

32 Nursery Close
Combwich
Bridgwater
Somerset TA5 2JB

Mr Stuart Lloyd
Rights of Way Coordinator – Legal Events Team
Economy, Transport and Environment Department
Somerset Council
County Hall Taunton
Somerset TA1 4DY

21st April 2008

Dear Mr Lloyd

Application for a Modification to the Definitive Map and Statement and Statement of Public Rights of Way relating the Footpaths around the Combwich Ponds in the Parishes of Otterhampton and Cannington.

This application concerns a right of way which has been available and enjoyed by the public for generations without interruption until the gates were closed and padlocked in May 2007.

Background

The area of the Combwich Ponds was previously a brick works and associated clay pits which have been in existence for centuries but finally ceased commercial production in about 1960. During this time access was not restricted as far as we can ascertain. Indeed some residents remember walking the area whilst the Brickworks were still operating. The flooded clay pits have always been an attractive area to walk around and enjoyed by generations of villagers and their families. The footpath from the Old Wharf Road following the southerly edge of the ponds was a linear route which joined the Stogursey/Hinkley Point to Cannington road at Bolham House and joined a wider network of footpaths.

The land which includes the Pond was purchased by the Bridgwater Angling Association Limited (BAA Ltd) on 12th February 1969 but this did not affect access by the public. Indeed the application we are making is based on much user evidence stretching back to over 70 years and long before BAA Ltd came on the scene.

Public Response

Following the closure in May 2007 a flyer was circulated throughout the village asking people to respond if they were concerned about the closure of the footpaths. Over a 100 people responded expressing their concern. The Parish Council and the Otterhampton Parish Recreation Association both expressed their concern and committed themselves to a campaign to get the footpaths reopened to the public.

A site meeting was arranged at the request of the Parish Council held on 12th September 2007 with John Hill Chair and Dave Henderson Head Bailiff BAA Ltd and together with Paul Gripton PC Chair, Barry Leathwood Vice Chair and Peter Shaw (Clerk) representing the Council in an attempt to find some common ground. Unfortunately this was not possible and it was made clear that the BAA Ltd would go to whatever lengths necessary to resist our claim.

A public meeting in the village hall was held on Wednesday 3rd October 2007 with over ninety people attending (the biggest meeting for many years). The meeting unanimously decided to support the campaign.

We accept that on occasions relations between the BAA the public were not as good as they may have been, mainly because of neighbourly squabbles with nearby residents, however in the main it was a harmonious relationship.

The legal position

Since the closure we have become aware that the BAA Ltd wrote to Somerset County Council on 29th December 1998 informing them that they had erected three notices at the ponds indicating that “This way has in no way been dedicated to the public”. They also submitted a “Deposit of Statement and Plan Section 31 (6) of the Highways Act 1980”, which states that “No [other] ways over the land have been designated as highways” (Section 31 Deposit) and is dated 24th January 1999. However, at no time did they or the notices prohibit public access.

We recognise that the effect of the “Section 31 deposit” is to require us to prove that the footpaths have been enjoyed by the public as a right without interruption for a full period of 20 years prior to the Section 31 deposition on 24th January 1999. This we can demonstrate by the number of “user evidence forms” accompanying this application and by correspondence between Otterhampton Parish Council and BAA LTD.

User Evidence

In total 53 “User Evidence“ forms have been completed and accompany this application covering the period 1929 to 2007. For the crucial period starting January 1979, 25 individuals have completed user evidence forms and this number rises to 43 for January 1999. This number continues to rise to 50 in the last couple of years before the closure. There are also 22 forms from people who walked the Ponds prior to 1979 including 1 from 1929. These user evidence forms collectively indicate continuous use of the footpaths from 1929 until they were closed in 2007. They are also worth reading as they give an indication the pleasure they gave to so many people over such a long period of time.

Correspondence demonstrating unopposed access.

