

FAO Steve Weaver
Planning Officer
Havant Borough Council
Development Control
Public Service Plaza
Civic Centre Rd
Havant
PO9 2AX
Via email only to: Steve.Weaver@havant.gov.uk

Our Reference: MCK/A4274-4

Email: mgilks@thrings.com

Dear Mr. Weaver,

Representations on an application for planning permission under section 70 of the Town and Country Planning Act 1990 ('the principal Act')

APP/21/01310 | Change of Use of land and woodland (retrospective) as a wedding and events venue, including retention of permanent ancillary buildings and structures, the erection of removable structures (including marquees and temporary facilities), and the use of the land as a campsite in association with events. | Tournerbury Woods, Tournerbury Lane, Hayling Island ('the Application')

Tournerbury Woods, Tournerbury Lane, Hayling Island ('the Application Land')

The following representations on the Application are made on behalf of [REDACTED]

Relevance of Earlier Representations

These representations make highly material legal points and are additional to the representations on planning policy and material considerations made by Mr Michael Knappett BSc BTP of Messrs. BJC Planning and those of [REDACTED]. The LPA is requested to also consider the first-hand material from [REDACTED] in response to planning application reference APP/18/00943 and the documentary, photographic and video material submitted for the appeal which it has in its possession.

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We invite the LPA to consider all the information that has already been provided on the appeals because in our submission, nothing has changed, and the matters raised in relation to those applications and outstanding appeal are just as relevant to this application. If the local planning authority requires a resubmission of those representations and the inquiry materials then we are happy to oblige. However, we are of the view that not demonstrably taking those representations and these into account in the course of the determination of this application would constitute a gross error of law.

The application must be refused: there is no change in material circumstances

The points made here are of critical importance for the local planning authority. Individually and collectively the considerations indicate strongly in only one direction: the Application cannot be granted in its current form and must be refused. The LPA's main reason for refusal on the previous application was the amenity impact on [REDACTED]. The "mitigation" suggested by the Applicants is unrealistic, unenforceable and fails the planning practice tests.

The only way that the impact of the development can be mitigated is by giving [REDACTED] a meaningful involvement on the proposal which as a matter of law, can only be achieved by a planning obligation.

Even if the Application were resolved to be granted against the planning history, and against the relevant legal and policy considerations, in circumstances where there was no change in planning material planning considerations, the only lawful manner in which any necessary planning mitigation on [REDACTED] may be delivered is by planning obligation to be completed in advance of the grant of planning permission. To be effective and to bind all the interests then [REDACTED] must be a party to that planning obligation.

The local planning authority ought to be mindful of the narrow legal requirement to grapple with the earlier reason for refusal.

Legal and Factual clarification

There are any number of legal matters relating to the Application and its supporting documents which individually and cumulatively can properly be said to be errors of fact and errors of law.

First, the allegations of [REDACTED] seeking "ransom" for the use of the alternative track are untrue and very serious.

The allegations by the Applicant in the design and access statement in respect of 'ransom' is incredibly serious and with respect, they are incorrect. They are not made by a solicitor. It follows that they ought to be treated with extreme caution by the local planning authority, not least because this is both a serious allegation and an allegation that in [REDACTED] view is wholly without foundation. There is a history of the Applicant making to say the least, problematic allegations, and this background must go to credibility and likelihood of the credibility of the Applicant's statements or submissions.

The local planning authority will be well aware of the legal risks of basing any determination of a planning application in which it sought to rely upon or take into account the making of this kind of

serious allegation in circumstances where the person to whom the allegation is made rejects that allegation unequivocally.

We enclose the correspondence to the applicant at Enclosure 1 to which this firm has had no response other than a request it is send electronically, and to which [REDACTED] have had this response at Enclosure 2.

Enclosure 1 is the opening offer from [REDACTED] about access to the alternative access track. It demonstrates a perfectly normal commercial basis and even-tempered starting point for negotiation; it is an offer conveyed by Savills. This is a highly reputable professional firm and the writer is a respected leader in his field.

