

9. COPIES OF REPLIES TO PRE-ORDER CONSULTATIONS AND OMA'S RESPONSES

No.	RESPONSE	ADDRESS
1	Rob & Sheila Lyon	roblyon@cjlyon.onmicrosoft.com
2	Richard Durning's School	Clerk of the Trustees 1 Gorsey Lane Mawdesley Ormskirk Lancashire L40 3TE clerk@richarddurningscharity.org.uk
3	Oscar and Katrina Santa Maria	oscar@hitchenlegal.co.uk
4	Mr P. Slinger	Bentley Lodge Bentley Lane Bispham robert.slinger1@btinternet.com

Rob Lyon (roblyon@cjlyon.onmicrosoft.com)
Fri, 29 Oct 2021 13:21:42 +0000 (UTC)
To: "Moore, Simon" (Simon.Moore@lancashire.gov.uk)
LSG4.SM18.888.2629
Attachments: BENTLEY NURSERIES LAND .pdf

Hi Simon

I write this email on behalf of my late father Christopher John Lyon (I am a named executor of his estate) and his sister Miss Sheila Lyon.

I have attached a plan showing the boundary of Bentley Nurseries and also the original line of the footpath which entered the school field in the bottom corner shown on the plan and never ran through the land of Bentley Nurseries (I know this as I used this path many a time in my childhood).

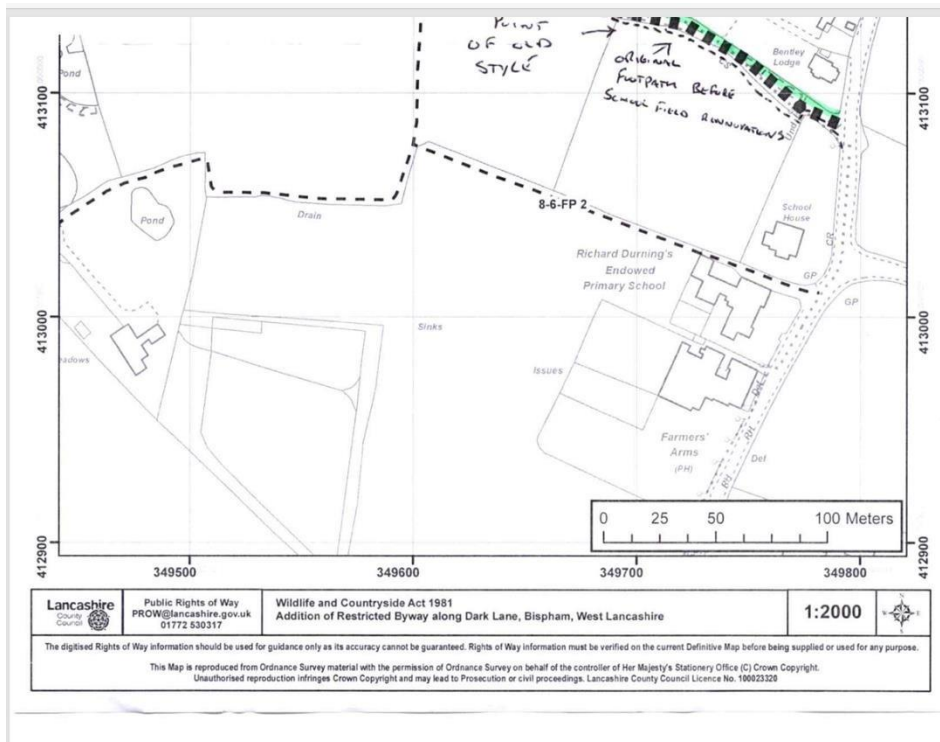
Please let me know your view on this but I am sure anyone with local knowledge of the area will confirm this to be true.

The style in the corner of the school field was removed around 10 years ago when the field was renovated and the running track installed, I guess this was also to add security for the primary school.

It is with this view that we would have to strongly object to any path or byway that ventured off the original footpath line and on to the land of Bentley Nurseries as the path has always been on the school field side of the dividing fence allowing foot access to those who used it as the only access at the top of the brook to the road is from the school field itself.

Kind Regards,

Rob Lyon MAAT, MICB
Partner/General Manager
07900 166732
01257 443390(Direct Dial)
www.cj-lyon.co.uk



Rob Lyon (roblyon@cjlyon.onmicrosoft.com)

Thu, 4 Nov 2021 14:41:17 +0000 (UTC)

To: "Moore, Simon" (Simon.Moore@lancashire.gov.uk)

Sheila Lyon Bentley Lodge - Objection to the addition of the restricted byway along Dark Lane to Bentley Lane, Bispham

Attachments: ADDITION OF RESTRICTED BYWAY ALONG DARK LANE BISPHAM MAP.PDF

Hi Simon,

I am writing to object to the above matter. My reason for doing so, is that the original Hawthorne hedge is still there and runs right up to the stream, and there are snowdrops, bluebells and daffodils right up to the stream and the boundary of our land is up to there. I have photos of said bluebells, snowdrops etc and wildlife (e.g. owls), and there are also bats. As for evidence in contrary to the application, my brother may have the original deeds to the boundaries of the land which will prove that this area of land is owned by us to the stream. The only pathway that we know was here before is on the school field side, not on our side.

