

Ms Sally Madgwick
Rights of Way Officer
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN

Our ref: CP011/0629/1450/404605.00001
Your ref: SM/2012/07/Holt72 and 08/Holt71

04 September 2013

Dear Ms Madgwick

Wildlife and Countryside Act 1981, Section 53

The Wiltshire Council Parish of Holt (Holt Path Number 71) Rights of Way Modification Order 2013/The Wiltshire Council Parish of Holt (Holt Path Number 72) Rights of Way Modification Order 2013

I refer to your letters of 23 July 2013 to Mr Harris enclosing copies of the above Modification Orders which would have the effect of adding two new footpaths across his land at Holt Manor.

As you are aware, I have been instructed by Mr Harris and I thank you for the additional information that you have sent me subsequently.

On behalf of Mr Harris, I am writing to object formally to the two Modification Orders on the ground that, contrary to what has been asserted by the applicants, there is insufficient evidence to establish the use of the two routes by members of the public for in excess of 20 years as required by Section 31 of the Highways Act 1980.

In support of that contention, I would make the following observations:

- 1 Although the application was made in November 2012, it is clear that the relevant 20-year period runs between July 1991 and July 2011, when my client erected fences to enclose the route of the existing and permitted footpaths to ensure the safety of the general public when cattle were in the field.
- 2 During the relevant period, the land was owned until 1996 by the Spreckleys, between 1996 and 2002 by Giles Clarke, from 2002 until 2011 by Mr and Mrs Fisher and since mid 2011 by my client.
- 3 There would appear to be no evidence available from the Spreckleys, but a letter has been received from Giles Clarke, confirming that both routes were used by the general public whilst he was the owner of Holt Manor. However, his tenure only covered six years of the 20-year period.

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- 4 I attach to this letter a copy of an email which has been received from Mr Fisher confirming that, during his period of occupation, which covered nine years of the 20-year period, he was unaware of any use of the two routes by the general public. His letter further confirms that had he seen or been aware of any members of the public using either route, then they would have been asked to use the public footpaths only.
- 5 Mr Fisher's account is confirmed by Phillip Holmes, who was the Estate Manager during the time that Mr and Mrs Fisher owned Holt Manor. As he points out in his representations, which are attached as Appendix 2 to this letter, part of his job was to check the land regularly, including all fences and stiles. Had either or both of these routes been in use, as alleged by the applicants, then it would have been clear to Mr Holmes as there would have been well worn paths. Mr Holmes is quite clear that at no point did he ever see anyone walking the paths.
- 6 Mr Hillier of Norbin Farm Ltd has farmed land in this area for many years. He has had cattle in the field through which the claimed footpaths pass and therefore would have been all too well aware if there were routes across the fields which were being used regularly by members of the general public. He was also engaged by the Fishers for a number of months in the mid 2000s to construct the new walls and gate pillars on the entrance drive. This work would have given him a very good view of anyone using the claimed routes as the relevant field is very close by. Again, Mr Hillier has confirmed that he never saw anyone using the paths and never saw any sign of worn tracks which would have indicated that the claimed routes were being used frequently by members of the public.
- 7 Mr Phil Harris, the current owner of Holt Manor, has also confirmed that he has never seen people walking on either of the claimed routes. This again corroborates the information given by Mr Fisher, Mr Hillier and Mr Holmes.
- 8 A number of the applicants refer in their evidence to a Google aerial photograph of the site dated 2006 which they claim shows the route of proposed Footpath Holt 71. However, this is only a snapshot of one moment in time and it is noteworthy that this route is not clearly shown either on the 2001 or the 2008 aerial photographs appended to the officer's Decision Report dated 21 May 2013. Furthermore, none of the aerial photographs which have been submitted in support of the application or referred to in the officer's report show any route which corresponds to the claimed route of proposed Footpath Holt 72. The only route which can be clearly seen on the 2006 and 2008 photographs is a line which follows the permissive route which was provided following the diversion of footpath 8 by Mr Fisher and the installation of the gate at this point for the farmer in about 2005. This would explain why there is no sign of this route on the 2001 aerial photograph appended to the officer's report. This route has now been removed as a direct consequence of these two applications.
- 9 The only aerial photographs that have been examined at this stage all date from 2001 onwards, which covers the last 10 years of the period for which the public must claim that they have used the way as of right. To date, no examination has been undertaken of any aerial photographs for the preceding 10 years, although a 1999 aerial photograph appended to my client's initial response before the Orders were made, would suggest that neither path was in existence at that date.

