

IMPROVING THE NAF – LAF NETWORK – UNCONFIRMED SUMMARY NOTE OF THE ANNUAL JOINT MEETING 5 APRIL 2019

The annual NAF/LAF meeting held at Battleby on 5 April 2019 was attended by 61 people with 23 Local Access Fora represented from across Scotland. The aim of the day was to allow NAF and LAF members to share experiences of access issues, help resolve problems and raise awareness of potential solutions. Ideas on how the whole NAF/LAF network could be strengthened and about topics that could usefully be explored at NAF/LAF meetings were considered in a brief “brain-storming” session: suggestions are noted in Annex 1.

How the NAF/LAF network is doing after 15 years

Rona Gibb from Paths for All reflected on what has been achieved since the introduction of the Land Reform (Scotland) Act 2003 over 15 year ago. She highlighted the huge amount of work completed since the inception of LAFs and the development of Core Path Plans.

Local Access Fora had facilitated better dialogue between different interests and provided support for local authority access officers. Many disputes had been resolved, better signage for access delivered and a greater understanding of the legislation by both access providers and access users made. LAFs have provided advice and guidance to local authorities, and have helped champion and celebrate access. In general access provision has expanded and the network is better used. Core path plans exist for all local authority areas and these are now being reviewed

In terms of monitoring, information was collected centrally by Scottish Government (up to 2015/16) which gave an overall picture of LAF activity. By 2007 all Local authorities had LAFs, access strategies and access officers. Since then there has been a decline in the number of access officers as well as the number of LAFs and the frequency of meetings. In some cases this reflects a decline in the number of issues needing to be resolved in other cases it reflects the difficulty of getting representation on LAFs. Current monitoring of LAF activity is in abeyance but requests have been made for it to be reinstated.

Rhona highlighted the range of information and publications available on line to support the work of LAFs including; a guide to path grading, signage guidance, supportive policies for active travel, walking and cycling strategies and funding to support these. She also noted that very few LAFs had a web or social media presence and suggested that this may be a good mechanism for sharing good practice between LAFs and raising awareness of LAF activity in general.

LAF reflections on this NAF/LAF network

Participants gave their reflections on the state of the LAF network which included;

- Caution in interpreting the monitoring data; for some LAFs there are fewer issues, so meetings can be less frequent, for others the reduced frequency of meetings is due to a lack of access officer support and volunteer members.
- Inactive LAFs are not uncommon. Does the LAF structure deter new members and are LAFs dynamic enough?
- Some Councils don't use the LAF enough as an advisory body. Access issues have declined but there are occasional pressure points.

- Moribund LAFs may have resulted from a narrower role given by Local Authorities.
- The 2017 SOAN survey shows variable LAF activity, e.g. a slowing down of activity following core path planning. Thriving LAFs tend to be those with lots of LA support and access officer time.
- With a dynamic Access officer LAFs can be reinvigorated and the membership widened e.g. by asking NFU/SAYFC to encourage young farmer involvement.
- A top down approach can discourage involvement especially grass roots involvement.
- The role of the Chair is important to assert independence from the LA. Whilst LAFs need independence they also rely on secretariat support from AOs to keep things moving.
- Example of D & G Outdoor Access Trust financial support for a secretary and WEB site.

Learning from other LAFs – group discussions

1. The creation, popularity and future of a new long distance path “The St Magnus Way”

Anne Gascoigne member of the Orkney Outdoor Local Access Forum explained the benefits the new 55 mile long St Magnus Way pilgrimage route had created on the Island. She highlighted the involvement of communities and landowners in the development of the route, including the role of historians, funding partners and good communication in making it happen. The route (some sections of which are multi use) is inspired by the story of St Magnus. It evolved from an idea in 2015, the first section was launched in 2017 and further sections thereafter, with only a miniscule budget of £60 k. The route is a way of linking existing paths and sites and brings health benefits, and an economic boost to local accommodation and service providers, across the Island. For further information see: www.stmagnusway.com

