

APPEARANCES

FOR THE ORDER MAKING AUTHORITY

Mr G.N.Y.Lomas

A solicitor of the Kirklees Metropolitan Borough Council.

He called

Mr R.Dailey

An engineer of the Kirklees metropolitan Borough Council.

FOR THE SUPPORTER

Mr B. Grundell

Of Jordans, solicitors of Neil Jordan House, Wellington Road, Dewsbury.

He called

Mr .C.Lilley

High Barn, near Hey Beck Lane, Woodkirk, Dewsbury.

FOR MR I. BRAGG, AN OBJECTOR

Mr J Nixon

A partner of Hewison and Nixon, 24 Station Lane, Featherstone, Near Pontefract, West Yorkshire, WF7 5BE.

He called

Mr I.Bragg

75 Hey Beck Lane, Woodkirk, Dewsbury. WF12 7QU

OTHER OBJECTORS

Mr J.Fountain

73 Hey Beck Lane, Woodkirk, Dewsbury. WF12 7QU.

Mr G.L.Spurr

63 Hey Beck Lane, Woodkirk, Dewsbury. WF12 7QU.

Mr J.Boothroyd

71 Hey Beck Lane, Woodkirk, Dewsbury. WF12 7QU.

Mrs H Boothroyd

71 Hey Beck Lane, Woodkirk, Dewsbury. WF12 7QU.

Mr J.W.Haywood

76 Bradford Road, Tingley, Near Wakefield, West Yorkshire. WF3 1NN.

DOCUMENTS

1. Attendance List.
2. Extract from the definitive map.
3. Extract from the definitive statement.
4. Copy of undertaking dated 21 August 1991 by Mr R.C.Lilley.
5. Photograph of High Barn looking southwards.
6. Copy of a letter dated 18 December 1992 from Mr J Longbottom.
7. Copy of a letter dated 25 November 1993 from the Co-operative Insurance Society Limited.

I, Ian Christopher Bragg of 75 Hey Beck Lane, Woodkirk, Dewsbury WF12 7QU make this statement in support of my application pursuant to the Wildlife and Countryside Act 1981 for a modification of the footpath No.49 on the Definitive Map and Statement of Kirklees Metropolitan District.

1. I confirm that the contents of this statement are true to the best of my knowledge and belief. All matters set out in this statement are within my own knowledge unless indicated otherwise. There is attached to this statement an exhibit marked ICB1. All page numbers in this statement relate to pages of the exhibit unless otherwise stated.
2. I am the freehold owner of the above property which is registered with title number WYK268995 (Land Registry office copy: pages 1 to 5).
3. Part of my title on the East side of the property consists of a small triangular section of land upon which there is located a garage and outbuildings. I understand that this triangle of land, like much of the land around it, was once part of the Savile Estate. I have been provided with a copy of a conveyance dated 5th January 1966 by which the Savile estate sold this small triangle to Stanley Brian Buckley who was then the owner of the house and land to the West, which is now my house at 75, Hey Beck Lane. (1966 conveyance at pages 6 to 11).
4. Clause 1 of the 1966 conveyance states that the land is sold subject "(c) to the footpath crossing the entire length of the North Western boundary of the property hereby conveyed as indicated on the plan annexed hereto". The attached plan clearly shows what I now know to be public path No.49 as it was then located, which cut up from the opposite field boundary to the South and then passed along the edge of the small triangle which was purchased by Mr Buckley in 1966 until it met the highway at the front of the property. It is this section of the path which I now seek to have deleted from the Definitive Map and Statement because I believe that, in the circumstances described below, there was a Modification Order made in respect the path in the late

1960s or early 1970s by Batley Borough Council and the records for that order have been lost or destroyed.

5. There is at page 12 of the exhibit a photograph of my property taken from field to the South. This shows the route of the footpath which is referred to in the 1966 conveyance. The South boundary of my property is fenced, as it has been ever since I acquired the property in 1981. The former route of the footpath now forms an integral part of my garden and it has always formed an integral part of the garden ever since I moved in.
6. For as long as I have lived at the property, the route of the public path has passed along the Southern boundary of the field which is to the South of my property. The line of the path is approximately straight and it joins the highway adjacent to the Eastern corner of the additional triangle that was acquired by Mr Buckley in 1966. This is the line which I wish to have added to the Definitive Map and Statement because I believe that this was the re-aligned route that was authorised by a Modification Order made in the late 1960s or early 1970s by Batley Borough Council, although the records for that order have been lost or destroyed.
7. The photograph at page 13 shows the Eastern end of the line which I contend should be the line of footpath No.49 where it meets the highway. As can be seen, there is a formal green Highway Authority "footpath" sign at the end of the path and for as long as I have known the property, this has always been there.
8. I was not aware that there has ever historically been a footpath through what is now our land until Kirklees Council wrote to me on 26th November 2003. This was in connection with an application which had been made by a neighbour for the diversion of another part of footpath No.49 pursuant to section 119 of the Highways Act 1980. The Council informed me that "in the course of investigating the above application, it has come to [the Council's] attention that public footpath Batley 49 runs across your property as shown on the attached plan.". The attached plan showed the old route which had been shown on the 1966 conveyance. The letter only asked me to discuss the

