

**IN THE COUNTY COURT**  
**SITTING IN NEWCASTLE UPON TYNE**  
**Chancery Business**

The Combined Court Centre  
The Quayside  
Newcastle Upon Tyne NE1 3LA

Date: 21/10/2016

**Before:**

**His Honour Judge Behrens**

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**Between:**

**(1) PETER BRAMWELL**  
**(2) GWENDOLINE MABEL BRAMWELL**  
**(3) LOW MEADOWS EQUESTRIAN**  
**CENTRE LIMITED**  
**- and -**  
**PETER ROBINSON**

**Claimants**

**Defendant**

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**Richard Selwyn Sharpe** (instructed by **Hodgson & Angus**) for the **Claimants**  
**Stephanie Jarron** (instructed by **Bond Dickinson**) for the **Defendant**

Hearing dates: 4, 5 and 6 October 2016  
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**Judgment Approved**

**Judge Behrens:**

**1 Introduction**

1. This is a right of way dispute between neighbours. As with many such disputes it would have been far better if it could have been resolved amicably or with the assistance of an experienced mediator. In *Oliver v Symons* [2012] EWCA Civ 267, another dispute between neighbours in County Durham Elias LJ's judgment included

This is a case which was crying out for mediation, even assuming that it could not have been settled more informally than that. It ought never to have come near a court, and with a modicum of good will on both sides, it would not have done so.

2. On the same topic Ward LJ said:

I wish particularly to associate myself with Elias L.J.'s pointing out that this is a case crying out for mediation. All disputes between neighbours arouse deep passions and entrenched positions are taken as the parties stand upon their rights seemingly blissfully unaware or unconcerned that that they are committing themselves to unrelenting litigation which will leave them bruised by the experience and very much the poorer, win or lose.

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3. There have been a number of attempts at mediation in the case. Regrettably none of them have succeeded. It is however plain that relations between these two families have sunk to such a low ebb that each side is prepared to assert that the other has made threats against them and that they are frightened to walk on the lane unaccompanied.
4. It is thus necessary for the Court to resolve the dispute. I, of course, have to apply the strict rules of the law of easements which may give results which do not satisfy either side.
5. Mr and Mrs Bramwell are owners of a farmhouse, buildings and land at Low Meadows Farm, Lanchester County Durham. Mr Robinson is the owner of the adjoining farmhouse, farm buildings and land known as Lizards Farm.
6. In order to gain access to Low Meadows Farm from the public highway Mr and Mrs Bramwell have the benefit of a prescriptive right of way over a track known as Kitswell Road much of which is on Mr Robinson's land.
7. There is no dispute that Mr and Mrs Bramwell are entitled to the right of way but there are disputes as to the extent of the right of way and as to whether Mr Robinson has interfered with it. On the other hand Mr Robinson accuses Mr and Mrs Bramwell and their licencees of excessive user and trespass.

**The extent of the right of way.**

8. It will, of course, be necessary to describe the right of way in more detail later in this judgment. For present purposes the issues relating to the extent of the right of way can be summarised:
  1. Mr Robinson contends that the right of way is confined to the track itself. Mr and Mrs Bramwell on the other hand contend it is more extensive. They contend that it includes a right to pass over the verges, to use the passing places on the track and to what is described as "swingspace".
  2. Mr Robinson contends that the right can be used by Mr and Mrs Bramwell and their visitors at any time. However, in so far as it is used by customers of the livery it can only be used between 7 a.m and 9 p.m. Mr and Mrs Bramwell, on the other hand contend that the use of the right of way is unlimited in time. In her closing submissions Miss Jarron accepted that the evidence did not support a time restriction and in those circumstances I can deal with the issue quite shortly.
  3. Mr Robinson contends that heavy vehicles over 17 tonnes cannot use the right of way. Mr and Mrs Bramwell do not accept that there is any such restriction

**Interference with the right of way**

9. It is not in dispute that since the middle of July 2012 Mr Robinson has made the use of the right of way more difficult for Mr and Mrs Bramwell and their clients. Mr and Mrs Bramwell contend that these acts constitute interference with the use of the right of way. There are nine groups of acts that are alleged to constitute this interference:
  1. In July 2012 Mr Robinson removed 3 passing places beside the track. Mr Robinson asserts that these passing places are not within the right of way and thus there is no interference.
  2. At or about the same time Mr Robinson placed boulders on the right of way which are alleged to restrict the width. Mr Robinson accepts that he placed boulders on the verges but denies that this restricts the width of the right of way. In his closing submissions Mr Selwyn

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Sharpe accepted that the boulders do not now interfere with the right of way at all. In those circumstances he was content not to pursue any allegation in relation to the boulders.

