

APPENDIX E – OFFICERS COMMENTS ON OBJECTIONS

Objector	Objection	Officer comments
Mr G Fletcher (landowner)	<p>The supreme court has in R (on the application of Barkas) vs. North Yorkshire County Council & Another [2014] UKSC 31 recently ruled that the judgement in R (on the application of Beresford) v Sunderland City Council [2003] UKHL 60, the authority on which the order cites, was wrong and therefore can no longer be relied on.</p>	<p>The ruling in the Beresford case related to land maintained by the local authority and that where the public had used such land for more than 20 years with the authorities knowledge, the use was “as of right”. The Barkas case brought this judgement into question.</p> <p>In the Barkas appeal the question before the Lords was that where land is provided and maintained by the Local Authority pursuant to Section 12(1) of the Housing Act 1985 or its statutory predecessors, is the use of the land by the public for recreational purposes “as of right” within the meaning of Section 15 of the Commons Act 2006?</p> <p>The Court ruled that so long as land is held under a provision such as Section 12(1) of the 1985 Housing Act, members of the public have a statutory right to use the land for recreational purposes; therefore, use of the land is “by right” rather than “as of right”, therefore, the implication in the earlier judgement in Beresford can no longer be relied upon.</p> <p>Officers do not consider that the judgement has a bearing upon the Purton Case as it relates to land provided and maintained by the Local Authority pursuant to Section 12(1) of the Housing Act 1985 or its statutory predecessors and the land at Purton is not held as such, being in private ownership.</p>
	<p>Use of the land by the public has been by right as opposed to as of right. Public use has been granted permissively and I believe I have made this clear to the community (as the landowner).</p>	<p>In its investigation of the available evidence, Officers found no supporting evidence that the present landowners had granted permission to members of the public to use the claimed route. In the landowner evidence form and in previous letters to the Council the landowners state that they have never required anyone to seek permission to use the route and confirm that they have granted free access to both of their fields to all local residents, against the wishes of their tenants. However, in a</p>

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		<p>letter to Wiltshire Council dated 22 August 2002, Mr Fletcher states <i>"I believe that the current permissive use can continue to work for many years for the benefit of the whole community"</i>. No evidence of how this permission was communicated to members of the public has been presented by the landowners and the majority of witnesses claim that they have not been given permission to use the route.</p> <p>Mrs Patricia Vincent sought permission from the previous owner to keep an eye on the cattle, but this permission may have related to use of the land as a whole for this purpose, rather than just the claimed route and Mr Charles Mills worked on the farm in question from 1929 to the early 1930's and during these years, his use may be by implied permission for the purposes of carrying out his work.</p>
	<p>Since Beresford has been overturned implied permission can now give way to being held as permission by right. It would not have been reasonable for me to grant permission individually to each person and the law does not require me to do so.</p>	<p>Officers consider that the Beresford judgement relates to land held and maintained by the local authority. The judgement regarding what is considered "as of right" on such land is overturned by the more recent judgement in Barkas. Officers do not consider that these judgements are relevant to the Purton case as the land is not held or maintained by the Local Authority. With regard to implied permission, in its investigation of the available evidence Officers have not discovered persuasive evidence of implied permission over the land. Mrs Patricia Vincent sought permission from the previous owner to keep an eye on the cattle, but this permission may have related to use of the land as a whole for this purpose, rather than just the claimed route and Mr Charles Mills worked on the farm in question from 1929 to the early 1930's and during these years, his use may be by implied permission for the purposes of carrying out his work.</p>

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	I have been aware of the use of the land by the community and allowed it to continue on the clear inference that it was by no means unconditional but dependent on my consent.	Officers have not discovered persuasive evidence provided by the landowners or path users that public use was dependent upon the consent of the landowners. Mrs Patricia Vincent sought permission from the previous owner to keep an eye on the cattle, but this permission may have related to use of the land as a whole for this purpose, rather than just the claimed route and Mr Charles Mills worked on the farm in question from 1929 to the early 1930's and during these years, his use may be by implied permission for the purposes of carrying out his work.
	I have been clear and direct that access to the property was granted in the understanding that it could be revoked should it affect our own use and enjoyment of the land.	Please see comments above.
	Where there have been breaches of the permission granted, I have been quick to deal with them.	Please see comments above. There is no evidence of users being challenged when using the route and the landowners have not provided individual accounts of users being challenged by them.
	Establishing a public right would directly interfere with my use and intended future use of the land. The land is currently used for grazing livestock and a footpath would be damaging. Animals have already been tampered with and there would be a public safety aspect if we decided to put cattle in the field.	In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.
Pauline Cameron (interest in the land)	The footpath width of 1.82m is huge and a great loss of crops and farming land to the owner.	Please see comments above. A width of 1.82 metres is an average of the widths stated by witnesses, where there is an absence of historical documents which may provide evidence of a width. We must therefore rely upon the width actually used by the public.
	Why can't the footpath go around the outside of the field? This would lead to less crops ruined or lost through use of the path. There is perfect flat ground around the outside close to the houses to the left of the entrance, or more demanding walking around to the right of the field from the entrance.	The provision of a suitable alternative route cannot be taken into account. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. The route contained within the Order is consistent with

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		the route claimed by witnesses. If a Definitive Map Modification Order is confirmed and the route is successfully recorded on the definitive map, the landowner may then apply for a diversion of the footpath under separate legislation.
	The field has certainly been walked straight across for many years without any concern for the owners or their crops.	The objector acknowledges that the path has been walked for many years and in determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.
Margaret Entwistle (tenant of the land)	The proposed footpath would objectively interfere with my use of the land (to graze horses) and would result in damage to my property and livestock.	Officers would certainly agree that incidents which result in damage to property and livestock are certainly very distressing and would urge that the tenant to report such incidents to the police. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.
	Continual abuse of property by the residents of the village since I erected fencing to keep my animals safe and away from the public. I have had fences broken and vandalised resulting in my animals being able to get out where they could become injured.	Please see comments above.
	I have tried to divide the field in two to accommodate a permissive right of way as the Fletcher's had allowed but again the fences and style I installed have been removed and damaged which has incurred both stress and financial loss on my behalf.	Please see comments above.
	Due to continuous abuse I now have serious concerns over the welfare of my animals. Failure to restrict my horses puts them at risk of laminitis. I have also heard that the villagers themselves have expressed that they have no regard for my 'old ponies'.	Please see comments above.

