

mbrindle006

From: Amrith, Ravinder **Sent:** 27/01/2014 11:34:40
To: Brindle, Megan
Cc: Walker, David; Bulger, Richard; Whitmore, Margaret
Subject: OBJECTION:DMMO Moorside, Claimed public footpath from Barton Road to Bowerham Road, Lancaster City

Megan

Wildlife and Countryside Act 1981

The Definitive Map and Statement of Public Rights of Way for the County of Lancashire

The Lancashire County Council Public Footpath from Barton Road to Bowerham Road, Scotforth (Definitive Map Modification) Order 2013

My Client: Landowner (LCC LSG/RKA/25.2840

I write in respect of the above Order with the live objection period running until 20 February 2014.

Please be advised that my client, the Landowner (including evidence in objection from LCC's Directorate for Children and Young People and Moorside Primary School) objects to confirmation of the Order and reiterates its points of objection already submitted to date.

As the Order with objection will be referred to the Secretary of State for determination, the Landowner confirms it wishes that the matter is determined by way of Public Inquiry. The Landowner therefore reserves the right to amend, amplify or add to its objection already submitted in the light of fresh evidence and/or any further submissions from MFCG or other persons in favour of the Claimed Route and the right to submit its 'statement of case' and 'proofs of evidence' as directed by the Secretary of State.

I look forward to receiving confirmation of the Public Inquiry date, venue and start date with timetable for exchange of documents.

Please acknowledge receipt of my client's formal objection to the Order.

Regards

Miss Ravinder Amrith

Solicitor

Environment and Resources

County Secretary & Solicitors Group

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From: Brindle, Megan
Sent: 22 January 2014 15:26
To: Amrith, Ravinder
Subject: FW: DMMO: Moorside, Claimed public footpath from Barton Road to Bowerham Road, Lancaster City

Please see below and attached.

Thanks

From: Brindle, Megan
Sent: 07 January 2014 15:37
To: Blackburn, Julie; Walker, David
Subject: DMMO: Moorside, Claimed public footpath from Barton Road to Bowerham Road, Lancaster City

Hi,

Please see attached a copy of the Order, explanatory statement, notice of making and a letter addressed to Julie Blackburn.

I have sent a paper copy of this in the internal mail today to Julie but wanted to make sure you both received it.

I have also sent a copy to 'The Chief Executive' as Lancashire County Council are the landowner.

Kind regards

Megan

Megan Brindle
Paralegal Officer
County Secretary and Solicitors Group
Office of the Chief Executive
Lancashire County Council
Telephone: 01772 (5)35604

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WILDLIFE AND COUNTRYSIDE ACT 1981

CLAIMED PUBLIC FOOTPATH FROM BARTON ROAD TO BOWERHAM ROAD, LANCASTER

LANCASHIRE COUNTY COUNCIL

CLAIM NO. 804/496

OBJECTION

ON BEHALF OF LANCASHIRE COUNTY COUNCIL AS

LANDOWNER

All references in this Objection to statutory provisions are to the Wildlife and Countryside Act 1981 unless otherwise stated.

Glossary:

Landowner –	Lancashire County Council
LO –	Landowner
the School –	Moorside Primary School
the Objector –	Landowner, CYP and the School
CYP –	Directorate for Children and Young People
LO Land –	Landowner's land edged red on the Plan
the Plan –	Plan reference v1.2p and dated 29.01.13
School Playing Fields –	marked 1, 2 and 3 and shaded Pink on the Plan
Barton Road Playing Field –	marked 5 and shaded blue on the Plan

Gressingham Drive Fields –	two fields marked 4a and 4b and shaded yellow on the Plan
School's Land –	marked 6 and shown white on the Plan
Claimed Route –	shown as a purple dashed line and marked A to B on the Plan
MFCG -	Moorside Field Community Group
DMS –	Definitive Map and Statement

INTRODUCTION

1. These grounds object to the MFCG's claim for a route from (A) Barton Road to (B) Bowerham Road ("Claimed Route") shown on the plan with reference v1.2.p ("the Plan") at **Appendix LO1**.
2. These grounds are advocated by the LO and include evidence from CYP and the School and collectively will be also referred to herein as ("the Objector"). It should be noted that the Objector may have already submitted and or may submit comments in objection and that these are to be considered in addition to this objection and documents referred to herein.
3. This objection is made on the basis of the evidence and information currently available to the LO. The LO therefore reserves the right to amend, amplify or add to this Objection in the light of fresh evidence and/or any further submissions from MFCG or other such persons in favour of the Claimed Route.

