

Report

7

Report to:	Community Services Committee
Date of Meeting:	4 February 2014
Report by:	Executive Director (Community and Enterprise Resources)

Subject:	Land Reform (Scotland) Act 2003 – Privacy and Public Access Rights at Milton Lockhart Estate, Clyde Valley
----------	---

1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ request committee to consider approving action to uphold public access rights;
- ◆ request committee to acknowledge a request for an advisory 'privacy' zone around Milton Lockhart House

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the Council takes action under sections 13 and 14 of the Land Reform Scotland Act to uphold access rights at Milton Lockhart Estate, Clyde Valley; and
- (2) that the Council endorse the provision of an advisory 'privacy' zone around Milton Lockhart House.

3. Background

- 3.1. Milton Lockhart Estate lies on the northern banks of the River Clyde near the village of Rosebank. By tradition, areas of the estate woodlands and river banks have been used for informal recreational access. The section of the Clyde Walkway runs through the estate grounds which was constructed in 2008.
- 3.2. In 2010, the Council granted planning consent for a new large estate style house and associated outbuildings. The house occupies the footprint of the former Milton Lockhart House which was demolished in the 1970's.
- 3.3. As part of the overall management of the estate and its grounds, the new owners are restoring the walled garden, gatehouse lodge and bridge, renovating the former stable buildings for guest accommodation and undertaking extensive estate woodland management.

4. Land Reform (Scotland) Act 2003

- 4.1. Under the provisions of the Land Reform (Scotland) Act 2003 (LRA), there is a general right of responsible public access over private land. This right is subject to a number of conditions and exemptions to safeguard the interests of land and property owners.

- 4.2 Section 6 of the Act specifies land over which access rights are not excisable. In summary these are:-
- A building or structure;
 - Land which forms the curtilage to a building or structure which is not a house;
 - A compound or other enclosure containing a building or structure;
 - In relation to a house or other building or structure, sufficient adjacent land to enable persons living there to have a reasonable measure of privacy in that house or place and to ensure that their enjoyment of that house or place is not unreasonably disturbed;
 - Garden ground;
 - Sports and playing fields when not in use;
 - Crop fields.
- 4.3 Sections 13 of The Act places a duty on the local authority to 'assert, protect and keep open and free from obstruction or encroachment any route... by which access rights may reasonably be exercised'. Section 14 of the Act prohibits landowners from carrying out certain prescribed operations which prevent or deter the exercise of access rights. These include putting up signs or notices; fences, walls or hedges or taking or failing to take any other action. Where the local authority consider that a landowner has contravened the Act, it may serve a written notice requiring that remedial action as specified in the notice be taken by the landowner. In the event of a failure to comply with the notice within the specified time, the local authority may take the remedial action specified and recover costs. The landowner has the right of appeal to the sheriff court against any such notice.
- 5. Current Position**
- 5.1 Since late 2011, discussions have taken place with the owners of the estate in an attempt to reach an acceptable agreement for the management of public recreational access over the estate land which recognises both the interests of those wishing to use the estate grounds for access purposes but which, at the same time, safeguards the landowners' rights for privacy and security. There are two clear but related issues for consideration. First of all, and acknowledging that there has allegedly been a number of incidents on the estate where public access activity has come into conflict with the property owners' interests, it is the view of the owners of Milton of Lockhart Estate that they have a reasonable level of justification to believe that access rights do not extend around the house and ancillary buildings (curtilage) or across an area of land in front of the house and extending to the riverbank, which is sufficient and reasonable for their privacy and undisturbed enjoyment of that house. The attached map (appendix) identifies the extent of land over which they believe access rights are not excisable. The owners have, therefore, requested that the Council supports the provision of an advisory 'privacy' zone as identified on appendix.
- 5.2 The second issue relates to use of the private estate road (which lies outwith the proposed advisory 'privacy' zone) between the estate's northern entrance at Milton Road (adjacent to the memorial to General Roy) and its junction with the Clyde Walkway (appendix). Until recently, this road has been used informally by members of the public from the Carluke area to access the Clyde Walkway. In October 2013, the owners installed new vehicular gates and estate boundary fencing across and adjacent to the track, the effect of which has been, acknowledging section 14 of the LRA, that use of this route by pedestrians from Carluke seeking access onto the Clyde Walkway is no longer available. During earlier discussions between the Council's staff and the landowners, it was suggested that a compromise would be to install a pedestrian gate in the fencing to allow continued use of the track by pedestrians as far as its junction with the Clyde Walkway. In support of the local

