

LLTNPA admits further unlawful application of the camping byelaws

Description



Inchcailloch, where the camping bye-laws don't apply, viewed from Balmaha on east Loch Lomond where camping byelaws do apply.

There are very serious legal issues about the way in which the Loch Lomond and Trossachs National Park Authority have tried to implement the camping byelaws which up until now they have tried to sweep under the carpet.

The most significant legal issue arose early last year when the LLTNPA was forced to drop its intended ban against overnight stays in campervans because it was unlawful ([see here](#)). In effect the LLTNPA had acted ultra vires, beyond their powers, although they have never admitted this, let alone explain it to Scottish Ministers. It was a small step in the right direction therefore when last week the LLTNPA effectively admitted they had been acting ultra vires in trying to apply the camping byelaws to the island of Inchcailloch in Loch Lomond.

When consulting on the extension of the camping byelaws from east Loch Lomond the LLTNPA deliberately omitted the Loch Lomond islands because of the opposition it knew that would create from the boating community. A case of divide and rule which was proven when, at the Board Meeting which approved the proposals to Scottish Ministers, it was minuted that the Park would next consider extending the byelaws to the Loch Lomond Islands. The LLTNPA has kept quiet on that ever since – more secret meetings and deliberations? – but this year made the mistake of including camping on Inchcailloch in their “progress” reports on the camping byelaws ([see here](#)):

Inchcailloch also
saw 37 bookings for 43 nights,
with 81 adults and 14 children
visiting.



The LLTNPA have since 2014 leased the island of Inchcailloch, which is part of the Loch Lomond National Nature Reserve, from SNH who own it. Under the lease the LLTNPA have assumed all responsibility for visitor management, including the operation of the small campsite on the island and included this in the camping permit booking system. In an email on 21st October to the Park’s lead Director for the byelaws. I questioned the legal right of the LLTNPA to apply rules created under the camping byelaws to the Park’s management of this site. Rather than reply directly, the LLTNPA treated my question as an information request – a misuse of freedom of information procedures – but the response ([see here](#)) is as close as this National Park Authority will ever get to admitting it has made a mistake and acted ultra vires:

Question

I am now writing to ask what is the legal authority the LLTNPA has for including in the campsite terms and conditions for Inchcailloch the following statement in which you say that a valid booking reference or permit (some mistake here surely – this is byelaw terminology) may be checked not just by an officer of the park but by the police:

“A valid booking reference and/or permit must be available for inspection on request by an authorised officer of the Loch Lomond and The Trossachs National Park Authority (“the Park Authority”), or a Police Officer”

Response

The wording of the campsite terms and conditions for Inchailloch, in particular the use of the term ‘permit’ in relation to campsite bookings will be checked and amended as appropriate. We appreciate that the use of this term may cause confusion in relation to the use of permits in camping management zones, which do not extend to the island of Inchailloch.

Question

I would also like to ask on what legal basis have Police Scotland agreed to do this?

Response

As stated above the wording of the campsite terms and conditions for Inchailloch will be checked and amended as appropriate. The inclusion of a reference to police officers checking the validity of bookings on the island may have been made in error, the police have not been asked to monitor camping bookings on Inchailloch

While portrayed as a mistake, it appears someone in the LLTNPA was trying to apply the camping byelaws to Inchailloch by the back door.

There are some interesting other issues here which have implications for any future attempt by the LLTNPA to apply the camping byelaws to the Loch Lomond islands. SNH is the lead agency for access rights and yet earlier this year failed to include any clear statement on how access would be managed in its new draft plan for the Loch Lomond National Nature Reserve. This, despite being ostensibly committed to promoting enjoyment of NNRs by the public. I have pointed that out to them and had a very helpful discussion with local staff. I hope that omission from the NNR Plan will be rectified and that the new lease for Inchailloch – its due for renewal next year – will build in protection of access rights. I believe it should also require the LLTNPA to consult publicly on any plans they have for the management of the island.

Other legal issues concerning the application of the camping byelaws

There are a number of further legal issues with the camping byelaws which still need to be addressed. The most important are:

1) The LLTNPA's failure to remove “No camping” signs in the National Park. The first time I reported these, at Loch Earn, was on 31/5/15 – three and a half years ago now – and the LLTNPA has failed to remove them even though in this time its access team has successfully removed other signs that contravene access rights.



One of the multitude of signs on the South Loch Earn Rd. If the landowner doesn't want people to camp they could politely suggest an alternative place to camp nearby but instead blatantly contravene access

These are unlawful because they imply that camping is banned year round when, even in camping management zones, full access rights still apply from 1st October to 1st March. Through failing to act the LLTNPA is allowing landowners to promote a year round camping ban, which is in effect an unlawful extension to the camping byelaws. I have now submitted an FOI request to find out why the Access Team have failed to deal with these signs in their usual successful way – I suspect the answer lies at the top.

2) The LLTNPA is still issuing warnings to campers – more, I understand, this year than last – when the camping byelaws allow NO provision for “warnings” to be issued and no provisions exist for those warned to question or appeal this decision (a fundamental denial of human rights). What's more the LLTNPA is retaining that information for FIVE years when the police and procurator fiscal are only allowed to hold information on warnings for three years. This is all fundamentally wrong and never

been discussed by the LLTNPA Board (in open session at least).

3) The campervan climbdow has created human rights issues which effectively undermine any legal justification for the byelaws. How can it be right that when one member of a small group spending the night in a camping management zone does so in a campervan, they do so quite legally, but if their pal sleeps in a tent next door they are committing a criminal offence?

What needs to happen

The LLTNPA Board has so far ignored the legal issues associated with their implementation of the camping byelaws. Its time they considered them. New Board members should demand these are discussed at their next public meeting in December when they consider this year's report to Scottish Ministers on the camping byelaws.

Category

1. Loch Lomond and Trossachs

Tags

1. camping
2. Camping bye laws
3. Freedom of Information
4. Governance
5. LLTNPA
6. scottish natural heritage
7. visitor management

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