LANCASHIRE COUNTY COUNCIL'S LAND OWNERSHIP

4. The LO is the freehold owner of land edged red on the Plan.
5. Barton Road Playing Field (shaded blue and marked 5) and Gressingham Drive Fields (shaded yellow and marked 4a and 4b) are managed by the LO. The School Playing Fields (shaded pink and marked 1, 2 and 3) and the School's Land (shown white and marked 6) are managed by the School.
6. The Barton Road Playing Field is a site held for use by local schools which do not have on-site playing field provisions. The schools that can choose to use these fields in addition to the School are Scotforth St Pauls CE Primary School and St Bernadettes RC Primary School. The alleged Claimed Route crosses the northern section of the Barton Road Playing Field.
7. The Gressingham Drive Fields are two fields marked 4a and 4b and shaded yellow on the Plan. The Gressingham Drive Fields were subject to a mowing and grazing tenancy agreement for twelve years between 1989 to 2001 during the relevant period 1988 to 2008. From October 2001, the two fields have been retained by the Landowner for future educational provision by way of a new school facility. The alleged Claimed Route crosses the south of Gressingham Drive field marked 4b.
8. The School Playing Fields are shown shaded pink on the Plan and marked 1, 2 and 3. School Playing Field marked 1 is a drained and developed playing field for sport purposes. It is frequently used by the School and during the school year has marked out running lanes, football and rounder's pitches crossed by the alleged Claimed Route. School Playing Field marked 2 is an

area of undeveloped land held as part of the Moorside School site. School Playing Field marked 3 is a former allotment site that was from 1st April 1982 leased to the Moorside Allotment Holders Association until they terminated the Agreement on 31 March 1995.

9. The School Land shown white and marked 6 on the Plan forms the School's grounds. To the south of the School there has always been available a permissive path available for the public to use and make access to school easier from the Hala estate. The School has managed the footpath to make available the line to be walked on by the public. At the time the Claimed Route was brought into question the route had been re-constructed to provide a dual footpath/cycle path as shown in brown on the Plan.

THE SUBSTANTIVE LEGAL BACKGROUND

Procedural matters

10. The procedural matters are set by section 53(2); a Registration Authority is required to make modifications to the map and statement as soon as reasonably practicable after the occurrence of 'an event'. The applicable activating event is that stated at subsection 53 (c) (i) *"the discovery...of evidence which... shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land is the area to which the map relates, being a right of way such that the land over which the right subsists is a public path..."*

11. The proper approach to the application of section 53 (c) (i) at the stage where a modification order is to be made was considered to be as follows in *R. v SSE, ex. p. Bagshaw and Norton (1994)* does the evidence produced by the claimant together with all the other evidence available show that either (a) a right of way subsists? Or (b) it is reasonable to allege that a right of way subsists.
12. The LO accepts that the approach advocated in *Bagshaw* properly applies to the making of a modification order. However, when an order modifying a DMS comes to be confirmed under s.53 (6) of and Sch 15 to the Act, the Registration Authority cannot confirm the order if satisfied *only* that the allegation of the subsistence of the way was reasonable. Rather, he must be satisfied on the balance of probabilities that the way subsists: see *Todd v, SoS* [2004] 1 W. L. R. 2471 at [51].
13. The Applicant is claiming by way of evidence of use forms that the Claimed Route have been used on foot for 20 years and therefore is claiming deemed dedication under section 31 Highways Act 1980 or dedication inferred at common law.

Substantive legal test

14. The substantive test as to whether a right of way subsists is set by section 31 Highways Act 1980. Under section 31 Highways Act, MFCG must satisfy each of the following tests:
- (1) Enjoyment by the public "as of right": not by force, nor stealth nor by the licence of the Landowner;

(2) Without interruption. This is actual interruption of the enjoyment of the right;

(3) For a full period of 20 years.

15. If any one of these tests is failed, MFCG will not have established that the statutory presumption of dedication is made out. For the avoidance of doubt, it is the LO submission that none of these tests are made out, and MFCG case must fall at this first hurdle.

16. In any event this statutory presumption is rebuttable by evidence that the LO did not intend to dedicate the way as a public right of way. It is the LO submission that there is substantial evidence before Regulatory Committee of acts by the LO that are inconsistent with any intention to dedicate the alleged line of the Claimed Route as a public right of way.

