge might thus approach double that number. In any event at those times when cattle needed to be herded across the bridge it is possible that a significant number of people would be required to wait behind the barrier. This is a long bridge, and I can understand the objector's estimate that the whole operation of driving the cattle towards and over the bridge might take up to half an hour. Even if that is an over-estimate, any delay would seem likely to be greater than the few minutes described in the Balliefurth case⁶ referred to by the council. The longer the wait, the greater would be the risk that path users, perhaps particularly those unused to country conditions, would ignore the signs and attempt to cross the bridge, putting themselves in danger.

15. Such a situation would in my view be likely to increase the anxiety of the farm operator and reduce his ability to manage the farm properly, either because driving cattle across the bridge could only take place when there were few members of the public about, or because increased numbers of farm staff would be needed to manage the movement safely. In either case the existence of the core path would interfere with the proper management of the farm and result in hazards for users of the path across the bridge. The authority are correct to point out that under the Land Reform Act a land manager has a duty to manage the land in a responsible way, including working with the local authority to integrate access and land management. However the particular constraints of this bridge would present special difficulties to the land manager. Section 17(3) of the Act requires the local authority in drawing up the plan to have regard to the need to balance the exercise of rights of access and the interests of the owner of the land. The government's Guidance in relation to section 17(3) indicates that core paths should assist the interests of sound land management without compromising accessibility.

16. This is a unusual situation, and in the majority of cases it is possible for public access to be satisfactorily managed alongside farm operations, but the physical characteristics of this bridge in my view would make such management difficult and the suggestion put forward by the authority does not seem to me to be currently a feasible solution. It seems likely, bearing in mind the content of the M77 Corridor Masterplan,⁷ that when preparing the Plan the authority understandably anticipated that more development of the steading and its surroundings would take place than has actually occurred, and that they did not anticipate

⁶ AA4

⁷ AA5

the expansion of the farming enterprise that the objector now plans. Both those factors need now to be taken into account.

17. A further unusual element of this case is the apparent dispute between the access authority and the Outdoor Access Forum for East Renfrewshire. The authority's statement indicates that no dispute exists, and that the Outdoor Access Forum has not objected to this route, and they submit a letter from the Forum.⁸ However letters submitted by the objector from David Chesner, the Chairman of the Forum⁹ demonstrate at the very least that there are different views of the events surrounding the Forum's consideration of the matter at its meeting on 18 May 2010¹⁰. It is not appropriate for me to arbitrate between the different accounts, but the very existence of this difference of opinion undermines the authority's case for the adoption of this route as a core path at the present time. The guidance 'Core Paths Plans – a guide to good practice' emphasises the key contribution that an Outdoor Access Forum can make to the core paths process of consensus-building, and stresses the need for Forum members to have a sense of ownership not just of the Plan but of the whole process that produces the Plan. It is clear from the correspondence that at present, and at least in relation to this proposed route, the Forum does not have that sense of ownership. While it would no doubt be possible for authority to proceed with construction of this core path without the cooperation of the Outdoor Access Forum this would be difficult and possibly counter-productive for other aspects of its work. It seems to me the most sensible course would be for the authority to resolve its differences with the Forum before proceeding further with this proposal. I would suggest that the authority considers returning to discussions with the Forum to see if the difficulties currently presented by the motorway bridge can be overcome. If a solution can be found then changes could be incorporated in the review of the plan.

18. Although Professor McGown also referred to health hazards from cattle and sheep slurry these hazards are not unusual in the countryside and users of the path could be expected to encounter them whether here or elsewhere. The support given to Professor McGown's views by the NFU Scotland, NFU Mutual¹¹ and the Armour Veterinary Centre¹² does not add any significant weight. I am also satisfied that the existence of water mains running through the structure of the bridge¹³ would not present an insuperable obstacle to the bridge's use as a core path.

19. The objector has put forward 3 alternative access routes to the country park¹⁴. The first is from Crookfur Road at Ryatt High Amenity Site at junction 4 of the M77. They suggest that since this is 10-15 minutes' walk from Patterton Station those sufficiently interested in accessing the park would not find it inconvenient. Alternatively car parking could be provided at the Ryatt site. The second suggestion is for access to be taken via Aurs Road, off the Westacres Roundabout which starts at the far south east end of the park. The third suggestion is that an existing railway underpass at the southerly end of Patterton Farm should be used. None of these alternatives has been the subject of consultation as part of the draft core path plan process, and so I could not recommend their adoption without further consultation taking place. Moreover in each case the authority has

⁸ AA2

⁹ OS15

¹⁰ AA1

¹¹ OS8

¹² OS12

¹³ OS4

¹⁴ OS9

provided convincing reasons why none would be a suitable alternative to this proposed route. In the first case the routes suggested had been considered unsuitable as a core path after due consideration. The second already formed part of the proposed core path network but served a different function, approaching the park from a different direction. The third had only been put forward at a late stage after consultation had closed. In any event as far as I am aware the railway operator has not been consulted on this possibility.

