



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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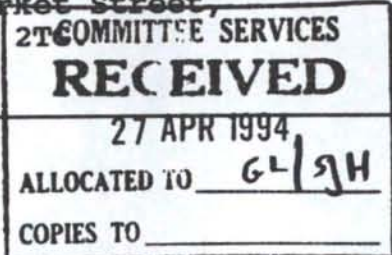
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The Solicitor to the Council,
Kirklees Metropolitan Borough Council,
Kirklees House, ~~Market Street~~,
Huddersfield. HD1 2TC

Your reference CH/MB/D112.142

Our reference: FPS/Z4718/4/14

Date 26 APR 1994



Dear Sir,

HIGHWAYS ACT 1980, SECTION 119 AND SCHEDULE 6.

THE KIRKLEES METROPOLITAN BOROUGH COUNCIL (PUBLIC FOOTPATH NO. 49 BATLEY (PART) - HIGH BARN HEYBECK LANE BATLEY) PUBLIC PATH DIVERSION ORDER 1992.

1. I refer to the above named Order, submitted by your Council to the Secretary of State for the Environment for confirmation, which I have been appointed to determine in accordance with paragraph 2A of Schedule 6 to the Highways Act 1980 ("the 1980 Act").
2. If confirmed without modifications the Order would, at the expiration of 28 days from the date of the confirmation,
 - (a) extinguish the public right of way over the land described in article 1 of the Order and shown by bold black dashes on the Order map ("the present path"), and
 - (b) create a footpath over the land described in article 2 of the Order and shown by bold black dots on the Order map ("the proposed path").
3. On 29 November 1993 I made an unaccompanied site visit. I walked Batley Path No 49 from its junction with Batley Path 55 to its junction with the Leeds Road, and the route of the proposed path. On 30 November 1993 I held a local inquiry into the Order at The Town Hall, Batley. Immediately after the inquiry, I made an accompanied site visit and walked the route of the present path and the route of the proposed path.
4. At the inquiry objections to the Order were made by Mr I. Bragg, Mr G.L. Spurr, Mr J. Fountain, Mr J.W. Haywood, and endorsed by Mr J. Boothroyd and Mrs H. Boothroyd. Mr R.C. Lilley supported the Order. At the inquiry it was confirmed on



behalf of your Council that so far as the formalities specified in Part I of Schedule 6 to the 1980 Act, and in the relevant regulations, were the responsibility of your Council they had been complied with. The Order is substantially in the prescribed form.

5. In this letter a reference to a numbered paragraph is a reference to the paragraph so numbered in this letter, a reference to a lettered point is a reference to the point so lettered on the Order map, and a reference to a numbered document is a reference to the document so numbered in the list of documents attached to this letter.

DESCRIPTION OF THE PRESENT PATH, THE PROPOSED PATH AND THE SURROUNDING AREA.

6.1 Batley path 49 between point X and the Leeds Road forms a pleasant rural walk through fields partly bounded by woods. Most of the surface is firm, though rather muddy in the wet weather. Stout timbers have been placed across the wettest parts of the surface.

6.2 *The present path.* At point X the present path may be entered either by opening an unlocked farm gate or through a narrow gap in a fence. The path passes over a field until it is crossed at right angles by a fence about 45 metres south-west of point X. A good stile is placed in the fence. Between point X and that stile the route of the path is well worn over a firm surface. Between that stile and point Y the path passes over another field. The route of the path is not well worn in that field, but its surface is firm, except that near the fence the surface is heavily rutted, and water has collected in the ruts.

6.3 *The proposed path.* At point X the east end of this path is open. Between points X and Z the path passes between low walls, fences and hedges south of the houses in Hey Beck Lane and a post and rail fence about 1 metre south of those walls. The route between these points is well worn and on a surface which is firm though rather muddy in the wet weather. At point Z the route is crossed by a fence. Between points Z and Y the route crosses a field. There is no trace of the route in that field. Part of the surface of the route in that field is boggy.

