

Clarke, Darrel

From: Tim Callaway [REDACTED]
Sent: 24 July 2019 09:32
To: Clarke, Darrel
Cc: Clifford Percival; Keith Ballard
Subject: RE: Bembridge Lagoon Footpath

Hi Darrel

Thanks for your follow up.

Yes, it would be sensible to have a further meeting on site to look at the next steps.

I appreciate it may be difficult to find a suitable date at the moment, but we could always try to arrange for a site visit for you with Keith followed by a phone conference.

Do you have any dates in mind?

Keith and I have taken some time to go over the evidence provided by the applicant in support of their claim and to review the counter evidence held by the RSPB.

I believe that the RSPB's evidence is sound and it actually includes previous written statements that the claimant had provided for the council and had published in the local press, specifically stating that use of the path is permissive and kindly granted by the landowner, along with details included in various RSPB deeds, etc.

However, I would like to reiterate our previous conversations and what I believe was the aspiration discussed at the meeting in the harbour office, that we would far prefer all of us to spend resources and time working directly with the council, BHA and other landowners and Natural England, to deliver a footpath route, including necessary infrastructure that protects the SSSI, SPA/SAC and would be adopted and maintained in the future by the Isle of Wight Council RoW team.

I have presented a summary below of both the claimant's evidence and of the RSPB's counter evidence, followed by a suggested approach.

Claimants evidence

The claimants are claiming public rights of way on foot along 4 section lengths of path and public bridleway rights along the same sections.

The additional evidence submitted by the claimant consists of a further 140 completed user evidence proformas, each with a supporting map.

For clarity, I have just attached the claimants application details including route map and their user evidence statements.

Completed User Evidence Proformas:

- The claimants advertised their intention to make a claim via newspaper and roadside signage.
 - The user evidence proformas collectively resemble a petition rather than evidence of use
 - The advertising was based on a false statement that the RSPB were closing the claimed route(s).
- The completed proformas are not consistent in evidence regarding:-
 - The route used
 - Assumed status of the route
 - Actual period of use.
- The actual route is not reliably described within any of the user evidence proformas.

- The majority of the maps accompanying the user evidence proformas show the route pre-drawn and photocopied, which has then been marked over in colour. However, some maps indicate a different route.
- The claimants user evidence states Bridleway status for the whole claimed route.
- There is no evidence of notice being served to all the potential owners and to the owners of the unregistered end of the Harbour Farm drive (B to C)

Book Extract:

- The referenced book 'The Bembridge Branch Line' was revised in 2006 with the reference to a public footpath removed. This would appear to confirm that there had been a challenge of fact before revision.

RSPB Counterevidence

- The claimants have previously acknowledged the 'permissive' use of the old railway track on foot, within written statements sent to IoW council on 30th January 2015 and the local press on 17th August 2007.
- This permissive use is entirely concurrent with the RSPB view. The RSPB has evidence that suggests the status of the route along the old railway track A to B, B to C & B to D was permissive prior to our first acquisition at Brading Marshes in 2001. This evidence includes information held in statutory declarations and deeds:-
 - Access rights via statutory declaration in 2001, for sections A to B and B to C
 - Acquisition in 2004 of the freehold of most of the land where the routes are claimed from Maritime Leisure Investments. This **excludes** a 40m section of D to E through the Houseboat users car park owned by the current harbour company and a 15m section of B to C joining Embankment road from Harbour Farm that is **unregistered**.
 - Private rights for various sections being granted to individuals.
 - There was **no permissive bridleway**. Permissive use was only by foot and the only horse usage of any of the claimed route that RSPB are aware of was by the owners and occupants of the Harbour Farm stables who used the route as part of the farm owners' access rights.
- The section of the claimed route D to E is of recent use, especially the part that runs through the SSSI/SPA/SAC lagoon.
 - Post and pre - 1992 Ordinance Survey maps show the original extent of water where section D-E is claimed.
 - Aerial photographs since 1999, show evidence of unpermitted infill of the lagoon making it accessible on foot.
 - Prior to the green security fence being erected during 2005-6 it was possible to access along the old railway track beyond RSPB land further than point D of section B-D, which avoided this area of the lagoon. The damage to the internationally designated area of the lagoon by unauthorised access, has only become evident to the RSPB within the last 5 years. Over the last 3 years, considerable damage to the designated lagoon is being caused both by waste being thrown into the lagoon to make a foot crossing and by trampling of the margins. In 2019 the RSPB was required to erect fencing to prevent continued damage, by this unauthorised use, to the designated wildlife and habitats of the lagoon.
- The RSPB has clearly identified sections of this route as a permissive path by:-
 - Registering a section 31a deposit with the planning authority (first in 2009 and renewed in 2019) showing 3 sections A to B, B to C and B to D of the claimed route as permissive footpath and one section (D to E through the lagoon) **not existing** at all.
 - Identifying the existence of the permissive footpaths and the claimed route A-B, B-C & B-D via:-
 - The permitted footpath access points are signposted "RSPB Brading Marshes Nature Reserve – Bembridge Lagoons" and have "Permissive Path" waymark discs attached to them.
 - Information boards around the reserve at key points of interest, showing a nature trail map, which also shows the permissive route (including a wildlife interpretation lectern style sign actually along this route).
 - A reserve trail guide (available at Brading Railway Station and on the RSPB website) which includes a map of the RSPB Brading Marshes Nature Reserve visitor trail.

