



**DEVELOPMENT CONTROL AND REGULATORY BOARD**

**APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER  
PROPOSED ADDITION OF TWO PUBLIC FOOTPATHS  
(C109 AND C109A) AT GLEN OAKS, GREAT GLEN**

**SUPPLEMENTARY REPORT OF THE  
DIRECTOR OF ENVIRONMENT AND TRANSPORT**

**Purpose of this Supplementary Report**

1. The purpose of this report is to inform members of new correspondence relating to the above application; that being two emails received on 7<sup>th</sup> December and the subsequent reply from the Case officer.

**Emails from Mr. Mitchell**

2. Mr. Mitchell acts on behalf of the owners of part of the land affected by the application; Mr. and Mrs. Robinson. He writes in his first email:-
3. *"I have discussed its terms and also visited the site once again with my client. Bearing in mind your recommendation I feel I must ask you to respond to me and provide information on the following matters which are particularly relevant to the whole situation.*
  1. *What consideration have you given to the question of maintenance costs on and ongoing basis relating to the woodland? Para 73 of your report refers to significant ongoing maintenance issues and I suggest also costs which will fall to be paid by the taxpayer. Trees will fall, branches will break off, and yet you have given no indication at all, other than general average per metre cost of path maintenance, of any potential cost or budget which will have to be met to keep any paths clear. How does LCC intend to access woodland with machinery and/or vehicles needed to clear any such footpath? I assume that you will not be calling upon the landowner to deal with these matters.*
  2. *Would it be the intention of LCC to construct a fence and stile at point D on the Plan M1134-C ? Would it be necessary to access any land outside the line of the footpath for the purposes of carrying out any works to or adjacent to*

*the routes of all footpaths? Who will meet the cost, and on what basis would such access be requested ?*

3. *Have you given any consideration to the question of access into the field at point C on the plan from Oaks Road? There is currently a 12 ft metal agricultural gate blocking access into the field. It is typical of a farm gate and was originally long ago a wooden gate which was replaced by the metal gate when it became beyond repair. The gate is essential to the land to demarcate the boundary, and enable access for stock and large very wide agricultural vehicles when necessary. It is not acceptable to rely upon walkers to open and close this gate, and in any event I assume that LCC would be intent in time on constructing a secure stile, pedestrian gateway, or similar to be used by walkers. Where would this be, and how does LCC intend to deal with the metal gate? No provision at all to date has been made for these matters, and they are critical to the landowner.*
4. Mr. Mitchell's second email is as follows:-
  1. *"This is marked 2nd email and relates to further instances where my client, the landowner, has taken steps prevent access being made to his land by pedestrians walking along land between points A to B to C, and also B to D shown the Plan M1134-C.*
  2. *1. At Para 65 of your report you repeat the terms of my letter about electric fencing erected on the Miller field by the farmer, for the purposes of keeping in livestock. At Para 66 you state that none of the witnesses/walkers recall any electric fencing. Were the witnesses asked the question by you, or is this merely a summary of their evidence? If the latter is the case, then your report is inaccurate. I repeat on behalf of Mr Robinson that for many years he did use and place electric fencing on site, and on two or three separate occasions batteries and electric energisers were stolen from the field and never seen again. He cannot say who was responsible.*
  3. *2. In my first email of 6 December I refer to the metal gate erected at point C on the plan by the landowner. The vehicular track between points B and C on the Plan was for many years used by the landowner and latterly his tenant as a means of gaining access to the field now being developed by Miller. This is no longer required as such, and Miller have no legal right to use the track. For security reasons for stock on land, and also to prevent any unauthorised access to the land, for some time the landowner retained at the gate a chain and padlock which was kept locked. This was not popular and on occasion the padlock was superglued by unknown people apparently determined to see the padlock removed. They were successful as the landowner finally abandoned use of the chain and padlock.*
  4. *These two paragraphs demonstrate clearly that the farmer did not agree to unauthorised people/walkers using this paths, and equally it is apparent*

*that there were people determined to take whatever action was necessary to remove obstructions from the land. Activity verging on the criminal was undertaken, and it was only when planning applications were being made in respect of the land now owned by Miller that a more conventional approach to amending the Definitive Map on public footpaths was actually made.*

5. *Please confirm that this email will be added to your Report.”*

**The Officer's Response:-**

6. I acknowledge receipt of your two emails. I shall address your points as follows:-

Gates and Fences

7. The difficulty with using the erection of various fencing and or gates as an argument that a landowner does not wish to dedicate a public right of way on their land is that, on agricultural land, fencing and gates are usually perceived to have an agricultural purpose. Anyone coming across a fence on a known public right of way may reasonably assume it is solely for the purposes of stock control, especially if they can lower the fence and or step over it in the case of an electric fence or climb over it or walk through it in the case of wooden fences and gates. The same goes for an unrecorded path where a number of members of the public believe, by several years of usage, that they have a right of way.
8. Under Common Law and also under the provisions of the Highways Act 1980 there is a defined need for a landowner to express their desire not to dedicate (or acquiesce to the coming into being of) a public right of way by clear and overt means such as signs erected and maintained alongside any structures or entrances. In order to clearly express their desire not to dedicate a public right of way they need to inform the public that this is the case. Otherwise it is difficult to establish that actions by the landowner that could reasonably be interpreted to be for stock control and land management have a different or at least secondary role as a means of preventing a path becoming a public right of way.
9. I appreciate that many landowners will not be fully aware of the actions they need to take in order to negate any future claims that a right of way as yet unrecorded, crosses their land, but the legislative framework takes no account the lack of foreknowledge of this
10. As to members of the public not recalling the electric fence, there is a specific question on the user evidence form that asks *“Have you come across any physical structures which have hindered or obstructed your use of this route? If yes, please give details including locations and dates. Please mark the*

*locations on the attached map.*” None of the witnesses reported coming across an electric fence. Two did note the wooden fence across the entrance to the wood at the southern end but one referred to it as a stile.

#### Maintenance/ Fallen trees and Branches

11. Regarding maintenance costs this, you will appreciate, is difficult to quantify especially with rural, unsurfaced paths. The Highway Authority has a statutory duty to maintain the surface of public rights of way. In urban areas this involves repairing tarmacadam or gravel paths. In rural settings it usually involves clearing surface growth of grasses, nettles and brambles growing up through the surface of the path. Surface vegetation growth varies a great deal, with weather conditions, warm wet summers creating more work than dry summers. Sometimes if a path is well used it does not become necessary to clear surface vegetation.
12. There is no intention to surface the alleged paths on your clients' land should they eventually be recorded as public rights of way.
13. As regards fallen trees and branches the responsibility for clearing these from public rights of way rests with the landowner, though the County Council's Rights of Way Inspectors will often clear paths of smaller tree and branch falls themselves. With bigger tree falls they would contact the landowner and ask them to remove the obstruction.
14. Regarding the field entrance at point C on the proposal map, the alleged right of way goes through the gateway and therefore if this route is formally recognised as a public right of way it should not be locked. However, it would not be unreasonable to create a hand gate next to the field gate so that the field gate could be secured, and the Area Rights of Way Inspector could look to assist your clients with this if it became an issue.

#### Circulation under the Local Issues Alert Procedure

15. Dr. R.K.A Feltham CC

#### Officers to Contact

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