

Public Rights of Way

Fax: 01484 221613

8 August 2013

Our ref 872/1/49/GC

Your ref: JMC/SHP(or KMO)/211630-1

Ramsdens Whitfield Hallam  
28 Bond Street  
Dewsbury  
WF13 1AU

FAO Mr Jeremy Cook

*By Peter Andrew*

Dear Sirs

**Public footpath Batley 49: your clients Mr & Mrs Bragg, 75 Hey Beck Lane**

Further to our previous correspondence, including your letters dated 18 July 2013, 22 July 2013, 29 July 2013 (50 page pdf document), your email of 31 July 2013 and our various responses. Please note that as well as providing a full response on points and information raised, this letter is a final informal request for your clients to re-open the above footpath.

A - Site survey - Holroyd Miller

You have provided no information to us regarding what requests were made to your client's retained surveyor, what his site survey consisted of, nor any details of what information was given by Mr Lenton in reply. As we are not in receipt of any information with regard to Mr Lenton or the survey, we are unable to consider it. We note your statements that "we disagree with your interpretations of the plans" and "your contentions with regard its current position are incorrect", however, you have not provided any information, or clarified any grounds to question the council's position.

B - Further enquiries undertaken by your clients regarding purchase file and Wakefield Deeds Registry.

With regard to the documents you have referred to, some of which you have supplied copies:

*B1 - Planning application 1951* – we have not had sight of this document despite asking for a copy of it, but as a planning consent cannot authorise the stopping up or diversion of a public right of way, it would carry little weight in any event.

*B2 - Search of 8 December 1965* – we have not been informed of the nature or detail of this "search". We have not received a copy of this document, although we have asked for it to be provided. However, a "search" dated 1965 is unlikely to affect the definitive map process which resulted in the publishing of the definitive map and statement with a relevant date in 1952. A 1965 search would not divert or stop up a public footpath and would not change the recorded alignment of Batley 49.

*B3 - 22 January 1966 – conveyance from Savile Estate to Mr Buckley. We have not received a copy of this document, although we have asked for a copy to be provided. As with the above, it is difficult to envisage how a conveyance from 1966 is likely to affect the statutory definitive map process which resulted in the publishing of the definitive map and statement with a relevant date in 1952. Again a 1966 conveyance could not divert or stop up a public footpath and would not change the formal recording of Batley 49.*

*B4 - Records of the estate office and Mr Roger Preston Jones – no copies provided. The council has requested these copies from you. The council has also made enquiries to Savile Estate, with no response received. If you or your clients are aware of any such records which purport to divert, stop up or otherwise amend the alignment of the recorded public footpath Batley 49, I would suggest that you let us have them as soon as possible.*

*B5 - Land registry document of 1971 – This has been identified as being the plan attached to Mr Buckley's declaration dated November 1981 which has been provided to the council within the submitted 50 page pdf emailed on 30 July 2013. This plan appears to be an Ordnance Survey extract which has been annotated and sits within a template box noting "Crown copyright 1971". The depiction of ways on this '1971' plan, or the lack of depiction of ways on this '1971' plan provide no evidence which would be relevant in questioning the alignment of public footpath Batley 49 in the statutory definitive map process which resulted in the publishing of the definitive map and statement with a relevant date in 1952. Mr Buckley's declaration does not refer in any way to public footpath Batley 49.*

*B6 - Local land charge search 18 September 1981. Copies provided to the council in 50 page pdf of 30 July 2013.*

The solicitor, Christopher Hewison does not appear to have asked the relevant public footpath question. This being an optional question at Part II, I (at page 4 of the enquiry).

*B7- The solicitors (Hewison & Nixon) at the Local Land Charge searches of January 1995 and May 1998 (some copies provided to the council) do not appear to have asked the relevant public footpath question – which as with the above would be an optional question 18. As a result, no public footpath information was provided by the council.*

As a result these 1981, 1995 and May 1998 Local Land Charge documents provide no relevant information regarding the location of recorded public rights of way.

*B8 - Local land charge search July 1998 - (copies provided to the council).*

The solicitor (Hewison & Nixon) appears to have asked the optional question 18 in July 1998 on the instigation of the council, to their May 1998 Local Land Charges search. In reply, the council appears to have supplied a form and an annotated version of the previously-proposed diversion plan with a template box dated July 1992. This erroneous diversion plan has been the subject of previous replies to you. The apparent provision of this plan as part of a Local Land Charges search and the plan itself do not in any way affect the alignment of the recorded public footpath Batley 49 (see \*B11 below). Local Land Charges searches would not be routinely examined in consideration of a public footpath enforcement matter.

*B9 - Building consent of 15 October 1982 (copy provided).*

This would appear to be a planning consent, rather than a building consent. A 1982 planning consent would provide no evidence which would be relevant in questioning the alignment of public footpath Batley 49 in the statutory definitive map process which resulted in the publishing of the definitive map and statement with a relevant date in 1952.

B10 - Proposed diversion of 1992 – this matter has been responded to in previous correspondence, including reference to the council's and the inspector's considerations. The line of public footpath Batley 49 is incorrectly shown in the proposed diversion documents. No public path order to change the alignment of footpath 49, (or any path apparent on the ground at that time) was confirmed or came into effect.

\*B11 - Please note the response below on the local land charges search copies provided by you. from the council's Senior Registry Officer, David Reid.

"Hi Giles

*I refer to our conversations yesterday and to the ongoing correspondence between yourself and Ramsdens Whitfield Hallam.*

*In respect of the various issues raised by the local authority searches, which were carried out by my Highways Registry team, I would reply as follows.*

Access to local authority searches

*Councils are advised to hold searches for a period of 15 years for insurance purposes and most local authorities will not keep them beyond that time period.*

18 September 1981 search

*The public rights of way question on the Law Society's Con29 search document is an optional question. As such, public rights of way information would not be routinely provided unless the additional question was asked by the enquiring solicitor. Having had sight of the documents forwarded to you by Ramsdens Whifield Hallam, there is no evidence to suggest that the public rights of way question was asked with this search and, consequently, no public rights of way information would have been revealed.*

27 January 1995 search

*Again, there is no evidence in the documentation forwarded to you to suggest that the additional public rights of way question was asked.*

*It is interesting that a copy of a public footpath diversion plan is included with the 1995 search. This office would not have issued a diversion plan with the search without annotating it with the appropriate search reference details and we would certainly not have issued such a plan if the additional public rights of way question had not been asked. I can only assume that some of the paperwork has become misplaced during the scanning process by Ramsdens Whitfield Hallam.*

11 May 1998 search

*The additional public rights of way question was asked on this search and my team responded to reveal the existence of Batley Public Footpaths Nos. 49 & 55. The*

plan provided with the search response is a copy of a diversion plan which can only have been supplied by the Public Rights of Way team at that time. Of course, a search response is merely an interpretation of the authority's records on a given day and does not in any way alter the correct legal position. If Ramsdens Whitfield Hallam feel that their client has been issued with an incorrect search response and has suffered loss as a result, I would suggest that they put their concerns in writing to the Local Land Charges department in the first instance and they will refer the matter to the Council's insurers as appropriate.

Comments from 18 July letter

5. Our clients in purchasing the property carried out a Local Land Charge search through (then) Kirklees on 18<sup>th</sup> September 1981 which shows no footpath but states specifically (page 2 of the search) that there is a footpath on the road (un-adopted) on the side of the site. National Grid Reference SE2724.

*In respect of the above comments by Ramsdens Whitfield Hallam, which I believe were made to you in a letter of 18 July, I would respectfully suggest that the solicitor is reading more into the response on page 2 than was intended. Question 1(a) asks if the roadways (including footpaths) abutting the property are maintained at public expense. I.e. what is commonly known as "adopted". The search response simply records that Hey Beck Lane is adopted but the road at the side of the property isn't. Again, I would re-iterate that no public rights of way information would be revealed at this question, as there is an optional public rights of way question elsewhere on the Con29 where such information would be revealed.*

*I hope my comments are of some assistance."*

B12 - Mr Reid notes that the search response(s) "[...] does not in any way alter the correct legal position." I would again note that Mr Bragg was informed by the council in late 2003 that the definitive footpath Batley 49 runs across his land, and that the council informed him that we would not take action against Mr Bragg at that time due to the ongoing formal application from Mr Lilley to divert path 49 and the continued availability of public access. In Mr Bragg's planning application for conversion of the garage to dwelling in 2011, application submissions to the council included a plan showing the definitive alignment of public footpath 49 across his land.

[http://www2.kirklees.gov.uk/business/planning/application\\_search/filedownload.aspx?application number=2011%2f92466&file reference=390817](http://www2.kirklees.gov.uk/business/planning/application_search/filedownload.aspx?application number=2011%2f92466&file reference=390817)

C - The council's enquiries.

