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21 February 2012

Mr David Jenkins
Chief Executive
Dorset County Council
County Hall, Colliton Park
DORCHESTER
Dorset
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By Recorded Delivery

Footpath 32, Powerstock

Thank you for your letter of 30 January 2012 which draws us to October 2010.

You refer to a meeting between the County's Monitoring and Complaints Officer and Councillor Coatsworth arising from the October 2010 letter. "It was agreed at that meeting that given the age of this particular dispute and the number of times enquiries have been made about the same issues, there was little to be gained in terms of any follow up action, as no new matters were raised." I was not informed of that decision. The filibustering was entirely of the Council's making and although it is possible to concede that issues were raised on a number of occasions, there was never any serious attempt at their resolution.

The case against the County Council has been encapsulated as follows: "The levels of hostility and antipathy evident among the Officials in their treatment of the Wallhayes application included acting outside the law, imposing delay and altering documentary evidence to their advantage".

We find that in both the Centre and Right of Centre Strategic Authorities and in DEFRA radicalism is flourishing in the Access area unhindered by responsible control. The access industry has relative freedom to nationalise private property. This paper will highlight this reality, attempt to say why this anomaly exists and what needs to be done to achieve an equality of arms.

We must not allow this family's experience at the hands of your Officials to be set aside without taking the opportunity to collate the lessons learned.

Permit me to address the Case.

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Date: 30 January 2012
Your ref:
My ref: DHJ/LMP

Mr R M Connaughton
Wallhayes
Nettlecombe
Bridport
Dorset
DT6 3SX

Dear Mr Connaughton

FOOTPATH 32, POWERSTOCK

am writing in response to your letter of 19 January

You refer to Mr Coatsworth's report to me of October 2010. I take it that you are referring to a document that you in fact provided to Mr Coatsworth, and which Mr Coatsworth passed on to officers here. Elaine Taylor, Director for Corporate Resources and the County Council's Monitoring Officer, with responsibility for ensuring legality and propriety in the County Council's affairs, together with Jonathan French, the County Council's Complaints Officer, met with Mr Coatsworth on 14 October 2010. It was agreed at that meeting that given the age of this particular dispute and the number of times that enquiries have been made about the same issues, there was little to be gained in terms of any follow up action, as no new matters were raised. Mr Coatsworth agreed and accepted that position. It is not therefore the case that there was no response to Mr Coatsworth's report to me (ie your report which Mr Coatsworth passed on) of October 2010.

As I wrote in my last letter, it is not the case, as you imply, that your complaint was not considered, or that there was any dilatoriness by officers in responding to it.

I of course entirely agree with you as to the importance of high standards of probity and conduct in public affairs. I reiterate that, despite your using the term, I have found no evidence of "mal practice", or indeed of the term that you now use, "criminal action", in the County Council's handling of the issues about which you have written.

Yours sincerely

David Jenkins
Chief Executive

cc Mr Angus Campbell
Mr Ronald Coatsworth

ACCESS – "WHAT PROBLEM?"

A Response to Dorset CC CEO by Richard Connaughton

INTRODUCTION

1. The relevance of the term criminality to the case has been questioned. There are four elements to be proven in a case of Misconduct in Public Office:[1]

a. The Public Officer was acting as such.

b. He/she wilfully neglected to perform his/her duty and misconducted himself/herself.

c. His/her conduct amounted to an abuse of the public's trust in him/her.

d. He/she acted without reasonable excuse or justification.

The offence becomes a criminal offence when the Official wilfully takes a preferred position in order to achieve a result sympathetic to his/her and colleagues' sensibilities.

ACTING OUTSIDE THE LAW

2. Councillor R.W. Coatsworth told me of a discussion he had held with the solicitor appointed to the County's Rights of Way Department. She said Wallhayes had a case for diversion but the application would not be supported because *they* had *decided* that to do so would create a precedent, a consequence of which would see more, similar applications.

3. The County's Senior Rights of Way Officer, Mr C. Slade, set out in writing the absolute limitations of the Council's support for the application to an essential situation where the public must "emerge as net gainers". That the County was aware of the existence of this condition is clear from the statement made to the Local Public Inquiry on 21 February 2006 by Captain Malcolm Shakesby, Chairman of the Roads and Rights of Way Committee: "I can understand why the Council's Officers wanted the public to be net gainers in this process". I doubt that these were his words. The Officers are supposed to be impartial.