17. The relevant 20 year period is to be calculated retrospectively from the date when the right of the public to use the way was brought into question. In the present case, the LO granted Lancaster City Council a licence to carry out construction works as part of the cycle scheme shown on the Plan marked brown as the 'dual use path' and as part of the construction works a fence was erected with the last job of installing and locking the gate shown on the Plan marked with a 'G' on 3 July 2008 see **LO2**. Accordingly, the relevant period during which MFCG must demonstrate user of the path is July 1988 to July 2008.

18. In the event that the statutory presumption of dedication under section 31 Highways Act 1980 is not established, a way may still be dedicated at common law but as demonstrated on the second limb of the statutory presumption test above, the Objector evinces many acts to demonstrate lack of intention to dedicate.

THE OBJECTION

EVIDENCE OF USER

19. The Objector does not intend to address all of the user evidence in this Objection, but merely seeks to highlight the inadequacies in the evidence that has so far been submitted and to show that there has been insufficient use of actual enjoyment of the way for the period required 'as of right'.

19.1 All user evidence forms ("UEF") attach the same marked out plan showing the alleged Claimed Route and it is submitted there is the risk that the line claimed is not necessarily the line walked. This is corroborated by the fact that users indicate various routes crossing over the beck.

19.2 A material proportion of the users indicate that they did not use the same route across the land;

19.3 A user further confirms there was some variation over the Barton Road football pitches with no distinct path on the Barton Road Playing Field;

19.4 Users remember a wooden gate at the access to the land on Barton Road at point A evidencing users would have used the way by force.

- 19.5 One user identifies she walked through the gate marked on the user plan with a cross, but the gate identified is not sited on the Claimed Route, confirming she did not use the line of the Claimed Route.
- 19.6 20 out of 45 responses say there is no signage. The remaining 25 state that the only signage is the new ones installed in 2008 after the completion of the cycle path but see evidence dealing with Notices when proving landowners contrary intention to dedicate, below.
- 19.7 One respondent states that *"someone I knew asked the head teacher of the school for permission to access the land"* confirming use was not 'as of right';
- 19.8 Aerial photographs submitted both by the School and by MFCG does not show any marked out path of the Claimed Route during the relevant period on fields 1, 2, 3, 5 and confirms the permissive path within area 6;
- 19.9 Further 31 respondents state that they walked their dogs over the school field (despite the signage) – confirming that they believe the application is for open access to dog walkers, not a right of way from A to B.
- 19.10 MFCG general approach has lacked direction and is inconsistent. For example, the group considered changing the line of the Claimed Route however did not.
- 19.11 A number of the routes claimed are not the shortest or most logical route to take between the points given, for example 4 users all state

that they use a route across the fields between 37 Chester Place and 221 Bowerham Road. One user claims the route as a shortcut from 37 Chester Place to the playground on Winchester Avenue when in fact it is far longer via this route. One user states a route from Ulster Road to Barton Road and lives at Lily Grove. None of these destinations require access via the Claimed Route, as they are all north of Barton Road and therefore brings into question their credibility. One user who confirms she lives on Brookside states the Claimed Route provides her with a shorter route, however it is submitted anyone living on Brookside would use the informal access from Brookside through the community centre car park, as confirmed in the evidence of Richard Wood at **LO3(1)**.

19.12 One user confirms that there is not a single identifiable right of way across the LO Land and mentions various routes/crossings over the beck.

19.13 Two users claim to have looked after the fields however; responsibility for the School Playing Fields for grounds maintenance has always been with the School. The Applicant in fact, being fully aware that the School Playing Fields including the LO Land has always been owned by the LO and controlled by the School, has approached the School on occasions before the event of the installation of the gate to voice their opinion on the school's mowing regime and further asked for specific consent to use the LO Land.

19.14 A material number of users state that they have visited the field to watch school sports day which suggests an understanding that part of

the Land forms the School's Playing Field and that s/he was on the Land with permission/licence. Indeed the School has and continues to hold sports day on the School Playing Field marked 1 where it permits spectators to watch.

19.15 User evidence that they walked the Claimed Route A to B does not stand up to the fact that there are no defined paths on 1, 2, 3, and 5 and are on 4a and 4b. The path constructed by the LO on land marked 6 and now a dual use path as shown on the Plan, was used with permission, there were no Notices regarding ownership or trespassing ever erected on this path, constructing and making the full length from Bowerham Road to Gressingham Drive available. By sharp contrast, once users came off the path at point G on the Plan, there was a clear Notice advising the public that playing field 1 was the Schools playing Field and the reasonable user would have understood that the members of the general public were not permitted on this land.

