

**COVERING LIST OF REPRESENTATIONS, OBJECTORS AND SUPPORTERS**

**THE LANCASHIRE COUNTY COUNCIL**

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE  
COUNTY OF LANCASHIRE**

**THE LANCASHIRE COUNTY COUNCIL (ORMEROD STREET TO GAMBLE ROAD,  
THORNTON CLEVELEYS) DEFINITIVE MAP MODIFICATION ORDER 2015**

<b>No.</b>	<b>OBJECTIONS STILL OUTSTANDING</b>	<b>ADDRESS</b>
1	Squire Patton Boggs On behalf of NPL Estates Limited and Fleetwood Wanderers Limited	<a href="mailto:julia.dixon@squirepb.com">julia.dixon@squirepb.com</a> Direct point of contact for Fleetwood FC: Patrick Newell <a href="mailto:Patrick.Newell@fleetwoodtownfc.com">Patrick.Newell@fleetwoodtownfc.com</a>
<b>No.</b>	<b>OBJECTIONS WITHDRAWN</b>	
-		
<b>No.</b>	<b>SUPPORTER</b>	
-		
<b>No.</b>	<b>OTHER RESPONSES</b>	
1	Atkins Global	<a href="mailto:Krishnaraj.Kumar@atkinsglobal.com">Krishnaraj.Kumar@atkinsglobal.com</a>  <a href="mailto:osm.enquiries@atkinsglobal.com">osm.enquiries@atkinsglobal.com</a>

17 December 2015

By email only

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Our ref JD2/LG/NPL.002-0021

Your ref LSG4/5.51869/MB

Dear Sir

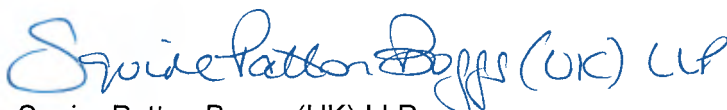
**Wildlife and Countryside Act 1981 - Part III**  
**The Lancashire County Council (Ormerod Street to Gamble Road, Thornton**  
**Cleveleys) Definitive Map Modification Order 2015**

We write on behalf of NPL Estates Limited and Fleetwood Wanderers Limited (trading as Fleetwood Town Football Club) and enclose the following documentation:

1. Formal objection to the Lancashire County Council (Ormerod Street to Gamble Road, Thornton Cleveleys) Definitive Map Modification Order 2015; and
2. Copy witness statements of Mrs Kathleen Roskell and Exhibit KR1 and of Mr Ken Roskell (both statements are referred to in the above objection).

We would be grateful if you could confirm receipt of the enclosed.

Yours faithfully

  
Squire Patton Boggs (UK) LLP

Enclosures

cc: Megan Brindle - Legal and Democratic Services (by email only)

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**THE LANCASHIRE COUNTY COUNCIL (ORMEROD STREET TO  
GAMBLE ROAD, THORNTON CLEVELEYS) DEFINITIVE MAP  
MODIFICATION ORDER 2015**

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**OBJECTION OF NPL ESTATES LIMITED AND  
FLEETWOOD TOWN FOOTBALL CLUB**

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NPL Estates Limited and Fleetwood Town Football Club (“the Objectors”) hereby make a formal Objection to the Lancashire County Council (Ormerod Street to Gamble Road, Thornton Cleveleys) Definitive Map Modification Order 2015 (“the Order”) made by Lancashire County Council on 21 October 2015 pursuant to section 53(2)(b) of the Wildlife and Countryside Act 1981 seeking to modify the definitive map and statement for the Council’s area by the addition of a public footpath from Ormerod Street to Gamble Road.

An objection was made to the Order by NPL Estates Limited prior to the making of the Order which representations are repeated and on which both the Objectors rely.

NPL Estates Limited acquired the land known as Pool Foot Farm on 8 June 2001 over which the claimed Order route lies. It was transferred to its parent company, Le-Fylde Estates Limited, in November 2014. In January 2015, part of the land was transferred to Fleetwood Wanderers Limited t/a Fleetwood Town Football Club for the development of a new community and training facility for which planning permission

was granted on 24 November 2014. That part of the land was transferred to JAYMEL Limited on 12 January 2015.