3. At about the same time Mr Robinson placed posts in the verge which are alleged to interfere with the swingspace.
4. In May 2013 and December 2013 Mr Robinson has placed 13 speed bumps on the right of way. These are said to be unnecessary, too high and/or excessive. Mr Robinson makes the point that some of the speed bumps replace old worn out speed bumps and contends that they do not constitute an interference.
5. In April 2013 there emerged a pothole some 20 m away from one of the speed bumps. It was initially filled in by Mr Bramwell. Mr Robinson believed that Mr Bramwell was not entitled to fill in hole and removed the filling. It is not suggested that the hole made the track impassable. However in November 2013 the hole was eventually filled in by the local authority on the instructions of Mr Bramwell
6. In May 2014 Mr Robinson commenced the construction of a further 7 speed bumps. He did not however complete the work. Mr Robinson does not accept that this constitutes an interference with the right of way.
7. Mr Robinson has blocked the right of way, stopped vehicles, harassed the occupants, accused them of speeding, demanded to know the purpose of the visit claiming they were overloaded and demanding to inspect the load. Mr Robinson accepts that on occasions he has prevented vehicles from using the track before 7 a.m. he contends there was an understanding that there would be no use of the track before 7 a.m.
8. In June 2014 Mr Robinson commenced works of construction of a new cattle grid and gate. The construction of the cattle grid is admitted. Mr Robinson contends that it replaced one that was damaged by construction traffic when Mr and Mrs Bramwell were building the indoor riding school. He denies it amounts to an interference. In his opening submissions Mr Selwyn Sharpe accepted that the construction of the cattle grid did not interfere with the right of way. Thus I need say no more about it.
9. In June 2014 Mr Robinson installed 3 gates across the way which were initially kept open. In January 2016 he shut the 2 gates while sheep grazed the verges. In July 2016 he placed a notice saying that "when livestock are in the field gates must be closed at all times"; Mr Robinson has continued to insist that the gates be closed at all times. Mr Robinson denies that the closing of the gates constitutes a nuisance.

**Excessive user**

**10.** Mr Robinson alleges that Mr and Mrs Bramwell have used the right of way excessively. He makes a number of allegations all of which are denied by Mr and Mrs Bramwell. Mr Robinson relies on 4 matters. He contends that vehicles are driven at excessive speed, travel along the track at unreasonably early hours in the morning and late hours in the evening, travel with loud music blaring so as to cause a disturbance to Mr Robinson and his visitors. He also contends that the use of the right of way has increased out of all proportion to the level of use established by prescription. He points out that Mr and Mrs Bramwell now run an equestrian centre from their property which is on a much larger scale than the limited livery business run by their predecessors in title. In reply to this allegation Mr and Mrs Bramwell point out that the Mortons ran a racing yard from the stables with at least 30 horses in training with regular traffic along the way by large horse boxes, together with visits from owners, staff, farriers, vets and deliveries.

## 2 Evidence

11. In support of their claim Mr and Mrs Bramwell called live evidence from Mr Bramwell, Mrs Clembinston, Mr Mason and their daughter, Mrs Bramwell Dunn. In addition I read statements from Mrs Bramwell and Mrs McNeill who were not required to attend for cross examination.

12. In support of his claim Mr Robinson called live evidence from himself, his girlfriend Miss Turner and Mr Dickman, the previous owner of Lizards Farm.

13. In addition I attended the premises for a view, was provided with a video showing a car driving down the track both in 2010 and now, a professionally drawn plan ("the plan") of the track showing precisely where the various obstructions gates and passing places are. I was also referred to a number of other documents and photographs including an aerial photograph of Lizards Farm taken in 1964.

## 3 Ownership

14. There is no dispute as to history of the ownership of the respective parcels of land. It is thus not necessary to refer to the deeds. Much of the following is taken from the chronology helpfully provided by the parties.

15. In the late 1960's Mr and Mrs Morton purchased Low Meadows Farm. At that time the track was a rough track grassed over with no hard surface. Sometime in the late 1980's Mr Morton laid a hard surface to the track.

16. It is not clear when Mr and Mrs Morton commenced the livery business at Low Meadows Farm. Mr Morton replaced some wooden stables in 1987 and built an indoor arena. I infer that the business commenced shortly thereafter. It had certainly commenced by 1991 when Mr Dickman acquired Lizards Farm. It continued until the business was sold to Mr and Mrs Bramwell in 2010.

17. For a period of time between 2000 and 2010 there was a small racing stable at Low Meadows Farm. This part of the operation appears to have been relatively modest involving no more than 8 – 10 horses.

18. When he sold the business to Mr and Mrs Bramwell in 2010 Mr Morton described the business in the following way:

In all the years of trading we have always had a good client base and rarely have empty stables.

We can provide stabling and grazing for up to 47 horses on a year round basis although the land consisting of 80 acres of large paddocks can also accommodate additional grazing ...

In addition to the stabling which is run on a Do it Yourself Basis I provide turn out, bring in mucking out ...

Our facilities include an indoor and outdoor arena, a horse walker and a 1 mile gallop.

19. Mr and Mrs Bramwell purchased Low Meadows Farm from Mr and Mrs Morton in November 2010. Together with their daughter Mrs Bramwell-Dunn Mr and Mrs Bramwell have continued the use of Low Meadows Farm as an equestrian centre. In February 2012 they were granted planning permission for the construction of a large new building to accommodate an indoor equestrian arena which was subsequently built.