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	<p>Villagers broke fencing to toboggan when there was snow on the ground with no consideration for my animals or property. This resulted in the loss of 2 foals and a mare. Because of this I was urging Mrs Fletcher to seriously consider revoking the permissive footpath and not allowing any public access at all to the Hoggs Lane Field since the historical and intended use of the land was being compromised.</p>	<p>Please see comments above.</p>
	<p>It is my strongly held belief that a public footpath would make it impossible for me to continue to use the land for its designated purpose of grazing livestock.</p>	<p>In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.</p>
<p>Mrs R A Clifford & Mr P J Akers</p>	<p>My father owned the field prior to the present owner, in the 1980's and 1990's. Throughout his ownership he continuously tried preventing and challenging many residents regarding trespassing on this piece of ground and dog fouling.</p>	<p>We are in receipt of a landowner evidence form completed by Mr Philip Akers (son of the late Mr David Akers who was the previous landowner), which states that his father was aware of the use of the route and he saw people on foot most days. He never required people to ask permission before using the route and no plan and statement under Section 31(6) of the Highways Act 1980 was ever deposited with Wiltshire Council to prevent public rights being claimed. Mr Philip Akers claimed that his father, nor anyone on his behalf, ever turned anyone back or tried to stop people using the route and no signs or notices stating that the way was not public were erected during Mr Akers land ownership.</p>
	<p>Un-permitted access to this field has been an ongoing problem for decades, not to mention the potential risk to unborn animals which dog excrement may have caused and continues to cause.</p>	<p>The objector acknowledges that access to the field has been without permission. In its investigation of the available evidence, Officers have found little evidence that the landowners have challenged public use of the path. Mr and Mrs Fletcher claim to have erected notices stating that the way was not public in February 2001; however, no evidence of the wording or photographic evidence of the notice has been provided by the landowner and only one witness recalls seeing such a sign.</p>

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		<p>The barrier erected by the landowners in 2001, has not prevented public use and appears not to have been maintained. There are no accounts of users being challenged whilst using the route, provided by either path users or the landowners. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.</p>
	<p>It is not necessary when there are two existing footpaths 110 and 112 either side of the field within a very short walking distance of the proposed footpath.</p>	<p>The provision of a suitable alternative route cannot be taken into account. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.</p>
	<p>Frustrated that many of the residents whose properties back onto the field take it as their right to use the field, when they are trespassing. At the back of the houses most residents have gates which open directly onto the field giving them immediate access to ground they should not be on. I feel this is down to idleness as they can't be bothered to walk down the road to get to the approved footpath. If there is no footpath the ground is private hence it should remain a no entry zone.</p>	<p>Even if a footpath is added to the definitive map and statement of public rights of way, it will not give additional rights to those residents who have put gates into the fences at the back of their gardens, to walk over private land from their garden gates to reach the public right of way.</p>
	<p>Disporia in unborn cattle is on the increase largely due to the amount of dog fouling. Putting a footpath across the centre of the field could lead to an increase causing financial loss and inconvenience. This is preventable and we should be looking to preserve the natural environment without potentially causing further problems, particularly where there are alternative routes which are easily accessible to residents.</p>	<p>Dog walkers should pick up after their dogs, it is an offence and carries a £1,000 fine; however, this is something which is very difficult for police to enforce. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.</p>

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	<p>People who access this field at the moment are trespassing and do so at their own risk if there are animals grazing. Approval of the footpath would lead to the owner becoming liable if anything should happen, i.e. if a dog were to chase or attack livestock.</p>	<p>Dogs should be kept on a lead near livestock; however, this is very difficult for police to enforce. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired.</p>
	<p>Animals should of course be kept on leads at all times however this is not always the case for some owners. Loss of livestock would have a further knock on effect to the farmer and they would also incur liability arising from the issue which occurred. This is again avoidable as there are neighbouring footpaths to use.</p>	<p>Dog owners should behave responsibly around livestock and pick up after their dogs; however this is something which is very difficult for police to enforce. In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. The provision of suitable alternative routes cannot be taken into account.</p>
	<p>I believe that the current owner purchased the land at a premium price due to the fact that there was and is no footpath in place. Should at any time in the future a planning application be made on this ground, an established footpath would cause many problems and certainly effect its value.</p>	<p>In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. If the land is developed in the future, there are legal powers available to the Council, by which a footpath may be extinguished or diverted under the Town and Country Planning Act 1990, where it is considered necessary to do so to enable development to continue.</p>
	<p>My siblings and I have an interest in this property although it is not the only reason I am objecting to the application. The practical and environmental issues highlighted above are of great concern. We really should be concentrating on respecting other people's property and using approved routes already available. An additional path through this field is unnecessary.</p>	<p>In determining whether or not to confirm the Order, the Council or the Secretary of State may only take into account the evidence to determine whether or not a public right has been acquired. The provision of suitable alternative routes cannot be taken into account.</p>