

Application for a Modification Order

Wildlife and Countryside Act 1981

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

To: The County Secretary and Solicitor, Lancashire County Council.
Of: PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ

I/~~We~~: (Name of applicant) JULIE LOIS SPEAR
Of: (address of applicant) PARK HOUSE, SAWKEY, BB7 4LF

Hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981
modifying the Definitive Map and statements for the area by:

~~1. Deleting the [footpath] [bridleway] [restricted byway] [byway open to all traffic]~~
FROM:

~~TO:~~

2. Adding the [footpath] ~~[bridleway] [restricted byway] [byway open to all traffic]~~
FROM: NORMAN RD, OSWALD TWISTLE BB5 4WF

TO: BLACKBURN RD, OSWALD TWISTLE

ORDNANCE SURVEY ref. SD7328SW

~~3. [Upgrading] [downgrading] to a [footpath] [bridleway] [restricted byway] [byway open to all traffic] the [footpath] [bridleway] [restricted byway] [byway open to all traffic]~~
FROM:

~~TO:~~

~~4. [Varying] [adding to] the particulars relating to the [footpath] [bridleway] [restricted byway] [byway open to all traffic]~~
FROM:

~~TO:~~

~~BY PROVIDING THAT:~~

AND SHOWN ON THE MAP ACCOMPANYING THE APPLICATION

I / We attach copies of the following documentary evidence (including statements of witnesses) in support of this application:

LIST OF DOCUMENTS PROVIDED:

Land registry title plan
map of the 1911 Parish.
Ordnance survey map from 1890's
Ordnance survey map from when estate being built.
Photograph of fence erected March 2020
Transcript of core lease for 8 Norman Rd.
Extract from core lease from 27.11.1913 for no. 8.
Extract from core lease from 1.5.1919 for no 12.
Letter from head of legal & Democratic services at
Hyndburn Council July 2021
Letter from head of Audit & Investigations at
Hyndburn Council Feb 2022
Witness statement from Christine Alderson
Witness statement from Samantha Alderson
my witness statement.

DATED: 17.12.2022 . SIGNED:



THE FOLLOWING DOES NOT MAKE UP PART OF THE ABOVE FORM

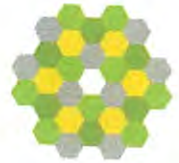
Please return the completed application form to:
The County Secretary and Solicitors Group, Lancashire County Council, PO BOX 78
County Hall, Fishergate, Preston, PR1 8XJ (REF: LSG4/PROW/JM)

NOTE: Please be advised that evidence supplied will be used in accordance with the processes under the Wildlife and Countryside Act, it will not be confidential and may be disclosed to third parties. Those supplying any evidence should be informed of this.

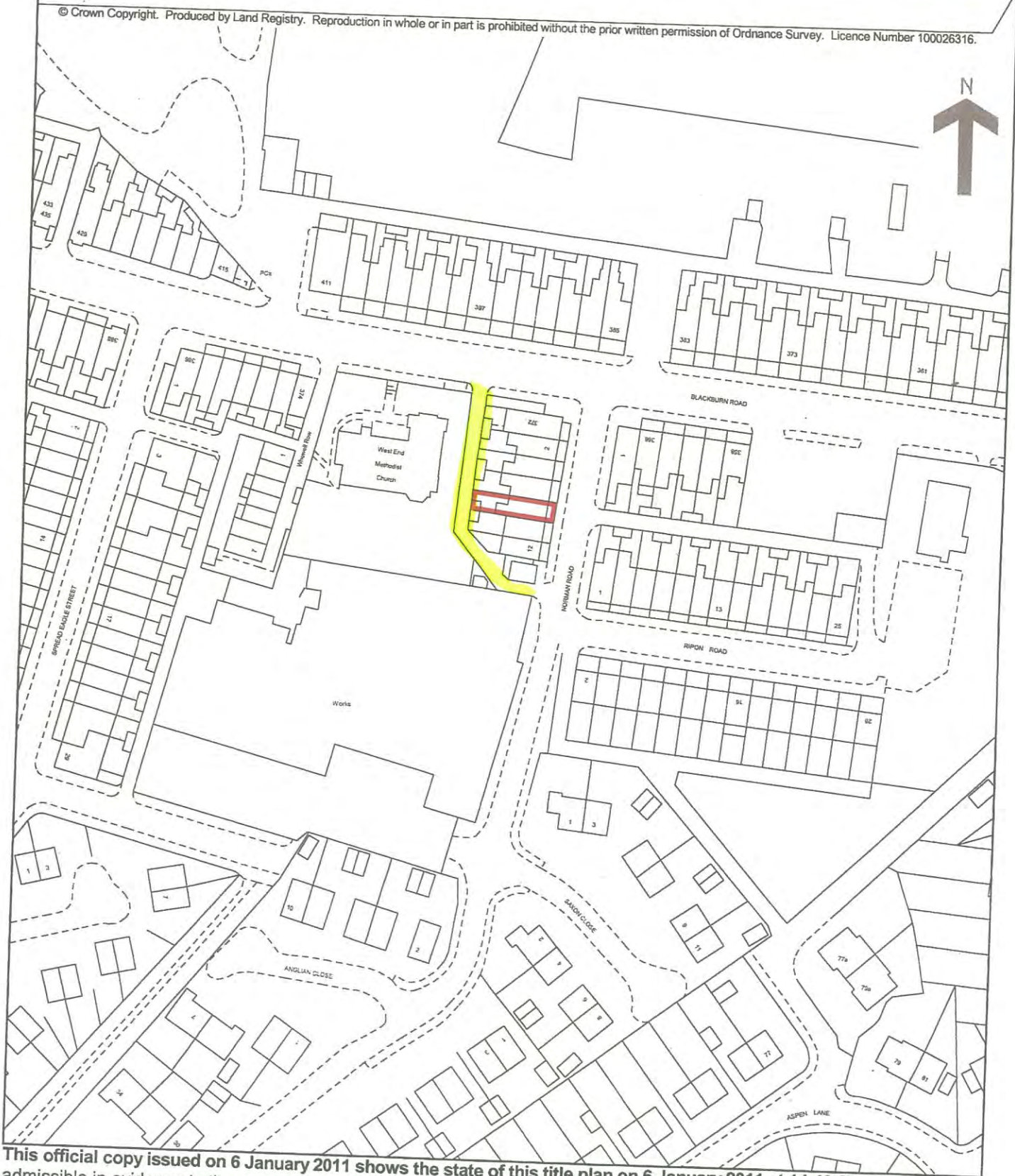
NOTE: Lancashire County Council is obliged to put a copy of the application on a register available to the public. If you consider that the inclusion of the applicants name and address would, or would be likely to, cause substantial damage distress to the applicant or to another person and such damage would be unwarranted, please contact Lancashire County Council who can remove these details from the register and from any documents contained on the register.

