

## **Regulatory Committee**

Meeting to be held on the 6<sup>th</sup> July, 2005

### **Part I - Item No. 7**

Electoral Division affected:  
Ribble Valley South West

#### **Wildlife And Countryside Act 1981**

**a) Claimed Byway Open to All Traffic From Saccary Lane to Public Footpath No. 3, Mellor, Ribble Valley Borough; and**

**b) Claimed Upgrading to Byway Open to All Traffic of part of Public Footpath No. 3, Mellor, Ribble Valley Borough**

**Claim No. 804/403**

(Annex 'A' refers)

Contact for further information:

S P Southworth, 01772 533430, Legal Services Group

Mrs A Taylor, 01772 534608, Environment Directorate

#### **Executive Summary**

a) The claim for a byway open to all traffic from Saccary Lane to Public Footpath No. 3, Mellor, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way; and

b) The claim for part of Public Footpath No. 3, Mellor, Ribble Valley Borough, to be upgraded to the status of byway open to all traffic on the Definitive Map and Statement of Public Rights of Way,

in accordance with Claim No. 804/403

#### **Recommendation**

1a) That the claim for a byway open to all traffic from Saccary Lane to Public Footpath No. 3, Mellor, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way; and

1b) That the claim for part of Public Footpath No. 3, Mellor, Ribble Valley Borough, to be upgraded to the status of byway open to all traffic on the Definitive Map and Statement of Public Rights of Way,

in accordance with Claim No. 804/403, be accepted; and

2) That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) and (ii) of the Wildlife and Countryside Act 1981 to a) add to the Definitive Map and Statement of Public Rights of Way a byway open to all traffic extending from a point on Saccary Lane, Mellor, Ribble Valley Borough, to the north of Throstle Croft and Throstle Nest, in a general southerly direction to a point on Public Footpath No. 3,

Mellor, Ribble Valley Borough, to the south of Throstle Croft and Throstle Nest, a distance of approximately 167 metres, and shown between points A - E on the attached plan, (GR 6628 3217 to 6632 3201); and b) to upgrade to the status of byway open to all traffic on the Definitive Map and Statement of Public Rights of Way part of Public Footpath No. 3, Mellor, Ribble Valley Borough, extending from a point to the south of Throstle Nest, in a general southerly direction to a point on Saccary Lane, Mellor, Ribble Valley Borough, a distance of approximately 51 metres, and shown between points E – G on the attached plan, (GR 6632 3201 to 6631 3197).

## **Background**

A claim has been received for:-

a) a byway open to all traffic extending from a point on Saccary Lane, Mellor, Ribble Valley Borough, to the north of Throstle Croft and Throstle Nest, in a general southerly direction to a point on Public Footpath No. 3, Mellor, Ribble Valley Borough, to the south of Throstle Croft and Throstle Nest, a distance of approximately 167 metres, and shown between points A - E on the attached plan, (GR 6628 3217 to 6632 3201), to be added to the Definitive Map and Statement of Public Rights of Way; and

b) part of Public Footpath No. 3, Mellor, Ribble Valley Borough, extending from a point to the south of Throstle Nest, in a general southerly direction to a point on Saccary Lane, Mellor, Ribble Valley Borough, a distance of approximately 51 metres, and shown between points E – G on the attached plan, (GR 6632 3201 to 6631 3197), to be upgraded to the status of byway open to all traffic on the Definitive Map and Statement of Public Rights of Way.

## **Consultations**

Ribble Valley Borough Council

The Borough Council's Countryside Officer understands that, prior to 1993, the route was open to traffic. In addition he understands that it had been open for access for a good number of years and that its closure around 1993 was not met with universal approval by a number of people who claimed to have knowledge of its existence going back for some considerable time. The Borough Council, therefore, would not have any objection to the proposed Modification Order.

Mellor Parish Council

The Parish Council Planning Committee were all in full support of the scheme presented, and were keen that established rights of way were accessible.

## Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in 'Advice – Head of Legal Services Observations'.

### **Advice**

#### Environment Director's Observations

a) Claimed byway open to all traffic from Saccary Lane to Public Footpath No. 3 Mellor, Ribble Valley Borough

The claimed route commences at point A, where it leaves Saccary Lane. A road sign warning that Saccary Lane is windy beyond this point is positioned at point A but clearly relates to Saccary Lane and not the claimed route.

From point A the claimed route is tarmaced and its appearance is that of a private entrance to a residential property. A substantial wooden gate has been positioned across the claimed route and its height and design mean that it is not possible to see through or over it to see the claimed route beyond. The gate is hung on two substantial stone built gateposts; on the left gatepost is a plaque bearing the name of the property (Throstle Nest) and on the right gatepost is a sign saying 'Private Road'. The gates are kept closed and are operated by a telecom system linked to the house. Access along the claimed route is therefore not possible and the route beyond the gates is not visible due to the size and design of the gate and because of the fencing and dense vegetation either side of the gates.

It appears that the gateposts may have been increased in height since they were originally constructed as the top four layers of stone brickwork look like they have been more recently added.

With permission of the landowner the remainder of the route was inspected.

Beyond the gates at point A the claimed route extends in a south-south easterly direction along a tarmaced access road constructed to provide access to the rear of Throstle Nest (not shown on the Ordnance Survey maps available). The claimed route follows the access road for approximately 20 metres to point B at which point the access road sweeps away from the claimed route in a more south easterly direction to provide vehicular access to the house.

