

Wallhayes, Nettlecombe, Bridport, Dorset, DT6 3SX

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The Rt Hon Caroline Spelman MP
Secretary of State, DEFRA
House of Commons
Whitehall
London SW1A 0AA

through

The Rt Hon Oliver Letwin MP

Dear Mrs Spelman,

IN THE MATTER OF OUTSTANDING BUSINESS
Wallhayes, Nettlecombe, West Dorset

1. The original source of the Wallhayes problem is to be found in the encouragement of Councils in the National Parks and Access to the Countryside Act 1949 to identify and record public footpaths in Definitive Statements and on Definitive Maps. Overzealousness contributed towards the wrongful claims of complete paths as seen in the Peppard case from Somerset and the exercise of linking as occurred at Wallhayes. Here, a stand-alone path with a point of termination at the enclosed property's southern gate was extended through the garden to join with a lane running to the north of the property.
2. Discovery that this action had not been discussed with the then owner was put to Dorset County Council's Senior Rights of Way Officer: "we had no statutory obligation to tell her". The acquisition lay dormant for many years. When details of the appropriation were released, the owner took no action. In a country community, local people were not in the habit of passing through the home of another without permission.
3. It would be fair comment to describe the Open Spaces Society as the most militant of the larger Access societies. They have a network of Reporters distributed throughout the country who have as a task the identification of paths and ways not in use with a view to bringing them into use. An example of this system in action can be seen by reference to Central Bedfordshire's Footpath 28.
4. The change of status of the Wallhayes path was achieved by a Society member designing a pub walk through the property and published in a Dorset magazine in which he appears to have had a proprietary interest. Keen to stem the flow of strangers through their home, to restore pre-existing levels of privacy and

security, the owners sought to steer walkers around rather than have them coming through their home.

5. Consultations were held locally with the landowner of adjoining land, with the Ramblers' Association and with an Independent Inspector from the Lord Chancellor's Panel, in a mock exam intended to ascertain the validity of the local plan. The Secretary of the local Ramblers would be informed subsequently that she had made the wrong decision but that came after the submission of the application for a diversion to the relevant authority. That Authority was West Dorset District Council, to whom the County Council had delegated the requisite powers. In reality, the County Council, where the Rights of Way Officials are located, retained effective overall control.
6. A study of the relationship between Strategic Authorities' Access Departments and the elected members reveals a common dichotomy. Access Officials' *raison d'être* is the extension of paths and ways throughout their area of responsibility. Almost exclusively, the concept of impartiality is neither exercised nor understood by Officials who are there to advise the elected members, the official decision-makers. There is considerable blurring at the margins of these two functions.
7. 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.
8. During the course of various Committee Meetings, the responsibility for the management of the application was transferred from the District to the County Council. The combined level of support for the application in the relevant Committees of the Authorities was 85%. There was a number unable to accept they were not to have their way who accordingly applied to the Secretary of State to convene a Local Public Inquiry.
9. He did this, nominating as the Inspector a former Rights of Way Officer from the County of Devon and a Member of the Institute of Public Rights of Way Officers, one of those who had replaced the Lord Chancellor's Independent Inspectors in 2001. It soon became clear that the Secretary of State's nominee was instinctively and doctrinally opposed to what our family was asking. The relevant County Councillor told the CPS that he had "never seen any public proceedings to match these in terms of spiteful repression of one side and favouring of the other". In response to the Inspector's bad manners and rudeness revealed at her Inquiry, she was declared *persona non grata* in the County of Dorset.
10. No internal complaints regime was ever going to find a colleague guilty of bias. Among those who would complain were the former Police Inspector responsible for the Bridport Area, the local constable and a Detective Sergeant. The local MP, the Rt Hon Oliver Letwin MP, wrote to the then Secretary of State, David Miliband MP, to tell him the correspondence he had seen "clearly casts doubt upon the fairness and impartiality of the Inspector and hence the validity of her Decision". He suggested a new Inquiry should be convened. Mr Miliband's staff told the Secretary of State that would not be necessary.

