

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

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

**THE LANCASHIRE COUNTY COUNCIL PUBLIC FOOTPATH FROM  
BESCAR BROW LANE TO PUBLIC FOOTPATH 14A, SCARISBRICK  
DEFINTIVE MAP MODIFICATION ORDER 2014**

<b>No.</b>	<b>OBJECTIONS STILL OUTSTANDING</b>	<b>ADDRESS</b>
1	Thomas R Lavelle	Rosemount Nursery Pygons Hill Lane Lydiate Liverpool Merseyside L31 4JD
2	Henry Ashcroft	Scarisbrick House Farm Heatons Bridge Road Scarisbrick Nr Ormskirk L40 8JQ
3	Stephen Buttle	9 Bescar Lane Scarisbrick Nr Ormskirk L40 8QN
4		

5		
<b>No.</b>	<b>OBJECTIONS WITHDRAWN</b>	John & Mark Forshaw 176 Bescar Lane
		Scarisbrick Parish Council
<b>No.</b>	<b>SUPPORTER</b>	
<b>No.</b>	<b>OTHER RESPONSES</b>	

804/544

RE.

SCARISBRICK HOUSE FARM

PROPOSED FOOTPATH OFF  
BEECH BROW LANE, SCARISBRICK

HEATONS BRIDGE RD

SCARISBRICK

NR. ORMSKIRK

Dear Sir/Madam.

LANCS

L40 8JR

As tenants and occupiers of this land we are a directly affected party. We did not receive service of notice, in person, by post, by email or any notice posted on the land in question.

We use this land as our 'pasture' unit for our breeding stock. There has been an increase in incidence in cases of dog walkers being injured and killed throughout the country by maternal cattle.

Increasing incidence of neosporosis, an abortive disease, contracted from dog faeces, is of major concern to those involved with animal health and welfare.

We are entitled to peaceful enjoyment of the land, the welfare of our livestock is paramount.

We have a duty to challenge trespassers. After the summers of 2010 and 2011, when we experienced vandalism, and wilful damage, reported to PC JO Dawson, then our Community Boat Manager, culminating in PC 4208 GARDINER attending an incident on 3<sup>rd</sup> Sept 2012 in response to a man destroying the fence and assaulting both tenants.

(LANCS. CONTAGIOUS INCIDENT NO. LC 2012 - 0903 - 1143)  
CRIME NUMBER 120393

There was a further assault on the tenants within a short period of time thereafter

L

(LC 2012 - 1012 - 0993)

804/544

As a parish councillor, I declared a pecuniary interest in the agenda item (6/10/11) regarding proposed path, and left the room. I have no knowledge of discussions, but know objectors are in the majority.

No members of the public supporting the proposed path attended the meeting.

Yours sincerely



HENRY ASCROFT

H. ASCROFT + SON.

804/544

FAO: Ian Young

From: Stephen Buttle

Deputy County Secretary and Solicitor

9 Bescar Lane

Christ Church Parish

Scarisbrick

Preston County Hall

Near Ormskirk

PO Box 78

Lancashire

Preston

PR1 8XJ

L40 9QN

20/10/2014

Dear Ian,

I have written this letter to launch an objection in relation to the proposed 1385 metre long footpath in Christ Church parish, Scarisbrick which will run from Bescar Brow lane and connect with the existing public rights of way to Woodmoss Lane (Map Grid Ref. OS Liverpool Land Ranger series 108 E. 385. N. 141.)

I do so on the grounds of the proposed width. The public notice (pinned on the bridge by your office) has stated that the width will be 3 metres. This is far too wide as it is more than enough width for access by wheeled powered vehicles. You will note that here is a grass common on the opposite side of the adjacent brook (Sandy Brook) which is not tended by the local Farmers. The bridge that your notice was pinned to also spans this brook. As a regular walker of the existing pathways in this area, this proposed width would in my opinion leave wide open the possibility for easy access to this common for people who call themselves travellers. This is a scenario that I do not welcome at all and wish to avoid at all costs.

Should you decide to reduce the width, to ideally a metre or less, and have firmly constructed fenced styles or gateways at either end to discourage misuse of local public rights of way, and do so in writing, then I would be happy to withdraw my objection.

Yours Sincerely,



Mr Stephen Buttle.

John Elliott

0170685678

few weeks ago - list of common rights.  
maps -

Objection to the Proposed Footpath from

Point A to Point C along Sandy Brook Introduction

**REF: LSG4/PROW/5.47931/MB**

The owners of the land proposed for the situation of the proposed footpath from Point A to Point C whose family have owned for the past sixty one years, oppose and object to its imposition.

The tenant of the land proposed for the situation of the proposed footpath from Point A to Point C also opposes and objects to its imposition.

BACKGROUND

Scarisbrick Parish Council

It is erroneously claimed in the Regulatory Committee Report ('the Report') that Scarisbrick Parish Council has been consulted but that no response has been received from that body.

Scarisbrick Parish Council was not consulted about the imposition of the proposed footpath.

Scarisbrick Parish Council therefore did not have the chance to express an opinion on the proposed footpath.

Both the owners and the tenant of the land would have liked Scarisbrick Parish Council to have been consulted and allowed the opportunity to respond to such a consultation.

DESCRIPTION OF ROUTE

Allegedly Worn Railings

The Report alleges that the railings at Point A are worn.

The existence of these railings delineates the border of the private land of the owners. The railings were erected as a physical barrier: both demonstrative of the privacy of the land beyond as an impediment to unauthorised access. Any trespass by non-authorised persons and any tenuously related wear can only have happened after 2012 when problems with trespass initially started.

In the alternative, any wear could merely have been the result of the owner and/or tenant's use, be it in person or by their livestock.