Land Registry Official copy of title plan

Title number **LAN112690**
Ordnance Survey map reference **SD7328SW**
Scale **1:1250** enlarged from 1:2500
Administrative area **Lancashire: Hyndburn**



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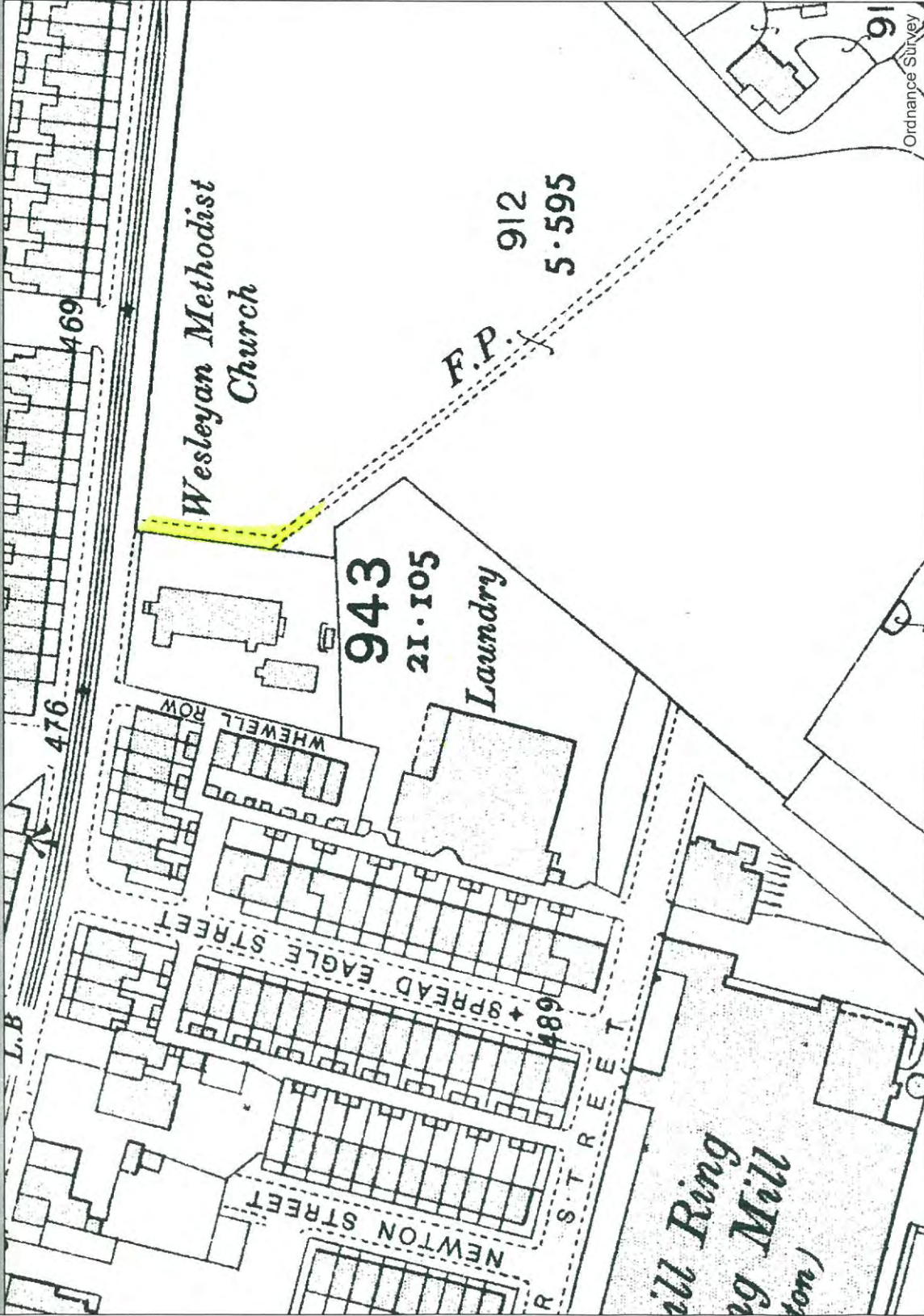
This official copy issued on 6 January 2011 shows the state of this title plan on 6 January 2011 at 14:46:27. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.
This title is dealt with by Land Registry, Fylde Office.