20. According to Mrs Bramwell Dunn there are currently some 50 horses (including 2 ponies). 39 of these have some livery. 5 have full DIY and 7 have full livery. The others have some services provided by the business.

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21. In 1991 Mr Dickman purchased Lizards Farm from Mr and Mrs Reed. Mr Dickman sold Lizards Farm to Mr Robinson in July 1996. Mr Robinson moved into Lizards Farmhouse in October 1996 and has occupied it ever since.

22. Since 2009 or perhaps 2008 Mr Robinson's girlfriend Miss Turner has stayed at Lizards Farmhouse on a regular basis and is very familiar with the track. Initially she stated there seven nights a week; now she stays most week-ends from Friday night to Tuesday morning.

23. Mr Robinson has recently applied for planning permission to convert one of the barns in the farmyard to the south of the track to residential accommodation. If successful, he plans to move there.

## 4 The track

24. The track proceeds in a generally westerly direction from the junction with the adopted unclassified road, Kitswell Road, Lanchester. The first part of the track is not on land owned by Mr Robinson and is thus not relevant to this dispute. The track is a public bridleway.

25. The track within Mr Robinson's ownership is shown on the plan. The track within Mr Robinson's ownership is approximately 625 metres in length. It is tarmacadamed.

26. The expert report indicates that all of the track is less than 2.7 metres wide. Much of it is between 2.3 and 2.5 metres wide.

27. At the eastern end of the land within Mr Robinson's ownership is a cattle grid. To the south of the track approximately 170 meters from its eastern end is Lizards Farmhouse where Mr Robinson lives. The farmhouse is at a slightly higher level than the track but is otherwise adjacent to the track.

28. On the northern side of the track opposite the farmhouse is an old stone wall in poor condition. Mr Robinson contends that the wall has been damaged by vehicular traffic driving down the track. There is, however, no independent evidence of this. To the north of the wall and at a lower level are a number of farm buildings and an outside horse arena which form part of Lizards Farm.

29. The entrance to Low Meadows Farm is approximately a further 455 metres from Lizards Farmhouse. The entrance to Low Meadows Farm is protected by what used to be a cattle grid. However the cattle grid is now filled in with ash so that there would be nothing to prevent sheep at the western end of track from entering Low Meadows Farm.

30. To the north of the track the land falls away quite sharply. It is common ground that there was at one time a hedge on the northern side. The hedge was replaced by a fence. It is not suggested that any vehicles passed on the northern side. There is some dispute over the precise position of the fence/hedge. In evidence Mr Robinson suggested that it was very close to the track (between 6 inches and a foot). Mr Dickman suggested it was somewhat further away - between 2 and 3 feet from the verge. The fence has been removed. In 2009 the fence had become damaged and Mr Robinson moved it some 20 foot back from the track.

31. The land to the south of the track is in general higher than the track. However there are a number of places where it flattened out and vehicles could pass. These areas will be considered in more detail later in this judgment.

## 5 Use of the right of way

32. Although it is conceded that there is a prescriptive right of way over the track there are disputes over the extent:

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**33.** It was Mr Robinson's case that livery licencees of Mr and Mrs Bramwell could only use the track between 7 a.m and 9 p.m. Mrs Clembintson gave clear evidence of her experience since 1993. It was clear from her evidence that from 1993 – 1995 she was at the stables by 7 a.m. She was not the first to be there. From 1995 – 2008 she was there by 5.30 every morning.

**34.** Mr Mason who was a jockey and racehorse trainer said that between 2006 and 2008 he was there by 6.30 in the morning. It was not unusual to see a couple of liveries at the same time. He pointed out that in the winter months when there was racing at the all weather tracks horses would have to leave at all times of the night.

**35.** None of this was challenged by Miss Jarron in her closing submissions.

**Passing places**

**36.** There are 3 passing places shown on the plan. The first (PP1) is some 30 m from Low Meadows Farm and extends a distance of about 20 m. The second (PP2) is 200 m from Low Meadows Farm and extends about 20 m. The third (PP3) is 350 m from Low Meadows Farm and extends about 10 m.

**37.** There was evidence from Mrs Clembintson, Mr Dickman and Mr Robinson himself that vehicles drove over areas (PP1) and (PP2) for passing from 1991. Mr Robinson said that he saw tyre marks when he walked down the track about once a week. There was no evidence that PP3 was used for passing before 1998. Mr Dickman said it was not.

**38.** Mr Robinson gives evidence about the origin of the passing places in paragraphs 19 – 22 of his witness statement. In summary (and as elucidated in evidence and/or final submissions):

1. PP1 was created in 1998 as a result of an agreement between Mr Robinson and Mr Morton. The use of it as a passing place was accordingly with Mr Robinson's express consent.
2. PP2 and PP3 were also created in 1998 when Mr Robinson placed 2 gates in the fencing on the south side of the track. The gates were set back to enable farm vehicles, horse boxes and the like to manoeuvre from the track into the field.

**Verges**

**39.** There was very little evidence about the use of the verges. Both Mrs Clembintson and Mr Dickman agreed that pedestrians and horses would leave the track to avoid oncoming traffic. There was very little evidence that went beyond that.