Further in the alternative, the wear could merely be the result of the railings having been re-used from another site where they became worn. It is common practice to re-cycle in the farming community.

Gate at Point C

The Report states that on the day of inspection the gate at Point C was locked.

The gate at Point C was and is always locked as it marks the division between the land of the owners and the land of the Forshaw family.

The gate at Point C was kept locked to prevent, and in the alternative discourage, any trespass by any unauthorised person. The gate was and is a clear indicator of the privacy of the owners' land. The use of a padlock is clearly indicative of the privacy of the owners' land and their intention to exclude all unauthorised persons from any access whatsoever.

#### Fenced-Off Area Alongside Sandy Brook

The Report is, at times, misleading with regard to the area fenced-off alongside Sandy Brook.

It is inaccurate to view this fenced-off area as 'the proposed route'.

The area was fenced-off by the present owners' father at the request of the River Crossens Drainage Board in order to protect the bank of Sandy Brook from excessive trampling by grazing cattle.

#### Alleged Presence of a Worn Track

The Report alleges that on the day of inspection a worn track could be seen in places.

The Report goes on to state that it was not possible to determine whether this supposed track had been created by animals, farm machinery, or walkers.

The owners would like to clarify that there was no track. Any appearance of a supposed track would have been due to use by the owners and their tenant's use of the land: animals; farm machinery; private use or Environment Agency doing any work on the watercourse and bank.

In the alternative, any visible usage by non-authorised persons, who would have to have gained access to the land via trespass, can only have occurred from 2012 as that was when problems began to occur with trespass.

To gain access to the land, trespassers will have had to scale fences, padlocked gates, and pass signage stating the privacy of the land. The owners did all that can reasonably and legally have been expected of them to maintain the private status of their land.

#### MAP AND DOCUMENTARY EVIDENCE RELATING TO THE CLAIMED ADDITION

##### 1839 Tithe Map

The appearance of a possible path of unknown status, as there is no key, is meaningless with regard to the argument for the imposition of a public footpath.

There is a break in the reasoning applied to this piece of misleading evidence. It is stated as persuasive that the claimed route seems to meet two other routes that are presently public footpaths.

Correlation does not prove causation.



Just because some unknown form of path meets some other unknown form of path does not mean that they are of the same status. Motorways meet A-roads and A-roads meet B-roads and B-roads meet private driveways.

Even if the claimed route was a path in 1839, and it should be noted that it has not been shown as such on any subsequent map whatsoever, it was never a public right of way.

#### 1934 Authentic Map of South Lancashire

The Report describes this map as being of a remarkably 'large scale'.

It is therefore contradictory for the Investigating Officer to observe that the route may have existed but may not be shown due to 'limitations of scale'.

#### 25 Inch 1893 Ordnance Survey Map

This map is of the largest scale (1:2500) and does not show the claimed route.

It is clear that the route did not exist in 1892 when this map was charted.

#### 25 Inch 1928 Ordnance Survey Map

The apparent existence of a footbridge at Point D on this map is meaningless to the application for a right of way.

All the land concerned belonged to the Scarisbrick Estate and was used for private shooting parties. The shooters attending these private parties needed to be able to cross the various waterways on the estate and so plank bridges were habitually erected for private use.

These plank bridges rarely lasted for more than a couple of years due to rot, and were often replaced by other plank bridges in other positions after they had rotted so much that they became unsafe. It was not common practice to replace the plank bridge in the same place each time.

#### 1960s Aerial Photograph

The reason that a strip of land bordering Sandy Brook between Point A and Point B was fenced off, as noted in this photograph, is that the field was sectioned off to prevent over-grazing of the bank.

This fencing was in no way indicative of the establishment of a track or any public right of way whatsoever.

#### 1988 Aerial Photograph

The alleged faint line is in fact only visible due to the different shading of the growth on the bank.

In the alternative, it could also be seen as a result of the different levels and stages of bovine grazing between the larger field and the smaller section of the field (separated as they were, and are, by fencing).

Further in the alternative, if the Investigating Officer is determined to interpret the shading as evidence of a faint track then it should be noted that at this time (and indeed ever since) the area concerned was wholly private, clearly defined as such, and not used by the public.

The Investigating Officer comments that the proposed route 'may have been accessible'. Access to this route was reasonably blocked. A determined trespasser could scale the most intricate of barriers. As trespass was not occurring at this time, no greater barriers were deemed within reason.

#### 1999 Aerial Photograph

The Report observes that it is not possible to see the precise nature of access at Point A as it was in 1999.

The owners would like to stress that the access at Point A has always been strictly private and was so in 1999. The field gate was erected in 2006 when the present Tenant found it better to drive his cattle out of his rented land in (Bescar Brow Lane) onto land directly opposite in Scarisbrick Hall.

#### 2000 Aerial Photograph

Any track arguably visible in this photograph was not in public use. Any supposed appearance of a track can be explained as merely being the indentations made by grazing cattle and access by the owners, tenant and Environment Agency.

There was no use of any supposed track on the owners' land in conjunction with the use of Public Footpaths 14 and 14a. Any geographical convergence is merely coincidental and such argued correlation should not be seen as causative of public access. An incorrect inference has been drawn. The owners' land was private use.

If the Investigating Officer is determined to see a 'worn track' then it should be stressed that nevertheless the land was wholly in private use.

#### 2007 Aerial Photograph

In its 'Observations' the Report discusses the 'exact nature of access from Bescar Lane onto the claimed route'. This is worrying. There is no border between the claimed route and Bescar Lane. The claimed route borders Bescar Brow Lane. They are two different roads. It can only be assumed that this is an error on the part of the authors of the Report. Such errors do not encourage the reader to have much confidence in the accuracy of such a Report as a whole.

