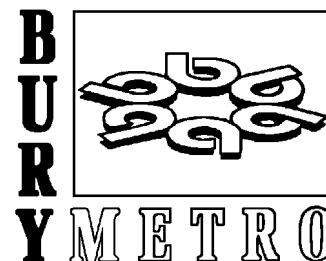


**BURY METROPOLITAN BOROUGH
COUNCIL
ENVIRONMENT & DEVELOPMENT
SERVICES**



**CLAIM FOR A PUBLIC FOOTPATH AT OSBORNE WALK,
RADCLIFFE (INCLUDING THREE SEPARATE ROUTES ALONG A
SLOPE BETWEEN OSBORNE WALK AND PAVILION WALK)
RECEIVED ON 7 FEBRUARY 2003)**

1. BACKGROUND

1.1. Before Osborne Walk

1.1.1. It has become clear from the evidence that before Osborne Walk (OW) was built the land was covered by disused allotments. A path had been formed across this land over several years. A copy of an undated Ordnance Survey map has been submitted by a resident of OW. They describe it only as "old". It shows a path running east to west to the south of Radcliffe Cricket Ground but to the north of where OW is built. The Authority does not hold a copy of this map, but Bury's Archivist has confirmed that as the map has a metric scale it must date from the 1950's or 1960's as Ordnance Survey did not use such scales before this time.

1.2. Building of Osborne Walk

1.2.1. Residents in the vicinity have given 1964, 1965, 1966, and 1967 as possible dates for the construction of OW.

1.2.2. Planning records indicate permission was granted on 2 June 1965. The Deeds for one property on OW are dated 31 October 1966.

1.3. The Fence at the Eastern End of Osborne Walk

1.3.1 None of the evidence submitted by the claimant refers to a fence being erected at the Pavilion Walk (eastern) end of OW when the houses were originally built. However, evidence from the residents of OW suggests a fence did originally exist at this location. It is possible that the original fence was not located in the same position as the remains of a fence currently visible on site.

- 1.3.2 Statements relating to when this original fence fell into disrepair (presumably due to the failure of residents to maintain) range from 1975 to 1982. One resident believes it was around 1975/6 and mentions the remains of a fence when they moved into OW in 1982. Another resident who has lived at OW since it has been built believes repair of the fence ceased in the late 1970's.
- 1.3.3 The quality of the claimant's evidence must be questioned due to the failure to mention the presence of a fence at any time. However, removal of it in the late 1970's still provides a timescale in excess of 20 years for a right of way to come into existence by prescription.
- 1.3.4 A second fence was erected after the installation of the flagged path on the embankment between OW and the Pavilion Walk. This did not close off the path, it is possible that those determined to walk along OW would have walked around the end of this fence to fulfil their aim. Remains of this fence still exist on site.

1.4 The Embankment between Osborne Walk and Pavilion Walk

- 1.4.1 Those objecting to the claim for the right of way suggested that the embankment was virtually impassable due to its construction from builder's rubble and a gradient steeper than existing. Residents of OW do however give an impression that the embankment could be traversed with great care.
- 1.4.2 Neither the claimant nor the submitted evidence forms mention any difficulty in using the path before the sloped, flagged path was installed. However, there is agreement between supporters and objectors that the embankment was originally steeper.

1.5 The Homer Street (Western) End of Osborne Walk

- 1.5.1 One family of OW provide a detailed account of a "private usage gate" at this end of the path, installed when OW was built and lasting until at least 1984.
- 1.5.2. Another resident of OW recalls a "barrier" at the Homer Street end of the path when he moved into the property in 1976. However, residents living at OW since it was built only mention a fence at the Pavilion Walk end of the path.
- 1.5.3 Other residents of OW have been asked by the Authority if they recall a barrier, fence or gate at the Homer Street end of the path. None of them do. Indeed, nobody else has made reference to a structure at this location. All residents of OW were asked if we could interview them to gain information and evidence on this matter but they did not respond.
- 1.5.4 The presence of a "private usage gate" would not have prevented use by or rights arising in favour of the public unless it was locked and/or had a private sign attached. One resident suggests private signs were originally erected on OW when it was built but does not say when they were removed and they do not state that the gate was locked. It would have been necessary for residents to have keys to any locked gate if movements by them were to continue unrestricted and there would have to have been arrangements made for the postman etc. None of the evidence suggests this was the case.

