

APPENDIX D - CORRESPONDENCE RECEIVED IN THE FORMAL OBJECTION PERIOD
(I) REPRESENTATION OF OBJECTION

Green, Janice

From: Duncan, Michael <m.duncan@ashfords.co.uk>
Sent: 19 November 2018 09:31
To: Green, Janice
Cc: Nicholson, Robert; Alvin Lindley
Subject: Objection - Path No. 41 Definitive Map and Statement Modification Order 2018 - your ref: JG/PC/9 2016/09
Attachments: Objection of Alvin Lindley dated 19 November 2018(23274341_1).PDF
Importance: High

Our ref: 223360-116

Dear Ms Green

Further to our telephone conversation last week, please find attached the Objection of Mr Alvin Lindley pursuant to the above Order.

Kindly acknowledge receipt

Yours sincerely

Michael Duncan
Associate

m.duncan@ashfords.co.uk
Direct +44 117 321 8064
Mobile +44 7763 559178
Fax +44 117 321 8001

ashfords

Ashfords LLP

Tower Wharf, Cheese Lane, Bristol BS2 0JJ

[LinkedIn](#) | [Twitter](#) | [ashfords.co.uk](#)



Due to recent changes in the law, we have updated our Privacy Notice. Please click [here](#)

Important Notice - Sending funds electronically to our bank accounts

We are committed to helping minimise your risk of being exposed to fraudulent activity. We will NEVER notify you of changes to our bank details by email. If you receive any communication indicating any change to our bank details then you should immediately call our Professional & Financial Risks Team to confirm authenticity before you send any funds to us.

This email is sent on behalf of Ashfords LLP and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify the sender immediately by return e-mail, and then delete the email without making any copies or disclosing the contents to any other person. Email transmission cannot be guaranteed to be secure or error or virus free. You should carry out your own virus check before opening any attachment.

Ashfords LLP is a limited liability partnership, registered in England and Wales with number OC342432, and its registered office is at Ashford House, Grenadier Road, Exeter, EX1 3LH. Ashfords LLP is authorised and regulated by the Solicitors Regulation Authority with number 508761. A list of members of Ashfords LLP, and their professional

qualifications, is available at the registered office. The term partner is used to refer to a member of Ashfords LLP or an employee of equivalent standing.

**THE WILTSHIRE COUNCIL (PARISH OF ASHTON KEYNES) PATH NO. 41
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2018**

OBJECTION OF ALVIN MARK LINDLEY

INTRODUCTION

1. This is the formal Objection of Alvin Mark Lindley (“the Landowner”) to the Wiltshire Council (Parish of Ashton Keynes) Path No. 41 Definitive Map and Statement Modification Order 2018 (“the Order”). He is the freehold owner of land to the south of [REDACTED] Ashton Keynes, Wiltshire (“the Land”) over which the claimed path subject to the Order runs. He acquired the Land at Public Auction on 12 March 2015 from Aggregate Industries UK Limited (“Aggregate”).

2. The Land was part of a wider area subject to a planning permission granted by Wiltshire County Council (“the County Council”) on 26 March 1992 for the extraction of sand and gravel. The permission was implemented by Aggregate and restoration was completed in 2004. Former Footpath 20 crossing the Land was formally stopped up on 20 November 1996 by an Order made under section 257 of the Town and Country Planning Act 1990 to enable the extraction works to be carried out.

3. The Order has been made pursuant to an application made by Ashton Keynes Parish Council (“the Applicant”) dated 30 September 2016 (“the Application”). Despite the Application having been made in reliance upon more than 20 years use pursuant to the statutory presumption contained in section 31 of the Highways Act 1980, that contention has been rejected by the County Council which has instead made the Order specifically on the basis that the claimed path has been dedicated as a public footpath by the landowner at common law.

GROUNDS OF OBJECTION

4. The primary Grounds of Objection are as follows. However, the Landowner reserves the right to add to the stated Grounds should additional information be forthcoming in support of the Order.
 - i. The claimed path was not dedicated as a public footpath by the landowner. Such intention to dedicate has not been demonstrated. On the contrary, the claimed path was provided as a permissive path.
 - ii. The claimed path has not been used by the general public to any material degree over a material period, either to be sufficient to demonstrate implied dedication at common law or to demonstrate acceptance of any dedication, which dedication is denied.

COMMON LAW DEDICATION

5. In order for dedication to have occurred at common law, the burden of proof is firmly on the Applicant to demonstrate that the landowner intended to dedicate the way as a public right of way. Caselaw establishes that that is a heavy burden: *Jones v. Bates* [1938] 2 All ER 237. Further, it must be established by the Applicant that any such dedication was accepted by the public.