2. Future funding for Core Paths and walking promotion by Forums and Trusts

Peter Ross, Chair of Dumfries and Galloway LAF and D&G Outdoor Access Trust shared his experience on funding, given a financial landscape with LA and Central Government cutbacks in staff and funding, a lack of volunteer capacity for the Forum and the Trust and high costs of PR and marketing if it is professionally done. Funding availability is obscure and diffuse. He summarised what funding is available:

- Grant Funding; possible but increasingly competitive, time consuming and shrinking
- Charitable fund-raising. Appeals, Gifts, Legacies. Hard to build a USP which has emotional appeal.
- User Funding; Crowd Funding,- USP problematic; Parking,- costly for little return especially away from busy places; Tourist Tax - politically sensitive and needs a supportive tourist trade; Paid guiding,- long lead-in time; honesty boxes-doesn't raise enough for a lot of effort.

A number of points emerged during the workshop discussion:

- Learn from others, e.g. horse access takers who have a National Association (BHS).
- Access is not expensive and should be organised along volunteering principles.
- Tap into the NHS through maximising health benefits.
- Where walks are popular, near to cities, people are prepared to donate and pay for parking, i.e. different solutions for different places.

- There is a fundamental lack of leadership. LAFs need to come together in collaboration to develop a national strategy in order to pressure NAF to make governmental representations on SRDP succession, tourist tax, core path review, maintenance and capacity building for LAFs.
- Continue to argue for better access to central funding, as suggested by NAF, in their recent deliberations about funding (most LAF participants were not aware of this).

3. People and Wildlife – the Caper Conundrum

Eric Baird (until recently Chair of the Cairngorms LAF) talked about the difficulties in balancing the needs of protected species such as Capercaillie and the growing demand for forest recreation. Survey work shows that Capercaillie do not use approx. 100m either side of access tracks, meaning that their foraging habitat is becoming increasingly fragmented and the survival of the population threatened. Signage to keep people on the tracks have had limited success. They are now looking at a variety of measures including a strategic approach to Capercaillie conservation that is policed by the local community. A Capercaillie officer will study the pattern of disturbance, vegetation types close to the tracks and gain a better understanding of people's motivation to help compliance with conservation measures.

4. Council Support and funding, the workings of the Act and the Code

Nick Cole, Chair of Perth and Kinross LAF explained the LAF structure and how they operate, including involvement in a couple of high profile mediations. He highlighted that their independence from being Council (Councillor) led is a key strength in being seen as impartial. Major issues from PKAF perspective were a lack of legal advisory sources, a reluctance on the part of the Council to embark on anything that could potentially result in litigation, and at times an inability of different Council departments to recognise access provisions. On a general basis, the lack of authority for the LAFs means that any decisions taken may be ignored, which can result in protracted timescales for resolution. In common with other LAFs the declining number of access officers and in some cases rangers hampers efforts to get things done, i.e. the remaining staff cannot devote the time and effort to deal effectively and timeously with more complex cases.

The session also provided Nick with a means to introduce himself and his new role as the LAF representative on NAF to wider based colleagues.

National Access Forum achievements in the last year

David Henderson Howat summarised some of the main achievements since last year including: providing representation to Government and Ministers on the importance of access and IPA funding in consultations on the new 'Scottish Forestry Strategy', and 'Support for agriculture and the rural economy'. He highlighted a number of NAF discussion papers such as funding challenges post Brexit, parking and access, public access around livestock etc. There had been some limited success by the NAF subgroup 'Mapping core paths on OS maps' with core paths now available on SNH website, albeit on an 'Open street' rather than an OS backdrop. NAF will be revisiting Core paths and OS mapping at a future meeting. Other sub group work includes looking at mediation to resolve stalled access cases and work to promote the SOAC to young people.