The council has already provided you with copies of documents relevant to the formal recording of the public footpath 49. You have asked about the enquiries that have been undertaken and what information has been considered by the council. You have referred to these as "exhaustive enquiries", as a "complete audit of all Public Path applications (to vary or otherwise) from 1952 to date)" and you also noted "We understood from your earlier emails that enquiries had been carried out that allegedly concluded that no application had been made to vary the location of this footpath until the early 1990's." You have also stated

*"[.....] your earlier emails contention that you had checked sources available to you with regards to applications to relocate public footpaths including but not limited to footpath number 49."*

The council has not made enquiries of all available documents at all public records offices, as this would not be considered to be reasonable and appropriate. The council has not suggested that relevant documents relating to this footpath could not exist. The council would not routinely seek out documents referring to private conveyance or local land charges searches, given these could not in themselves change the status of the public rights of way. If you are aware of any particular relevant documents which would clarify, identify or affect the recorded alignment of public footpath Batley 49 then please bring them to our attention so that the appropriate consideration may be given to them. The council has always provided your client with every opportunity to submit any documentation which is considered supportive of your client's case.

The modified definitive map and statement of public rights of way published in 1985 and held by the council as surveying authority is conclusive proof of the existence and position of public rights of way (Section 56, Wildlife & Countryside Act 1981). We have already provided this information.

In checking whether there has been an evident error in the recording of the public footpath Batley 49 in the 1985 formal record, officers also viewed the council's public rights of way ("PROW") path files, PROW application files, records of orders made, copies of the '1952' definitive map and papers connected with that process, as well as historic Ordnance Survey plans and other papers held by the council. No relevant evidence was uncovered which would support a contention that the modified definitive map and statement is incorrect, or that public footpath 49 has been formally diverted or stopped up since the beginning of the '1952' definitive map process.

We invited your clients to provide the council with any information they wished the council to consider in regard to the alignment of the public footpath. Your client has had nearly ten years knowledge of the alignment of definitive path 49, during which he may access and accumulate any documents which he may wish to rely on. Following the blocking of any access to the public, we wrote to your client on 1 March 2013, five months ago. We have given a response on all submitted information. We have previously highlighted the potential for your clients to submit an application for a definitive map modification order, if they wish to submit evidence to request changes to the modified definitive map and statement of public rights of way. We have explained the recording of public rights of way and the public path order process. We have made clear our interest in considering any information that they or you wish us to consider, and have responded appropriately to any supplied.

Although we do not currently rely on the following information, I would note that, in addition, the council has a letter on file from a local resident which suggests that the correct alignment of the public footpath 49 runs over land which is now owned by your clients. I have also had a telephone conversation with a different local resident who contends that some years ago Mrs Buckley challenged them when walking the usual route along the public footpath by the brick wall across the Buckley's land (now owned by your clients). The resident contends that Mrs Buckley said that the path had been moved. This resident does not recall any formal notices connected to this alleged movement of the footpath.

#### D - Your client's case.

Your client's case appears to be summed up in your letter of 18 July.

*"As there is no suggestion whatsoever that our client altered the position of the footpath personally during his occupation of the property and an Estoppel clearly arises."*

Obstruction of the public highway may be an act of commission and/or omission. It is a continuing offence concerned with preventing public passage over the public highway and is not just the act of erecting, depositing or otherwise creating physical impediments.

You seem to be suggesting that the council can take no action against your client or this interference with public rights over his land. Obstruction of public highways, and the highway authority's powers and duties regarding the protection of the public rights do not cease on sale or other transfer of land. It is unfortunate that at the time of their purchase of the property affected by public rights, your client's solicitor appears not to have made the optional enquiries to discover public footpath 49. On the matter of continuing offence, I would note the powers under S137ZA of the Highways Act 1980 introduced by the Countryside and Rights of Way Act 2000 which enable Magistrates to levy daily fines where an obstruction continues.

With regard to the issue of Estoppel, I have consulted the council's solicitor in this respect. I am informed that given the council is under a duty under Section 130 of the Highways Act 1980 to assert and protect the rights of the public to use the highway, Estoppel cannot arise. I am further informed that the doctrine of Estoppel is highly questionable in public law generally and particularly where it would prevent the council undertaking its statutory functions or fettered its discretion.

You refer variously to "relocating", "altering the position" and "realigning"; but it is the unauthorised prevention of public passage over the recorded public footpath that is the offence, not the alleged or actual provision of an alternate route. Whether such unauthorised blocking took place 40 years ago or this last week does not alter the fact that it is an obstruction to public passage over the public highway. In addition, further obstruction to footpath 49 has been erected during your client's ownership.

From your letter of 18 July:

*"In disposing of the land Savile Estates have realigned the footpath (over their own land)".*

You provide no evidence to support either this point or any contention that the public footpath was subject to any formal diversion or stopping up. You state that the footpath has been realigned - this is precisely the council's point. The public footpath has been obstructed whilst being "realigned" on the ground at some time without the authority of a formal process.

Further from your letter of 18 July:

*"By that date (1971) it had been relocated by Saville Estates with an express or implicit agreement from the predecessor Local Authority and/or abandoned."*

You state that the path was "relocated" and/or "abandoned". The council's point is that at some time the public footpath 49 has been obstructed, that the obstruction remains and should now be removed. With regard to "express...agreement" - you provide no evidence to support any contention that the public footpath 49 was subject to any formal diversion or stopping up by the council. A local authority has no power to give "implicit agreement" to relocate a path, and any such alleged implicit agreement would not amend the formal alignment of public footpath 49 or this council's duties. Similarly, the recorded public footpath may not be, and has not been, abandoned; this public highway subsists until such

time as it is subject to a relevant legal event coming into force, e.g. an Act of Parliament, a definitive map modification order or a public path order.

#### E – Taking matters forward.

Your client has been aware of the recorded alignment of Batley public footpath 49 since late 2003. Our letter and enclosed plan of 26 November 2003 was acknowledged by Mr Bragg by his fax reply of 1 December 2003. Your client has not taken any steps to address the obstructions, nor to apply to change the alignment as it runs over land, nor to make any application which may challenge the recording of public rights of way at Hey Beck Lane. These points have all been discussed in detail with your client, the options explained and I have invited any queries or discussion which may assist you and your clients. Your clients have not taken up any of these options. Indeed, since being informed about the footpath, the footpath has been subject to further obstruction, e.g. in the form of the electric gate.

The blocking of a gate off the public footpath has led to a number of requests from members of the public regarding public rights of way at Hey Beck and has brought this matter to a head. Your client's neighbour shows no intention to proceed with any application to divert footpath 49 and would appear to accept the council's position regarding the path's current definitive alignment.

The public footpath 49 has been recorded since at least the publishing of the first definitive map and statement, which had a relevant date in September 1952. This public footpath used to run outside the curtilage of no.75, between the former south-eastern boundary wall and the stable building. That land and stable building was incorporated at some point into the holdings at 75 Hey Beck Lane, the stable became a garage and subsequently, a bungalow. Your client's own planning submissions for that bungalow conversion included a plan which shows the alignment of path 49 as we describe. The council's responsibilities regarding the obstructions of the definitive footpath are clear and I would ask your clients now to re-open the footpath to the public.

The council has shown reasonableness and patience over these issues and has informed and assisted affected landowners but we now have a situation where public access is prevented, we have received requests from various members of the public attempting to exercise their rights and we have no ongoing process proposing to change or to challenge the public footpath in question.

#### F - Request

I would now ask your clients to remove all obstructions and deposited materials from, and remedy any disturbance affecting, the above public footpath over your client's land and to reinstate the above footpath so that it is open, available and safe for public use. These items and materials include all and any fencing, walls, the electric gate, the electric gate mechanisms, dwarf walls, bedding plants, shrubs, trees or other non-grass vegetation and soils or other minerals etc.

Please let me know if your client has removed or arranged for the removal of all impediments to exercise of this public right over his/their land. If your client has taken all reasonable steps to remove the obstructions and still requires an extension to complete the removal of obstructions and re-open the path, please let me know as soon as possible, providing a timetable of the proposed works. If this is acceptable then we may grant an extension before referring the file for formal enforcement. My direct telephone line is 01484 225575. Alternatively you may write to me at the address above or by email to [giles.cheetham@kirklees.gov.uk](mailto:giles.cheetham@kirklees.gov.uk)

Your client has made a conscious decision to disregard the council's approach and informal request to comply with the law or to rectify a problem. If the footpath 49 is not re-opened we would therefore be obliged to use our default enforcement powers to ensure that matters are resolved in the interests of the public. In those circumstances it is not appropriate for the public to bear the costs. I believe that it would be reasonable for the council to seek to recover all costs which apply from our letter of March 1, 2013. However, given the nature and history of this particularly matter of obstruction, we have wished to give your client every opportunity to comply, to investigate, to seek advice, to provide evidence and to date we have been happy to provide information and responses to him and his representatives without recharge. This letter is a final informal request.

