

EAST AYRSHIRE COUNCIL

CUMNOCK AREA LOCAL COMMITTEE – 11 APRIL 2002

RIGHTS OF WAY AND OUTDOOR ACCESS IN EAST AYRSHIRE

Report by Director Of Community Services

1. PURPOSE OF REPORT

- 1.1 To advise the Committee about Right of Way in East Ayrshire and Outdoor Access as it relates to the draft Land Reform Bill.

2. BACKGROUND

- 2.1 A right of way is a route along which the public have a right of passage. To be a right of way, a route must meet certain conditions. The main ones are that the route must have been used by the public for at least twenty years, it must connect two public places, and it must follow a more or less defined route.
- 2.2 A right of way is established through the collection of sufficient evidence to show that the route meets the accepted conditions for such status, and this evidence can be used to assert that the route is a right of way, either to secure acceptance of the way by all the interests, or through court action.
- 2.3 Unfortunately, there is often doubt about the legal status of rights of way, and they are sometimes hotly contested by landowners. Local authorities have the power to establish the legal status of a right of way through court proceedings, but they are often reluctant to take right of way claims to court as cases can take years to resolve, at enormous cost and effort.
- 2.4 The National Catalogue of Rights of Way (CROW) which has been compiled by the Scottish Rights of Way and Access Society Classifies rights of way into three status categories:
- Vindicated – routes declared to be rights of way by the courts or through another legal process.
 - Asserted – routes which have been accepted as rights of way by the landowner or where local authorities have indicated that they would take legal action to protect them if necessary.
 - Claimed – other routes which appear to meet the common law conditions necessary to be regarded as rights of way, but which have not been formally vindicated or asserted .

- 2.5 The local authorities duties regarding rights of way is stated clearly in the Countryside (Scotland) Act 1967 S46. It is the duty of the local Planning Authority to assert, protect and keep open and free from obstruction or encroachment any public right of way which is wholly or partly within their area, and they may for these purposes institute and define legal proceedings and generally take such steps as seem expedient.
- 2.6 Any local Authority or local Planning Authority may repair and maintain any public right of way (not being a road or footpath at the side of the road) within their area.
- 2.7 The Ranger Service and Planning Department attempt to keep rights of way open and mediate with landowners where necessary. There has never been a budget to carry out this work and all repairs are on an ad hoc basis.

3 DISCUSSION

- 3.1 During the summer months of 1978 a survey of public footpaths and rights of way was undertaken by the Department of Technical Services of Cumnock and Doon Valley District Council using labour recruited under the Manpower Services Commission Job Creation Scheme.
- 3.2 The survey catalogued all paths and a report was produced giving a detailed description of each path walked, points of interest along the route, details of their physical condition, length, starting and finishing points. The finished report provided a list of claimed rights of way within the Cumnock and Doon Area but at the present time they have little legal standing.
- 3.3 Over the next year there will be radical changes to the public's rights of access to the countryside. The Land Reform (Scotland) Bill is currently passing through the Scottish Parliament and is expected to be enacted in spring 2003. If it remains in its present form it will give the public the right of responsible access over most land and inland water Scotland (with certain exceptions)
- 3.4 In its present form it will be a duty of 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. It will be a duty of the local authority to draw up a plan for a system of paths ("core paths") sufficient for the purpose of giving the public reasonable access throughout their area. Public rights of way will still exist but many will be incorporated into core path networks.

- 3.5 In response to the new legislation East Ayrshire Council has appointed two Access officers to start developing core path networks around local communities.
- 3.6 Consultants have recently completed an Outdoor Access Strategy for East Ayrshire. It will be presented to the Community Service Committee later in the year.
- 3.7 An East Ayrshire Outdoor Access Forum is being developed which will be involved in the development of access throughout East Ayrshire

4 FINANCIAL IMPLICATIONS

- 4.1 Nil

5 LEGAL AUTHORITY/IMPLICATION

- 5.1 Nil

6 POLICY IMPLICATION

- 6.1 Nil

7 CONCLUSIONS

- 7.1 There is little funding available for rights of way but where these paths can be incorporated into core path networks there will be the possibility of applying for grant aid.
- 7.2 The Access Officers have already applied for several grants to develop new routes in East Ayrshire with many more to follow in the future.

8 RECOMMENDATIONS

- 8.1 The Committee is invited to note the content of this report and endorse the action taken so far.

William Stafford
Director of Community Services

WS/ASM

19 March 2002

LIST OF BACKGROUND PAPERS

- 1. Land Reform (Scotland) Bill**
- 2. Draft Scottish Outdoor Access Code**
- 3. East Ayrshire Outdoor Access Strategy**

Any person wishing to inspect the background papers listed above should telephone 01563 554733 and ask for Andrew Scott-Martin, Country Park Manager.

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AGENDA