

**ANGUS COUNCIL**

**LAND REFORM SUB-COMMITTEE OF COMMUNITIES COMMITTEE – 27 JANUARY 2022**

**ACCESS DISPUTE AT 114 FERRY ROAD, MONIFIETH**

**REPORT BY DIRECTOR OF VIBRANT COMMUNITIES AND SUSTAINABLE GROWTH**

**ABSTRACT**

This report outlines a dispute over public access at 114 Ferry Road, Monifieth, and recommends a way forward.

**1. RECOMMENDATIONS**

It is recommended that the Sub-Committee:

- (i) notes the contents of this report;
- (ii) agrees to proceed with formal enforcement procedures, including serving a notice under section 14 of the Land Reform (Scotland) Act 2003;
- (iii) agrees to defend any subsequent court case in the event of the notice being appealed to the sheriff court and to take any additional or alternative enforcement proceedings as the Director of Legal and Democratic Services shall deem appropriate.

**2. ALIGNMENT TO THE COUNCIL PLAN**

This report contributes to Priority 3: Place. It assists with our targets of 95 percent of adults stating that their neighbourhood is a safe place to live and 88 percent of adults being satisfied with parks and open spaces.

**3. BACKGROUND**

- 3.1 Complaints were received in summer 2020 regarding obstructions to public access at 114 Ferry Road, Monifieth.
- 3.2 The Land Reform (Scotland) Act 2003 established a right of responsible access to land. The Council has a duty to uphold those access rights.
- 3.3. Officers considered that access rights applied to the obstructed route, and sought removal of obstructions. Attempt at resolution have to date been unsuccessful. It is therefore appropriate that the Council considers further steps to have obstructions removed.

**4. LEGISLATION**

- 4.1 Section 1 of the Land Reform (Scotland) Act 2003 gives the public rights of access to land.
- 4.2 Section 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, waterway or other means by which access rights may reasonably be exercised. It further provides that, in pursuit of this duty, the local authority may institute and defend legal proceedings and generally take such steps as they think expedient'.
- 4.3 Section 14 of the Act provides that the owner of land in respect of which access rights are exercisable shall not do anything, 'including putting up any fence or wall' for the purpose or main purpose of obstructing access rights.

- 4.4 Where the local authority considers that the above provision has been contravened it may serve a notice requiring remedial action. If the notice is not complied with, the Council may take the specified remedial action and recover costs. The owner may appeal the notice to the Sheriff Court.

## 5. THE ROUTE

The route in question is immediately to the east of the house and garden at 114 Ferry Road, Monifieth. **Appendix 1** contains location maps. The route is a vehicle width track which, prior to being obstructed in 2020, provided a through route from Ferry Road to the Council owned playing fields to the north. It is understood to be in the same ownership as the adjacent house and garden. **Appendix 2** contains further details of the route, including photographs, and other relevant background information.

## 6. OBSTRUCTIONS TO ACCESS

Officers were made aware of obstruction to public access in June 2020. An existing set of gates at the southern end of the track were locked, and temporary barriers were installed at the northern end. The barriers at the northern end were subsequently replaced with permanent secure fencing. **Appendix 3** contains photographs of the obstructions.

## 7. PUBLIC USE

- 7.1 The Council received 23 complaints regarding the initial obstructions in summer 2020. This suggested that there was significant interest in and use of the route.
- 7.2 A questionnaire was issued in December 2020 to help assess, amongst other things, the levels of public use. It was sent to the original complainants and to Monifieth Community Council, with a request to make it available to any other interested parties. 52 individual responses were received. Monifieth Community Council confirmed that they had made the questionnaire available on their social media page. They further advised that, as an impartial and unbiased community group, it would not be appropriate for them to provide comment.
- 7.3 94% of the 52 questionnaire respondents stated that they had used the route up until its closure in summer 2020. 50% said they used it at least once a day, and a further 40% used it one or more times a week. 86% had first used it prior to 2005, and 48% had used it prior to 1995. One questionnaire respondent and two other individuals stated that they supported the landowner's position.
- 7.4 People said they used it for direct access to the playing fields, as part of a route from the Wemyss Crescent housing to Ferry Road and a local shop, as part of a route to Monifieth High School, and as part of a route from Ferry Road to destinations east of the Dighty Water including Grange Primary School and the Seven Arches Viaduct. Several respondents stated that the route is well used by school children.
- 7.5 The evidence points to the route having been well used by the public on a daily basis.