The response at Enclosure 2 was not to [REDACTED]'s agent or [REDACTED]'s solicitor. It was directly to [REDACTED].

The care and thought demonstrated by Enclosure 1 may be usefully contrasted with Enclosure 2. The local planning authority will not find it difficult to conclude whether it is [REDACTED] or the Applicant that are seriously interested in compromise, and which of them is lacking in credibility.

Second, the expansive definition of track relied upon by applicant is wrong as a matter of law.

We wrote to the LPA on 18 December 2020 to explain that it is legally incorrect that Appellant's rights are as broad as he suggests. We rely on those representations here - we have also written to the Appellant on a number of occasions to set out the same.

The law on easements is highly complex. We urge the local planning authority not to change its decision on the basis of a false prospectus; the position on the property dispute between the parties has not changed since the refusal of planning application.

Accordingly, the proposed mitigation cannot be delivered by the Applicant. It follows that there has been no change in material considerations since the refusal of planning application reference APP/18/00943.

The local planning authority will find itself in great difficulty if it proceeds on the basis that the proposed mitigation is deliverable and that the phantasmic promise of amelioration amounts to a lawful basis to conclude there is a material change in circumstances. It may end up granting planning permission for public access to a place which remains unsafe: see *Kane v New Forest District Council* [2001] EWCA Civ 878. The local planning authority is referred once again to AGP's commissioned report on this which is referred in the planning submission.

The local planning authority must not follow the Applicant down a rabbit hole that encourages it to accept the Applicant must both manage visitors and keep them safe off on the land and environs of the Application Land, but at the same time accept the Applicant can manage visitors or keep them safe on area of the Application Land and its environs beyond its control. The local planning authority must avoid falling into the trap of exercising powers ultra vires to create a de facto public highway on AGP's land,: see *DB Symmetry Limited v Swindon BC and SSHCLG* [2020] EWCA Civ 1331

We make the following general observations to the points made regarding “easements” which might assist the local planning authority in reaching a balanced view on the Applicant’s assertions in respect of whether they have any realistic basis for their confidence they can deliver any mitigation without an express agreement with ■■■■.

It is simply not correct that the Applicant can ensure the sight lines necessary for safety. The Applicant cannot install apparatus, signs or other works. A cursory recitation of the following non-exhaustive list of principles below make it plain the Applicant’s promised are impossible without agreement with ■■■■; a change to the easement; and a further application for planning permission to carry out those works.

Third, easement and ancillary rights arising thereto, must be construed for the intended purpose of the grant; here that is a matter of dispute between the parties. Planning law cannot be used to interfere with private property rights (*DB Symmetry*).

The following legal points regarding easements are important:

- Terminology in land and planning law are not interchangeable and indeed, to rely on it as though it were, is misleading see: *Risegold Ltd v Escala Ltd* [2008] EWCA Civ 1180).
- The local planning authority ought to prefer the interpretation of the landowner than the Applicant, and deal with the Application accordingly in the case of an obvious dispute.
- The grant of an easement is subject to excessive user and cannot interfere with other persons having a like right see: *Jelbert v Davis* [1968] 1 WLR 589). The user contemplated by this permission would constitute an interference.
- An easement cannot be used to access an enlargement of the dominant tenement. Moreover, there is no right of elbow room on a track such as this: it is restricted to the exact width of the way (*Minor v. Groves* (2000) 80 P&CR 136 at 143). The owner of land abutting a way may build right up to the edge of the way and AGP will restore the obstruction to the sight lines and reverse the Applicant’s summer trespass.

The upshot for the local planning authority is that there is no realistic basis for the upgrading unless it is agreed by ■■■■ with the Applicant and required by a section 106 legal agreement. The Applicant has not even consulted ■■■■ on the proposals, despite the fact it shall have to obtain ■■■■’s consent.