4. In order to frustrate the family's best efforts to restore pre-existing levels of privacy and security to their home, the family suffered the effects arising from alliance building, the politics of evil and envy, intimidation, calculated obstruction and allowing the situation to become personal.

IMPOSING DELAY

5. The second of four principles used to illustrate those "which had been employed by Officers and Inspectors to achieve a positive result against owners", is said to be:

> "The drawing out of procedures and responses over time, intending to physically and mentally exhaust owners to disconnect their supporters through the impression of a dead horse being flogged."[2]

6. A group of Officials arrived at Wallhayes intent upon identifying a diversion acceptable to both them and the owners. The present path is 599m long, the homeowner's recommended solution 609m long and the Rights of Way solution 734m. Of the latter, in common with all paths, to be acceptable it must be in the owner's interest. This was not the case but what it did do with its mix of lanes and field edges was to establish a template from which the suitability of alternative proposals could be measured.

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1 Attorney General's Reference (No.3 of 2003) [2004] 2CRAPPR23.61 p.383.

2 The Hobhouse Report 2011, para 15, p.7.

7. The administration of Diversion applications was a shared responsibility between Dorset County Council and West Dorset District Council. The Wallhayes case was originally assigned to the District Council. On 27 November 2000, the County's Senior Rights of Way Officer heard of the intention of the District Council to make the Order in favour of Wallhayes. He persuaded the Principal Solicitor to write to West Dorset District Council, "The County Rights of Way Officer has instructed me to object to the proposed Order because it is clear that the diversion would result in a path which is substantially less convenient to the public".[3] The solicitor's letter served its purpose. The District Council backed down. The assertion had been totally false. When the Wallhayes proposal is compared with the County's example, it fits well within the boundaries they had established. Not until 13 May 2004, 3½ years later, were the appellants able to return to the same point at which their application had been cynically blocked. The Hearing, now under the auspices of the County Council, was held in two parts. After gratuitous delay, the final consideration of confirmation of the Order took place on 14 July 2005, 14 months after the Committee first resolved that the Order be made. In a demonstration of local democracy, eighty-five per cent of the elected committee members representing the District and County Committees voted in support of the Wallhayes case. If we count the year from October 2010 when the full extent of the malpractice was revealed to the CEO and his subordinates, the 14 months of calculated delay imposed by the Officials between the two Committee Hearings and 3½ years delay caused as a result of Mair's wrongful intervention, the County Council was responsible for unnecessarily inflicting a delay of 5 years and 8 months upon the appellants. Citing "the age of this particular dispute" as a reason for doing nothing represents an own goal on behalf of the County Council.

ALTERING DOCUMENTARY EVIDENCE

8. It is first necessary to establish the context in which this specific consideration fits. There is a Memorandum dated 18 March 1943 of Lord Justice Scott's Joint Committee of the Commons, Open Spaces and Footpath Preservation Society and Ramblers Association approved by all Executive Committees.[4] Their advice included the appointment of "a sufficient number of arbitrators…officially and independently appointed…such arbitrators to be selected from barristers or other specially qualified (legal) persons… An arbitrator will give that confidence in his impartiality which will lead to a more rapid despatch of business and less obstruction, an impartiality which the public will not recognise if the authority which has demanded a decision also acts as a judge".

9. In 1949, in the interest of establishing impartiality and independence in the Decision making process so that the policy making and decision taking were kept separate, Independent Inspectors were recruited onto the Lord Chancellor's Panel. The continuing relevance of separating impartiality and independence from DEFRA's direct control was confirmed in the 1998 Human Rights Act which came into English Law in 2000. Article 6(1) guaranteed citizens the right to a fair, impartial and independent Tribunal. One year later, without recourse to Parliamentary approval, the Independent Inspectors of the Lord Chancellor's Panel were removed and replaced essentially by former Rights of Way Officers. Nine of the eleven employed on casework had been promoted out of the ranks of junior access professionals. This act provided a seamless, continuous link of people with the same access mindset from DEFRA, through its agency in the Planning Inspectorate, the Access Departments in Unitary and Strategic

[3] Mair to Muir. JM/SBB/5090 dated 27 November 2000.
[4] National Archives MAF48/666.

Authorities down to grass roots where the sentiments of activists and others in Access Organisations cemented their power and strength.

