

8/1/14

ROBERT CHALMERS & CO

SOLICITORS & ESTATE AGENTS

67 High Street, Inverurie, Aberdeenshire, AB5 9QJ Tel.: Inverurie 21263

Rutland Exchange Box 770

ROBERT L C CHALMERS

THOMAS W DUNCAN

Mrs Helen Fraser (Clerk/Bailies of Bennachie)
Templar Croft
Aquithie
INVERURIE

Our Ref: IB18/RLCC/MK

Your Ref:

Date: /)TH November 1984

Dear Helen

Proposed Lease of Afforsk Pond

I have now had an opportunity of looking at the draft Minute of Lease which you left in my office the other day

I do not know who prepared the draft Lease but in my opinion it is quite plainly prepared by somebody who does not understand what the Bailies of Bennachie do !

The first part dealing with the description of where the property is, is quite alright as is Clause One but Clause Two talks about "Treasury Rates" of interest: I have never heard of these and I imagine ^{that} what is meant is the Bank of England lending rate or some other suitable phrase.

In Clause Three I have sought to distinguish the Local Authority type of rate by inserting the words "as may be assessed thereon by the Rating Authority".

Clause Four is alright from the Landlords point of view but I think could cause problems by allowing the members of the public who are not Bailies to have access along the banks. This also causes problems with the obligations on the tenants in Clause Ten and Eleven

Clause Five causes problems as I cannot see that an accurate record can be maintained if many many Bailies decide to go fishing! Will they always report their catches to you!

Clauses Six and Seven give me cause for concern in that the Bailies as a body cannot really in my opinion be expected to make good or pay compensation for damage which might be caused by other persons including those in Clause Four whom the Landlord permits on to the subjects of let.

Clause Eight is alright and seems quite sensible. Clause Nine is in some respects in conflict with Clauses Six and Seven in that again /

Also at:

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Units 16/16a "The Village," 94-108 John Street, Aberdeen, AB1 1LE Tel.: Aberdeen 641627

Mrs Helen Fraser

/ again unauthorised persons can be fishing and cause damage which the Bailies might be expected to put right at their own expense.

Clause Ten and Eleven cause problems so far as supervision is concerned and in any event ^{now} can the Bailies ensure that all their members will produce a card or even apply for a card or ticket: Who among the Bailies is to issue such card or ticket. I presume that this has been looked in to by the Bailies and that someone is to accept responsibility for contacting those members who wish to fish and for issuing cards but perhaps you would let me know about this.

Clause Twelve states that the landlord is prepared to warrant the rights so far as contained in the Lease but no more: I cannot think of any problems beyond the terms of the Lease but it is possible that something might turn up such as rights of access along the pathway coloured blue.

Clause Thirteen is alright and I can find no problems with that!

The last clause is somewhat inappropriate in that it is unlikely that the Bailies could go into liquidation or be wound up but they could cease to exist.

I am on the whole not very enamoured of the lease and I would wish to see some of the clauses made more practical and sensible having regard to the fact that the Bailies are not a close knit circle of angling enthusiasts (such as would be the case with an angling club) but is a wide spread organisation: I am all the more perturbed as members of the public are in terms of the lease entitled to approach or be near the subjects of let and who could cause damage which would ^be inevitably laid at the Bailies door.

