

THRINGS

SOLICITORS

FAO: Mr J Pavey
Irwin Mitchell
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By email only:

18 November 2021

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

Direct Line: 0117 374 9614
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Dear Sirs

Our Client: A G Phillips & Son Limited

Your Clients: Mr Christopher and Mrs Alice Snell

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.

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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 Mr and Mrs Phillips' 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 Mr Snell trespassed and cut the area back in September this year knowing that Mr and Mrs Philips 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 Mr Snell's trespass and associated property damage in September.
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