

Scottish Land & Estates Legal Briefing Note

Euan & Claire Snowie v Stirling Council & Ramblers Scotland

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

The judgement in this case was in favour of Stirling Council and the Ramblers Association.

In summary Sheriff Cubie has upheld the Council's claim that the locked pedestrian gates at the West Lodge entrance to Boquhan House were an unreasonable obstruction to access, and that the full area that the Snowies wished to have excluded access rights (around 40 acres) was larger than necessary for providing privacy for persons living there and for their enjoyment of the house.

The Sheriff agreed with all parties prior to his judgement that he would shade the area on a plan of the property that would represent the area of land adjacent to the house to be excluded from access rights for reasons of privacy and enjoyment of the house. His judgement shows this area to be around 12.5 acres.

Opinion by Malcolm Strang-Steel, Partner with Turcan Connell Solicitors

Each of these cases turns on its own facts and location. However, from a lawyer's point of view, it is interesting that Sheriff Cubie has adopted wholesale Sheriff Fletcher's interpretation of the law in the Gloag Case. I think he was correct in so doing.

There are one or two observations which can be made:-

1. The importance of the evidence given was made clear in the Gloag Case and re-emphasised here. Mr Snowie himself was regarded as an unreliable witness by the Sheriff and the Sheriff had even less time for his security expert.
2. A factor in the decision in this case was the amount of legitimate non-statutory access that was already available, eg. the neighbouring farmer, tenants, those with horses in the adjacent riding stables etc. In the Gloag Case of course there were no rights of access of any kind across the ground adjacent to Mrs Gloag's house.
3. It does not appear that the Snowie's pled as an alternative to the stables etc being excluded on grounds of being necessary for the privacy of their house that the stable buildings and their curtilage in themselves should have been excluded. It may still be open to them to run that but the assertion that they were necessary for the privacy of those in the house was not accepted by the Sheriff.
4. In relation to the numerous let cottages within the grounds the Sheriff said "there may be cases where the existence of tenants may be one of the characteristics justifying a larger area excluded from access but this is not such a case.

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 those of Scottish Land & Estates &, as indicated, Malcolm Strang-Steel.