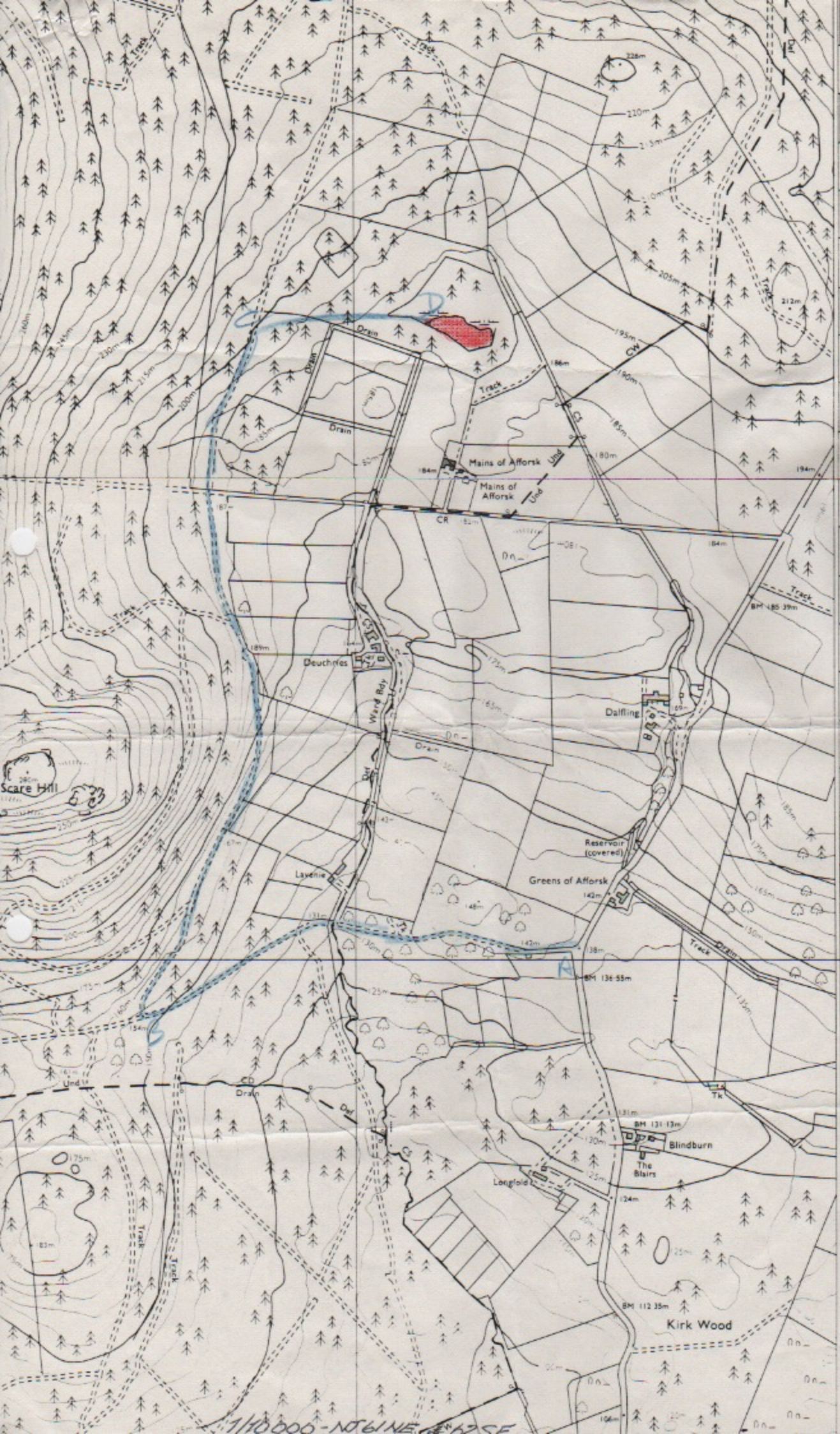
Could we please discuss at some later stage

Yours sincerely

H. "Bob"

Dictated by R.L.C. CHALMERS
BUT SIGNED IN HIS ABSENCE

8/1/16



820000m

LAT 57 16

White Hill

19

EAST GAROCH WARD

1:10000 - NOT NECESSARILY

*Kellan
for the records
Jung*
This pond, the only sizeable sheet of water in the Benrachie area, was constructed in the early 1930s by the then owners Tulliefontaine Estate as a duck pond. The main sluice burst a few years later with considerable reduction in size and depth. The pond has been gradually silting up ever since. Some trout were put in from a burn by the son of the construction contractor without the owners knowledge and a few survived. By 1981 the water was virtually unfishable due to weed.

In the summer of 1981 four individuals Mr A. Maclean, Mr R. Bell, Mr K Andersz and Mr J.R. Mackay approached the Forestry Commission regarding the repair of the sluice and acquisition of the fishing rights.

The initial response from the Commission was favourable and was handled by a Mr Troughton. He asked the group of four to prepare plans for the reconstruction of the sluice at their own expense and for a biological survey of the pond to be carried out. The group drew up very detailed plans and obtained a biological survey report from Dr Mark Young, Aberdeen University Zoology Dept. Here are some extracts from his Report: "Only one trout was caught and because of the number and position of the nets it is unlikely that there are many others present. There is no opportunity for spawning due to silting and obstruction of the inlet burns. There seemed to be no young fish present. pH is 4.4 (very acid)."

There was an on-site meeting with Mr Troughton who could see no problems to the group acquiring the fishing rights. On this understanding the group, as an experiment, stocked the pond with getting on for 100 rainbow trout ranging in size from 7 inches to $\frac{3}{4}$ lb. at their own expense. On 23 Sept 81 Mr Cooke of the Forestry Commission faxed a letter to JRM with the words "I would be prepared to recommend to Conservator that your initial three year term be at a nominal figure in consideration of the improvement works which you will be carrying out."

