



## **Nairn West & Suburban Community Council**

Donna Manson  
Chief Executive  
Highland Council

Stewart Fraser  
Head of Legal Services  
Highland Council

Dear Donna and Stewart,

14/12/22

### **Re: Formal complaint about improper installation of designated parking spaces and equipment without appropriate legal requirements in place, or appropriate consultation .**

I am writing on behalf of Nairn West and Suburban Community Council to make a formal complaint about improper behaviour and procedure associated with installation of designated car parking spaces and associated equipment in the Nairn car parks and Harbour precincts. This complaint particularly involves your parking manager, Shane Manning and his blatant and persistent failure to follow both legal processes and Highland Council Policy.

### **Background: Installation of illegal Permit Holder Only bays at Nairn Harbour approach road and motorhome bays on Common Good land at Nairn Harbour.**

In 2022, much to the surprise of the Nairn community and Highland Councillors the whole length of the road parallel to the yacht compound at the harbour (an adopted highway fully accessible to the public) was unexpectedly marked out with Permit Holder Only signs and painted bays for around 15 cars. It transpired that Shane Manning had an unofficial and unminuted meeting on 3rd September 2021 with some sailing club members and without any public consultation or taking the matter to any Area Committee or Community Council forum it was agreed with this completely unrepresentative group that:

- a) Instead of public parking beside the yacht compound, the whole left hand side of the adopted harbour access road would become Permit Holder Only bays (around 15 bays) for those who had a harbour mooring. An application form is now available on HC website, and there is no charge. The associated documents state that the permits are 'offered in terms of and subject to the provisions' of two orders (neither of which include the Nairn Harbour adopted road.) , so deliberately untruthful.
- b) That motorhome bays would be painted in on the Common Good Harbour car park and be available for overnight use.

### **Complaint 1. Installation of designated parking bays on an adopted highway with no Traffic Regulation Order in place.**

- a) It is not legal to restrict or make changes to access to a public road without a Traffic Regulation Order which requires a full consultative process and application to Transport Authorities.
- b) The law is being broken by Highland Council through the actions of its employee.
- c) Painting white lines and putting up signs for bays for which there is no TRO is an offence. The TRO must be in place before the action is taken, not retrospective or at some unspecified date in the future.
- d) Highland Council policy and guidance '**Decriminalised Parking Enforcement – The Highland – Q and As**' also clearly states that a TRO must be in place before changes are made to road layout or car parking spaces.  
What is being done here is contrary to HC's own policy guidance which officials are tasked with carrying out.
- e) Offering illegal and invalid permits 'offered in terms of and subject to the provisions' of two orders which do not include the area in question is deliberately misleading and untruthful and should be removed from HC website immediately.

This may become a matter for the Police.

### **Complaint 2. Condoning deliberate deception and intimidation of the Public**

- a) At the November 2022 Nairn Area Committee meeting where this was discussed Shane Manning's response was that they couldn't and wouldn't enforce the permit parking and that would mean it didn't matter that they had no legal basis for the bays and the public, if they were in the know, could park there anyway.  
This attempted explanation was quite shocking, and it is extremely regrettable that HC head of Governance Kate Lackie who was in attendance went along with this approach of 'We're breaking the law, but we won't give anyone a ticket'. This is unbelievable and 'Wednesbury unreasonable' for any council to behave in this way, and has to be fully investigated if necessary by another Local Authority. The Scottish Court Tribunals Regulatory Chamber (to whom we have spoken ) are significantly concerned about the implications of HC putting these permit bays on a public road with no Order in place.

Highland Council through their employee are deliberately deceiving and intimidating the public with illegal false signs and markings. The general public who are legally entitled to park in these bays include paddlers, watersports participants, visitors, users of harbour eating places or walkers, elderly and disabled. They are being seriously inconvenienced by this illegal scheme, and their needs must be considered.

### **Complaint 3. Motorhomes allowed by an official to overnight in the Harbour car park for a compulsory charge without any agreement from Nairn Councillors and contrary to Common Good legislation.**

- a) We would direct you to the YouTube recording of the NAC meeting of April 20<sup>th</sup> 2021, where the parking charges and motorhome provision are discussed and you will see that a decision was taken **not** to remove the prohibition on overnighting motorhomes for **all** the three seaside car parks. (38mins. onwards). This decision has never been revoked. In spite of that and a TRO still being in place prohibiting overnight stays, dedicated motorhome bays were marked , and the parking machine adapted to make a compulsory charge of £10 for overnighting motorhomes. This was as a result of the 3<sup>rd</sup> September informal meeting of Shane Manning and sailing club representatives which totally inappropriately ignored the April 20<sup>th</sup> decision of the Nairn Councillors.

- b) The harbour car park is inalienable Common Good land, and we have been informed in correspondence by Sara Murdoch, Common Good Officer and Kate Lackie, head of Governance and Performance that if motorhomes were paying a compulsory charge that it would be a change of use under the Community Empowerment Act and would require public consultation and court approval. This tallies with an independent legal opinion which we obtained from renowned Common Good expert Andrew Ferguson.  
No such consultation has taken place, and therefore the CEA is being contravened.
- c) By charging for motorhomes to camp overnight, it is setting up a de facto campsite which would by Shane Manning's own admission in the 20<sup>th</sup> April 2021 meeting (37 minutes on the recording) require to be licensed and safety issues addressed such as motorhome spacing.  
No such licensing or safety assessment has been carried out which poses considerable risk to overnighers.

#### **Complaint 4: No public consultation about any of the changes to car parking.**

- a) Throughout all the discussions about car parking and charging for parking whether voluntary or compulsory, the Nairn community has been promised that a full review would be undertaken and public consultation carried out. This has never happened, in spite of it being an integral part of HC's own parking policy documents. (Highland Council Parking Policy and Guidance 2018 to 2023 p11)

#### **Conclusion:**

It is of huge concern that Highland Council is contravening both the law and its own policies by the actions outlined above, and to date has not responded appropriately to the issues being raised locally. No reasonable council would wantonly and deliberately break the law and commit offences, then when challenged try to excuse the behaviour and deliberately deceive and intimidate the public.

We are not opposed in principle to some form of parking-management in the town. We recognise that the provision of parking on Common Good sites can usefully raise income for the CG Fund and on Council sites can manage demand and promote sustainable travel. Any such schemes should however only be implemented after full local public consultation, and we would hope and expect to contribute to such a debate. We firmly believe that any scheme involving setting aside permit bays or payment for parking, whether voluntary or mandatory, should be part of a carefully-considered town-wide visitor-management strategy, and should be properly thought out and sensibly-designed, with clear, simple, legal, fair and reasonable rules. The present schemes meet none of these criteria. The existing arrangements are ill-judged, confusing, discriminatory and - it would appear - without a proper legal basis, and have been imposed without consultation by an official acting without proper authorisation or accountability and on the basis of inaccurate and misleading assertions.

We expect a full and thorough investigation which may require to be undertaken by another Local Authority given the seriousness of the complaints, and the involvement of very senior council officials.

Kind regards,

Alastair Noble