

ANGUS COUNCIL

ROADS COMMITTEE

24 JANUARY 2002

AMENDMENT TO THE LIST OF PUBLIC ROADS
AT MILNE'S LAND, KIRRIEMUIR

REPORT BY THE ACTING DIRECTOR OF ROADS

ABSTRACT

This report recommends that the Committee agree to an amendment to the List of Public Roads.

1 RECOMMENDATIONS

It is recommend that the Committee agree:-

- (i) to promote an amendment to the List of Public Roads by way of deletion of that part of the entry for Milne's Land, Kirriemuir insofar as relating to a length of 0.101 km and substitution therefor a length of 0.070 km; and
- (ii) to authorise the Acting Director of Roads to carry out the necessary statutory procedures relating to the proposed deletion subject to reporting back to Committee on the outcome of these procedures.

2 INTRODUCTION

Following an enquiry by a resident regarding public right of passage over a turning area at the end of Milne's Land, Kirriemuir investigations into the status of the road led to details emerging which suggest that the length of road registered on the Council's inherited List of Public Roads is incorrect.

3 DETAILS

The Kirriemuir Town Council, Mileage of Unclassified Roads (Pre 1975) listed Milne's Land as a private road extending for a length of 77 yards (70 metres). A note appended to the list stated that this length of road was about to be upgraded and taken over by the Council (See Appendix 1). There was no detailed description or annotated plan to indicate the start/finish points of this measured length.

A later version of the same list (also Pre 1975), possibly prepared for handover to the newly created Tayside Regional Council, showed Milne's Land listed at 110 yards (101 metres) (See Appendix 2). Again, there was no description or plan to indicate the start/finish points for this measured length.

Subsequently, the listed length of 101 metres (110 yards) for Milne's Land was carried forward to the Tayside Regional Council, Kirriemuir Burgh - Unclassified Roads and Streets Statutory List of Highways (See Appendix 3) which was inherited by Angus Council in 1996 as part of the current List of Public Roads.

At the time when the earlier lists were compiled, the east-end of Milne's Land was bounded by an open field upon which new houses were built around 1979. The distance from the Roods to the field was 70 metres (77 yards). This distance corresponds to the length recorded on the original list shown in Appendix 1. It is clear therefore that the recorded length of Milne's Land in the current List of Public Roads does not reflect the length which was adopted pre 1975 and should therefore be amended to 70 metres.

Since the access to the new houses at the east-end of Milne's Land was, until recently, surfaced only in gravel, and since this area did not form part of the road which was upgraded prior to 1975 it must therefore be assumed that this area was formed as a private access over which there is no public right of passage.

The proposed deletion requires to be notified to affected frontagers and published in a local newspaper. Any representations made within 28 days of these steps must be taken into account by the Council in deciding whether or not to proceed with the proposal. Thereafter if the Council decides to proceed with the deletion, the frontagers have a right of appeal to the Sheriff within 28 days of notification of the Council's decision.

4 **FINANCIAL IMPLICATIONS**

There are no financial implications arising from the proposals in this report.

5 **HUMAN RIGHTS IMPLICATIONS**

The resident who first drew this matter to the Council's attention did so in order to clarify his right to use the area which is now deemed to be private access for the purposes of turning his vehicle/manoeuvring in and out of his driveway which lies at the extreme end of the 70 metre (77 yard) adopted length.

The re-determination of the length of the public road as 70 metres (77 yards) will, in the absence of any information to the contrary, confirm the status of the area beyond the limit of the public road as private access. Members of the public (including local residents) will therefore only be able to use this area on the sufferance of the owner(s).

The affected resident may therefore feel that the Committee's decision will affect his human rights as defined in Article 1 (Protection of Property) of the First Protocol:-

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provision shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance

with the general interest or to secure the payment of taxes or other contribution or penalties.”

The proposed alteration to the List of Public Roads is however only correcting an apparent error in the recorded length of Milne’s Land on the List of Public Roads. There is no evidence to support the view that the surfaced area beyond the 70 metre (77 yard) length was ever anything other than private access. While the affected resident may have previously used this area for turning and manoeuvring, on the assumption that it was part of the public road, it would appear that he was in fact using a private access.

The proposed correction to the List of Public Roads will therefore not affect his human rights since he previously did not have a right to use the area in question in any case and, as such, his legal possessions are not affected by the proposal. Aggrieved parties rights are further safeguarded by the statutory objection/appeal procedure referred to above.

6 CONSULTATION

The Chief Executive, the Director of Law and Administration and the Director of Finance have been consulted in the preparation of this Report.

7 CONCLUSION

The listing of 77 yards in the pre 1975 list would appear to have been transcribed on to the subsequent lists incorrectly as 110 yards. The entry in the Council’s List of Public Roads for Milne’s Land, Kirriemuir should therefore be amended to the original adopted length of 77 yards (70 metres).

R W McNeil
ACTING DIRECTOR OF ROADS

NOTE

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (and not containing confidential or exempt information) were relied on to a material extent in preparing the above Report (list papers concerned):-

APPENDICES

Appendix 1 - Kirriemuir Town Council, Mileage of Unclassified Roads

Appendix 2 - Unclassified Roads, Kirriemuir

Appendix 3 - Tayside Regional Council, Kirriemuir - Burgh Roads and Streets - Unclassified Statutory List of Highways.