G - Formal action and recharge of costs

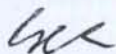
Officers intend to re-visit the site early next week and inspect the above path. If the path across your clients land is not open and available to members of the public at the time of the site inspection then a file will be passed to our Streetscene Service to co-ordinate formal enforcement action.

From the time of leaving the office to undertake this site inspection, until this matter is concluded and footpath 49 re-opened, council officers will log works and time spent associated with securing the removal of obstructions and re-opening the public right of way, Batley public footpath 49. The council will seek to recover as appropriate, all relevant costs from any relevant landowner(s) in accordance with, amongst others, Section 143 and schedule 12A of the Highways Act 1980. These costs are likely to include but are not limited to all officer time, transport costs, ground works costs, contractor costs, professional costs (e.g. electrical engineers) legal expenses, administrative costs, re-charged or claimed police costs, etc. These costs are likely to be significantly more than your client would incur in re-opening the footpath.

Other than as noted above in the final paragraph on page 7, please address any future correspondence to:

Vanessa Redfern  
Assistant Director: Legal, Governance & Monitoring  
Kirklees Council,  
High Street Buildings,  
High Street,  
Huddersfield,  
HD1 2ND.

Yours sincerely



Giles Cheetham  
Definitive Map Officer



DX 710090 Huddersfield 8

Tel: 01484 221000

Fax: 01484 221423

Email: [sandra.haigh@kirklees.gov.uk](mailto:sandra.haigh@kirklees.gov.uk)  
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13 August 2013

Our Reference: DEV/SJH/KG/D104-038

Your Reference:

Mr J Cook  
Ramsdens Whitfield Hallam  
28 Bond Street  
Dewsbury  
WF13 1AU

Dear Mr Cook


**Your Client: Mr and Mrs I Bragg**  
**75 Heybeck Lane, Woodkirk, Dewsbury WF12 7QU**  
**Re: Public Footpath Batley 49**

Your letter of 12 August 2013 has been forwarded to this department and I am now writing to acknowledge receipt of that letter.

For clarity I would just like to mention one thing, which is that whilst you state in the penultimate paragraph of your letter that you still await clarification from the Council, this clarification was given in Giles Cheetham's letter of 8 August 2013 in Section C (page 4 of 8).

Your rejection of the factual content and legal argument raised in Mr Cheetham's letter is noted. That letter set out the Council's position in full and gave your client the opportunity to remove the obstruction to the highway, before formal action was instigated. The Council now put your client on notice of its intention to issue notices under section 143 of the Highways Act 1980 to remove the obstruction.

Yours sincerely



**Sandra Haigh**  
**Legal Officer**  
**for Acting Assistant Director – Legal, Governance and Monitoring**

# Ramsdens Whitfield Hallam

Our Ref : JMC/SHP/211630-1  
Your Ref : DEV/SJH/KL/D104-038

9 September, 2013

Sandra Haigh  
Kirklees Council  
DX 710090  
HUDDERSFIELD 8

Email (sent by)

Dear Madam

**Our client: Mr & Mrs Ian Bragg**  
**Re: Highways act 1980 - Section 143**  
**Public Footpath Batley 49**

We are instructed on behalf of the above named in connection with the proposed enforcement in relation to the alleged obstruction of Public Footpath Batley 49.

Our enquiries into the background of this case are continuing.

You will recall that it is agreed by all parties that the footpath has not been in the position proposed (by the Local Authority's Planning Department) since 1966 or possibly even 1952.

As a consequence it has been extremely difficult to obtain any original source documentation.

We note that your own records are sparse.

We currently have a number of enquiries on-going with Wakefield Deeds Registry and the West Yorkshire Archive Services. We are also interviewing long standing residents in the Heybeck Lane area. To this extent we enclose Statutory Declaration of Mrs Margaret Hallas sworn 6<sup>th</sup> September 2013 in relation to her recollection that the predecessors in Title of our clients arranged for a formal application for planning permission associated with the relocation of the footpath to be made in the late 1960's.

Mrs Hallas remains available for interview by your department in connection with the matters set out in the Statutory Declaration.

At the present time we have been able to trace applications for relocations and repositioning of footpaths back to 1971 and 1972 and going back to the late 1960's.

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Doc Ref : 2160025237

On Ref: JMCSPH211630-1  
Your Ref: DEWSPHKL104-038  
9 September 2013

Sandra Haight  
Kirkcaldy Council

Please acknowledge receipt of this information and confirm that you will forestall any enforcement proceedings until you have carried out all reasonable enquiries in connection with this new information.

Please acknowledge receipt.

Email (sent by)

Yours faithfully

Dear Madam

Ramsdens Whitfield Hallam

Our client: Mr & Mrs Ian Briggs  
Re: Highways Act 1980 - Section 143  
Public Footpath Battery 49

Direct Tel : 01924 431783  
Direct Fax : 01924 469299  
Jeremy.Cook@ramsdens.co.uk

We are instructed on behalf of the above named in connection with the proposed enforcement in relation to the alleged obstruction of Public Footpath Battery 49.  
Our enquiries into the background of this case are continuing

You will recall that it is agreed by all parties that the footpath has not been in the position proposed (by the Local Authority's Planning Department) since 1966 or possibly even 1952.  
As a consequence it has been extremely difficult to obtain any original source documentation.

We note that your own records are sparse.

We currently have a number of enquiries on-going with Whitfield Docks Registry and the West Yorkshire Archive Services. We are also interviewing long standing residents in the Hothead Lane area. To this extent we enclose Statutory Declaration of Mrs Margaret Tallan sworn 6<sup>th</sup> September 2013 in relation to her recollection that the predecessors in Title of our clients arranged for a formal application for planning permission associated with the relocation of the footpath to be made in the late 1960's.

Mrs Tallan remains available for interview by your department in connection with the matters set out in the Statutory Declaration.

At the present time we have been able to trace applications for relocations and repositioning of footpaths back to 1971 and 1972 and going back to the late 1960's.

# Ramsdens Whitfield Hallam

Our Ref : JMC/SHP/211630-1  
Your Ref : DEV/SJH/KL/D104-038

16 September, 2013

Sandra Haigh  
Kirklees Council  
DX 710090  
HUDDERSFIELD 8

Email (sent by)

Dear Madam

**Our client: Mr & Mrs Ian Bragg**  
**Re: Highways act 1980 - Section 143**  
**Public Footpath Batley 49**

We acknowledge receipt of your letter dated 10<sup>th</sup> September 2013.

We are surprised by your response.

Clearly this new evidence corroborates the evidence of Mr Fountain referred to in Mr Cheetham's original enquiries.

Whilst Mr Cheetham felt able to discount Mr Fountain's recollection it is now corroborated by a second wholly independent witness, Margaret Hallas.

We write this letter on an open basis as it will be relied upon in Court and in relation to any issue with regard to costs.

Notwithstanding the foregoing we have instructions to agree to a compromise pending resolution of this issue.

Our client has instructed us to put forward a proposal whereby Footpath number 49 be temporarily diverted (our client can make a formal application if you feel it appropriate or proportionate) in the interim along the line of footpath number 55 which runs at the eastern boundary of our clients property number 75 down the farm lane.

In order to avoid the contested style and point of access (owned by Mr Lilley – see previous inquiry and previous enforcement) Mr and Mrs Bragg will agree to remove a 6ft fence panel on both the eastern and southern boundary to their property to afford footpath number 49 access across a length of 2 metres.

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Continued.....

Page 2 of 2

Doc Ref : 2160026248

This will allow footpath number 49 to meet up with the current route to the rear and southern boundary of our clients property without impediment.

Please confirm your agreement to this course of action and consequently whether or not a formal application to divert needs to be made at this stage.

In relation to our on-going enquiries we have ascertained that this same footpath was the subject of enforcement proceedings in 1971 taken by the Batley Town Council as it was at that time.

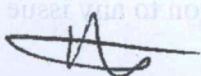
We are obtaining the full file from West Yorkshire Archives.

It is quite clear from the paperwork we have seen that a great deal of activity time and energy was put into removing the obstructions to footpath number 49 yet no comment was made with regard to the apparent obstruction that you allege has been in place since that time.

Our interpretation of this file and we shall disclose it upon receipt is that it provides a clear inference that an application to divert footpath number 49 had been made by the Buckley's as evidenced by Mrs Hallas and Mr Fountain.