For over a year nothing happened. Letters, telephone calls and visits to the Commission Office in Aberdeen all resulted in "you will be hearing from us shortly with a favourable reply". On 28/3/83 JRM wrote to Conservator Ian Grant personally regarding the lack of progress as a result of which an on site meeting was held on 28/7/83 with Conservator Grant and Mr Cooke. It was Mr Grants first visit to the pond and he could see no reason why there should be any conflict between angling and the conservation of the area. However he did see a P.R. problem in leasing it to a small number of individuals. Ostensibly he suggested that as the group of 4 had connections with the Barons of Benrachie the problem be resolved

by involving the Bailies Council as an environmental body. What he did not want was the fishing to be made available to all and sundry as, being such a small water, this could ruin it. He would be happy if the fishing were to be controlled by the small group in association with the Bailies. An occasional day ticket could be made available to a Bailie at a normal charge but that the fishing be not advertised even amongst the Bailies. If every angling Bailie were to want to fish it an impossible situation would result and the effect on the environment could be serious and permanent. Nor did he want any vehicles driving along the banks of Affock road. The Commission have the right to use this road but they do not do so as they do not wish to be involved in its upkeep. Therefore any access would have to be pedestrian and as the pond is fairly remote and difficult to get to, people who know the area would be most suitable as fishing tenants. It is occasionally very attractive but this is largely because it is rarely visited. He would wish to keep it that way.

He suggested that the Commission go ahead with the repair of the sluice and raising of the water level and that Mr Cooke should prepare a draft fishing let. The angling group and the Bailies Council feel that the draft let which is a standard F.C. angling let is quite in order but it was suggested that the Bailies legal Adviser Mr Robert Chalmer, Solicitor, be asked to have a look at it.

In November 84 a Bailies Angling Administrative Committee, composed of Senior Bailie, Clerk, Council members Mike Davidson and Don Whyte along with Angling Group Bailies A. Maclean and J.R. Mackay, was set up to administer the fishings. The pond was completely emptied of water and fish in Summer 84, the sluice repaired and the pond refilled. Leaks at one point in the bank have to be repaired before stocking can take place in Spring 85. Fishing will not be possible until 1986-87 depending on the size of trout to be introduced. As the rainbow trout released in 1981 seemed to put on very little weight it is envisaged that brown trout will be used to stock the loch. The inlet stream has still to be cleaned out but it has not yet been decided whether the Commission or the Angling Group will undertake this.

The Angling Group of Four will bear all the expenses involved including stocking, liming, fertilising, payment of rent and rates and so on

James R. Mackay
4/12/84

8/1/14

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ROBERT L C CHALMERS

THOMAS W DUNCAN

J R MacKay Esq
The Dell
BLAIRDAFF
Inverurie

Our Ref: IB18/RLCC/JS

Your Ref:

Date: 6th December 1984

Dear James

Bailies of Bennachie
Afforsk Fishings

Thank you for your letter of 5th December with a note about the background to this matter.

Having read the note I must confess that I am now considerably happier with the proposed Lease which I must confess I suspected from the outset was a standard style of lease produced by the Forestry Commission for such situations.

In that event I really have no adverse comment to make now upon the Lease except to query what are "treasury rates of interest" in Clause second. It seems to me that this phrase is somewhat imprecise but as I do not think that you or your colleagues will be late in paying the rent it is probably largely academic!

I suppose if I am to do my job properly I should really be looking after the Bailies interests in the first place (as opposed to the interests of the Angling Group of Four and it perhaps would be appropriate if the Angling Group of Four were prepared to grant a Letter of Indemnity to the Bailies undertaking to keep the Bailies free of all expenses and liability in the matter. The reason for this is that in the first instance should there be any problem the Forestry Commission or indeed any member of the public who might be affected would take the matter up with the Bailies but as by the terms of your note it is not really a matter for the Bailies as such it would seem appropriate that the Group of Four underwrite the Bailies liability

If this is acceptable to you I would like to have a further meeting with you to see what terms might be put into such a Letter of Indemnity

Perhaps we could meet after school one afternoon: Thursdays are my best days but perhaps you could let me know your views. I am available at home most evenings (telephone 03587-396)

In/

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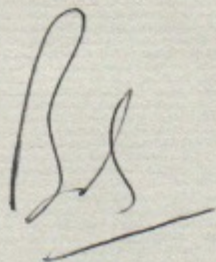
J A MacKay Esq

6th December 1984

In the meantime I return herewith the Lease having made a copy of it for the file for future discussion.

With kind regards to you both

Yours sincerely

A handwritten signature in dark ink, appearing to be 'J.A. MacKay', written in a cursive style. The signature is positioned on the left side of the page, below the typed text. There are two circular punch holes visible on the left edge of the paper.