Any access to the claimed route from Point A was clearly private in 2007.

There was a gate at Point C in 2007 and its purpose was to designate the privacy of the owners' land.

There was no public use of the claimed route at this time.

Any appearance of a track of whatever description and however interpreted can only have been the result of the owner and tenant's private use of the owners' land.

#### Various Rights of Way Maps

The complete lack of any mention whatsoever of the claimed route in the Parish Survey Map (1950-1952), the Draft Map (1953-1955), the Provisional Map (1960), the First Definitive Map and Statement (1962), and the Revised Definitive Map of Public Rights of Way (First Review) (1975 onwards) is supportive of the owners' argument of fact: that there never has been a public right of way across their land.

The status of the land has never changed. The owners seek the recognition of this.

Problems with trespass by a limited number of the public only began in 2012.

#### **Statutory Deposit and Declaration made under Section 31(6) Highways Act 1980**

The reason the Statutory Declaration was only made in 2012 and no others were made before it is that there had never been any problems with members of the public trespassing on the owners land before 2012.

If there had been such problems in the past then the owners would have made a Statutory Declaration at that time.

There were, in any case, obvious barriers and signage signifying the privacy of the owners' land. These measures should be read in Common Law as clear indications by the owners that their was no intention for any public right of way to be dedicated.

#### **Ownership**

The Report is in error with regard to the specifics of the ownership of the land upon which the claimed route Point A to Point C falls.

The Report states that the land belongs to the son and daughter of Mary Lavelle (deceased). In fact the land belongs to the son and daughters (two daughters) of Mary Lavelle (deceased).

It should also be noted that the 'whole' of the claimed route has not been used as a 'whole' as access to the owners' land from the Forshaw family's land has been

barred by a gate since at least 2007 and previous to this there was no use of access between these two parcels of land, and certainly not by the public.

#### **COUNTY SECRETARY AND SOLICITOR'S OBSERVATIONS**

##### Information from the Applicant

There are many inconsistencies and contradictions in the reports of those who claim to have used the supposed route. For example, there is a great deal of variety in the description of the

existence and/or position of stiles/gates/fences. Many of the accounts are mostly incorrect about the actual physical characteristics of the land. If one claims to have walked land regularly over a significant period of time, one should know the characteristics of that land and be able to impart that information when required. This dearth of knowledge and accuracy should encourage the reasonable reader to two deductions:

- i. that those who have made these statements do not actually know about the land they are claiming to know; and,
- ii. that their statements should fail and be disregarded on the basis of general unreliability.

The Report contains a startling number of typographical errors and houses some very unclear syntax in this section. This is somewhat worrying as the Report is hoped to be a professional document carefully considered and drafted. The imposition of a previously non-existent public right of way is very troubling to the owners and it had been hoped that the assessment of whether to do so or not would be carried out in a conscientious manner. Typographical errors and confusing syntax do not fill the owners with confidence in the Report.

The potential legal ramifications of one deponent's claims to have moved a gate/stile/fence belonging to the owner and on the owners private land will be investigated by the owners' solicitor. If there is any chance of a prosecution for theft and/or criminal damage against this deponent then that will be sought by the owners.

Any unauthorised users of the land would have been stopped if they were seen by either the owners or the tenants. Since a small number of unauthorised users started trespassing on the land in 2012 all have been told that they cannot walk there as it is wholly private land. That one supposed user states that they ignored verbal attempts to make them leave the route does not mean that supposed use was not a trespass. It would be interesting to know how, short of using physical force to make that supposed user leave, the County Secretary and

Solicitor think a landowner, having already erected physical barriers to entry, should act in such a situation.

That two supposed users lay claim to there being an 'aggressive landowner', as the Report puts it, is deeply troubling. The Report reads in a very biased way in favour of the applicant rather than the owner at this point. This is also deeply troubling. The owners' solicitor will be looking into the potentially defamatory and libellous nature of these claims. If any avenue for legal prosecution exists it may well be taken.

The owner was informed by the Tenant in October 2012 that he had to call in the local Police Lady (P.C.Dawson) to a trespasser who was getting aggressive in his attitude towards being stopped walking along the Bank and abusing the boundary fence. The owner was called by P.C.Dawson to clarify that the land was privately owned.

The owners were not involved in the confrontation with the Tresspasser.

That one supposed user claims that a sign was recently only in place for a couple of days is telling of the recent problems the owners have been having with trespass, theft, and criminal

damage. There were no problems before 2012. There was no unauthorised use of the land before 2012. The criminality and civil trespass have gone hand-in-hand since 2012.

## **CONCLUSION**

The owners have not, at any time, dedicated the land in question to become a public right of way and still do not do so.

There has been no dedication from use under Section 31 Highways Act 1980.

There is insufficient evidence for dedication to be inferred at Common Law.

It is wholly misleading for the Report to claim that 'access to the route has never been questioned or denied up until October 2012'. Firstly, this statement presupposes that the supposed route was used by the public in this period: it was not. Secondly, the supposed route was clearly private during this period. Thirdly, if it were used by the public then they would have been challenged.

The claimed knowledge and use of the supposed route by the supposed users is greatly exaggerated. As previously noted, these supposed users did not even provide accurate descriptions of the supposed route in their user evidence forms. Their evidence should therefore be disregarded. It is questioned why the inaccurate information supplied by the supposed users is held in higher regard by the Report than the accurate evidence supplied by the owners.

The supposed route has only been victim to the unlawful trespass of a limited number of unauthorised members of the public since 2012. That is the reason for certain measures having been taken from that time. Any use has also only been sporadic at most.