10. We examine the first of two instances where plausible cases can be made to the effect that liaison between the County's Legal Department and the Planning Inspectorate prepared the ground for the arrival of the Government Inspector and the delivery of her perverse decision at the end of her Inquiry. Section 119 of the Highways Act 1980 requires planned diversions to be in the interest of all owner(s) of land crossed by the path. The County Council hired a consultant, formerly from Devon CC, domiciled in the Channel Islands. Although the upper rate for the provision of this type of service was £600, the appellants were charged £2000 with a follow-on surcharge of £1000. When objections were raised, the County Council said: "Pay up or there will be no Inquiry". In her Report submitted to DCC's Legal Department, the consultant addressed the matter of landowners' interests. She said that since Crutchley Estates would be exchanging a 350m cross-field path across an arable field for a 100m field edge path, it could not be argued this was not in the landowner's interest. When the County's Legal Department released the Consultant's Report, they had deleted mention of this obvious conclusion. That act eased the way for the delivery of the Inspector's perverse decision that she could not agree the diversion across this field was in the interest of the owner. The removal of the Independent Inspectors on the Lord Chancellor's Panel and their replacement by former Rights of Way Officers, who are not independent, rendered the impossibility of collusion occurring possible.

11. The second case relates to an Official's alteration of a map submitted by the appellant. It is believed this had been done in order to achieve a result sympathetic to the Fraternity's sensibilities. The appellant had annotated key reference points with capital letters on the map submitted with his application, beginning in the south-east with 'A'. It was discovered on the day of the Inquiry that those letters had been rearranged. There seemed to be no apparent reason for disrupting the commencement of the Inquiry in this way. It seemed strange to those with tidy minds to discover 'A' now halfway down the footpath. Not until the release of the Inspector's Decision did a reason for this unauthorised tampering become apparent. The new point 'A' was the point at which the Inspector proposed to establish a point of termination, one of three along a straight line. The significance of these two events is that if they are true, and that does appear to be the case, the result of the Inquiry was known before the Inquiry assembled.

THE COUNTY COUNCIL'S COMPLAINTS AND MONITORING SERVICE

12. As an outsider looking in, it became clear why the County's Complaints and Monitoring efforts were found to be unfit for purpose. It was not possible to succeed with sensible complaints in an environment where Officials and Elected Members refuse to criticise Officials. With regard to an earlier complaint, the Officials saw no problem in nominating as Investigating Officer the husband of a senior member of the Access Department. The request for the why and wherefore for the criminal alteration of case documents was met by the blandest of refusals.[5] It had been a crime. The Officials refused to reveal the identity of the person involved. "I do not consider it appropriate to name the junior official who prepared the plan which accompanied the Committee Report. The Report in its entirety is the report of the Director (Miles Butler) (or Directors in the case of a joint report). It is my opinion that the plan was prepared (and not "altered") to give clarity." It can be seen by anyone so disposed that the map part of the Appellants' application was altered and, if the Principal Business Support Officer had been present at the opening of the Inquiry, he would have noted the

[5] Mike Evans to R.M. Connaughton in an unreferenced letter dated 2 September 2009.

dismal failure of what he described as it giving 'clarity'. No one had authority to tamper with the evidence. The response was nonsense, more shame on his superiors for either initiating or failing to recognise a whitewash. This event was of more than passing importance since it had been an Officer who had been untruthful in the evidence put before the Roads and Rights of Way Committee.

13. The decision that there was little to be gained from any follow-up action due to "the number of times that enquiries had been made about the same issues…as no new matters were raised" is strange.[6] Whose decision was that? We witnessed the absolute failure to provide *any* answers at any stage, the failure to have set effective machinery in place to assess the legality and propriety in the County Council's affairs and the decision to proceed no further, apparently taken by the Director of the Department, among those responsible for the most serious of the recorded impropriety. She was an interested party.

14. Logically, a *response* to Councillor Coatsworth's revelation of the depth of the malpractice can only be deemed to have occurred if detailed investigation, identification and punishment of the responsible people had taken place. That did not occur after the meeting on 14 October 2010 or at any time before. There is no time limit on calling to account those guilty of wrongdoing.

