



## Rights of Way Consultancy

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*By email and by post*

6 February 2012

Dear Adam

**Public Bridleway No 5 Langford (in the Parish of Henlow) and proposed creation of a public footpath over the River Ivel**

I refer to your letter of 19 December 2011. Thank-you for allowing me to delay my response from 1 February until today. My request for extra time was to allow my client to seek further legal advice. A copy of the advice received is enclosed. I ask that this letter and the full advice is appended to any decision report to Councillors and shown to senior officers before the Council makes a decision on whether or not to make the proposed footpath creation Order for the route O-M-N.

As you will see, my client has been advised that it has a case to object to the proposed footpath creation order. Should the Council decide to press ahead with its preferred course of action then my client will pursue an objection to a public inquiry. Should my client be successful in preventing the confirmation of the public path creation order in respect of the footpath, its inquiry costs will automatically fall to be paid by your Council.

The Council has repeatedly stated that it cannot understand my client's objection to the proposed footpath creation. The Council has alluded to other (unidentified) fishing sites that are allegedly run whilst being subject to public access. The Council has further suggested that this is without any apparent difficulty. I was not aware that the Council had any particular expertise in running an angling club. However, if the Council can point to its own lake and river fishing facility where unlimited public access on foot, and with dogs, facilitated by a public footpath, is managed without any adverse impact on the angling activity then my client would be interested to see how this is achieved.



Irrespective of this, the proposed creation of the footpath between O and M on your plan 1 would have an obvious adverse affect on my client's site and its legitimate undertaking. My client's objection is site specific.

The site is operated as a coarse fishery with a capacity for up to 650 members. Although the Club is now operated as a private limited company (for legal reasons), it operates on a 'not-for-profit' basis with all profit being re-invested in the management of Club facilities for the benefit of the membership. The hard work of Club officers and individual members for over 50 years in managing the site both for the benefit of members and to improve the value of wildlife habitat has resulted in a valuable asset. The Club has never sought or received any assistance from the present Council, its predecessors, or the local Parish Council.

The proposed route will sever the site, effectively making it two smaller sites. This will adversely affect the ability of the Club to manage the lakes site as a whole. It is not possible to compensate the Club for the whole of the adverse affect that this will have on Club activities.

The severance will adversely affect the land value of the site. In the event of any Order made being confirmed, my client will seek compensation in respect of diminished site value as assessed by independent professional fishery valuers.

The imposition of the footpath will result in the permanent loss of 11 fishing positions (swims) on the lakes. It will not be possible for anglers to continue to use these since the angling poles used are up to 16 metres in length. If used on the swims adjacent to the proposed footpath the path would inevitably be obstructed, with consequent risks to the public. Angling poles currently cost in the region of £3,000 each, so even without the concerns for the illegal obstruction of the path and possible risk to the public it is unlikely that members would want to risk damage to their equipment by exposing it to the public.

The Club will seek compensation for loss of income in respect of lost swims.

The Club presently has a little over 500 members. The Club members, who are ordinary members of the public, enjoy the security, freedom of movement and openness of the present arrangements. If the proposed footpath is imposed on the site, management arrangements will have to change in such a way as to restrict the movement of Club members. The Club is presently a membership only Club, this, together with the security of the site, has encouraged junior anglers and families to be members, and participate in the sport at a level not experienced at day-ticket fishery sites. (My client has experience of running both kinds of waters.) The imposition of the footpath will allow any member of the public to legitimately enter the heart of the site.

The Club and its members cannot be compensated for this loss.



You have not indicated in your consultation letter how wide you would expect the proposed footpath to be. The narrow strip of land between the lakes is at points less than 3 metres wide. In order to prevent trespass of people and dogs from the footpath my client would wish to fence either side of the route.

If this were not possible then my clients would anticipate continual trespass and would have to increase bailiff activity. If fencing were possible the Club would seek compensation in respect of the cost of this and of continual maintenance. If it is not possible, it will seek compensation for the cost of additional bailiff activity over and above the expected need to increase bailiff activity in any case (for which the Club will also seek compensation).