8/1/14

MINUTE OF LEASE

between

THE SECRETARY OF STATE FOR SCOTLAND
("the First Party") on the one part

and

THE BAILIES OF BENNACHIE
("the Second Party") on the other part

and pay all existing and future rate, and other outgoings whatsoever in respect of the rights hereby let

The First Party lets to the Second Party excluding assignees legal and conventional and sub-tenants and the Second Party agrees to take

ALL and WHOLE so far as the First Party can grant the same and except as hereinafter mentioned the right of fishing by rod and line at Afforsk Pond in the Parish of **OYNK** in the County of Aberdeen as is coloured red on the plan attached and signed as relative hereto and that upon the following terms and conditions-

FIRST Notwithstanding the dates hereof the lease shall commence on the Fifteenth day of March Nineteen hundred and Eighty Five and shall endure for the period of Three years but providing that the Second Party shall have the option of a lease for a further period of Three years on like terms to these presents (but excluding any further option) and at a rent to be agreed.

SECOND The Second Party shall pay to the First Party the rent of £10 sterling for the first year and £30 sterling for each ensuing year the said rents being payable annually in advance the first payment being due on the Fifteenth day of March Nineteen hundred and Eighty Five for the year ensuing with interest at the rate of Treasury rates in force on each payment from the due date until paid.

What are Treasury Rates?

/THIRD

• EIGHTH

MINUTE OF LEASE

between

THE SECRETARY OF STATE FOR SCOTLAND
("the first party") on the one part

and

*as may be assessed
Herein by the Rating Authority*

THIRD The Second Party shall pay all existing and future rates and
other outgoings whatsoever in respect of the rights hereby let

during the subsistence of this lease.

FOURTH The First Party shall be free to execute all such works and do
all such acts and things on his lands as in his opinion may be
necessary or desirable in due course of agriculture or forestry
or for any purpose including but without prejudice to the generality

of the foregoing the erection of houses and other buildings and
the permitting of members of the public to have reasonable access
to the banks for the purposes of air and exercise.

FIFTH The Second Party shall exercise the right in a fair and sportsmanlike
manner comply with all statutes-by-laws and regulations of the
appropriate authorities affecting the rights hereby leased and at
the end of each season shall render to the First Party a true and
accurate record in writing of the number and weight by species of
all fish taken.

SIXTH The Second Party shall make good or pay compensation for any damage
caused to any lands adjoining the fishings by themselves or by those
authorised by them and shall not light or permit the lighting of
any fires.

SEVENTH The Second Party undertakes to free and relieve the First Party of
all claims for compensation for injury or damage to persons or property
which would not have arisen but for the granting of this lease.

EIGHTH The Second Party undertakes not to take vehicles on to the lands
and
adjoining the fishings/to gain access to the fishings on foot only
along the route ^{approximately as A-B-C-D.} marked ~~on~~ on the said plan, of at

NINTH The First Party is not bound to provide protection of any kind
against unauthorised fishing and will accept no responsibility for
such fishing. The Second Party at their own expense may take such
steps to prevent same as may be necessary including the erection of
warning notices which may be erected subject to the approval of
the First Party.

TENTH The Second Party shall not permit any person but themselves to
exercise the said right of fishing other than any person authorised
by them as provided for in Clause Eleventh members of the Society
and the Second Party shall secure the issue to each member of a
card or certificate of membership which shall bear the name and
address of that member and which is to be produced on demand to the
Forestry Commissioners' Forester or Ranger or other person duly
authorised in that behalf by the First Party.

ELEVENTH The Second Party shall be entitled to permit the said rights to be
exercised by other persons on condition that each and every said
person shall be issued with a card or ticket bearing that persons
full name and address the period for which the permit is issued and
such card or ticket shall be signed by the Second Party or his agent
and by the said person and shall be produced on demand to the
Forestry Commissioners' Forester or Ranger or other person duly
authorised in that behalf by the First Party.

TWELFTH The First Party warrants the rights hereby leased only so far as
is commensurate with the terms of this lease and no warranty
is to be implied beyond the provisions hereof.

THIRTEENTH The Second Party binds himself to work and fish the whole waters
sufficiently and to keep the fishings in proper order during this
lease and to remove all their boats
engines and gear at the termination hereof,

LASTLY In the event of the Second Party failing to implement observe or
comply with any of the above terms and conditions or if the Second
Party becomes bankrupt goes into liquidation or is wound up or

ceases to exist or makes any composition with or assignation for
the benefit of its creditors the First Party shall have the right

to bring the let to an end and that without prejudice to any claims
he may have against the Second Party IN WITNESS WHEREOF

address of that member and which is to be produced on demand to the
Forestry Commissioners Forester or Ranger or other person duly
authorised on that behalf by the First Party.

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