

COVERING LIST OF REPRESENTATIONS, OBJECTORS AND SUPPORTERS

THE LANCASHIRE COUNTY COUNCIL

WILDLIFE AND COUNTRYSIDE ACT 1981

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

**THE LANCASHIRE COUNTY COUNCIL (LOVE CLOUGH FOLD,
RAWTENSTALL, ROSSENDALE BOROUGH) DEFINITIVE MAP
MODIFICATION ORDER 2018**

No.	OBJECTIONS STILL OUTSTANDING	ADDRESS
1	Dr David Hempsall and Mrs Diane Ewart-Jones	The Barn Loveclough Fold Rossendale Lancashire BB4 8QT davidshempsall@gmx.co.uk
2	Mr James Tozer	2 Cloughfold Barn Loveclough Fold Rossendale BB4 8QT Jim@tozerassociates.com
3	Mrs Dawn Tozer	2 Cloughfold Barn Loveclough Fold Rossendale BB4 8QT
4	Mr Stephen Felinski	1 Cloughfold Barn Loveclough Fold Rossendale BB4 8QT
5	Mrs Sally Felinski	1 Cloughfold Barn Loveclough Fold Rossendale BB4 8QT
6	Mr David Ashworth and Mrs Alison Ashworth of	Loveclough Fold Rossendale Lancashire

		BB4 8QT
No.	OBJECTIONS WITHDRAWN	
-		
No.	SUPPORTER	
-		
No.	OTHER RESPONSES	
-		

Dr David S Hemsall and Mrs Diane Ewart-Jones, The Barn, Loveclough Fold, Rossendale, Lancashire
BB4 8QT

Tel: 01706-231568 Mobile 07592295996

Miss Claire Blundell,
Legal & Domestic Services
Lancashire County Council
P.O.Box 78
County Hall
PRESTON
PR1 8XJ

19th March, 2018

Dear Miss Blundell,

Ref: LSG4.CB7.5.53282.804.518

The format of what follows is not quite what we might have hoped. It is the result of Dr. Hemsall's being confined to hospital following a heart attack and so document referencing is based on his close study rather than direct access to the sources.

From the outset, we wish to reiterate our outright opposition to the claimed footpath as shown. Our reasons are set out here.

1. Development of Loveclough Fold, 1980s and 1990s

We can find no evidence that during the development phase of the 1980s and 1990s, there was any objection at all to the installation of the fences and walls as required by the appropriate planning authority, namely Rossendale Borough Council. Simply put, RBC laid on the developers and residents stringent requirements on fences and walls (including the use of tegulated pavours for the access road) with which the developer and residents complied in full. Indeed, in the case of dry-stone walling, residents won praise from RBC for going far beyond the minimum requirement, thereby enhancing further the state of the conservation area.

2. Evidential base of the claimed footpath

You kindly hosted a visit by Dr. Hemsall and Mr. Robert Nichols (Footpaths Officer, Limey Valley Residents Association). They viewed the evidential base which has three components:

- 2.1. Two overlaid photographs of the site, taken from different locations but at roughly similar elevations to produce a wide-angle panorama.
- 2.2. Sketches on copies of the panorama provided by 156 "witnesses" in support of the claim.
- 2.3. A database showing the names and details of those claiming to have walked the claimed path, including a notional start date. Our view is that the evidential base is so flawed – so compromised - as to be risible, as view shared incidentally by Mr Nicholas. Without complete access to our files, we summarise here:

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2.4 This "evidence" of "witnesses" was collected at a mass meeting at which, we are advised those attending were directed as to what to fill in on the supplied panorama. Given Mrs. Ewart-Jones' experience in litigation, we can find not a single example of "evidence" collected in this way as being regarded as sound. Rather the process called to mind the mass denunciation of the Pendle Witches!

2.5 Given the manner of the data collection – i.e. by mass meeting – what is significant is not so much the uniformity of the responses (to be expected) as the number of variations, especially from "witnesses" who were patently (and identifiably) members of the angling club for when the designated access to the lodges was along the south-east bank.

2.6. The panorama was photographed with an elevation of a few feet. Even so, it is possible to make out some similarities with the Ordnance Survey of 1960 which shows the farm buildings linked by a looped pathway, giving access in turn to each structure. We note only one thing: the path is not straight as in the present claimed path, a point to which we shall return later.