Please acknowledge receipt.

Yours faithfully



**Ramsdens Whitfield Hallam**

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Mr. S. G. G. G. G.  
Mr. A. G. G. G. G.  
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Tel: 01132 432339  
Tel: 01132 432340

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Email: [sandra.haigh@kirklees.gov.uk](mailto:sandra.haigh@kirklees.gov.uk)  
[www.kirklees.gov.uk](http://www.kirklees.gov.uk)

18 September 2013

Our Reference: DEV/SH/KL/D104-038  
Your Reference: JMC/SHP/211630-1

Mr J Cook  
Ramsdens Whitfield Hallam  
28 Bond Street  
Dewsbury  
WF13 1AU

Dear Sir

**Your Client: Mr Ian Bragg**  
**Highways Act 1980 – Section 143 (Public Footpath Batley 49)**

I acknowledge receipt of your emailed letter on 17 September, a copy of which I have forwarded to Giles Cheetham.

You have requested details of diversion applications over a specified period; I attach a copy of the Council's lists of orders from council files; page 4, whilst faded, is the best copy available.

I am unable to forward you any documentation from Savile Estate as the Council does not appear to have received anything from Savile Estate regarding either this path or land disposal at Hey Beck.

If you have copies of relevant documentation that you wish to send to the Council you may still do so.

For the avoidance of doubt I must point out that the Council is relying on the five enforcement notices dated 19 August 2013, compliance with each notice being required within one month from the date of service.

Yours sincerely

*Sandra Haigh*

**Sandra Haigh**  
**Legal Officer**  
**for Acting Assistant Director – Legal, Governance and Monitoring**

## Giles Cheetham

---

**From:** Rebecca Townsend <Rebecca.Townsend@ramsdens.co.uk>  
**Sent:** 05 November 2013 13:41  
**To:** Sandra Haigh  
**Cc:** Jeremy Cook  
**Subject:** Our client: Mr & Mrs Ian Bragg Re: Highways act 1980 - Section 143 Public Footpath Batley 49

## Ramsdens Solicitors LLP

Date : 05/11/2013

Your Ref : DEV/SJH/KL/D104-038  
Our Ref : JMC/RJT/211630-1

Dear Madam

**Re : Our client: Mr & Mrs Ian Bragg Re: Highways act 1980 - Section 143 Public Footpath Batley 49**

We refer to your letter of 18<sup>th</sup> September 2013 and the enclosed copy of the Council's lists of orders. The lists appear to consist of three pro-forma pages, two additional pages which are largely illegible and a hand-written schedule of orders from 1975 to 2006 which is in three sections.

The pro-forma pages are headed with a blank space for the name of the relevant former Borough Council, UDC, etc, to be completed. It therefore appears that this list was not part of Batley Borough Council's own archive but was compiled by another body or at the request of another body which was collating records from various subordinate or former councils.

The first two pages of the pro-forma list show orders made in reverse chronological order from 1968 back to 1953. This appears to suggest that the list was not created at the time that the orders were made but compiled later from another source. The third page picks up the record from 1969 moving forward to 1975 but there is no indication as to the reason for this change in format. The pro-forma records end in February 1975.

The illegible pages appear to be headed "highways to be diverted" and "highways to be stopped up". This therefore suggests that it records proposals, although it is not clear whose proposals they are or whether they were implemented or why the Council has retained a list of apparently historic proposals.

The hand-written list appears to begin with a section which is compiled up to 1981 in section 1 and then up to 1987 in section 2. Again this list does not appear to have been made up contemporaneously because it is not a chronological list as one would expect if the orders had been entered into the record immediately they were made.

In view of the above, could you please assist with the following further enquiries:

1. When and for what purpose were the pro-forma records prepared?
2. By which local authority were the pro-forma records prepared?
3. Were the pro-forma records prepared on a single occasion or maintained and reviewed on a regular basis?

## Giles Cheetham

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**From:** Sandra Haigh  
**Sent:** 02 December 2013 07:24  
**To:** Giles Cheetham  
**Subject:** FW: Our client: Mr & Mrs Ian Bragg Re: Highways act 1980 - Section 143 Public Footpath Batley 49

Giles

I am just forwarding a letter from Ramsdens for your information.

Thanks

Sandra

---

**From:** Rebecca Townsend [mailto:Rebecca.Townsend@ramsdens.co.uk]  
**Sent:** 27 November 2013 11:13  
**To:** Sandra Haigh  
**Cc:** Jeremy Cook  
**Subject:** Our client: Mr & Mrs Ian Bragg Re: Highways act 1980 - Section 143 Public Footpath Batley 49

## Ramsdens Solicitors LLP

Date : 27/11/2013

Your Ref : DEV/SJH/KL/D104-038  
Our Ref : JMC/RJT/211630-1

Dear Madam

**Re : Our client: Mr & Mrs Ian Bragg Re: Highways act 1980 - Section 143 Public Footpath Batley 49**

We refer to your letter of 25<sup>th</sup> November 2013.

We have looked again at the information provided and your covering letter.

We are not certain that the position you have set out is consistent with what you have said previously.

There is clearly very little evidence and it would have been helpful if you could have let us know before that your records were apparently so incomplete.

On the face of it the earliest order you have is 1974. This would accord with the time of the Local Government reorganisation. This presumably explains the absence of relevant earlier Orders.

We note further your explanation for the 2 handwritten pages. We appear to be missing 2 pages out of a 5 page record as matters presently stand. We are proceeding with the application with a modification of Order and will be seeking a full indemnity in respect of our client's costs.

Yours faithfully

**Rebecca Townsend** | Receptionist  
28 Bond Street, Dewsbury, WF13 1AU  
Tel: 01924 455391 or Fax: 01924 469299 Web: [www.ramsdens.co.uk](http://www.ramsdens.co.uk)

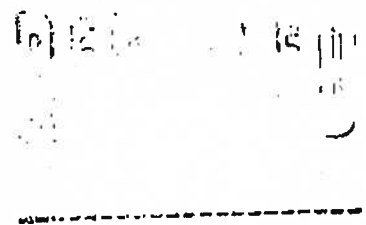


# Ramsdens Solicitors

Our Ref : JMC/HJC/211630-1  
Your Ref : 872/MOD/181/BAT49/GC

03 March 2014

Giles Cheetham  
Kirklees Council  
Legal, Governance & Monitoring  
P O Box 1274  
HUDDERSFIELD  
HD1 2WZ



Dear Sir,

**Our client: Mr & Mrs Ian Bragg**  
**Re: Highways act 1980 - Section 143**  
**Public Footpath Batley 49**

We refer to our letter dated 18<sup>th</sup> February 2014. Please acknowledge receipt of the enclosures thereof. Please let us have your substantive response to the points raised therein.

We recently carried out a site visit of the locus.

It remains the case that the footpath to the rear of our client's property as determined by the 1992 Planning Enquiry remains blocked off at the bottom of the path (at the stile).

We understand that this work was carried out by Mr Lilley previously who is also alleged to have removed the official Kirklees footpath sign when blocking up the pathway.

Given that this path has been in existence for over 20 years, please confirm when and if any steps to enforce the public right of way in respect of the same are planned and if not, why not.

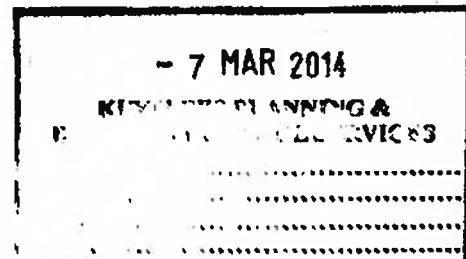
Yours faithfully

*Ramsdens*

**Ramsdens Solicitors**

Direct Tel : 01924 431783  
Direct Fax : 01924 469299  
Jeremy.Cook@ramsdens.co.uk

*Received in Proof*



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Doc Ref:  
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## Sharon Huddleston

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**From:** Giles Cheetham  
**Sent:** 07 March 2014 10:56  
**To:** Jeremy Cook  
**Cc:** Rob Dalby; Tom Ghee; Sandra Haigh  
**Subject:** Alleged obstruction of public footpath at Hey Beck - your client Mr & Mrs Bragg  
**Attachments:** Document.pdf; Plan for 7 Mar 2014 clarification of alleged obstruction.pdf

Alleged obstruction of public footpath at Hey Beck - your client Mr & Mrs Bragg (your ref - JMC/HJC/211630-1)

Sirs,

Thank you for your letter dated 3 March 2014 (copy attached). We will reply to your letter of 18 February regarding the DMMO application in due course.