map of the 1911 Parish



High : 255
Low : 0

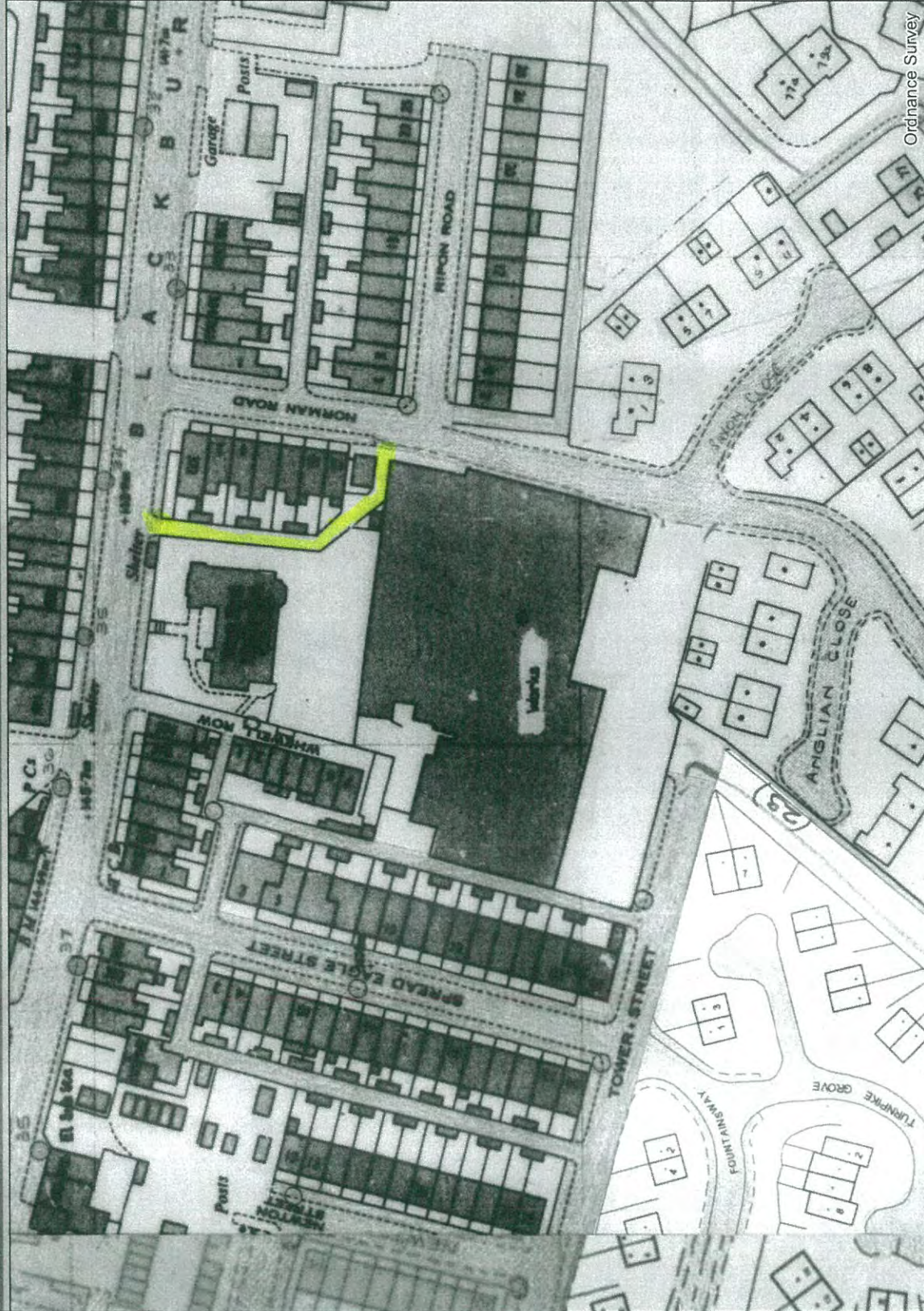
1890s



Map Scale: 1:1,250
Map Centre: 373,118 428,223

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- Red: Red
- Green: Green
- Blue: Blue