Unauthorised mountain bike trail guidance:

Kevin Lafferty (Forest Scotland) summarised the work of NAF sub group which looked at issues surrounding unauthorised trail building for mountain bikes and over 18 months had developed guidance for riders and land managers. This came about following the significant increase in trails with no permission from land managers (over 500 km of unauthorised trails on FE land) and the need for additional guidance over and above SOAC. Problems identified were dangerous hazards and environmental damage. Key stakeholder engagement was used to scope and develop the guidance. Stakeholder and regional events also allowed riders and land managers to work together on key messages and to provide framework models for working together, various agreements, liability, insurance etc, and case studies. There is now greater potential of getting the right trails in the right places. The guide was launched at the Developing Mountain Biking in Scotland conference in November and has been very well received by the mountain biking community. See: the SOAC website: <https://www.outdooraccess-scotland.scot/guidance-unauthorised-mountain-bike-trails-guide-land-managers-and-riders>

Engaging with young people to promote the Scottish Outdoor Access Code:

Mark Wrightham explained the Forum's current work to promote the Scottish Outdoor Access Code to young people. The aim is to work with 'Young Scot' to develop key Code messages for this new audience through a co-design process so their needs are taken into account. The work will identify broad messages for the target audience (14- 18 year olds) and will focus on the basic principles of responsible access. A few specific issues, such as shared use, access with dogs around livestock, dog waste and camping have been identified. The co-design work will provide feedback from young people to develop positive and enabling messages. The next steps are to identify what kind of resources we need and to produce something to promote next spring. In terms of wider Code promotion there is greater use of social media platforms and that too opens up opportunities for communicating with young people.

Lessons Learned from Recent Case Law

Kenny Auld, Recreation, Access and Health Manager, Loch Lomond and the Trossachs National Park, talked about his experience of challenging obstructed access with particular reference to the Drumlean case. He gave a brief history of the case including the non-compliant infrastructure (3 locked gates and discouraging signage), an assessment of access rights, and the court process through the Sheriff Court, the Sheriff Appeal Court and the Inner House. Importantly, neither the 'timing' of the gate installation (which was prior to the 2003 Act) nor the claim that their intended 'purpose' was not to deter or prevent access were accepted as legitimate arguments by the appeal courts. The result has been further clarity over access rights and some improvements to local access (2 of the locked gates to be opened). The access officers are now working with the estate to develop an access management plan.

Learning from other LAFs: Group presentations & discussions cont.

5. Core Path Plan Review

Two representatives from Falkirk Area Access Forum, Mike Ewart and Angus Duncan (Access Officer) led this session presenting and discussing their actions in relation to reviewing Falkirk Council Core Paths Plan, which was first adopted in May 2010.

The sessions focussed on the processes that the Local Access Forum took/supported the local authority with in systematically reviewing the 2010 Core Paths Plan. This included checking that the criteria used in identifying the original core paths were still fit for purpose, which they were. Checking that the existing core paths still met at least 3 out of 5 of these criteria to remain as a core path and also identifying routes where change was required through land management activities or other developments.

In addition, the LAF Identified routes that had been developed or substantially improved in the intervening period and these were checked against the 5 criteria. The above enabled the Local Access Forum with Council Officers to create a Revised Core Paths Plan (Draft) which was developed by Council Officers and approved by elected members to go out to formal consultation. This 12 week formal consultation is currently under way and concludes in early June, at which point the LAF will work with Council Officers to review any objections or representations received and enable a finalised Revised Core Paths Plan to be published.

6. Access Challenges; resolving access issues raised by development

Representatives from the City of Edinburgh Council LAF (Peter Hawkins and Rod Dalitz) and the Access Officer Martin Duncan explained some of the access challenges faced from the City's growing development pressure. The example given was a Right of Way route through a development. The route was altered and a bridge installed, making access more difficult for some users. A paper outlining the local authority duties in relation to upholding access was sent from the LAF to the Council. This resulted in a joint site visit between the Planning Committee and the Local Access Forum where the issues were discussed. This illustrated the importance of the LAF in raising access issues locally and seeking better solutions.

7. Legal implications for LAF members (FOISA and EIRs)

Don Milton Chair of West Dunbartonshire LAF highlighted important constitutional matters that can have an impact on FOI and EIR requests.