LACK OF INTENTION TO DEDICATE

6. The evidence adduced falls far short of establishing that Aggregate intended to dedicate the claimed path as a public footpath. The route was laid out by Aggregate in 2004, but as a permissive route only. That was Aggregate's intention at that time. That is clearly evidenced in correspondence between Aggregate and the Applicant, and at meetings between them when the Applicant was seeking the dedication of the claimed path. It was thus in the Applicant's own knowledge that the path was only permissive and had not been dedicated.
7. Moreover, the County Council's Rights of Way Officer who attended on site in May 2015 himself removed the waymarker signs from the claimed path, acknowledging that it was permissive only. That is particularly pertinent given that the Applicant, and indeed the County Council's Officer in her Report to Committee, contend that the public's right to use the claimed path was not brought into question until April 2016.

LACK OF USE

8. The claimed path has not been used as of right for any material period by the general public from which either dedication at common law can be inferred or from which acceptance by the public can be established.
9. In the first instance, it is apparent from the contents of the evidence user forms that the compilers are confused as to the route they are referring to and as to the route of the claimed path. Many of them refer to using the claimed path prior to 2004. As acknowledged in the County Council's Officer Report, that was not possible given that the route was not laid out until 2015. Similarly, users claim to have used the claimed path post May 2015 when it was physically closed off by the Landowner, again demonstrating that they are wholly confused. In such circumstances, no weight can be given to such evidence given that it appears the compilers are referring to other routes walked rather than the claimed path.
10. Secondly, the lack of evidence of public use is further demonstrated by the Applicant's claim in the Application and supporting evidence that the claimed path had been used for over 20 years and so should be regarded as having been dedicated pursuant to the presumption contained in section 31 of the Highways Act 1980. That very premise of the Application together with the evidence obtained in support is fundamentally flawed and misplaced. The evidence does not, and cannot, support the use of the claimed path which only physically existed on the ground from 2004, and could not have been used during the extraction and restoration works on the Land in any event.
11. Thirdly, that total confusion is further evidenced by the plan accompanying the Application itself and upon which basis the user evidence was obtained. The Application plan is fundamentally different from the Order plan as acknowledged in the Officer report: see paragraph 10.48. They are referring to inherently different routes. The evidence in support relates to a different route to that subject to the Order and consequently cannot be relied upon in support of the Order.

12. Fourthly, the lack of use of the claimed path by the public is demonstrated by the fact that it was overgrown to the extent that it was unusable when the Landowner purchased the Land in March 2015. It had clearly not been used for many years.

13. Fifthly, it is of note that as of April 2016 when the Landowner made a deposit under section 31(6) of the Highways Act 1980 to negative his intention to dedicate any public rights of way over his land, there had been no suggestion of, or any reference to, the claimed path being a public footpath which ought to have been recorded on the Definitive Map, whether by the Applicant, any alleged user, any Rights of Way Officer from the County Council or any other person. The first mention of any such contention was in September 2016 when the Claim was made.

CONCLUSION

14. Consequently, common law dedication of the claimed path has not been established, and the Order should not be confirmed.

Signed.....

Ashfords LLP
For and on behalf of Alvin Mark Lindley

Date.....

APPENDIX D - CORRESPONDENCE RECEIVED IN THE FORMAL OBJECTION PERIOD
(II) REPRESENTATIONS OF SUPPORT

Green, Janice

From: Dave Wingrove [REDACTED]
Sent: 25 October 2018 15:01
To: Green, Janice
Cc: Berry, Chuck; Fiona Ryder
Subject: Definitive map modification order - Ashton Keynes

Dear Ms Green,

Wildlife and Countryside Act 1981 - Section 53
Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way -
Rixon Gate, Ashton Keynes

I understand that, on 7 September 2018, Wiltshire Council made a definitive map modification order. The effect of this order, if confirmed, is to add a public footpath to the definitive map and statement of public rights of way, in the Parish of Ashton Keynes, leading from Fridays Ham Lane, at Rixon Gate, in a generally south-west, west and south westerly direction, to its junction with Path No. 19 Ashton Keynes.

I wish to record that Ashton Keynes Parish Council is fully supportive of this order and that the Parish Council sincerely hopes that, in the fullness of time, the order is confirmed.

