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Councillor Beki Hoyland
Chair
Commons and Rights of Way Committee
Gloucestershire County Council
Shire Hall
Westgate Street
Gloucester GL1 2TG

By Email Only:

beki.hoyland@gloucestershire.gov.uk

9th December 2024

Dear Councillor Hoyland,

Commons and Rights of Way Committee

10 December 2024

Agenda Item 6

**APPLICATIONS FOR MODIFICATION ORDERS TO ADD PUBLIC FOOTPATHS
ACROSS LAND ADJACENT TO BRAMBLE LANE, STONEHOUSE PARISH,
GLOUCESTERSHIRE (ref:573/11/212(6)(7)(8)(9)(10))**

We are instructed by Linda Maiik, the freehold owner of the land known as "Verney Fields". It is coloured green on Slide 2 accompanying the officer report into Agenda Item 6 at tomorrow's meeting.

Our client objects to the above applications insofar as they relate to her land.

We have instructed expert Counsel, Stephen Whale of Landmark Chambers, to advise and assist us and our client. Mr Whale has drafted this letter.

We wish to draw attention to a range of issues in the officer report, and to urge you and your fellow committee members to take them into account in determining the applications. Please ensure that your fellow committee members are provided with a copy of this letter.

References to paragraph numbers are to paragraphs in the officer report.

The application

On 4 July 2023, Stonehouse Town Council (“STC”) submitted five DMMO applications: see paragraph 5.4.

Slide 2 is a map at scale 1:25,000 showing the location of the claimed routes. It appears to have been produced by Gloucestershire County Council, not STC.

There is nothing in the officer report to indicate that the applications complied with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981, whether as to a map drawn to the prescribed scale or otherwise.

Paragraph 5.5

Paragraph 5.5 is wrong. STC’s parallel application is pursuant to section 15(1) of the Commons Act 2006. That application is “separate ongoing and unconnected” in the sense that it is legally separate. However, it is not irrelevant to these DMMO applications. STC’s case in the parallel application is that the *whole* of Verney Fields has been used for sports and pastimes (including walking and dog walking). That case flatly contradicts its case in these DMMO applications.

It is a primary characteristic of a highway (of which a public footpath is an example) that the public right of passage should follow a known, defined line. As there is no right to wander (*jus spatiendi*) at common law, dedication of a public right of way cannot be inferred from public wandering: see, for example, Attorney General v Antrobus [1905] 2 Ch 188, 198 *per* Farwell J, and the other cases cited in *Highway Law*¹ at 1-27.

If, as it claims, the *whole* of Verney Fields has been used as claimed, there has not been passing and re-passing on the claimed routes. Put another way, STC’s section 15(1) application fatally undermines its DMMO applications.

Date of calling into question

The case officer concludes, in paragraph 9.6, that the qualifying period for Verney Fields is 2003-2023. This is imprecise. The same paragraph refers to Ms Maiik’s purchase on 9 March 2023 and her subsequent paths closure/erection of signs during the same month. Ms Maiik purchased her land on 3 March 2023. It is said that this gave rise to a challenge to public use of the claimed routes over Verney Fields. It follows, on the case officer’s account, that the end date of the statutory 20 years’ period was the precise date in March 2023 when the paths were closed/signs were erected. It is not simply 2023 generally.

Paragraph 6.4

As this paragraph records, Google Earth aerial maps do not support STC’s case as to all the claimed routes.

Paragraph 7.1 to 7.12

These paragraphs support Ms Maiik’s objection. As the case officer effectively concedes, none of the many maps discussed shows any of the claimed routes.

Paragraph 8.2

The Open Spaces Society can be expected to support DMMO applications in any event. Mr Townley concedes that he has “not examined the individual detail of the evidence submitted...”

Paragraph 8.4

¹ Sweet & Maxwell, 6th edition, Sauvain QC.

This paragraph states that the Godsells cannot “represent” either Mr Sibley’s or Mr Oakhill’s position regarding public access over their land during 2006-2019. But that does not detract from their factual evidence as to stopping walkers, asking them to keep to footpaths, the long grass/brambles and the way in which this made various claimed routes difficult to use/impassable.

Paragraph 8.6

Hearsay comments are not *per se* inadmissible in these kinds of cases.

Paragraph 8.7

This states that Ms Maiik/her son “were not the owner or tenant until 2023 and therefore were not in a position to determine how the landowners at the time viewed the public use.” But the fact that their ownership began in 2023 does not alter their evidence or its reliability as to prior facts. As they state: “We have both known the land since 2013, are familiar with the land & how it has & has not been used; We also know its history going back a long way, as detailed thoroughly in our LES.”

Paragraph 9.27

Ms Maiik makes the point that there has been user by force. We cannot see that the officer report grapples with this point or makes a finding as to it.

Paragraphs 9.28 and 9.29

These paragraphs refer to the erection of a gate in 2020, the installation of barbed wire fencing in March 2023 and the erection of a “Private” notice in 2023.

There is also evidence of a stile being removed in 2020, the replacement of a corroding gate with stock fencing/barbed wire, repeated destruction of this stock fencing/barbed wire, the replacement of the fencing with a welded shut gate, a stile which fell down but was not replaced, signs being installed in April 2019, signs being torn down repeatedly and new signs being erected in 2019-20: see paragraph 8.4.

We cannot see any finding in the officer report as to whether these events occurred, in whole or in part, before the deemed dates of calling into question or any finding as to their implications if so.

Paragraph 9.29

The officer report is plainly wrong to advise that user is by force only if the user is verbally or physically prevented from using a claimed route. User may be by force (or “contentious”) if, for example, it is in the face of a suitably-worded notice or if it involves climbing over a locked gate.

Paragraph 9.32

This quotes from a Bruton Knowles comment. Thus: “...In addition, consideration will be given to fencing the land to ensure any unconsented access to the land beyond the footpaths - is stopped. I am sure you will agree this would be an unfortunate position for residents, but you will appreciate my client has no option but to protect any interest in the land.”

The case officer infers from this comment that the landowner was aware of user.

On the contrary, the comment only refers to “any unconsented access”. This is not to a comment to the effect that there actually *was* unconsented access. The same point goes for paragraph 9.49.

Paragraph 9.33

The officer report does not consider whether the stile/waymarker at point J relates to public footpath MST30.

Paragraph 9.41

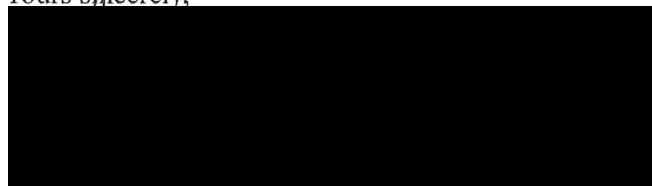
Again, the fact that the Godsells did not own the land crossed by section E-F until 2019 and could not “represent” the prior landowner’s view during that time does not *per se* affect their ability to set out pre-2019 facts as to user by force and challenges to walkers. Miss Jones’ evidence attests to signage and verbal challenges.

Conclusion

To repeat, you and your fellow committee members are respectfully urged to take this letter into account before determining the DMMO applications. If they are granted as to Verney Fields, it should only be on the bases set out in the officer report (i.e. “reasonably alleged to subsist” and pursuant to section 31 of the Highways Act 1980).

Ms Maiik continues to oppose the applications, and she proposes to object (necessitating referral to the Planning Inspectorate, on behalf of the Secretary of State) if the committee resolves to grant the applications as to her land. This letter does not represent the entirety of our client’s objection.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

John Copland and Son

Solicitors

cc: jaci.harris@gloucestershire.gov.uk