

Scottish Land & Estates Legal Briefing Note

Mr Graham Tuley and Mrs Margot Tuley v The Highland Council

Outcome in the Judgment in the Appeal from the Sheriffdom of Grampian, Highland and Islands at Dingwall and Summary of the Main Points

Full Judgement available at: <http://www.scotcourts.gov.uk/opinions/2009CSIH31A.html>

Outcomes:

1. The key test of responsibility for land managers in Part 1 of the Land Reform (Scotland) Act 2003 (the Act) is whether their management causes “unreasonable interference” with a person’s access rights. If a landowner contravenes Section 14(1) of the Act, it will be taken that they have not conducted ownership of the land in a responsible way.
2. In the specific circumstances of this case the appeal judges determined that it was reasonable to exclude horse riders from the path through the northern sector of Feddonhill Wood. This is because if they did have access the damage likely to be caused would unreasonably interfere with the access rights of walkers and the rights of the Tuleys to manage their land for the purpose for which they intend to use it.
3. In this instance the landowners were considered to have enough justification in their anticipation of long-term damage to validate pre-emptive action.
4. Each case has to be dealt with according to its own circumstances and so it is difficult to generalise from individual cases. It will still be necessary to consider each case on its own merits.
5. If access rights are to be denied to any ground, for any type of access user, interference with another’s rights (be they, landownership, other access rights, or any other rights) will need to be justified as reasonable.
6. That the Tuleys were acknowledged and demonstrable supporters of public access was an important element in the judgment. It helped to demonstrate that their purpose in restricting a type of access was bona fide.
7. The appeal judges also gave a view on the proper interpretation of Section 14(1) of the Act, in relation to actions which prevent or deter access rights. They made it clear that in their view notices could only be enforced against a landowner where the specific purpose of an action is to prevent or deter access, not where this is a secondary or incidental consequence of an action.
8. Notices warning of tree felling, to give the example used at the appeal hearing, may therefore have the effect of deterring access, but the landowner should not be subject to a Section 14 notice if the notices are used because his genuine concern is to warn access users of a current hazard.
9. The appeal judges go on to point out that the bona fides of the land owner in his stated purpose in carrying out the action complained of will be a critical determining factor in whether a Section 14 notice is or is not justified.
10. This approach is again consistent with the key test of the Act “unreasonable interference” with another’s rights. That is, land management operations may reasonably interfere with access rights, but not unreasonably interfere with them, and access rights may reasonably interfere with the rights of others (including other access users), but not unreasonably interfere with them.

This briefing note was prepared by Scottish Land & Estates for the purpose of advising its members on the outcome and implications for land managers of this court case which relates to Part 1 of the LR(S)A 2003. The views expressed are purely those of Scottish Land & Estates.