A letter (number 1 in the pack) dated June 1st 1992 from the secretary of the Bridgwater Angling Association to the Residents of Estuary Park, Comwich whose properties back on to Ponds. The letter is about a neighbourly dispute regarding rear garden gates and fencing adjacent to the Ponds

What is relevant to the question of a right of way having been created are the facts that the BAA state clearly that –

1. *They had never given members of the public permission to enter their property and use the paths.*
2. *They had never taken any steps to prevent members of the public entering their property (as yet) and using the paths.*
3. *They were clearly aware that members of the public were enjoying walking around their lake.*

What this letter shows is that there was no reason for the public to think they were not enjoying the path as of right. It appears that although the BAA were fully aware of the public walking the paths nothing was done to prevent ‘the public’ gaining a right of way until the section 31 deposit and notices going up at the end of 1999 though these did not deny access.

The BAA's attitude to the public's use of the paths has varied considerably and at times appears to have supported the public's use of the amenity –

A letter (Number 2) dated 26th June 1990 from the BAA to the temporary clerk of the Parish Council.

1. *This states that the BAA hopes to improve the amenity offered by our lake.*
2. *That at some time in the future, it may be that we will decide to provide a stoned path around the whole of Combwich pond, so that our members and your residents will be able to walk all the way round in comfort and safety, a few yards back from the bank, on a surface which will remain dry and free of mud in all weathers. This year we have done exactly that at the North Pond at Dunwear, Bridgwater, at a cost of around £7,000 to ourselves, and have been commended for our work by the Somerset County Council, Sedgemoor District Council, the Forestry commission and many residents of Bridgwater who now regularly walk this path.*

A letter (Number 3) received 27th June 1993 from the BAA to Peter Shaw, Clerk Otterhampton Parish Council.

Regarding the question of paths around the ponds and the management committee's conclusions that – Whilst accepting that an undertaking to improve the ponds to the same level as Dunwear ponds was given, it should be understood that this is an objective that must relate to the availability of funds.

The Application

Although the vast majority of the user evidence forms indicate that the public have always had access around the complete circumference of the Ponds, some have stated that on occasions the path was blocked (overgrown) along the northerly edge (adjacent to the Estuary Park bungalows). For that reason our application is for a footpath to be established from Old Wharf Road following the southerly edge of the Pond to the Cannington road at Bolham House with a spur leading up to the North West corner of the Pond. The route of the footpath is marked in red on the enclosed map.

We sincerely believe, supported by the evidence we are submitting that the footpaths around Combwich Ponds have been in continuous use for generations and meet all the legal requirements to be designated a public footpath.

We would be grateful for the urgent consideration of our application so that we and the wider public may enjoy once again the beautiful countryside adjacent to our village.

Yours faithfully

Barry Leathwood OBE
Otterhampton Parish Footpaths Liaison Officer
On behalf of the Otterhampton Parish Council and all those who have completed the attached "User Evidence Forms".

Enclosed;

FORM 1 **Completed** application Form for a Modification to the Definitive Map and Statement together with a map of the claimed footpath.

FORM 2 The notice which has been sent to the landowner BAA Ltd together with Form 4

FORM 3 **53** User Evidence Forms

PHOTOGRAGHS Showing access to the footpath from Old Wharf Road and Cannington Road adjacent to Bollam House and two photographs showing views of the Ponds before the public were excluded by padlocked gates.

GOOGLE Photograph showing the Comwich Ponds and the proximity to the village. The footpaths can also be seen

COPY CORRESPONDANCE

A letter (number **1** in the pack) dated June 1st 1992 from the secretary of the Bridgwater Angling Association to the Residents of Estuary Park, Comwich whose properties back on to Ponds.

A letter (Number **2**) dated 26th June 1990 from the BAA to the temporary clerk of the local Parish council.

A letter (Number **3**) received 27th June 1993 from the BAA to Peter Shaw, Clerk Otterhampton Parish Council.

SUPPORTING LETTERS

Letter from the Otterhampton Parish Council (Number 4)

Letter from the Otterhampton Parish Recreation Association (Number 5)