1.5.5 It seems apparent that access along OW could not have been successfully restricted at the Homer Street end of OW.

1.6 When was the sloping, flagged path to Pavillion Walk installed?

1.6.1 The claimant and some of the residents of OW state that the path was installed "15-20" years ago.

1.6.2 One resident states the early 1990's.

1.6.3. The Authority does not have a record of when the path was installed, however, Mr Jones ex-leader of Bury Council, local resident and allotment holder, can date the path in relation to his political career. He has stated that it must have been installed between 1979 and 1986.

1.6.4 Another resident of OW, believes it was built some time between 1985 and 1990.

1.6.5 An aerial photograph from 1979 appears to show a trodden line on the slope but not a flagged path. Another aerial photograph taken in 1989 does appear to show a flagged path. Both the 1979 and 1989 "versions" of the path appear to run on a similar line.

1.6.6 Therefore, it can be deduced that the path was built some time between 1979 and 1989. By using all the available evidence, the balance of probability is that the path was built in 1985 or 1986.

1.6.7 The Council removed the flags from the path in November 2002. This gives the flagged path a life span approximately 16 years.

1.6.8 Residents of OW state they have complained to the Council ever since the path was installed. They claim that as a result the right of way has always been in dispute and cannot have attained public status through user evidence. However, as these complaints were made to the Council and not to the users of the route this action does not amount to bringing the right of way into question and aerial photographs suggest that the route of the sloping flagged footpath had already been in use prior to the construction of the flagged path.

1.7 Notices and Obstructions.

1.7.1. The claimant states that notices and obstructions began to appear in 1999. Although many of the submitted evidence forms neglect to mention notices and obstructions, there is evidence both for and against the claim which agrees with this date.

1.7.2 There are some queries about the wording of the notices and who erected them. However, notwithstanding these points, it is felt that their presence in 1999 was enough to bring the status of the path into question. As a result, any

claim for a public right of way must relate to a 20 years (or more) period prior to 1999.

- 1.7.3 One resident has stated that he obstructs OW once a year to prevent it from becoming a public right of way. Evidence has been presented that he has actually attempted this on two occasions by taking up paving flags and then building a gap stile from breezeblocks. There is no evidence to suggest this actually stopped people from using the path.

2.0 EVIDENCE

2.1. Evidence Forms Submitted by the Claimant

- 2.1.1 Twenty-eight evidence forms were submitted. Three were immediately discounted as they were completed by minors. Nineteen forms claimed over twenty years use of the path and six claimed less than twenty.
- 2.1.2 Of the nineteen forms claiming over twenty years use, twelve mentioned recent notices on OW, one referred to a barrier at the Pavilion Walk end of OW and three stated that there had been obstructions outside No 34 OW.
- 2.1.3 Two forms did not have answers completed to all the questions. One was completed on behalf of someone else and another claimed use of the route for a longer period than OW has been in existence.
- 2.1.4 In addition, the claimant has completed the questions on the front sheet of every claim form relating to the locations of the footpath being claimed. Following advice from Counsel, those who submitted evidence forms were asked to agree to be interviewed by the Authority to clarify the contents of their forms. As a result, seven people were interviewed and six of these signed statements or maps confirming the route they were claiming and its location. Others approached to be interviewed did not respond.