From point B the claimed route continues in a straight line in a south-south easterly direction across part of the landscaped garden area. The claimed route has a grass surface which is regularly mowed and has been integrated into the landscaped garden. The claimed route is not obstructed by any trees or bushes that are found on either side of the grass 'strip'. Under the grass, close to point B, there are two parallel strips of 'grass-crete' (knobbly concrete track covered with grass) that is visible for several metres which would allow vehicular access over the grass without damaging the surface.

From point B the claimed route continues in a straight line for approximately 60 metres to point C where two black bollards have been placed across the route to prevent vehicles driving over the grassed area/claimed route.

Immediately behind the bollards is a thin strip of block paving and a metal drainage grid which catches water flowing down the claimed route from point D.

Beyond point C, continuing in a south-south easterly direction, the claimed route has been tarmaced and, on the day of inspection, a car belonging to the landowner was parked on the claimed route between points C and D.

Between points D and E the claimed route continues in a south-south easterly direction along a second tarmaced access drive leading from Throstle Nest to Saccary Lane. On the right (east) it passes a tennis court and on the left (west) it runs parallel to a stream over which there are two substantial wooden footbridges providing access into additional landscaped garden.

The claimed route ends at point E where it is obstructed by a second set of wooden security gates identical in appearance to the gates at point A. As with the gates at point A these gates are kept shut and are operated by a telecom system linked to the house. The gateposts are identical to those at point A and also appear to have been raised in height since they were originally constructed. The gates are on the boundary of the land attached to the property and form the start of a second tarmaced driveway leading to the property.

On the outside (southern side) of the gateposts there is a post box and a plaque saying 'Throstle Nest'.

In summary the claimed route is approximately 167 metres long and runs in a virtually straight line rising gradually uphill in a general south-south easterly direction. Use of the claimed route is blocked by gates at points A and E. A 'Private Road' sign exists at point A and the overall appearance is that the gates at both point A and point E give access to a private residential property.

b) Claimed upgrading to byway open to all traffic of part of Public Footpath No. 3, Mellor, Ribbles Valley Borough Council

The claimed route commences at point E where the gates providing access to Throstle Nest (and the claimed route described in a) above) are positioned. The claimed route extends in a southerly direction rising quite steeply in gradient along a tarmaced access road which provides vehicular access to Throstle Nest and a number of additional properties located further along Public Footpath No. 3, Mellor.

A yellow grit box is located close to point E and the route has been tarmaced to the full width (approximately 6 metres) between two stone walls.

At point F a tarmaced access road branches off the claimed route to the east to provide access from Saccary Lane to Pleasant View Farm. From point F the claimed route continues uphill for a short distance to point G where it ends at Saccary Lane.

At point G, just before joining Saccary Lane, there is a covered grid that has been positioned across the full width of the route to collect water running off Saccary Lane. A public footpath signpost has been banded onto a telegraph close to point G. The sign points along the claimed route (which is recorded on the Definitive Map as a public footpath).

In summary, the claimed route is approximately 51 metres long. It is tarmaced throughout its whole length and is fully accessible. There is a public footpath signpost at point G that has been erected by the County Council but there are no other signs or barriers indicating the status of the route or preventing access.

A variety of maps, plans and other documents were examined to try to determine when the claimed route came into being, and to obtain any information that would help determine its status.

Saccary Lane is shown on the earliest map examined, which was Yates' Map of Lancashire of 1786. The scale is very small, and it appears that the lane in the area of dispute is shown with a number of bends, one of which is probably the current curved stretch of lane to the west of the claimed route. A building is shown at the approximate position of Throstle Nest, and the name 'Throstle Nest' appears on the map. The claimed route itself is not shown.

'Throstle Nest' is also shown on Stockdale's map of 1818, although it appears to be on the western side of the lane. This map shows roads straight, or with broad curves, and so it is of little help in determining whether the claimed route, or the modern Saccary Lane, (or both), was the main thoroughfare at the time. Greenwood's map of the same date is the earliest map examined that shows the road layout at Throstle Nest as an oval - a lane to the west on the alignment of the current Saccary Lane, and another on the east corresponding to the claimed route. There is no distinction on this map between the two parts. The property Throstle Nest is shown and named.

Teesdale/Hennet's map of 1830 also shows the oval-shaped road layout. This map shows the eastern part (the claimed route) as the wider of the two, with the modern Saccary Lane the narrower lane.

The first edition of the 6-inch Ordnance Survey map, surveyed in 1844-46, and published in 1848, shows both routes. They are of similar width, and neither is shown with any lines drawn across it which would indicate some sort of barrier, such as a gate.

The first edition of the 25-inch map, published in 1893, shows the claimed route with a line drawn across it both at the northern end, point A, and the southern end, point G. The claimed route is not shown coloured whilst Saccary Lane ('Zechariah Brow' on this map) is shown coloured, along with other lanes which are now regarded as public roads. The lack of colour may indicate that the claimed route was not regarded at the time of publication as part of the main public road network in the parish.

The 1911 and 1931 editions of the 25-inch OS map both show gates at the northern and southern ends of the claimed route.

The 1956 6-inch OS map, which is a revision of an earlier edition, revised between 1930 and 1945, shows the claimed route with gates at each end.

The 1970 25-inch OS map shows the claimed route with a gate at the northern end only.

