

Mr Alastair Noble  
By email  
[anoble30@aol.com](mailto:anoble30@aol.com)

Please ask for: Carolynn Baker  
E-mail: [customerresolution@highland.gov.uk](mailto:customerresolution@highland.gov.uk)  
Tel: 01463 702402  
Our reference: FS-Case-471928058  
Date: 27 January 2023

Dear Mr Noble

## **Stage 2 Investigation Complaint**

I refer to your complaint received on 14 December 2022. This has been considered as a Stage 2 Investigation complaint under the Highland Council's complaints procedure. The circumstances surrounding your complaint have been investigated and I am now in a position to respond to you.

### **Complaint Details**

Improper behaviour and procedure associated with installation of designated car parking spaces and associated equipment in the Nairn car parks and Harbour precincts.

#### **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 the Highland Council through the actions of its employee.
- c) Painting white lines and putting up signs for bays for which there is no Traffic Regulation Order is an offence.

The Traffic Regulation Order 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 Traffic Regulation Order must be in place before changes are made to road layout or car parking spaces.

What is being done here is contrary to Council'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 the Council 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 must 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, water sports 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 20 April 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. Despite 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 September informal meeting of Shane Manning and sailing club representatives which totally inappropriately ignored the 20 April 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 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 overnighters.

**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, despite it being an integral part of the Council's own parking policy documents, (Highland Council Parking Policy and Guidance 2018 to 2023, p11)

**Our Investigation**

You make a number of points in your letter, and I will deal with each of these individually.

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

The introduction of the informal Permit Scheme for Harbour users was a genuine attempt to address concerns expressed by harbour users over access to moored craft.

This was undertaken after discussion with the previous Nairn Committee chair after members asked that officers discuss the proposal to allow Motorhomes to stay overnight in the Nairn Harbour Car Park.

The permit application process has standard references to the Off Street and On Street Traffic Regulation Orders and allow reference to not only specific locations but also to definitions and the protections against misuse of permits.

Your assertions of illegality are not agreed as these permit bays are not enforced and are thus only advisory in their true nature.

Though we do agree that in this situation, the application of statutory powers of a Local Authority are not completely in line with standard regulatory processes. This matter is being addressed by discussions with members, in bringing forward a formal amendment to the 2016 On Street Traffic Regulation Order as discussed at the November 2022 Nairn Area Committee and when it comes forward will be advertised via a full public consultation.

An amendment to formalise the Permit Bays will be brought forward and advertised for Statutory Consultation. If any unresolved objections are present after the 21-day statutory consultation period, the Nairn Committee will be required to review these and make a decision on whether the amendment will proceed.

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

I note your comments and I can advise that the signs have been amended to reflect their advisory nature by removing the wording "only".

*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.*

The advice to members on the 20 April 2021 referred to the negative side of the possibility of creating an informal campsite by unregulated Motorhome stays. Mr Manning did not say that allowing Motorhomes to park created a de facto campsite.

Allowing Motorhomes to park between 10pm and 8am in car parks with all activities contained within the vehicle does not fall within the campsite regulatory framework.

After further review of this matter on the 3 September 2021 and the 7 October 2021 at Nairn Ward Business meetings, the previous Nairnshire members required officers to consult with Harbour users before allowing officers to proceed with the change to the regulation of the Harbour Car Park that would allow Motorhomes to park between 10pm and 8am.

Officers met with the Harbour users when the Motorhome proposal was discussed and the parking on the access Road was raised by the group.

As no objection was received from this group the Nairnshire Members did not oppose the introduction of Motorhome stays in the Harbour Car Park with a voluntary payment scheme. As the conditions of use of Council Car Parks is an operational matter delegated to Officers there was no requirement for any further Committee approval. I have attached two notes from those Ward Business Meetings.

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

The Highland Council Policy on wider consultation refers to Mandatory Charging only, it does not apply to the Invitation to Pay (ITP) initiative. The new Nairnshire Committee agreed the continuation of the ITP scheme in Nairn at the meeting of 22 November 2022 without the need for a wider consultation exercise.

## Conclusion

In consideration of the above, I do not uphold your complaint.

Yours sincerely



Tracey Urry  
Head of Roads and Low Carbon Transport

## What happens next?

My response completes the Council's consideration of your complaint. I hope my reply has addressed your concerns, however if you remain dissatisfied with the Council's response you have the opportunity to refer the matter to the Scottish Public Services Ombudsman. I enclose information below on how to contact them directly.

## Information about the SPSO

The Scottish Public Services Ombudsman (SPSO) is the final stage for complaints about public services in Scotland. This includes complaints about Local Government. The SPSO is an independent organisation that investigates complaints. It is not an advocacy or support service (but there are other organisations who can help you with advocacy or support).

If you remain dissatisfied when you have had a final response from Highland Council, you can ask the SPSO to look at your complaint. You can ask the SPSO to look at your complaint if:

- you have gone all the way through the Councils Complaints Handling Procedure
- it is less than 12 months after you became aware of the matter you want to complain about, and
- the matter has not been (and is not being) considered in court.

The SPSO will ask you to complete a complaint form and provide a copy of this letter (our final response to your complaint). You can do this online at <https://www.spsso.org.uk/complain/form/start/> or call them on Freephone 0800 377 7330.

You may wish to get independent support or advocacy to help you progress your complaint. Organisations who may be able to assist you are:

- Citizens Advice Bureau
- Scottish Independent Advocacy Alliance

The SPSO's contact details are:

SPSO

Bridgeside House

99 McDonald Road

Edinburgh

EH7 4NS

(if you would like to visit in person, you must make an appointment first)

Their freepost address is:

FREEPOST SPSO

Freephone: 0800 377 7330

Online contact [www.spsso.org.uk/contact-us](http://www.spsso.org.uk/contact-us)

Website: [www.spsso.org.uk](http://www.spsso.org.uk)