Yours sincerely

Dave Wingrove
Chairman, Ashton Keynes Parish Council

Green, Janice

From: Pippa Lawrence [REDACTED]
Sent: 18 November 2018 19:02
To: Green, Janice
Subject: Representation re Path no.41 Modification Order 2018

Follow Up Flag: Follow up
Flag Status: Flagged

Wildlife and Countryside Act - Section 53

The Wiltshire Council (Parish of Ashton Keynes) Path no. 41 Definitive Map and Statement Modification Order 2018.

This path should be reinstated because:

There were Wiltshire Council footpath way marker signs at both ends of Path no. 41 for at least 10 years.

Footpath 20 crosses marshy land that turns into an impassable bog during wet weather and is regularly unusable for months over the winter. Footpath 19 also floods to above wellington boot height so is also unusable. This means that footpath 41 is the only path usable throughout the year enabling us to get to BR 38 and further footpaths. Without footpath 41 we have to walk along the road - Rixon Gate - which in places is narrow and the verges are high and narrow with uncut hedges, this makes it difficult to get ourselves and our dogs safely out of the way of any traffic.

Pippa Lawrence
[REDACTED]
Ashton Keynes

Green, Janice

From: Jackson, Tess (NE) <Tess.Jackson@naturalengland.org.uk>
Sent: 22 October 2018 10:22
To: Green, Janice
Subject: RE: Notice of Making Definitive Map Modification Order - Ashton Keynes


Hi Janice,

Thank you for forwarding the attached proposed Definitive Map Modification Order to me. Having considered it and discussed with the Thames Path National Trail officer I have no comments to make on this proposal.

Kind Regards

Tess Jackson
Senior Advisor
Statutory Access Team (National Trails)

Postal Address:
Mail Hub,
Natural England
County Hall,
Spetchley Road,
Worcester. WR5 2NP

Tel: 01452 740295 

Teleconference Ready-Access Number : 0800 0730 694
International/Mobile Ready-Accesss Number: +44 (0) 3306 068 753
7-digit access code: 461 362 1922

www.nationaltrail.co.uk

www.gov.uk/natural-england

We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

In an effort to reduce Natural England's carbon footprint I will, wherever possible, avoid travelling to meetings and attend via audio, video or web conferencing.

From: Green, Janice [mailto:janice.green@wiltshire.gov.uk]
Sent: 28 September 2018 13:57
To: Jackson, Tess (NE) <Tess.Jackson@naturalengland.org.uk>
Subject: Notice of Making Definitive Map Modification Order - Ashton Keynes

Dear Ms Jackson,

Wildlife and Countryside Act 1981 – Section 53

The Wiltshire Council (Parish of Ashton Keynes) Path no.41 Definitive Map and Statement Modification Order 2018

Further to my letter dated 13th September, enclosing notice of the making of the above-mentioned definitive map modification order adding a footpath in the parish of Ashton Keynes, please find attached a revised notice, where unfortunately the notice did not appear in a local newspaper as required.

Please note that the period for receiving representations to the order has been extended by one week and if you would like to make any representations to the order, I would be very grateful if you could forward them in writing, not later than 5:00pm on Monday 19th November 2018.

Kind regards,

Janice Green

Rights of Way Officer
Wiltshire Council Waste and Environment
Ascot Court Trowbridge BA14 0XA
Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

Information relating to the way Wiltshire Council will manage your data can be found at:
<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Web: www.wiltshire.gov.uk

Follow Wiltshire Council



Follow Wiltshire Countryside



This email originates from Wiltshire Council and any files transmitted with it may contain confidential information and may be subject to Copyright or Intellectual Property rights. It is intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and delete the email from your inbox. Any disclosure, reproduction, dissemination, modification and distribution of the contents of the email is strictly prohibited. Email content may be monitored by Wiltshire Council to ensure compliance with its policies and procedures. No contract is intended by this email, and any personal opinions expressed in this message are those of the sender and should not be taken as representing views of Wiltshire Council. Please note Wiltshire Council utilises anti-virus scanning software but does not warrant that any e-mail or attachments are free from viruses or other defects and accepts no liability for any losses resulting from infected e-mail transmissions. Receipt of this e-mail does not imply consent to use or provide this e-mail address to any third party for any purpose. Wiltshire Council will not request the disclosure of personal financial information by means of e-mail any such request should be confirmed in writing by contacting Wiltshire Council.

This email and any attachments is intended for the named recipient only. If you have received it in error you have no authority to use, disclose, store or copy any of its contents and you should destroy it and inform the sender. Whilst this email and associated attachments will have been checked for known viruses whilst within the Natural England systems, we can accept no responsibility once it has left our systems. Communications on Natural England systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes.