Creelman v Argyll & Bute Council

Cases under the Land Reform (Scotland) Act 2003 · https://scotways.com/ken/creelman-v-argyll-bute-council/

Dunoon Sheriff Court, Court ref.: B12/08

24th September 2009.

Scottish Courts Service decision.

This was an appeal by Mr and Mrs Creelman against a Section 14 Notice served on them by Argyll & Bute Council under the Land Reform (Scotland) Act 2003. The Notice required them to remove a sign that said ‘Private Road. No Access Without Permission’ at one end of a track through their ground, and also to remove barbed wire at the other end of the track.

Facts: Mr and Mrs Creelman were the owners of two properties at Stronardon: a five bedroom house in which they lived, and a lodge house 'Dunans Lodge' located at the junction of a track leading to Stronardon and a public road, and which was used for short term holiday lets. The attached land was about 6 acres, in a long, narrow shape, bounded on one side by the public road and on the other by a steep bank above a river. The track through the property passed within a few metres of both Dunans Lodge and Stronardon. The total area of the property was about 6 acres and part of the ground (about 2 acres) was unusable as it was steeply sloped, with vertical drops down to a river. The land had originally been laid out as a garden for the adjacent Dunans Castle. The current owner of Dunans Castle, Mr Spain, had complained about lack of access. He wanted people visiting the Castle to be able to access the land. The track past the Lodge House had been overgrown for many years until the Creelmans cleared it. The Local Access Forum had been consulted and supported the Council’s view that part of the land was within access rights, although the Sheriff noted that there had been no site visit.

Evidence: there was little dispute in the evidence given by the parties. For the Creelmans it was argued that the they had put much effort into the improvement of the woodland garden; that before their improvements to the property the main access track was not passable; the closeness of the track to the properties was such that people on it could see into the houses; that the unusually long and narrow shape of the property made it unreasonable to have access; and that the size of the area was not unreasonable for a house of this size. The Council proposed that an area to the east of the track should be within access rights. They said that the main house was not always visible; that Stronardon could not be reasonably compared with the outcome of the case

for a very large house such as Kinfauns Castle; and proximity to the public road compromised claims of this being an undisturbed location.

Decision: Sheriff Derek Livingston decided in favour of Mr and Mrs Creelman, and found that the whole area of their land, including the whole garden area, was excluded from access rights in order to ensure that enjoyment of the houses was not unreasonably disturbed. He placed emphasis on the track and its close proximity to the two houses involved, such that people walking on the track would interfere with the reasonable privacy of people occupying both houses. Here he followed the Gloag and Snowie cases in that the test for how much land was needed to ensure privacy was an objective one, and based on considering the needs of a hypothetical typical owner, not the particular owner. He said that the property was in a relatively secluded part of the country, where people would expect more privacy than if living in an urban location. The Sheriff noted that the impetus for the case did not seem to have come from disaffected walkers but from a neighbour who wanted to use the Creelmans' land for business purposes.