

9. Copies of Replies to pre-Order Consultations

No.	REPLY	ADDRESS
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1.

Thu, 16 Dec 2010 14:10:44 -0000
To: "Khalid, Saleha" <>
Cc: "Hayes, Kerian" <>, "Turner, Jane
DMMO: Sandy Lane (St Joseph and St Annes Primary School)
Attachments: Objection to claimed FP.doc

Dear Saleha

Claimed Footpaths running from the south of public footpath
Claim No. 804/466

Please find attached the Landowners objection against the above claim.

I have just passed the hard copy to Kerian.

Please let me know if you need anything further.

Regards

Miss Ravinder Amrith
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Wildlife and Countryside Act 1981

**Claimed Public Footpaths running to the south of Sandy Lane (Public Footpath
No. 135 Accrington, Hyndburn Borough)**

Claim No. 804/466

S FOSTER AND OTHERS

APPLICANT

(Members of the
public)

and

LANCASHIRE COUNTY COUNCIL

OBJECTOR

(Landowner)

GROUND OF OBJECTION

AGAINST CLAIMED FOOTPATHS RUNNING FROM THE SOUTH OF PUBLIC
FOOTPATH NO. 135 ACCRINGTON, HYNDBURN BOROUGH
Claim No. 804/466

Preliminary matters

1. These grounds object to the Applicant's claim for a number of interconnected routes. Lancashire County Council as the Surveying Authority ('the Authority') has kindly provided a copy of the attached Committee Plan ('the Plan') at **Appendix LCC1** to assist in objecting to the same marked out points. The lengths identified by the Applicant and further marked by the Authority are, length A - X – Y - D, length E - Z - X and length Y - C. The claimed footpaths run over land to the south of Public Footpath 135 Accrington ('the Land').
2. These grounds are advocated by LCC as objector and also include and refer to the information provided by St Annes and St Joseph School ('the School') in document **LCC2** and the farmer ('Mr Guy') in document **LCC3**, attached. It should be noted that the School and Mr Guy may have already submitted or may submit comments in objection and that these are to be considered in addition to the landowner's objections and documents referred to herein.

The Land

3. Lancashire County Council is landowner ('landowner') of the Land edged red since 1949. See Plan attached at **LCC4** showing extent of ownership.
4. The Land is adjacent to St Anne's and St Joseph's RC Primary School ('the School') and the Land had been designated for the schools educational purposes.
5. The Land was licensed to Mr Guy offering mowing and grazing rights. Mr Guy used the Land for over 20 years both on a licence (**LCC5**) and informal basis up to 1990, subsequently the School took control over the Land.
6. The relationship with Mr Guy and the school unfortunately deteriorated as Mr Guy's cows graze the field and has meant that the cows had eaten new planted trees as part of the School's intention to develop the Land for a nature reserve and outdoor class room. Mr Guy to date uses the Land for grazing without permission, which has now had an adverse effect on the relationship with the landowner and Mr Guy, consequently this means that the landowner may find it difficult to obtain detailed information from Mr Guy on rebutting the three claimed footpaths.

Legal Issues

7. The Applicant is claiming by way of evidence of use forms that the claimed routes have been used on foot for over 20 years and therefore is claiming deemed dedication under section 31 Highways Act 1980 or dedication inferred at common law.

Section 31 Highways Act 1980

'...actually enjoyed...'

8. Whilst 29 evidence of use forms have been submitted to support the claim the landowner submits that there has not been sufficient use of one of the three ways for the required full period of 20 years. Four users have only specified which of the routes they have used. Question 3 on the user form asks *'Has the way always run over the same route'* and the four responses are: (1) *'Yes: two visibly worn paths traversing the field'*, (2) *'there are two visible defined footpaths traversing the field, I have always used the upper footpath'*, (3) *'I have usually walked across the middle of the field but there is also a path I use along the top of the field'* and (4) *'I have always walked across the footpath in the middle of the field although I believe there is also a path around the top'*.
9. The remaining 25 evidence of use forms do not specify which of the claimed routes have been used and it is submitted that there is a risk that the users are providing user evidence for all routes which indicates that an individual route had not been used for 20 years or more.
10. One form refers to a change of route, this being a gentleman who has known and used the route for 56 years and claims that the route changed slightly when the school was enlarged, again this questions whether the route he is claiming (which he does not specify which) was used for the required 20 years.

'...without interruption...'

11. The School and Mr Guy have on numerous occasions affected actual and physical interruption with the intention of stopping the enjoyment of the public's use of the routes claimed. See paragraphs 25 to 40 for more detail and includes at point A a stoned wall, repaired and strengthened over a substantial period a fence and signs; point C repaired and strengthened over a substantial period timber rail fence and barbed wire fence; point D repaired and strengthened over a substantial period metal railing and timber post fence; and point E repaired and strengthened over a substantial period a dry stone wall.
12. At point A despite there being erected shift gate and a barbed wire fence being erected to interrupt with the intention of stopping the access at this point, people continued to use the way by going around the side of the gate/wire fence, this means the public did interrupt within the meaning of the section 31 Highways Act 1980.