INTERRUPTION... 20 YEARS CONTINUOUS USE...

20. For the reasons set out below the Landowner submits that the alleged Claimed Route has been used with sufficient interruption. Sufficient interruption during the relevant period demonstrates that users were prevented from actual enjoyment and cannot evidence using the Claimed Route for a continuous 20 years.

Barton Road Playing Fields

Fenced off as per line of drainage easement

21. There has been actual and physical interruption of users enjoying the Claimed Route from A to B. For a period of over 9 months between July 1989 and April 1990 the Lancaster City Council carried out works in respect of the Bowerham Flood Relief Scheme Phase 2 ("the Scheme") see **LO4(1) to LO4(8)**. In order to effect the Scheme, Barton Road Playing Field was fenced off on the line of the 'drainage easement' as shown on the plan in appendix **LO4(6)** and for ease of reference marked out in green and indexed 'drainage easement' on the Plan **LO1**. For the avoidance of doubt, whilst the Scheme was referred to as the Bowerham Flood Relief Scheme, the Scheme affected the Barton Road Playing Field marked 5 on the Plan.

22. The works to achieve completion of the Scheme clearly evidences insufficient use of the way for the period required (1988 to 2008), the construction works interrupted actual enjoyment of the continuous line of the Claimed Route from A to B.

Sport activities

23. The Barton Road Playing Field currently has two marked football pitches to the southern end of the Barton Playing Field. There was further a proper cricket square marked out opposite point A on the Plan and next to this cricket square, a properly marked out hockey pitch. Both the cricket square and the hockey pitch were marked out on the line of the alleged Claimed Route on the Barton Road Playing Field.

24. The evidence submitted in appendix **LO4(1) to LO4(8)** corroborates the existence of the cricket square and hockey pitch and their position. **LO4(1) to LO4(8)** is evidence taken from the Lancaster City Council's file on the Bowerham Flood Relief Scheme. The letter dated the 5th July 1989 at **LO4(4)**, hand written notes **LO4(5)** with attached plan **LO4(6)** confirms a meeting on the sewer scheme which ironed out some concerns. One concern addressed as the first point in the letter reads *"The temporary access road is not to be taken where there is a natural break in the hedge onto Barton Road, because it would affect the football and the cricket pitches, and perhaps prevent their use"*. The plan referred to in this letter at **LO4(6)** shows a revised access for implementation of the Scheme, the access was moved north of the natural break in the hedge being point A on the Plan. The Grounds Maintenance Manager has further clarified in his evidence at LO3 that what the Lancaster City Council have referred to as a football pitch was actually a cricket pitch "...that looks very similar to a 7 aside football pitch..." The **LO3** accepts that players did engage in a game of football on the cricket pitch but the purpose of the game is irrelevant, the existence of two pitches on the line of the alleged Claimed Route on the Barton Road Playing Field caused sufficient interruption in use.

25. As Lancaster City Council has corroborated, the cricket pitch and hockey square were in use during construction works to implement the Scheme with the Scheme ultimately interrupting the continuous line of the alleged Claimed Route being available for a substantial 9 months within the relevant period claimed.

26. There is evidence in the way of a file note confirming the sport lettings on the Barton Road Playing Field to be in existence dated 19 August 2005 at **LO5**. It is evident that 4 different groups were actively using with the LO's permission and using the Barton Road Playing Field for football and for other generic use. There were two football clubs namely, Lancaster Free Methodist who rented the football pitch on a Saturdays between 2 p.m. and 4 p.m. and a fee was charged. The second being Bowerham FC again for football on Sundays from 2pm to 4 pm. Barton Youth and Community Centre Lancaster City Council and the schools in the area had further use of the Barton Road Playing Field. There is further corroboration at **LO6** of the Lancaster Free Methodist Church Football Club that they were still letting in 2010 and a second Lancaster Giants FC were letting. It is submitted that the hockey and cricket/football pitch at the north of the field and the general use by other groups with permission from the LO, sufficiently interrupted the use of the line of the alleged Claimed Route during and outside school hours to have been actually enjoyed for a continuous period of 20 years.