**40.** Mr Selwyn Sharpe sought to argue that there was a prescriptive right to "swingspace" which was needed by larger lorries driving over the track. There was one photograph of such a lorry with its wing mirrors extending over the track. However, there was little or no evidence of the extent to which such larger lorries drove over the verges.

**Weight**

**41.** In his witness statement Mr Robinson suggests that the track is limited to vehicles of less than 17 tonnes. He bases this on what he describes as "chat" with Mr Morton who told him he had imposed a 17 tonne weight limit. Mr Morton was not called to give evidence to refute this.

**42.** However a consideration of the pleadings shows that this is not a point taken in the Defence. The crucial paragraphs are paragraph 6 and 7 of the Re-Amended Defence. In

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paragraph 6(1) Mr Robinson admits that there is a right of way by prescription. In paragraph 6(2) it is admitted that the right is “with or without vehicles”. There is no suggestion that the vehicles needed to be less than 17 tonnes in weight. Paragraph 7 elaborates on the extent of the right of way. Whilst it refers to the physical characteristics of the land it does not refer to the weight of the vehicles.

**43.** It follows that the weight of the vehicles was not put in issue in the pleadings with the result that Mr and Mrs Bramwell cannot be criticised for not calling evidence to deal with it.

**Volume of traffic**

**44.** There was evidence from Mr Robinson supported by Mr Dickman that the use of the track had increased since the days when Mr Morton owned Low Meadows Farm. However, Mr and Mrs Bramwell referred to the sales particulars I have set out to give an indication of the traffic when it was owned by Mr and Mrs Morton. They point out that there was a racing stable at Low Meadows Farm for some of the period.

**45.** No doubt there was some increase in traffic when the new equestrian centre was being built. It may be that the increased facilities provided by that centre has meant that there has been some increase in the use of the track. I do not, however think that it has been anything like as great as is suggested by Mr Robinson. However Miss Jarron accepted that mere increase in the volume of traffic using the way did not affect the prescriptive right.

**46.** Both sides have attempted to count the number of vehicle movements. Mrs Bramwell Dunn carried out a test on 27, 28 and 31 October 2015 with a CCTV camera with the following results:

Date	Livery	House	Delivery/Visitor
27/10/2015	33	4	1
28/10/2015	41	3	5
31/10/2015	42	7	3

**47.** Each vehicle came and went with the result each vehicle has 2 movements. Mrs Bramwell Dunn accepted that after 1 November the traffic would increase slightly as all the horses came in after that date. She produced a graph showing the time of each movement.

**48.** Mr Robinson did not accept these figures. Based on his CCTV he suggested that it is between 130 – 200 journeys per day. He also said that on one occasion there were 300 journeys in a day.

**49.** I have no reason to reject Mrs Bramwell Dunn’s figures though I accept there may be days when there are more than the 100 or so movements that occurred on these 3 days.

**Speed of traffic**

**50.** Mr Robinson considers that all drivers should drive down the track at 10 m.p.h or less and slower when passing Lizards Farmhouse. He considers that many people speed over the track. In paragraph 85 of his statement he refers to a police Volvo driving at 54 mph.

**51.** He has made numerous complaints to Mr and Mrs Bramwell about drivers driving at excessive speed. Despite requests from them to stop this is often by sending texts.

**52.** Mr and Mrs Bramwell do not accept that the problem is anything like as great as Mr Robinson alleges. Mrs Bramwell Dunn pointed out that Mr Robinson had accused drivers of

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driving at 80 mph when they could not possibly have done so; he had accused people of speeding who had not in fact been on the track at the relevant time.

**53.** She said that they had taken considerable measures to address Mr Robinson's concerns. These included:

1. Telling all the livery clients when they first come to drive slowly past Lizards Farmhouse.
2. An instruction on the website to drive slowly past Lizards Farmhouse.
3. Sending out to all livery clients notes from a yard meeting on 15 March 2014 which included Mr Robinson's concerns and reminding them to drive slowly on the track and ask them not to arrive before 7 a.m if it is avoidable.
4. Sending out flyers to livery customers, vets in relation to speed.
5. Instituting a system for only driving down or up the track at 10 minute intervals. [This system had the effect that if a driver missed a slot for driving he might have to wait 15 minutes before the next slot].

## 6 Obstructions

### Speed bumps

**54.** There have been speed bumps in the vicinity of Lizards Farmhouse for some time. According to Mr Bramwell there were about 3 or 4 speed bumps. One was made out of rubber; the others out of stone.

**55.** Mr Dickman's recollection is that there were 3 speed bumps. One was at the eastern end of his land – between the cattle grid and the verge; the second was some 25 m west of Lizards Farmhouse in the approximate position of SB10; the third, which he constructed was some 15 m east of Lizards Farmhouse in the approximate position of SB11.

**56.** There is no evidence that they were particularly aggressive or caused any damage to vehicles. Mr Dickman described the existing bumps as having a low profile – more of a rise than a bump. He accepted that the bump he constructed was more substantial. It was designed to protect his septic tank and the drains that passed under the track at that point. No doubt they slowed down traffic passing beside Lizards Farmhouse.