With regard to the alleged footpath obstruction, it would facilitate an appropriate response if you could clarify the location described as the “[...] *bottom of the path (at the stile).*”

I am not aware of any stile within the area described so I attach a plan in an attempt to assist you, which is marked A, B & C at various points on Mr Lilley’s property boundaries.

Perhaps you could confirm to which of these approximate location points you refer, or annotate and return a copy plan marked with the relevant location of the blockage?

Regards,  
Giles

**Giles Cheetham**

Definitive Map Officer – Public Rights of Way  
Investment and Regeneration Service  
Kirklees Council, PO Box B93, Civic Centre III, Huddersfield, HD1 2JR

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W [www.kirklees.gov.uk/](http://www.kirklees.gov.uk/)



## Sharon Huddleston

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**From:** Giles Cheetham  
**Sent:** 13 March 2014 15:25  
**To:** 'Helena Clayton'; Jeremy Cook  
**Cc:** Rob Dalby; Sandra Haigh  
**Subject:** Your client: Mr and Mrs I Bragg. Blockage report and DMMO update

Sirs,

[Your client: Mr and Mrs I Bragg . Path blockage report and DMMO application update](#)

Thank you for your email below.

### Path blockage

I have consulted colleagues and am not aware that the council has any current intention to undertake enforcement action to remove the blockage you report. Your claims regarding public status are noted and of course form part of your DMMO application case. As you are aware, this point on the eastern boundary of Mr Lilley's property with the track is not on the definitive alignment of public footpath Batley 49. If your clients' DMMO application recently made to the council concludes with the addition of this route to the definitive map and statement, our position on this would evidently need to be reviewed. The above does not in any way affect the council's consideration of your DMMO application, nor does it imply that the council or its officers have reached any conclusion on the existence of public rights over the route concerned.

As you have already been informed, the footpath was not "*determined by the 1992 Planning Enquiry [..]*". That process did not lead to the determination of the existence of public rights of way, it looked at a proposal to change the route applied for by Mr Lilley, so that it would run elsewhere; these two propositions are not the same. The conclusion of that process was to refuse the proposal to change the route applied for; therefore it had no net effect whatsoever on any path/route.

### DMMO application

Thank you also for your letter of 18 February 2014 enclosing your "*re-dated*" WCA7 form of certificate of notice. Your original certification of notice does not appear to be subject to any "*confusion*" or "*misread*" on our part. Your firm's error, in certifying notification seven years before such notification occurred, was simply brought to your attention to assist you and with the formalities of the relevant process in mind. You would be aware that, for example, without serving notice and certifying same to the council in the appropriate manner, the applicant would not accrue the right to make representations against non-determination (under WCA 1981, Schedule 14, 3 (2)). With regard to your final paragraph, I would refer you back to the third paragraph of our letter of 12 February 2014. We are satisfied to accept the application and are not raising any challenge but note that the formalities of the DMMO application process have been subject to significant legal argument in past cases elsewhere. I will write further on the DMMO application in due course.

Regards,  
Giles

### **Giles Cheetham**

Definitive Map Officer – Public Rights of Way  
Investment and Regeneration Service  
Kirklees Council, PO Box B93, Civic Centre III, Huddersfield, HD1 2JR

01484 225575

[giles.cheetham@kirklees.gov.uk](mailto:giles.cheetham@kirklees.gov.uk)

[www.kirklees.gov.uk/](http://www.kirklees.gov.uk/)



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**From:** Helena Clayton [<mailto:Helena.Clayton@ramsdens.co.uk>]

**Sent:** 12 March 2014 09:04

**To:** Giles Cheetham

**Cc:** Jeremy Cook

**Subject:** Our client: Mr and Mrs I Bragg Wildlife & Countryside Act 1981 Definitive map modification order ("DMMO") application for addition/deletion at Batley public footpath 49. (ref 872/MOD/1/49/GC)

## Ramsdens Solicitors LLP

Date : 12/03/2014

Your Ref : 872/1/49/GC

Our Ref : JMC/HJC/211630-1

Dear Sir

**Re : Our client: Mr and Mrs I Bragg Wildlife & Countryside Act 1981 Definitive map modification order ("DMMO") application for addition/deletion at Batley public footpath 49. (ref 872/MOD/1/49/GC)**

Thank you for your email dated 7<sup>th</sup> March 2014.

To clarify matters, the location described as the "[...] *bottom of the path (at the stile)*" is the area marked with the letter 'C' on your attached plan. Please also find attached relevant photographs showing this area of the footpath.

Yours faithfully

Jeremy Cook.

**Helena Clayton** | Junior Legal Assistant

19A Cheapside Wakefield WF1 2SD

**Tel:** 01924 669522 **Fax:** 01924 669529 **Web:** [www.ramsdens.co.uk](http://www.ramsdens.co.uk)

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**Ramsdens Solicitors LLP**

YELLOW

Investment and Regeneration Service  
PO Box B93, Civic Centre 3,  
Off Market Street, Huddersfield, HD1 2JR

Public Rights of Way

Fax: 01484 221613

28 March 2014

Our ref 872/MOD/181/BAT49/GC  
Your ref: JMC/SHP/211630-1

Ramsdens Whitfield Hallam 901  
28 Bond Street  
Dewsbury  
WF13 1AU

FAO Mr Jeremy Cook

By Post e  
Email\* (not necessary)

Dear Sirs

**Wildlife & Countryside Act 1981. Definitive map modification order ("DMMO") application for addition/deletion of public footpath.  
Public footpath Batley 49: your clients Mr & Mrs Bragg, 75 Hey Beck Lane**

As you have stated your dissatisfaction with the council's progress on the above matter, the following information is offered on an interim basis, whilst early enquiries continue.

The council has a Cabinet-approved priority scoring process for DMMO applications. I enclose a draft score sheet for the prioritisation of Mr & Mrs Braggs' application, along with the current priority statement of other outstanding DMMO applications. I also enclose a copy of the notes used to guide the priority scoring process. Once concluded, the priority scores for DMMO are "live", in that they are open to amendment if the circumstances of an application change. You would note that the above application appears likely to score lowly using the priority matrix.

As it appears that a number of substantive matters raised in your application have already been investigated by the council, we may look to take a report to the relevant committee at an early stage, depending on the results of our ongoing enquiries, including those regarding the making of formal orders by the former Batley Borough Council.

Formal council consideration of the relevant evidence and of the above application would be made by members of the relevant committee, but I note below a few current officer thoughts, made without prejudice to that formal consideration of the application by members.

In early viewing of the application submissions and other previously gathered evidence, there would appear to be doubt as to whether there is cogent (*Trevelyan v Secretary Of State For Environment, Transport & Regions [2001] EWCA Civ 266*) and succinct evidence to show that the 1985 definitive map and statement are in error when showing a route across your clients' land.

Government guidance to local authorities is contained in DEFRA's Rights of Way Circular 1/09, version 2

Paragraphs 4.30 to 4.35 of this circular deal with deletions of public rights of way from the definitive map and statement.

This guidance provides that *"The evidence needed to remove what is shown as a public right of way from such an authoritative record as the definitive map and statement....will need to fulfil certain stringent requirements. These are that:*

- *The evidence must be new –an order to remove a right of way cannot be founded simply on a re-examination of evidence known at the time the definitive map was surveyed and made*
- *The evidence must be of sufficient substance to displace the presumption that the definitive map is correct*
- *The evidence must be cogent."*

The evidence put forward by the applicants is described by Mr Bragg as "circumstantial", and it is suggested to the council that it is of sufficient merit to outweigh a lack of documentary evidence of any formal diversion, which is alleged to be missing or lost.

It is not uncommon for public paths to be obstructed over long periods of time, and even for unofficial diversions to be signposted. It does not necessarily follow that such paths were diverted formally. The existence of such situations is a quite different matter from the evidential requirements for making a formal legal order (DMMO) deleting a definitive footpath on the basis of a claim that it has been previously formally diverted. Whilst dealing with this matter last year, it was claimed that the council should delay, or not take, enforcement action to allow you and/or the Braggs to continue and complete their investigations into archived records. Your apparently significant and substantial investigative efforts over some months have unearthed 4 single pages regarding Batley Borough Council and footpath 49, included at item 'G' in Mr Bragg's submission folder. These papers refer to the preclusion of public passage (without resorting to climbing over walls) elsewhere on path 49 after report to the Batley Borough Council of problems at those particular locations, hundreds of metres away from 75 Hey Beck Lane, on Mr Hyde's land. This is evidence regarding the history of path 49, but would not appear to be significant documentation of any great weight to support the deletion application. The land now owned by Mr Lilley, which is alleged to be subject to a post-order route of footpath 49, belonged to Savile Estate at the relevant time. Both your and our enquiries with Savile Estate have not produced any documentation (or acceptance by the Estate) to support the applicants' contention that public rights were formally diverted from the Buckley land to Savile Estate land decades ago.