Gressingham Drive Fields

27. It is confirmed that the Gressingham Drive Fields marked 4a and 4b have had a mowing and grazing licence since 1989 to 30 September 2001 see **LO7**, the mowing and grazing licence totalled 12 years within the relevant period of the Claimed Route (1988 to 2008). It is clear that anyone of the users would have either encountered the actual and physical mowing and grazing of the Gressingham Drive Fields and interrupted use or at least would have taken note that the Gressingham Drive Fields to have been mowed and grazed and

the reasonable user would have understood the lack of landowner intention to dedicate.

School Playing Fields

28. The Plan shows the School Playing Fields shaded pink and marked 1, 2 and 3.

The line of the alleged Claimed Route crosses the School's Playing Field and it is to this extent that the School has produced the following evidence.

29. 46 evidence forms at **MS1(18)** have been submitted by the School on behalf of the Moorside Community. The form includes the question *"Have you attended school events on any parts of the land"* and 37 out of the 46 users have said yes and indicated on the plan in the evidence form that the school events have taken place on the School Playing Field including the School Playing Field marked 1 on the Plan. 5 evidence forms have not attended school events so there is no indication of location of school events. 2 evidence forms have only attended the school fair event which only took place post 2001 on the School Playing Field marked 2 on the Plan as anti-social behaviour including damage to the stalls was caused by teenagers.

30. The evidence forms show that school events included annual sports days and football tournaments during and after school hours, physical education lessons held by the School during the day and evening, parent teachers association events, science lessons, sponsored walks with permission, rounders, rugby matches and training have taken place on the School Playing Field marked 1 for the whole relevant period 1988 to 2008. **MS1(22)** provides independent evidence of football tournaments on field 1 on Friday 31 December 2004 in The Lancaster Guardian newspaper. The evidence provides sufficient

interruption for the full 20 years and it is clear that users would not be able to walk the specific line of the alleged Claimed Route on the School Playing Field marked 1.

31. The Grounds Maintenance Manager in appendix **LO3(1)** further confirms that during a twelve month period, a football pitch was marked and used from April until August and then a rounder's pitch was marked out and used from September to April meaning the School Playing Field marked 1 being used every month of each year.

32. The School has further submitted evidence forms from six teachers of the School dating back to 1995. In the evidence of Michelle Dent at **MS1(29)** she confirms that she has been a teacher at the School since April 1995 and confirms the use of the School Playing Field marked 1 as already listed in paragraph 30 above, again confirming sufficient interruption of the line of the Claimed Route.

33. Ms Dent also confirms that she on many occasions asked unauthorised persons on the School Playing Field marked 1 to remove themselves from the field. Ms Dent has further confirmed that unauthorised persons tended to be dog walkers and confirms they were definitely roaming as opposed to walking the line of the Claimed Route. Ms Dent confirms her words to dog walkers to be *"Excuse me, would you mind taking your dog somewhere else, this is a school field and there are children trying to have a PE lesson"*. Ms Dent further elaborates on her acknowledgement of walkers taking a short-cut and confirms *"No specific line, I have seen people walking from different directions, I have not noticed specifically that it is well used in one particular way on and off the*

field, I would also say that the field is and never was a busy thoroughfare. If there was a well used route there would have been a worn path in the grass and there never was. See photos". She further confirms she has told trespassers that it is the school owned field *"Yes. The boys on motor cycles were ex-school pupils so knew. Some of the other trespassers just stared ahead not wanting to engage in conversation".* As regards difficulties Ms Dent has experienced *"Yes, one lady owner, a few ago, was told she was on school property. She left the field but then returned and walked straight through my class P.E Lesson. I did not confront her as I was alone with my class."*

34. School teacher Jonathan, confirms that *"people moved from the field when I take the children out for their weekly PE lessons outside".* Another School teacher confirms *"In Autumn term 2004 both year 5 classes were on the field – walking all around it – there were 3 people with dogs on the field. All 3 were asked to leave. We did explain that the children were having a science lesson in the school fields. 2 of the dog owners left. One, however, was not willing to leave. He did leave, but returned with the dog before the end of the lesson.* School teacher Gail confirm she has always told trespassers that the field is school owned and as regards difficulties states *"Yes, I have been ignored, I tend not to confront people again if they are ignoring me as it is intimidating for me and am always worried about angry/aggressive behaviour in front of children".* It is submitted, continued use after being told to leave the field, was by force.