RSPB has previously closed sections of the claimed route without any challenge:-

- Section A to B for 2 weeks during February 2005 to carry out saline lagoon engineering works. Prior to these works there was a double gate situated at the junction of the Harbour Farm driveway that was kept in a just ajar position. We removed one gate to allow access for plant. The remaining gate is within the hedge in rusty condition and the orientation of the hinge post shows that the track and claimed route section A to B was gated at that location.
- Section A-B was closed again in 2007 and 2012 to allow extraction of felled timber from the marsh.
- Additional information
 - Historic signs identifying permissive use or private land:-
 - Section B to C - 'Private Road No Parking' – a long standing sign at the end of the Harbour Farm drive
 - Section A to B - 'Highway Act 1959 There Are No Public Rights Of Way Over This Land' - signs still in existence within the old railway track boundary at the eastern end. The sign near the start of claimed section was removed by RSPB in 2005 (for improved tractor access) and replaced with RSPB signs marking the permissive path. One was vandalised in 2017.
 - British Transport Commission Act 1949 - some of the user evidence submitted claims usage from between 1953 and 1969 when the track was still in ownership of the rail authority. The 1949 Act made it impossible to acquire a right of way by prescription over railway or harbour authority owned land.
- RSPB has already stated that as the responsible landowner, we are expected by Natural England and by our members and supporters to ensure that activities on our reserves do not have any adverse impacts on the recognised species and habitats and that damage is rectified. This is why we had to erect fencing to protect a small section of the lagoon that was being damaged.

Despite the strength of the RSPB evidence, we would still like to propose delivering a footpath route that could lead to a permanent dedication as a footpath.

However, as previously noted, the SAC and SPA status places a statutory obligation on both landowners and the council.

RSPB and Natural England have previously stated that any proposal must address the current damage to the SSSI/SPA and SAC and ensure the approach delivered removes the risk of any future adverse impacts of a dedicated footpath on the designated site.

Therefore, in order to achieve this, any proposal to dedicate a route as a permanent footpath, would be dependent on other landowners also dedicating a section of the route across their land and the inclusion of all the necessary infrastructure to protect the SSSI and SPA/SAC. The route would then be adopted and maintained in the future by the Isle of Wight Council RoW team.

In this approach, due attention should also be given to the advice from Natural that any necessary works to make the footpath past the lagoon usable, may require an Appropriate Assessment (these works are separate from the dedication process and are not directly connected to management of the designated sites) and that opportunities to restore previously damaged areas of the SSSI, SPA/SAC should be included.

The proposal would relate primarily to the section B – E and would involve:-

- Section D – E:- any footpath route to link with Embankment Road, would be established away from the lagoon and over third party land
- Section B – D:- provision of additional fencing and interpretation to manage any increase in recreational activity along this stretch

As regards Section A – B, improvements to natural screening and a review of existing interpretation and viewpoints is all that should be required.

