

No Radical Road for Historic Environment Scotland – the Salisbury crags access debacle

Description

It is now three and a half years since Historic Environment Scotland (HES) closed the Radical Road below Salisbury Crags in Edinburgh and it was good to see the BBC pick up the story last week ([see here](#)). HES has also been in the news recently ([see here](#)) and ([see here](#)) because of its proposals to abandon maintaining historic buildings which it is charged with protecting. In the last eight months HES has introduced access restrictions to no less than 70 of its buildings and grounds: 20 in June; 11 in November; and 39 in January (see [HES news release](#) for locations). Just like the Radical Road, HES has used Health and Safety as its justification and has been blaming the underlying problems – the state of the rocks/masonry – on climate change. In both cases it appears that HES has proceeded with the closures without giving proper consideration to access rights. This post takes a further critical look at what is going on following my post last August ([see here](#)) and subsequent investigations.

Climate change and the erosion of buildings and rocks

HES's news release on 21st January had the bold headline: *“New measures introduced to manage the impact of climate change on Scotland's national heritage sites”*. In the text below it qualified this slightly *“While our changing climate is not the sole reason for deterioration, it has certainly accelerated it and brought the issue to a head”*. The Herald article revealed the other reasons HES believes properties are deteriorating are visitor footfall – really, for falling masonry? – and age. Nothing was said about the impact of atmospheric pollution on buildings or whether maintenance programmes over the last 20 years have been adequate.

Why climate change should be making it impossible for HES to maintain many of its historic buildings is not immediately obvious. Scotland may be getting wetter (27% more precipitation in the century to 2014 ([see here](#))) but it is also getting a lot warmer (29 fewer days a year when there was ground frost). Erosion caused by water may be increasing, but that caused by freeze-thaw – which affects ruins as well as crags – must be decreasing. So how do the two balance?

Since the potential impact of climate change on buildings and cliff faces appears to me far from simple I had a look at HES's publications and work on climate change ([see here](#)), which mentions research on the *“chemical effects of warmer, wetter winters on Scottish sandstone”*. I found nothing about the impact of climate change on buildings though there is a lot, for example, about how poor maintenance of sandstone can increase erosion. Maybe the research results are hidden away somewhere on the HES website, which is not the easiest to navigate. But if the claims of HES's senior managers about the impact of climate change were backed by their research, why not refer to that in the news release? And more importantly, if it's true, why has HES not been warning the Scottish Government about the impending catastrophe that is about to hit Scotland's sandstone settlements, starting with Glasgow? Why isn't there a wider building emergency?

The HES Board were told in June 2019, in a paper ([see here](#)) on Holyrood Park which I obtained through a Freedom of Information request and which they have still not published, that:

Since 2011 a number of rock falls have taken place - from single blocks to up to 100 tonnes in volume. Our evidence suggests that despite increasing intervention the rate of rockfall is increasing in both frequency and size. This correlates with climate change and increased precipitation and high impact weather events which are set to increase. Increasing temperatures combined with rainfall mean that Valerian plants are proliferating - a significant driver in generating rockfall. The non-growth season when it can be chemically treated is decreasing and the effectiveness of this can be difficult to gauge below the surface.

A correlation between climate change and increased rockfall does not explain the causation. First HES implies increased precipitation and high impact weather events are responsible - are the crags being blown down? Then it states it's the spread of Valerian that is the problem and it attributes this to warmer weather and increased precipitation which if true means that the impact of climate change is at most INDIRECT. That may be the case, but again causality is complex. There has been some fascinating research in the USA ([see here](#)) into how Valeriana Edulis, which is closely related to our Valeriana Officinalis, has responded to climate change. This found male and female plants responded DIFFERENTLY to the changing climate in Colorado's rocky mountains! This suggests there might not be any simple explanation to the spread of Valerian in Holyrood Park. The point, however, is that while HES obviously cannot do anything about climate change it could do something about the Valerian and at a reasonable cost.