**57.** Between December 2012 and May 2013 Mr Robinson placed a total of 13 speed bumps over the whole of the roadway within his ownership. The precise position of the speed bumps is shown on the plan but may be summarised in the following table:

SB No	Distance from Low Meadows Farm	Distance from Lizards Farmhouse
1	41 m	
2	81 m	
3	133 m	
4	183 m	
5	236 m	
6	272 m	
7	347 m	
8	374 m	
9	394 m	45 m west
10	430 m	25 m west



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11	464 m	15m east
12	483 m	24 m east
13	540 m	80 m east

**58.** There are plans showing the precise dimensions of the speed bumps. Their dimensions vary. The most aggressive are SB 4, 5, 1 and 2 which are between 88mm and 113mm in height. They are made of concrete, stone or tarmacadam. Mr Bramwell made the point that most ordinary cars would catch the bottom when driving at 5 m.p.h although he accepted that larger vehicles (such as 4 x 4's) would not. As they are not set at right angles to the track vehicles rock when they go over them with the result that some horse boxes are disturbed.

**59.** When I visited the site for the view I drove my Volkswagen Passat over them. On a number of occasions I caught the underside of my car. Mr Robinson's reaction to this in evidence was that my car was in need of repair.

**60.** When he gave evidence Mr Robinson accepted that the speed bumps required a driver to slow right down. He said it was necessary because of the high speed of the drivers using the track. He accepted that it was necessary to slow right down to 5 m.p.h or less and that some drivers did indeed catch the bottom of their cars. He described incidents where cars had driven down the track at speeds of 25 m.p.h which he described as excessive.

### Saw Cuts

**61.** In May or June 2014 Mr Robinson made preparations to install a further 7 speed bumps on the road. The preparation work comprised making cuts into the track in the positions shown on the expert's plan. The nearest of the saw cuts is a mere 22 m from the entrance to Low Meadows Farm. If Mr Robinson had completed the work there would have been speed bumps or gates approximately every 20 m between Low Meadows Farm and Lizards Farmhouse.

**62.** When he gave evidence Mr Robinson said he was advised by the local authority that he was entitled to do that. However he did not complete the work. In evidence he told me that he had no intention of doing so. It is not suggested by Mr and Mrs Bramwell that the saw cuts themselves create any significant obstruction to the right of way.

### Gates

**63.** It is common ground between the parties that there were no gates across the right of way from at least 1991. It appears that there may have been a gate or gates at some time because the definitive statement of the public right of way includes:

Proceeds in a westerly direction to 2 field gates, second at Lizards Farm, then to field gate (old wagon way) continue on bridle road to gateway (no gate) to Ford and Footbridge.

**64.** Mr Dickman said that when he owned Lizards Farm he allowed sheep to roam over the whole of the track. Presumably the sheep were contained by the cattle grid at the western edge of his land and the cattle grid at the entrance to Low Meadows Farm.

**65.** In about May 2014 Mr Robinson erected 3 gates at the positions shown on the expert plan. These are approximately 100 m from Low Meadows Farm (G1), 210 m from Low Meadows Farm (G2) and 330 m from Low Meadows Farm (G3).

**66.** Between May 2014 and January 2016 these were kept open. In January 2016 two of the gates (G1) and (G3) were closed<sup>1</sup>. At the time Mr Robinson stated that it was due to temporary

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<sup>1</sup> There was one day when all 3 gates were closed but I regard this as "de minimis" and shall ignore it.

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weather conditions whilst his sheep grazed the verges. However in July 2016 Mr Robinson erected a signs which said that the gates were to be kept closed at all times when livestock are in the field.

**67.** Mr Robinson explains his position in paragraphs 75 – 79 of his second witness statement.

75. I describe below that livestock have long grazed the land adjoining the track and the verges of the track itself. I have installed wire fences along the south side of the track which allow sheep to go underneath the fence and then onto the track itself. My fields in this area are divided up by further fences so as to be able to keep livestock in separate fields and the gates I have installed are in line with those fences to as to keep livestock separate. This will enable me, for example, to graze ewes and male lambs in different fields. Are present I am not using the fields for this purpose as I refer to below, so the gates are kept open. However once I start to use the fields for this purpose relevant gates will need to be kept shut.

76. Mr Bramwell is incorrect to suggest that the purpose of the gates is to interfere with any right of way. As can be seen from photographs 23, 43 and 46, the posts are set back from the edge of the track so they should not cause any obstruction to traffic. The gates do not contain locks and have “rider friendly” handles so they can be opened by riders without having to dismount. I understand that this is an approved standard form of gate for use on bridleways.

77. I have been criticised by Mr and Mrs Bramwell for sheep being free to go onto the track and at one stage I was threatened with an immediate injunction application to prevent me from grazing my sheep in way which gives them access to the track.

78. Throughout my time at Lizards Farm, sheep have been free to graze the land and free to cross over the track or graze the verges. Photograph 6 for example shows sheep grazing the fields to the south side of the track just beyond my house. Cattle also used to graze the same area. This is why there are and have long been cattle grids on the land at the edge of my property and at the entrance of Low Meadows farm.