As previously indicated, we have made some enquiries about Batley 49, which are ongoing. I enclose a list of orders made by the former Batley Borough Council under section 108 of the Highways Act 1959. I also enclose copy extracts of the London Gazette 1966-71, during the alleged order-making period, when Batley Borough council's existence also overlapped the Buckley's ownership of the additional triangle of land. Such notices in the London Gazette were widely required under various legislation for orders to amend public highways; including orders for public rights of way. We have not discovered any evident advertisement for an order made by the Borough Council, nor have we discovered any advertisement of any other relevant order application to the Batley Borough Court for Batley footpath 49. Similar enquiries regarding "Hey Beck" or "Heybeck" have only produced a number of unclaimed estate notices, following a death. Enquiries are continuing with the local archive

and local court services on this matter. As you are aware, West Yorkshire MCC, as surveying authority, made no relevant Batley footpath 49 modification of the definitive map and statement when publishing the 1985 version, following the formal review process.

I also enclose a copy of Mr Buckley's planning application for a stable in late 1965 on the triangle of land. Adduced witness statements attest to the correct nature of Mr Buckley's approach to all such matters. The 1966 conveyance of the triangle of land from Savile Estate would appear to indicate that Mr Buckley was not the owner of the relevant land in 1965. However, he has indicated in his planning application of 1965 that he owned the relevant land.

Notwithstanding the far from unusual circumstances of path blockage and realignment described here, I am not presently of the view that the evidence dictates that Kirklees should make an order including deletion of the route based on the inactions or potential minor inaccuracies of a predecessor authority when they were dealing with a report that public user was interrupted in two specific locations elsewhere on path 49 in 1971. I would also note that contrary to Mr Bragg's assertion in evidence, Batley were not the surveying authority for public rights of way at the time.

The evidence adduced by you regarding the allegation that a public footpath subsists over Mr Lilley's land mainly appears to be similar to that described above, i.e. that a public footpath was dedicated as a result of an alleged order that extinguished or diverted the part of footpath 49 over your client's land. With regard to that evidential aspect of this part of the claim, I would note the lack of corroborating evidence adduced. Your client appears to have supplied little user or other personal evidence or other documentation which could be conclusive about the alleged subsistence of such another or additional public footpath route. It is noted that the public do appear to have had access over Mr Lilley's land over some years prior to Summer 2012.

The officer comments above may not appear very positive, but I assure you that the council, as surveying authority and its officers are keen to ensure that the formal record of public rights of way is correct and up-to-date. We would welcome any relevant evidence regarding the existence or status of any public rights of way which enables us to do this.

I wish to give you every opportunity to adduce evidence in support of your clients case and therefore invite you again to provide any further evidence of user, or any other evidence that dedication of the "Lilley" route as a public footpath has occurred, and/or that there is no public right of way over your client's land. This is simply to offer you every opportunity to adduce evidence in support of your application before it is considered by the council; there is no requirement for you to do so.

We also intend to write to some of our usual consultees and to other parties that have expressed an interest in such cases to invite comment and/or evidence submissions regarding the above application.

Of course, it is possible that the above public footpath was formally diverted; but on final reckoning this would need to be proved. Similarly, it is possible for additional public rights to be established over third party land whilst a definitive public footpath is obstructed, although the particular circumstances of each case would be relevant, and this claim would also need to be proved. It is also possible that a public footpath could be added by order to the definitive map and statement in line with your application whilst no order is made to delete the definitive route over your client's land. The relevant test (Section 53, Wildlife & Countryside Act 1981) for making an order for an addition is currently 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 [...]"

This is lower than the burden of proof for making an order to delete, which is on the balance of probability, which is also the burden of proof for confirmation of any DMMO.

On issues of orders to both delete/add the following link may be helpful, which is guidance from the Planning Inspectorate for its inspectors.

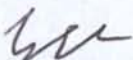
[http://www.planningportal.gov.uk/uploads/pins/row/consistency\\_guide.pdf](http://www.planningportal.gov.uk/uploads/pins/row/consistency_guide.pdf)

The DMMO application has been added to the register kept by the council under Section 53B of the Wildlife & Countryside Act 1981. If the council has not determined the application within 12 months of receipt of the certificate of notice, the applicant may apply for direction to the Planning Inspectorate in Bristol, as previously advised.

If the relevant council committee refuses the above application there are rights of appeal under Schedule 14 (4) of the 1981 Act. As such, I would ask you to note that as any order made would be subject to formal objection and possible reference to the Secretary of State, the council is seldom the final arbiter in cases of dispute concerning DMMOs and DMMO applications.

Please note that legislative changes are proposed in the Deregulation Bill 2013-14 which may significantly affect this application. You may contact me by email [giles.cheetham@kirklees.gov.uk](mailto:giles.cheetham@kirklees.gov.uk) or telephone 01484 225575 or at the above address.

Yours sincerely



Giles Cheetham  
Definitive Map Officer  
Enc.

- \* Bill 181 Draft Joint Report
- \* Guidance Note for Council
- \* Planning Statement At 28/3/14
- London Gazette (Green)
- List of S108 orders
- Buckley Planning Act of 1965



# Ramsdens Whitfield Hallam

Our Ref : JMC/SHP/211630-1

Your Ref : DEV/SH/KL/D104-038 and 872/1/49/GC

28 January, 2016

Mrs Sandra Haigh  
Kirklees Council  
Legal, Governance & Monitoring  
P O Box 1274  
HUDDERSFIELD  
HD1 2WZ

Email (sent by)

Dear Madam,

**Re : Our clients : Mr and Mrs I Bragg  
Highways Act 1980 - Section 143 (Public Footpath Batley 49)**

We refer to previous correspondence concerning the above matter and in particular our client's application to the Planning Inspectorate for a Direction.

As a result of the Local Authority's stance and actions our clients have been compelled to request the Planning Inspectorate to direct the Council to make a decision upon their application.

Notwithstanding the draconian enforcement action taken (including involvement of the Police) the Local Authority advised the Planning Inspectorate there were no particular issues of concern that merited being given urgent consideration. Pursuant to the representations of both parties a provision for an enquiry to be held within 12 month was made by the Inspector. We have not heard from your Rights of Way Officer since the date of that direction.

As a consequence of the delay in this long running issue/application, we have reviewed our file(s) and engaged consultant, Mr Andrew Dunlop to assist with our client's application.

We believe that the enforcement and as a consequence of the threat of enforcement the contentions of both parties are wholly incorrect.

Our application on behalf of Mr and Mrs Bragg proceeded on the basis that we were to make an addition to footpath 49. Given the matters that follow hereafter it would appear that that application was wholly unnecessary and based on erroneous information in any event (largely from your Rights of Way Officer).

We reserve our position with regard to the possible withdrawal of the application pursuant to you responding in respect of the balance of the points set out herein.

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Doc Ref:  
2168236450

### **Kirklees Enforcement and Current adopted position.**

The action to date is based upon the counties provided definitive map and its interpretation. This has been expanded to compare with earlier OS maps that show a footpath. This approach is flawed.

The map was not drawn magnified but on a smaller scale and as thus created a difficulty in interpreting as to what was originally intended.

1. Its first use is on a DM, page 53 (attached hereto as enclosure 1) is unclear (even with magnification or expansion) where the mark terminates.
2. On the second DM page 54 (enclosure 2) it is clear that the path does not cross over the Bragg's holding but joins the farm track before turning north. I pause there to mention this was in accordance with the original route and the signposts that have been displayed for some three decades.
3. On the current DM page 38 (enclosure 3) it is not completely clear if it crosses the holding or runs the farm track.

We accept that it has to be borne in mind that a line indicating the route of the path is drawn with a thick pencil. If scaled that would be approximately 10 metres wide. This scale with the slightest slip of the pencil can move the path many meters to a new location.

Your Rights of Way Officer, Mr Cheetham has taken this into account and referred to the earliest large scale maps justified the location of the path on his view as running through the Braggs. He has however failed to establish that path was a public footpath and instead presuming that it was and thus concluding that the DM route must cross the Braggs land.

The whole enforcement action has been based on this incorrect assumption rather than fact.

### **Basis for Kirklees assumption and correct position**

In 1984 the Braggs purchased the plot adjacent to the contested site. They sought rights of way information from Kirklees. The search that they received confirmed no public rights of way crossed the combined plot.

Later in 1984 they sought planning permission for building upon the newly acquired plot. The Council failed again to identify a public right of way crossing the land.