It should be recalled that the cutting back of vegetation was a trespass on ■■■■’s land, and accordingly the visual sightline as presented by the applicant is wholly illusory. Were the local planning authority to proceed upon the basis that the current sightline can be maintained would be incorrect, because it was achieved in a manner that does not reflect the legal reality, or the reality that delivery on the ground can only be with the consent of ■■■■. The Appellant was written to at the time, we enclose the correspondence for your reference.

Fourth, whatever the scope of the agricultural grant or easement, it also does not equate to planning permission to carry out works on ■■■■ land.

Plainly, for the type of works set out in the Visitor Management Strategy (VMS), and which the applicant concedes is necessary planning permission would be required. The fact is that whatever the Applicant may argue, the land in ■■■'s ownership is not theirs to develop.

We would remind you that ■■■ properly obtained planning permission for their alternative track, the basis on which the Applicant intends to carry out work on the track without any planning permission being sought for the same is wholly unclear. At the very least, the tracks should be treated consistently; including landscaping, surface materials. All of this enhancement would require grant of planning permission in respect of ■■■'s land – just as was required for the alternative track.

Fifth, there is no right to resurface.

The easement provides no general right to metal or resurface the track, or to install signs or marshal visitors. To suggest otherwise is fanciful and to say the least, serves as an archetype for a case of the Applicant putting hope before any reasonable expectation. The local planning authority must reject that assertion.

Sixth, limitation on planning permission: the operational words and attachment of conditions

As a matter of law, no planning condition may compel or require works outside the operational terms of the planning permission. Planning conditions should not create a burden on ■■■'s land, we summarise relevant passages from the DB Symmetry case below.

The Law on Planning Conditions - Generally

A condition will be struck down where the people who would use the access track would be so numerous that they would in effect constitute the 'public', with the result that a highway or quasi-highway would have been built.

The local planning authority will be aware that highways or quasi-highways may only be constructed under other statutory provisions relating to the acquisition of land and the payment of compensation.

The Applicant has already said on their own case that they are of the view any person permitted by the Applicant can use the track. This is false, the effect of a grant of planning permission would change the position irrevocably in planning terms. The local planning authority action were it to grant planning permission might cement a situation where the Applicant could invite the public to use the track.

Accordingly, even if planning permission were granted against the development plan and all material considerations, it is obviously clear that a Grampian condition is not appropriate. It equally clear that it must be conceded that were there to be a resolution to grant planning permission that excluded and prevented any changes to the track at all but required the Applicant and ■■■ to enter as parties into a planning obligation with the local planning authority, this would not amount to an exercise in compulsion. If the resolution was subject to the requirement for a planning obligation to which ■■■ was a party, then ■■■ being a party is more likely to avoid ■■■ having to take action against the local planning authority for unlawful exercise of its powers or acting beyond its powers.

An unenforceable condition will go to unreasonableness (Bromsgrove DC).

Planning conditions may only be attached under section 70(1) of the principal Act for regulating the development or use of any land under the control of the applicant. It is for the appellant to prove the existence, extent and rights arising under the track. As explained elsewhere, is a matter of dispute between the parties and it would be inappropriate for the local planning authority to work on the basis that it has sufficient information to reject [REDACTED] analysis and accept that of the Applicant.

The attachment of the VMS as a planning condition would be a mistake, and not simply because it would be imprecise and probably unenforceable. In considering the imposition of conditions the Applicant needs to show that he will be able to implement the mitigation measures or VMS within the time limit imposed by the condition (*British Railways Board v Secretary of State for the Environment and Hounslow LBC* [1994] JPL 32).

This is highly unlikely to happen without the agreement of [REDACTED]. If the applicant were to adopt a more commercial and conciliatory approach to sensible negotiation, then a planning obligation and change to the terms of the easement might possible. However, at the time of writing that is simply not the Applicant's point of reference and is not the basis upon which the Application has been made.