## 8. ATTEMPTS AT RESOLUTION

Officers spoke to the owner of the property in June 2020. This was followed up with a letter in which the owner was asked to remove obstructions to public access. Subsequent correspondence has been with the owner's solicitors. It has been made clear through correspondence that the owner does not accept that the public have a right of access over the track and does not intend to remove obstructions. The owner regards the track as a private driveway and considers that public use unreasonably affects their privacy. They have also stated concerns relating to dog fouling, damage to cars, and public safety. The situation remains unresolved.

## 9. ACCESS RIGHTS

- 9.1 Appendix 4 includes a detailed consideration of access rights, with reference to legislation and the Scottish Outdoor Access Code.

- 9.2 Officers consider that access rights under the Land Reform (Scotland) Act 2003 apply to the obstructed route.
- 9.3 The landowner's actions, in obstructing the route, are considered to contravene his duty to manage land responsibly with respect to access rights.

## **10. POSSIBLE PUBLIC RIGHT OF WAY**

- 10.1 A number of people, when raising the matter with the Council, stated that they considered the route a public right of way. The questionnaire that was issued in December 2020 was therefore designed to gather witness evidence of public use to help assess the possible existence of a public right of way.
- 10.2 An initial assessment of the evidence suggests that a public right of way was unlikely to have existed prior to 1990. The evidence suggests that the volume and nature of public use since 1990 was likely to be consistent with the criteria necessary for establishment of a public right of way. However, exercise of access rights under the Land Reform (Scotland) Act 2003, which came into effect in 2005, do not in themselves count as possession for the purpose of establishing a public right of way. The availability of access rights may therefore have interrupted the necessary prescriptive period and prevented establishment of a public right of way.
- 10.3 As access rights are considered to exist, it is not appropriate to investigate the possible public right of way further at this time.

## **11. ANGUS LOCAL ACCESS FORUM**

- 11.1 Angus Local Access Forum was set up to offer advice to Angus Council, and others, on matters relating to outdoor access. Forum members are appointed by the Council.
- 11.2 A paper on the access issue at 114 Ferry Road was presented to the Forum at their [meeting of 8 March 2021](#).
- 11.3 The opinion of the Forum was that access rights apply to the route, that it was clearly well used by the public, and that the barriers were an unreasonable obstruction to access rights. Their view was that the Council should continue to pursue the removal of obstruction.

## **12. PROPOSED NEXT STEPS**

- 12.1 Having concluded that access rights apply, and that the route was well used by the public, it is appropriate that the Council takes further steps to having obstructions to access removed, in order to meet its duty to uphold access rights.
- 12.2 Correspondence from the landowner's solicitors has made it clear that he will not voluntarily remove obstructions to access.
- 12.3 It is therefore appropriate the Council serves a notice under Section 14 of the Land Reform (Scotland) Act 2003, requiring removal of obstructions, and takes any further steps as may be necessary. Further steps may include removing the obstructions and recovering associated costs in the event of the notice not being complied with, or defending court action in the event of the notice being appealed to the Sheriff Court.

## **13. FINANCIAL IMPLICATIONS**

There are no immediate financial implications arising directly from this report. The cost of removing obstructions, if required following failure to comply with the notice, can be met from the Planning and Sustainable Growth revenue budget. Should the landowner appeal the case in court, there will be further financial implications, these are however not quantifiable at the present time.