There are no tithe or inclosure maps for this area of Mellor.

The maps produced under the provisions of the 1910 Finance Act were also consulted. These maps were produced to record land in private ownership, with details in accompanying valuation books, to enable owners of land to be taxed on its incremental value. Landowners were entitled to claim a reduction in tax due if a public right of way crossed their land, details of which were recorded in the valuation book. In this instance, the Finance Act map shows the claimed route within a parcel of land, not excluded from it. The parcel is described in the accompanying valuation book as 'Throstle Nest', owned by John Hargreaves. A site value deduction for a right of way was claimed for a 'bye road' for the Ordnance Survey parcel number 317, which plot exactly corresponds to the claimed route.

No reference has been found to any legal stopping-up of a highway along the claimed route.

The claimed route was not shown on the parish survey map for Mellor. Public Footpath No. 3, Mellor, was shown ending to the east of the claimed route. On the subsequent Draft Map for Blackburn Rural District, this footpath was shown joining the claimed byway, and continuing to Saccary Lane, in the same way as it is shown on the current Definitive Map. There is no record of an objection to the depiction of the claimed route on the Draft Map, or to any other map produced in preparation of the current Definitive Map.

No other maps or documents were found which provide any useful information.

In summary, map evidence shows that the claimed route has existed since at least 1818, and is shown on all maps examined produced since that date. It was recorded as having gates by the Ordnance Survey in 1893, and in 1910 the owner of the land seems to have believed it was a public right of way, describing it as a 'bye road'.

#### Head of Legal Services Observations

##### Information from the Applicant and supporters

In support of the claim, 16 evidence of use on foot forms have been submitted indicating knowledge of the route for 65 years (1); 50-59 years (2); 40-49 years (3); 30-39 years (5); 20-29 years (3); and 10-19 years (2).

The forms indicate use of the route on foot for 62 years (1); 40-49 years (3); 30-39 years (3); 20-29 years (5); 10-19 years (3); and less than 10 years (1).

The usage has been mainly for pleasure and recreation purposes, going to shops and school, dog-walking, visiting friends, and as part of a circular walk, as a safer alternative to using Saccary Lane. The usage ranges from daily, 2/3 times per week, weekly, twice monthly, monthly, and less frequently.

Of those witnesses completing evidence of use on foot forms, three also mention use on bicycles (from 1942-1953, 1949-1998, 1974-1983); two mention use on horseback (from 1985-closure, 1990-closure); and seven mention use in vehicles (1960-closure, 1960-2003, 1965-2000, 1968-1969, 1975-1999, 1981-1992, 1986-1993 for the delivery of milk).

Several of the witnesses refer to gates at either end of the route. It is mentioned that the gates at the northern end were seldom closed until being locked in 2002, although one witness mentions that a new gate at this location prevented access in 1991. At the southern end of the route it is mentioned that a gate was erected in 1993, and replaced in 2002, being locked in about 1998 or 1999. Further, mention is made of the erection of 'private' signs in or around 2002, and occasional challenges to use from around 1996 to 1998.

Prior to those dates, however, the witnesses were not working for any owner or occupier of land crossed by the claimed route at the time when they were using it; they have not been stopped or turned back when using the route, and have not heard of anyone else having been challenged; they have not been told by any owner or tenant that the way was not public; they have never known of any locked gates or other obstructions on the route (other than recently, as detailed above); they have never seen any prohibitory notices on or near the route (again, other than as detailed above); and they have never been given permission to use the route.

One of the witnesses mentions that the owner of Throstle Nest from 1986-2001 saw her using the route (on foot) but never stopped her. A further witness mentions that previous occupiers of Throstle Nest often saw her using the route and were always friendly and passed the time of day. One witness was invited to pick blackberries by a previous owner.

The occupier of Throstle Croft during 1968-1969 states that he witnessed use of the route by persons on foot, cycle, horse, motor cycle and in motor vehicles, adding that, during those years, and into the 1990's, the route was well defined and separated from the adjacent gardens by mature rows of hedgerows on both sides. He adds that, during that time, he often spoke with the owners of Throstle Nest who never expressed any adverse comments about use of the route. This witness also submits that the route is shown on an Ordnance Survey Map circa 1970, marked as a 'poor or unmetalled road', believing that this could have been a reason for its omission from the Definitive Map.

Further to the submission of the evidence of use forms, five sworn affidavits or statements have been submitted supporting the claim.

One of those witnesses lived at Throstle Nest, Saccary Lane, Mellor, from 1921 (aged 4) until 1939 when he joined the Army. The property and adjoining land was

purchased by his father in 1919 and was owned and occupied by the family until sold in 1986.

Since demobilised in 1946 he has lived in Blackburn and regularly visited his sister and her family at Throstle Nest until she went into a nursing home in 1984.

He has known the route since 1921. The route has always run over the same route.

He states that gate posts and gates on the north entrance from Saccary Lane were built and erected by his father in 1936 for appearance purposes only and not for privacy. Gates were left open at all times except when moving cattle. There were no gates either midway up the road or at the top.

He has never seen any notices such as 'Private Road', 'No Thoroughfare' or 'Trespassers will be prosecuted' on the route.

He submits that, from 1921 to 1939 (when he lived at Throstle Nest), the route was almost daily used by the public as a thoroughfare on foot, sometimes on horseback, motorcycle and pedal cycle, and very often in vehicles. The public preferred to use the route as that part of Saccary Lane is a narrow lane with no footpath and dangerous corners.