The merely sporadic nature of use by the supposed users is supported by the supposed users' inability to present a consistent description of the barrier structures across the route. If use had been more than sporadic then there should have been a greater consistency in the details provided in the user evidence forms. To put it simply, their evidence is unreliable.

Moreover, the various barriers mentioned earlier in this report, along with signage, clearly sectioned off the area as for private use only.

Any unauthorised use of the supposed route has not been of right. All land rights have been retained by the owners and none have been dedicated in any way whatsoever.

There has been use of force by unauthorised users of the supposed route. Criminal damage has been done to barriers since the unauthorised use started in 2012.

Passing through gates to clearly private land and avoiding the landowner and/or tenant amounts to stealth.

The Report alleges that the railings at Point A are worn.

The existence of these railings delineates the border of the private land of the owners. The railings were erected as a physical barrier: both demonstrative of the privacy of the land

beyond as an impediment to unauthorised access. Any trespass by non-authorised persons and any tenuously related wear can only have happened after 2012 when problems with trespass initially started.

In the alternative, any wear could merely have been the result of the owner and/or tenant's use, be it in person or by their livestock.

Further in the alternative, the wear could merely be the result of the railings having been re-used from another site where they became worn. It is common practice to re-cycle in the farming community.

This case is clearly distinguishable from the recent Planning Inspectorate decision mentioned in the Report regarding a low wall, as:

- i. the railings at Point A would not have been attractive to members of the public to scale, there were invariably unpredictable cattle on the other side of the railings;
- ii. the railings at Point A would not have been scalable with relative ease, and one of the user evidence statements points to the difficulty faced by any attempt to scale them; and,
- iii. the railings at Point A have never been scaled frequently, any scaling by members of the public has been at most sporadic, challenged, and only since 2012.

Gates were habitually locked and signs and notices in place before 2012. The only reason the owners have not drawn attention to this previously is that they were challenging a trespass that itself only started in 2012. There had been no public use of the land prior to 2012 and so the majority of the owners' attention to the problem comes from 2012 onwards. As there was no problem with trespass before 2012, as there was no public use of the land before this date, mention of such measures was not considered initially relevant. The supposed users are falsely claiming to have used the claimed route for a longer, and inaccurate, amount of time. Throughout that time the claimed route was always kept private by a combination of measures and there was no public use of it.

It is very troubling indeed that the Report incorrectly names the owners' solicitor, John Roberts, as the actual owner of the land. Those preparing the Report should have known who the owner was by the time they wrote their conclusion. It is a shocking error.

The owners' mother and father always kept the land private and excluded the public from any use of it. They regularly walked the land to check boundaries and were very keen on good land husbandry as many old farmers are and so would have noticed any unauthorised use of the land. Although the present owners mother left the farm in 2000 she only moved a few hundred yards down the road and kept an eye on the land and its use, along with her children doing so. She was mobile and vigilant until just before her death in 2007 and so there can have been no public use of the supposed route up until that time. From 2007 onwards Thomas Richard Lavelle (one of the owners) and Henry and Ian Ascroft (the tenants) have been vigilant and have not had any problems with trespass over the land in question until 2012.

It is hard to fathom why the Report states that Thomas Richard Lavelle's explanation for the fencing-off of the section of field alongside Sandy Brook only makes it 'arguably' difficult to

use that fencing as indicative of an intention by the owner to dedicate the claimed route. The fencing is completely unrelated to any supposed route.

The language used makes the report seem biased in favour of the applicant and against the owners.

The area was fenced-off by the present owners' father at the request of the River Crossens Drainage Board in 1953 in order to protect the bank of Sandy Brook from excessive trampling by grazing cattle. It is not evidential of any intention to dedicate.

More typographical errors and confusing syntax abound in the conclusion of the Report.

Finally I think Lancashire County Council should have consulted the Environment Agency Regarding the claim for a Public Footpath as they are responsible for the maintenance and upkeep of the watercourse which takes the water from Ormskirk and outlying areas to the Sea at Crossens.

The Environment Agency periodically dredge the watercourse and mow the Bank which is claimed to be a footpath, so after dredging the path it would be messy and rather dangerous for walking along. Who would be responsible if any damage was done to the Bank and the water broke through onto the farmland in periods of high rainfall when the water levels can get fairly high up the Bank?

### SUMMARY

The owners' object to the establishment of the proposed public right of way. There has never been an intention to dedicate. The land has always been kept private. Problems with trespass only started in 2012 and have been dealt with in the proper way by the owners so as to avoid any question of the privacy of the land.

The owners respectfully ask those with the authority to do so to re-consider their recommendation for the establishment of a public right of way.

Signed on behalf of all three owners (the children of Mary Lavelle (deceased)),

Thomas Richard Lavelle  
Rosemount Nursery  
Pygons Hill Lane  
Lydiate  
Liverpool  
Merseyside  
L31 4JD



11<sup>th</sup> October 2014.