In *DB Symmetry Limited v Swindon BC and SSHCLG* [2020] EWCA Civ 1331 the Court of Appeal affirmed the long standing principle that a planning condition attached to a permission will be invalid if its effect is to destroy private proprietary rights, such as to require the construction of an ancillary road on the application site and to make it available for use by owners of adjoining properties, effectively requiring its dedication as a highway without compensation.

The imposition of any planning condition that required the work proposed by the Applicant to facilitate safe public access would be unlawful for any number of reasons including these; it requires the grant of rights over land rather than merely regulating the use of land; it is a misuse of a power to achieve an objective that the power was not designed to secure; it is irrational in the public law sense, and it is disproportionate.

Allegations of illegal activity at the farm

The Applicant cannot demonstrate any illegal activity at the farm. Relations with the Environment Agency are good and there is no planning or environment enforcement investigation from any quarter.

The Applicant is appealing an extant planning enforcement notice in which the local planning authority has identified and concluded there have are egregious and blatant failures to comply with the planning code.

It is the Applicant and not [REDACTED] that is having to manage the consequences of a failure to obtain planning permission before embarking on a business enterprise. The local planning authority should be slow to reward that behaviour unless it ensures that has cast iron mechanisms available for itself and for [REDACTED] to force the Applicant to behave appropriately in the future. At the present time, there is no sound basis upon which the local planning authority can reach that conclusion.

The Applicant has not for the first time made outrageous allegations about the occupiers of ■■■■ land: see Enclosures 3 and 4. These must go to the question of whether the local planning authority ought to accept some or all of the assertions made by the Applicant. It goes to the point that it would not be prudent for the local planning authority to place reliance on a proposed VMS. There is an appreciable risk of continuing harm to ■■■■ as an existing farming enterprise, and severe distress and amenity harm to the occupants of the residential dwellings. The local planning authority ought not to lose sight of the human aspect and the planning harm.

Precedent

The local planning authority is unable to proceed upon the basis that there is a history of activity similar to that for which permission is applied for in this Application that has become lawful by the effluxion of time. It is legally irrational to proceed on that basis where the certificate of lawfulness was rejected and a planning enforcement notice has been issued.

Were the local planning authority to accept by the grant of planning permission, without any history of lawful use, that commercial activities of the scale and nature sought by the Applicant are in principle acceptable, then it would drive a coach and horses through the application of the development plan policy in this locality.

■■■■ would be bound to consider if there was any commercial opportunity by a change in position adopted by the local planning authority arising from the grant of a planning permission for full commercialisation of neighbouring land and the attempt to change an agricultural track into an effective public right of way across land in their ownership. It would force ■■■■ to reevaluate the range of planning uses that may be available to them, taking into account that they will be left with land in their ownership that is criss-crossed by two accessways permitted for wholly and unbridled commercial use by a neighbouring landowner.

Planning permission granted on the basis that the local planning authority accepted the Applicant's false submissions that planning uses at ■■■■ farm are a largely commercial use premises with dwellings, instead of an agricultural use enterprise with residential dwellings would be highly significant. It may irreversibly change the balance of material planning considerations in the locality. This policy risk ought not be discounted by officers or councillors. It is not a course of enquiry that ■■■■ would necessarily want to follow, but it would be churlish for any enterprise to resist the temptation to re-evaluate the situation based upon a new planning landscape in which a commercial event venue hosting thousands of people a year was permitted by the local planning authority.

The general land use planning and ecological considerations are acute and have been explained by ■■■■ and the Harbour Conservancy. As part of the development falls within a sensitive area, and it is a project for an urban development and/or campsite screening pursuant to the is required (the Schedule

2 Column 2 thresholds do not apply)¹. The local planning authority is asked to make an assessment and reach a screening opinion.

There is demonstrable harm to residential amenity on the basis of evidence related to the actual use - this is not a consideration simply based upon hypotheses. Accordingly, the authority is urged to look beyond the immediate considerations arising from this planning application and think about the long-term.