The route continued to be so used during his sister's occupancy and ownership until 1986 when the property was sold. Until then it was also used by provender lorries coal lorries supplying the farms adjacent to Lower Throstle Nest.

Their neighbours at Pleasant View (formerly Blue Slate Farm), Deercroft Farm (formerly Higher Throstle Nest Farm) and Woodhouse Farm were granted in 1919 by deed the use of the route.

He has never heard of anyone being stopped or turned back when using the route.

A second witness, born in 1933, has always lived at Showley Fold Farm. He first recalls walking up and down the road via the house known as Throstle Nest (the Throstle Road) with his Grandfather, who lived with them when he was four years of age, when he often called to see friends at Saccary House, about half a mile from their house. Their journeys were frequent in fine weather until he started school when he was five, when the walks with him were less frequent until he died in 1940.

He has, every year, used the Throstle Road from 1937 until 1999. At least twice a week between the time he left school at age 14 (1947) and 21 (1954), it was necessary to use that road to reach Mellor Village, catch a bus from the Spread Eagle Public House to Blackburn, to visit cousins at Cunliffe Fold Farm, and many friends on Saccary Lane and adjoining farms. The use has been many times a year.

From 1942 (age 9) until 1954 (age 21) he cycled on the Throstle Road.

He submits that wooden gates on the north road entrance until 1991 were only known to be shut:-



- (i) when cattle were moved once or twice a year;
- (ii) to stop youngsters using the road to race in sports cars in the 1950's. The gates were replaced in 1991 and large gates erected in 2002 and locked in 2002 for the first time. Until at least 1991 there were spaces for walkers on both sides of the gates.

He also submits that, to the south, there was a gate on the boundary to Saccary Lane and it was knocked down by a wagon during the war and not replaced. New gateposts slightly to the north of that point were built in about 1993; gates were erected in about 1996; and were locked in 1998. Substantial new gates were erected in 2002.

He adds that he has never been stopped by anyone from using the Throstle Road nor asked permission or paid to use it. To his knowledge the road has, until 1991, been used by many people on foot and by bicycle particularly as that part of Saccary Lane on the west of Throstle Road is very narrow and without a pavement and very dangerous to walkers and cyclists.

He has only known of one occasion when anyone was stopped from using the Throstle Road and that was in 1998 when two of his grandchildren aged 13 and 11 were stopped and turned back by the then owner of the Throstle Road.

The next day his wife went up that road with their grandchildren and he saw them and did not object nor turn them back. His grandchildren had never previously been stopped from using the road.

The third witness is a former owner of The Rann, Saccary Lane, also known as Beech House, quarter of a mile south of the route, living there from 1958 – 2003.

He has used the route on foot from 1958 to 1999 going on country walks often with members of his family. The route was used because of the dangerous and narrow road on that part of Saccary Lane between the entrance and exit to the route.

He has also used the route by car mostly proceeding south up Saccary Lane and only a few times proceedings north, all journeys between 1958 and 1991, but not yearly.

He has on many occasions between 1967 and 1996 pushed his bicycle up the route and on a few occasions cycled down it. He often stopped at Throstle Nest to talk to the occupier who would be in the garden ready for a chat. A later occupier's dogs would at times come out to bark at him.

He submits that there were old wooden gates at the north entrance to the route which he never saw shut. New stone gateposts were built and gates were erected in 1993 and if shut he would open them automatically by pressing a button. However, in summer, 2002, substantial gates were erected and locked.

Gateposts were built at the 'T' Junction on the route on the south of Throstle Nest in 1993 and wooden gates erected about 1996, which he does not recall seeing closed

until 1998, when the gates were closed but would open automatically with the pressing of a button.

One evening in the summer of 1998 with a friend and his son they opened the south gate – (the lights went on) – and they went over the route and opened the North Gates to Throstle Nest to proceed to the A59. Later they returned the same way. The lights came on again and no one challenged them.

In winter 1998 on the south gatepost a security device with a dial code was installed with a bell push connected to Throstle Nest. On Sunday, 7<sup>th</sup> February, 1999, with a friend, they wanted to use the route at the south gate. They pressed the bell but there was no reply. They returned a few minutes later and he noticed the owner by his car near the fence. He shouted to him to attract attention and demanded to know why the gate was locked as they wanted to go through and he told us there had been 3 attempted burglaries. After a chat he introduced him to his friend who told him he used to live in Throstle Croft and he told him that the route was used by the public at that time. He asked the owner if he was going to open the gates to let them through and he replied "all right then". He told him that he was exercising his right of way and he did not comment other than to tell them to open the north gate by pressing the stud on the right side of the gatepost.

In 2001 he met the owner when he was working at the new entrance to Throstle Croft on Saccary Lane and he told him it was a great nuisance having the lock on the south gates as there was a Public Right of Way over the road and he wanted to use it, and the owner replied "I beg to differ".

On 1<sup>st</sup> April, 2002, he and his friend were stopped by the owner of Throstle Nest and the route when they were using the route in front of his house, Throstle Nest, and he strongly objected and escorted them off the premises to the south gate. A few weeks later he put up strong gates and a notice saying 'Private Road'.

He was not aware of any previous notices; has always used the route without payment, without permission and not secretly.

