

From: m.comber
 Date: 10/11/2007 22:40:31
 To: Thompson Rob (Countryside)
 Cc: Thomber Cllr T.K. Smith Andrew (Countryside); Allen Phil
 Subject: RE: Unauthorized fencing

Dear Rob,

I can't tell you how dismayed I am to hear that you knew of the intention of the landowner and did not even discuss it with your Area Team Leader, Phil Allen. If you had he may have cautioned you with regard to the legal implications.

At common law a highway authority is under a duty to, prevent and remove obstructions. This duty is reinforced by statute. Section 130 HA1980 imposes on a HA a duty:

- a) to protect and assert the rights of the public to the use and enjoyment of highways for which it is the highway authority
- b) to prevent as far as possible the stopping-up or obstruction of those highways

You have clearly failed in this respect in more ways than one.

1. The definitive statement for BW4 Parish of Headley says: *"From road B3004 northwards along unenclosed track between bushes on edge of heath land to junction with NO. 5, then north eastwards along earth track on north west side of hedge and bank, through gateway, stile at side, along UNENCLOSED GRASS TRACK ON VERGE OF FIELD to no. 47. Then northwards along sandy track enclosed between fences to junction with no. 46."*

There are several points to note here:

- Any change to a statutory right of way has to be the subject of a legal event especially when it is changing its description as from unenclosed grass track on verge of a field to enclosed grass track.
- This procedure allows for other proposed alterations such as the removal or construction of a gate, particularly one on a different alignment to the existing furniture.
- Or to the fact that as the path is now enclosed and not part of a field no gates are necessary for the ingress or egress of stock.
- The path is substantially altered where it exits at BW47. Because of the way the fencing has been erected it is now several metres shorter and the existing field gate has been moved.
- Most importantly of all is the fact that because it is a field edge path and therefore not enclosed, the public have consistently walked along a route which is more or less in line with the gate which was at the Lindford end. This then will be the statutory alignment because it clearly shows a worn track. The extent of a highway where it passes over a common or unenclosed land, is frequently still more indefinite to the right and left of what may be the ordinary passage. This, the statutory path (because it has been used since the landowner fenced in this part of the common in the early sixties) is therefore now obstructed by the new fence.
- The fence and gate is a sudden and substantial obstruction which occurred without warning and now needs to be removed with equal urgency. As an elected councillor I would urge your authority to remove this obstruction with the same urgency that it was erected. Your suggestion that you will look at it in the next few weeks is simply not good enough especially when the inconvenience of the gate, which cannot be opened from horse back and which is an unauthorized obstruction as are the rails at both ends of the path, are more than likely to be a health and safety issue.

The other gates on BW54, but particularly the one which is stuck in the sand, are certainly a long term issue. I contacted your department and EHDC in the late 1990's in this regard and have correspondence still on file in 2000. There is almost certainly more if I took the time to search. So it begs the question just how far behind are you? Please will you send me the 'to do' maintenance list and those which have already been done this year. We were to have this information on line but it does not seem to have materialized.

As I said in my previous email the gates cause more than inconvenience to myself and other horse riders who have to go through them. Sometimes one cannot open them at all and they become an unlawful obstruction. They are in the same ownership as the newly erected, unlawful fence.

By the way I have no objection to the landowner fencing the path but the correct legal procedures need to be followed to protect the statutory alignment and rights of the public. I have attached five photos taken today.