The Objectors object to the Order as no public right of way on foot subsists over the claimed route.

The Order was made by the Council on the stated basis that, on balance, dedication of a right of way on foot was deemed to have been granted pursuant to section 31 of the Highways Act 1980 or was inferred under common law by reason of the user evidence submitted in support of the Application to modify the Definitive Map.

Given such circumstances, the main grounds of the Objection are as follows.

1. There is no documentary evidence supporting the Order. On the contrary, the available maps, plans and other documentation referred to in the Committee Report support the Objection that no public right of way along the claimed Order route subsists. The Order route is not identified as a public right of way on any of the documentary evidence referred to by the Council nor is there any other indication from any of such evidence that the claimed route is a public right of way.
2. For the purposes of section 31 of the Highways Act, the Council relies upon the fencing of the land in 2014 for the construction of a community sports complex as bringing the public's right to use the claimed Order route into question. The relevant 20 year period is thus stated to be 1994 until 2014.

3. During that 20 year period, the route has not been used to any material degree by the general public. A presumption or inference of dedication requires significant and continuous levels of use throughout the entirety of a 20 year period or throughout a sufficiently long period to enable dedication to be inferred at common law. Instead, the 10 user forms submitted merely demonstrate, at their highest, a sporadic and very occasional use by individuals over the years, but not to any extent to raise a presumption of dedication under section 31 of the Highways Act 1980 nor an alternative inference of dedication at common law. Indeed, that is consistent with the evidence of the Objectors, as supported by the witness statements from Mr Peter Naylor and Mr Scott Carswell and by the attached witness statements from Mrs Kathleen Roskell and Mr Ken Roskell, that members of the public were not using the claimed route. The owners, tenants and employees of the owner of the land were regularly on the land over the years and yet no public use whatsoever was apparent to any of them. Notably, prior to 2002 when the land was part of a working farm, the tenant farmers lived and worked on the land.
4. Moreover, over the years, the land, including the Order route, has been used by the landowner or his tenants for purposes wholly inconsistent with a public right of way use and which would have prevented the public from using the route. Up until 2002, the land was part of a working farm. Pigs, poultry and cows were kept on the land, and public access was prohibited by signage, and was physically prevented by the entire land being enclosed by fencing or

hedges which also served the purpose of containing the livestock. In subsequent years, the three football pitches on the northern part of the land over which the claimed route lies were used regularly for football matches and training throughout the football season and occasionally for training out of season. The public would not have been able to use the claimed route across the pitches at any of those times and did not do so.

5. Reliance appears to be placed by the Council upon the existence of a worn path on the ground along part of the claimed Order route during an Officer site view in June 2014. However, it cannot be simply assumed that any such worn parts of the claimed route arose due to public use. In fact, that was the route used by the tenant farmers to access the land with a tractor, and was the route subsequently used regularly by employees of NPL to inspect the land generally, including the fencing round and on the land, the ponds, and for any evidence of fly-tipping. That was the reason for an apparent worn path on the ground rather than any public use.
6. Further, any use by the public would have been regularly interrupted as a matter of fact by the use of the football pitches.
7. Moreover and significantly, any use by the public of the claimed route was not as of right, which is a use without force, without secrecy and without permission, namely *nec vi nec clam nec precario*. “Force” for such purposes does not merely refer to physical force. User is *vi* and so not “as of right” if it involves climbing or breaking down fences or gates or creating gaps in

hedges: see *Newnham v. Willison*.<sup>1</sup> The attached witness statements from the tenant farmers of the land from 1968 to 2002 indicate that the entire land was fenced or hedged to ensure the containment of the livestock on the working farm. Such fencing and hedging had to be stock proof. Thereafter, the perimeter fencing and hedging around the entire land remained in situ and was retained and regularly inspected by NPL and its employees. Hence, any access to the land by the public necessarily involved climbing over fences, breaking fences to gain access or creating gaps in hedges to gain access, all of which would be *vi* and not as of right.