79. As I described above, until the fencing works in 1998 the south side of the track was always open fields and sheep were free to graze up to the track and indeed onto the track if they wished to do so. It is not unusual to have sheep grazing along farm tracks in rural locations.

**68.** In evidence Mr Robinson suggested that if Mr and Mrs Bramwell would repair or reinstate the cattle grid at the entrance to their property it would be possible to keep the gate at G1 open. However that cattle grid has been blocked up with the result that sheep could stray into Low Meadows Farm.

### **Wooden Posts**

**69.** Mr Robinson has placed a total of 50 wooden posts (WP) in the verges adjoining the track. They are shown on the plan and I do not need to describe the positions in detail. WP1 – WP5A effectively block PP1 being used as a vehicular passing place; WP22 – WP25 block PP2; WP 35 – 39 block PP3. The remainder of the posts have been placed close to the northern boundary. It is said that they interfere with horses riding on the verge though there is little evidence of this. There is some evidence that some have been hit by vehicles driving or with wing mirrors extending over the northern verge.

### **The Pothole**

**70.** The position of the pothole is not shown on the plan. In evidence it was said to be just to the west of Saw Cut 6 some 290 m from Low Meadows Farm. As set out above Mr Bramwell filled it in. Mr Robinson removed the filling and it was not repaired until November 2013.

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**71.** There is in fact significant evidence including an email of 8 July 2012 that the track is not in a good state of repair and Mr Robinson has objected to Mr Bramwell carrying out repairs to the track. He has told him in that email that it would never be repaired and even objected to Mr Bramwell clearing snow and ice from the track.

**72.** As I pointed out it is well established that an easement carries with it such ancillary rights as are reasonably necessary for its enjoyment. This includes a right to repair and maintain the track. It would include clearing snow and repairing potholes. It can also include making alterations to and improving the track.<sup>2</sup>

### **Harassment**

**73.** Susan McNeill has been a client of Low Meadows Farm livery since 2008. In her witness statement she sets out numerous incidents of problems she has had with Mr Robinson between July and November 2013 evidenced by notes she had taken. Amongst her complaints are that Mr Robinson wrongly accused her of speeding that he has blocked her in, that he had prevented her arriving before 7 a.m, that he had driven his mower at the car forcing her to stop and that he drove his tractor down the lane at a very slow speed forcing her to take 16 minutes to get to the end of the track. As already noted Mrs McNeill was not required to attend for cross-examination

**74.** In paragraphs 17 – 36 of her witness statement Mrs Bramwell Dunn sets out numerous examples of harassment by Mr Robinson against livery customers lawfully using the right of way. I shall not set them out in detail but it is necessary to summarise them:

1. Jumping out at livery customers with a view to harassing them; shouting swearing gesticulating, using foul language, accusing them of speeding when they were driving at less than 15 m.p.h. This conduct frightened the drivers who were often ladies with children
2. Driving his vehicle at Anne Miller as she was using the lane to access Low Meadows Farm.
3. Blocking the access of Nadia Alnani; accusing her aggressively of speeding the night before when she had not visited the centre for 3 days.
4. Blocking Angela Minto (Mr and Mrs Bramwell's tenant) on her way to work. Being aggressive and assaulting Mr Bramwell when he went to assist. [Mr and Mrs Minto gave up their tenancy citing Mr Robinson's behaviour and the obstructions as the reason.]
5. Blocking a vet who was attempting to visit the livery. Blocking another vet attempting to leave the premises. Blocking and being aggressive to delivery drivers.

**75.** Mrs Bramwell Dunn was not cross-examined in detail about these incidents. In the Notes from the Yard meeting of 15 March 2014 there appears:

Mr Robinson IS NOT TO APPROACH ANY USER OF THE LANE personally or block it in any way. If he believes that a vehicle has been speeding or driven dangerously he is to provide evidence of this to the police. If the police are satisfied with the evidence they will speak to Low Meadows accordingly.

**76.** Many of these incidents were put to Mr Robinson in cross examination. In general terms he said that they were either fabricated or justified.

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<sup>2</sup> See Gale on Easements 19<sup>th</sup> Ed paragraph 1-91.

## 7 Conclusions

### ***Extent of prescriptive right***

#### **The Law**

77. There was little if any dispute as to the relevant law. It may be summarised:

1. In order to establish a prescriptive right there must be long enjoyment of the right “as of right”. That means it must be neither by violence, nor by stealth nor by leave asked from time to time” [Gale paragraph 4-98]
2. The extent of the right of way acquired by prescription must be measured by the extent of user during the period of time relied upon: [*Finch v Great Western Railway* (1879) 5 Ex D 254 at 258 ; *Mills v Silver* [1991] Ch 271].
3. The authorities on rights of way, from the leading case of *Williams v James* (1867) LR 2 CP 577 onwards, establish that the right impliedly granted or prescriptively acquired is a right for all purposes according to the ordinary and reasonable use to which the dominant tenement might be applied at the time of the implied or supposed grant. [*McAdams v Robinson* [2004] EWCA Civ 214 at paragraph 79 per Sir Martin Nourse.]