WHAT NEEDS TO BE DONE

15. There are internal and external influences which require attention. The failure within the County to take any action of any description against readily identifiable malpractice is as good as giving a green light for this type of misbehaviour *ad infinitum.*

16. It is repugnant that after a period of 8 years had elapsed, after which the elected members had wrested control from the hostile Officials, those unable to accept they were not to have their way looked to the Secretary of State DEFRA to overturn the considered opinions of 85 per cent of County and District elected members in this their expression of local democracy. It requires only one person, who need not live in the County, to mobilise the singular Inspector to chair a Local Public Inquiry. The individual concerned had previously worked on Access in Devon County Council and was a Member of the Institute of Public Rights of Way Officers. She took no time to demonstrate her animosity towards us. She was instinctively and doctrinally opposed to what we wanted to do. The detail of what took place at the Local Public Inquiry is set out in Section 6 of *The Fraternity: A Report of Malfeasance in Public Office* which can be found at www.connaughton.org.uk

17. For her rudeness and bad manners towards the County's Senior Solicitor, the County declared the Inspector *persona non grata* in the County of Dorset. That was a step in the right direction. However, the County does have a responsibility to ensure that this business is conducted fairly, impartially and in accordance with the law. It was neither fair nor impartial, the introduction of these cuckoos in the nest revealed the absence of statutory Independence and an Inquiry is not a Tribunal. Tribunals can be expected to be chaired by a barrister or solicitor, normally appointed by the Lord Chancellor. Of the eleven Inspectors conducting case work as representatives of the Secretary of State, not one has a legal qualification. The respected Hobhouse Report 2011 provides in its Recommendation No.3: "The injustice and illegality of Government Inspectors presiding over Local Public Inquiries will continue for as long as they are permitted to remain in place. It is recommended that they make way immediately for Adjudicators qualified in law from H.M. Land Registry, to preside over a proper Tribunal as specified by law". The County Council can act as a catalyst in

[6] Jenkins to Connaughton. DHJ/LMP dated 30 January 2012.

this process of change by insisting that the Secretary of State's adjudicators satisfy the requirements of Article 6(1) of the Human Rights Act 1998 or be refused permission to practise in the County.

18. The Government has failed to take a fair and effective lead in the matter of Rights of Way. Their Policy is pro-access but there is no understanding within Government of the size of the problem, nor will there be for as long as the responsible Minister appears to remain content to sign the nonsensical letters his bureaucracy put in front of him. It seems it would be difficult for him to behave as he does if he was made aware of the corruption, the bad people, their bullying and intimidation, bad laws, the bankruptcy imposed upon those who stand their ground and suicide of those who cannot abide the reality of their helplessness. The Coalition Government's advisor on Rights of Way matters is Natural England, who organised the much criticised Stakeholder Working Group on Unrecorded Rights of Way. The Minister told Somerset County Council how the Stakeholder Group had a "balanced" representation.[7] Perhaps that is what his Officials told him. The truth is different. "It was 4½ of us against the rest in fractious meetings punctuated by stand-up rows. We were faced with outrageous bullying and intimidation…It was a bloody nightmare."[8]

19. DEFRA is obliged to be impartial. At the conclusion of the Wallhayes Case and the release of a perverse Decision there was an understandably strong wave of protest. The way in which those protests were handled was a revelation. Setting aside the grudging apology to Dorset County Council for the Inspector's rudeness towards their Official, those protests from individuals present at the Inquiry and who had the benefit of a reply were arbitrarily dismissed by colleagues of the Inspector who had not been present, while others were totally ignored. The Rt Hon Oliver Letwin MP intervened in a letter to the then Secretary of State DEFRA, David Miliband, to say he had seen a number of the letters of protest and took the view that the Inquiry had not been conducted fairly and that it would be appropriate for a new Inquiry to be convened. The Secretary of State replied that he had been advised this would not be necessary.

20. The Government is aware that the present body of Government Inspectors is illegal in its constitution and has been illegal for 11 years. The consequences and implications of this undesirable situation leave nothing to the imagination, yet doing nothing is not an option. The subject is addressed at Recommendation 4 of the Hobhouse Report 2011, p.31. "There is the matter of beneficiaries of an Order made on their behalf by County Committees only to have that Decision overturned by a single Inspector unqualified to do so. It is recommended a new Statute be prepared for Parliament to overturn these illegal decisions in favour of the earlier Decisions made locally at County level, if that is the expressed wish of the injured parties on a case by case basis."

21. On 14 April 2009, I met Deputy District Crown Prosecutor, Roger Hall, at Weymouth Police Station. He told me he had been given an understanding that the Inspector "would chair no further meetings, would retire and was unwell". Her mentor at the Planning Inspectorate also took early retirement. The Government had therefore tidied up its own business, yet no one had considered the plight of the injured parties. The question has been put before the Secretary of State. If it is the Council's view that Local Democracy is to be supported, then it seems incumbent upon the Council to register itself as sympathetic to the Hobhouse Report 2011 Recommendation No.4 and inform DEFRA accordingly.