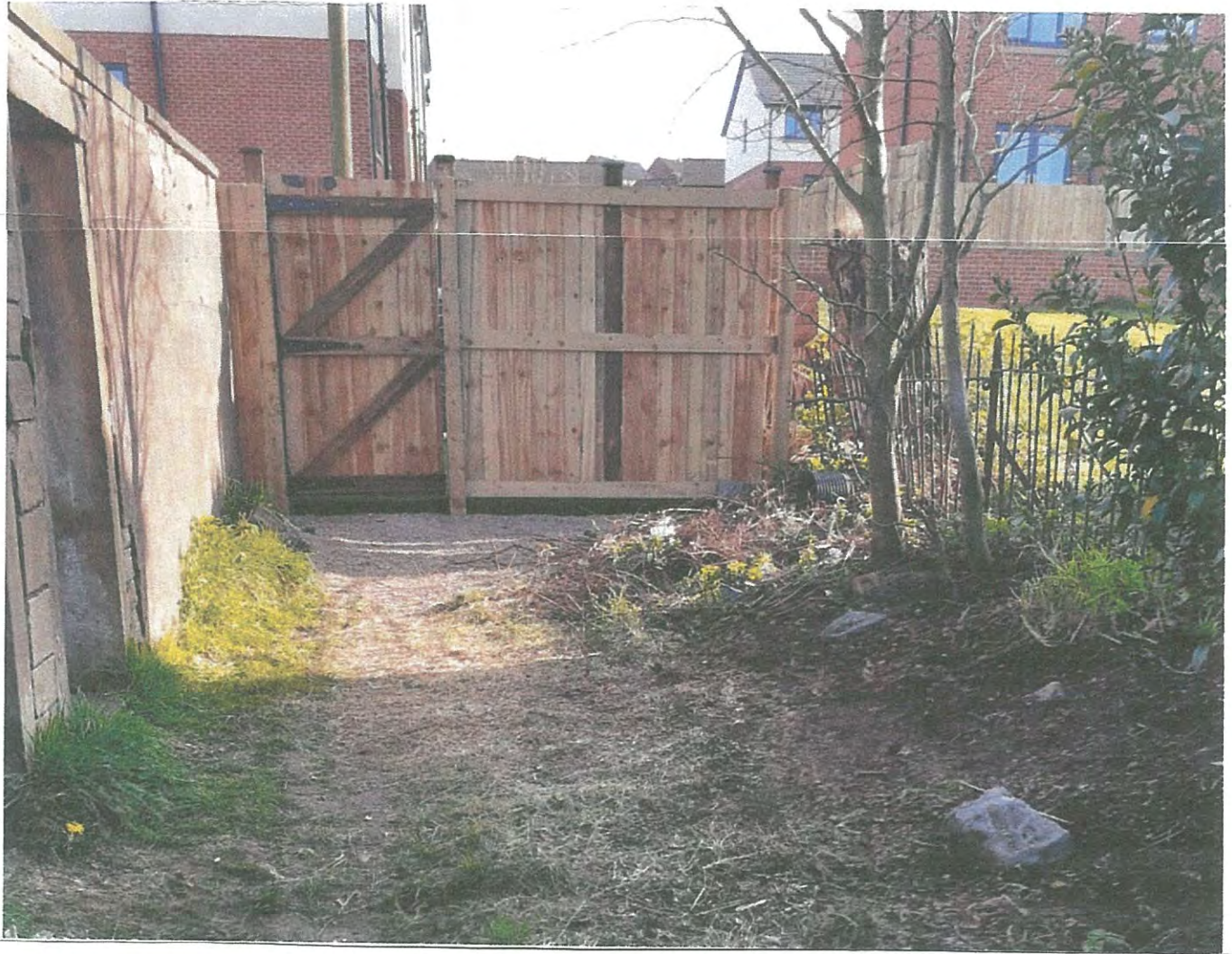


Ordnance Survey

Map Scale: 1:1,250
 Map Centre: 373,118 428,223

0 0.015 0.03 0.06 0.09 0.12 mi
 0 0.0325 0.065 0.13 0.195 km

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6. THIS INDENTURE made the 27th day of November 1913 B E T W E E N JOHN DUCKWORTH of Accrington in the Coy of Lancs Auctioneer (who is the legal mortgagee of the hereditaments hereby demised and is hereinafter called "the Lessor" which expression shall include the persons or person for the time being entitled to receive the rent hereby reserved where the context so admits) of the first part GEORGE WALSH ROBERT WALSH and ALBERT WALSH all of Oswaldtwistle in the sd Coy Joiners and Builders (the owners of the equity of redemption of the sd heredit) of the second part and JAMES HENRY SLEDDON of Oswaldtwistle a/sd Engineer in a Cotton Mill (hereinafter called "the Lessee" which expression shall include his exs ads and assns where the context so admits) of the third part

at the Office of the Clerk of the Peace, Accrington, 1st May 1913

WITNESSETH as follows:-

1. THE Lessor in conson of the sum of £220 to the sd George Walsh Robert Walsh and Albert Walsh paid by the Lessee (the receipt whereof the sd G. Walsh W. Walsh and A. Walsh hereby acknowledge and the payment whereof with his privity and consent the Lessor hereby acknowledges) and also in conson of the rent and covts by the Lessee hereinafter reserved and contd the Lessor at the request of the sd G. Walsh, R. Walsh and A. Walsh doth hereby demise and the said G. Walsh, R. Walsh and A. Walsh do hereby demise and confirm unto the Lessee A L L THAT messe or dwhse situate on the Westerly side of Norman Road within Oswaldtwistle a/sd with the yard garden and outbldgs thto and which messe is Nod. 8 in the said road (Except and reserving hereout to the person or persons for the time being entitled thereto all mines beds and quarries of coal and ironstone and other metals stone and minerals within and under the prems hereby demised with all necessary or proper powers rights and easements for searching for winning working getting and carrying away the same by underground workings only on such person or persons making proper compensation to the Lessee for all damage done to the buildings upon the same landas the same are reserved in and by a certain Conveyance to the said G. Walsh R. Walsh and A. Walsh of the said prems with other hereditas dated the 12th day of November 1908 And also except and reserving unto the Lessor the free running of water and soil in and through the sewers drains and channels for the time being in or upon or under the prems hereby demised And also except and reserving to the Lessor the right to erect any wall or building in such manner and form and of such height as he may think proper on any land of the Lessor (not being a street or streets) adjoining or contiguous to the prems hereby demised And also except and reserving unto the Lessor and his lessees tenants or occupiers of land and bldgs adjoining or contiguous to the sd prems and his surveyors agents and workmen the liberty and privilege at all seasonable hours in the daytime to enter upon the sd prems hereby demised in order to repair such adjoining or contiguous prems as often as occasion shall require) TO HOLD the same (subject to all rights of road and water light and all other easements now affecting the same) unto the Lessee from the 1st day of November now last past for the term of 999 years PAYING therefor yearly during the sd term and proportionately for any fraction of a year the rent of £l. 9. 6 by equal half yearly payments on the 1st day of May and the 1st day of November in every year free from all deductions (except Landlord's property Tax) the first payment thof to be made on the 1st day of May 1914 and to be computed from the date hereof.

2. THE Lessee for himself and his assns and to the intent that the obligations may continue throughout the term hereby created covenants with the Lessor and also as a separate covenant with the sd G. Walsh, R. Walsh and A. Walsh as follows:-

- (1) TO pay the reserved rent on the days and in manner a/sd
- (2) TO bear and discharge all existing and future rates taxes and assessments duties impositions outgoings and burdens whatsoever whether parliamentary parochial local or of any description assessed charged or imposed upon the demised prems or upon the owner or occupier in respect thof or payable by either in respect thof (landlords property tax only excepted).
- (3) AT all times during the sd term well and sufficiently to repair cleanse uphold maintain and keep in good and tenantable repair the sd messe or dwhse or another to be erected in substitution therefor and all additions thto and the fixtures therein and the outbldgs walls fences sewers drains and the adjoining roads to the centre thereof with all necessary reparations and amendments And when for that purpose the state of the prems either by decay

accidents from fire or otherwise shall so require to take down the same messes or dwellings or other buildings and to rebuild and erect again on the site thereof in a good and substantial manner a similar messes or dwellings or other buildings under the direction and to the satisfaction of the Lessor or his surveyor or agent and so that there shall always during the said term be upon the said premises hereby demised in such tenantable repair as affords a good and substantial messes or dwellings of the clear letting yearly value to a good tenant of £10. at the least.

- (4) NOT to erect on any part of the demised premises any new building or any additions to the existing buildings except with the consent of the Lessor first obtained and in accordance with plans elevations and specifications to be first approved of by the Lessor or his Surveyor or Agent.
- (5) TO permit the Lessor his Surveyor or Agent once in every year during the said term in the daytime with or without workmen or others to enter the demised premises and view the state of repair and condition of the same and upon the Lessor or his Agent giving or leaving notice in writing of any defects or wants of reparation to repair and make good the same according to such notice and the covenant in that behalf hereinbefore contained.
- (6) NOT to permit anything to be set up or used or done upon any part of the demised premises which shall be noxious noisy or offensive or be any interruption or annoyance to the tenants or occupiers of premises adjoining or near thereto and to accept as final the decision of the Lessor on any questions which may arise concerning alleged breaches of this covenant.
- (7) WHENEVER required so to do by the Lessor or by the Local Authority at the Lessee's expense to make lay pave flag and form (so far as not already done) and afterwards at all times keep in repair until the same shall become repairable by the Local Authority the footway and one half the roadway of Norman Road affords and also one half the back street at the rear of the demised premises in such manner and form and of such materials as the said Local Authority may require so far as the said roadways are coextensive with the demised premises and also at the like request and expense to make such sewers and drains in or under the said roadways and footways as the same Authority may require and to keep the same in repair until the same become repairable by the Local Authority.
- (8) AT the determination of the said term to yield up the demised premises and all buildings thereon and additions thereto in such repair and condition shall be in accordance with the covenants hereinbefore contained.