35. A further report was submitted by two teaching assistants both Mrs McNulty and Mrs Whiteway confirming that they ran a lunchtime football club for 4 years from 2000 to 2002 on the School Playing Field 1, again this would have

interrupted use of the Claimed Route. The report does acknowledge that they had problems with dog mess, dog walkers would not leave the land when requested and that they encountered specific problems from a dog named Tyson and its teenager owners joining in on the school's football game or chanting inappropriate instructions to the school children. For these problems the football club ended. It is clear that unauthorised dog walkers and teenagers once asked to leave were using the land by force.

36. A further sufficient interruption was the fact that the football goalposts and pitch on the School Playing Field marked 1 sited at the border of the field with the yellow area marked 4a on the Plan, at the point at which the claimed path takes a diagonal route across the School Playing Field 1 see plan at **MS1(29)**, the plan provides a view of camera and location of goalposts shown with a circle and photograph **MS1(29)** corroborates the position of the goal posts. It is submitted the goal posts and the pitch itself, being crossed by the alleged Claimed Route, would have sufficiently interrupted user using the defined line. Further, it is clear that there is a further informal access point south on field marked 4a see **MS1(3)** point I and photographs at **MS1(16)**.

37. Prior to the fence and gate erected in 2008 which brought the Claimed Route into question, the School has submitted evidence of the fence which previously existed, the old fence ran the length of the right hand side of the area marked 1 and in the same location as the new fence (shaded brown on the Plan) shown in photographs **MS1(29)**. Whilst there were no gates at the time of the photograph, photograph **MS1(17)** at point E shows an old stone gatepost near point E and it is submitted that a gate had previously existed in that place which would have interrupted use of the Claimed Route.

'...AS OF RIGHT...'

38. 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.

With permission

Dual use path on School's Land

39. The Claimed Route from B (Bowerham Road) to G marked on the Plan has always since the time the school was constructed been a permissive path for the public to use and in particular was used by parents and school children from the Hala estate. The School has always maintained it as a permissive path and more recently and prior to the Claimed Route being called into question, allowed Lancaster City Council to construct a dual use path. It is confirmed that there were no landownership Notices erected on the permissive path, the path being constructed and maintained for use by the public, use of the path was with permission, not 'as of right'. This is further corroborated by the fact a Notice existed at the entrance of the School Playing Field marked 1.

40. Permission had been given by the Objector for football and other sporting events to take place on the Barton Playing Field and the School Playing Fields.

By force

41. School teachers told unauthorised persons on the School Playing Field marked 1 to leave the School Playing Field and it is submitted that unauthorised use would continue by force, School teachers being intimidated

to confront further as the presence of school children put them in the vulnerable position.

42. Further, the two Notices that were erected on the Barton Road Playing Field (see below for details), one at point A and the other opposite Wakefield Drive were pulled down without permission, it is submitted the public understand the implication of the Notice, that the public were deemed trespassers and were unauthorised to use LO Land, the public did not like the LO asserting its control over its land and whilst pulling one of the Notices down, the LO re-erected the Notice see **LO12**, again reiterating and asserting its ownership and control of the Land edged red. It is submitted that any subsequent use was by force.

"CONTRARY INTENTION TO DEDICATE"

43. Whilst the LO submits that the first limb of the statutory test fails it further submits that MFCG must fail at the second hurdle, it is submitted that the Landowner throughout the relevant period can evidence contrary evidence to dedicate.

NOTICES

Barton Road Playing Field

44. Throughout the relevant period, signs have been erected notifying the general public that the Land is private property and those trespassing or causing a nuisance, including the playing or practising of games or sport and the exercising of animals on the Barton Road Playing Field would be committing an offence ("the Notice").

45. The Notice, throughout the relevant period appears three times on the Barton Road Youth and Community Centre. One on the Barton Road elevation, one to the playing field gable end and one on the opposite gable end of the building facing Brookside. Pictures of two of the Notices are shown at **MS1(12)**. At **LO3(1)** Richard Wood ("the Grounds Maintenance Manager") confirms in his evidence that the two signs on the Barton Road and the playing field side of the building have been in existence *"as long as I can remember"*. It is submitted the signs existed during the whole of the relevant period 1988 to 2008.

46. The Grounds Maintenance Manager further confirms that the same Notice with the same wording was erected at two of the access points onto Barton Road Playing Field. The three access points have been marked with a black cross on the Plan. One informal access is at point A of the alleged Claimed Route, the second opposite Wakefield Drive and the third at the south of the Barton Playing Field. The Notice at point A on the Plan and opposite Wakefield Drive were erected in 2005 see **LO8** and whilst the reason for erecting the Notice was fuelled by the problems with golf balls see **LO8** it is clear from the Grounds Maintenance Manager, the LO and the Notice itself, that the LO was not just dealing with the golf ball problem but took the opportunity to yet again assert its full control over its land. The LO confirms that the same Notice was also erected at the third informal access near Lentworth Drive prior or on 2005, the Notice has and still remains erected see **MS1(12)**.

