

## **Appellant's Comments in respect of granting the request to make an order**

### **Wildlife & Countryside Act 1981**

#### **Application for Definitive Map Modification Order**

#### **Alleged Public Footpath, Long Row, South Shields**

### **Appeal to the Secretary of State under paragraph 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981**

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#### **Schedule 14 Appeal Guidance - Updated 18 September 2024**

*In line with a change in Defra policy on 13 February 2014, evidence to be considered by the Inspector should not be limited to that which was previously considered by the local highway authority in refusing the original application. Evidence, not previously considered by the local highway authority may therefore be submitted with an appeal.*

#### **Response**

We are currently still in the process of submitting all the evidence disregarded by the council along with more evidence and will continue to do so until the final deadline of our appeal. We are also in the process of having to notify all interested parties as we believe the OMA has failed to do so.

#### **Schedule 14 Appeal Guidance - Updated 18 September 2024**

*The right of appeal does not exist if the authority issues a refusal notice to make an order for the status applied for but resolves to make an order for a different status or where the authority makes an order which differs from the application in some other way.*

#### **Response**

We have clear evidence of over 20 years use of most of the path, so why did the OMA not choose to make the order for these parts of the route? Why are you asking for two new DMMO applications?

#### **Schedule 14 Appeal Guidance - Updated 18 September 2024**

Relevant evidence submitted from interested third parties will also be considered by the Inspector along with any subsequent comments made by either or both the appellant and the local authority, on that third party evidence.

#### **Response**

Can the OMA please provide to us the details of all 3<sup>rd</sup> parties it has notified of our appeal including copies of any correspondence and the contact details including but not limited to Natural England, KCIIIIECP, The Ramblers etc

#### **Schedule 14 Appeal Guidance - Updated 18 September 2024**

*Please be aware that no party can make an application for costs against any other party (on the basis of unreasonable behaviour) at a hearing or inquiry held in relation to a Schedule 14 Appeal. This is because it is not covered in the relevant legislation.*

#### **Response**

Why did the OMA make threats against the councillors who voted at the DMMO hearing that they acted unlawfully, and they were threatened with personal liability? I am sure tha

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### **Schedule 14 Appeal Guidance - Updated 18 September 2024**

*A more formal oral procedure may, on occasion, be adopted where, having reviewed all the evidence submitted, the Inspector considers it is necessary to ensure procedural fairness, or he/she considers the conflict of evidence cannot be fairly resolved on consideration of the written representations and papers alone. In these circumstances the local authority will be asked to provide a suitable venue for the holding of that oral procedure – be it an inquiry or a hearing.*

#### **Response**

Why has the OMA made representations to us that a public inquiry will be held when the planning inspectorate are not at the stage of the process?

### **Section 31 of the Highways Act 1980**

*There is clear evidence that the claimed route could not have been used along its full length for the applicable 20-year period for the purposes of Section 31 HA 1980.*

*Even within the evidenced period of use (being less than 20 years), there was also an interruption to the use. A claim based on the Section 31 presumption is destined fail.*

#### **Response**

We also have clear evidence which was disregarded by the OMA that parts of the path were used for over 20 years. The small section that was blocked off during the construction of the call centre is the only exception to this, however we still also believe this was made available to the public for over 20 years.

### **Common law dedication**

*There is no evidence the landowner intended to dedicate a public right of way when laying out the majority of the route in 2007/8 or subsequently, as opposed to merely tolerating such use. Subsequent closure by the landowner is consistent with toleration of use by the public.*

*There is no evidence the tenants and mortgagee consented to such a dedication and there was a period in receivership when no-one had capacity to dedicate.*

*Taking these factors together, there are other possible explanations for the public use other than the creation of a right of way. At common law, the mere existence of other possible explanations suffices to prevent any inference of dedication.*

#### **Response**

The landowner never declared the land as private until February 2020 when they replaced temporary Harris Fencing with a permanent Steel Gate fixed to land, they did not own and without any planning permission which is over 20 years from when the path was originally used. In fact, the council even maintained part of the path from 1999 up until December of 2020, which we have documented proof.

### **King Charles III England Coast Path**

*With regard to the King Charles III England Coast path, the creation of rights of access Under Countryside Rights of Way Act and designation of a route is a discrete legal process, entirely unrelated to the establishment of public rights of way.*

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### **Response**

*The legal arrangements allowing the public to walk on the trail and the coastal margin are often complex and may differ from place to place. The enforcement powers to deal with situations like this rests with the local highway authority and are set out in the Countryside and Rights of Way Act 2000 and Marine and Coastal Access Act 2009.*

Can the OMA please confirm why they are not taking any action other than forcing us down this path of making a DMMO application in the first place? What are you currently doing with regards to your other duties and obligations under this other legislation?

Why has the OMA not followed on from the communications provided by Natural England, other than for Dave Carr Highways and Infrastructure manager representing a small handful of private residents in asking Natural England to divert the KCIIIECP?

Why have the council disregarded most of evidence that the alleged path in question the KCIIIECP section SBA-1-S031 which was used by thousands of people and is well documented by many sources does not exist?

Are you aware of the allegations of personal relationships and conflicts between some council officers and both current and former councillors and officers?

### **OTHER QUESTIONS FOR THE OMA?**

1. What was the purpose of the council changing the user evidence forms on the 7<sup>th</sup> of October? Who has the OMA notified about this change apart from myself and John? (Attached for PINS file)
2. On what basis does the OMA base its judgement that "The Council will not be notifying the 82 people who provided evidence for your application and the Council have no plans to hold a hearing, as this will be held through a public inquiry through the Planning Inspectorate." (Attached for PINS file)
  - a. Who if anyone has the council notified as interested parties or third parties of this appeal?
  - b. What user evidence groups did the council contact during their investigation, and can you provide copies of any communications?
3. Why did the OMA make the evidence available in a printed file for 28 days for inspection at the council's offices and not notify the public or any interested parties, and if you did inform anyone who did you notify?
4. Why have no evidence forms whatsoever been supplied by the OMA that were sent directly to Lisa Tracey or any other officers. Every single letter and evidence statement used has been supplied by us. We have had reports of people who sent you evidence and it was withheld. Can the OMA confirm that not one single evidence statement has been sent to them other than the three recently provided to PINS?
5. Why did the council disregard and not provide PINS with all of our evidence and supporting documentation in the first instance? How come we are left to upload and scan hundreds of pages of evidence that were already submitted to you. The withholding of our evidence for so long has impacted our appeal and we will be asking the planning inspectorate to provide us with an extension, so we can ensure that no more evidence is further disregarded.
6. Hopefully once all the evidence and information are considered in its entirety the OMA may change its findings and decision and help its residents.