

27.03.24

The Astronomy Dome and Burdens

Owners of chalets consider that the burdens ensure our estate remains as lovely as it is, owners and visitors have to abide by them. Owners believe that the burdens begin at the entrance of Laigh Isle and extend to all parts and buildings of the estate. Effectively when we buy a chalet we agree to the burdens and we agree to uphold them. The Committee consider that owners also agree to the ethics of the burdens.

The committee will enforce the burdens and are to be informed prior to work being done on a property.

The Committee will also be asking at the AGM this year to have an additional burden that, 'any work on a garage that alters its structural form should also be agreed by the Committee'.

For further details about the burdens, and additional burdens - see Burden Page [Click here](#)

[* on website](#)

The Astronomy Dome

In Dec 2021 No7 placed an astronomy dome on the top of his garage **without reference to/or informing the committee**, this caused many complaints to the committee regarding the owner 'breaking the burdens'. The owner Mr Mountain sent some photos of his deeds claiming the garage was separate to the chalet and was not covered by the burdens. At the time the Register of Interests Scotland did not have his title or title plans available since he had purchased his chalet in 2018 and it hadn't been updated. This also was during the times of lockdown (March 2020 - June 2020 and Jan 2021 - July 2021) thus the ROI was delayed.

See PDF of a letter sent by the committee to owners on the 8th Feb 2021. [Click here](#) where it was stated that because we could not have sight of the titles the outcome would have to wait.

March 2022 G Mountain, No7 received planning permission for the dome.

The title plans became available on the ROI in early 2024 and are in the public domain so we include them below.

Title Plan PDF [Click Here](#)

Title Sheet PDF [Click Here](#)

Because of the way the Title Sheet and Plans are written the Committee decided to consult a solicitor regarding whether the burdens had been broken or not. A fee of £250+VAT = £300 has been paid by Isle of Whithorn Leisure Ltd. The Committee concluded that despite the cost, it was important to completely clarify the situation regarding the astronomy dome regardless of it's outcome.

25.03.24 Legal Advice Recieved from Brazenall & Orr, Solicitors in Dumfries regarding Burdens and The Astronomy Dome

'The Law concerning the enforcement of burdens and conditions in titles is complex and not entirely clear.

In Scotland, to enforce a burden and condition it is necessary to have both a benefited and burdened property. In this case Mr Mountain's property is the "burdened property" but we have to work out what is the "benefited property" and who has the right to enforce the burdens and conditions.

A real burden can only be enforced by someone who has both "title" and "interest" to do so. "Title" is tied to the proprietor of the "benefited property". The burdens and conditions are contained in the Disposition by Christian Salvesen (Properties) Ltd to Patrick McAvoy recorded GRS Wigtown on 25.2.1977 which is Burden 4 in Section D of the Land Certificate. This deed does not specify who has the right to enforce the conditions. If the deed had been created after the 28th November 2004, the deed would need to identify who had enforcement rights. There was no requirement prior to the 28th November 2004 to identify who had enforcement rights, and this was implied in various ways.

The Title Conditions (Scotland) Act 2003 abolished the old rules and replaced these with new rules. Section 52 and 53 of the 2003 Act states that where burdens and conditions are imposed on related properties under a common scheme, each property is a benefited property. A common scheme is where the burdens on a group of properties are the same or similar and were imposed by the same person. I have not checked the titles to all the other chalets but assume they are similar and were all imposed by Christian Salvesen (Properties) Ltd. If my assumption is correct, then the proprietors of the other chalets would have right to enforce the conditions.

The next step is "interest". A person has interest to enforce only if failure to comply with the burden will in the particular circumstances, result in material detriment to the value or enjoyment of the persons right in the benefited property. This is a very high threshold to overcome.

If you were successful in establishing both "title" and "interest" then your right to enforce may have been lost by acquiescence. The rules are set out in the Title Conditions (Scotland) Act 2003 section 16. This Section codified the law of acquiescence. The following criteria has to be met: -

Material expenditure is incurred by the burdened owner.

The benefit of the expenditure would be substantially lost if the burden was now to be enforced.

Either the owner of the benefited property consented to work whether formally or informally or all of those with enforcement rights either consented or did not object within the period ending 12 weeks after the work had substantially been completed.

The work is sufficiently obvious that those with the right to enforce knew or ought to have known about it.

As the astronomy dome was installed in 2021, this section is likely to apply.

I have examined Mr Mountain's Title Sheet for 7 Laigh Isle, Isle of Whithorn. Burden 4 of the burdens section of the Title Sheet specifically states that the burdens only apply to the area of ground tinted pink. I understand, but should be grateful if you would confirm that my understanding is correct, that the garage

on which the astronomy dome is situated on the area coloured blue. If this is the case, then the garage is not bound by the title conditions.'

letter ends

We confirmed the above question.

The Committee concludes that:- 'The astronomy dome is on a title (the garage) not bound by the burdens and thus the Committee is unable to ask Mr Mountain owner of No7 to remove it.'