All of this suggests that the HES's attempt to use climate change to justify the closure of both its historic buildings and the Radical Road is only an excuse. The real explanation for the closures is that HES have not got enough money to look after what they are charged with protecting: one suspects that their Board are not prepared to tell the Scottish Government this through fear of having their budgets cut even further.

HES's access restrictions and the Land Reform Act

The Land Reform (Scotland) Act 2003 included historic and cultural sites within access rights, with two important exceptions. Access Rights don't include cultural sites where paid entry is required but more importantly for the cases being considered here to buildings or their curtilage. This means that HES were quite within their rights to restrict access to buildings where there is a danger of falling masonry for health and safety reasons.

The issue, however, is the land round about. The list of access restrictions on the news release shows that HES has responded to the danger of falling masonry by automatically trying to impose access restrictions over entire sites and then considering what parts, if any, could be safely re-opened. For the 40 sites closed in January HES states *assessments currently being undertaken on site to open up as much access as is safely possible*. In imposing blanket restrictions, HES have acted beyond their powers and therefore, where restrictions extend beyond the curtilage of buildings (and places

where there is any conceivable risk from falling masonry), I would encourage readers to submit complaints to their local access authority.

The exception to this is Holyrood Park where the Park Regulations, as I explained in my first post, were never amended after the passing of the Land Reform (Scotland) Act as they should have been. Those regulations give HES the power to make up its own rules on access. This was covered in the 2019 HES Board Paper on Holyrood Park (link [here](#) again):

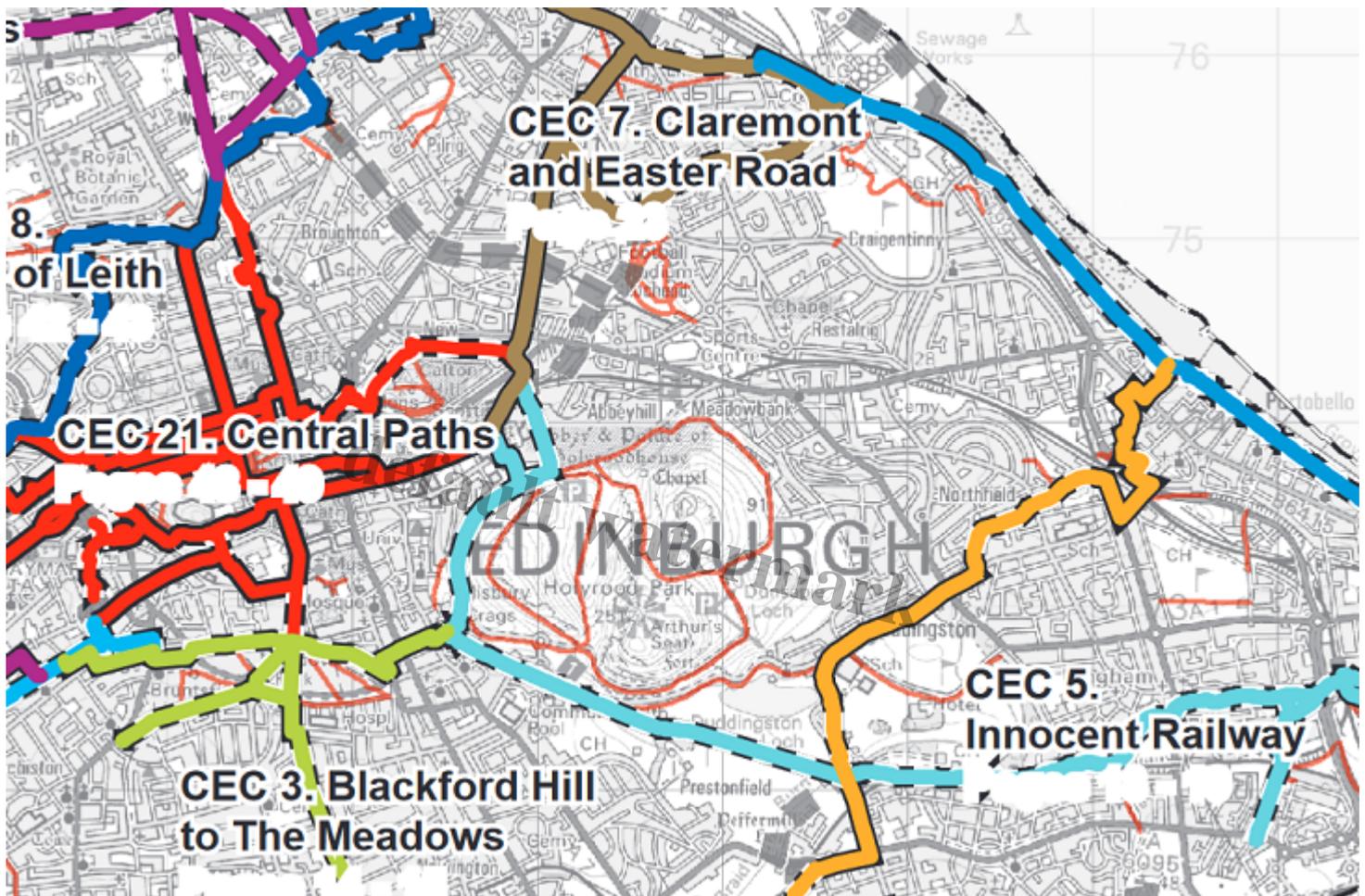
24. **Requirement to update Park Regulations:** Holyrood Park is legally regulated by The Holyrood Park Regulations 1971 (as amended) (“the Regulations”). While somewhat archaic and in clear need of update, the Regulations are a very useful management tool for those operating the park. HES’s solicitor is currently investigating the method by which the Regulations can be most effectively updated. It seems likely that this will require a set of amendment Regulations in the form of a Scottish Statutory Instrument, which will thus require involvement from Scottish Government, and some form of Parliamentary scrutiny. HES is reliant on Police Scotland for some aspects of legal enforcement, but may also be able to bring civil claims in its own name in certain circumstances e.g. bringing interim interdict proceedings to prevent unauthorised events going ahead, and/or bringing an action to remove unauthorised occupants from land.