#### **Findings**

78. In my view the right of way is in general limited to the track itself. I am not satisfied that there was sufficient user of the northern verge to give rise to a prescriptive right. I am equally not satisfied that there is sufficient evidence to establish a “swing space” either side of the track going back the requisite period of 20 years.

79. There is no prescriptive right to PP1 or PP3. I accept the evidence of Mr Robinson that the use of PP1 has, at least between 1998 and 2010 been with his consent pursuant to an informal arrangement with Mr Morton. It follows that the user was not “as of right”.

80. In the light of the evidence of Mr Dickman and Mr Robinson I accept that there was no passing at the location of PP3 until 1998. It follows that the requisite 20 year period is not established.

81. I am, however satisfied that there is a prescriptive right to pass at PP2. The user is established by the evidence of Mr Dickman, Mr Robinson and Mrs Clembintson. There is no suggestion that there was any agreement in relation to PP2.

82. I am not satisfied that there is any restriction on the times that the easement can be exercised. This was in effect conceded by Miss Jarron in her closing submissions and I agree with the concession. The evidence of Mrs Clembintson and Mr Mason clearly establishes sufficient user before 7 a.m and after 9 p.m.

83. I am similarly not persuaded that there was any weight limit on the type of vehicle that can use the way. The weight limit is not pleaded and there was no application to amend. The informal discussion between Mr Robinson and Mr Morton (even if it occurred) is not a sufficient basis for me to infer a limitation on the weight of vehicles entitled to use the track.

## ***Interference***

### **The Law**

**84.** The relevant legal principles are as set out by Briggs J. in *Zieleniewski v Scheyd* [2012] EWCA Civ 247:

For present purposes the applicable principles may be summarised as follows:

- 1) Not every interference with a right of way is actionable. The owner of the right may only object to activities, including obstruction, which substantially interfere with the exercise of the defined right as for the time being is reasonably required by him.
- 2) The question whether the owner reasonably requires to exercise his right in a particular way is to be addressed by reference to convenience, rather than necessity or even reasonable necessity.
- 3) Thus, if an obstruction interferes with a particular mode of exercise of the right which it is neither unreasonable nor perverse of the owner to insist upon, then the obstruction will be an actionable interference even if there remain other reasonable ways of exercising the right which many, or even most, people would prefer.

As Blackburne J put it

“The test of an actionable interference is not whether what the grantee is left with is reasonable, but whether his insistence on being able to continue the use of the whole of what he contracted for is reasonable.” In the context of an easement acquired by prescription rather than by contract or written grant, it is common ground that Blackburne J's phrase “the whole of what he contracted for” may be substituted by the phrase “the whole of that which he has obtained by prescription”.

**85.** There are a number of other authorities to which it will be necessary to refer when considering individual elements of the claim. I shall refer to them when dealing with the individual items.

### **Conclusions**

#### ***Harassment***

**86.** Whilst I have accepted much of Mr Robinson's evidence relating to historical matters I do not take the same view of his conduct since 2012. Having seen him give evidence I formed the view he was quite capable of behaving in the way that is alleged against him. I am quite satisfied that his conduct in relation to users of the track had been totally unreasonable and unacceptable. He has exaggerated the allegations of speed. I do not accept that the speed of the vehicles was anything like the sort of figure he suggests. I accept that the occasional car may have driven too fast but that did not begin to justify his conduct. Without making specific findings of fact on each allegation I accept that he has jumped out at users of the track, behaved aggressively towards them, accused them of speeding when they were not, blocked the track, deliberately driven his tractor at a very slow speed down the track so as in effect to block it.

**87.** His attitude to repairing the track was not only wrong in law but wholly unreasonable. It can only be interpreted as an attempt by him to make the use of the way as inconvenient as possible.

**88.** In my view the allegations of harassment are proved. I would grant an injunction to prevent further harassment.

Approved Judgment***The speed bumps.***

**89.** In *Saint v Jenner* [1973] 1 AER 127 the servient owner had erected speed bumps so as to slow down the dominant tenant. The County court judge held that the speed bumps as originally constructed were not an interference. One had fallen into disrepair and had become a nuisance. He awarded damages but did not order its removal. The decision was upheld in the Court of Appeal.

**90.** In his judgment Stamp LJ said:

the learned judge found that as originally planned and laid down the ramps were not a substantial interference with the right of way. In this connection it is to be observed that in deciding what is a substantial interference with the dominant owner's reasonable user of a right of way, all the circumstances must be considered, including the rights of other persons entitled to use the way: here the rights of the defendants in connection with their property and riding activities; and there was, in our judgment, evidence on which the judge could properly hold, as he did, that the ramps as originally planned and constructed did not constitute a substantial interference.

**91.** In the course of his evidence Mr Bramwell accepted that it was reasonable for Mr Robinson to have speed bumps either side of Lizards Farmhouse and to protect the drain and septic tank. However, he objected to aggressive nature of the bumps created by Mr Robinson. In his closing submissions Mr Selwyn Sharpe accepted that 4 or 5 bumps might be acceptable.