## **OBJECTION TO DEFINITIVE MAP MODIFICATION ORDER**

### **PUBLIC FOOTPATH FROM BESCAR BROW LANE TO PUBLIC FOOTPATH 14A, SCARISBRICK (Reference: LSG4/5.47931/MB)**

Scarisbrick Parish Council believes that it is not in the wider interests of the people of Scarisbrick to have this additional public right of way and wishes to object. The Council's concerns in this regard are:

- The claimed footpath is along the bank of Eas Brook / Sandy Brook. This is a strategically important watercourse which takes surface water from the Parish and the adjacent market town of Ormskirk. The Environment Agency has permissive powers with regard to maintenance but the landowner has riparian duty to dredge and maintain the banks. The course of the proposed footpath not only endangers the bank but is also the area upon which detritus from dredging operations is normally deposited. It is essential to surrounding agricultural land and neighbouring settlements that neither the integrity nor maintenance of this watercourse are compromised.
- The Council is mindful of its wider responsibility to the health and well-being of its residents, including potential users of the claimed footpath. Usage of the land in question has traditionally been as pasture for the grazing of cattle. There is an argument that the land is now of little use for any other agricultural purpose. Over the last few years, within the UK, there have been a small but significant number of injuries and fatalities to members of the public who have walked in fields containing cattle (particularly with calves at foot). It is notable in this regard that nearly half the user forms refer to walking with dogs.
- The main requirement for the claimed footpath appears to be leisure. This need is already over-supplied as there are more than 30 public footpaths in the Parish. Lancashire County Council has stated that they are currently unable to satisfactorily perform routine maintenance, a fact that is becoming increasingly obvious.

The preceding statements outline the Council's concerns, but it understands that objections at this stage should be directed to whether a right of way has been established. To this end the Council believes that the case has not been made and outlines arguments below.

It is noted that the date of bringing into question has been determined to be October 2012. Any period of use under the provisions of the Highways Act 1980 must then run from October 1992 to October 2012.

Evidence of usage can be broadly categorised into documentary evidence and user statements. Evidence from owners and tenants is important when determining intention to dedicate.

#### **DOCUMENTARY EVIDENCE:**

##### **Maps:**



There is no definitive evidence that the claimed route existed on early commercial maps or Ordnance Survey.

Claims that it existed on the Tithe Map of 1839 are arguable given that the map has no key and there was no reference to the claimed route in the accompanying Tithe Award. The officer's comment that the Tithe Maps only provide supporting evidence in conjunction with the written Tithe Award is noted in this regard. It is not clear why she ignores her own guidance when she subsequently states that part of the claimed route existed in 1839.

#### Aerial photographs:

The claimed route did not exist as a clearly worn track in 1988. The first observation of a "worn track" (by means unknown) was in 1999. However, it is also possible that the creation of the track could be due to the passage of livestock or due to maintenance procedures involving the watercourse. There is no documentary evidence from aerial photography, or elsewhere, that a track existed prior to 1999.

The industry standard for resolution in aerial photography is 25cms. This means that an object less than 25cms in width cannot be identified. Most fences and gates in common use would be less than this width when viewed from above and it is therefore not surprising that gates or fences cannot be seen even when present. Lack of visibility of gates and fences on aerial photographs, therefore, does not constitute evidence of absence of such a barrier.

The colour photographs from 1988 onwards all show the field in question to be green at the access point "A" where it borders Bescar Brow Lane. This infers the use of this land as pasture since 1988 and is entirely consistent with the owner's and tenant's occupations as local beef producers. It is inconceivable that such a farmer would not install stock proof fencing and gates to prevent the escape of his livestock. There is also an imperative on such farmers to exclude members of the public in view of well publicised manslaughter claims involving cattle. Documentary evidence to support this view is provided by invoices for the purchase of fencing and gates.

#### Police incidents:

There have been two recorded incidents. The first occurred on 3<sup>rd</sup> September 2012 when the tenant was pushed over into some brambles by a claimant who was in the process of pulling down a barrier. The attending police officer was PC 4208 Gardener (incident number LC 2012-0903-1143; crime number CJ 1203938). The damage to a fence was recorded in addition to the assault.

The second incident was on 12<sup>th</sup> November 2012 when the tenant's son was kicked repeatedly whilst preventing a claimant from gaining access. Two police officers attended from Skelmersdale police station (incident number LC 2012-1012-0993).

Damage to barriers had been reported by the tenant in 2011 to the police. This was to the Parish's Community Beat Manager at the time (PC Dawson).

These assaults against the tenants are a matter of record, yet user statements claim that it was a user who suffered the assaults. This illustrates how beliefs can be revised particularly by parties who have an interest in a particular outcome.

#### Parish Council records:

A person claiming to be a frequent user (MOTT) attended a Parish Council meeting before the date of bringing into question (6th August 2012) complaining that the route had been blocked (minutes attached). It is also documented that she was informed that no public right of way then existed on the Definitive Map.

#### Census records:

It is important that the level of claimed usage is put into the wider context of Scarisbrick demographics. According to the 2011 census the total population of the Parish was 3,865. The neighbourhood adjacent to the claimed footpath is covered by Scarisbrick Output Areas E00129473, E00129474, and E00129477. The total population within these areas is 970. In order to ensure that this is representative of the neighbourhood only output areas in the immediate vicinity of the claimed footpath are included. No output area has been included that does not contain post codes belonging to claimants.

#### Invoices:

Six invoices confirm the purchase and erection of fences and gates on the land in question between 2006 and 2010. The total amount spent on barriers during this time amounts to £1,619.

#### USER STATEMENTS:

Copies of twenty-five user forms have been forwarded from Lancashire County Council. Two of the twenty-five forms have been dismissed as incomplete. This leaves twenty-three forms to be considered.

#### Period of use:

A spreadsheet analysis is attached (Table 1). Thirteen user forms claim knowledge of the route since dates within the range 1946 to 1986. Thirteen user forms claim use of the route since dates within the range 1953 to 1986. Most claim at least weekly usage. The remaining forms claim usage for less than 20 years (range 19 years 1 year).

#### Sufficiency of use:

- 3 claim use on a daily basis.
- 10 claim use on a weekly basis (or thereabouts).

- 2 claim use ≤ 15 times per year.
- 4 claim use ≤ 5 times per year.
- 4 do not specify.

