

Preston House Gardens – investigation into a complaint concerning the actions of the Community Council in the matter of the closure of a preexisting footpath.

The complaint made by two residents was investigated by officers of the Community Council whose statement is as follows:

1. Linlithgow and Linlithgow Bridge Community Council is a voluntary organisation concerned with the wellbeing of the Linlithgow Community as a whole and does not represent individuals as such. Individuals are represented by their local councillors.
2. A resident of Linlithgow (not a member of the Community Council) brought the matter of the closure of a well-trodden footpath to the attention of the Community Council on 7th July 2020. The Community Council being concerned with the closure of footpaths within its area contacted West Lothian Council and received a reply on 22nd July 2020. The reply is as follows

The access issue at Preston House Walled Gardens was raised in April following complaints from members of the public regarding obstruction of the route by residents and issues being raised by residents in regard to undue disturbance, antisocial behaviour and damage to property by those using the route. The Ranger Service, having determined that the route was not a right of way or a Core Path, required to assess whether access rights applied to the land in question as if they did, the duty placed on the Council under Section 13 of the Land Reform (Scotland) Act 2003 ('the Act') to uphold access rights would be engaged. Everyone has the right to be on and to cross over all land in Scotland other than that excepted, amongst other things, under section 6 of the Act. The Ranger Services assessed the land on which the route is located and obtained advice from Legal Services to determine if any of the exemptions under section 6 of the Act applied, as alleged by residents. A conclusion was made in June that the land was exempt from access rights under section 6 of the Act and that the Council would therefore take no further action in respect of this matter. Both the residents and complainants were advised of this determination. A copy of the response and plan issued to complainants is detailed below. I believe that the residents have put up the letter that they received from the Council as a sign on site.

To summarise the path a resident refers to is not a Core Path (so not part of the Core Path Plan) or right of way. The area that has the garden furniture on it is owned and managed by the residents and forms part of the land which the Council considers to be excepted from access rights. As the land is excluded from access rights the Council has no power to prohibit the residents from preventing members of the public from accessing it. The Council has not served any statutory notice in respect of this matter.

3. The Community Council, being satisfied with the reply, closed the matter.
4. On 24th July 2020 the Secretary received a complaint stating that 3 members of the Community Council had visited Preston House Gardens with the purported express intent of investigating the situation on behalf of the Community Council.
5. Following enquiries, the Community Council has identified and corresponded with two of the individuals concerned.
6. The officers have concluded as follows:
 - a. The visit was not made by 3 members of the Community Council as alleged. One of the group is a member of the Community Council but did not state at any time that

this was a visit being made on behalf of the Community Council nor that the Community Council was being represented.

- b. The Community Council's status as a statutory consultee on planning matters has not been compromised.
 - c. The Community Council is not a Scottish public authority and therefore does not fall within the remit of the Freedom of Information (Scotland) Act 2002. Freedom of Information requests should be directed to the responsible public authority.
 - d. The Community Council is satisfied that the incident which is the subject of the complaint involved only concerned residents of Linlithgow.
7. Having received advice from the legal representative of Community Councils in West Lothian this matter is determined to be closed and will not be discussed further. There is no appeal process.

John Kelly
Secretary
20th August 2020.