He has also submitted a copy of a Conveyance dated 31<sup>st</sup> March, 1919, of Throstle Nest and the route from the personal representatives of Sarah Hargreaves to Richard Lowell Jepson and the conveyance plan endorsed thereon refers to part of the route as 'Private Road and Public Footpath'.

The fourth witness lived at Throstle Croft from 1968 – 1973 and submits that, in those years, he observed that the road between Throstle Croft and Throstle Nest was used as a shortcut by walkers, cyclists and motor vehicles, to avoid the tortuous part of Saccary Lane, and was open at all times to all comers.

He states that the occupier of Throstle Nest used to take pleasure in talking to the many walkers who used the lane.

He submits that there was a pair of disused gates at the northerly end of the road which were never closed.

He adds that the road was shown on the 1970 Ordnance Survey map.

In 1993 a new owner of Throstle Nest unlawfully closed the road to all traffic, by building gates at the southerly end of the road.

The final witness lived at Throstle Croft from 1986-1998. Throstle Nest had been owned by his family since 1919.

To his certain knowledge the road between the two houses was always open to the public until 1993. It served as the access road to Throstle Croft, Throstle Nest, Pleasant View Farm, Woodhouse Farm and Deercroft Farm. The road was used by pedestrians, animals, motor cars, motor lorries and agricultural vehicles, by members of the public on foot, on horseback and on cycles. Peter Ainsworth, a local farmer, drove his animals up the road about twice a year.

In 1993 the then owner of Throstle Nest rebuilt gateposts at the northerly end and erected gateposts at the southerly end of the road between Throstle Croft and Throstle Nest, and later unlawfully closed the road to all comers. He restricted use of the road in stages, first by erecting gates across the southerly end of Throstle Road in about 1996, and by September, 1998, closing the gates to bar all traffic from the road. In 1993 he caused an old pair of gates at the northerly end of the road, which had always been left open, to be replaced by new gates which, a year or two later, were electrically-controlled and always kept closed.

In December, 1998, the witness observed that the southerly gates could only be opened by means of an electrical keypad controlled by an intercom to Throstle Nest. The roadway between the gates was unlawfully re-aligned and narrowed. Photographs have been submitted, one in particular showing the route in 1985 as a track bounded by mature hedgerows. Others show works affecting the route and gates in 1993.

#### Information from others

A recent owner of Throstle Nest has commented that Throstle Nest was built in approximately 1764 and no 18<sup>th</sup> or 19<sup>th</sup> Century maps showing rights of way have been discovered. Private access was available to Throstle Nest and to the four other farms adjacent to the public road.

This access is understood by him to be the currently claimed public right of way through his garden.

The passage through what is now Throstle Nest's garden has always been understood to be a private access for the four farms/dwellings. As far as he is aware this fact is supported by all conveyances of the local land (referring to the private right of way for those farm residents). There is no public reference to a right of way either in the deeds of the land or on any public maps or documents from 1764 until the present date. These farms' rights of access have been bought out over the period of 20 years with the exception of one party who continues to be entitled to (and is granted) access, but very rarely exercises her right.

First-hand accounts of the property are only available to him from the early 1960s. Since the early 1960s he can confirm a gate has been present on the bottom of the garden. The evidence so far obtained indicates that the gate was there before then. Evidence supports not only that the gate was usually left closed, but also that on the only occasion they have been able to document, a trespasser who (together with friends of his) were going across the land were ordered off the land. (He also notes that the witness points out that he knew that his actions were wrong – the land was private).

In around spring 1985 Throstle Nest was purchased by the previous owner.

The recent owner of the property has submitted a Statutory Declaration from the previous owner of the property referring to the gates at this location; discussions with the Chair of the Local Parish Planning Committee; and one incident of challenge to use of the route. Further details regarding these matters are provided later in this report.

The recent owner can confirm that throughout his occupancy of Throstle Nest the gates have remained closed and locked and nobody was granted access other than those authorised by his family.

It is submitted that the evidence clearly defines that the access has been blocked and rights asserted for at least 40 years. Complaint has been non-existent other than by two persons who appear to have been content to wait 12 years to even voice an issue with the owner of Throstle Nest, a further 4 before repeating the complaint over the fence, and finally a further 2 years before making this claim.

The recent owner of Throstle Nest has submitted a Statutory Declaration from the previous owner, who purchased the property in 1986. He submits that, prior to their purchase of the property, it had been unoccupied for some time. Gates were present on the north boundary of the property. These gates had a catch but were not locked.

On acquiring the property he closed the gates and continued to ensure that they were closed other than for access to his family and other rights of access permitted in the Deeds to the property.

Shortly after acquiring the property a local parish councillor attended at the boundary of the property and introduced himself as the chair of the local parish planning committee. The Councillor informed him that the gates should be open because the road was a right of way. At this time he told him that the solicitors who acted in the purchase of the property had confirmed that there was no right of way over the property.

The Councillor did not walk over the property but told him that he was not happy and would return. About one week later he did return and informed him that he had checked the Ordinance Survey maps and confirmed that he was correct that indeed there was no public right of way across the property.

Around 1989 he removed the existing wooden gates and replaced them with locking electric gates with confidential access code entry. The access codes were provided to the occupants of the four properties with agreed access. In 1992 electric gates with access code entry were also installed at the top of the property.