Yours,
Sheila Lyon
Bentley Lodge,
Bentley Lane,
Bispham,
L40 3SN

Thu, 04 Nov 2021 14:55:00 -0000

To: Rob Lyon (roblyon@cjlyon.onmicrosoft.com)

RE: Sheila Lyon Bentley Lodge - Objection to the addition of the restricted byway along Dark Lane to Bentley Lane, Bispham

Hi Sheila,

Thank you for the further information. We are still at the consultation stage for this matter, seeking information prior to the council reaching a decision, you will be served notice going forward if an Order is made. At this point it is possible to lodge a statutory objection.

Kind regards

Simon Moore
Paralegal Officer
Legal and Democratic Services
Lancashire County Council
01772 531280

Please note that due to the ongoing pandemic County Hall is closed to the public and only minimal staff are present to complete essential tasks that cannot be carried out remotely. Legal staff are predominantly working from home and only attend the office when necessary.

5 Chestnut Close
Course Lane
Newburgh
WN8 7AH
28 October 2021

Dear Mr. Moon,

Application for Definitive Map Modification Order-
Addition of Restrictive Byway Along Dark Lane, Bispham

Your letter of 8 October 2021 to the chair of the Richard Durning's School Charity has been passed to me with a request to respond to it.

I am a trustee of the Charity and a former governor of the School. For 40 years until last year I was the owner and occupier of School House with my wife and family and so have a detailed knowledge of the history and uses to which the proposed path was put.

For the purpose of this letter I shall treat the proposed pathway as requiring separate comment – the first 30 yards or so as part 1 and the remainder as part 2. Part one covers the entrance from Bentley Lane down to the double gate (coloured red on the plan).

Part 2 relates to the remainder of the proposed pathway.

In 1925 the Earl of Derby sold the freehold estate of the playing field to the Charity. The Charity's title is now registered with absolute title at HM Land Registry. The conveyance to the Charity contained covenants for the erection and maintenance of boundary fencing.

In accordance with those obligations, a continuous iron railing was subsequently erected along the playing field boundary running along what was then called Dark Lane. I should say in parenthesis that it has never been called Dark Lane in the locality in modern times. Other wire and post fencing was erected along the other 3 boundaries.

Turning first to part 2, at an unknown later time a further iron railing was erected across the whole width of Dark Lane so that that lane became stopped up. It has remained stopped up ever since. Whilst one cannot say exactly when the stopping up occurred, 3 matters suggest that the stop up occurred a long time ago. Firstly, the iron railing is of an identical style and condition as the iron railing on the playing field. Secondly, I can verify that the stop- up railing was there 40 years

ago when I moved into School House and remains there. Thirdly, Geoffrey Monk, a patron of the Charity and former chair of governors and of the trustees, now in his 90th year that he has told me that to the best of his recollection the iron railing across Dark Lane has been there since the late 1940's.

I understand that the application before you has been made by the British Horse Society. An inspection of the former Dark Lane today will demonstrate why it was and remains stopped up. Immediately behind the railing is a precipitous drop of some 20/30 feet at the bottom of which is a brook. In flood over time the banks on either side of the brook have been washed away so as to create a ravine which would pose a serious threat to life and limb of man and beast should the stop up be removed. For those reasons it would be unthinkable to give part 2 of the pathway the status of a (however restricted) byway.

Turning now to part 1 of the pathway, I have given serious thought to the argument that the Charity could seek to claim a possessory title to this part of the proposed pathway. After all, the Charity has had the use of it for at least 40 years and more than likely 50 or 60 years. There do, however, seem to me to be at least 2 reasons why an attempt by the Charity to claim ownership by possession would be difficult to sustain. Firstly, it is a sine qua non that the claimant must be in occupation of the land. Whilst the Charity has used the path for access to the field it cannot really be argued that it has had sole use of it. I myself used it often to cut my hedge and trim the grass and weeds from time to time. Similarly, the Lyon family who have lived at Bentley Lodge (see plan) over 3 generations have not only cut their hedge but for some years before she died Florence Lyon cultivated the part of the land on her side to its midpoint with the specific purpose of preventing anybody else entertaining thoughts of possessory titles! Secondly, to claim a possessory title the claimant must be able to show occupation to the exclusion of other occupiers. If the Charity were to be regarded as an occupier, so would the Lyons- and when I lived at School House so would I!