2.7 Scrutinising of the database by Dr. Hempsall and Mr. Nicholas was necessarily limited by the time available. They focussed on the ten submissions on the top of the file of 156. From these, it was clear that some claims – legal documents, after all – can only be described as fraudulent. Some claims would require their author to have walked the claimed path whilst still in nappies. Mr Nicholas – an independent, expert observer in all this – stated that a number of the claims were physically impossible at the dates stated as building work undertaken precluded walking the claimed line. Our neighbour Mrs. Alison Ashworth, born and bred here, has undertaken her own and much better informed research into the database and concluded that a significant number of entries contain errors (or falsehoods) which vitiate the exercise "Technically and fatally flawed", you might say.

For our part, Dr. Hempsall's examination of the evidential base convinces us that it is unsound. The data have neither been checked for accuracy nor moderated. LCC has accepted uncritically an evidential base which we can assert with confidence is flawed, both in terms of detail and methodology. We shall leave it at that and not dwell at all on the motives of the prime mover though, together with fellow residents, we know full well what those were.

3. The claimed footpath

Let us preface this part of our response by reiterating

3.1. The evidential base is flawed

3.2. The evidence of the Ordnance Survey of 1960 and the "witnesses" panorama are in conflict

3.3. No straight line – as claimed – was possible because of fences, walls and buildings legitimately constructed.

Dr David S Hempsall and Mrs Diane Ewart-Jones, The Barn, Loveclough Fold, Rossendale, Lancashire
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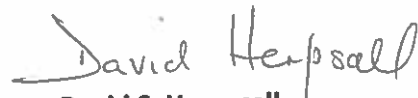
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The original application made by the late Jack Heys fell because it was, according to Mr. David Goode (PROW Manager LCC) "technically and fatally flawed. In our judgment, the present application too is technically flawed. The evidential base is flawed. It points to a path which did not – and could not – exist on the line as claimed. For it to have done so would have required passing through significant structures. The aerial photograph and Ordnance Survey of 1960 are conclusive – there never was a straight – line path as claimed.

Mr. Heys' claim failed because whilst he had evidence (which we refute in Part 2, *supra*), it was not for the claim being made. The same applies here. If LCC is to be consistent, then this claim too should be expunged completely and the stress caused to residents by ongoing harassment over this matter should cease.

In closing, there is of course now no need for this claim to be pursued. There exists the newly re-designated Footpath 384 on the south-east side of the Limey Water which runs parallel to the claimed path and offering similar access to the footpath network. The historical evidence for the existence of this footpath is incontrovertible (as demonstrated by Mr. Nichols and Accepted by LCC) and the path was, of course, previously waymarked by LCC signs. Simply put, the existence of FP384 provides a "convenient and commodious alternative" to the falsely based claimed footpath. There remains no case.

Yours sincerely


David S. Hempsall


Diane Ewart-Jones

Mr James Tozer
2 Cloughfold Barn
Loveclough fold
Loveclough
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Bb4 8qt
20th March 2018

Tel. 07968914406
E-mail jintozer99@hotmail.com

Ref LSG4/PROW/CB7/5.53282/804.518

To
The Director of Corporate Services. Lancashire County Council

Subject: Wildlife and Countryside Act 1981. The Lancashire County Council (Love Clough Fold, Rawtenstall, Rossendale Borough) Definitive Map Modification order 2018 (the "Order")

Reference LSG4/PROW/CB7/5.53282/804.518

Dear Sir/Madam

We write to register our formal objection to the above Order, which has been made on the basis of an extremely historic committee report, the contents of which have not been sufficiently interrogated and updated so as to ensure that the matter is up to date. Furthermore, there is insufficient evidence to establish the existence of any public right of way. The "evidence" that we have been able to interrogate to date is unreliable and falls far short of satisfying the statutory test.

This is not an objection that will be withdrawn and accordingly the matter will need to be submitted to the relevant Secretary of State for confirmation. Clearly, this would not be in the public interest and it would not be a reasonable use of the County Council's resources. There is no basis for the making of the Order and no evidence to support a claim that there is a public right of way in existence at the Site.

(i) Authority to make the Order

The committee resolution authorising the making of the Order is extremely historic and accordingly it is unreasonable for the authority to seek to rely on it as the basis of the Order. Any reliance placed by the County Council on this resolution as the legal basis for making the Order is therefore called into question, given that the County has not taken adequate steps to investigate the current position in respect of the site.