The only incident of trespass of which he is aware was around 1997 when two persons came to the south gate. One person asserted that there was a public right of way through the property whereupon he informed them that there was no such right of way and access was not permitted to the property. One of those persons informed him that a right had been gained over the property through usage and custom. He had never claimed this before.

Around Christmas 2001 the previous owner put the property on the market. Shortly after this the estate agents informed him that an 'old gentleman' was in their offices claiming that the property had a serious defect. The 'old gentleman' claimed that there was a right of way through the gardens of Throstle Nest and that the estate agents must tell all the prospective buyers. The previous owner informed the estate agents that he was not aware of any such claim. On investigation with the Council no such claim was being made. The matter was taken no further and the unidentified gentleman made no further contact.

The recent owner of Throstle Nest has also submitted a Statement from a resident of the area of 57 years, and also a professional gardener at Throstle Nest. He submits that, in the early 1960s, (around 1961/2) he, together with a few friends, used to regularly drive up Saccary Lane. In those days there was an old unmade pathway through the garden of Throstle Nest. The pathway was overgrown and blocked by a gate on the lower entrance to the garden. (He does not believe there was a gate at the top part of the garden). On some occasions the gate was left open.

As a "dare" when the gate was open he, together with friends, used to try to drive through the garden of Throstle Nest using the unmade path without being caught. There was a road to the side of the property which he knew was the proper route but it was a fun pastime in those days. They knew they were trespassing by using the old path through Throstle Nest (it was clear to him that it was private) but, equally, did not feel they were doing any harm.

On occasion the owner of Throstle Nest saw them passing through his garden on the old pathway. If they were seen the owner shouted at them that the path was private – they knew he was right but that perhaps added to the fun in those days.

As he grew older neither he nor his friends drove through Throstle Nest again. In the 1960s it had been fun but they always knew it was not permitted. By the 1970s they had stopped.

He can confirm that throughout the 1960s and 1970s the gate on the lower section of Throstle Nest garden (leading onto the pathway) was closed from time to time.

He does not understand any claim for a public right of access through the garden of Throstle Nest. The garden and the pathway have always been private.

The present owner of Throstle Croft has submitted that, when he purchased the property less than two years ago they were informed by their solicitor that a Stopping Up Order had been obtained on the former road by the owner of Throstle Nest. However, they do not have any documentation in order to substantiate this statement.

The present owner of Throstle Nest confirms that, since his occupation of the property in the summer of 2003, the north and south gates have remained closed and locked and that nobody has sought, or been granted, access other than those authorised by him and his family.

He has also submitted a copy of a document which was passed to his Solicitors by the vendors Solicitors at the time of his purchase of the property, which states that evidence from the two previous owners will prove that, certainly since the spring of 1985, there has been no public access through the property. Gates at the southern end of the way have remained closed to the public from 1985-1989. In 1989 the gates at the southern end of the way were replaced by electric locking gates and similar gates were installed at the northern end of the way.

It is submitted in that document that the way has never been registered by the Local Authority as a public right of way of any description, despite the property being present on the site since approximately 1764.

It is further submitted that private rights of way have been granted in favour of parcels of land adjacent to the property over the years as a result of sales of part of the estate which, at one point, comprised the property. These private rights have now been extinguished by deed, save for the rights in respect of one property. The fact that it was necessary for private rights of way to be reserved expressly by deed supports, it is submitted, the argument that no public rights of way existed, as there would be no need for rights to be granted by deed over the way if it was open to the public. The existence of private rights of way, it is submitted, also explains why the way has been preserved on the property and also why it opens out onto the public highway.

Solicitors acting for the present owner of Throstle Nest have objected to the claim(s). They submit that there is no case at all for any claim that vehicular rights have ever been dedicated over the route, whether expressly or by implication. It is submitted that the route is a private access road.

It is also submitted that it could not be concluded that a vehicular right of way either subsists or is reasonably alleged to subsist – approaching half of the user evidence forms make no mention at all of any vehicular usage; others paint a picture of what, it is submitted, could only be described as sporadic or infrequent use which would not be sufficient to give rise to rights. Other forms claim vehicular usage but are entirely silent as to details. Other forms and evidence disclose nothing by way of vehicular usage which would be entirely consistent with access by way of licence rather than as of right, eg milk delivery and usage by provender and coal lorries. Any remaining vehicular usage, it is submitted, is entirely explicable on the basis of neighbourly toleration rather than acquiescence in the face of an assertion by the public of vehicular usage as of right.

It is further submitted that any usage of the claimed route became contentious during the previous owner's occupation of Throstle Nest (which began in 1986) so that such usage would not then have been as of right and would eventually have been called entirely into question. Their clients believe that whilst Throstle Nest was occupied by the owner of the property up until 1984, she would come out of the house to remonstrate with users of the claimed route, again pointing to contentious user and not user as of right.

The Solicitors have submitted three statements from long-term users and residents of the area which, in their submission, presents clear evidence of the route not being used in the necessary manner for vehicular access and passage or at all.

One of those witnesses, who passed his driving test in 1966, states that he used to travel up Saccary Lane as part of his regular motoring. It was obvious that the public road was around the double bends but, as a youngster, when the gate at the bottom of what was obviously a private road was open, and if he was following a vehicle, he would try and beat them by going along the private road. It was obvious that this was a private road – the surface of the main road was properly tarmaced and the surface of the private road was inferior. He does not remember the gate being closed on many occasions, but is sure that it was locked off on the odd occasion. He also knew that it was a private road and that he should not be using it.

