Snowie v Stirling Council and Ramblers Association Lindsay and Barbara Ross v Stirling Council

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Case Report: 2008 S.L.T. (Sh Ct) 61
Stirling Sheriff's Court, Court ref: A976/06; 23rd April 2008
Scottish Courts Service decision and decision.
An appeal to the Court of Session was abandoned on 13th January 2010.

Facts: These two linked cases were heard together. Mr and Mrs Snowie owned Boquhan House close to Kippen in Stirlingshire and grounds extending to 70 acres. Two driveways entered the Estate from public roads via the East Lodge and the West Lodge, giving access to the Estate and a neighbouring farm. The Estate also contained seven tenanted houses and stables. Mr and Mrs Ross owned the West Lodge, the garden of which lay on either side of the main, west driveway. The gates consisted of two pedestrian gates and a vehicular gate.

After a few years of ownership the Snowies carried out work on the previously manually operated gates so that the vehicular gate could be operated electronically and remotely. The pedestrian gates at the West Lodge were locked, preventing public access through the gate.

Both before and after the Snowies purchased the Estate, local people enjoyed regular access, taking a short cut to a right of way parallel to the southern edge of the Estate, walking or cycling. After the main gate was locked, access could still be taken through the neighbouring farm or the East gates.

Stirling Council received complaints about the changes at the West gates from people wishing to take access. There were negotiations to seek agreement for reinstatement of pedestrian access at the west gate, involving Stirling Council, the Snowies and the Rosses. Following the failure of these negotiations, Stirling Council served a written Notice under Section 14(2) of the Land Reform Act (Scotland) 2003 requiring the pedestrian gate to remain open. During the course of the negotiations, the Rosses had become responsible for the gates under a lease (which the Sheriff

said appeared inexplicable). Once the existence of the lease was disclosed the Rosses were served with a similar Notice.

Evidence: The Snowies and the Rosses appealed to the Sheriff Court against the notice, claiming that unlocking the gate would affect their security and would prevent them having sufficient land excluded from access rights to enable them to have reasonable measures of privacy in Boquhan House and the Lodge. Mr Snowie claimed a special need for privacy for his family and referred to the need to provide for the privacy of other tenants close to the house, although the Ramblers noted that this claim did not extend to tenants on the other side of the main road.

Decision: In his judgment, the Sheriff endorsed the approach to the determination of exempted land set out in the Gloag judgment: the court is to look not at the individual proprietor for the time being, but is to consider the particular characteristics of the property, and the expectations of the kind of person who would buy it and live there. He set aside the evidence of Mr Snowie's security expert and decided it was not necessary for the gates to be locked for reasons of privacy and enjoyment, nor for security or insurance purposes, and he refused to withdraw the Notice.O

The Snowies had asked for the Sheriff to determine the amount of land that afforded privacy and enjoyment in terms of section 28 of the 2003 Act. They claimed that a substantial part of the estate should be excluded from access, including the entire length of the driveways. This was dismissed by the Sheriff, who outlined a smaller area to be excluded from the exercise of access rights, including the rear garden, the tennis courts and changing rooms, and adjacent gardens. He rejected the suggestion that the entire driveways should be excluded, as he said these were not land adjacent to the house. In relation to the tenanted houses on the estate, he said each of these properties had a well-defined garden area that was exempt from access and this would be obvious to any responsible access taker. A similar situation applied at the West Lodge.

Appeal hearing in the Court of Session on 13th January 2010

At the appeal hearing, Counsel for the appellants (the Snowies and Rosses) argued, firstly, that the Sheriff had not correctly interpreted section 6(1)(b)(iv) of the 2003 Act. He said that the Sheriff had to consider the particular people living there at the time in question, and he had not done this. He said the Sheriff had also failed to give sufficient consideration to the needs of the people living in the tenanted houses.

Secondly, he argued that the area of land which the Sheriff had excluded had been determined arbitrarily: there was no logical explanation as to how the decision had been reached. Also, he had conflated the Ross and Snowie cases, commenting on security of the estate in the Ross case,

when that was not relevant. The appellants asked for the Court to quash the judgement and remit the matter back to the Sheriff to apply the correct interpretation of section 6(1)(b)(iv).

Counsel for Stirling Council said that the Sheriff had made an extensive site visit, had listened to the wishes expressed by the Snowies and Rosses, and had come to a decision on what was required for ‘persons’ living in the house, as the Act required, and not ‘the persons’ as had been argued. The reasons for selecting the exempted area had been explained in the judgement.

The Court asked Counsel for the appellants to address them further on how, if the findings in fact were not challenged, the case could be remitted back to the Sheriff. However, the appellants withdrew their appeal, and so this issue was not addressed.

See the note on the Gloag case in relation to the involvement of the Ramblers Association.