

WILDLIFE AND COUNTRYSIDE ACT 1981 – PART III APPLICATION FOR DEFINITIVE MAP MODIFICATION
ORDER UPGRADE TO A FOOTPATH AT CHATBURN OLD ROAD, CHATBURN TO JOIN EXISTING
FOOTPATH WHICH EXISTS AT CROW TREE BROW.

RESPONSE OF THE LANDOWNER

Introduction

1. By letter dated 9 August 2022 Lancashire County Council (“the Council”) sought to inform JJ Construction (NW) Limited (“the Landowner”) that it had received an application to modify the Definitive Map at Chatburn from Chatburn Parish Council (“the PC”). However, the Landowner’s Registered Office has no record of receiving the letter.
2. The PC had not previously given notice to the Landowner of its intention to make such an application. The application is therefore procedurally flawed. The Landowner has been substantially prejudiced thereby. The Council’s own guidance notes to applicants at paragraph 6 state: “Once you have completed your notices of application, these must be ‘served’ on the owners and occupiers by one of the following methods, failure to do so will invalidate your application.”.
3. The applicants should be asked to confirm when and how due notice was given. If due notice has not been given, then the application should proceed no further.

Factual Background

4. The application seeks to add a new footpath to the DM along the line of a footpath that has been stopped up.
5. At present footpath 3-11-FP 13 crosses the Landowner’s field. It runs south from Chatburn Old Road (“COR”) (from a point opposite where 3-11 FP 14 joins COR from the north) and curves to the east where it joins 3-11 FP 1 which then proceeds east to join the road known as Crow Tree Brow (“CTB”).
6. The application seeks to add a new footpath alongside the western edge of the field, which would again run south from COR before curving east to join 3-11 FP 1.

7. The line of the application route along the west side of the field was previously a footpath but which was stopped-up in 1971 as a result of the expanded quarry development to the west of the field.
8. Further, between 2016 and 2021, part of FP 13 was temporarily diverted as a result of development being undertaken on the field so that it ran along part of the route now being claimed to be added to the DM.

The Basis for the Application and the Evidence Submitted

9. The basis for the application is not entirely clear:
 - a. On the one hand it appears that a footpath is claimed on the basis of the footpath shown on the DM prior to the 1971 stopping-up order. This is untenable.
 - b. On the other hand, user-evidence has been submitted describing use of the claimed footpath line. This indicates a user-evidence claim.
10. All of the user-evidence that claims use of the footpath between 2016 and 2021 cannot possibly have been use “as of right” along a new line. It was plainly use of the existing footpath along the line of the temporary diversion then in place.
11. The user-evidence from 1971 to 2016 suggests:
 - a. The presence of a footpath across the field was well known.
 - b. It was difficult for walkers to know or identify on the ground precisely where the line of the footpath ran. The line was not clearly defined on the surface of the field and runs across previously disturbed ground. It is clear that the users were doing their best to walk along the line of the approved footpath but there were plainly diversions from it,

particularly as to where it joined COR (many thought that the old kissing-gate was still the lawful point of access whereas, in fact, it is about 40m to the east) and where it curved to join FP 1.

- c. What is clear is that users thought they were using an approved footpath running across the field between COR and CTB – there is no sufficiently cogent evidence that users were walking across the field on a new footpath alignment “as of right” so as to create a new footpath alignment.
- d. The variation in the plans in the individual user-evidence show more than one line being identified. This tends to show the uncertainty described above

12. The application and its user-evidence seems to have been generated as a response to the Landowner’s plans to develop the field (which have been locally controversial in the planning context). But the Landowner has no desire to prevent use of a footpath across the site between COR and CTB. Any change in alignment necessary as a result of development will be dealt with within the appropriate statutory context.

Conclusion

13. The application is procedurally flawed.

14. In any event, the user-evidence does not show use of the claimed new footpath “as of right”; rather it shows confusion as to the true line of the existing footpath FP13 and “innocent” deviation from it.

From: [Sadiq, Ansar](#)
To: ["Alan Davies"](#)
Subject: RE: Application for DMMO re footpath off old road Chatburn Footpath 13
Date: 19 October 2022 10:00:00

Davies

Thank you for your response to which we confirm safe receipt of the same.

Regards

Due to the ongoing pandemic, County Hall is closed to the public and there are only minimal staff present to carry out essential tasks that cannot be carried out remotely. Legal staff are predominantly working from home and only attend the office occasionally and when absolutely necessary.

Ansar Sadiq
Paralegal Officer
Legal, Governance & Registrars
Lancashire County Council

From: Alan Davies <Alan@dtpc.uk.com>
Sent: 18 October 2022 17:38
To: Sadiq, Ansar <ansar.sadiq@lancashire.gov.uk>
Subject: FW: Application for DMMO re footpath off old road Chatburn Footpath 13
Importance: High

Sadiq

Please find attached our formal reply to the application for review please confirm receipt, it is based on the info issues by you and you will note we do not appear to have been official notified of the application.

Can you confirm that your investigations and discussions have not provided any further evidence from the parish council that we need to be aware of to take on board?

Regards,
Alan Davies
DTPC (Northwest) T:01706872323; M:07521560109,

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