

New gate installed through Loch Gynack fencing – an access problem solved?

Description



The new gate through the fence on the North Shore of Loch Gynack north of Kingussie

Back in May, I featured a deer fence on the Pitmain Estate in a post headed [if-you-come-across-an-access-problem-this-weekend-report-it/](#). I had reported the fence, which prevented people accessing the north shore of Loch Gynack, to the Cairngorms National Park Authority as an obstruction to access rights. On 26th September, the CNPA informed me that they agreed that the fence was potentially an obstruction to access rights and that as a consequence the estate had installed a gate. I went to take a look myself on 1st October, which turned into a very wet day (apologies for the poor photos) and have been meaning to blog about it since.

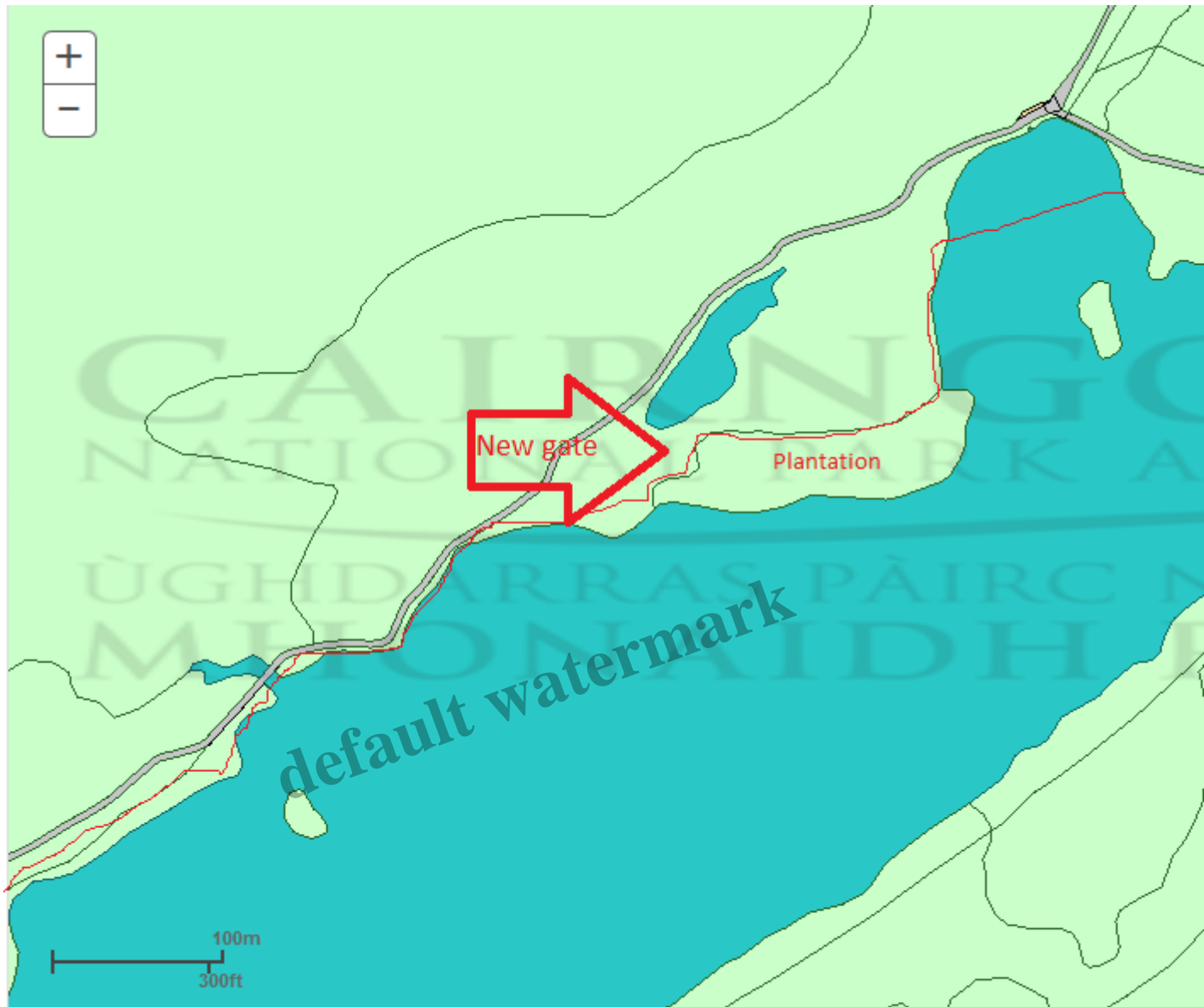


View from the plantation back to the gate

The first thing to say is a very well done to the CNPA staff concerned. While the Drumlean Judgement ([see here](#)) has made it clearer that fences or walls without sufficient open gates legally constitute obstructions to access rights, to get a gate installed in three and half months is good going. It was good to hear too that the estate fully co-operated. I hope this inspires more people to report fences as access problems to Access Authorities, including our National Parks.