#### Use as of right:

##### **Permission:**

- 3 users worked for one of the landowners and their use was therefore by permission and not of right.

##### **Barriers:**

- 10 claim that there has never been a stile, gate or fence.
- 10 claim that there has been a stile, gate or fence.
- A person claiming to be a frequent user (NICHOLSON) states that a barrier has been present at the Bescar Brow end which was reinforced in June 2012, i.e. it existed before the date of bringing into question.

##### **Challenges:**

- A spreadsheet analysis is attached (Table 2).
- 1 user claims to have been turned back on two unspecified occasions.
- 1 user claims to have heard of someone being turned back before the date of bringing into question (summer 2012).
- 1 user claims to have heard of "various people" being turned back during the course of 2012.

##### **Use of force:**

- One claimant admits to having removed a fence (ASHCROFT).
- Two claimants (NOLAN/NICHOLSON) state that a user was assaulted by a farmer/landowner. The assault did occur but was directed at tenants by a user, in fact there were two assaults directed against tenants. One of the assaults followed a tenant trying to prevent a barrier being pulled down. It occurred on 3<sup>rd</sup> September 2012, before the date of bringing into question.

#### **OWNER AND TENANT STATEMENTS:**

- There are two owners in part of the land in question, each part is tenanted.
- One owner, Mr Forshaw, states he is happy for people to walk along the track. It is pertinent to note that this is arable land (*vide infra*).
- The other owner is Mr Lavelle. It is pertinent to note that this land is pasture for the grazing of a breeding herd of cattle (*vide infra*).

- Mr Lavelle states that between 1953 and 1966 there was no use of the alleged path by any member of the public or indeed by any one and there was no defined path merely a bank at the field edge next to the stream Sandy Brook.
- He did not see anybody on the land whilst he was at the property.
- In the past the River Crossens Drainage Board (as it then was) built up the bank of the watercourse and told his father to put a fence along the field to stop cattle treading the bank away.
- Signs that he has put up to indicate that the property is private and not a right of way have been taken down.
- He has spoken to the adjoining owner to the north (Mr Forshaw) in relation to the proposed footpath and he appears to have no objection to it but his tenant does for the same reasons that Mr Lavelle's tenant objects i.e. fences broken down and people walking along boundaries of the land.

### **CONCLUSIONS:**

Mr Justice Legatt made observations on the fallibility of human memory and looked at how witness recollection should be treated in Gestmin -v- Credit Suisse [2013] EWHC 3560 (Comm). He commented that memory is especially unreliable when it comes to recalling past beliefs; proceedings themselves subject the memories of witnesses to powerful biases, particularly when witnesses have a stake in a particular version of events. He states that it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth. He takes the view that although witness testimony affords the opportunity to subject documentary records to critical scrutiny little reliance should be placed on witnesses' recollections alone. He emphasises the importance of documentary evidence when determining the facts.

There has been no clearly stated dedication by the owner (in part), Mr Lavelle. Consideration needs to be given to whether dedication can be deemed from use under the provisions of section 31 of the Highways Act 1980, or whether dedication can be inferred at common law.

### **Highways Act 1980, section 31:**

The provisions of S31 Highways Act 1980 require that the public has enjoyed use of the claimed route for a full period of twenty years. The date of "bringing into question" of the route is October 2012 and the 20 year period of use to consider would be 1992-2012.

The evidence of aerial photography does not support claims of usage over the full period. The claimed route did not exist as a clearly worn track in 1988. The first observation of a "worn track" (by means unknown) was in 1999. At best this indicates usage since 1999, which falls 7 years short of the required period. There is no documentary evidence from aerial photography, or elsewhere, that a track existed between 1992 and 1999.



The only evidence to support usage is from witness (user) statements. Table 1 (attached) analyses the user statements and shows that five people claim to have commenced use between 1953 and 1967 at a weekly or greater frequency. A further seven people claim to have commenced use between 1979 and 1986 (three at a weekly or greater frequency).

It could be reasonably suggested that use by such a number of people at the stated frequency should give rise to the establishment of a worn track. However, aerial photographs from the 1960s and 1988 show no evidence of a track.

It is accepted that these dates lie outside the twenty year period, but such evidence serves to challenge the veracity of user claims. The memories of the same users going back over a period of twenty years must therefore be treated with caution and, as stated by Legatt J, cannot by themselves be regarded as evidence of usage over this period.

The frequency of use from user forms is variable, with 13 claiming to use the route on at least a weekly basis and others considerably less (once a year). Only eight of those claiming to have had use for at least twenty years claim use on at least a weekly basis.

It is also necessary to demonstrate sufficient use by the public as a whole. Coleridge LJ states in *R v Southampton (Inhabitants) 1887* that “*user by the public must not be taken in its widest sense... for it is common knowledge that in many cases only the local residents ever use a particular road or bridge.*” It is therefore necessary to determine sufficient use by residents local to the claimed route. The term “sufficient” is not precisely defined and may vary from case to case. It was held in *Mann v Brodie 1885* that the number of users must be such as might reasonably have been expected if the way had been unquestionably a public highway. It is generally applicable that in remote areas the amount of use of a way may be less than a way in an urban area.

Census data shows the population within the local neighbourhood of the claimed route to be 970 people. It is suggested that claimed regular use by thirteen people (eight people for the required 20 years) does not represent sufficient use by the local population.

Use also has to be as of right. It must be without force, without stealth and without permission. The issue of use by force must be considered when barriers exist across a route. Ten users state that there was a stile, gate or fence across the route, although another ten users do not recall such barriers. Many user forms claim usage of the route on a daily or weekly basis yet memory is divided on whether something as clearly noticeable as a stile, gate or fence is present. This again demonstrates the dangers of relying on witness testimony alone.