8. In addition, there was fencing along other parts of the claimed route which the public would have to break or climb over in order to use the route. That included a post and rail fence at point E which was in situ for decades and which was more recently used to separate Gamble Road from the football pitches. It further included continuous barbed wire fencing which separated livestock from the football pitches to the north close to the Burn Naze public house.
9. Any public use was also *vi* and so not as of right due to it being carried out despite the existence of signage indicating that the land was private property and requiring the public to keep off it. Such signage was put up at a number of points around the perimeter by NPL during the period when the land was being farmed and remained in situ. The wording of the signs was

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<sup>1</sup> (1988) 56 P. & C.R. 8.

unambiguous and the various signs would have been clearly visible. On that additional basis, any public use would not have been as of right.

10. The tenant farmers also challenged any members of the public whose dogs gained access to the land. Again, it was made clear that neither the dogs nor the public were entitled to be on the land.
11. By reason of such matters, the section 31 presumption of dedication does not arise nor any inference of dedication at common law due to alleged long user.
12. In any event, there is clear evidence that there was no intention by the landowner to dedicate the route during the 20 year period relied upon by the Council for the purposes of section 31. It is sufficient for the Objectors to establish such evidence of a lack of intention to dedicate at any point during the 20 year period and not throughout it: see *R. (on the application of Godmanchester Town Council v. Secretary of State for Environment, Food and Rural Affairs*.<sup>2</sup> Moreover, the demonstration of a lack of intention to dedicate merely requires the landowner's conduct to effectively communicate such to reasonable users. There is no requirement to establish that particular individuals were made so aware.
13. The fencing of the perimeter of the land, the additional fencing, the signage, the challenges and the landowner's inconsistent use of the land for his own purposes referred to above all demonstrate such a lack of intention to dedicate.

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<sup>2</sup> [2008] AC 221.



14. As to common law dedication, the burden of proof is on an applicant to demonstrate on the balance of probabilities that the landowner had an intention to dedicate the claimed route as a public footpath. Given the matters referred to in paragraph 13 above, no such intention to dedicate has been established.
15. Consequently, it has not been established on the balance of probabilities that a public footpath subsists along the claimed Order route and the Order should accordingly not be confirmed.
16. The Objectors reserve the right to rely on further matters if and when any additional evidence is raised by the Council or other supporters of the Order.

17 December 2015

### **Witness Statement of Mrs Kathleen Roskell**

- 1- I am Mrs Kathleen Roskell and I live at 17 Southdown Drive, Thornton, Lancashire, FY5 5BL. Prior to this, my husband and I were tenant farmers, comprising of approximately 50 acres, at Poolfoot farm, Butts Road, Thornton-Cleveleys, Lancashire, FY5 4HX between 1968 and 2002. This comprised of not only the land and farm buildings but a farm house that we lived in with my husband and children.
- 2- I am aware that this land has now been acquired by Fleetwood Town Football Club.
- 3- My dad was the tenant farmer at the farm from 1960-1968, however my husband and I both farmed the farm from 1960. My dad transferred the farm tenancy to my husband in 1968.
- 4- When we first took over the farm and land in 1960, we mainly farmed pigs and poultry. Over the years we started to keep cows. We started off with 10 cows and began a milk round around Thornton of unpasteurised milk, and ended up with 26-30 cows producing around 50 gallons of milk a day. We then branched out into beef, ponies and livery.
- 5- Whilst we were on the land, the whole of the land was hedged and/or fenced off to the public – we obviously had to keep the livestock contained within the fields. The general public were not allowed on the land as this was a working farm and our home. There was no footpath through the land as no members of the public had access to it throughout the duration of our occupation.
- 6- We did have problem with dogs gaining access to the land through fences and attacking our poultry – and on the occasion that this did happen we always made it clear to the owners that neither they nor their dogs were welcome on the lands and were not allowed to be there.
- 7- There was also an issue with fly tipping – with trespassers gaining access by bending the steel fencing which used to surround the farm. We could not control this however NPL (our landlords, who we had a good relationship with) did put up some 'private property keep off' signs – a photo of one such sign is exhibited here at Exhibit KR1.
- 8- As far as we are aware, this was also the case before we owned the land. We farmed the land for 42 years. Before that, we believe that the previous owners/tenants of the land used to shoot dogs who wandered onto the premises as they posed a threat

to the poultry.