So, there you have it: the Park Regulations – although – somewhat archaic – are a very convenient means of HES being able to do what they like and ignore the Land Reform (Scotland) Act. The claim that changing the regulations is complex is rubbish. The Scottish Parliament has the power to issue new regulations repealing the power of HES to impose its own management rules. Repealing parts of statutes is a relatively simple process and indeed the Holyrood Park regulations should have been amended when the Land Reform (Scotland) Act was passed.

At the same time as requesting the offending regulations were repealed, HES could ask the City of Edinburgh Council, as the local access authority, to consult on new byelaws to cover Holyrood Park as set out in Section 12 of the Land Reform (Scotland) Act. While such byelaws would allow activities to be controlled as now, what they would not do is allow HES to close areas of land indefinitely. Under Section 11 of the Land Reform (Scotland) Act if a landowner wants to exempt land – such as the Radical Road – from access rights for more than six days consent is required from Scottish Ministers.

The processes set out under the Land Reform (Scotland) Act were intended to create transparent processes around access restrictions and enable the public to have their say. HES, however, has hidden behind the extraordinary powers it was given in the Park regulations and has made absolutely no attempt to consult about the closure. I have been informed by Mountaineering Scotland, which has been trying to take up the issues, that as of November 2021 the Edinburgh Local Access Forum, the statutory body responsible for advising on access rights locally, had not been consulted about the closure. Unfortunately, information about the Edinburgh LAF (who is on it, meetings, papers) is not public, so you cannot tell what they have and have not been considering.

There are suspicions here that there may have been collusion between City of Edinburgh Council officials and HES to allow them to manage Holyrood Park without reference to the Land Reform legislation:



Why for example was Holyrood Park left out of Edinburgh's core paths plan? If the Radical Road was a core path, HES couldn't have arbitrarily closed it as they did.

In my FOI I asked for any papers presented to the Board about the closure decision. I received just the paper for the June 2019 meeting. My conclusion from reading that and the minutes of Board meetings for the last three years is that the decision to close the Radical Road was taken by staff, not the Board. But since then Board Members have done nothing to challenge staff about their decision.