Invoices clearly demonstrate that tenants on Mr. Lavelle's land spent £1,619 on the purchase and erection of fences and gates on the land in question between 2006 and 2010. In addition, the reporting officer draws attention to the presence of a stock proof barrier during the course of her inspection and confirms that it is not possible to climb over or through such a barrier. A person claiming to be a frequent user (MOTT) attended a Parish Council meeting before the date of bringing into question (6th August 2012) complaining that the route had been blocked (minutes attached).

The only means of access would then be by force and is consistent with the tenants' claim of broken fences as reported by Mr. Lavelle and supported by comments made by Mr. Forshaw's

tenant. Such damage is admitted by one of the claimants (ASHCROFT) and has also been reported to the police in 2011 and September 2012 (prior to the date of bringing into question).

Force has also been used against tenants when users have attempted to gain access. Details have been given above; documentary evidence exists with Lancashire Constabulary in the form of crime and incident reports.

Three users worked for one of the landowners and therefore their use of the claimed route would not be as of right.

#### Common Law:

Halsbury (Laws of England, Volume 21 'Highways', Fourth edition) states: *"Both dedication by the owner and user by the public must occur to create a highway otherwise than by statute". "At common law, the question of dedication is one of fact to be determined from the evidence. User by the public is no more than evidence, and is not conclusive evidence"*.

Dedication must be inferred by open use, as of right, in such a way that the owner must have known that the public was using the route. The presumption of dedication arises from acquiescence on the part of the owner/occupier. The burden of proof is on the public claiming the route.

Acquiescence is a *laissez-faire* state that is unlikely to exist in the minds of most beef farmers. This arises from the most significant difference between them and arable farmers, the vulnerability of their investment in livestock. This perhaps explains the difference in attitude between the two part-owners of the land in question (Messrs Forshaw and Lavelle) to the claimed footpath.

Mr. Lavelle's land has been used as pasture, primarily for beef production, for many years. The land is used for grazing by a breeding herd consisting of about forty cows with calves at foot. The current market value per unit (cow with calves) is of the order of £1,500. Therefore, at any one time, the total value of the farmer's livestock investment on that field is in the region of £60,000. This breeding herd provides the beef crop for subsequent years. Profit margins to the farmer (in contradistinction to retail profits by supermarkets) are small. It takes relatively little to go wrong before the farmer records losses.

The herd's vulnerability stems from the animals natural inclination to wander and its susceptibility to disease. Stock proof fencing, gates and other barriers are an essential tool of the beef farmer to prevent unwanted livestock movement. Unwanted movement can lead to claims for damages and loss of animals. The latter not only means loss of investment but also loss of profit in subsequent years. There is therefore a very strong incentive to ensure the provision of adequate barriers, an incentive not shared by the average arable farmer.

Disease is commonly brought about by other animals acting as vectors. There is therefore a strong incentive for beef farmers to exclude such vectors from their land. The vector that has

caused the most publicity recently is the badger and its role in the spread of bovine tuberculosis. However, dogs are also a significant vector known to the industry, particularly as a source of neosporosis. Many dog owners will responsibly dispose of dog excrement deposited on pavements and in public parkland; they are required by law to do so. Very few appreciate the need to do so in the countryside.

Neosporosis is caused by the protozoan parasite *Neospora caninum* which is an epizootic organism, i.e. it causes an outbreak of disease affecting many animals of one kind at the same time. It is the most frequently diagnosed cause of bovine abortion in many countries in Europe. Cattle become infected by the ingestion of oocysts shed by infected dogs in faeces. This is known as horizontal transmission. However, once the disease has been introduced into the herd it is also transmitted vertically (infected animals may pass the parasite to their offspring over several generations and in successive pregnancies). The economic impact of the disease involves significant losses due to abortion, premature culling, and reduced post weaning weight. The disease decimates beef production within an infected breeding herd. There is no effective treatment and no available vaccine. The most effective measure against the disease is to exclude dogs from the land.

It is notable in this regard that 9 out of 23 user forms claim that they walk dogs across the land, mostly on a weekly or daily basis. It is suggested that, on the balance of probabilities, a beef farmer is unlikely to allow such use if he had knowledge that it was happening. Such a dedication would involve risking his livestock and livelihood and would be unacceptable to him.

There have been a small but significant number of injuries and fatalities caused to dog walkers by cattle with calves at foot. Beef farmers are increasingly aware that they have a duty of care in this respect, a breach of which can lead to expensive and time consuming litigation. It is again inconceivable that a responsible beef farmer would acquiesce to this risk if he had knowledge of such use on his land.

Lancashire County Council's report gives the impression that a dedication in Common Law may exist on the basis of user statements alone. However, Mr. Lavelle has testified that he has put up signs that have been taken down by walkers. This is supported by the evidence of users, two of whom claim to have seen such signs (RIGBY/ASHCROFT). Overt action is also confirmed by the testimony of a user (RIDOUT) who claims to have been turned back on two occasions whilst attempting to use the route and another has heard of "various people" being turned back during the course of 2012. The latter also admits to taking down a barrier (ASHCROFT) and another admits to the presence of a barrier (MOTT). Police records show that tenants have been assaulted in the process of trying to prevent entry to the land. This evidence points to a lack of intention to dedicate, entirely consistent with land use and the occupation of owners and occupiers as beef producers.

#### **FOOTNOTE:**

For the sake of transparency it should be noted that one of the tenants on Mr. Lavelle's land, Henry Ascroft, is a member of Scarisbrick Parish Council. In accordance with the Council's code of conduct he has declared a disclosable pecuniary interest on occasions when this matter has

been brought to Council. He has neither voted nor taken part in any discussion pertinent to this matter. On these occasions he has vacated the room as required by the Council's standing orders and this has been minuted. He has not instigated or contributed to this document.