3. THE Lessor and also the said G. Walsh, R. Walsh and A. Walsh so far as relates to his or their own acts and deeds and the acts and deeds of persons claiming under him or them respectively hereby covenant with the Lessee that the Lessee paying the rent hereby reserved and performing the covenants hereinbefore on the Lessee's part contained shall quietly possess and enjoy the premises hereby demised for the term hereby granted without any lawful disturbance from or by the Lessor or the said G. Walsh, R. Walsh and A. Walsh or any of them their or any of their heirs executors or administrators or any person claiming under them or any of them.

4. PROVIDED ALWAYS that if the rent hereby reserved or any part thereof shall be in arrear and unpaid for 21 days after the same shall have become due (whether legally demanded or not) or if there shall be any breach or nonobservance of the Lessee's covenants herein contained then and in any such case it shall be lawful for the Lessor to enter upon the said plot of land and the buildings for the time being thereon or any part thereof in the name of the whole and to repossess the same as of his former estate.

5. PROVIDED ALSO that until the Lessor his heirs or assigns shall require payment of the said rent to him and give to the Lessee or leave upon the said demised premises notice in writing requiring such payment the said rent shall be paid to the said G. Walsh, R. Walsh and A. Walsh their heirs or assigns whose receipt shall be a sufficient discharge for the same.

6. PROVIDED ALSO that any license consent or act hereinbefore required or authorised or which may be necessary to be given or done by the Lessor hereunder may be validly and effectually given or done by the persons or person for the time being entitled to receive and give a discharge for the said rent and any notice required to be given by or to the Lessor hereunder shall be valid and sufficient if given by or to the persons or person so entitled.

7. IT IS HEREBY DECLARED that the walls dividing the demised premises from the said adjoining dwellings and premises of the Lessor or of the said G. Walsh, R. Walsh and A. Walsh his or their tenants or lessees are to be deemed joint party walls and fences.

LASTLY IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consen other than rent exceeds £500.

I N W I T N E S S whereof the said parties to these presents have hereunto set their hands and seals the day and year first aforesaid.

SIGNED SEALED AND DELIVERED by the said John Duckworth

George Walsh Robert Walsh and Albert Walsh in the presence of:-

J. DUCKWORTH (L. S.)
GEORGE WALSH (L. S.)
ROBERT WALSH (L. S.)
ALBERT WALSH (L. S.)

B. Reddihough,
Clerk to Mr. S. Sandeman,
Solicitor,
Accrington.

- of by the Lessor or his Surveyor or Agent.
- (5) To permit the Lessor his Surveyor or Agent once in every year during the said term in the daytime with or without workmen or others to enter the demised premises and view the state of repair and condition of the same and upon the Lessor or his Agent giving or leaving notice in writing of any defects or wants of reparation to repair and make good the same according to such notice and the covenant in that behalf hereinbefore contained.
- (6) Not to permit anything to be set up or used or done upon any part of the demised premises which shall be noxious noisy or offensive or be any interruption or annoyance to the tenants or occupiers of premises adjoining or near thereto and to accept as final the decision of the Lessor on any questions which may arise concerning alleged breaches of this covenant.
- (7) Whenever required so to do by the Lessor or by the Local Authority at the Lessee's expense to make lay pave flag and form (so far as not already done) and afterwards at all times keep in repair until the same shall become repairable by the Local Authority the footway and one half the roadway of Norman Road aforesaid and also one half the back street at the rear of the demised premises in such manner and form and of such materials as the said Local Authority may require so far as the said roadways are coextensive with

- with the consent of the Lessors first obtained and in accordance with the plans elevations and specifications to be first approved of by the Lessors or their surveyor or agent.
- (5) To permit the Lessors their surveyor or agent once in every year during the said term in the daytime with or without workmen or others to enter the demised premises and view the state of repair and the condition of the same and upon the Lessors or their agent giving or leaving notice in writing of any defects or want of repair to repair and make good the same according to such notice and the covenant in that behalf hereinbefore contained.
- (6) Not to permit anything to be set up or used or done upon any part of the demised premises which shall be noxious or noisy or offensive or be any interruption or annoyance to the tenants or occupiers of premises adjoining or near thereto and to accept as final the decision of the Lessors in any questions which may arise concerning alleged breaches of this covenant.
- (14) Whenever required so to do by the Lessors or by the Local Authority at the Lessee's expense to make lay pave flag and form so far as not already done and afterwards at all times keep in repair until the same shall become repairable by the Local Authority the footway and one half the roadway of Norman Road aforesaid and also one half the back street at the rear of the demised premises in such manner and form and of such materials as the Local Authority may require so far as the said roadways are co-extensive with the demised premises and also at the like request and expense to make such sewers and drains in or under the said roadways and footways.

Fwd: Blocked back street BB5 4NF

julie speak <julie.speak@hotmail.com>

Tue 19/04/2022 09:15

To: iain speak <iainspeak@hotmail.com>

Sent from my iPhone

Begin forwarded message:

From: Christine Alderson <cpalderson@hotmail.co.uk>

Date: 14 April 2022 at 12:57:43 BST

To: Harvey.danson@lancashire.gov.uk

Cc: julie.speak@hotmail.com

Subject: Blocked back street BB5 4NF

Dear Mr Danson,

I live at 12 Norman Rd Oswaldtwistle BB5 4NF and have lived here since 1984. My neighbours at no 10 have completely blocked the back street by extending their back yard into a garden.

Ever since I moved here I have had full access to Blackburn Rd from my back gate, until it was blocked off. When my children were young, now 35 and 36, used to play out on the back street with their friends, running up and down, even riding their bikes not being allowed to go past no 6. It was safer than playing out there than the front of the house, with having 3 factories above me and a lot of traffic on the road.

Many people used to use the back street as a short cut to Blackburn Rd and vice versa. I have seen people over the last couple of years turn to go down the back street and having to turn around and being surprised at it being blocked. I would nip out the back gate to go to the local shops on Blackburn Rd, rather than going out the front door it was shorter!