I have noted your comments regarding the application for the modification order and the suggestion that the applicant would be unlikely to withdraw the application if the proposal only included simply extending permissive access rights, as the applicant was seeking for permanent public rights of way to be dedicated.

I have recently heard back from Malcolm Thorpe and will also reply to him separately to see how things have moved along as regards the route across BHA land after our meeting at the Harbour office.

Kind regards

Tim

Tim Callaway

Hampshire & Isle of Wight Area Manager

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The RSPB is the country's largest nature conservation charity, inspiring everyone to give nature a home. Together with our partners, we protect threatened birds and wildlife so our towns, coast and countryside will teem with life once again. We play a leading role in BirdLife International, a worldwide partnership of nature conservation organisations.

The Royal Society for the Protection of Birds (RSPB) is a registered charity: England and Wales no. 207076, Scotland no. SC037654

From: Clifford Percival
Subject: RE: Bembridge Lagoon - claimed public right of way
Date: 2 March 2021 at 18:43:18 GMT

Dear

Please see my replies in green font within your original text that I have copied immediately below for ease of reference, together with the attachments.

1. The majority of the claimed route is on land owned by the RSPB (Title no. IW57447). I can see from the Land Registry documents that the RSPB has owned this land since 30 April 2004 - do you know who the previous owner was? I believe that the Railways Board sold the land to the Bembridge Harbour Improvements Company in 1968, but it's not clear to me at the moment whether the land changed hands again (possibly more than once) before the RSPB purchased it. **The RSPB purchased the land from Maritime Leisure Investments**

2. The 2019 email refers to a "statutory declaration in 2001, for sections A to B and B to C". Are you able to send me a copy of that declaration? I've not managed to find a copy in the information folder. **Copy of the Statutory Declaration is attached as "2012-03-02 CP Atchmnt 1 (text) and 2 (Map)"**

3. Do you know approximately when the "Permissive Path" waymark discs were attached to

the “RSPB Brading Marshes Nature Reserve - Bembridge Lagoons” signposts? Also when the information boards showing the permissive route were erected? The Permissive Path discs were installed when the signs were refurbished with new posts approximately 4 years ago. The information boards showing the permissive path route were erected during the summer of 2007.

4. The email mentions that the RSPB closed Section A-B for two weeks in February 2005 to carry out engineering works, and again in 2007 and 2012 to allow extraction of felled timber from the marsh. Can you explain what steps were taken to close the path, e.g. bollards/fences/gates/signs/other, including locations and (ideally) dates?

2005 – The path was closed for two weeks where the site was secured by Heras Fencing and closure signage. Please see the attached photo of the lagoon showing the excavator parked on the track that forms the permissive path annotated “2021-03-02 CP Atchmnt 4.1 Photo works”

2007 and 2012 – The path was closed for three days on each of these years for timber extraction involving closure of the permissive path by way of signage (but not physically due to need for timber vehicle movements). Please see attached photo of timber extraction in 2012

annotated "2021-03-02 CP Atchmnt 4.2 Timbr
Extrctn 2012"

5. The email also mentions that a "Highways Act 1959 There Are No Public Rights Of Way Over This Land" sign located near the start of section A-B was removed by the RSPB in 2005, and replaced with RSPB signs marking the permissive path. I don't suppose you have any photographs, or other evidence, of the Highways Act sign?

Please see the attached photos "2021-03-02 Atchmnt 5.1, 5.2 & 5.3" showing these signs which were in existence in 2016. 5.1 shows one of the signs in position, 5.2 and 5.3 show a damaged sign which was removed following suspected vandalism

6. Can you let me know which section(s) of the British Transport Commission Act 1949 make it impossible to acquire a right of way by prescription over railway or harbour authority owned land?

It is Section 57 of the British Transport Commission Act 1949

I hope this additional information helps you in your task. If you need any further information please do not hesitate to revert back to me and we will try to help.

Regards

Cliff

Clifford Percival MRICS
Senior Rural Surveyor