Following consideration of the Holyrood Park paper in June 2019 the minutes of that meeting record:

14. The Board endorsed proposals for development of a strategic plan with attendant discussion with park stakeholders. In the meantime a park wide operational plan for HES with stakeholders will be important in shaping our continuing work.

Two and a half years later there appears to have been little progress on the Strategic Plan for Holyrood with the HES Board minutes from September 2021 recording:

“The Board noted that the development of the Holyrood Park strategic plan was being taken forward under business as usual planning. Members requested that this be within the next 12 months.”

There appears therefore to be no end to either the closure of the Radical Road or the review of the Holyrood Park Regulations in sight.

Health and Safety and the access restrictions

In my last post I considered some of the complex issues surrounding access rights, risk and health and safety. It is worth adding some observations here.

Over the last few years as a result of blogging on parkswatch I have met and communicated with a number of front-line staff responsible for health and safety (e.g. over access being closed for forestry operations). I have found all to care passionately about safety but at the same time to be very clear about assessing risks and what safety measures might be needed and why. I have found that when it comes to the outdoors it is not health and safety staff who tend to be risk averse but other frontline managers and senior managers (because it's easier to say no than assess risks). That appears likely to be the case at HES.

Whatever the risks on sections of the Radical Road there would appear to be little or no risk at Hutton's Section, the world famous geological site, yet HES fenced that off just as it has now closed access to the grounds around some of its crumbling buildings. It is HES Management that appears to be the problem here, not falling stones or rocks.

That is confirmed by the report from Fairhurst, dated March 2019, on Annual Rock Slope Inspections 2019 (also obtained through FOI though it had already been released to someone else - it's 15 MB so too big for this website).

7.0 Recommendations and Risk Management Plan

During the 2018 inspections of the rock slopes at Holyrood Park, a widespread significant change in rock slope condition could not be discerned, although changes in vegetation were noted. However, given the frequency of rockfalls and location of failure events outwith higher risk areas, together with a reported increase in visitor numbers to the Park, it is considered that the Risk Management Plan should be updated.

In particular, the risk posed by rockfall to park users on the Radical Road is considered to be higher than previously concluded (i.e. more hazards and increased pedestrian traffic). While the risk in this area and throughout the park may be reduced by inspection, scaling and vegetation management, it is considered that there remains a high residual risk of rockfall in certain areas. We consider that it is now appropriate to re-engage with HES to review the nature of the hazards and the potential consequences to park users.

It is recommended that the annual on-foot inspections and localised 2-yearly MEWP inspections should continue, and that these should be augmented by specific recommendations in the different areas of the Park. The following sections present the proposed approach for each area.

While Fairhurst said the risk of someone being hurt by rockfall was increasing, both because of the number of rockfalls and the increased numbers of people visiting Holyrood Park, they did not draw any conclusions about the potential consequences to Park users (i.e. whether there was a significant risk of people being hurt). Rather they recommended that HES should conduct its own risk assessment, to a review of the hazards. If HES has conducted a further risk assessment, it's not been made public.

As part of my FOI request I asked for information HES held about incidents involving rockfall and people and received [this](#): seven incidents at Edinburgh Castle, one person hurt. Now, I am not claiming there have been no near misses on the Radical Road, only that HES appears to hold no information to substantiate the decision by senior staff to close it. But any proper risk assessment would also have differentiated between risks along different sections of the Radical Road and, given the topography, it's difficult to believe there could have been any justification for closing it in its entirety (indeed as I pointed out in my last post Rangers were, on request, letting people through the fence to view Hutton's Section).

A proper risk assessment, however, would not just assess the risks of being hit by a falling rock on different sections of the Radical Rd, it would consider those risks within the wider context of risks at Holyrood Park and how such risks are managed in the countryside. Having closed the Radical Road far more people are now walking along the top of Salisbury Crags: so why is the risk of a section of crag collapsing below a person's feet judged less than the same section of crag falling on someone's head?