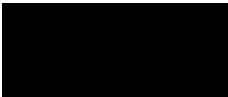
Notification

■■■■ are the owners of the land, but we are instructed they received no notification of the making of the Application as required by the Town and Country Planning (Development Management Procedure) (England) Order 2015. Given that the application form the Applicant completed may have both indicated information that they were the only owner of the land and also completed a Certificate B, the local planning authority ought to establish the correct position in respect of compliance with the legal requirements. It might usefully verify among other things whether and at what time the residential occupiers of ■■■■s land were notified of the making of the Application².

Conclusion

There are a host of legal obstacles in planning and private law that mean that the local planning authority is bound to reach the view that the Applicant is not presenting a deliverable or lawful scheme. There are a host of completing planning reasons why the Application must be rejected. In all the circumstances the Application must be refused.

Yours sincerely,



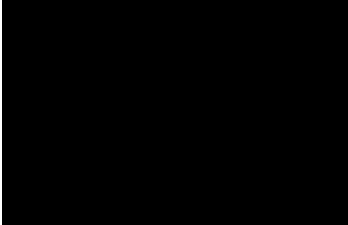
Enc: marked Enclosure 1, Enclosure 2, Enclosure 3 and Enclosure 4.

¹ The EIA Directive is currently implemented by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 Regulations); a 'sensitive area' is defined in the 2017 Regulations. Planning Policy Guidance confirms that it is not possible to formulate criteria or thresholds which will provide a universal test and the question must be considered on a case by case basis. Also see *British Telecommunications plc and another v Gloucester City Council* [2001] EWHC 1001 (Admin) per Elias J. at [58] as to screening. An Ecological Impact Assessment is not an Environmental Impact Assessment within the meaning of the 2017 Regulations.

² There are a number of assertions on the application form that are questionable. For instance, the existing use as a wedding and events venue. When 120 car parking spaces have been created for the integral purpose of a material change of use without planning permission those spaces ought not to be considered a lawful baseline.

23 April 2021

Our Ref: Tourn.1/SAB/jb



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Without Prejudice



Access driveway at Tournerbury Farm

We act for [REDACTED] with whom you have been communicating over a re-routed access to your Estate.

As you will be aware, our Clients are well underway with the construction of an alternative, much improved route, to your property, the planning permission for which was originally sought (jointly) in 2012. Our Clients have been working with the planning officer over some minor amendments to satisfy the permission which will enable them to complete the track imminently in accordance with the plans submitted for a new planning application to be submitted which will seek, among other things, to retain the alignment of the road built in the south-eastern corner.

You should recall that in the original application you clearly stated the present route adversely affected our Clients' enjoyment of their property including the security of their house and farmyard. In the 2017 renewed planning application, the planning officers concluded at the time that the number of events being held at your premises fell within the then permitted development tolerances but the access into your Estate through Tournerbury Farm caused "an issue with the ongoing operations within the Farm itself by way of additional traffic".

We do not need to repeat the private and planning policy reasons why the current route is unacceptable to our Clients and why, in their opinion, it cannot be used for the development for which you are seeking to achieve planning permission. The grant of a right from our Clients to use the new route would overcome a key obstruction to your development proposal for a large, broadly unconstrained, leisure and events use as it would largely remove the nuisance, amenity and health and safety objections that are inherent with your continued use of the Tournerbury farmyard to access your events.

On numerous occasions our Clients have explained to you that the correct position in law is that you do not have a right to use the route through their farmyard for the proposed expansion of your events business should you eventually receive planning permission. Our Clients would, however, be prepared to grant permission for you to use the new route that has been constructed for the purposes that you require, provided that the route through the farmyard ceases entirely. For the avoidance of doubt, this offer is made in the spirit of compromise, and is made without prejudice to the generality of our Clients' position and their full rights and remedies, which remain fully reserved.

