

Alasdair MacNab v The Highland Council and Others

Case Ref No: A159/20

Date of Hearing: Thursday 23 May 2024 at 10.30 (half day)

Division and Senators: First Division (Lord President, Lord Boyd of Duncansby, Lady Wise)

Livestreamed Hearing?: Yes No

Agents and Counsel:

Agents / Counsel for the Reclaimer/Pursuer (*Alasdair MacNab*):

Currie Gilmour & Co

David Thomson KC and Timothy Young

Agents / Counsel for the Respondents/Defenders (*Highland Council*):

DWF LLP

Alasdair Burnett KC and David Blair

Link to Judgment Reclaimed (appealed):

https://scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2023csoh59.pdf?sforsn=9e9b4ff6_1

Case Description:

Alasdair MacNab acquired Kildun Farm, Dingwall from his parents in 2006.

Between 1995 and 2000, parts of the farm had been acquired from Mr MacNab's parents by Highland Council by compulsory purchase order. The Council also acquired land from neighbouring landowners. They used the land to construct a

new section of the A862. The new section of road was built over an access road which had historically been used by pedestrians, cyclists and agricultural vehicles to access, among other places, one of the fields at the farm and a neighbouring property. A replacement access road was built.

In 2016, Mr MacNab obtained planning permission to develop premises at the farm for commercial tractor sales. The premises intended for development are accessed using the new access road. A dispute arose between Mr MacNab, his neighbours, Iain and Dawn Gilmour, and the Council as to the extent of Mr MacNab's access rights over the road. This dispute has prevented the development from progressing.

Mr MacNab raised the present action to clarify the extent of his access rights over the road. He asked the court to grant various declarators to the effect that he had an unrestricted vehicular right of access over the road. Before the Lord Ordinary (the first instance judge), he contended that there was a public right of pedestrian and vehicular access over the road. He relied upon the fact that the Council had acquired the land and constructed the road under their statutory authority to do so and had intended it to be a dedicated route for pedestrians and vehicles.

The Lord Ordinary refused to grant any of the orders sought. In relation to the argument that the road was a public right of access, the judge found that it was not used in an unrestricted manner by members of the public. Cyclists and pedestrians used it, and some private landowners took vehicular access over the road.

However, there was no evidence that members of the public generally took vehicular access over it. The road had not been designed and built to facilitate that.

Mr MacNab appeals that decision. The First Division will hear the appeal on Thursday 23 May 2024.