In the last week the tragic story of the woman apparently pushed off Arthur's Seat by her husband has again been in the news, with some of the media showing photos of Arthur's seat and some of Salisbury Crags ([see here](#)). The fact that accidents and even murders can happen in rocky places should not in itself be sufficient to close them off and at present those risks appear to be greater than

those posed by rockfall.

While in my last post I was very critical of what the Highland Ranger Service had said about access rights and fires ([see here](#)), this is their response to a large landslip in the Quirang which took place in October:



The Highland Council Access Rangers

October 22, 2021 · 🌐



Going to The Quiraing on Skye this weekend?

Sarah the North Skye Ranger reports;

Please be aware there have been some landslips affecting the path.

The resulting scree is presently stable, but the face where it came from is heavily fractured with some loose rock jammed in. There is some heavy rainfall forecast tomorrow and shower patterns all next week so that will be a test to see if anymore comes down.

default watermark

This was a landslip which swept over a path in an area very popular with tourists (not seasoned mountaineers):



The Rangers left people to make their own judgement â?? I think that was absolutely the right thing to do (although some might say that letting the photos speak for themselves was not enough and they might have added a warning). Contrast that approach to the one HES has taken in Holyrood Park.

What needs to happen?

It should be a matter of great concern nationally that the historic Radical Road, which is so important for outdoor recreation, geology and tourism has been closed now for three and a half years and that HES appears to be doing nothing meaningful to address the problems. Indeed, having been allowed to get away with the Radical Road closure they now appear to be applying a similar approach to their other properties. Rather than using the expertise of their staff to fix problems â?? and there is still considerable expertise within HES â?? they are restricting access because senior management and the Board see that as the cheap option.

As I argued in my first post, we need MSPs to insist that the Scottish Government repeal the Holyrood Park regulations and insist that HES manages the park within the framework set out in the Land Reform (Scotland) Act. There appears absolutely no point in asking civil servants to do anything as this extract from a letter to a reader sent by CHEME (Culture and Historic Environment at the Scottish Government) shows:

As you may be aware, the management of Holyrood Park is the responsibility of Historic Environment Scotland (HES) and as such, decisions about the park are operational issues for that organisation. Although the Scottish Government is not responsible for the day to day operational activities of HES, and legislation prevents ministers from directing HES in relation to specific statutory functions, the Scottish Government remains ultimately accountable to the Scottish Parliament for the activities of HES and its use of resources. I am, therefore, grateful to you for bringing your views to the attention of the Scottish Government.

I contacted HES for more information about your queries. In relation to the Radical Road and your query about it reopening, HES confirmed that it received geotechnical advice which stated that significant interventions are required to make the area safe for the public to access. While there is any risk of danger to the public HES has a legal obligation to protect the health and safety of visitors, its staff and its contractors. As there is an increased risk of injury from rockfall HES has erected barriers and signage which explain to visitors why the path is closed. These measures have been strengthened after people were witnessed bypassing the fences and entering the dangerous area.

You refer to other HES sites being closed, I can confirm that routine inspections recently carried out by HES at some of their properties identified a potential safety risk from unstable masonry at a high level. HES therefore took the decision to close or partially close some sites as a precautionary measure until further investigation can take place. HES is currently completing targeted inspections and expects that it will be necessary for some sites to remain closed for a longer period however believes that others may be allowed to re-open or partially re-open in the near future.

Main body of letter dated 16th September reproduced with permission

Who should be responsible for determining whether the Park Regulations are fit for purpose if it's not the civil servants? All this letter does is regurgitate HES's justification for their failed management.

The most likely way therefore we will achieve change is if City of Edinburgh Council and Edinburgh MSPs call on the Scottish Parliament to do so. If therefore, you are a resident in Edinburgh please lobby your MSPs and councillors and remember there is a local election coming up so you could ask candidates if are prepared to sign up to the repeal of the Park Regulations and bring them into line with the Land Reform (Scotland) Act..

Meantime, where HES is trying to impose restrictions on other properties where access rights apply, people should use the legal framework offered by access rights and ask their access authority to intervene.

Category

1. Access rights

Tags

1. access rights
2. Governance

Date Created

February 10, 2022

Author

nickkempe

default watermark