47. The Notice on the Barton Road Youth and Community Centre and at the three informal access points read as follows:

LANCASHIRE
COUNTY COUNCIL

"THESE PREMISES/GROUNDS ARE PRIVATE
AND FOR THE USE ONLY OF AUTHORISED
PERSONS CONNECTED THEREWITH.
PERSONS TRESPASSING OR
OTHERWISE CAUSING A NUISANCE OR
DISTURBANCE, INCLUDING THE
PLAYING OR PRACTISING OF GAMES
OR SPORT, AND THE EXERCISING
OF ANIMALS ON THESE PREMISES
ARE COMMITTING AN OFFENCE AND
MAY BE LIABLE TO PROSECUTION

48. The wording of the Notice is entirely consistent with a landowner wishing to assert its control over the land in question.

49. It would have been obvious to anyone entering the Barton Road Playing Field that this was owned by the LO with 'Lancashire County Council' underlined. Secondly, any reasonable person would have read the sign as meaning that authorisation or permission from the Landowner would have first been required to use the Barton Road Playing Field and the LO Land for any purpose.

50. Thus, the only sensible way to read the Notice would be as evidence that the Landowner had absolutely no intention of allowing the public at large to use the Barton Road Playing Field marked 5 and the land marked 4a and 4b, 1, 2 and 3. It is only reasonable to accept that the public at large would have understood that if a piece of land (Barton Road Playing Field) is private property and permission is required to use it in any way, and that private land

leads to adjoining fields (4a and 4b, 1,2 ,3) that those adjoining fields too are private property and the Landowner has absolutely no intention to dedicate.

51. The detailed wording of the Notice makes it clear that LO's Land was private property; that only people with permission from the Landowner could come onto it; that any use had to be connected with the private use of the land; and that trespassing and persons causing a nuisance or disturbance, including the playing of games and the exercising of animals would be committing an offence and liable to prosecution.

School Playing Field marked 1

52. Further, Michelle Dent, a teacher at the School since 1995 recalls in her evidence at **MS1(29)** that there was a Notice erected at the entrance of the School Playing Field marked 1, as marked with a 'N' on the Plan. Ms Dent confirms that the sign confirmed ownership of the School field and states *"...The older sign stated it was a school playing field. I remember it was old, there was also an old fashioned bin, metal slats with metal bin inside, old school ones..."* Evidence of the existence of the Notice is further corroborated by the evidence of School teacher Gail at **MS1(28)**. It is submitted, in this context particular – and context is critical – accepting the Notice was on the School Playing Field, that it would have been obvious to anyone entering the School Playing Field that it was at least managed if not owned by the School, secondly, any reasonable person reading the Notice would have understood, the Notice sited on the School Playing Field, authorisation or permission from the School would have first been required to use the School Playing Field for any purpose.

53. As such, all Notices are sufficient to rebut any presumption of dedication.

MFCG'S KNEW PERMISSION WAS REQUIRED TO USE THE LO LAND

54. It is submitted not only would a reasonable user have understood that the Landowner had no intention to dedicate the LO Land but further MFCG, actually knew and understood and actually obtained the express permission of the School for use of the Land, see **MS1(33)**.

55. Mike Worth, Chairman of the MFCG, explains the MFCG is made up of, chairman, secretary, treasurer and six elected committee members and has a total membership of 70 members and continues to state "...3 We have identified various sources of funding and professional assistance to achieve the aim of the group: which is "to enhance the area known as Moorside Fields, as a community resource and conservation area...4 One of the tasks within this aim requires the permission and co-operation of the school".

56. It is submitted, MFCG understood that the LO Land was LCC owned and further that the School Playing Field was in the control of the School and permission was required and further the co-operation of the school was needed. For MFCG to assert that they did not understand permission was required would accept they are able to play mental acrobatics.

57. MFCG knew permission was required "to enhance the area known as Moorside Fields, as community resource and conservation area" ("MFCG") and it is submitted that MFCG would not be able to assert that permission was not required in respect of the Claimed Footpath, again to hold otherwise is to

say they are able to play mental acrobatics, MFCG knew permission was required for 'any' use including using the LO Land as a short-cut and it was clear to MFCG that the Landowner had absolutely no intention to dedicate.