6.4 The distance between the present path and High Barn is much greater than the distance between the proposed path and 71, 73 and 75 Hey Beck Lane. The windows of the habitable rooms of 71, 73 and 75 Hey Beck Lane face the present and proposed paths. The windows of the habitable rooms of High Barn do not face the paths.

SUBMISSIONS OF THE PARTIES

7. The material points of the submissions may be summarised as follows.

The case for the order making authority

8.1 The applicant for the Order, Mr R.C. Lilley, is having problems from dogs accompanying pedestrians using the present path being allowed to run free and foul his field. He has had a problem of trespass from persons intending to catch rabbits in nearby woods straying from the present path. There is no practicable means of ensuring that dogs are kept on a lead by these pedestrians. The grass on the field is occasionally cut with the intention that the field can be used as a garden. Fencing off the present path in so far as it crosses this field would sterilise the use of a large part of it. The proposed diversion would take the path along the north edge of the field. Fencing the proposed path between points X and Z would not sterilise the use of a substantial part of the field. The present fence would have to be moved because it is too near the walls, hedges and fences along the south of the gardens of houses in Hey Beck Lane to allow the width of 2 metres provided in the Order. The applicant would be willing to put up a fence leaving this width, and to construct it so as to ensure that dogs did not stray into the field from the path. He can be relied on to do this work as it would be in his own interests. In so far as the diversion would not be over this field it would be over land in the ownership of a person other than the applicant. That other person has stated that he would be content with the diversion in so far as it would cross his land.

8.2 It follows from paragraph 8.1 that (i) the diversion would be in the interests of the owners of the land, and (ii) the effect of the proposed path as respects land over which it would pass, and any other land held with it, would make it expedient to confirm the Order.

8.3 The total length of footpath Batley 49 is 740 metres. The diversion would add only 15 metres to that length.

8.4 Any difficulty due to the surface of part of the route of the proposed footpath between points Y and Z being boggy could be overcome. The Council has an undertaking dated 21 August 1991 from the applicant. A copy of the undertaking is contained in document 4. Clause 6 of that document reads "I hereby undertake to defray any expenses which the Council may incur in bringing the new site of the path into a fit condition for use by the Council, including the provision of such signs as the Council may consider necessary." This undertaking was given before the Council had determined to make the Order. It may be treated as an agreement under section 119(5)(b) of the 1980 Act.

The fact that the person giving the undertaking neither owns nor occupies the land over which the route of the proposed path between points Y and Z does not detract from the enforceability of the undertaking. The undertaking could be employed to defray the cost of any works which the Council decided were needed to overcome the difficulty. This undertaking is material to the decision of whether or not the Order should be confirmed : the provision in section 119(6) of the 1980 Act that provisions referred to in section 119(5)(a) "shall" be taken into account does not preclude the taking into account of provisions referred to in section 119(5)(b).

8.5 It follows from paragraphs 8.3 and 8.4 that the diversion would not be substantially less convenient to the public.

8.6 The views enjoyed by persons using the proposed path would change only in perspective. It would be possible for the owners of the land over which the present path passes to restrict these views by hedging and fencing. Even allowing for the fence which the applicant proposes to put up between points X and Z, the enjoyment of the path would not be unduly affected by the diversion.

8.7 References to "the public", and to public enjoyment, in section 119(6) of the 1980 Act relate to those members of the public who use or are likely to use the path.

8.8 In making the Order the Council took into account interests of persons other than those mentioned in paragraph 8.7. The point of the objections relating to the loss of privacy which would be suffered by persons living in houses in Hey Beck Lane as a result of the diversion are to a certain extent accepted. The loss of privacy is an issue which the Council took into account when deciding to make the Order. The remarks attributed to a member of the police as recorded in document 6 indicate that the diversion would have very little bearing on the security of those houses. The remarks of the letter at document 7 from an insurance company may be incompatible with the remarks in document 6, but the security of the houses would not be significantly affected as the proposed path would not be greatly closer to the houses than the present path. A good view of the houses is got from the present path; as to the upstairs windows possibly a better view. Persons intending to commit crimes cannot be expected to keep to the public right of way. Loss of privacy or security could be mitigated by the occupiers of those houses planting hedges or constructing fences. In so far as any such actions would diminish the view from the south-facing windows of those houses, it has to be remembered that the occupiers have no legal right to the present view.