matter with the Definitive Map Officer; it did not suggest that any action was going to be taken as a result of the view taken by the Council at the time and no action was in fact taken. A copy of the letter is attached at pages 14-15.

9. Nothing then happened for another 10 years and I assumed that the anomaly identified by the Council in their records was just an anomaly and that no action would be taken because it was obvious that the path ran across the field at the back of my property on the route which I now contend for and this had been the situation for many years. The existing and established route had indeed for many years been officially sanctioned by the Council's own sign being placed at the Eastern end of the path and the sign remained in place after 2003.
10. In 2012 I applied for planning permission to convert the existing garage into a single storey flat. Planning permission was granted but when the approved plan was returned to my architects it had the old route of the footpath marked on it. I attempted to discuss the matter with the Council but ultimately by letter dated 20th May 2013 the Council informed me that they would require me to remove the existing boundary fence so as to allow public access along the route of the path that had been shown on the 1966 conveyance and which was still shown as the official route of the path on the Council's records. A copy of this letter is at pages 16-18.
11. The Council has informed me that it has no record of the footpath having been formally re-routed and therefore I have made my own enquiries as to how the route of the path came to be changed from that which is shown on the 1966 conveyance to that which has been actually in existence ever since I bought my property.
12. There is produced at pages 22 to 25 a statutory declaration of Margaret Hallas of Scargill Farm, 58 Hey Beck Lane, Woodkirk. She says that she was a close friend of Mr and Mrs Buckley and that she remembers them purchasing the additional triangle of land so that Mrs Buckley could keep horses on it and with the intention of building a stable on the land. Mrs Hallas can specifically recall being told of the reason why Mr and Mrs Buckley decided to have the

footpath formally re-routed, and being kept informed of the formal process of re-routing which had been pursued with the local council and finally being informed that official approval had been given. She believes that this occurred in the early 1970s, which she is able to establish approximately from the ages that their children would have been at the time.

13. I also attach at pages 26 to 31 a statutory declaration of Simon John Bowett who was married to one of Mr and Mrs Buckley's daughters and who lived in Heybeck Cottage, Hey Beck Lane, from 1980. He believes that the footpath will have been diverted in the late 1960s when Mr Buckley built his stables on the triangle of land that he had acquired in 1966. He describes Mr Buckley as being "a very particular and methodical man" who will always have done everything by the book. He therefore concludes that if the footpath was diverted around the side of the triangle of land, which it clearly was, then this will have been done legally and officially by Mr Buckley at the time.
14. Within the documents supplied to me by the Council, I have seen a copy of a resolution dated 1st December 1971 by the Council of the Borough of Batley (page 32). This relates to the unlawful stopping up of footpath No.49 further to the West. The resolution describes the path as "leading from "the Farm", Heybeck Lane". This is a description of the starting point to the East which has been in use since the re-routing that was made by Mr Buckley. It is not a description which could be used for the original starting point adjacent to 75 Hey Beck Lane, which was the old route shown on the 1966 conveyance. It therefore appears that as early as 1971 the Borough of Batley, which had responsibility at the time for maintaining the Definitive Map and Statement, was satisfied that the official route for the path is the one for which I now contend. This strongly supports the evidence of the above two witnesses that in the late 1960s or early 1970s Mr Buckley not only re-routed path No.49 on the ground but also obtained official sanction for the re-routing.
15. The description of the path in the above resolution is the same as a description contained in a memorandum from the Borough Engineer dated 30th September 1971 (page 33) and in a letter from the Town Clerk of Batley Borough Council dated 1st October 1971 (page 34) and in a note to the General Works

Committee dated 27th October 1971 (page 35). This therefore dates Mr Buckley's re-routing to no later than September 1971. The memorandum confirms that there had been an inspection of the path for its whole length from "the Farm". Since the purpose of the inspection was evidently to investigate signs of closure along the route, and since Mr Buckley's diversion had to have been carried out after January 1966 at the earliest, it is difficult to understand why the relatively recent stopping up of the route shown in the 1966 conveyance was not referred to at this time unless, as I believe to be the case, the diversion had been officially sanctioned by the Borough of Batley.