58. The LO respectfully request the Regulatory Committee to consider the law on this principle, that is, if a user and in context in this particular matter MFCG as a group and the Applicant to the Claimed Route admits to LO Land being private and any use requires the School or the LO's permission, has an important bearing on the second limb of the statutory test, that is the intention of the owner is not to dedicate.

Gressingham Drive Fields

59. It is submitted that it would have been clear to the reasonable user on observing the Gressingham Drive Fields being mowed for at least 8 months each year for 12 years what the landowners intention to be, that is the Gressingham Drive Fields to be mowed with permission /licence by a farmer, being inconsistent with an intention to dedicate and the Gressingham Drive Fields not to be used by the public.

General understanding that permission was required to use the LO Land

60. It is submitted that in addition to the MFCG asking for express permission to use the LO Land from the School, there was a general understanding in the community of Moorside that the LO Land was either owned or controlled by the LO or the School.

61. This general understanding can be evidenced by various requests for permission for different activities. Permission was sought for a fireworks

display on the Barton Road Playing Field see **LO9**, a letter of complaint on 10 September 2005 after one of the standard notices was erected following the problems of golf balls etc causing a nuisance to adjacent home owners. The letter makes clear how the notice was understood, that is, the no exercising of animals or children for playing see **LO10**. A deed of grant was entered into having received a request from a landowner abutting the School Playing Fields shaded pink and marked 1 on the Plan see **LO11** again showing that the Moorside community understood there was no intention to dedicate the LO Land. School teachers asking unauthorised person to leave the School Playing Field. The Objector letting the LO Land for football and other sporting activities to take place with permission during and after School hours.

Common law

62. Dedication at common law is an alternative in case the s31 claim fails.

63. There is no map evidence to show that there was a worn path on LO's Land marked 1, 2, 3, 5 and 6. See the map evidence produced by the School at **MS1(2), MS1(13), MS1(14), MS1(16) and MS1(17)**.

64. It is submitted that the points already raised in this objection clearly demonstrates there is contrary intention on the part of the Landowner to dedicate. The burden of proof is a heavy burden resting on the MFCG to prove the Landowner's intention to dedicate and it is submitted that the Landowner has not acquiesced in use nor is a formidable body of evidence to discharge this common law burden.

Conclusion

65. The Objector submits for the above reasons that the order be not made, there is not sufficient evidence produced by MFCG together with all the other evidence available to show that a right of way subsists or it is reasonable to allege that a right of way subsists on the following grounds;

- a. The test for statutory presumption of dedication under section 31 Highways Act is not made out, and MFCG case must fall at this first hurdle;
- b. In any event this statutory presumption is rebuttable by evidence that the Landowner did not intend to dedicate the way as a public right of way.
- c. Moreover, and for all of the reasons stated in this Objection, there is insufficient evidence of a common law presumption of dedication.
- d. Should for any reason the Registration Authority *make* the order it is further submitted that the Registration Authority cannot further *confirm* the order if satisfied *only* that the allegation of the subsistence of the way was reasonable. The Landowner submits that the Registration Authority cannot be satisfied on the balance of probabilities that the way subsists for all of the reasons and grounds stated in this Objection.

Dated this 29th day of January 2013

mbrindle006

From: Arif.Jamadar@atkinsglobal.com **Sent:** 21/01/2014 11:42:08
To: Brindle, Megan
Subject: No Objection : LSG4/MB3/5.35937/MB3; Barton Road To Bowerham Road, Scotforth
Attachments: image001.jpg, Scan-to-Me from 10.30.9.234 2014-01-15 094958.pdf,

This response is made only in respect to electronic communications apparatus forming part of the Vodafone Limited electronic communications network formerly being part of the electronic communications networks of Cable & Wireless UK, Energis Communications Limited, Thus Group Holdings Plc and Your Communications Limited.

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

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.

Many thanks.

Plant Enquiries Team

T: 01454 662881

E: osm.enquiries@atkinsglobal.com

ATKINS working on behalf of

× cid:image001.jpg@01CE2F8,

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From: Alison.Friend@atkinsglobal.com [mailto:Alison.Friend@atkinsglobal.com]

Sent: Wednesday, January 15, 2014 2:20 PM

To: Friend, Alison

Subject: Scan-to-Me from 10.30.9.234 2014-01-15 094958

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