2.2. Letters to Local Residents

- 2.2.1 Letters were sent to 111 addresses in the vicinity of OW asking for any information or evidence relating to the use and history of the claimed path.
- 2.2.2. Nineteen replies were received. Two needed to be discounted as they were from people who had already submitted claim forms. Eleven were signed by their author and their addresses could be confirmed. Six of these claimed over twenty years use of the path. Of these six, four stated that they had never been stopped (two made no comment), one had never seen any notices, two had seen recent notices (three made no comment) and two had not seen any barriers (four made no comment).
- 2.2.2 Five replies claimed less than 20 years usage. Six letters were received from anonymous sources. Only one of these claimed over 20 years use of OW.

2.3. The Residents of Osborne Walk

2.3.1 All the residents of OW have been asked for their views, information and evidence relating to the claim.

2.3.2 Ten of the twenty properties on OW have replied. Of these eight have objected to the claim and two have supported it, although one of these did not provide a clear signature or address. In addition to the issues listed previously, the following matters were raised:.

1. A "T" sign on the street nameplate for OW suggests the path is a dead-end.
2. Originally one resident of OW signed a statement indicating that rain often caused flooding up to ankle depth on a section of the path until it was drained by improvements on the allotments. They claim that both the presence of water and the repair works would have discouraged people from using the path. This resident moved into their property in 1977.

This resident then submitted a second signed statement claiming that the path was continually flooded up to ankle depth and was impassable from a few days up to a week at times.

3. A photograph showing the overgrown nature of the path in the 1980's suggests that the public would be unlikely to walk along it.
4. The house deeds show the path to be private.
5. The house deeds show the path to be public by using the phrase "And all others entitled" in relation to those permitted to use the path.
6. The wife of one of the individuals who submitted a claim form was challenged when using the path approximately six years ago.

Officers views on these points are as follows:

1. A "T" sign means no through route for motorised vehicles and does not relate to pedestrians and would be insufficient to bring the rights into question.
- 2&3 Flooding and overgrown vegetation may have made OW less pleasant to walk along but neither amount to access being denied.
- 4&5 Point 4 is irrelevant. The claim for a right of way has been made because the status of the path is in dispute. Point 5 is an incorrect interpretation of the effect of the wording used to convey explicit rights of way along OW.
- 6 There is no evidence to suggest that the conversation that took place was taken by the member of the public using the path as being a "challenge".

The person challenged has not submitted evidence and would not have necessarily passed on the information to anyone else.

2.4. Original Landowner of Osborne Walk

2.4.1 The estate of Thomas Drinkwater has been contacted and asked for their views regarding the claim. They have stated that they wish to object to the claim but have not provided any evidence or information to support this stance.

2.5. Mr Jones

2.5.1 Mr Jones ex-leader of Bury Council and local resident has been mentioned by several people as having knowledge of this matter. He was interviewed by the Authority and produced information relating to timescales for the refurbishment of the allotments and the construction of the sloping, flagged path.

2.6. Aerial Photographs

2.6.1 Aerial photographs have been inspected from 1979 and 1989. The 1979 photograph appears to show a trodden route along the slope at the Pavilion Walk end of the path. The 1989 photograph appears to show a flagged path has been installed on the slope. Both “versions” of the path run along a similar line.

2.7 Housing Services

2.7.1 Housing Services are responsible for the embankment between the eastern end of OW and the Pavilion Walk.

2.7.2. Housing Services have presented a copy of their file relating to this matter. It commences 1 February 2001. Investigation of it has discovered that Housing Services have no records of events relating to OW before this date.

2.7.3. Housing Services were asked for their official view on the claim for a right of way across the land. The response stated “Detailed enquires have been made and unfortunately Housing Services have not been able to establish exactly when or why this sloping path was laid” Despite this acceptance of lack of knowledge of the matter, the response goes on to say “Having taken legal advice I understand that the laying and removal of the sloping path could be indicative of Housing Services granting permission for the public to use the route over the sloping footpath. Removal of the path that had been laid could be indicative of removing said permission”.

It is not accepted that the absence of flagging would be sufficient to defeat the claim for this route.