20. Mr Chesner and Professor McGown also referred to the possibility of vandalism from people throwing objects onto the motorway. While this could be prevented by the erection of a suitable “cage” structure on the bridge in the manner described by Mr Chesner, the authority have not indicated any willingness to undertake such measures, which in any event would presumably require the agreement of Transport Scotland or their agents.

21. I have concluded that for all the reasons above I must recommend that these three paths be deleted from the plan. I therefore need to consider the effect of this change on the sufficiency of the network. The provision of satisfactory access to the Country Park is clearly an important element in the plan, and one I support. The absence of this link from a newly expanded rail station car park to the centre of the park will be a significant loss, and one which should be remedied through negotiation as soon as possible. However the network as a whole would remain well supplied with paths, and despite the absence of an east-west approach from Patterton station there would remain a number of ways of reaching the country park. I do not therefore agree with the authority that this trio of paths is essential to the sufficiency of the network.

Recommendation

22. I recommend that proposed paths DCP c19, DCP c20 and DCP c21 should be deleted from the core paths plan.

Application for an award of expenses

23. Section 18(6) of the Land Reform (Scotland) Act 2003 applies subsections (2) to (13) of section 265 (local inquiries) to inquiries held under this part of the Act. These subsections include the power of the Scottish Ministers to make orders relating to expenses. Paragraph 33 of the Code of Practice for Local Inquiries into Core Paths Plans and Other Inquiries under Part One of the Act says that expenses are likely to be awarded exceptionally and probably only in cases where one party has acted unreasonably and that unreasonable behaviour has demonstrably caused others to incur unnecessary expense.

The case for the applicant

24. Briefly, the applicant claims that the authority acted unreasonably in failing to give proper consideration to the means of access to the Dams to Darnley Country Park put forward by the applicant as alternatives to the draft core paths the subject of their objection. In seeking to provide a connection from Patterton Station to the country park they applied the wrong test to the necessity for a path, and they proposed a path across a narrow bridge which was patently unsuitable for the purpose. They failed to respond to the safety concerns of the applicant. In behaving in this way they caused the applicant unnecessary

expense in formally objecting to the draft core paths plan, in that if they had acted reasonably no objection would have been necessary.

The authority's response

25. The authority's response is that they had considered two of the alternatives put forward as part of the consideration of the draft plan. One the (Aurs Road alternative) was included as part of DCP c25 and DCP c24, but it had a different function and was not a satisfactory alternative to the objected path. The path at Crookfurs had been considered at an earlier stage in the plan preparation but was unsuitable as a core path for a number of reasons, including physical constraints, the objection of the land owner and its location at a motorway junction.. The suggested alternative route alongside the railway had only been put forward as part of the applicant's submissions to the reporter and the authority had not therefore had the opportunity to consider it previously. In relation to the bridge, it had not been unreasonable for the authority to speculate that following the disuse of the farm steading the use of the bridge for herding cattle would decline, and thus any safety concerns could be managed. In any event a right of responsible access across the bridge would remain.

Reporter's reasoning and conclusions

26. Circular 6/1990 sets out the government's position in relation to awards of expenses in planning appeals and states that awards are only made where (a) the claim is made at the appropriate stage of the proceedings; (b) the party against whom the claim is made has acted unreasonably; and (c) this unreasonable conduct has caused the party making the application unnecessary expense, either because it was unnecessary for the matter to come before the Scottish Ministers or because of the pay in which the party against whom the claim has been made has conducted its side of the case. These general principles seem to me to be equally appropriate in the case of inquiries into core paths plans.

27. Since the application for an award was made as part of a response to the submission of the objection to the Scottish Ministers, and thus as part of normal procedure it was in my view made at an appropriate stage of the proceedings.

28. I have concluded that the aim of connecting Patterson Station to the Dams to Darnley Country Park is an appropriate one. In the state of their knowledge at the time of preparing the plan I do not consider it was unreasonable of the authority to assume that following the granting of planning permission for the development of the steading and associated land and the signing of an agreement creating a path to the M77 bridge the intensity of agricultural use of the land either side of the bridge would decline, leading to less need for crossings. In response to the applicant's explanation of their particular needs and requirements, and the risk of conflict between the use of the path by significant numbers of people and the need to herd cattle across the bridge I have concluded that a more cautious approach should be adopted, but I do not consider the council's approach to have been unreasonable.

29. Although I have recommended that the three paths the subject of this objection should be deleted from the plan, I do not consider the authority's actions in including the proposed path in the draft core paths plan or in maintaining its position in the face of objection to have been unreasonable. The stance of the authority was one they were entitled to take, and they were entitled to continue to support that view. Since I have concluded that the

authority have not acted unreasonably it follows that the applicant has not been put to unnecessary expense.

