

PARISH COUNCIL MEETING 7 OCTOBER 2013

NOTE FOR PARISH COUNCILLORS

IN RESPECT OF

PUBLIC FOOTPATH APPLICATION

We act for Escrick Park Estate and have been asked to place a short statement before the Parish Council for its consideration in connection with an item on the Agenda for its meeting on Monday October 7 at 7.30pm. This item is the council's response to a consultation by North Yorkshire County Council on an application to modify the definitive map to include as a public right of way a footpath from Main Street, Escrick through the gates of Queen Margaret's School on to Temple Walk and back again.

Our client is fully aware that the council must be free to make its decision independent of influence from outside parties, and had therefore not intended to make representations to the council on this matter. However, it has been brought to its attention that a leaflet written by those behind the present application was circulated around Escrick Village on Friday encouraging villagers to attend the Parish Council's meeting and support the application, and in these circumstances a response from our client would seem to be merited.

The council should be aware that it is our client's intention to object in the strongest possible terms to the present application. A full response is being prepared by this firm which will be forwarded to North Yorkshire County Council in due course on our client's behalf. The leaflet that has been circulated does not represent a balanced view of the evidence, which is far more diverse than the leaflet tries to suggest. Having received copies of the evidence of user forms submitted from NYCC, the statement in the leaflet that 34 forms were returned and "30 of these provided evidence of unhindered use of the route over very many years" is misleading. Those behind this application may have gathered 34 forms, but we have had copies of 43 forms in total, and the picture they present is not as the leaflet's authors suggest.

1. A significant number of forms in support of the application are from residents describing their use of the route after 2000. This usage will not be relevant since the legislation requires at least 20 years uninterrupted user as of right prior to that right first being called into question. Our client deposited a map and statement as to the public rights of way over his land in July 2000 which did not include this route; therefore we would expect NYCC will be looking back for evidence of 20 years' usage prior to 2000. Only 29 forms cover personal use prior to 2000.
2. Use of the route must have been uninterrupted and as of right. Of those forms which claim personal use of the alleged route during the relevant 20 year period only around half allege this was as of right, i.e. without permission; the other half state that permission was provided either expressly or tacitly by the Estate and/or the school. User with the permission of a landowner is not user "as of right".
3. Even among those supporting the existence of a public right of way there appears to be a lack of understanding of what this will actually entail. The majority expressly

refer to the route having been open to Escrick villagers, even those who say no permission from a landowner was needed. No one has suggested the route has ever been open to the public at large.

We are in the process of obtaining detailed statements from a number of individuals who support our client's position, which is that use of the route by Escrick villagers has undoubtedly existed historically, but has been with the permission of our client and not 'as of right' as required by the relevant legislation. There has never been any intention on the part of our client to dedicate this route as a public right of way, and when its use began to be a cause of concern to Queen Margaret's school, the previous permission was withdrawn. As council members will be aware, an alternative route was provided at the same time, which the majority of villagers appear to be content to use.

Finally, we would note that in September 2004 the Parish Council voted unanimously to accept that there was no public right of way through the entrance to the school and to agree to a request from the Head Master of Queen Margaret's School that use of the path should be restricted. Minutes record this decision and we understand that a statement was placed in the Parish Magazine around this time to this effect. It would seem strange if the parish council now took a contradictory view.

We hope that the contents of this note will assist the Parish Council in its deliberations.

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7 October 2013