13. Mr Guy has challenged users face to face including challenging dog walkers and chasing them off. Mr Guy has stated he would need to be on the Land all day and night to stop people accessing the land illegally. Mr Guy mowed the land annually, during his tenure, more than once per week to check on his cattle and on each occasion he would challenge trespassers interrupting actual and physical enjoyment of the land, see LCC3.
14. For the reasons given above the landowner submits that none of the three ways claimed has been used without interruption.

'...as of right...'

15. Use has to be nec vi (without force), nec clam, (without secrecy), and nec precario (without permission). Use nec vi and nec precario are considered below.

Without force

16. Mr Guy had erected barbed wire fences when he first took the mowing and grazing licence for the land approximately 1970 and maintained obstructions through to 1990. Mr Guy had put in place metal guiders and wired up the fence lines on a regular basis at points A, C and D and states that the public continually cut through the fence wires. This is corroborated by the user Geoff Parkinson's (user evidence form dated 12 June 2004) response to question 4(c) as to whether he was prevented from using the way on foot to which he states "*Yes (at various times, barbed wire fencing has been erected)*" and to question 8 as to whether he was ever told that the way was not a public right of way, he states "*Yes (farmer) Dates unknown*" inferring there to be more than one occasion when the farmer had told the public that the land was not a public right of way.
17. The School made several attempts to obstruct and maintain the boundary of their field at points A, C, D and E as detailed in paragraphs 25 to 40 below and as much force as there has been to gain access the school has reacted and continually maintained and reinstating signs, walls and fences at points A, C, D, and E.
18. For the reasons given above the landowner submits that none of the three ways claimed has been used without force, it is clear on the ground at each point A, C D and E, that the structures have been maintained over a substantial period of time and at points the obstructions extended and reinforced with more substantial material.
19. The landowner which is the Estates of Lancashire County Council also refers the Authority to its 'Property Asset Management Information System' which records the work that has been carried out by the objector between 2004 and 2008 on repairing and erecting fence lines etc. see **LCC6**.

Without permission

20. The school gave permission on several occasions for the public to use the land, see LCC2. Permission given is corroborated in David Eastwood's user evidence where he states "No never but I was encouraged to use the path by former head Miss Egan" and goes on to state that he asked Miss Egan's permission to use the route after the school was built. Permission sought is further corroborated by Mr and Mrs Giordano who confirm that they asked the headmistress at St Annes' permission to use the way.
21. Two users (Maggie Lee and Joan Lee) state that they did not need to ask for permission "...stiles provided suggest right of way". A third and fourth user (Geoff and Mary Biscomb) also stated no permission "*always open via stiles*". The stiles erected were installed by Mr Guy after years of fixing the fence lines without permission of the School or the landowner. The installation of the stiles was primarily for the purposes of preventing people damaging Mr Guy's fences and letting his livestock out after years of maintaining obstructions at point A and C. Again the requirement *nec precario* is not made out. As to the Biscomb comments "always open", the farmer installed the stiles before this it was clear that the farmer struggled maintaining the fence lines due to damage by the public and did erect fences thereafter confirming the contrary that the way was not open always.

Contrary intention to dedicate

22. The notices erected on the Land clearly show contrary intention to dedicate.
23. It is submitted that notices at Point A erected clearly shows there was no intention to dedicate. User evidence corroborates notices erected in particular, Christine Azhir user form dated 15.06.04 states " I have only seen the 'private' sign on the car park of the school which was put up recently I have never seen any signs previous to this", Leigh Walmsley states "Private sign on fence this month June 2004", Maggie Lee and Joan Lee in their evidence dated 29 and 30 July 2006 respectively state "gate point next to the school but not placed on or near to any of the stiles", "Philip Andrews' evidence "no not until this week 13.04.07", Mr and Mrs Giordano evidence dated 9.10 2007 states "A sign on car park – had thought originally meant for there but told meant field", Mrs Brotherton's evidence dated 21.11.07 and Miss Wilson evidence date 20.11.07 both state notice summer 2007 located on the Sandy Lane side of the field and Miss Wilson understanding notice referred to the car park and not the footpath or field.
24. The Landowner does not agree with the comments about the notice was not understood for the Land at Point A. In June 2004 the Accrington and Rossendale College produced signage and the school erected at point A (see LLC2 Holden's information) corroborated by users referred to in the above

paragraph, sign erected were subsequently taken down. Early summer of 2007 the landowner erected a sign approximately 10 metres from point A notifying the public that premises and grounds are private property and anyone using the land would do so as a trespass. Three similar notices were erected in the parking area west of the Land, one of which faced the field over which the claim passes.

