

10 July 2020

West Lothian Council

Dear Sir or Madam

Objection to proposed s 11 order Bangour Village

I am writing on behalf of Ramblers Scotland to object to the notice to exempt land at Bangour village from statutory access rights under s 11 of the Land Reform (Scotland) Act 2003. This objection is on the basis of the stated purpose of the order which is set out as follows:

The purpose(s) for which the Order is being proposed is to prevent irresponsible access being taken in the interests of safety and security

There are a number of reasons for our objection:

1. Statutory access rights under the Land Reform (Scotland) Act 2003 only apply if the person exercising those rights is acting responsibly. An access taker behaving irresponsibly has no right of access and is, without need for recourse to a section 11 order, liable to legal action at the instance of either the landowner or the local authority by way of proceedings under section 28 of the Act or for interdict. Consequently, using s 11 of the Act to remove access rights to prevent irresponsible access is not a reasonable or appropriate use of this order making power.
2. Section 11(1) of the Act provides that an order exempting land from access rights can only be made 'for a particular purpose specified in the order.' The stated purpose of preventing irresponsible access is a general purpose rather than a 'particular purpose' and the making of a section 11 order for the general purpose stated is accordingly unlawful.
3. We acknowledge that there have been reports of irresponsible activities on this site, but there are many other more appropriate legal remedies available to deal with this behaviour. In particular we would make reference to:
 - Section 28 of the 2003 Act as referred to above
 - The Antisocial Behaviour etc (Scotland) Act 2004
 - The Criminal Law (Consolidation) (Scotland) Act 1995
 - The common law criminal offences of breach of the peace and criminal damage.

Against the background of these other more appropriate remedies to deal with the situation at Bangour village, recourse to section 11 powers is irrational and unlawful.

4. We are aware that the site is accessed by responsible access takers. Removal of all statutory access rights would affect anyone who is taking access responsibly on the site and is therefore disproportionate.
5. We strongly believe that the purpose outlined in this order is not reflective of the intention of the Scottish Parliament with regard to use of s 11. Section 27(1) of the 2003 Act requires authorities to have regard to guidance given by Scottish Ministers. The current [guidance](#) from 2014 makes it clear that Ministers envisaged that local authorities would only use this order in relation to managing access for events, whether to enable an entry charge to be made or to ensure health and safety was protected during that event. This is not the purpose of this Order.

6. Finally, it is our view that the removal of statutory rights from this land would not in fact exclude anyone from taking access there on the same basis as they went on to that land before the 2003 Act came into force, ie on the basis of custom and tradition rather than their statutory rights.

As an additional point, we note that the document containing the text of the s 11 order is titled “notice of proposed section 11 exclusion Bangour”. We would like to clarify that this is a proposed ‘exemption’ order and not an ‘exclusion’ order.

We trust the above information is helpful and would be happy to discuss this matter further with you.

Yours faithfully

Helen Todd
Campaigns & policy manager

Convener: Alison Mitchell
President: Lucy Wallace
Director: Brendan Paddy

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