## **14. OTHER IMPLICATIONS**

### **HUMAN RIGHTS IMPLICATIONS**

The recommendation to take enforcement action to resolve obstruction of public access rights has potential implications for the subject of the enforcement action in terms of the proprietors entitlement to free enjoyment of their possessions (First Protocol, Article 1) and/or in terms of alleged interference with home or family life (Article 8). It is considered that any such actual or potential infringement of such Convention rights is justified. Any actual or alleged infringement is in accordance with the Council's legal powers under the Land Reform (Scotland) Act 2003 and is necessary in the general interest to uphold access rights in Angus. It is also necessary for the protection of the right and freedom of others to freely enjoy their property without the restriction of their enjoyment and detriment of their amenity caused by the present unreasonable obstruction to access rights. Further, the interference will be the minimum required to achieve the objective of remedying the breach of planning control in question.

## **15. EQUALITY IMPACT ASSESSMENT**

An Equality Impact Assessment has been carried out and is attached.

**NOTE:** No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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List of Appendices:

Appendix 1: Location map

Appendix 2: Further details of the route

Appendix 3: Photographs of obstructions

Appendix 4: Consideration of access rights.



## Equality Impact/Fairer Scotland Duty Assessment Form

### Step 1

**Name of Proposal** Proposed enforcement – access dispute at 114 Ferry Road, Monifieth

### Step 2

Is this only a **screening** Equality Impact Assessment

**No**

**(A)** If Yes, please choose from the following options **all** reasons why a full EIA/FSD is not required:

(i) It does not impact on people

(ii) It is a percentage increase in fees which has no differential impact on protected characteristics

(iii) It is for information only

(iv) It is reflective e.g. of budget spend over a financial year

(v) It is technical

If you have answered yes to any of points above, please go to **Step 16**, and sign off the Assessment.

**(B)** If you have answered No to the above, please indicate the following:

Is this a full Equality Impact Assessment

**Yes**

Is this a Fairer Scotland Duty Assessment

**No**

If you have answered Yes to either or both of the above, continue with Step 3.

If your proposal is a **strategy** please ensure you complete Step 13 which is the Fairer Scotland Duty Assessment.

### Step 3

(i) Lead Directorate/Service: **Vibrant Communities and Sustainable Growth / Planning and Sustainable Growth**

(ii) Are there any **relevant** statutory requirements affecting this proposal? If so, please describe.

**Land Reform (Scotland) Act 2003, Section 13 duty to assert and protect access rights**

(iii) What is the aim of the proposal? Please give full details.

**To proceed with formal enforcement procedures to ensure removal of obstruction to public access on privately owned land.**

(iv) Is it a new proposal? **Yes**

Is it a review of e.g. an existing budget saving, report, strategy, policy, service review, procedure or function? **No**

**Step 4: Which people does your proposal involve or have consequences for?**

Please indicate all which apply:

Employees **No**

Job Applicants **No**

Service users **No**

Members of the public **Yes**

**Step 5: List the evidence/data/research that has been used in this assessment (links to data sources, information etc which you may find useful are in the Guidance). This could include:**

**Internal data** (e.g. customer satisfaction surveys; equality monitoring data; customer complaints).

**Complaints received regarding the obstructed path. Questionnaire survey on public use of the path.**

**Internal consultation** (e.g. with staff, trade unions and any other services affected).

**External data** (e.g. Census, equality reports, equality evidence finder, performance reports, research, available statistics)

**External consultation** (e.g. partner organisations, national organisations, community groups, other councils).

**Other** (general information as appropriate).

**Step 6: Evidence Gaps.**

Are there any gaps in the equality information you currently hold? **No**

If yes, please state what they are, and what measures you will take to obtain the evidence you need.

**Step 7: Are there potential differential impacts on protected characteristic groups?** Please complete for each group, including details of the potential impact on those affected. Please remember to take into account any particular impact resulting from **Covid-19**.