8.9 Loss of security can be taken into account in deciding on whether or not the Order should be confirmed only if it goes to the expediency of the diversion. To treat loss of security in that way would be breaking new ground. The case relating to the diversion of the footpath near Chequers Court is not relevant.

8.10 There is no direct access from houses in Hey Beck Lane to the footpath. Therefore those houses are not, for the purposes of section 119(6) of the 1980 Act, served by the footpath.

8.11 The objections based on the fact that the applicant knew of the existence of the present path when he purchased the land over which part of it passes, and the fact that the objectors at the inquiry outnumber the Council and its supporter are not considerations material to the decision of whether or not to confirm the Order.

The case for the supporter.

9.1 As noted on page 220 of Volume 21 of the fourth edition of Halsbury's Laws of England, the decision of the High Court in *Allan v Bagshot Rural District Council*, 1970, 69 L.G.R. 33 establishes that the only class of persons whose interests must be considered are users of the old footpath and owners and occupiers of property served by it, and owners and occupiers of land over which the new footpath is to run.

9.2 As the present path is not bounded by any fences or hedges pedestrians wander from it over the field adjoining High Barn (which is shown on the photograph at document 5). Those persons also fail to prevent their dogs wandering over that field and even into the immediate vicinity of High Barn. On one occasion pedestrians intending to catch rabbits in nearby woods had wandered into the immediate vicinity of High Barn. Trespass would be prevented if the diversion were to occur because between points X and Z the proposed path would be bounded on its south by a fence.

9.3 Persons living in houses in Hey Beck Lane have a genuine objection on the ground that the diversion would cause them a loss of privacy. But that loss does not outweigh the interests of the owners of High Barn which would be served by the diversion.

9.4 Persons intending to break into the houses in Hey Beck Lane would be neither encouraged nor deterred by the diversion.

The case for the objectors.

10.1 The diversion would cause a loss of privacy for persons living in Hey Beck Lane. This loss has already been experienced because for a period of several months the present path was unlawfully obstructed with the result that the proposed path was used during that time. The loss of privacy would not be confined to 71, 73 and 75 Hey Beck Lane because persons walking from point X to point Z would be likely to walk along the backs of the houses west of 71 Hey Beck Lane to avoid the boggy ground

between points Z and Y. This is what happened when persons walked from point X to point Z during the obstruction of the present path.

10.2 The diversion would increase the risk of houses in Hey Beck Lane being broken into. Evidence of this is provided by document 7. A person intending to make an unlawful entry would get a very good chance to assess the security of the houses by walking between points X and Z. Persons walking between these points have been seen staring into some of these houses. A person challenged between those points would have a plausible excuse for stopping, such as that he had stopped to tie his boot-laces. Also, dogs of persons living in Hey Beck Lane would become accustomed to this regular use of the path and would cease to bark at the users.

10.3 The loss of privacy and the increase of the risk of being broken into would reduce the value of houses in Hey Beck Lane. So far as this loss of privacy and increase of risk could be avoided by the occupiers of these houses planting of hedges or putting up higher fences or walls, it would be unfair for them to incur the cost and to lose the view which they now enjoy.

10.4 There are a number of objectors to the Order; its only supporter is the applicant.

10.5 The proposed path between points X and Z would detract from the public enjoyment of the path because for a walk across an open field it would substitute a walk very close to houses and between walls, fences or hedges on its north and the proposed fence on its south. The proposed path between points Z and Y would detract from the enjoyment of the path because of the boggy surface. The undertaking mentioned in paragraph 8.4 relates to land which is not owned or occupied by the person giving the undertaking.

10.6 The present path is much further from High Barn and far less intrusive to that property than is the proposed path from houses in Hey Beck Lane. The only invasions of the privacy to High Barn of which the inquiry has been given evidence have been caused by persons intending to catch rabbits, and by the dogs of those persons and of others.

