

Our ref: NB/SW/P.483.5
Your ref:
Date: 9 March, 2017



Mr [REDACTED]
Access Manager
Development and Infrastructure Services
1A Manse Brae
Lochgilthead
Argyll PA31 8RD

And by E-mail on [REDACTED]

Dear Sir

**Our clients – Mrs Marjorie Osborne and Mr Thomas Paterson
Public Right of Access – Cumberland Avenue, Helensburgh**

We have been consulted by Mrs Osborne and Mr Paterson who have passed to us your letter to them dated 7 February 2017. We are instructed to correspond with you to set out our client's position in relation to this matter.

We first of all note that you have concluded that the site "now appears to be safe to allow the public access". You state that this is following a site visit on Friday, 28 October. We would wish to make it very clear that our clients do not accept your assessment that the site is now safe and they remain of the view that there would be a significant risk to public safety should public access be allowed. We assume that the "site visit" undertaken by you on 28 October was carried out without the benefit of access to the land itself. Mr Paterson knows the area of land in question very well and indeed visited the site and entered into same as recently as 15 February this year. He has described the land as being treacherous under foot. He has explained to us that there are four bunds spread across the full site. We are advised in addition that the area of land is slightly sloping and that there is a gradient of 45 -- 50 degrees for ten metres or so. In essence, what we understand you to be asking our clients to do is to open up the fence beside a children's play area which would in turn open up a steep embankment. In addition as you state in your letter of 7 February, the bunds have started to decay and in our clients view this makes the situation even more hazardous. Our clients do not accept the statement contained within your letter of 7 February that "it is very unlikely that even children would attempt to climb on these piles because of the brambles". In/



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In the event that public access is permitted to the site, our clients view is that there would be a reasonably foreseeable risk of members of the public or dogs being walked in the area suffering injury due to the nature of the site.

Our clients have contacted P.C. [REDACTED] (Crime Reductions Officer) requesting his professional opinion as to whether the site is likely to pose a hazard to members of the public, especially children. If necessary, our clients will involve the health and safety executive. As you will no doubt appreciate, they are extremely anxious to avoid any situation in which they could attract liability for loss or injury suffered to members of the public accessing the site which is in their ownership. In these circumstances, they will vigorously oppose any notice issued by Argyll & Bute Council requiring them to open the site to allow public access.

By way of background information, we confirm that we have had sight of a decision by the Reporter dated 22 October 2015 quashing a notice issued by Argyll & Bute Council requiring removal of the bunds. Accordingly there is no legal requirement upon our clients to remove the bunds from the site. We would also however explain that our clients previous attempts to maintain the site have been disrupted both by the instruction of the Planning Officer of Argyll & Bute Council who insisted upon the suspension of the spraying by our clients of the site with weed killer despite our client having arranged with the gardeners contracted to carry out the works that these would not be harmful to saplings. We enclose for your information a copy of a communication received by our client from [REDACTED] Planning Officer, in June 2015 together also with a copy of an article which appeared in the Helensburgh Advertiser concerning the same issue on 28 May 2015. It is fair to say that our clients find themselves in something of a no win situation. They do however have as their overriding concern the hazardous nature of the site to members of the public should access be allowed and their own liability that might arise from that are they to be forced to open up the site as you suggest.

We would also suggest on our clients behalf that reference should be made to the Scottish Outdoor Access Code. In Sections 6 and 7 relate to "Land over which access rights are not exercisable".

At Section 6 (1) (a), excluded from access rights is "land on which there is any building or other structure or works, plant, fixed machinery, caravans, tents or other places used to give a person privacy or shelter". We understand from our clients that there is still timber within the site that requires extraction in respect of which our clients are recycling the product of the woodland. These are works which are still in progress and our client wishes to protect these.

Further,/

[REDACTED]

Argyll & Bute Council (Contd.)

9 March 2017

Further we would refer you to Section (1) (c) of the Scottish Outdoor Access Code, this section which has been held to cover areas like those gardens located in several parts of the new town of Edinburgh which are jointly owned and held by residents for their private use excludes private gardens to which two or more persons have rights in common. We would suggest that this section is also applicable to this particular area of land where it is owned jointly by Mr Paterson and Mrs Osborne.

We would submit on behalf of our clients that matters are very far from being as straight forward as your letter of 7 February 2017 suggests.

We would respectfully suggest that our clients' position here is entirely reasonable and that in all the circumstances it is not appropriate for you to issue them with a legal notice under Section 14 of the Act.

This letter is written entirely without prejudice to our clients' whole rights and pleas and may not be referred to in any Court action to follow hereon except with our client's express consent.

Yours faithfully

A solid black rectangular redaction box covering the signature area.

Enc.