

**Saleha Khalid - Paralegal**

County Secretary & Solicitors Group

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**From:** Martin Ainscough [mailto:martin@ainscoughs.co.uk]

**Sent:** 18 February 2009 09:21

**To:** Khalid, Saleha

**Subject:** Your ref. LSG4/PROW/SK/5.34495 (804/491)

[Dear Ms Khalid](#)

[Ref. Wildlife and Countryside Act 1981 – part III](#)

[Claim for definitive map modification order](#)

[Claimed Public Footpath from public footpath No.33 & 40 Newburgh to  
Public footpath No 39 & 34 Newburgh. West Lancashire District](#)

[Further to your letter regarding ownership of the land. The land is currently being registered at the  
Land Registry and will be completed very shortly.](#)

[However, as this is still not complete I am sending a copy of the conveyance as requested.](#)

[With apologies for the delay](#)

[Martin Ainscough](#)

[Giants hall](#)

[Newburgh](#)

[Wigan](#)

[Lancashire WN8 7XA](#)

# GIANTS HALL

28 November 2010

Saleha Khalid  
Paralegal  
Lancashire County Council  
County Secretary and Solicitors Group  
P O Box 78  
County Hall  
PRESTON PR1 8XJ

Dear Ms Khalid

**Re. Wildlife and Countryside Act 1981 – Part III**  
**Claim for definitive map modification order**  
**Claimed footpath from public footpath no.39 to public footpath no.40**  
**Newburgh, West Lancashire Borough.**  
**OBJECTION**

Further to your letter of 4 June, I have heard nothing more from your department and just in case you have already made arrangements for the necessary order to show the claimed footpath status on the Definitive Map and Statement of Public Rights of Way without telling me, I thought I should object formally to the order.

You are probably aware that the footpath 39 is not on the actual definitive map route but was re-routed through the wood in 1992 by Peter Moores the previous owner. At that time, fencing was erected across the desired route to direct walkers towards Cobbs Brow Lane. Blocking the claimed route. No walker can claim they have walked the path claimed.

It should also be born in mind that the evidence submitted by the public claiming 20 years of use of the route fails to take into account that the footpaths were closed formally during the foot and mouth crisis in 2001 and as a result, the claimed continuous use of the route is broken. We have obtained legal advice and counsels opinion on this matter and will be happy to challenge the decision.

As mentioned previously, I am willing to grant a permissive path on the route claimed as part of my Higher Level Stewardship application to Natural England. This will allow walkers to use the route without a modification order.

Given the state of public finances, particularly in Lancashire, can I suggest that this would be a prudent route to take. A costly public enquiry would be in no-ones interest.

Yours sincerely

Martin Ainscough

Mr Martin Ainscough  
Giants Hall  
Culvert Lane  
Newburgh  
Wigan  
WN8 7XA

Phone: (01772) 533427  
Fax: (01772) 530949  
Email: saleha.khalid@lancashire.gov.uk

Your ref:  
Our ref: LSG4/SK/5.34495 (804.491)  
Date: 21 January 2011

Dear Sirs

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

**WILDLIFE AND COUNTRYSIDE ACT 1981 – PART III  
CLAIM FOR DEFINITIVE MAP MODIFICATION ORDER  
CLAIMED PUBLIC FOOTPATH FROM PUBLIC FOOTPATH NO. 39 TO PUBLIC  
FOOTPATH NO. 40 NEWBURGH, WEST LANCASHIRE BOROUGH**

Further to your letter of 28 November 2010, with regards to your offer of a permissive route, please be advised that the Modification Order is now made and will be advertised shortly and will proceed as resolved by the Regulatory Committee of the County Council.

It would not be appropriate to consider your offer at the time as the Modification Order procedure is not yet concluded.

Yours faithfully

Saleha Khalid  
Paralegal

**Please quote our full reference number on all correspondence**

Martin Ainscough  
Giants Hall  
Newburgh  
Wigan  
Lancashire  
WN8 7XA

Phone: (01772) 533427  
Fax: (01772) 533493  
Email: heather.orsich@lancashire.gov.uk

Your ref:  
Our ref: LSG2/HO/5.34495 (804.491)  
Date: 27 May 2011

Dear Mr Ainscough

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

**Wildlife and Countryside Act 1981 – Part III  
The Lancashire County Council Definitive Map and Statement of Public Rights of  
Way Definitive Map Modification (No. 3) Order 2011  
Claimed Public Footpath from Public Footpath No. 33 & 40 Newburgh to Public  
Footpath No. 39 & 34 Newburgh, West Lancashire District**

Thank you for your email dated 10 February 2011 setting out your objections to the above Order made by Lancashire County Council.

I have now taken instructions from the County Council's Environment Directorate and in response to the objection I would make the following observations. For ease of reference I have adopted the same numbered points as in your said email.

**1. Foot and Mouth Outbreak 2001**

A minister, or an Inspector acting on his behalf, may make an Order prohibiting entry to a place or area which has been notified as 'infected' by an animal disease, such as foot and mouth disease. Such an Order has the effect of prohibiting use of rights of way across the land and contravention of an Order is an offence. During the foot and mouth outbreak in 2001 all public rights of way were temporarily closed under the Foot and Mouth Disease Order 1983 (as amended). In Lancashire this led to an immediate closure when the outbreaks were first announced and a phased re-opening, depending on the proximity of exclusion zones and whether land was used for grazing livestock.