We would urge you to accept this offer. Were you to continue to reject what we feel is a very reasonable alternative then our Clients believe that your proposed development will be regarded as unacceptable to the local planning authority and will be rejected. The fact that this offer has been made will be disclosed to the

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local planning authority. We believe that they will think it material that there is a far more acceptable route available to you, and could make any planning permission you might obtain conditional upon this route being used in any event. Permission may only be acceptable if a *Grampian* condition or section 106 planning obligation was imposed to prohibit the implementation of any planning permission until the authority is satisfied you are bound to the alternative route, to your property. This letter demonstrates to Havant Borough Council that there is certainty that there is a high level of confidence of that far better solution being realised.

To summarise, the terms of the offer are:

1. Your use of the Tournerbury Farmyard access route marked in blue on the attached plan will permanently cease 16 weeks after the formal grant of planning permission for the new route.
2. A personal right of access will be granted over the new track marked in red on the attached plan to come into effect 16 weeks after the formal grant of planning permission.
3. Your Estate will be responsible for 90% of the maintenance and repair of the new track between the points marked 'A' and 'B' on the attached plan.
4. Each party to bear their own legal costs in drawing up an appropriate easement.
5. That you will indicate to the local planning authority in writing that you are content for any resolution to grant planning permission by the local planning authority pursuant to application reference APP/18/00943 (or renewed application) to be conditional upon a Grampian condition or the completion of a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 that reflects the agreement reached between the parties.

We would be grateful to receive your written confirmation that this offer is acceptable to you. if you would be kind enough to sign and return the attached copy of this letter we can then instruct lawyers to progress with the easement.

Yours sincerely



Simon Blandford • BSc (Hons) Agric FIAgrM FBIAC ARAgS
Director – Food and Farming

I hereby agree to the terms set out in the attached letter



.....
Date

Enclosure 2: Copy text of email sent to resident [REDACTED]

From: Tournerbury Woods Estate Office [REDACTED] >
Date: 11 August 2021 at 11:14:57 BST

[REDACTED]
Subject: Video

Good morning [REDACTED],

Thanks for taking video of me driving along my Right of Way this morning. I don't know what you hope to achieve, apart from the [REDACTED].

The Right of Way has been in existence for 33 years and the owners' lawful use of it shouldn't come as any surprise to you.

[REDACTED]

When we have considered it fully we will come back to you.

In the meantime, should you continue to harass users of the Right of Way, doing so will only slow the process down, which is most likely not in your best interests.

Regards,

[REDACTED]

Copy text of email exchange between October and November 2021 between Applicant's solicitor Mr Pavey Partner of Irwin Mitchell LLP and [REDACTED]'s solicitor Mr Robert James Partner of Thrings LLP

[REDACTED]
Sent: 17 November 2021 08:53

[REDACTED]
[REDACTED] - Potential claims against [REDACTED]
[REDACTED]
[REDACTED]

Whilst I await instructions on my draft response to your letter dated 19 October, I am able to respond succinctly to your email below concerning an allegation of defamation.

[REDACTED] have received written confirmation from Becky Hodson, one of the officer who visited your client, [REDACTED].

In light of this, I don't believe I need to address the balance of your email as it clearly evidences that the allegation put forward by your client not only has no basis in law but also is a blatant lie. Your email has however served an useful purpose in demonstrating the credibility of your client and the veracity of his evidence in general.

Regards

Robert James
Partner

THRINGS

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[REDACTED]
Sent: 29 October 2021 19:15
[REDACTED]
[REDACTED]

Dear Robert

I am sorry not to have had an acknowledgment of my e-mailed letter of 19 October 2021. Please let me know if I should not expect a substantive response by close of business on 2 November.

On another matter, my clients were surprised to be visited yesterday, during half term with their

[REDACTED]

[REDACTED] whilst travelling along the right of way through Tournerbury Farm".