(ii) The Order - Statutory position

The Order has been made pursuant to section 53 of the Wildlife and Countryside Act 1981 (the "WCA 1981"), which seeks to add a public right of way to the definitive map. It is the statutory duty of the County Council as highways authority to ensure that the definitive map is kept up to date and this must be done on a timely, reasonable and proportionate basis.

s.53(2) WCA 1981 states that

the surveying authority should make modifications to the Definitive Map as soon as reasonably practicable on the occurrence of any of the events in s.53(3) WCA 1981 and in particular under s.53(3)(b) WCA 1981. This states that the Definitive Map must be updated on the expiration, in relation to any way

20th March 2018

To

The Director of Corporate Services, Lancashire County Council

20th March 2018

Page 2

in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path.

The Order relies on the County's erroneous conclusion that the public rights exist already – it is simply not correct to assert that the Order reflects established rights and does not create any new public rights. Here, the Definitive Map does not (and has not for many many years) shown the footpath as described in the Order. Indeed, there have been private properties on the line of the purported path since the late 1990s and so there is no way that the evidence relied on in support of the Order can be correct and in accordance with the statutory test. Any use of the purported right of way could not have been *nec clam nec vi* and *nec precario* (i.e. without force, secrecy or permission) as the land is privately occupied.

The WCA 1981 is clear that orders may be made, based on the discovery by the surveying authority (in this case Lancashire County Council) of evidence which, when considered with all other evidence, shows that the Definitive Map should be modified in one of one three ways listed in Under s.53(3)(c)(i) – (iii) WCA 1981. S.53(c)(i) WCA 1981 states that the evidence must show that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

To the extent that we have been able to interrogate the evidence being put forward by the County Council, there appear a significant number of inconsistencies and anomalies in relation to the evidence. There does not appear to have been any degree of meaningful scrutiny in relation to the evidence put forwards by other individuals, each with their own agenda in terms of establishing whether there is a purported footpath. In due course we will adduce evidence that firstly there is no footpath in existence as a matter of fact, and secondly that if the County persists in promoting the existence of the purported footpath, any such path cannot possibly meet the evidential standards required in terms of the use being without force, secrecy or permission.

(iii) The Burden of proof

As the highways authority, it is for you to prove that there is a public footpath in existence as per the Order purportedly made and the notices served. To date no such evidence has been forthcoming and in the circumstances, the conduct of the Council is at best misguided. In the event that the County proceeds with the Order then this is a matter that we will be bringing to the attention of the planning inspectorate in due course.

(iv) Conduct of the matter

We are struggling to understand how this turn of events has come about, and indeed the basis on which the County Council has considered it expedient and in the public interest to make such an Order. It has been physically impossible to walk the purported path in question for over 20 years. In any event there is no evidence to meet the statutory test that such a path exists.

For example, there has been development in the vicinity of the Site during the 1990s onwards. Although the planning regime is distinct from the highways regime, the 2 are not entirely divorced. It is the County's statutory duty to raise any highways objections at the planning application stage. At no stage has the County Council objected to planning applications on the basis of the existence of this purported footpath. It is contrary to the rules of natural justice for the County Council to seek to do so now (regardless of the fact that we do not see that there is any evidential basis for the Order to be confirmed in any event).

(v) Freedom of information Act request

Please also accept this correspondence as a formal request pursuant to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 for the disclosure of any and all of the following documents in relation to the proposed definitive map modification order including (but not limited to) the following:

- Correspondence between officers regarding the purported existence of the footpath

20th March 2018

To

The Director of Corporate Services. Lancashire County Council

20th March 2018

Page 3

- Any correspondence with the borough or district authorities regarding the existence of the purported footpath
- Any updates or correspondence between officers regarding the committee resolution in 2015;
- Any correspondence with third parties regarding the existence of the purported right of way; and
- The evidence relied on in making the Order

We look forward to receipt of the above information within 20 working days in accordance with the statutory provisions.

However, in conclusion and given the circumstances described above, the only option available to the County Council is the immediate withdrawal of the Order.

Yours faithfully

A handwritten signature in black ink, appearing to be 'J Tozer', with a long horizontal flourish extending to the right.

Mr James Tozer

cc. Chief Executive, Head of legal, Head of highways

Mrs Dawn Tozer
2 Cloughfold Barn
Loveclough fold
Loveclough
Rossendale
Bb4 8qt
20th March 2018

Tel. 07967 816726
E-mail dawnroseonline@hotmail.co.uk

Ref LSG4/PROW/CB7/5.53282/804.518

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Yours faithfully

A handwritten signature in black ink, appearing to read 'Dawn Tozer', with a stylized flourish at the end.