My ex-husband, been divorced over 20 years, used to be able to drive up and down the back street, if he needed to load or unload the car into or from the back yard and my neighbours used to do the same.

There has always been full access up and down the back street until it was blocked by my neighbour.

Kind regards

Christine Alderson

From: Samantha Alderson <samanthaalderson@hotmail.co.uk>
Sent: 21 February 2022 12:36
To: Danson, Harvey <Harvey.Danson@lancashire.gov.uk>
Subject: Rear alley of Norman Road Oswaldtwistle

Good Afternoon Mr Danson

I am sending this email to confirm that Norman Road has always had an alley way where there has been constant access for all through.

I am now 35 and when I was born I lived at 12 Norman road. Growing up my dad used to maintain the alley for me and my sister to ride our bikes along. Throughout the years the alley was used as a walkway for the public, it used to be clear and many people used to walk to the adjoining Blackburn Road. When the alley was initially blocked I saw several people walk down and then have to come back out and walk around. I'm sure there were more than those I spotted. At 18 I moved out of my family home, however my mum still resided there. Now single and disabled she was unable to maintain the alley, however it was still very much accessible to everybody. Considering my mums condition the whole family helps her and we always continued to help cut trees on the alley to allow sunlight into her garden and clear access. I moved back to Norman Road and into number 8 at the age of 25. The alley was still used as an alley and access was still available for all. People walked through. Slowly the residents of 10 started to leave things on the alley. From garden tiles on a pallet to rubbish bags left to decay. I have photos from being disgusted through the years. They also allowed their dog to toilet on the alley and the church garden. Something that has been constantly complained about and dealt with by Hyndburn Council. However undesirable it became to walk past, I still had full access from my garden to walk to my mums garden as there had always been.

In March 2020 before lockdown that all changed. The residents of number 10 decided to use the land, erect fences and create a larger garden. Despite being questioned and asked not to proceed, they continued. They said access would still be available. Access is not available as the gates are always locked and I have been told in no uncertain terms that people can walk around. I can now no longer walk from my garden to my mums without having to walk around the whole block. When covid restrictions were eased and my disabled mum came in my garden to visit they saw her struggle and walk all the way around and locked the gates behind themselves. Something that I obviously found frustrating and upsetting.

West End Methodist Church used the alley as access to their church, there is a gateway that historically was used for delivering coal to the kitchen. The church did log a compliant with Hyndburn Council in 2020 as half of this escape route has now been blocked by the fence erected by 10 Norman Road.

I hope this helps to clarify the use of the alley of Norman Road historically as just that, an alleyway, a walkway with full access for all until March 2020.

Kind regards
Samantha Alderson

Sent from Samsung Mobile on O2
[Get Outlook for Android](#)

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Park House,
Sawley,
BB7 4LF.

17th December 2022

Re: Public Highway to the rear of Norman Rd Oswaldtwistle BB5 4NF

I wish to make a statement to describe the usage of this back street/alleyway that I have witnessed over the last 37 years.

I have been a regular visitor to this street since 1984 when my friend married and moved into number 12. I was always able to walk right through from Blackburn Rd to Norman Rd, to go round to the front door.

Since 2010 I have owned number 8, and (after extensive renovations) rented it to that friend's daughter. The back street has been in constant use for waste management, and would be vital access for emergency services were there to be a fire or a medical emergency. Whilst undertaking the renovations I regularly saw members of the public who do not live there walk their dogs through, ride through on bicycles etc

Until March 2022, when the owners of number 10 erected fences, this back street was available as a thoroughfare leading from Norman Rd to Blackburn Rd, which was available to any member of the public at any time.

There has never been any signage suggesting that it is private, nor any sort of obstruction to passage, such as gates or fencing.

The deeds of the houses on this terrace do refer to the "back street" behind them, but do not grant residents permission to access it.

There is no known owner of the back street registered with land registry, and I have been unable to find any information as to any possible owner. Indeed the wording of the deeds suggests that the builders expected the back street to be adopted by the local authority.

Historical maps show that a footpath existed in this location long before the houses were built.

I am, therefore, hoping that this footpath can be added to the definitive map, so that action can be taken to rectify the current disruption.



Julie Speak

Legal & Democratic Services

Scaitcliffe House

Ormerod Street

Accrington

BB5 0PF

Email: jane.ellis@hyndburnbc.gov.uk

Your ref: LS/JAE
Our ref:
Ask for: Jane Ellis
Direct Line: 01254 380146
Date: 29th July, 2021

Dear Mrs Speak,

Your complaint re 10 Norman Rd, Oswaldtwistle - 5th July 2021

I refer to your complaint, which I have considered. I have read the papers you sent me, plus looked at the Council's records in respect of this matter. I have raised specific enquiries re a number of issues with Mr Prideaux, Mr Glover and the Council's planning solicitor.

I thought it would be helpful first to set out the key events:

30 March 2020 - you contacted the Planning Department to complain about the fencing off of the unadopted highway to the rear of 10 Norman Road ("the Property").

21 April 2020 - a site visit took place

22 April 2020 - the Council wrote to Mrs Timperley, the owner of the Property, to ask her to remove the fences and other items and to cease to use the unadopted highway as a garden.

5 May 2020 - having not received a reply, a further letter was sent to Mrs Timperley. This prompted a response from Mrs Timperley

12 May 2020 - the enforcement officer met Mrs Timperley at the Property and some discussion / correspondence with her then ensued, but it was not possible to reach agreement

7 August 2020 - an enforcement notice was served on Mrs Timperley

8 September 2020 - following an appeal by Mrs Timperley to the Planning Inspectorate ("PINS"), PINS indicated that Mrs Timperley did not have a legal right of appeal as she did not have a legal interest in the unadopted highway

13 May 2021 - the Council received advice from a planning barrister about its ability to prosecute Mrs Timperley for non-compliance with an enforcement notice given her lack of the usual right of appeal and her lack of a legal interest in the site in question. The barrister confirmed that a prosecution could be brought in such circumstances

17 May 2021 - the Council again wrote to Mrs Timperley to ask her to remove the fences etc and to cease to use the site as a garden. She was also asked whether there were any mitigating circumstances she wished the Council to consider in determining whether to proceed to take further enforcement action against her. This was done on legal advice to strengthen the Council's prospects of success in any future prosecution having regard to issues such as the human right to a fair hearing and general common law procedural fairness principles - the Council could then demonstrate that it had followed a fair process and had due regard to Mrs Timperley's position given her absence of a right of appeal

4 June 2021 - Mrs Timperley responded to the Council's letter and agreed to a site meeting

28th June 2021 - a site meeting took place with Mrs Timperley, but agreement could not be reached

12 July 2021 - Mr Prideaux authorised service of a second enforcement notice on Mrs Timperley having considered a detailed report prepared by Mr Glover that had regard to relevant statutory considerations such as Human Rights Act obligations, a public interest assessment and the Council's equality duty

21st July - a second enforcement notice was served.