Councillor Ascroft's business partner, Ian Ascroft, has made representations on this matter and has supplied items of documentary evidence to the Council. Scarisbrick Parish Council has also heard representations from an owner (Mr. Lavelle) and a claimant (Mrs. Mott).

A handwritten signature in dark ink, appearing to read 'J C Herbert', with a long horizontal stroke extending to the right.

Dr J C Herbert FRCA

Clerk to Scarisbrick Parish Council



TABLE 1

**USER FORMS CLAIMING KNOWLEDGE OF THE ROUTE (20+ YEARS):**

Length of time known (years)	Year since known	User form
66	1946	Nolan
60	1952	Charnock G
60	1952	Kerruish
56	1956	Rigby
50	1962	Nicholson
46	1966	Ashcroft
40	1972	Charnock C
32	1980	Butler Jas.
30	1982	Forshaw J
30	1982	Butler J
28	1884	Mott
26	1986	Forshaw C
26	1986	Forshaw M
23	1989	Crawley

**USER FORMS CLAIMING USE OF THE ROUTE (20+ YEARS):**

Length of time used (years)	Year since used	Frequency of use	User form
59	1953	TWICE WEEKLY	Charnock G
56	1956	WEEKLY	Rigby
?	?	?	Kerruish
52	1960	WEEKLY	Nolan
47	1965	40 TIMES / YEAR	Nicholson
45	1967	DAILY	Ashcroft
33	1979	TWICE WEEKLY	Charnock C
32	1980	3 - 4 times/year	Butler Jas.
30	1982	20 - 50 TIMES / YEAR	Forshaw J
30	1982	3 - 5 times/year	Butler J
28	1984	DAILY	Mott
26	1986	10 times/year	Forshaw C
26	1986	15 times/year	Forshaw M
23	1989	?	Crawley

**KEY:**

Knowledge and use claimed to commence between 1946 - 1967 but no evidence of a track on aerial photographs from 1960s and 1988.

Knowledge and use claimed to commence between 1972 - 1986 but no evidence of a track on an aerial photograph dated 1988.

User form should be rejected - not signed.

**COMMENT:**

Continual use (often on at least a weekly basis) has been claimed by five people commencing between 1953 and 1967, and a further seven people between 1979 and 1986. However, aerial photographs in 1960s and 1988 show NO evidence of use.

TABLE 2

**USERS STOPPED WHEN USING THE ROUTE:**

Number of times stopped	Timeframe	Before or after October 2012	User form
1	Oct 2012 - March 2013	After	Ashcroft
2	Unspecified	?	Rideout

**REPORTS OF HAVING HEARD OF SOMEONE ELSE BEING STOPPED:**

Number of reports	Number of people stopped	Timeframe	Before or after October 2012	User form
1	Unspecified	Oct - Dec 2012	After	Mott
2	1	Recent (unspecified)	Probably after	Nolan/Butler
1	Unspecified	Unspecified	?	Taylor
1	Unspecified	Within 2012	?	Forshaw M
2	1	Within 2012	?	Forshaw J and C
1	Multiple	Within 2012	?	Ashcroft
1	1	Summer of 2012	Before	Nicholson

**KEY:**

Incidents stated to be after the date of bringing into question (October 2012).

Incidents stated to be before the date of bringing into question (October 2012).

Unspecified dates which could be before or after the date of bringing into question (October 2012).

**COMMENT:**

The majority of reporters cannot give details or state the dates of relevant incidents. Their statements are therefore of little value in relation to Highways Act (section 31). However, one does state that she had heard of somebody being stopped in the summer of 2012 (before the date of bringing into question). Another reports multiple incidents ("various people") in 2012.

Ref Nos: JE/SBS/LSG4/804-544

[Jayne.Elliot@lancashire.gov.uk](mailto:Jayne.Elliot@lancashire.gov.uk)

16 November 2024

Dear Jayne,

**Thank you for your letter dated 7<sup>th</sup> November 2024**

I am responding on behalf of my brother Mark Forshaw of 176 Bescar Lane and myself, the proposed order route has always been part of the brook bank and a path has never been established, up until 2012 we allowed people local to Bescar Lane ( at their own risk) to walk over our section of the land which you identify as D- C on the attached plan with the proviso that they acted responsibly which they did; hence we gave our support.

**The emphasis being on local people acting responsibly.**

Post Covid however we have had an influx of people from further afield using the footpath from Woodmoss lane to D who have neither respect of boundaries or for the crops and no interest in acting responsibly with fouling or keeping their dogs on leads. We currently have a tenant on our farm who has turf on the field adjacent to D and FP14 on your plan, dogs are left to run loose on the turf on a regular basis resulting in dog mess all over the turf.

Although the land adjacent to the proposed route from C to A does not belong to us, I think that it is important to point out to you that it has a different tenant than in 2012, who is farming it with sheep and cattle as opposed to solely cattle, if dogs were allowed to run loose as they are on the footpath and on our land they would definitely be a danger to his sheep.

It's equally important to point out that to establish a permanent footpath would disturb the wildlife which now inhabits the bank, it has been left undisturbed for nearly 13 years. In 2012 it was only walkable for certain times of the year, in summer it used to be impassable because of the grass growth, now with the passage of time it has grown up into a typical wild riverbank.

**In view of these changes both Mark and I would like you to put on record that we are withdrawing our support for the 'order route' and would actively oppose it with statements and by attending any public inquiry.**

Thank you for bringing this matter to our attention,

Kind Regards,

John & Mark Forshaw