A second of those witnesses has had cause to use Saccary Lane on a monthly basis for the past 11 years. He previously had grand-parents living just off the bottom of Saccary Lane so has had cause to use Saccary Lane all of his life (48 years). He is aware that the claimed route was a private road or track, and used it to very occasionally cut through to avoid the bends on the public highway, and only whilst on push-bike or on foot – this was between the years 1963-1973. After that time he did not use the road as he knew it was private and drove a motor vehicle. On the odd occasion that he did use the track and was seen by the occupants they would point out that it was private property and ask him not to use it. He has always considered Saccary Lane as being the route relating as the correct byway and route for all traffic.

The third witness has been aware of Saccary Lane since a young age in the mid-1950's, being a visitor to a great aunt at a property subsequently demolished and rebuilt on the other side of Saccary Lane immediately below Throstle Nest. He has travelled Saccary Lane infrequently on foot and by car as a child, and frequently by car for the last thirty years. He is aware that the claimed route was a private road or track only providing access to the properties in that area. He has always considered that the public road was Saccary Lane and that this was maintained by the County Highways Department (or other such responsible body) as the only public road and route for all traffic.

Further submissions have been made on the grounds of safety; security; nuisance; the existence of an adjacent alternative metalled highway; and that the route does not lead to any site or feature; The Committee will, of course, be aware that, although these points are of importance to those persons making them, they are amenity objections and have no bearing on whether or not the path exists in law.

## **Assessment of the Evidence**

The Law - See Annex 'A'

### **In Support of the Claim**

Joins vehicular route at both ends

The early commercial maps

The Finance Act documentation – reference to a bye-road

Recollections of those who lived on the route

User evidence

Used to look like a track bounded by mature hedges and trees rather than garden

### **Against Accepting the Claim**

No direct recollections of vehicular use prior to 1919

No detailed evidence of vehicular use prior to 1950

Intermittent vehicular use from 1950's until route closed

Reference to 'bye-road' not made by owner

'Public Footpath' referred to in sale in 1919 and subsequently not recorded in full on Definitive Map – lower section only thought to be footpath

### **Conclusion**

The application asks that the route be recorded as a byway open to all traffic. This is a particular type of vehicular highway able to be recorded on the Definitive Map.

There is information received from both those who have used the route, those who have lived near the route, those who have owned the route, and from documents and maps.

It is suggested that the Committee first consider whether the route is, on balance, a highway at all, and then look at what type of highway – a footpath, a bridleway or a byway.

In considering whether the route is a highway

To have become a highway the route needs to have been dedicated. Dedication may be inferred from circumstances or deemed under the provisions of Section 31 of the Highways Act 1980.

In this matter the route is arguably showing as a through route on Greenwoods Map of 1818, Teesdale Hennets Map of 1830, and on the Ordnance Survey 1<sup>st</sup> edition of 1848. It continues to be shown as a route in existence, but with gates, on subsequent Ordnance Survey Maps. It is recorded as part of a taxable plot in 1910 but a deduction claimed for it being a 'bye-road', and in 1919 is sold described as a public footpath. There has been public use over many years and the recollections of an early occupier of Throstle Nest from 1919 recalls public use of the route in all types of vehicle, as do the occupiers of Throstle Croft nearby. The Parish Surveyors



in the 1950's presumably thought it was part of some public network as Public Footpath No. 3, Mellor, came to an end on a route further east linking with the claimed route.

It is suggested that the circumstances of the history of the route indicates that dedication of the claimed route for public use may have occurred many decades ago such that it appears on the travellers maps and is known to a member of the owners family in 1910 as a bye road and referred to as a public footpath in selling the land in 1919. The use of the public even up to the 1980's would seem to have been without effective challenge and the Committee may consider, on balance, that the route is some kind of highway from several years ago. If, instead, the Committee is not satisfied that dedication can be inferred it may be that dedication can be deemed under Section 31 of the Highways Act 1980 from user before, say, 1991.

Is it only a public footpath?

A footpath is the most restricted type of highway, being pedestrian only, and if the Committee are of the view that it is some kind of highway then it is advised that it is at least a footpath.

However, it is advised that it is reasonable to consider that public routes available for travellers on foot only were unlikely to be shown on the historical maps of Greenwood and Teesdale-Hennet, and that through routes are likely to have at least bridleway status. The view of the gentleman said to be the owner (but was, in fact, not) was that there was a public right of 'bye road' on the route. It is not clear what he may have meant by the term 'bye road', but it is suggestive of rights higher than a footpath. It must be noted that he was not in fact owner of the land. He was clearly a family member of the owner who had died six years earlier, but whether he had particular knowledge of the route is not clear. He may have been speaking as authorised by the rest of the family, including the personal representative, but again it is not known.

The actual owners, being the personal representatives of Sarah Hargreaves, did refer to the route as 'public footpath' on selling it in 1919, yet the new owner then, as confirmed by his son, knew of and acquiesced in public use both on foot and in all vehicles. Evidence of specific use mainly on foot is submitted in this matter, over several decades without challenge until the 1990's.

It is advised that it would be arguable, on balance, to infer that the route has been dedicated as a highway of a higher status than footpath from all the circumstances.

Alternatively, modern use on foot up to the route being called into question may well indicate that dedication could be deemed from the use, say 1971-1991.