16. At pages 36-37 there is a statement dated 9th March 1972 from Alan Firth who was the Building Inspector for Batley Corporation. This statement appears to relate to the same complaint which was the subject matter of the resolution referred to in the above paragraphs. The footpath here is described as running "from roughly to the rear of 75 Hey Beck Lane". This is again a good description of the current route for which I now contend but it is not a description of the path shown on the 1966 conveyance, since that route would either be described as passing to the side of 75 Hey Beck Lane or through 75 Heybeck Lane (depending on whether the triangle was seen as part of the property at the time or separate).
17. By letter dated 5th August 1992 Kirklees Metropolitan Council, as successor to the Batley Borough Council, notified me that they had made a footpath modification order in respect of footpath No.49 (pages 38 to 41). This would have the effect of diverting the path from the Southern boundary of the field adjacent to my property to the Southern boundary of my property itself. I therefore objected to the order. By a decision letter dated 26th April 1994 the Planning Inspectorate refused to uphold the order. At no stage during this process was it suggested that the actual route of path No.49 should run up through my property rather than along the Southern boundary of the adjacent field. (a copy of the decision letter is at pages 42 to 51).
18. By a letter dated 28th June 1994 (page 52) I was informed by the Solicitor for Kirklees Council that the footpath had been inspected and the sign at the East end had been re-aligned so as to indicate the precise route of path No.49.

There was again no suggestion at this time that the official route was anything other than that which was in existence on the ground at the time.

19. The Council has not been able to produce any evidence that an official diversion order was made at the time that Mr Buckley re-routed the footpath in the late 1960s or early 1970s. However, my solicitor has made further enquiries of the Council in regard to its records and as a result of those enquiries I would contend that the absence of any record of a formal diversion order having been made is not decisive in this case. I would therefore argue that the circumstantial evidence suggesting that an official diversion order was made should carry more weight than the mere absence of documentary records for such an order.
20. I believe that Kirklees took over as Highway Authority from Batley Borough Council in 1986. The current records of Kirklees includes a pro-forma list of various "Extinguishment /Diversion Orders" made by Batley Borough Council. (pages 54 to 56). Two of the three pages which have been provided contain lists of orders in reverse chronological order and one page is in chronological order. There is a handwritten note on the top of one page saying that there should be "5 pages", but only three have been supplied. In view of the absence of any consistent chronological sequencing, it is impossible to tell if anything might be missing from the records or what periods or what geographical areas might be covered by any missing records.
21. Kirklees has been unable to inform my solicitor why the records have been maintained in this way, who prepared them, when they were prepared or for what purpose. If Batley Borough Council ever made its own contemporaneous records of orders actually made by it, then such records have not been retained. The Kirklees list might therefore only include lists of orders for which copies could be found when the lists were compiled or it might just be a list of orders made under particular statutory provisions. It is simply not possible to deduce anything from these lists except that the specific orders identified on the lists were in fact made on the dates attributed to them.

22. There is no reason at all to believe that the list which has been provided by Kirklees was intended at the time that it was made to be a complete record of all diversion orders that were made by Batley Borough Council. There is no basis on which it can be assumed that it was even possible at the time to compile such a complete list from the available information. Even if the Kirklees lists were complete when they were made, there is no reason to believe that all of the pro-forma pages which were originally created for this purpose have in fact been archived and retained. The circumstantial evidence would suggest otherwise.
23. The Council's records also contain four separate cards relating to the orders that are held in their strong room (copied onto a single page, at page 57). It will be noted that the Council does not have the original of any order made before 1974. Therefore if a diversion order was made as a result of an application by Mr Buckley before this date then the Council will not have a copy of it.
24. My solicitors wrote to the Council on 5th November 2013 asking for clarification of the origin and purpose of the above records and one other page from the Council's records which they had also produced but which was largely illegible and which is in any event irrelevant to the present case. The Council's response dated 11th November 2013 (pages 58 to 60) confirms that they are unable to provide any information which would be capable of demonstrating that the limited records that they hold are in fact conclusive as to the totality of orders made in respect of all footpaths in the Batley Borough Area in the 1960s and 1970s.
25. A photograph showing the path in the background is also attached at page 61.

Sworn as a Deed by: Ian Christopher Bragg

In the County of WEST YORKSHIRE

This 31st day of January 2014



Before me, a Solicitor/Commission for Oaths



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CATRIN MEREKID LLOYD

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