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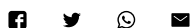
Old laws 'out of step'



Land owner Joseph Walker with an 1815 Powerscourt Estate map.

JAMES KEATING

Wed 9 May 2012 at 04:54



IN February this year, Niall Lenoach and Noel Barry of the Enniskerry Walking Association (EWA) lost an access case in the High Court. They had claimed a right of way existed along an old coach road in Glencree.

The road in question crossed the land of Joseph Walker, who obtained a high court injunction preventing walkers using his land in 2008.

Costs in the case are yet to be decided, but they have potential to be extremely high. A similar case in Lissadell, County Sligo, cost over €6m.

Albert Smith of Keep Ireland Open (KIO), who campaign for rights of access, says that locals in the Glencree area 'face ruinous costs'. Two previous court cases over access to the area, which is in the foothills of the Wicklow Mountains, had costs of over €1m.

Smith went on to say that, 'A man who claimed there was a right of way along an old road used for centuries was brought before the high court; for simply claiming there was a right of way.'

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Proving there is a right of way is very difficult, leading to tremendously expensive cases.

Niall Lenoach, in his case, found that; ' the test for proving a public right of way is set so high that it would be virtually impossible to meet.'

This complicated legal process, combined with the area being poorly legislated, means that 'if the case were upheld or not appealed it would close off all public rights of way in Ireland that are not specifically dedicated in writing by a landowner.'

In North Wicklow disputes over rights of way are common. Lenoach says that they go back as far as the 1840s.

The law on rights of way is even older: According to barrister and law lecturer Siobhan Gaffney, ' the law is very outdated, going back to the feudal system."

A landowner has the right to close to the public what walkers consider a traditional right of way, unless it has been designated in writing.

When this happens, as in the Glenree case, it is up to the individuals who use the right of way to prove it exists in court.

This leads to lengthy and expensive legal battles.

Mr. Lenoach has been very critical of the role of local government in cases such as his. According to Mr. Lenoach, ' the county councils have the power to designate a place as a public right of way, but most of them don't want to know. Dun LaoghaireRathdown is the only council in the country that has come out with a list of protected rights of way in their area.'

Bray Councillor Christopher Fox, disagrees. He said that in their 2004 development plan the council attempted to free up rights of way across Wicklow.

Through consultation with landowners the council achieved some success in opening up access for hill walkers.

Problems are encountered when landowners do not believe that a right of way exists, as occurred with Mr. Walker.

In these cases the council are reluctant to get involved because by designating a right of way it can be used as evidence in court.

In Lissadell, Co. Sligo, it was such a designated right of way which led to a legal battle costing over €6m. As Albert Smith of KIO puts it: 'Do you wonder why local authorities won't protect rights of way when they could be confronted with dozens of cases costing that kind of money?'

Mr. Smith raises another issue, tourism.

' The cost to tourism is enormous because of [legal] uncertainty. Scotland has had a tourism boom since change as radical as what Keep Ireland Open are looking for, but is in favour of changing the legislation to avoid court cases.

It would also help the council with their outdoor recreation strategy, which seeks to encourage walks and improve the infrastructure for hill walkers, which would, in turn, promote tourism in the area.

In consultation with landowners, the council suggested that walkers are unregulated and that by opening up routes landowners could funnel them across a specific part of their land. This would cause as little disruption as possible.

85 landowners agreed access, but when some did not the council had no remit to decide what was a right of way.

Keep Ireland Open see access as a they introduced the 2003 land reform act. Ireland could do the same.'

The act opened the countryside to recreational users, provided they follow a strict set of rules regarding their use of private land.

Cllr. Fox is not in favour of a civil liberty enjoyed in many other countries, while farmers and landowners are concerned about damage to their property and insurance or legal costs.

It is a dispute which is difficult to reconcile with just mediation, according to Cllr. Fox.

While they disagree on what the legislation should be, Cllr. Fox and Albert Smith do agree that a change to the law is necessary;

Even the Judge in the old coach road case called for the government to look again at the law, saying that mediation should be compulsory.

Barrister Siobhan Gaffney says that: ' There are rights and wrongs on both sides and unfortunately the law is so up in the air.

' There needs to be some basis for what is a right of way.

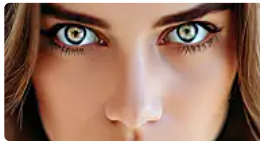
'Ultimately it drags on for years, and will end up in the courts.'

The legislation covering these disputes is 'totally unsuited to a modern age' according to Albert Smith.

'We're stuck with 18th and 19th century laws, and that's why ordinary decent citizens trying to protect the rights of the public to go for a walk face financial ruin.'



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