[REDACTED]

[REDACTED]

James Pavey
Partner
Irwin Mitchell LLP

DDI: 01293742746
Mobile: 07774 737295



CORONAVIRUS UPDATE: Our number one priority is the safety and wellbeing of our clients, colleagues and communities. We're following Government advice, with many of our colleagues working remotely and making use of technology to ensure we continue to support your needs.

Visit our coronavirus response page [here](#)

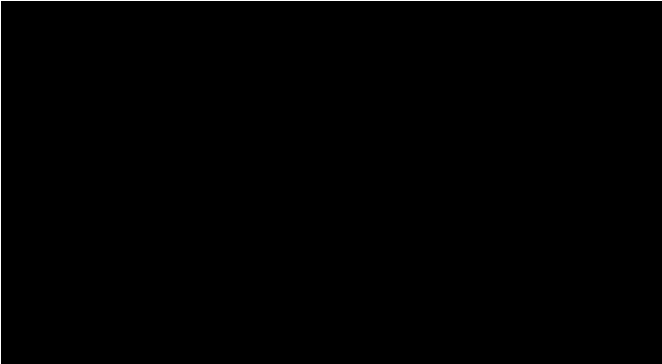
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Please consider the environment - Think before you print

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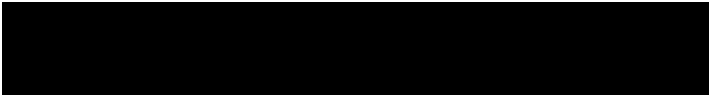


18 November 2021

Your Reference: 014073/01073/A8099604-7/19034206-1
Our Reference: RWJ/A4274-3

Direct Line: 0117 374 9614
Direct Fax: 0117 929 3369
Email: rjames@thrings.com

Dear Sirs



1. We write further to your letter dated 19 October 2021, being the first substantive correspondence from you in nearly two years concerning the right of way in question.

Preliminary matters

2. We note the express recognition that your letter is not a letter of claim within the meaning of the pre-action protocol. Accordingly, what we set out below is precis of our client's position and we reserve the right to set out further particulars should it be necessary in due course.
3. Given the passage of time, our client was initially surprised to receive correspondence in such terms, but upon reflection it would appear the correspondence stems from difficulties your clients are having with planning issues concerning their land. As our client understands the position, your clients' permission for planning for their intended use was rejected *inter alia* for inadequate access and our clients understand that the same is subject to a Planning Inquiry scheduled for March next year.
4. The correlation between your clients' planning difficulties and the new allegation concerning the width of the right of way is not lost on our client. In particular, it finds it very telling that the issue of the width of the right of way was not raised at all by you back in 2019 despite what amounts otherwise to a lengthy setting out of your clients' position in respect of the same. Accordingly, our client views the present position as nothing more than a spurious argument raised with the sole purpose of attempting to strengthen their position at the Inquiry.

The right of way

5. As identified above, the issue of the width of the right of way was not raised by you at all in your 2019 correspondence, despite the width of the right of way being identical to what it was back then as it is at present day.
6. As for the construction of the extent of the right of way, it is our client's position that the operative term is "*tracks*" and it is [REDACTED] clear evidence that the track was a single lane track back in 1987.
7. As for the so-called Southern Passing Place, we note that your clients contend this forms part of the original right of way and/or similar rights have been acquired since through the doctrine of lost modern grant and/or prescription. It is our client's stance that such a position is non-sensical as the entrance to the adjacent field (which you label as the Southern Passing Place for which our client makes no admission as to the terminology unilaterally adopted) had yet to be constructed at the time of the grant and was constructed much more recently. The same is true for what you have labelled as the Northern Passing Point, save that its construction is even more recent. The area in question was heavily vegetated until [REDACTED] trespassed and cut the area back in September this year knowing that [REDACTED] were away for the weekend.

Alleged nuisance

8. It is our client's simple position that the alleged nuisance does not amount to a nuisance as the land in question is not covered by the extent of the right of way. Our client has simply reinstated the width of the right of way prior to [REDACTED] trespass and associated property damage in September.