Recommendation

30. I recommend that no award of expenses be made.

Modifications proposed by the Access Authority in response to objections

Draft core path DCP e05

31. This path runs through the grounds of Greenbank House, which is owned by the National Trust for Scotland. The section which is the subject of objection by NTS runs from the south at Flenders Road to the north where it joins Mearns Road. The Trust supports informal access to their property, but the existence of a core path would prevent the closure of the property to the public when special events were held, which would affect their income and hence their viability.

32. The authority have discussed the situation with the Trust and have accepted that since there is currently no legal mechanism for the temporary closure of a core path even for legitimate reasons such as commercial events, which are an important source of revenue for NTS, a diversion of the core path is appropriate. This would take the core path along the minor road Flenders Road, which is already the route for core path DCP e06.

33. I am aware that consultation has recently taken place on a possible change in the law to enable core paths to be temporarily closed. However its outcome is not yet known, and any legislative change would need to follow. The review of the core paths plan will allow the authority to consider in the light of any such legislation whether a change in the core paths plan would be desirable, but for the present I support the proposed modification.

Draft core path DCP b20

34. The authority indicate that this draft path was erroneously shown running through the private garden of Snypes Cottage. The modification intends a correction relocating the path to the fisherman's path alongside Snypes Dam. The authority have provided clarification of the route in response to my questions, and have supplied a plan showing the proposed modification, which is satisfactory. An objection to the path has been withdrawn on the basis of the proposed modification.

Draft core path DCP a11

35. In the submitted plan path DCP a11 is a continuation of DCP a09 which runs along the minor road from Gateside and with paths DCP a10, DCP a12 and DCP a13 join DCP a14 which runs along the side of the Lochliboside Hills. DCP a11 has not been constructed and is marked as an aspirational path which I understand to mean a path which would be provided after the adoption of the plan. There are objections from landowners on the grounds that the path would pass through fields where young stallions are grazed where harm to horses and danger to path users would be an issue; that it also passes through an industrial area where there are heavy trucks and machinery and that it would pass the front door of a private house.

36. I would not support the deletion of these core paths simply because they would pass through fields containing livestock since this can be appropriately managed by putting in place suitable precautions and by the responsible exercising of access in accordance with the guidance in the Scottish Outdoor Access Code. However part of the route passes through terrain which the council describes as challenging and which they do not consider an appropriate path could be constructed within two years. The route of DCP a12 is used by HGVs visiting the landfill site at Capellie Farm. Instead a modified route is proposed which would continue to follow the minor road before following a track through community woodland at Foreside Farm. Consultation has taken place with the owner of the woodland and on this basis the objections have been withdrawn. I support the modification. It is a pity that the opportunity will no longer exist for the core path to follow the attractive Killoch Glen, but this will remain as part of the wider Fereneze Brae path network with signposted routes and information boards.

Recommendation

37. I recommend that those modifications to paths DCP e05, DCP b20 and DCP a11 proposed by the access authority and indicated on plans which accompanied the authority's letter received 14 March 2012 should be incorporated in the core paths plan.

M J Culshaw

Reporter

List of documents

Documents referred to in objector's submission

- OS1 Plan showing the extent of Patterson Farm and route of proposed core paths DCP c19, DCP c20 and DCP c21
- OS2 Dams to Darnley Country Park Development Management Plan
- OS3 Copy letter from agents for APS to Access Authority in respect of DDCP
- OS4 Copy plan showing location of high pressure water mains and accompanying letter from Scottish Water
- OS5 List of links
- OS6 CV of Professor Alan McGown BSc PhD DSc CEng FICE FCIHT Hon MinstRE
- OS7 Report by Professor McGown
- OS8 Letters from NFU Mutual and NFU Scotland
- OS9 Plan showing location of alternative suitable access to DDCP and across M77
- OS10 Copy photographs A-I
- OS11 Extract titles
- OS12 Letter from Armour Veterinary Centre
- OS13 Letter from Local Access Forum to Access Authority, undated

Documents accompanying objector's further submission

- OS14 Registers of Scotland Extract – copy s69/75 agreement
- OS15 Letter from David Jesner, Chairman of East Renfrewshire Outdoor Access Forum
- OS16 Plan showing size of fields farmed by APS

Documents referred to in access authority response

- AA1 Minutes of East Renfrewshire Outdoor Access Forum 18 May 2010
- AA2 Letter from EROAF to Dams to Darnley Country Park Officer dated 30 August 2010
- AA3 HSE leaflet Cattle and Public Access in Scotland
- AA4 Integrating Access Case studies – Balliefurth Farm
- AA5 East Renfrewshire Council M77 Corridor Masterplan and Development Framework
- AA6 [no document]
- AA7 Registers of Scotland Extract – copy s69/75 agreement
- AA8 Letter from Strathclyde Police 19 February 2010

Document accompanying access authority response to claim for expenses

- AA9 Registers of Scotland Extract – copy s69/75 agreement