Public Footpath Nos. 29 and 40 Newburgh would therefore have been closed during this time and this would effectively mean that it was not possible to lawfully access the claimed route.

The issue as to whether restrictions on access to claimed rights of way under the foot and mouth control measures constituted an 'interruption' in use has been considered by the Planning Inspectorate, whom deal with all objected to Orders.

A copy of their advice note is publically available and is attached for your information. It appears that the Planning Inspectorate takes the view that the temporary cessation of use of the way solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 would not be classed as an 'interruption' in use under section 31(1) Highways Act 1980.

The County Council support this view and are satisfied that there has been sufficient uninterrupted use of the Order route to satisfy the provisions of section 31 Highways Act 1980.

## **2. Confusion surrounding the start and end of the claimed route and current route of Public Footpath 40 not being the same as that shown on the Definitive Map**

In regards to Public Footpath No. 40 Newburgh, the environment directorate is of the view, having walked the route currently used by the public and having examined the Definitive Map and maps produced as part of the Definitive Map process, that the route used by the public is the definitive route of the public footpath.

However, it has been noted by the environment directorate that the signpost at the start of the route on Cobbs Brow Lane has become obscured by trees and they will arrange for this to be rectified.

The Order route leaves Public Footpath No. 40 Newburgh at Point C on the Order plan. When the County Council carried out a site inspection on 29 September 2009 it was noted that access along the claimed route from point C was blocked by the existence of post and rail fencing. However, the user evidence refers to a direct route through the fencing which it is claimed has not always been in existence. No information regarding the erection of this fence or any other measures that may have been taken to prevent access by the previous landowner has been supplied to the County Council.

In regards to Public Footpath No. 39 Newburgh, I can confirm that the definitive route of Public Footpath No. 39 has been digitised incorrectly on the Order plan. However, Point A, from which the Order route leaves Public Footpath No. 39 Newburgh, is unaffected by this error and is correctly shown on the Order plan. The correct line of the footpath is now digitised on our records.

Further, Public Footpath No. 39 Newburgh is currently obstructed at the point at which it leaves Cobbs Brow Lane with the public using an 'unofficial diversion' north of the field boundary. I can confirm that details have been passed to the Area Network Officer to ensure that the correct line of the footpath is made available.

## **3. Evidence of work carried out by the previous owner to prevent trespass**

I can confirm that the County Council is not aware of any evidence being provided by Mr Ainscough or the previous owner, Sir Peter Moores, of work carried out to refute the claim. The environment directorate is of the view that the fence across the claimed route close to Point C appears to be the only evidence on site that any action may have been taken to stop the public using the route. However, no information regarding when it was erected or its purpose has been communicated to the County Council. The existence of the fence, at the time the Order route was inspected by the County Council, is reported in the Regulatory Committee report. Reference is also made to the temporary obstruction of the Order route by an open ditch, dug following receipt of the application to add the footpath to the Definitive map, and which has subsequently been filled in.

I should be obliged if you would consider the points outlined above and further consider withdrawing your objection and confirming the same to me in writing. I enclose a self addressed envelope for your convenience.

If objections are not withdrawn, the Order will be submitted to the Secretary of State for Environment, Food and Rural Affairs for determination and may fall to be dealt with under Statutory Instrument 2007 No. 2008 Tribunals and Inquiries, England – The Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007.

I look forward to hearing from you at your earliest convenience.

Yours faithfully

Heather Orsich  
Paralegal

**Please quote our full reference number on all correspondence**

File Actions

Reply Reply All Forward Print Close

From: martin@ainscoughs.co.uk  
To: Orsich, Heather  
Subject: Your ref. LSG2/HO/5.34495 (804.491) Modification order Newburgh

08/06/2011 15:25:43

Dear Ms Orsich  
Thank you for your letter of 27 May.

I will not be withdrawing my objection to the modification order.

1. Foot and Mouth outbreak  
I have received legal advice from the top rights of way barrister in the country. He has clearly stated that in his view the planning inspectorate's advice is fatally flawed. We understand that this will have to be challenged in court as there is no legal precedent on this at the moment.
2. Point C is very relevant to the claimed route. The post and rail fencing replaced some chestnut paling fence erected by Peter Moores and his shoot tenant. The route of the footpath to point C from Newburgh does not match the definitive map and is clear evidence of work carried out by Peter Moores, the previous owner. Witnesses will testify to this.
3. Photographic and testified evidence will be brought to the enquiry about the work carried out to direct walkers to the correct route – or I can provide it before that date if necessary. However, the work to redirect the footpath and walkers in the wood below point C clearly shows intent on behalf of Peter Moores. Together with the existence of vast quantities of chestnut paling. Dates can be provided.

Please let me know if you would like any further information.

Yours sincerely

Martin Ainscough  
Giants Hall  
Newburgh  
Wigan  
Lancashire WN8 7XA

JMORT001

**From:** martin@ainscoughs.co.uk**Sent:** 08/06/2011 15:25:43**To:** Orsich, Heather**Subject:** Your ref. LSG2/HO/5.34495 (804.491) Modification order Newburgh

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