I have concluded that officers have put a lot of time, effort and resources into this matter, including seeking counsel's advice. The circumstances of this case are unusual and the referral to counsel was a reasonable step to take given a number of uncertainties.

Turning to your specific complaints:

1. You say that the matter has not been thoroughly investigated. I think the timeline above does not support this, nor does the Council's planning file for this matter, which shows that a lot of time and effort has been put into this matter.
2. You say that the Council has been dismissive of your concerns. Again the timeline and planning file do not support this view. The Council has continued to explore options to resolve this matter over many months, including seeking a barrister's opinion to clarify a number of legal issues which our (very experienced) planning solicitor considered to be unclear on the facts of the matter.
3. You say there has been delay. I think this is not the case in respect of the period March 2020 to September 2020, when I think the matter was dealt with reasonably expeditiously, especially in the context of the pandemic. I think there was some undue delay in the period from September 2020 to March / April 2021 when the decision was taken to seek counsel's advice. From that point I consider that the matter picked up momentum and has been dealt with expeditiously again in all the circumstances. In looking at the delay, I think some allowance must be made for the pandemic and also for the very significant workload of the enforcement officers (of whom we only have 1.5 full time equivalent), which has risen significantly during the pandemic. I think the delay was caused by officer uncertainty how to proceed once PINS declined to deal with Mrs Timperley's appeal. The circumstances of this matter were also not straightforward, but I accept that the Council could have been a little quicker and could have better kept you informed of the reasons for the delay and in this regard I apologise for any upset this may have caused you. However, I also consider that the planning route is not necessarily the most appropriate or effective route to deal with the problems you are experiencing in any event. The Council is acting as local planning authority and its approach is governed by planning legislation. It appears to me, as Mr Glover has advised you already, that you will have private law rights in this matter. You may be able to seek a quicker and more effective resolution by private action. Similarly, a more effective route may be under section 143 Highways Act, which enables Lancashire County Council (as highways authority) to remove structures causing an obstruction on the highway. This is a very speedy route as the structures can be removed without a court order following service of one month's notice requiring removal. The Council has asked LCC to use its statutory powers in this regard but the County Council has declined the request. This is a matter that you may wish to pursue directly with LCC. The Council's powers as local planning authority are limited and I am advised by the Council's planning solicitor that, even if a prosecution is successful, the Council does not have legal power to require removal of the fencing.
4. You say there have been mistakes and a cover up. I can find no evidence of a "cover up", nor have you produced any. I do however think that a mistake was made in the wording of

the first enforcement notice and this has led to the requirement to serve another in order to ensure the Council can successfully progress to prosecution. Essentially the first notice did not specifically require the change of use of the site to stop and the failure to say so specifically may have enabled a prosecution to be successfully defended. Again I apologise for this. However, I do not consider that the mistake arose as a result of carelessness, or lack of attention. This has been a complicated matter on its facts and the issue was only picked up by the Council's barrister.

5. You say Mr Prideaux sent an email on 1st July that you consider insulting. If the email had been sent to you by Mr Prideaux in those terms I would have agreed with you. However, it was not. The email was a quick email exchange between very busy colleagues, which was copied to you unintentionally in an email chain. Far from dismissing your concerns, Mr Prideaux in fact asks Mr Glover to take a number of steps to progress this matter - he asks him to update you and to seek your opinion on whether the planning breaches have caused you specific detriment. This is one of the factors Mr Prideaux would need to consider in determining whether to serve a further enforcement notice. I think Mr Prideaux's assessment that little would be served by a meeting with you at that point in the course of this matter is not an unreasonable one, especially in the context of his workload. I consider that Mr Prideaux is entitled to make decisions as to the best usage of his time and I do not uphold your complaint in this regard.

Overall, I am satisfied that the Council has spent considerable time and effort on this matter and is continuing to do, given the recent service of a further enforcement notice. In this regard the planning staff are acting on behalf of the local planning authority and are not acting specifically on your behalf. I agree that there was a period of time when the matter could have progressed more quickly, but I am mindful that some delay was attributable to the pandemic and that the Council's limited staffing resource was juggling a very large workload at the time (and as they still are).

Yours sincerely,

Jane Ellis

Jane Ellis
Director - Legal & Democratic Services

From: **Jane Ellis** Jane.Ellis@hyndburnbc.gov.uk 
Subject: Your complaint
Date: July 29, 2021 at 12:39 PM
To: **Julie Speak** julie.speak@hotmail.com



Dear Mrs Speak

I attach my response to your complaint

If you remain dissatisfied you have a right of appeal to the Council's chief executive. He can be emailed at:

chief@hyndburnbc.gov.uk.

Please say why you wish to appeal. The matter will then be allocated to an unconnected chief officer who will consider the matter afresh.

Best wishes

Jane Ellis
Director



Speak-letter.docx

STAGE 3 INVESTIGATION INTO COMPLAINTS **BY MRS J SPEAK**

INDEPENDENT INVESTIGATING OFFICER
MARK BEARD, HEAD OF AUDIT & INVESTIGATIONS

COMPLAINTS AND FINDINGS

Your complaint surrounds issues relating to the neighbours of a property you own having created fencing which extends their property and blocks the rear alley behind the properties on Norman Road. In addition the complaint focuses on the protracted delays you have faced with the Planning Department, mixed messages you have received from Council Officers, the lack of success with enforcement action which has been taken and the Council's failure to prosecute the resident for non-compliance with the enforcement notices.

