

OUR REF : CL/WHITE306/003
YOUR REF :
DATE : 24 February 2023

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Dear Sirs

**Objection to proposed Public Path Modification Order - land between Barrow and Cottesmore
Ref: RCCDC/M17**

We are instructed on behalf of Mr White the owner of the land affected by the application for a Definitive Map Modification Order over land between Main Street, Barrow and Sheepdyke, Cottesmore. Our client strongly objects to the making of an Order in this case and is particularly concerned as to the lack of conclusive evidence in this case. We set out below the grounds of objection and would be grateful if these grounds could be given appropriate consideration in the determination of the application. We are keen to ensure that appropriate scrutiny is given to the evidence now submitted by the applicant, particularly given that there is no one piece of conclusive evidence and the claim therefore appears to be made on assumptions gained from the documents provided. We submit that those assumptions are incorrect in this case, in light of the advice contained in the Wildlife and Countryside Act 1981: Definitive Map Order Consistency Guidelines dated 27 January 2022 ("the Guidelines").

The application appears to have been made under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the main issue is therefore whether the discovery of evidence, when considered with all other relevant evidence available is sufficient to show, on the balance of probabilities, that rights of way which are not shown in the definitive map and statement exist, or have been reasonably alleged to exist, such that the definitive map and statement require modification.

On reviewing the evidence submitted in this case, we note that certain key evidential documents seem to be missing and that there is therefore no conclusive document, which alone, could be considered to be sufficient to demonstrate that a public right of way exists in the location now claimed. Indeed, we note that the applicant has instead used assumptions gained from inconclusive evidence to seek to demonstrate that the claimed route did exist. For the reasons set out below we dispute this position.

We would submit that in accordance with the Guidelines: *"it is necessary with all evidence to consider the portion of the document on which the applicant relies, not by itself, but in context. Similarly, it is necessary to study maps carefully to see whether the feature relied upon is supported by other information on the map. As Mummery L J said in O'Keefe v SSE and Isle of Wight Council [1997] ... it is important to read all the documents... as a whole and not to examine passages taken out of context."*

In terms of the drawing of assumptions or inferences from insufficient documents, when read together, the courts have held in *West Yorkshire MCC v Harry Brown' (1983)* that, *"the decision-*

maker should give ... careful consideration of what should prima facie be drawn from a fact and then see whether, upon consideration, this should be rebutted or whether it should ripen into an inference upon which further conclusions may in turn be based." It is therefore clear that any inference must be tested against other evidence, no matter how reasonably any inference may seem, it is no more than a rebuttable presumption. The Guidelines are also clear that seeking to rely on several lightweight pieces of evidence, for example three commercial maps by different cartographers, all produced within the same decade, may be mere repetition and therefore the evidential weight to be afforded to those documents together would be less than a single definitive piece of evidence made under statute.

In this case the applicant has not sought to produce a copy of any relevant Inclosure Award or Map. It appears that there may not be any available evidence of this nature. We consider this to be significant and contrary to the assertions now made by the applicant in this case. We further note that no title documentation has been submitted.

The applicant has submitted various OS Maps dating between 1883 and 1899, given the official Guidelines above, we would suggest that these maps can only be read as a single map, and therefore the weight to be afforded to them is not sufficient alone to determine, on a lawful basis, that a public right of way subsists as claimed. We further question the reliability of such maps, it is well established that such maps of this age generally lacked sophistication and that the annotation of 'F.P' on an OS Map of that age is not evidence of a public right of way. It is well known that surveyors recorded any form of access or track as may have been on the ground at the date of inspection. This is not determinative that any said route was public, indeed some routes would have been privately used by farm labourers to access the fields. It cannot therefore be presumed that a public right of way existed from these maps alone.

With regards to the extracts from the Parish Council's Meeting Minutes, we would again submit that these records are not reliable as they are not specific to the location or route of the claimed path. There is no field references noted, nor is there a map reference or map contained within the minutes. The discussions could therefore relate to any number of fields or routes in the area. This evidence is not therefore conclusive as to the existence of a public right of way over Mr White's land.

With regards to the submitted Finance Act evidence, we submit in accordance with the Guidelines that, *"in all cases the evidence needs to be considered in relation to the other available evidence to establish its value; this is particularly important where a deduction for a public right of way is shown in the Finance Act records but its line is not apparent. It must be remembered that the production of information on such ways was very much incidental to the main purpose of the legislation."*

We further submit that the evidence contained in the personal diary of Norah Thompson has little or no value. Personal records of this nature which do not attach plans or reference field numbers, and which are not based on a statutory procedure are unreliable. This diary is a personal memory and cannot be considered accurate. Nor can this be relied upon as to the existence of a public right of way, it is not known whether the author was personally permitted to use any claimed routes, nor whether she was simply trespassing. Assumptions have been made based on this evidence by the applicant and we would consider such assumptions to be unreliable based on the lack of any evidential value of the diary entries.

With regards to the draft definitive map parish survey returns, we again question the reliability of this evidence given its 'draft' status. A draft is just that, it is not a final document and is therefore subject to amendment and change. It is clear here that the route was not taken forward at that time and we submit that this is evidence against the claim now made. It may well have been an aspiration of the parish to try and have a route in this location added to the map at that stage, however it appears that this was not successful and we suggest that this further questions whether a public route ever existed in the location now claimed. We therefore submit that this evidence is unreliable and cannot be counted on in lawfully determining that a public right of way existed across Mr White's land at that time.

Having reviewed the evidence submitted by the applicant and for the reasons set out above, we submit that the claim is not conclusive. There is a clear absence of sufficiently detailed and reliable evidence in this case to support the claim now being made. As such it is submitted that the Order should not be made by the Council in this case.

However, should the Council proceed, despite the clear objections above, then our client would also like it noted that from a practical point of view there are concerns as to whether such a route could be physically implemented. The reason for this is that since part of the land was quarried there is a significant drop along part of the now claimed route which would not be physically useable. Our client has also informed us that he has known the land for at least 60 years and during that time he has never known a public right of way to exist across it. We are informed by our client that there could have been no right of way over the land when the land was being quarried since the company installed a concrete road to transport the ironstone from the site to the railway for onward transport. We understand that there was a significant drop either side of this road, part of this still exists on the land and would in our view prevent a safe route from being implemented as is now proposed. Our client is obtaining further information from the archives regarding the quarrying of the land which it is hoped will assist in this objection.

Finally, and for completeness, our client wishes to note that there has been no intention to dedicate any right of way across this land, nor has there been any use of the claimed route as of right and without interruption over a 20 year period. As such there can be no presumed dedication in this case through long user or inferred dedication by the landowner. The claimed route is blocked off and no access has been permitted by the landowner.

We should be grateful if the Council could carefully consider the submissions made on behalf of the landowner, prior to considering whether to make the Order in this case. We are particularly concerned in this case as to the lack of definitive and specific evidence of the route now being claimed.

We should be grateful to be kept updated of the Council's decision. Our client reserves the right to seek advice on any further action required to be taken to oppose this Order.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Charlotte Lockwood', written over a faint, illegible printed name.

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