In 1992 the neighbouring land owners sought and eventually gained a Section 119 Highway Diversion Order from Kirklees Council. This Order was objected to by our clients but following a statutory process and Public Inquiry, the Order was confirmed. The effect of the Order was to divert the public footpath (Batley 49) to a new road as shown on the new route as shown on the Order Map. That diversion was advertised and gave all persons a chance to object and complain to the High Court if they felt aggrieved by its confirmation. No one did and once the requisite timescale had expired the confirmation became unchallengeable.

Whilst the order does not follow the route in Mr Cheetham's current presumed interpretation of the old maps (or his magnified/blowing up interpretation of 10 metre wide pencil mark) it does fit with both the opinions of the Council in 1984 and importantly no one challenged the Order in 1992.

Accordingly the effect of the 1992 Order was to divert Batley 49 from its previous location to a new location. This was a legal decision and cannot now be challenged at this point in time.

Perhaps the most serious feature caused for our client's legitimate complaint is that the Local Authority's own definitive map was not updated upon confirmation of the 1992 Order. Indeed apparently it still isn't. Both the paper and electronic version failed to show your alterations confirmed by the Council's own Order. This is an offence in itself.

It follows from that that it is reasonable to infer that the Local Authority failed to inform the Ordnance Survey of the Order.

### **The Proposed Solution**

We require your immediate confirmation that the Local Authority will alter the map using a Legal Event Order. This will be authorised by Section 53 of the Wildlife and Countryside Act. Whilst this would be at the public expense, it takes approximately an hour and takes effect immediately.

Consequent to that you will correct your paper copy map and the electronic version.

It will then be necessary to inform the Ordnance Survey.

We then require arrangements to be made to reinstate our clients land and fence and rectify the enforcement work undertaken in providing our client with a full integrity in respect of the same.

### **Conclusion**


If you are not persuaded that the confirmed Order shows footpath 49 the Council may submit its own Section 53 modification Order to add a footpath upon the route you now seem to think it should run.

In the interim our clients will deny access to Council Officers or any member of the public pending your decision. The Council may, as a consequence of the foregoing conclude on its own to amend the route now.

Our clients reserve their position entirely with regard to costs incurred and effects upon their quiet enjoyment of the property particularly given the aggravated feature of involving the police.

Please acknowledge receipt by return and let us have your substantive response within 5 working days.