2.8 Bury Archivist.

2.8.1. The Archivist was asked to search for records relating to OW. He was unable to uncover any relevant information.

2.9 Other Council Divisions/Sections.

- 2.9.1. Planning records have been inspected. The permission for the building of OW was granted in June 1965. No other relevant information was discovered.
- 2.9.2 The Parks and Countryside Section were asked if they had any records relating to the allotments. They have nothing of relevance to the claim.

2.10. Three routes claimed across the embankment

- 2.10.1 The claimant has claimed three paths across the embankment connecting with OW.
- 2.10.2 The first is a direct continuation of OW, running straight down the embankment. As a result this is the steepest of three routes.
- 2.10.3 The second follows the line of the flagged path which was removed in November 2002. It runs diagonally along the embankment before turning to meet Pavilion Walk at a right angle. A dropped kerb exists at this junction.
- 2.10.4 The final route again follows the previously flagged path but continues in its diagonal line until reaching Pavilion Walk. This would provide the most direct route for anyone using the path around the southeast boundary of Radcliffe Cricket Club in order to access Unsworth Street.
- 2.10.5 The supporting evidence forms submitted by the claimant refer only to a path from Homer Street to Pavillion Walk and do not give any details of which of the three paths along the embankment have been used.
- 2.10.6 The aerial photographs described previously in this report are of insufficient scale and detail to differentiate between three separate routes, particularly as a tree and shadow obscures part of the area.
- 2.10.7 The fence erected at the end of OW may have dissuaded use of the path directly down the embankment for the time it was in situ. However, it is possible that the more adventurous pedestrians would have simply walked around the end of the fence and then straight down the embankment in order to take the quickest and most direct route to their destination. A well trodden line in this position suggests that this is the case.
- 2.10.8 Photographs provided by the claimant taken in February 2003, show three worn trodden lines on the grassed embankment on the lines she has claimed. The current situation on the site is similar, suggesting that all three routes are currently in use.

3.0. SUMMARY

- 3.1. Twenty –five identifiable people have claimed over 20 years of use of OW and the adjoining embankment at Pavilion Walk. Six of these have signed statements relating to interviews carried out by the Authority to verify their evidence.

- 3.2. One identifiable resident of OW supports the claim that rights have been acquired over OW.
- 3.3. Eight occupiers of properties on OW believe OW to be private.
- 3.4. Ten occupiers of properties on OW have not directly made their views known regarding the matter.
- 3.5. Housing Services state the flagged sloping path gave the public access along this route "by permission"
- 3.6. The claimant has claimed three paths along the embankment at the Pavilion Walk end of OW. The supporting evidence forms do not provide information as to which of these paths the person completing each form has used. However, if it is found that OW has become a public right of way through usage then it would appear that all three embankment paths have been available for use by the public during the relevant time frame. The fence at the Pavilion Walk end of OW previously referred to may not have prevented access to the path straight down the embankment for the time it was insitu.
- 3.7. The evidence can be summarised as follows:
 - i) A fence was erected at the Pavilion Walk end of the path at OW when the houses were first built.
 - ii) The fence fell into disrepair, probably during the late 1970's .
 - iii) The slope at the Pavillion Walk end of the path was difficult to use but passable for anyone wishing to take a short cut. Therefore, unhindered public access commenced by 1979 at the latest. All three claimed routes along the embankment would have been available at this time.
 - iv) A flagged footpath was installed by the Council on the slope between OW and Pavilion Walk, probably in 1985 or 1986.
 - v) A fence was erected at the top of the slope from OW to Pavilion Walk in the late 1980's or early 1990's. It is possible that its width did not prevent those who were determined to walk straight up and down the embankment from doing so. A well trodden line at this point suggests that this user was not restricted by this fence.
 - vi) Private notices and obstructions began to appear on OW in 1999, bringing the status of OW into question for the first time since the fence fell into disrepair in the late 1970's.
 - vii) The sloping flagged footpath along the embankment was removed in November 2002.