It is difficult to see how my client would prevent trespass off the proposed path whilst still allowing the public views of the lake area. In any case, given the proximity of the proposed footpath to the lake waters it would be impossible to prevent members of the public introducing alien species to the controlled waters of the lakes. Koi carp, goldfish and terrapins are examples of species kept as pets that have been introduced to controlled fisheries with disastrous results. Invasive plant species deliberately or inadvertently introduced by the public to controlled waters can have equally devastating consequences for the fishery and for the wildlife habitat value.

It would not be possible to compensate my client for the increased risks of invasive species entering their controlled waters.

My client is also particularly concerned about access to the site by dogs. The site has been operated with a dog ban for the last 12 years. Since the introduction of the dog ban the site has been free from dog faeces significantly reducing the risk of transmission to members (especially junior members) of toxocara canis. Some breeds of dog are particularly attracted to water, enjoying swimming. Some members of the public encourage their dogs to swim. The damage to the wildlife habitat of the western bank of the River Ivel as a consequence of this activity is obvious on site. Dogs entering the lakes and river on the site will disrupt any angling activity. This is a potential damage to the legitimate activity of my client on its land that cannot be compensated for.

Apart from the unpleasantness of dealing with, and the health risk presented by, dog faeces another reason for banning dogs from the site was the possible conflict between dogs and anglers over bait. Angling bait for coarse fishery is often meat based and smells attractive to dogs. Club members also bring food to the site for their own consumption, which may also attract unwanted attention from dogs.

The Club also lays (permitted) poisons for the control of brown rats on the site and would be concerned about dogs accessing areas where poison is laid.



In the event of the footpath being imposed on the site, the Club will continue to enforce a ban on members bringing dogs on site. It will then be possible to trace any incidence of infection, conflict or disruption to dogs brought on site by members of the public.

My client expects to receive compensation for the construction of the proposed bridge over the River Ivel. We expect that all and any works will be subject to the relevant planning processes and will require Environment Agency approval with an approved programme of works such that works will not adversely affect the fish and bird breeding seasons and be of minimal impact on other wildlife species.

My client will not permit access to its site for the construction of the bridge, over and above the access to which the Council may be entitled under the powers contained in the Highways Act 1980.

There will be a detrimental impact on the environment and the lakeside and river bank ecology if the public footpath is imposed. There are fish-spawning rifles near the site of the proposed bridge, and a recorded water vole habitat on the riverside in my client's ownership. Kingfisher routes exist on this stretch of river and there are badger and deer runs over and close to the proposed route.

My client cannot be compensated for this loss.

My client remains committed to the resolution of the obstruction to Bridleway 5. It has previously proposed that in addition to the suggested 'diversion' of the bridleway out of the lake and onto the Haul Road that it would be willing to create a public footpath route between the lake and the Haul Road. This has been dismissed by the Council, apparently because it is unacceptable to the Henlow Parish Council. No detailed reasons have been given as to why the offer is 'unacceptable' and no opportunity was given to my client to discuss whether improvements could be made to the proposal to make it more acceptable to the Henlow Parish Council and your Council. My client considers that it is feasible to design pedestrian route in this area giving views of the lake that the public apparently seek (and the Council apparently wishes to provide) without the severe adverse impact on my client that the present proposal has.



My client has taken appropriate legal advice from a respected specialist in this area of law. My client intends to act upon that advice as outlined above, should the Council persist in ignoring my client's legitimate concerns about the proposed creation of the footpath. My client's original offer of a pedestrian route between the lake and the Haul Road, coupled with the proposal as the Council outlined in January last year still stands and my client would work with the Council to design an appropriate route providing suitable lake views. I am instructed to make the additional offer that if the Council abandons its present proposal and instead works with my client to achieve an acceptable footpath route as suggested above my client would meet the cost of installing the new part of the route to the Council's required standard.

I very much hope that your Council will reconsider its position and decide not to make the proposed footpath creation Order.

Please acknowledge receipt of this letter and the enclosed formal advice.

Yours sincerely

Sue Rumfitt  
Principal