10.7 The decision on whether or not to confirm the Order should not be restricted to consideration of the particular matters specified in section 119(6) of the 1980 Act. The decision should also be based on consideration of the general expediency of the diversion, and this includes the disadvantages to the owners or occupiers of houses in Hey Beck Lane.

CONCLUSIONS

11.1 Having taken all representations and objections into account, and on the basis of the evidence given to me, and from

my site visits, I reach the following conclusions.

11.2 In view of the contentions mentioned in paragraph 8.1, the diversion would be in the interests of the owners of the land crossed by the present path. The effect of the diversion as respects land over which it would pass, and any other land held with it, would make it expedient to confirm the Order.

11.3 The Council was right to take into account the interests of persons living in Hey Beck Lane, as mentioned in paragraph 8.8, and the supporter was right to concede, as mentioned in paragraph 9.3, that those persons have a genuine objection on the ground of loss of privacy. I find nothing in the context of section 119 (6) of the 1980 Act to justify construing the provision that the particular matters which the subsection requires to be taken into account excludes the effect which the diversion would have on nearby houses. The intrusion into the privacy of High Barn caused by the present path, of which the owner of that property complains, would be far exceeded by the loss of privacy to houses in Hey Beck Lane which would be caused by the proposed path. The distance between High Barn and the present path is considerably more than the distance between 71, 73 and 75 Hey Beck Lane and the proposed path. None of the windows of High Barn face the present path (see document 5) but the windows of the habitable rooms of 71, 73 and 75 Hey Beck Lane face the proposed path.

11.4 The objection mentioned in paragraph 10.5 that the proposed diversion between points X and Z would detract from the enjoyment of the walk is right. Paragraph 8.6 records the possibility of fences or hedges being placed alongside the present path westwards from point X, although paragraph 8.1 records the view that such fences or hedges would sterilise the use of a large part of the field. Even if such fences or hedges were placed, they would no more enclose the footpath than the enclosure formed by the walls, hedges and fences on the north of the proposed path between points X and Z and the proposed fence on the south of that length of that path.

11.5 The surface of the ground over which the path would pass between points Y and Z is too boggy to be satisfactory. The fact that the undertaking to defray expenses (document 4) is given by a person who does not own or occupy the land over which the proposed path would pass between points Z and Y does not itself detract from the value of that undertaking. Section 36(2)(d) of the 1980 Act would apply to make the proposed path a highway maintainable at the public expense. The Council would therefore have powers and duties to maintain the path. Therefore the unsatisfactory state of the ground between these two points would not cause the path to be substantially less convenient to the public or make the diversion inexpedient as regards the enjoyment of the path.

11.6 The extra length of 15 metres on a footpath of 740 metres would not itself cause the diverted path to be substantially less convenient to the public.

11.7 The Council's contention mentioned in paragraph 8.10 is right. Its contention mentioned in paragraph 8.11 is also right, except that the number of objections may add to the weight of objection, and in this case it does so.

11.8 The evidence about security, land values, trespass and lack of control of dogs is inconclusive, even if it is relevant.

11.9 My overall conclusions are as follows.

(a) The diversion would be in the interests of the owners of the land crossed by the present path. The path would not be substantially less convenient to the public in consequence of the diversion. It would be expedient to confirm the Order having regard to other land served by the path, and land on which the proposed path would be created and any land held with it.

(b) It would not be expedient to confirm the Order having regard to the effect which the diversion would have on the public enjoyment of the path as a whole.

(c) The objections relating to the loss of privacy which would be suffered by persons living in 71, 73 and 75 Hey Beck Lane must be taken into account. That loss of privacy would be serious.

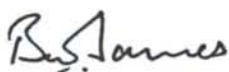
(d) The conclusions mentioned in subparagraphs (b) and (c) taken together outweigh the conclusions mentioned in subparagraph (a). Therefore the Order should not be confirmed.

DECISION

12.1 For the above reasons, and in the exercise of the powers transferred to me, I have decided not to confirm the Order.

12.2 A copy of this letter is being sent to Mr R.C.Lilley and his solicitors, Mr I Bragg and his solicitors and each of the other objectors.

Yours faithfully,



**B.W. James, C.B.E., LL.B, Barrister.
INSPECTOR**