- 10 As the officer's report records, neither of the claimed paths is shown on any Ordnance Survey map. Given that some of the user evidence asserts use going back to the 1940s and 1950s and that Mr Giles Clarke in his letter refers to the paths being of "immensely long habitual use" this is again surprising as, following one of its periodic resurveys of the area, Ordnance Survey would have marked any clearly well-used path.
- 11 The Wiltshire Ramblers do not appear to have responded to the consultation before the Order was made. One would have expected that, were these claimed routes regularly used by the general public as part of the network of footpaths in the area, then the Ramblers would have submitted a response in support of the application as they would have been aware of both of these routes if they existed, as claimed.
- 12 Mr Martin Moyes, in his user evidence form, refers to Mr Spreckley, who owned the land until 1996 (five years of the relevant period), encouraging him to walk to Holt Manor across the fields. However, this would have been a personal invitation and therefore would not be sufficient to establish a right for the purposes of Section 31 of the Highways Act 1980. Moreover, looking at the footpath network and the line of the claimed routes, it is clear that the obvious routes for Mr Moyes to have walked from Holt would have been along Footpaths 14 and 16 or Footpaths 17 and 18, since both these routes would have given far more direct access to Holt Manor than either of the claimed routes.

Conclusions


Given the longstanding, frequent and heavy usage of these paths asserted by each of the user evidence forms submitted by the applicants, it is extremely surprising that those who would have been in the vicinity of the claimed routes on a frequent, if not daily, basis and who would all have been very aware of activity on the land, either because they owned the land (Mr Fisher and Mr Harris who together cover nine years of the relevant period) or because it was part of their job to be aware of what was going on (Mr Holmes, who also covers nine years of the relevant period and Mr Hillier, who has farmed in the area for many years).

Had the usage of the claimed routes been as longstanding and frequent as the user evidence forms suggest, then both routes would have been clearly identifiable on all the aerial photographs particularly given the 2m width for each claimed by the applicants. This is not the case. The absence of clearly worn tracks instead corroborates the assertions made by the landowners and those working on and in the vicinity of the field through which the claimed routes pass, that these were not routes actually enjoyed by the public as of right and without interruption for a full period of 20 years or at all.

Accordingly my client objects to the confirmation of these Orders on the basis that the tests required by Section 31 of the Highways Act 1980 have not been satisfied and requests that the two Orders

now be referred to the Secretary of State so that the evidence submitted by the applicants may be tested before an Inspector at an inquiry.

Yours sincerely



Karen Howe
Senior Associate
Clarke Willmott LLP

t: 0845 209 1260 m 07786 321 730
f: 0845 209 2514
e: Karen.Howe@clarkewillmott.com

Karen Howe

From: Phil Harris [redacted]
Sent: 31 August 2013 17:14
To: Karen Howe
Subject: FW: Holt Manor and land

Follow Up Flag: Follow up
Flag Status: Flagged

Herewith !!

From: ANTHONY FISHER [redacted]
Sent: 31 August 2013 12:50
To: Phil Harris
Subject: Fwd: Holt Manor and land

Sent from my iPhone

Begin forwarded message:

From: ANTHONY FISHER [redacted]
Date: 31 August 2013 12p
Subject: Holt Manor and land

To whom it may concern

We owned Holt Manor from 2002 until 2012 and we can confirm that we did not allow unknown walkers on our land unless they were following the allowed rights of way. There were times when we had to reprimand some walkers who were not following the appropriate route. Any deviation from this policy could have violated our privacy
Anthony Fisher FCMA

Sent from my iPhone

Click [here](#) to report this email as spam.

Philip Holmes
36 Marsden Road
Kingsway
Bath
BA2 2LW

06th April 2013

REFERENCE APPLICATION TO REGISTER 2 FOOTPATHS

To Whom It May Concern: For approximately 10 years until 31st July 2011, I was employed as a full time estate manager by the former owner of Holt Manor. My duties included the maintenance of the property and the grounds. My Wife and I lived at the Dower House at Holt Manor. Inspection of the fields and fencing was carried out on a regular basis, also mowing of the verges alongside the road. At no time do I recall any person or persons walking the 2 routes suggested, in fact if I had it was my duty to inform them that they were trespassing and must stick to the official paths. At no time was a trodden path visible during employ. The former owner did have me erect a gate for the farmer to use near to the Manor, which the public did use to create unofficial path which has a notice informing the public of such. At times people would walk away from the official paths, but never on a regular basis.

Yours sincerely

A large, solid black rectangular redaction mark covering the signature area.

Philip Holmes

Phil Harris

From: gill hillier [REDACTED]
Sent: 13 April 2013 20:05
To: Phil Harris
Subject: Norbin farm re Holt manor

Dear Sir / Madam

I understand there are ongoing discussions with regards to two footpaths below Jacobs ladder which is situated at Holt manor Bradford Road Holt,

This is farm land that i am a tenant and have used for livestock purposes in past and intend to do so in the future ,

The two footpaths in question i have never seen being used once in all the years that i have farmed the land,

Given that this land is agriculture land in a organic conversion at present ; if these proposed plans go ahead the land will become un workable in farm management terms and be detrimental to the environment in terms of not complying to the government standards for organic farmed land ,

Finally there has never been any visual marks of use to the land in question,

Mr Hillier
Norbin Farm ltd
Box Wiltshire
SN13 8JJ

Tenant of Holt Manor agriculture land.

*Norbin Farm
Box
Corsham
Wiltshire
SN13 8JJ*

[REDACTED]
01225 866907

13/04/2013

HOLT MANOR
LEIGH ROAD
HOLT
BA14 6PR.

