

To: All Members and Officers of the
Countryside and Rights of Way Panel.

DX 712320 Stafford 5

Fax No. (01785) 276219

Please ask for: Zach Simister

Telephone: (01785) 276134

e-mail: zachary.simister@staffordshire.gov.uk

Date: 21 January 2021

Dear Sir/Madam,

Countryside and Rights of Way Panel - Friday 22nd January 2021

I have recently forwarded to you a copy of the agenda for the next meeting of the
Countryside and Rights of Way Panel.

I am now able to enclose, for consideration at next Friday 22nd January 2021 meeting of the
Countryside and Rights of Way Panel, further appendices for the following report:

5. **Wildlife and Countryside Act 1981, Section 53 - Application for Public Footpath
between Keele Road and Paris Avenue, Westlands, Newcastle-under-Lyme
(Pages 1 - 8)**

Report of Director of Corporate Services.

John Tradewell
Director of Corporate Services

Enc

Supplement 1 - LF609G

Further Evidence Submitted by the Applicant - Dr A Drakakis -Smith

The below additional comments were sent in by the applicant on the 19/01/21

In answer to these:

The relevant period is 1976-96 and it is the wire obstructions of the 1980s that are critical to the case – the 1996 obstruction was recognised as the date of challenge. The path would not appear in the details of the landowner who submitted the land registry information as it does not exist as a definitive right of way. The red line on the associated land registry plan does encompass the land through which the alleged route passes. The details relating to the erection of the fence on the highway waste or verge are not materially relevant to the case. The fact remains that the alleged route was obstructed at times during the relevant period.

The photograph is illustrative of the fence at the end of the alleged route although nothing turns on this. The earlier wire obstructions being more critical.

Email from Applicant - 19/01/2021

Dear Mr Adkins

By chance I looked on the County Council ROW meetings list since I wanted to know the time of the meeting as information had not been sent to me re this meeting as promised. We have not been sent the details of joining the meeting on Friday either.

I then found additional information from the new owner which had been sent to you in October 2021 which had not been forwarded to us. The information from the owner differed somewhat from the information that we have on the issue. We have evidence to show that from 1999 there was no wire obstruction at the entrance. And this fence and wire only appeared within the first ten days of November 2020, it seems after the owner had been forwarded our evidence re the path and after his return to the UK.

We have two registrations for the cottage and the extra land mentioned. The path runs between the two. The pathway does not appear on either registration (although it does appear on maps) which might suggest an inaccurate registration of this land. And the Land Registry does not check. I have been informed that it relies mainly on the integrity of solicitors! It is also doubtful that the fence reported in applications

forms in 1996 and in the early 1980s was 'official' and/or legal. We would also query several of the statements made by the current owner as fact rather than personal opinion.

Having now studied all the documents recently published on the Council's website related to the above numbered public path application, we have identified a further piece of extremely important evidence. This case will be decided on whether the user evidence shows long use of the application route "as of right" or not. The landowner at the time claims it was not use as of right because of fencing erected at the Keele Road end which users circumnavigated or removed. Attached is a photograph of the fence concerned.

Further research confirms that the fence concerned was actually erected on the roadside waste or highway verge of Keele Road and not on land that crossed the private and unincumbered area of the application route. So, unless Staffordshire County Council Highways Department gave its consent for the erection of the fence concerned it constitutes an unlawful obstruction of the public highway. The public have a right to the use and enjoyment of all publicly maintainable highways, including the roadside waste that forms part of it (section 130 Highways Act). Accordingly, Thistleberry Residents Association claims that user evidence, indicating that the fence was circumnavigated, was both a legal entitlement to overcome the unlawful obstruction and the fence was not located on the application route at all but on land already comprising an existing public highway, recorded on the section 36 list of roads and streets maintainable at public expense.

Please can you ensure that this information is provided to the Panel Members who will be determining this application on Friday.

Yours sincerely.

Dr A Drakakis-Smith (Chair)

Mr C Lakin (Vice Chair)

Thistleberry Residents Association



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