The gate is easy to spot from the track and is located in the place along the fence where having a new access point makes the greatest difference. It leads into a small plantation (see top photo) on a glacial moraine on the north shore of Loch Gynack. This is the largest area of ground enclosed between the fence and the loch:

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I have marked the approximate line of the fence along the north shore of Loch Gynack as a red line. Survey

In fact its by far the best bit of ground between the fence and loch for enjoying access rights:



The view from the north east corner of the plantation from close to the fence looking over to the Gyn powerhouse on far side of bay (centre)

The strip of fence north of the plantation is far too close to the loch shore to allow anyone to walk on the shore side of the fence before it turns and cuts across the bay in front of the hydro powerhouse. This is a fairly short section of the loch shore so, arguably, the fact that its almost impossible to access doesn't matter that much as you can enjoy the loch shore near by.



The fence where it returns to the shoreline at the western edge of the plantation

On the opposite side of the plantation, however, the fence returns to the loch shore and then runs close to the loch for four times the length of the northern section. I walked along the loch side of the fence for a time until progress became impossible:



Where the fence drops right down to the loch shore its not possible to walk along it in any normal sense of the word “walk”.

I then climbed over a wooden section, connecting the older and newer sections of deer fence, back onto the track..



Looking West from the join in the fences, a convenient crossing point for those with the ability to climb obstacles

There is an opportunity here to install a second gate which would enable people to walk or even bike (its probably too rough for horses?) along the section of the loch shore where I had managed to walk. The greater problem is that there is no space to walk along the shore from here onwards and walking along the road feels like being caged in. Access rights includes the right not just to walk along the path but to step off it and sit under a tree or by the shore of a loch. You are still effectively prevented from doing that here.

In my view, despite the CNPA's efforts to date, the access problem still exists. The problem is the fence stops people getting to the shoreline. There is no point putting gates through most of it because you could hardly move on the other side. The exception to this is the gate which has now been installed and the joining point between older and newer fences. The real problem is the line of the fence itself.



The deer fence runs, without an access point, from the plantation to the western end of the loch (not point at which this photo taken). People have effectively been prevented from accessing the loch shore

The Loch Gynack fence provides an example of a very specific type of access problem which though not common is not unique either. It concerns situations where people are prevented from enjoying a specific area of land where access rights are exercisable. Another good example is the fence on the north side of the river in Glen Lochay which appears designed to prevent people accessing the river. It was there prior to 2003 – indeed the late Donald Bennett raised it as an issue which needed to be addressed in the negotiations which led to the Land Reform Act – and it's still there!

Ostensibly, the Drumlean Judgement addressed a different situation where people were prevented from enjoying access rights over a much larger area of ground where access rights were exercisable by a fence/wall. It found that in such circumstances there needed to be sufficient crossing points. The Drumlean solution would not really work in relation to Loch Gynack because the fence is so close to the loch. However, the principle behind the judgement is that land managers have a duty to manage their land in a way that does NOT obstruct access rights:

“Unless the land is excepted under section 6, it is land to which the rights attach. It then becomes the duty of the landowner under section 3 to use and manage it, and otherwise conduct the ownership of it, in a way which, as respects those rights, is responsible. In this case, where there is a right to cross and to be on the farm area, the only responsible action is to permit the rights to be exercised by allowing access to the area. This must involve unlocking any gate or gates and removing any signs which prevent or deter such access.”

The implication of this, I believe, is that if the problem cannot be solved by opening gates, then other solutions should be considered.

What needs to happen

The shore of Loch Gynack is clearly an area where access rights are exercisable and the fence effectively stops people exercising those rights. I believe therefore there is strong reason for the CNPA to take this further and am writing to them to suggest the Loch Gynack fencing, which was reported to their Local Access Forum in May ([see here](#)), is referred to them for further consideration and advice.

I am also trying to establish whether any of the new section of fencing received public funding. The underlying issue on the Pitmain Estate is its being subject to ever more intensive management and fences are being erected all over the place – completely the opposite to what is happening at Glen Feshie on the other side of the strath where fences are being progressively removed. The erection of deer fencing should be subject to some public control and were it to be so problems such as those at Loch Gynack could be completely avoided. Even if the fencing were required – and it's difficult to see any purpose to this fencing apart from that of keeping from the loch shore – it could have been situated on the up-side of the track allowing people to wander along the loch shore and access the open hillside above through gates.

Category

1. Cairngorms

Tags

1. access rights
2. CNPA
3. landed estates

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