WILTSHIRE COUNCIL
RIGHTS OF WAY
COUNTY HALL
TROWBRIDGE
WILTSHIRE BA 14 8JN

Dear Sally Madgwick.

With reference to your letter of 26th March 2013. (1) We became the owner of the affected land 31st May 2011 . (2) The fencing was erected July 2011 . (3) Mr Giles Clarke till approx 13yrs ago , Mr Anthony Fisher May 31st 2011 . (Mr Hillier of Norbin Farm, Box , Wiltshire . Since we have resided at Holt Manor we have never seen people walking the routes suggested , tracks have never been established , refer to statement of Mr Philip Holmes . Prior to erection of fences people were observed going of footpath but never on a set path , when ever able these people were spoken to . There is no need for these extra footpaths as access is already catered for . Given the Parish Councils strong views on keeping the landscape clean , and the need if these footpaths are granted to fence them in due to cattle in the fields , the application will seriously affect the views, ,and the farmers use of the fields . This is a vindictive application and must be seen as such. It has taken the Parish Council 15mths to decide the erected fencing has stopped them walking some where they should not . It is interesting to note you cannot walk foot path 16 due to it being blockcd of by electric fencing yet no one complains .

Yours sincerely, Mr Philip Harris

[Your Name]

NORBIN FARM LTD

Sally Madgwick
Rights of Way Officer
Wiltshire Council
Bythesea Road
Trowbridge
BA14 8JN

Dear Sally Madgwick,

With regards to the application to add the footpath (Application Reference: SM/2012/07/Holt72), we object for the reasons given.

Having been a local farmer for many years, my family having lived locally and farming under a contract, this and other surrounding land. People walking the suggested route has never been witnessed neither tracks observed other than cattle tracks.

Furthermore, adding to this route would, given the need for fencing in, severely compromise my ability to maximise the use of the land. The landowner has provided safe and secure routes for walkers, one following the line of the application; therefore there is no need for this or other footpaths, as access is already adequate.

In addition, my building company worked for many months on building walls and pillars on the estate approximately nine years ago and walkers were never seen using the route suggested.

Andy Hillier



Box, Corsham, Wiltshire. SN13 8JJ
T: 01225 866907 M: 07970810516
VAT No. 639 0468 94 Company No. 06621293
Director: Andy Hillier Secretary: Gill Hillier

Michelle Harris-Manley
The Dower House
Leigh Road
Holt
BA14 6PR

Sally Madgwick
Rights of Way Officer
Wiltshire Council
Bythesea Road
Trowbridge
BA14 8JN

Dear Sally Madgwick,

With regards to the application to add the footpath (Application Reference: SM/2012/07/Holt72), we object for the reasons given.

I have lived in The Dower House for quite some time now and occasionally go for walks in and around the fields and land surrounding the suggested footpaths. I myself have never witnessed any person using said footpaths nor stumbled upon any human tracks.

Furthermore, adding to this route would, given the need for fencing in, compromise the natural beauty of the landscape which I feel is wrong. The current landowner has provided routes for walkers which are safe and secure, one of which follows the line of the application; therefore I personally see no need for any additional footpaths, as access is already beyond adequate.

Michelle Harris-Manley

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NORBIN FARM LTD

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Rights of Way Officer
Wiltshire Council
Bythesea Road
Trowbridge
BA14 8JN

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2.

Box, Corsham, Wiltshire. SN13 8JJ
T: 01225 866907 M: 07970810516
VAT No. 639 0468 94 Company No. 06621293
Director: Andy Hillier Secretary: Gill Hillier

05.09.13

Dear Sally Madgwick,

Footpath order SM / 2012 / 08 / HOLT71 . Please record my objection to this order .
Having walked this land on the official paths for ~~some~~^{many} years with my dog , I have never
witnessed anyone walking the route suggested . The landowner has supplied 2 secure
routes for single people to walk , one now closed and sadly missed .

Yours sincerely,

A large black rectangular redaction covering the signature area.

[Your Name]

MRS. SUSAN OLIVER .

1, SPENCERS ORCHARD
BRANFORD ON AVON

SM/2012/07/HOLT72

Simon Mount
Holt Manor Lodge
Leigh Road
Holt
BA14 6PR

Sally Madgwick
Rights of Way Officer
Wiltshire Council
Bythesea Road
Trowbridge
BA14 8JN

Dear Sally Madgwick,

With regards to the application to add the footpath (Application Reference: SM/2012/08/Holt71), we object for the reasons given.

Having lived at Holt Manor Lodge for some time now, and regularly walking the fields along the dedicated footpaths, I have never witnessed any person using the suggested route.

Furthermore, adding to this route would, given the need for fencing in, severely alter the natural landscape. The landowner has already provided safe and secure routes for walkers; therefore I see no need for any further footpaths to be instated.



05/09/13

Simon Mount

Michelle Harris-Manley
The Dower House
Leigh Road
Holt
BA14 6PR

Sally Madgwick
Rights of Way Officer
Wiltshire Council
Bythesea Road
Trowbridge
BA14 8JN

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Michelle Harris-Manley