In order to be able to address the complaint you make the following work has been carried out:-

1. The matter has been raised and discussed with Chief Planning & Transportation Officer, Mr Prideaux.
2. The matter has been raised and discussed with Executive Director, Mrs Ellis.
3. The matter has been raised and discussed with Planning Enforcement Officer, Mr Glover.
4. I met with you in my office on Monday 7th February 2022 and discussed the issues and viewed correspondence and photographs.
5. The records / information surrounding this case were examined.
6. Correspondence surrounding this case and complaint was examined.

The findings for each complaint are detailed in the points referred to below:-

Complaint No.1:

The enforcement actions surrounding the Volkert's fencing including delays within the process, including the failure of the Council to prosecute for non-compliance with the enforcement notices.

- *You state that during the 8 years you have owned your property there has been no blockage on the back alley during that time.*
- *You state the rest of the alley is open both ways up to the point of the fencing erected by No10.*
- *You state that you were told by Mr Glover that the fences themselves were okay as they were permitted development but the change in use of the land required planning permission to be used as a garden.*
- *You state that the Volkert's are using it as a garden and continue to do so despite the Enforcement notices which were issued. You sent up to date photographs showing this fact with your email dated 18th February 2022.*
- *During your meeting with me on 7th February 2022 you gave numerous examples of failures to respond to your emails and delays that had occurred within the process.*

- You quoted from Council Policies during our meeting on 7th February 2022 regarding enforcement and prosecution and stated that Government Legislation gives certainty in this case, which could be viewed via the .gov.uk website.
- You stated that it sends out a message that if you are stubborn then the Council will drop the matter.
- **As a result of the investigation I make the following observations:-**
 1. It is clear from the evidence that there have been a number of delays throughout this process. I have covered the issue of delays during the process in Complaint 2 below.
 2. It is clear from the evidence that the crux of the issue relates to the change of use of the land itself as Mr Glover advised that the fences themselves fell within permitted development. Indeed the enforcement notices that were issued were in respect of the land usage rather than the fences.
 3. You informed me, at our meeting on 7th February 2022, that United Utilities had no plans to take any actions but had stated they would force access if they needed access to their sewer etc.
 4. The evidence shows that members of the Planning Department worked hard to find a resolution to the issues raised. The key difficulty faced by the Planning Department was the limitations as to what it could do.
 5. Whilst Enforcement Notices were issued it was recognised from the outset that these would not result in the removal of the fencing which is the fundamental crux of your complaint. The Enforcement Notices were not issued because of the fencing but due to the change in use for the land the fences encapsulated.
 6. The evidence shows that the Council sought external Legal Counsel's opinion on this matter and were advised that the onus falls on Lancashire County Council to deal with this matter under section 143 of the Highways Act 1980 to remove the items causing the obstruction on the highway, i.e. the fences in question.
 7. Mr Prideaux has also pointed out that the National Planning Policy Framework advises that enforcement action is discretionary. As you are aware the Council issued enforcement notices but based on the legal advice from both the Council's Legal Team and external Legal Counsel made the decision we could not take this matter any further. This is also backed up by the Legal Department's advice that it was not expedient to take legal action following non-compliance with the enforcement notices. Mr Prideaux cannot over-rule the Council's own solicitor's legal advice.
 8. Whilst I do recognise that you strongly disagree with the decision taken not to prosecute and you have quoted the various Council policies when you met with me on 7th February 2022, I must look at the case as a whole and ask a number of questions:-
 - Did the Council explore the avenues available to it in order to deal with this matter?
 - Has the Council considered the legal position with regards to this matter?

- *Is there a clear process that demonstrates why the matter has been dealt with the way in has been?*
- *Can the Council position be justified based on the evidence available?*

The evidence shows the answer to be yes to all of these questions. In determining the action to be taken the Council must weigh up what it is trying to achieve, what resources it will need / use to achieve this and what will be achieved as a result. This also fed into the ultimate decision that was taken by the Planning Department.

9. *The Council has pursued Lancashire County Council as the Highways Authority as advice Legal Counsel gave to Planning was the main way to resolve this was through the Highways Act and by Lancashire County Council taking action. However, Lancashire County Council have said that they do not intend to do this. Hyndburn Borough Council has no powers to make them do this.*
10. *I believe that the Council's Planning Department and Legal Department thoroughly explored the avenues that were available to deal with this matter but equally must recognise that in some cases as a District Council we do not always have all the necessary powers in order achieve this.*
11. *Mr Prideaux has closed this case and confirms that the Council propose to take no further action in regard to this matter. I am also aware that Mr Glover has written to the owner of No.10 informing them that this issue remains active and would be a disclosure if she came to sell her property.*
12. *Mr Glover has also stated that the Council has done all it can within the law to remove the gates and fences which were the focus of the complaint but as planning law is written we are prevented from doing so. Mr Glover also pointed out that Lancashire County Council as the Highway Authority and you as someone who has rights over the alley are in a far better position to secure the removal of the gates and fences. Both Mr Glover and Mr Prideaux state that the Council has done all it can within the law as it stands, to seek the removal of the gates and fences. In addition the Council also sought external Legal Counsel's opinion but was told Lancashire County Council as Highways Authority was in a position to take action under the Highways Act.*

Complaint Conclusion:-

The complaint is not upheld. The Council thoroughly investigated the avenues open to it in order to try and resolve this matter. However, it is clear that the powers available to the Council meant that it could not enforce removal of the actual fences and gates from the outset, this is something which lies with Lancashire County Council as Highways Authority. I know you have contacted Lancashire County Council yourself, as has the Council. It is also clear from legal advice that structures causing an obstruction on the highway fall under s143 of the Highways Act and the Legal Officers advise this can be done without the need for a court order following the serving of one month's notice requiring removal.

An additional consideration may be for you to contact your County Councillor, which for your area is Cllr. Peter Britcliffe to see if he can help you move this matter forward with Lancashire

County Council's Highways Team. I have included the link to his contact details from Lancashire County Council's website:

[Councillor details - County Councillor Peter Britcliffe \(lancashire.gov.uk\)](#)

I do recognise the frustration you have surrounding this matter and the fact it has not been resolved but I also must balance this with the fact the Planning and Legal Departments explored all avenues fully in order to try and find a resolution.