Farley Wood and Farley Hill
Section 25(2)(a) of the Land Reform (Scotland) Act 2003
To advise the access authority on matters relating to the exercise of access rights

Report by Head of Environment

Summary
Section 25(2)(a) of the Land Reform (Scotland) Act 2003 identifies one of the functions of a local access forum as being “to advise the local authority…on matters having to do with the exercise of access rights…”

The Inverness and Nairn Local Access Forum is being asked to consider the case of Farley Hill and Farley Wood, Beauly and offer advice on how the issues might be resolved.

1. Background

1.1 Part 1 of the Land Reform (Scotland) Act 2003 (the Act) came into effect on Wednesday 9th February 2005.

Section 13 of the Act makes it a duty of the Council 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’.

1.2 In January 2005 a member of the public contacted the access officer enquiring about the suitability of a stile over a deer fence into Farley Wood, Beauly. In April of 2005 another enquiry was received about access to Farley Wood and Farley Hill [Appendix 2]; this concerned access to the same area for horse riders. Meetings were arranged between the access officer, the gamekeeper and an agent in June 2005. By June 2006 [Appendix 1] 2 gates remained locked with the original stiles beside them and several signs were noted [Appendix 3].

2. Access at Farley Wood and Farley Hill

2.1 Farley Wood is owned by Imperial London Hotels Pension Fund and Farley Hill is owned by Hatfield Farms Limited. A gamekeeper is resident and the agent visits from time to time.

The estate has experienced vandalised gates and fences. Cars had been dumped and set alight, illegal motorcycling has been an issue and in January 2006 tyres were illegally
dumped on the site. The estate felt that it should strengthen its security in areas where it felt most vulnerable to such incidents.

Concerns include liability over shooting and adders as well as the responsibilities of dog walkers and horse riders. The relationship between dog walkers and bird rearing, breeding and black grouse are of particular concern as was the ability of the tracks to withstand horses’ hooves.

In February 2006 the agent stated that he intended to install double gates at key access points and, being security conscious, requested the names and addresses of horse riders that a dialogue might be opened with them and keys probably provided to them.

The estate feels that its other responsibilities do not always complement those of the Land Reform (Scotland) Act 2003. It also feels that it has to protect against careless or irresponsible visitors.

The estate feels that it has taken adequate steps to comply with the terms of the Land Reform (Scotland) Act 2003. It has no wish to restrict pedestrian or horse access to their property and is making no attempt to do so. It feels that the only issue at stake is The Highland Council’s requirement for an additional gate. It feels that the additional gate will increase the problem of motorcycle use. It also feels that the steep approach to that gate makes it unlikely for horse riders to use that access point.

By July 2006 the estate had provided hatch gates at 3 sites, ensured that a field gate remained unlocked and that a side gate was left unobstructed.

2.2 The access officer believes that Farley Wood and on Farley Hill are accessible to those exercising responsible access.

The majority of the tracks fall within paragraph 2.2 of the Scottish Outdoor Access Code [...you can exercise access rights in such places as:...hills, mountain and moorland...woods and forests...on all other paths and tracks where these cross land on which access rights can be exercised] provided that those rights are exercised responsibly while the activities that might be exercised there include walking, cycling and horse riding [paragraphs 2.7 to 2.10].

Section 3 of the Land Reform (Scotland) Act 2003 requires the land to be managed responsibly. By maintaining an obstruction for the purpose or main purpose of preventing or deterring the exercise of access rights the land manager is taken to be managing the land irresponsibly. The Scottish Outdoor Access Code defines an obstruction that stops or hinders anyone from exercising access rights responsibly. It gives examples in paragraph 4.9 which include...asking people to avoid using a route or area when there is no safety-related reason to do so...locking a gate on any path or track without reasonable cause or on any well-used path or track without providing an appropriate alternative for non-motorised access...erecting a sign or notice worded in a way which intimidates or deters the public.

There is reasonable cause to lock the gate to deter unauthorised motorised access but an appropriate alternative must be provided beside the locked gate. The hatch gate is an appropriate alternative although there may be other acceptable designs.
By July 2006 the estate had failed to provide an appropriate alternative access point beside the locked gate at Ruilick and displayed 4 signs that failed to comply with the Land Reform (Scotland) Act 2003. Another locked gate and stile has yet to be addressed.