- 9- Having seen the plan attached to the application to add a public footpath, the footpath supposedly comes out onto the corner of Ormerod Street. Whilst we were on the land, there was a large hawthorn tree on this corner and there was no access to the land from this point – it was fenced off, as the rest of the farm was. There was a gate further down the fencing on Ormerod Street, however this was overgrown and locked shut. There was one particular time when the weather was so bad that my husband had to open up the gate to cart some produce off the land – this is the only time during our time on the land that the gate was opened or able to be opened.
- 10- We are aware that between points D and E of the plan there were some football pitches. As the footballers often accidentally kicked the ball onto our land, they would frequently have to come onto the land in order to get the ball back. This was difficult for them due to the fencing and hedges and so the footballers built a sort of stile in order that they could gain access to retrieve their balls. This stile was solely for the use of the footballers in retrieving their ball and was not for use by the general public. Obviously the field needed to remain stockproof and the stile did not allow animals to access the fields. We did not see anyone use the stile except for the footballers.
- 11- Just to confirm that during my time and my father's time on the land, there was no public footpath as set out on the Application nor was anyone allowed to access the land for this purpose through that designated route.

I believe the facts set out in this statement to be true.

Date: 12th June 2015

Signed: 16-12-2015

**WITNESS STATEMENT OF KATHLEEN ROSKELL**

**EXHIBIT KR1**

September 2014



**NPL Estates, Liverpool, Business Centre, Unit A4, 25 Goodlass Road, Liverpool, L24 9HJ, Tel:**  
**(0)151 448-7345**

**Witness Statement of Mr Ken Roskell**

- 1- I am Mr Ken Roskell and I live at 17 Southdown Drive, Thornton, Lancashire, FY5 5BL.
- 2- I can confirm that I have seen the witness statement of my wife, Mrs Roskill, dated 16<sup>th</sup> December 2015 and I confirm that the facts that she has stated are correct and true.

I believe the facts set out in this statement to be true.

Date: 16-12-15

Signed: K. Roskell

**From:** [Kumar, Krishnaraj](#)  
**To:** [Brindle, Megan](#)  
**Subject:** No Objection: LSG4/MB3/5.51869/MB3; Ormerod Street to Gamble Road, Thornton Cleavelays;  
**Date:** 13 November 2015 08:13:46  
**Attachments:** [image001.jpg](#)  
[Scan-to-Me from 10.30.15.248 2015-11-11 131940.pdf](#)

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Dear Sirs,

New Roads and Street Works Act 1991

## Stopping Up Order / Footpath Diversion / Extinguishment / Gating Order

### No Objection

We refer to the below or attached order and confirm that we have no objections

**Please email Stopping Ups to [osm.enquiries@atkinsglobal.com](mailto:osm.enquiries@atkinsglobal.com)**

**To enable us to process your application as quickly as possible, please ensure you include Grid References.**

A copy of the Cable and Wireless process 4461 'Special Requirements relating to the external plant network of Cable and Wireless UK Services Ltd' is available on request. The process provides guidance on working in the vicinity of Cable and Wireless's apparatus.

#### **IMPORTANT - PLEASE READ = Your Next Step?..**

Where apparatus is affected and requires diversion, please send all the scheme related proposals that affects the Vodafone Network to [c3requests@vodafone.com](mailto:c3requests@vodafone.com) with a request for a 'C3 Budget Estimate'. Please ensure you include a plan showing proposed works. (A location plan is insufficient for Vodafone to provide a costing). These estimates will be provided by Vodafone directly, normally within 20 working days from receipt of your request. Please include proof of this C2 response when requesting a C3 (using the 'forward' option). Diversionary works may be necessary if the existing line of the highway/railway or its levels are altered.

Kind regards,

Plant Enquiries Team

T: 01454 662881

E: [osm.enquiries@atkinsglobal.com](mailto:osm.enquiries@atkinsglobal.com)

**ATKINS** working on behalf of Vodafone: Fixed



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**Sent:** 11 November 2015 17:50

**To:** Friend, Alison <Alison.Friend@atkinsglobal.com>

**Subject:** Scan-to-Me from 10.30.15.248 2015-11-11 131940

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