**Please state if there is a potentially positive, negative, neutral or unknown impact for each group. Please state the reason(s) why.**

Age

**Positive. The alternative routes currently available involve significant detours and steeper slopes or steps, which may be less suitable for older people. The obstructed route was also used as a route to both primary and secondary schools. Its reopening will positively affect both older and younger members of the community.**

Disability

**Positive. The alternative routes involve significant detours and steeper slopes or steps, which will be less suitable for some people with physical disabilities. They also involve traversing busy streets with traffic which have been noted as an issue for some disabled users. Re-opening the obstructed route will positively benefit these people.**

Gender reassignment

**Neutral**

Marriage and Civil Partnership

**Neutral**

Pregnancy/Maternity

**Neutral**

Race - (includes Gypsy Travellers)

**Neutral**

Religion or Belief

**Neutral**

Sex

**Neutral**

Sexual orientation

**Neutral**

**Step 8: Consultation with any of the groups potentially affected**

If you have consulted with any group potentially affected, please give details of how this was done and what the results were.

**The issues highlighted in 7 above were identified through evidence of use questionnaires obtained from members of the public.**

If you have not consulted with any group potentially affected, how have you ensured that you can make an informed decision about mitigating action of any negative impact (Step 9)?

**Step 9: What mitigating steps will be taken to remove or reduce potentially negative impacts?**

**No negative impacts have been identified. However if the proposal is not implemented there will be a negative impact on the group identified in 7 above.**

**Step 10: If a potentially negative impact has been identified, please state below the justification.**

**N/A**



**Step 11: In what way does this proposal contribute to any or all of the public sector equality duty to:** eliminate unlawful discrimination; advance equality of opportunity; and foster good relations between people of different protected characteristics?

**Implementation of the proposal will help ensure that the groups identified in 7 above have equal opportunities to access the public land beyond the obstructed route.**

**Step 12: Is there any action which could be taken to advance equalities in relation to this proposal?**

**No**

### **Step 13: FAIRER SCOTLAND DUTY**

This step is only applicable to **strategies** which are key, high level decisions. If your proposal is **not** a strategy, please leave this Step blank, and go to Step 14.

Links to data sources, information etc which you may find useful are in the Guidance.

**Step 13(A) What evidence do you have about any socio-economic disadvantage/inequalities of outcome in relation to this strategic issue?**

**Step 13(B) Please state if there are any gaps in socio-economic evidence for this strategy and how you will take measures to gather the evidence you need.**

**Step 13(C) Are there any potential impacts this strategy may have specifically on the undernoted groupings?** Please remember to take into account any particular impact resulting from **Covid-19**.

**Please state if there is a potentially positive, negative, neutral or unknown impact for each grouping.**

**Low and/or No Wealth** (e.g. those with enough money to meet basic living costs and pay bills but have no savings to deal with any unexpected spends and no provision for the future.

### **Impact**

**Material Deprivation** (i.e. those unable to access basic goods and services e.g. repair/replace broken electrical goods, warm home, leisure and hobbies).

**Impact**

**Area Deprivation** (i.e. where people live (e.g. rural areas), or where they work (e.g. accessibility of transport)).

**Impact**

**Socio-economic Background** i.e. social class including parents' education, people's employment and income.

**Impact**

**Other** – please indicate

**Step 13(D) Please state below if there are measures which could be taken to reduce socio-economic disadvantage/inequalities of outcome.**

**Step 14: What arrangements will be put in place to monitor and review the Equality Impact/Fairer Scotland Duty Assessment?**

N/A

**Step 15: Where will this Equality Impact/Fairer Scotland Duty Assessment be published?**

**Alongside the committee report**

**Step 16: Sign off and Authorisation.** Please state name, post, and date for each:

Prepared by: Paul Clark, Countryside Access Officer. 10 September 2021.

Reviewed by: Doreen Phillips, Equalities Officer, 13 September 2021

Approved by: Jill Paterson, Service Leader Planning & Growth, 13 September 2021