2.3 The initial complainant regarded the stile by the gate to be dangerous and difficult to negotiate, there being only 2 steps which were far apart.

The second complainant claimed to have had ridden horses freely in the wood until it was sold to the current owners and continues to monitor the Council’s progress in this case. They felt that the tracks were accessible under the Land Reform (Scotland) Act 2003.

3. Options

3.1 1. Write to the agent’s solicitors outlining deficiencies and requesting compliance by [date].
2. Offer to bring parties together to address respective concerns and achieve compliance by [date].
3. Arrange a site meeting for forum members to the site prior to the next meeting.
4. Recommend to the Inverness Area Committee that notice under section 14 of the Land Reform (Scotland) Act 2003 be served requiring remedial action.

4 Resource Implications

3.1 Dependent on advice and any subsequent action by The Highland Council or the local access forum.

Recommendation

1. That the Forum consider the case and advise the Council on what action or actions the forum believes may successfully conclude this case.

Signature:

Designation: Head of Environment

Date: 11th September 2006

Author: Stewart Eastaugh

Background Papers:

Appendix 1: Correspondence notes
Appendix 2: Location Map
Appendix 3: Site Map
February 2005 access officer asked factor to look at the stile
April 2005 no action taken by factor. Second complaint received.
May 2005 details of locked and obstructed gates received
June 2005 meeting with agent and keeper at which Scottish Outdoor Access Code, responsibilities and liability were discussed
June 2005 meeting and short visit to some of the gates with keeper
July 2005 letter to agent identifying gates in question and offering potential sources of funding to assist the estate in meeting the cost of either hatch gates or stockproof box gate
November 2005 telephone call from agent who appeared to be investigating his own design for gates as well as waiting for the outcome of a nearby access case to determine “reasonableness”. He asked about indemnity against fly tipping and legal recourse against those damaging the tracks.
December 2005 access officer sends design for hatch gate and recently approved shooting sign from the Scottish Outdoor Access Code website. Concern expressed at the lack of progress. Offer to bring parties together to discuss the issue. February 2006 given as a deadline for progress before the Council considers serving notice under Section 14(2) of the Land Reform (Scotland) Act 2003 requiring them to take remedial action.
February 2006 response from agent stating intention to install double gates at key access points; inviting discussion when he was next in the area and requesting the names of the horse riders in order to enter dialogue and “probably provide each with keys.” Statement that redress would be sought if damage occurred.
February 2006 telephone conversation with agent who said that he would like to trial one gate, that he was waiting for quotes and that he would like to sit down with horse riders. Access officer agreed to put names together for discussion which was pursued with horse riders and a local British Horse Society Scotland representative.
February 2006 letter from agent detailing fly tipping incident. Also confirms that hatch gates will be installed at 3 points and that quotations are expected in early March. States that the offer by the Council of financial assistance will not be taken up.
February 2006 letter to agent stating that appropriate alternatives should be provided at all gates and requesting a positive response by early March.
February 2006 letter received from second complainant identifying individuals and families interested in riding in the area approaching Loch nam Bonnach
March 2006 letter from agent stating that appropriate alternatives will be provided at all locked gates apart from one where separate horse access will be provided nearby. Goes on to identify difficulties in meeting different land management responsibilities.
March 2006 letter from agent identifying changes made to certain gates, stating intention to strengthen security and position that the estate has provided very good access, acted reasonably and complied with the law.
March 2006 letter to agent expressing concern about distance one alternative access is from the locked gate and the ground it gives access to and asking if there is any doubt about what the Council might view as appropriate to contact the Council.
**March 2006** letter to agent stating that the alternative provided is 500m away and denies access to 1km of track and therefore unsuitable. Requests that an appropriate alternative be provided beside the locked gate at Ruilick by the end of May 2006.

**June 2006** letter from agent’s solicitors reaffirming the agent’s belief that he has complied with the Scottish Outdoor Access Code and taken adequate steps to comply with the Land Reform (Scotland) Act 2003. States that the agent has no wish to restrict access and question the need for an additional gate. Mentions the threat of motorcycling, fly tipping and the unlikely approach of horses to that potential access point.

**June 2006** letter to agent’s solicitors stating opinion that their client had not complied with either the Scottish Outdoor Access Code or the Land Reform (Scotland) Act 2003 and addressing the points in turn. Gave notice of a site visit on 13th July by access officer.

**July 2006** site visit by access officer to confirm what had and had not been done.