Mrs Dawn Tozer

cc. Chief Executive, Head of legal, Head of highways

Mr Stephen Felinski
1 Cloughfold Barn
Loveclough Fold,
Rossendale BB4 8QT
Phone 07857659829
Date 13/03/18

Ref LSG4/PROW/CB7/5.53282/804.518

To
The Director of Corporate Services. Lancashire County Council

Dear Sir/Madam

We are struggling to understand how this turn of events has come about. In 1989 we purchased this property with planning permission to convert the Barn into our home, which included the surrounding land. Having followed the process and paid the necessary planning fees and searches nothing has ever come up about a footpath. This is either been gross negligence or incompetence that such an oversight can be ignored or missed. From the start of the construction in 1990 to this moment in time it has been physically impossible for anyone to walk the indicated path in question. The stone wall boundary was erected in 1994 with planning permission from the local council. Furthermore, we were granted planning permission for an extension that was built over the proposed pathway!

We have been extremely upset and stressed over the years as this has been ongoing for far too long. We strongly protest against this modification order being imposed by yourselves and have forwarded all the evidence to our legal team. They will be contact you shortly to substantiate our claim.

Sincerely,

Mr Stephen Felinski



Mrs Sally Felinski
1 Cloughfold Barn
Loveclough Fold,
Rossendale BB4 8QT
Phone 07857659829
Date 13/03/18

Ref LSG4/PROW/CB7/5.53282/804.518

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Sincerely,

Mrs Sally Felinski



Loveclough Fold Farm

Loveclough

Rosendale

Lancs

BB4 8QT

20/03/2018

Reference LSG4.PROW.CB7.888.245.804.576

To whom it may concern

We write yet again to object to the above modification order- now dated January 2018. Please include previous objections alongside this current objection.

I start with a brief history of our association with the area.

We purchased the above property from Messers K and S Ainsworth in March 1989. The property consisted of two dwellings, in August 1989 planning consent was granted for one dwelling. We were the first occupants of the new development of Loveclough Fold which consisted of the farmhouse and outbuildings. The farmhouse was inhabitable, the surrounding barns were in a derelict state and the area surrounding was overgrown and neglected. We moved into a caravan with a one year old and the rear of the farmhouse. We moved into our house in August 1991.

In Sept 1996 we were served an Enforcement order regarding the road and the surrounding walls. K and S Ainsworth were also served an order to maintain the existing unsold land and remove a dutch barn

In March 1997 planning permission was granted to retain the existing walls and carry out the block paving.

In 2003 we purchased the plot of land from Messers K and S Ainsworth which was to the rear of our house and which houses our chickens, a shed, two greenhouses, vegetable plots as well as a lawned area. This area was subject to an enforcement order which had been served on K and S Ainsworth. The order was lifted in 2003

We have enclosed a map highlighting our house and garden area.

In your letter you ask for relevant objections, we consider the following to be relevant objections:

The claim was made maliciously and not based on factual evidence

As a claimed right of way it has not been physically possible to walk the route the claimant's state.

The evidence some of the claimants made is inaccurate.

To quote your explanatory statement "to be relevant a response or objection should relate to the existence or status of rights of way..."

Could you please then explain why LCC chose to ignore the correct right of way i.e. footpath no 4 which was blocked by developers , yet despite complaints from residents LCC chose not to take any action to reinstate or act on this?

The claim was initiated in 2005 and yet we are here in 2018 with no conclusion to matters.

We have correspondence dated 04/10/2006 from LCC employee Jean Blackledge stating "the Committees decision was to accept the claim, a 42 day period for objections and following that the matter would be referred to the Secretary of State for Food and Rural Affairs who may decide to call a public enquiry "Despite our objections during this period we did not appear to have a public enquiry

To conclude, the amount of effort LCC have made to pursue the modification order is disproportionate to the effort made to maintain, reinstate an illegally blocked existing path i.e. footpath no 4. If this footpath which is the correct Right of Way had not been blocked would we be having this legal confrontation now. The lack of effort by LCC is of deep concern.

Having lived in our home for over twenty nine years we have spent the last twelve and a half years with this claim hanging over us. This has caused us unnecessary stress, anxiety. Not to mention extremely time consuming. It would appear that one man's obsession following a dispute with a neighbour who no longer lives in Lancashire and some dubious statements take precedence over local residents who purchased their properties in good faith and have conformed to planning regulations over the years making the area very attractive and well maintained.

This now leaves us no option but to seek further legal advice on the matter.


David and Alison Ashworth