Yours sincerely





Jeremy Cook

**Ramsdens Whitfield Hallam**

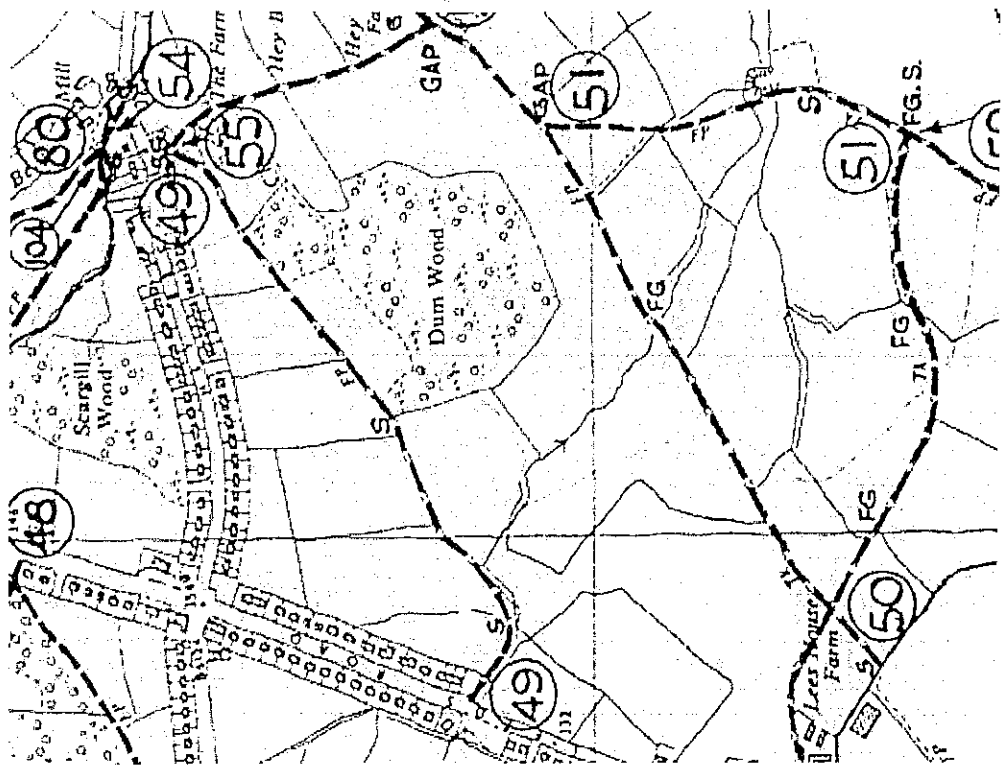
Direct Tel : 01924 431783

Direct Fax : 01924 469299

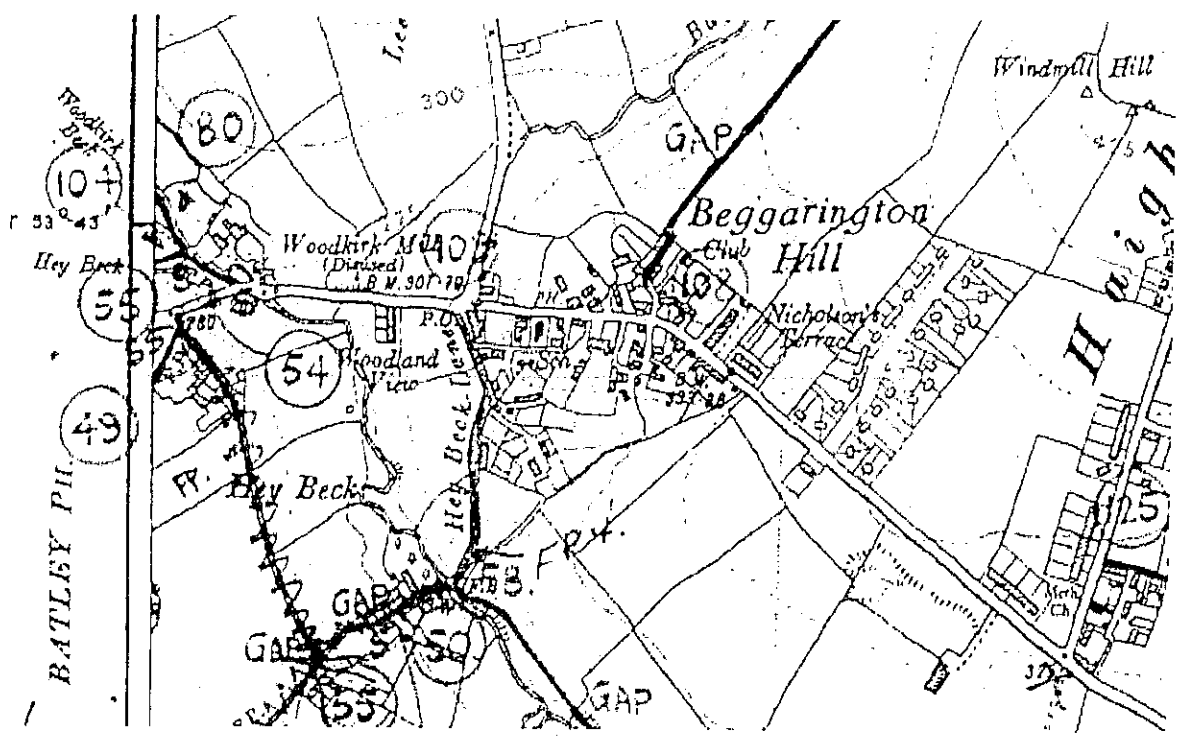
Jeremy.Cook@ramsdens.co.uk

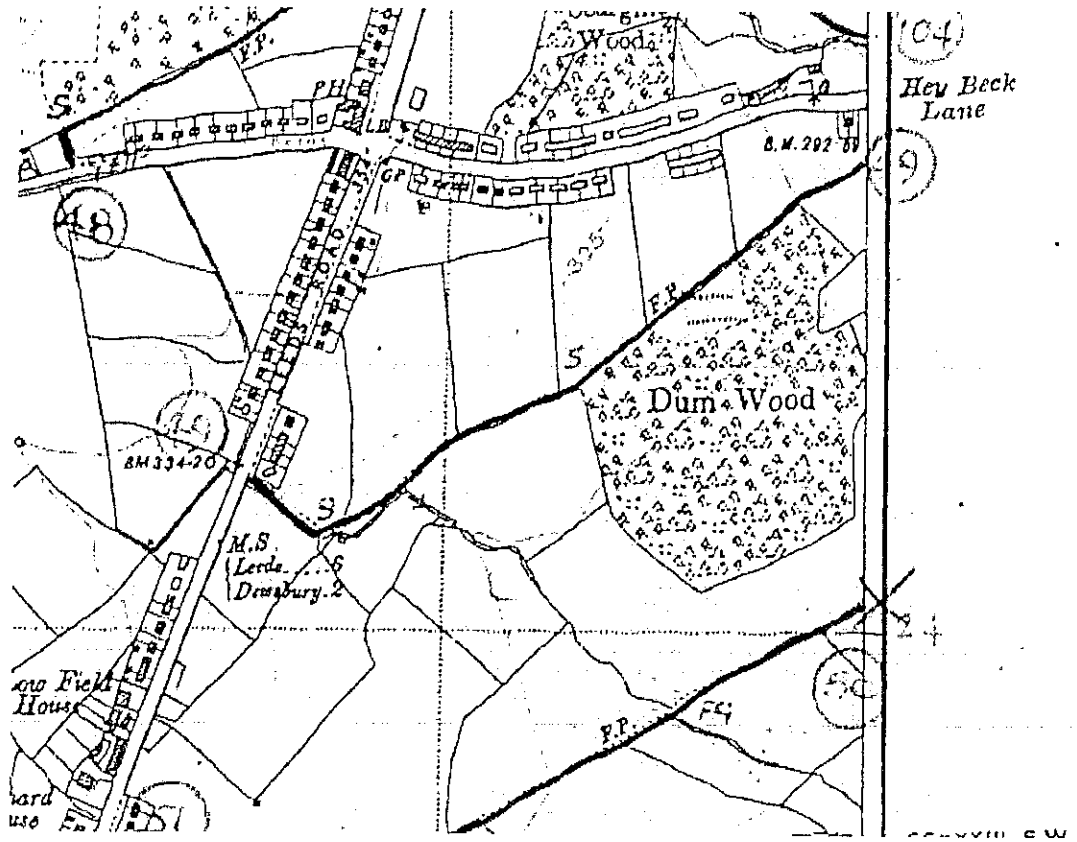
# **ENCLOSURES**

**1, 2 & 3**



OSI







## Sharon Huddleston

---

**From:** Giles Cheetham  
**Sent:** 01 February 2016 13:15  
**To:** 'Sharon Potter'  
**Cc:** 'Jeremy Cook'; Rob Dalby; Sandra Haigh  
**Subject:** RE: Your clients : Mr and Mrs I Bragg - Public Footpath Batley 49 and DMMO

[Planning sub-committee dates \(Heavy Woollen area\)](#)

[Your ref: JMC/SHP/211630-1](#)

Sirs,  
further to your recent enquiry, I received the following further information today from our committee services.

*“The next two meetings are 3/3 and 14/4, beyond this will be determined at the AGM in May, but possible provisional dates are 9/6 and 21/7.”*

You may find the council's "Calendar of meetings" webpage useful:

<https://democracy.kirklees.gov.uk/mgCalendarMonthView.aspx?GL=1&bcr=1>

Regards,  
Giles

Giles Cheetham  
Definitive Map Officer – Public Rights of Way  
Investment and Regeneration Service  
Kirklees Council, PO Box B93, Civic Centre III, Huddersfield, HD1 2JR

Tel: 01484 221000 – ask for Giles Cheetham

✉ [giles.cheetham@kirklees.gov.uk](mailto:giles.cheetham@kirklees.gov.uk)

Ū [www.kirklees.gov.uk/](http://www.kirklees.gov.uk/)

o Public rights of way: local authority responsibilities <https://www.gov.uk/public-rights-of-way-local-authority-responsibilities>

o Public rights of way: landowner responsibilities <https://www.gov.uk/public-rights-of-way-landowner-responsibilities>

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**From:** Giles Cheetham  
**Sent:** 29 January 2016 14:56  
**To:** 'Sharon Potter'  
**Cc:** Jeremy Cook; Rob Dalby; Sandra Haigh  
**Subject:** Your clients : Mr and Mrs I Bragg - Public Footpath Batley 49 and DMMO

Sirs,  
[Your ref: JMC/SHP/211630-1](#)

Thank you for your emailed letter dated 28 January to our legal office.

I am hesitant to go over old ground again in detail, but would make a few notes for the benefit of the DMMO process and in our continued attempt to clarify that process and ensure that every opportunity is given for submission of any relevant evidence. Hopefully this would also minimise misunderstandings.

The contents of your letter are noted and shall be added to the DMMO file. They will go together with any other available evidence in the council's DMMO consideration on the possible making of an order pursuant to the DMMO application at Hey Beck.

Please note that the council is directed to decide whether to make an order further to the Hey Beck DMMO application. There is no *"enquiry to be held"* subject of any direction. That application is to delete a footpath from, and add a footpath to, the DM&S.

DMMO order application decisions are delegated to the area planning sub-committee. If the council makes an order, it would be open to public notification and potential objection; if the council decides not to make any order, the applicant(s) has/have a right of appeal against refusal.

You are again informed that any evidence you wish to submit to support your contentions would be welcomed prior to a decision being made.

You write, e.g.

**Accordingly the effect of the 1992 Order was to divert Batley 49 from its previous location. This was a legal decision and cannot now be challenged at this time.**

---

If you have any evidence to support this or any other point, you are most welcome to submit it so that it can be properly considered. Irrespective of any purported effect of that Highways Act order and order application, I would note that you are already aware of the Inspector's decision letter of April 1994 (noted within as copied to Mr Bragg and his solicitors at the time) in which the Inspector, B W James wrote in conclusion *"I have decided not to confirm the order"*.

We intend to submit a relevant DMMO report for the attention of the relevant committee before the date indicated for a determination by the secretary of state in the direction. You will be notified of the date, as a courtesy, in advance. The protocol for speaking at (sub)committee is available on the council's website.

<http://www.kirklees.gov.uk/you-kmc/yourCouncil/pdf/constitutionPart5.9.pdf>

Subject to any evidence to be discovered and considered and without prejudice to any DMMO application decision of the council or any subsequent relevant confirmed order, there is no current intention to seek the making of a LEMO for Batley 49 or to seek a DMMO other than may be requisite on the council further to the sub-committee decision further to the investigation of the Hey Beck DMMO application and/or any subsequent order. There is similarly no current intention to seek changes to the council's paper or electronic records of PROWs or to seek changes to Ordnance Survey mapping products in relation to Batley footpath 49.

- **Please let us know at the earliest stage if the Ramsden/Bragg Hey Beck DMMO application is withdrawn.**

Your comments regarding previous enforcement action and the threatened obstruction of Batley footpath 49 by your client(s) have been forwarded to our Streetscene service for information.

Otherwise, I would refer you again to previous detailed correspondence.

Regards,  
Giles

Giles Cheetham  
Definitive Map Officer – Public Rights of Way  
Investment and Regeneration Service  
Kirklees Council, PO Box B93, Civic Centre III, Huddersfield, HD1 2JR

Tel: 01484 221000 – ask for Giles Cheetham  
E [giles.cheetham@kirklees.gov.uk](mailto:giles.cheetham@kirklees.gov.uk)  
W [www.kirklees.gov.uk/](http://www.kirklees.gov.uk/)

- o Public rights of way: local authority responsibilities <https://www.gov.uk/public-rights-of-way-local-authority-responsibilities>
- o Public rights of way: landowner responsibilities <https://www.gov.uk/public-rights-of-way-landowner-responsibilities>

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**From:** Sharon Potter [<mailto:Sharon.Potter@ramsdens.co.uk>]  
**Sent:** 28 January 2016 09:15  
**To:** Sandra Haigh  
**Cc:** Jeremy Cook  
**Subject:** Re : Our clients : Mr and Mrs I Bragg Highways Act 1980 - Section 143 (Public Footpath Batley 49)

## Ramsdens Solicitors LLP

Date : 28/01/2016

Your Ref : DEV/SH/KL/D104-038 and 872/1/49/GC  
Our Ref : JMC/SHP/211630-1

Dear Madam,

**Re : Our clients : Mr and Mrs I Bragg Highways Act 1980 - Section 143 (Public Footpath Batley 49)**

Please see attached correspondence in connection with the above matter.

Yours sincerely

### Sharon Potter

Legal Secretary to Jeremy Cook  
28 Bond Street, Dewsbury WF13 1AU  
**Tel:** 01924 431780 **Fax:** 01924 469299 **Web:** [www.ramsdens.co.uk](http://www.ramsdens.co.uk)

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