Specific points on the claimed routes

Length A – X – Y – D

25. Evidence of obstructions erected and maintained is stated in the schools evidence at LCC2 and Mr Guy LCC3.
26. Mr Guy has put in place metal guiders and wired up the fence lines on a regular basis for years starting from when he took on mowing and grazing rights in 1970 through to 1990.
27. At point A, Mr Guy then erected a make shift gate because he wanted to prevent people damaging his fences and letting his livestock out. Mr Guy had continually strengthened and repaired the fences and gate to discourage use.
28. Mr Holden (Chair of Governors) also erected barbed wire at point A (see LCC2).
29. Accrington and Rossendale College produced signage and the school erected gate and fences at points A, see LCC2 marked accordingly.
30. Early summer of 2007 the landowner erected a sign approximately 10 metres from point A notifying the public that premises and grounds are private property and anyone using the land would do so as a trespass. 3 similar notices were erected in the parking area west of the field, one of which faced the field over which the claim passes.
31. At point D there is no stile present. Metal railings and timber posts fences have been erected and maintained by both the college and the school, see LCC2 marked 'D'.

Length E – Z – X

32. Mr Guy has put in place metal guiders and wired up the fence lines on a regular basis for years starting from when he took on mowing and grazing rights in 1970 through to 1990.

33. There is a stone dry wall at point E which has been damaged on numerous occasions. The dry stone wall was rebuilt/repared in May 2005, every time work was done, it was knocked down again, in June 2006 the wall was rebuilt and Mr Holden (Chair of Governors) states he personally repaired the wall at point E on two separate occasions before 2007. In 2007 a workparty formed by a group of parents and governors took four nights of re-building the dry stone wall and again the wall was knocked down. The school was reduced to having a metal palisade fencing put up on the school side of the dry stone wall to secure the boundary so that we could persevere with the rebuilding of the dry stone wall; subsequently someone moved a section of the fence to open up access for people.
34. There is no stile or gate at point E but what is known is that Mr Guys attempts to obstruct his land beyond point E on the private track.
35. The Landowner refers the Authority to LCC2 and is marked accordingly as events/obstructions erected at Point E.

Length Y – C

36. Mr Guy has put in place metal guiders and wired up the fence lines on a regular basis for years starting from when he took on mowing and grazing rights in 1970 through to 1990.
37. Mr Guy did erect a stile at point C this was done to prevent people damaging his fences and letting his livestock out.
38. The school made substantial attempts to obstruct any access at point C, LCC2 provides a chronology including dates, marked accordingly.
39. Mr Guy also erect a stile after years of fixing fence lines. This was done to prevent people damaging his fences and letting his livestock out. The claimed route Y – C does not communicate with highway at point C, there is no supporting network and it is submitted that the evidence does not indicate a cul-de-sac, see below.

Cul-de-sac

40. The onward route at point C and D is the Accrington and Rossendale College's field, and the onward route at point D and E on the plan is a private track, neither the college field or the private track has recorded public right of way whilst the applicant refers to public use over a long period of the track the fact remains that members of the public do not have a right of passage on this track and the applicant whilst stating that the owner of the track consents to

public use this section is not recorded as a Highway on the County County's records and has not been the subject of this or any other claim under the Wildlife & Country Act 1981 to add it to the Definitive Map of Public rights of Way.

41. The fact the track has private status only, brings us to consider the law on public rights of way and cul-de-sacs. Whilst there is no rule of law that a way cannot be a right of way unless its termini are such other rights of way, thus a *"cul-de -sac path may be established as a public right of way where, by its nature, it intrinsically provides a public facility for example by affording views, even where it does not connect with another highway and thus forms a 'dead-end'"* it is submitted that the evidence in favour of the claimed footpaths does not indicate a cul-de-sac, there is no point of interest and further the evidence is clear that the users walk the route along the "private access road".
42. The objector refers the Surveying Authority to the Secretary of State's decision in its own Order FPS/Q2371/7/43². One of the two ways claimed ran around a reservoir and whilst the Surveying Authority view was that the evidence provided by the claimants shows that they walked along the spur path then returned by the same route, the Inspector disagreed and stated *"Nowhere can I find a statement to that effect in the evidence supplied by the claimants. It may indeed have been what some people did, but it seems clear from some of the forms that others continued beyond point F, either eastwards through the adjacent field and on towards Healey Nab or following the water's edge south east and south westwards back to point A..."*³
43. It is submitted that the decision as to whether or not to accept this claim should be consistent and in line with the Planning Inspectorate's finding in FPS/Q2371/7/43 and conclude that there is no evidence in this case to suggest that any of the three paths should be regarded as a cul-de-sac route which leads to a place of public resort.

Common law

44. Dedication at common law is an alternative in case the s31 claim fails.
45. The Applicant has submitted an undated Ariel photograph showing a long straight path which does not correspond exactly with the claimed length A – X – Y. A path running from point C appears to join the path between X and Y. The route to D or E is not shown and neither is X – Z – E.

¹ Paragraph 26 of The Planning Inspectorate's interim decision Order reference: FPS/Q2371/7/43.

² See copy at Document 3.

³ See paragraph 25 and 26 of the Decision Order FPS/Q2371/7/43.

46. It is submitted that the undated Ariel photograph coupled with the points raised above do not point clearly and unequivocally to an intention on the part of the landowner to dedicate. The burden of proof is a heavy burden resting on the claimant to prove the landowner's intention to dedicate and it is submitted that the owner has not acquiesced in use nor is there a formidable body of evidence to discharge this common law burden.

Conclusion

47. It is submitted for the above reasons that the order be not made.