**92.** I agree with Mr Selwyn Sharpe's submissions. In my view all (save SB 13) of the present bumps constitute an interference with the right of way and must be removed or altered. However, I would permit Mr Robinson to have a total of 5 speed bumps – one at the eastern end, one in the vicinity of the septic tank, one either side of his house and the other one between his house and the entrance to Low Meadows Farm.

**93.** Mr Selwyn Sharpe showed me a statutory instrument relating to the construction of speed bumps on a public highway. I am not satisfied that any new bumps need conform to that specification. However, any new bumps must not be dangerous and must not cause ordinary cars to scrape their bottoms. They should be created at right angles to the track.

***Gates***

**94.** Mr Selwyn Sharpe referred me to a number of authorities on gates. Most of them are fact specific. Amongst the cases referred to was the decision of Nicholas Strauss QC in *Owers v Bailey* [2006] AER (D) 106 (Sep) which contains the following:

63. In *Petty v. Parsons* [1914] 2 Ch. 653, the Court of Appeal held that the erection of a gate across the right of way was not necessarily a sufficiently substantial interference with the right of way to be actionable. Whether there was a substantial interference was a question of fact in each case. In deciding whether the interference was substantial, the court has regard to all the circumstances of the case: see *Saint v. Jenner* [1973] 1 Ch. 275.

64. I accept Mr. Wells' submission that the motives of the party whose actions are alleged to constitute an actionable nuisance are relevant to the question whether there is such a nuisance: see *Christie v. Davey* [1893] 1 Ch. 316; *Hollywood Silver Fox Farm Ltd. v. Emmett* [1936] 1 All E.R. 825. Mr. Wells also referred to the dictum of Dodd J. in the Irish case of *Flynn v. Harte* [1913] 2 I.R. 322, which was expressly approved by Ronan and O'Connor L.JJ. in *Geoghegan v. Henry* [1922] 2 I.R. 1:-

“Each case depends upon its own facts. Whether a gate is or is not an obstruction of the right is a matter of fact. He who acts in a neighbourly way may be sure he is within the

**Approved Judgment**

law. He who acts in an unneighbourly manner is breaking the law ... The question in most cases is convenience or “cussedness”? ...”

**95.** It is self evident that the presence of the closed gates adds to the inconvenience of anyone wishing to drive to Low Meadows Farm. There were no gates across the way from 1996 when Mr Robinson became owner until 2014. The gates were not closed until 2016 when Mr Robinson chose to graze the verge “as a temporary measure”. He has since changed his mind and insisted that they be closed at all times there is stock in the field. They have been closed permanently since then. The area of land to be grazed between the gates is comparatively small.

**96.** I take into account my findings in relation to the acts of harassment. I also take into account the explanation given by Mr Robinson in his witness statement and set out above. Notwithstanding this explanation I have come to the clear conclusion that Mr Robinson’s insistence on closing the gates is “cussedness” rather than convenience. His motive is relevant to my views on whether there is an interference. In my view there is.

**97.** Subject to the next paragraph I would order that the gates be left open except in an emergency.

**98.** If the gates are left open there is a risk that sheep would trespass onto Low Meadows Farm. This is easily remediable in that Mr Bramwell could repair the cattle grid or install a new one at the entrance to Low Meadows Farm. I would accordingly permit Mr Robinson to keep the western gate closed until Mr Bramwell has done this.

### **The wooden posts**

**99.** Most of the wooden posts do not constitute an interference in the light of my findings. However WP22 – WP25 which prevent passing at PP2 are a clear interference and must be removed.

### **The Pothole**

**100.** Mr Robinson’s acts in removing the filling constituted a clear interference with Mr Bramwell’s right to repair. I would make an order preventing Mr Robinson from interfering with the right to maintain and repair the track.

## **8 Damages**

**101.** There is now a claim for special damage only in relation to the loss of rent caused by Mr and Mrs Bramwell’s tenant leaving their tenancy as a result of Mr Robinson’s conduct. In evidence Mr Bramwell suggested that the period was only 2 months though it was increased to 3 months in Mr Selwyn Sharpe’s closing submissions. Some of the time the property was vacant it was being repaired or renovated. The old rent was £650 per month. The new rent was £700 per month.

**102.** I propose to take a broad brush approach. I propose to award Mr and Mrs Bramwell £1,300 under this head.

**103.** I take the view that the interferences in this case have been deliberate and serious. Not only have they caused significant anxiety they have caused substantial inconvenience, anxiety and distress to Mr and Mrs Bramwell. In addition to the special damage I propose to award general damages of £3,500.

**104.** Thus the total award of damages is £4,800.

## 9 The Counter claim

**105.** I am not satisfied that there has been excessive user of the right of way. The fact that there may have been occasional speeding by some people does not amount to excessive user. Mr and Mrs Bramwell and Mrs Bramwell Dunn have in my view taken reasonable steps to prevent their visitors from speeding over the track. They are not responsible for the occasional person who drives too fast. They must however continue to take reasonable steps to see that their visitors do respect Mr Robinson's land by not driving too fast, by not arriving too early if it is avoidable.

**106.** The Counterclaim is dismissed.