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7 Benyon to Maddox. DEFRA MC 19609 dated 6 September 2010.

8 A Letter to the Rt Hon Oliver Letwin MP. Access Policy, p.9.

THE FRATERNITY'S MODUS OPERANDI

22. Wallhayes, together with the next door Home Farm, formed part of the historic Nettlecombe Dairy. A domestic, stand-alone footpath ran from the southern gate, across fields to the railway station. The northern gate formed a junction with a lane passing through the village. Between the north and south gates ran a 75m long occupation path, a way where the right of use is limited to the occupiers of land and premises served by the path. When the process of identifying public paths began in 1949, the Recorders were obliged to decline claims on this path since, with no outlet, it did not qualify and should not have been included. What is known as *linkage* was a frequent occurrence, a ploy which, if subsequently discovered, could be rectified. This happened at Wallhayes, an enclosed property where the surveyors wrongly took a twin path northward from the southern gate, passing on either side of Home Farm. The western arm crossed the landowner's land. He objected on the grounds there was no path to claim and it was removed. In the Wallhayes case, the extension took the line of the occupation path. The homeowner did not object – she was not consulted and the overgrown southern gate had not allowed access or egress for many years. Cogent and compelling evidence was put before the Senior Rights of Way Officer Slade to the effect that the owner had not been consulted and nor had she been willing to dedicate the occupation path to public use. Slade said to me: "The County had no statutory obligation to consult her".

23. When acquainted with the situation, the homeowner did not raise an objection because, in the villages, villagers did not pass through a neighbour's home without permission. Among the Access Organisations who work in collaboration with County Access Departments is the extreme, 2300-strong Open Spaces Society. Their members are to be found throughout England and Wales. Their 'correspondents' seek out historic, unclaimed paths and underused paths. The source of the Wallhayes problem was the publication by a correspondent in *Dorset* magazine in December 1998 of a pub walk down the occupation way, attracting a large number of strangers onto the property. The diversion application flowed from this action. The Ramblers Association established their members did not enjoy passing through people's homes[9] being content to take convenient diversions around the property. Local Ramblers found nothing objectionable in the plan. It is among the hierarchy that the ideologically blinkered are to be found. The local officer authorised to speak on behalf of the Ramblers was told she had 'given the wrong answer'.

24. Discussion with Mr Slade revealed the political bias at play here. He said to me, when Diversions are approved, there is a hike in the property's value. Ours had been an obviously wrongful designation. Our understanding of natural justice has it that anything wrongfully removed should be returned to its owner. The concept "once a footpath, always a footpath" cannot therefore apply.

25. Everard Marsh, Powerstock's Footpath Officer, told me that the Parish had been advised by the County Rights of Way Office not to entertain our diversion application. The assembly of interested parties' statements revealed collusion. Those of Mr Slade, the Ramblers and the Parish Council contained the same inaccurate references with regard to the occupation way. I asked Mr Slade to come and point out his allegations on the ground. He refused. I asked his Director to release Mr Slade to do as requested. He also refused.

26. When the Inspector opened the Local Public Inquiry she ruled out any discussion of the wrongful designation. She invited Mrs Ramage, the principal activist

[9] Milne & Lyall Solicitors, To Whom It May Concern, ISP7066-KC dated 3 September 2007.

who had been prominent before, during and after the Inquiry to open proceedings. "Your purpose", said the Inspector, "is to ensure this application fails". In his unacknowledged complaint to the Planning Inspectorate, the policeman living in the community wrote: "In the case of Mrs Ramage, the fact she distorted the truth…appears to have been subsequently ignored. Mrs xxxx (Inspector) has chosen to use Mrs Ramage as one of her main witnesses". This behaviour has been observed in the Hobhouse Report 2011's Four Principles among the cadre of Inspectors: to achieve a positive result against owners, namely: "The practice of identifying, steering and following one or more Champions or kindred spirits (frequently a close neighbour of the victim) to where *they* want to go".

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There is a requirement for neutral persons to read this account with a view to adopting measures to identify management failures, to rectify that which can be rectified and to ensure that nothing like this ever happens again.

Yours sincerely,

R.M. CONNAUGHTON

Copy to:

Councillor Angus Campbell – Leader of the Council
Councillor Ronald Coatsworth
Chairman Roads and Rights of Way Committee