Is it a bridleway?

As a through route on Greenwoods and Teesdale-Hennet's maps it is advised that the route is likely to be a route of at least bridleway status for a dedication to public use dating back many decades. This may have been what Mr J H Hargreaves meant by bye road, although the term "bridleway" was well known in 1910. The likely use of

the route is self-evident from it being the more direct route avoiding the corners of Saccary Lane, and this is borne out by the evidence of use and reference to the gates being open and mainly used for stock control.

The owners referring to the route as a public footpath on selling the land in 1919 do not refer to it as a bridleway, and it appears that the route is known by one of the Hargreaves as a bye road in 1910 yet only nine years later it is sold as a “public footpath”. Despite reference to it being a footpath on the conveyance, however, it would appear that the owning family acquiesced in some use on horseback at least until selling in 1986. A previous owner of Throstle Croft recalls use “by members of the public on foot, on horseback and on cycles”. The Committee may consider that, on balance, a dedication can be inferred either from it being recorded on the old maps, or from the reference to it being a Bye road, or from the acquiescence by the owner in the user, that the route carries at least bridleway rights.

Is it a vehicular highway such that it is a “byway open to all traffic”?

For the route to be a vehicular highway it would need to have been dedicated and accepted as such. The route is shown as a through available route on the early maps, but there is no specific evidence of use in carts or carriages. The route, however, is shown as an alternative line to another section of highway which is part of a long route connecting Ramsgreave to Clayton-le-Dale, and this would arguably be a vehicular route. The first possible reference to it having vehicular rights is Mr Hargreaves reference to it being a ‘bye road’. The term bridleway was well known, but not used, and it may be considered that by this term Mr Hargreaves claimed a deduction because of a public vehicular route in plot 317. Bye road was not a term used in highway statutes at that time, but the Oxford English Dictionary define it as “not a main road” or “an out of the way little frequented road”. This claim for a reduction in valuation because the route is a bye road, it is suggested, is strong evidence of the status of the route being known to be vehicular. The Finance Act process included completion of a form (Form 4) by the landowner. The form asked if the land was subject to any public rights of way or public rights of user. The information from Form 4 was copied into the Field Books including the deduction in value due to these public rights. The valuers then visited the property. That the right was along the claimed route is very clear and it provides good evidence of the reputation of a way as public, but it should be remembered that Mr John Hargreaves was not actual owner of the land and route at that time, but was clearly of the family who owned it.

Reference to it being a vehicular route continue with the reference in his affidavit by an occupier living at Throstle Nest 1921-1938, and his statement that “the route of way was almost daily used by the public ..... very often in vehicles”. The gates were left open, he records.

He also refers to this use continuing and, although a successor family owner sold part of the land granting a right of way over the ‘private road and public footpath’, it is suggested that this just repeated the old terminology of the earlier Deed rather than reflecting what was happening.

A local resident recalls the gate at Point A being closed to stop youths in cars racing through in the 1950's. This may have been a very early challenge to public vehicular use but possibly more likely to be aimed at unreasonable use of the route. Reference from users of occasional use in vehicles dates back to 1958 and through the 1960's. The owners of Throstle Croft for the late 1960's recalls use by the public in motorised vehicles and recalls how the route was a route separated from Throstle Croft and Throstle Nest by hedgerows. Some evidence of use in vehicles through the 1970's and 1980's is submitted. Reference by one user was of being shouted at by the owner that it was private in the 1960's and there is reference to the present owner believing that the owner prior to 1984 would come out of the house and "remonstrate" with users but no details or dates are given.

It may be considered that the use by vehicles in the 1960's and 1970's was not the daily use recalled by Mr Jepson but may reflect local people continuing with the previous public use of the route. The gates do not appear to have caused difficulty.

The property being sold by the Jepson family in 1986 seems to have been a turning point in the history of the route. Actions taken by the new owner in the late 1980's, early 1990's, arguably began to challenge public use of the route. It may be difficult to say which act could be said to have called the route into question, but certainly the local users refer to 1991 as being the year when new gates were put on the route. Challenges started to occur and new stronger gates were locked in 2002.

Dedication can be deemed to have occurred under Section 31 Highways Act 1980 if user has been sufficient in the 20 years immediately before the route was called into question. It may be, on balance, that the use in vehicles may not be sufficient to deem a recent dedication of a vehicular route in modern times, although it is suggested that the use may be sufficient to deem dedication of a footpath in the 20 years, say 1971-1991.

However, this route has a long history and it may be more appropriate in this case to consider whether actual intention to dedicate a vehicular route can be inferred at Common Law from all the circumstances. Dedication at Common Law requires being satisfied that the owners intentions to dedicate a vehicular highway are shown on balance. This is a heavy burden. However, the early maps, the route linking with vehicular highways, the Finance Act claim for a bye road, the comments by Mr Jepson and others, and apparent acquiescence by owners 1919-1984 in vehicular use may, on balance of probability, indicate the existence of a vehicular route which is a vehicular route of a character and type more suitable for use by walkers and horse riders than vehicles. Such a vehicular route should be recorded as a byway open to all traffic, and the Committee may, therefore, consider that the Claim should be accepted.

**Alternative options to be considered - N/A**

**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 804/403		S P Southworth, Legal Services Group, Ext: 33430

Reason for inclusion in Part II, if appropriate

N/A