communities' continued request to have access to the Clyde Walkway, a petition has been received requesting the Council take action to safeguard the public's right to continue to use the estate track for the purposes of accessing the Clyde Walkway.

5.3 The Council's planning service has advised that planning consent is required for the installation of the boundary gates and fencing. Separate correspondence is currently taking place with the landowner on this issue to seek the submission of a retrospective planning application. It is hoped that the outcome of this process may satisfactorily resolve the issue of ensuring continuing public pedestrian access to the Clyde Walkway through planning conditions requiring the provision of a pedestrian gate. Notwithstanding the outcome of these separate discussions the fencing in its current form is considered to obstruct public access rights. Without prejudice to the planning aspects of this issue and determination of any planning application that may be submitted, the Council should reserve its right to take legal action at a future date under the provisions of Section 14 of the LRA.

5.4 The Council needs to take a balanced approach between protecting the public's access and the landowners' privacy rights. The Council is of the opinion that whilst it is reasonable to support the provision of an advisory 'privacy' zone around the house and associated outbuildings, the installation of the new boundary fencing effectively obstructs the public's access rights to the Clyde Walkway.

6. Employee Implications

6.1 Management of these two issues will primarily be dealt with through the use of the Council's Countryside and Greenspace section.

7. Legal Implications

7.1 The advice of the Council's Legal Services has been sought regarding the extent of the Council's legal powers, duties and responsibilities in relation to both aspects of this case.

7.2 In terms of supporting the landowners of the owners of the Milton Lockhart House to the point where an advisory 'privacy' zone is created, Legal Services' advice has indicated that whilst the Council and the landowners may take a view regarding what may be a reasonable extent of land over which access rights do not apply, neither party has the authority to legally determine the matter. Such issues are reserved for the courts and judicial authorities.

7.3 In relation to the obstruction of access rights caused by the boundary fencing, Legal Services has advised that the Council is empowered by the provisions of Section 14 of the LRA to serve a legal notice on the owners of Milton Lockhart House to have the obstruction removed and that, subject to appeal and failure to comply with the remedial actions specified by the notice, the Council is entitled to carry out the specified works and recover costs.

8. Financial Implications

8.1 The financial implications associated with installing the advisory 'privacy' zone site signage can be accommodated from within existing resources. However, in the event that either aspect of this case is referred to legal authorities for determination, there could be legal expenses incurred by the Council, the value of which cannot be predicted.

9 Equality Impact Assessment and Consultation Arrangements

9.1 The issue has been discussed at the South Lanarkshire Outdoor Access Forum, the Council's statutory advisory body on outdoor access matters. The Forum includes

representatives from both landowners and access user interests. There is unanimity that, given the characteristics of the new house and associated structures, the owners are entitled to a reasonably extensive area of private ground for their undisturbed enjoyment of the property and that the Council should assert the public access rights to the Clyde Walkway. The Forum supports the actions proposed by this report.

Colin McDowall
Executive Director (Community and Enterprise Resources)

14 January 2014

Link(s) to Council Objectives/Values

- Improve the quality of the physical environment
- Improve health and increase physical activity

Previous References

None

List of Background Papers

- Appendix – Milton Lockhart access to Clyde Walkway and Advisory Privacy Zone Map

Contact for Further Information

If you would like to inspect the background papers or want further information, please

contact: - Simon Pilpel, Access Officer

Ext: 7738 (Tel: 016987717738)

E-mail: simon.pilpel@southlanarkshire.gov.uk