11. In a Decision Document selective in its use of evidence, revelatory in its poor exercise of judgement and the economies made with the truth, the solitary Inspector overturned the democratically expressed wishes of the elected members of the County of Dorset. So much for local democracy. “The decision of the Inspector stood out as perverse”, said Dorset Police.
12. The involvement of the High Court in Rights of Way judgements is disproportionate. The cost to victims in search of justice is expressed in tens of thousands of pounds. There is no justice to be found there, only the law linked to alleged facts as presented by the tribune of fact. The Inspector’s activities account for the involvement of Dorset CID in this case. There is justification for County CIDs to interest themselves in many other similar cases. The Jenkinson case from Staffordshire comes to mind. The discomfiting point of law at issue here is the Inspector’s improper persuasion of the Judges of veracity of fact in which there was no substantive evidence upon which the Court could rely.
13. Dorset CID wrote to the Planning Inspectorate concerning the Decision of their colleague the Inspector. “It seems to me that the Courts’ judgements are based upon evidence put before them in a Decision document written by Inspector Eden. I have read that document in depth, relating its claims to what could be seen on the ground and am concerned that it does not give a true representation of the facts pertaining to this case.” The same letter went into the Appeal bundle at the Court of Appeal, where it had the same impact as in the Inspectorate. The Inspectorate required the Police Sergeant to communicate with them in his capacity as a private individual.
14. The Inspectorate was warned by the CID that their colleague appeared to be identifiable with one side of the argument. “This would not have been a problem had the Inquiry over which she presided been conducted fairly and impartially.....The Judge (Mr Justice Walker) would understandably assume that the evidence before him and upon which he made judgement had originated from an independent Tribunal and represented a fair, impartial, balanced consideration of the facts.” The police examined the evidence and concluded that the Decision “seems biased and some issues that I have been made aware of do not appear to have been given due gravitas”.
15. I attended the Court of Appeal, to whom my legal team insisted I allow them to make representation. My Counsel was not present. Another had taken her place. He told me I was wasting my time. The Judge would not consider any new material such as the CID statement. The Judge’s task was to be certain that the High Court Judge had not erred in law. Counsel told me the Judge would allow him no latitude but he might be sympathetic to a litigant in person. It was Hobson’s Choice. I disinstructed Counsel and took my place to fight our family’s corner. I opened by saying the High Court Judge was wrong insofar as he had based his ruling upon a flawed Decision. The Judge disagreed, telling me that I was assuming the Decision to be flawed in determination, a view corroborated by inadmissible CID evidence. I told the Judge that if the Decision was wrong, which it clearly was,¹ so too by implication must be the Judgement from which it flowed. The Inspector’s

¹ Section 7. The Decision. *The Fraternity. A Report of Malfeasance in Public Office.*
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errors had infected her final judgement. “From the evidence I have seen and read”, said Dorset CID’s representative, “I would certainly not agree that the effect on the public would be more detrimental than the effect on the applicants of her diverting the path”. One of the Ramblers’ officials present at the Local Public Inquiry had told the Inspector: “Ramblers didn’t like walking through people’s gardens”.² I was then to witness idiosyncrasies within the Law. The Appeal Judge read his judgement from a prepared script. There was no opportunity for rebuttal. I need not have bothered. His reasons for not allowing the Judicial Review touched upon the same points which had been the original questions we wished to ask of this dreadful Decision, answers which DEFRA had refused to contemplate.

16. The police forwarded their file to CPS. What happened at CPS is worthy of separate study. Suffice it to say that their Investigating Officer appears to have reached an accommodation with the Planning Inspectorate. “She will play no further part in Inquiries. She will retire”. Her mentor at the Planning Inspectorate also took early retirement. There would be no scandal. The loose ends were tidied up to the extent that nothing would reflect badly upon DEFRA and the Planning Inspectorate. The Government had taken care of its own. There is one important matter outstanding. What do you propose to do, Secretary of State, in respect of the neglected parties, the victims of this criminality?
17. Recommendation 4 of the much praised Hobhouse Report 2011 offers a solution to the family affected and others similarly abused: “There is the matter of parties who were the 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 Decisions made earlier at County level, if that is the expressed wish of the injured parties on a case by case basis”. There is a natural justice principle whereby property that has been improperly taken from its owner must be returned.

Yours sincerely,

R.M. CONNAUGHTON

² Milne & Lyall Solicitors. To whom it may concern, dated 3 September 2007.