Now I turn to what I regard as an unanswerable case that the Charity has a private (as opposed to public) right of way- an easement of necessity- consisting of the right to pass and repass over what I have called part 1 of the path for tractors, gang mowers and other mechanical vehicles for the purpose of entering and exiting the school playing field in order to enable the school to continue its ground maintenance, as well as putting on sports and other activities including the annual sports day, fairs and other money raising ventures which require marquees, stalls etc to be brought on to the field and removed afterwards. Essentially, no other access point than the double gated entrance already referred to, exists and so the Charity maintains that the grant of a restricted byway under the Wildlife and Countryside Act 1981 as amended is subject to any pre-existing private right of way such as the Charity's easement of necessity (see in particular see, Part 111 S56(i)(d)). Any attempt to override, remove or modify that private right would be robustly resisted.

I hope that you find the contents of this letter of assistance but if I can help further please me know.

I should be obliged if you would notify me of the outcome of the application and give me early warning should the British Horse Society plan to pursue the matter further once it has been acquainted with the contents of this letter. It follows from this that you may copy it to the British Horse Society's Secretary.

Yours Sincerely

Kenneth Wilkinson. (Vice Chair, The Charity)

Yours Faithfully

Mr Kenneth Wilkinson
5 Chestnut Close
Course Lane
Newburgh
WN8 7AH

Phone: 01772 531280
Email: Simon.moore@lancashire.gov.uk

Your ref:

Our ref: LSG4.SM18.888.2629

Date: 5th November 2021

Lancashire County Council does
not accept service by e-mail.

Dear Mr Wilkinson

**RE: WILDLIFE AND COUNTRYSIDE ACT 1981 – PART III
APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER
ADDITION OF RESTRICTED BYWAY ALONG DARK LANE, BISPHAM, WEST
LANCASHIRE**

I would first like to thank you for your detailed consultation response dated 28th October 2021. Comments made will be summarised in the report to be considered by the council's Regulatory Committee.

Further to our investigations do the Charity have a copy of a legal order stopping up the route prior to the erection of the railings mentioned in your letter? The erection of railings across the route does not itself constitute a stopping up of the route.

I look forward to hearing from you in due course.

Yours faithfully



Simon Moore
Paralegal

Please quote our full reference number on all correspondence

Oscar (oscar@hitchenlegal.com)
Thu, 4 Nov 2021 17:37:38 +0000 (UTC)
To: "Moore, Simon" (Simon.Moore@lancashire.gov.uk)
Cc: Oscar (oscar@hitchenlegal.com), Kate Hitchen (kate@hitchenlegal.com)
LSG4.SM18.888.2629 (Oscar and Katrina Santa Maria)
Attachments: School House.pdf

Dear Mr Moore,

Please find attached the outline of our property perimeter further to your letter earlier this month.

After reviewing the byway proposal we would like to put forth our objection to the project. The addition of a restricted byway we feel may actually cause intrusion to the natural habitat of some of the owls nesting in the trees along the brook. In addition, we don't feel that there would be any way for you to create a byway as there is no natural path way alongside the brook and in the spring we find many birds nesting there and also a beautiful natural forest of bluebells.

Please do not hesitate to contact us if you need anything further from us.

Yours sincerely,

Oscar Santa Maria Bethermy and Katrina Santa Maria
School House,
Chorley Road,
Bispham,
L40 3SL.

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Fri, 05 Nov 2021 12:45:00 -0000
To: Oscar (oscar@hitchenlegal.com)
RE: LSG4.SM18.888.2629 (Oscar and Katrina Santa Maria)
Attachments: image001.png

Dear Mr Bethermy,

My thanks for this response to our consultation, comments made will summarised in the report to be considered by the council's regulatory committee.

I would stress that the contention in such applications is that public rights already exist in law and thus should be recorded, the council is not seeking to create new public rights.

Kind regards

Simon Moore
Paralegal Officer
Legal and Democratic Services
Lancashire County Council
01772 531280

Please note that due to the ongoing pandemic County Hall is closed to the public and only minimal staff are present to complete essential tasks that cannot be carried out remotely. Legal staff are predominantly working from home and only attend the office when necessary.

Bentley Lodge

Bentley Lane

Bispham

Ref. LS94 SM18.888. 2629

1/11/21

Dear Sir/Madam,

I will be objecting to any change of the present footpath in the area near Bentley Lodge. There has never been a footpath on Bentley Lodge land. I do recall in the 1950's school children, including myself, walking on the school field side of the brook for nature walks with the Headteacher. It was also the route taken, by permission of the School Governors, by the Rector of Hawdesley Church for the blessing of the arable field on Rogation Sunday. That tradition became obsolete a long time ago.

The only footpath for Health & Safety reasons is the one marked FP2 on your map.