- LAFs operate under the requirements of the Land Reform (Scotland) Act 2003
- A landowner unhappy with conclusions of a LAF report prepared for Authority Access Officer and started trying to get information from LAF, including information about members.
- Landowner tried using Freedom of Information (Scotland) Act 2002. LAF not covered by FOISA.
- Landowner then tried using The Environmental Information (Scotland) Regulations 2004 which have very broad definition of Environment/Environmental.
- Request rejected by LAF and landowner complained to Office of the Scottish Information Commissioner.
- Commissioner demanded evidence as to why LAF was not covered by EIRS. Knew nothing about LRA and assumed LAF Chair was a full time, employment.
- Reply sent explaining:
 - LAF Independent of Access Authority and NOT Authority Committee
 - Not under control of person or body to which the EIRS apply
 - LAF is advisory body only, no executive authority
 - LAF has no environmental responsibilities or functions
- Evidence, including Constitution, accepted by Commissioner.

- Some LAFs may fall under EIRS if their Constitution/TOR/Articles of Association state they are an Access Authority Committee or have an Authority Officer as Chair.
- If covered by EIRS, Commissioner has access to significant powers (EIRS same as FOISA) to enter and seize articles from premises as required and significant fines can be imposed on those deemed to be in contravention of EIRS.

8. Access Issues in the Far North (restarting an inactive LAF & developing a trail with 200 landowners)

Jay Wilson Chair of the John O’Groats Trail and Caithness LAF member outlined some of the access issues in relation to this relatively new 147 mile long distance walking route. The trail primarily a coastal walking route, it is waymarked and extends from Inverness to John O’Groats. There are still styles on some sections so it is not fully multi use. There is increasing involvement with local communities and opportunities to create more links to local settlements to increase the economic benefits and wider use of the trail. He also explained about the recent revival of the LAF and the importance of getting new members onto the LAF. For further information about the trail see: www.jogt.org.uk

Feedback session

In addition to the items raised throughout the day and captured in Annex 1 the following additional feedback was given;

- a) The need to revise guidance for LAFs particularly Terms of Reference for LAFs following experience learnt from FOI and EIR requests.
- b) Support for the format for the NAF/LAF joint meeting this year, with more opportunities for networking. Also useful to have discussions relevant to rural LAFs as well as urban ones, i.e. something for everyone.
- c) Support for the group discussion and informative presentations.
- d) Requests for information from Scottish Government about the revised local authority guidance.

Annex 1:

A number of issues were identified during the day and were grouped as follows;

1) The role of NAF and what it can do for LAFs

- Several questions about the role and duties of NAF
- Increased support for LAFs through greater collaboration/support from NAF
- Sound out the issues LAFs are dealing with
- NAF can act as a link to National Agencies and Scottish Government
- Direct communication between the LAF rep on NAF and the Chairs of LAFs

2) Lobby Scottish Government and Local Authorities

- Need for local authorities to recognise the role of access officers and not dilute this with other duties
- More support for LAFs from local authorities and NAF to improve functionality
- Lobbying of SG and Las to keep access issues high on the agenda
- Identify opportunities for funding support for access officers and access provision

3) Share best practice

- General support for more sharing of good practice including the use of case studies
- Shared learning from other LAFs to address common issues, what has worked and promoting success.

4) Dispute resolution

- More recognition of land owners/managers rights
- NAF to act as an advocate of responsible access rights
- More enforcement by local government
- How to break the deadlock in disputes, concern over lack of power by LAFs
- Define responsible access in relation to dogs (especially around food crops)

5) Core paths

- More information on the Core path review
- More guidance on procedures and roles for LAFs in relation to CP review
- Funding for the maintenance of Core Paths
- Several suggestions for representing core paths on OS maps

6) LAF membership

- Provide an updated template for LAFs 'Terms of Reference'
- Advice on rejuvenating LAFs and how to deal with the reduction in access officers in local authorities
- Need for new members to rejuvenate representation on LAFs and sufficient members to carry out LAF business
- Need wider representation of interests on LAFs e.g. water sports, disabilities
- Issues about public liability insurance for long distance trails
- Legal advice and guidance re FOI and EIR requests and data protection.