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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 26/05/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

**ON APPEAL TO THE HIGH COURT FROM THE COUNTY COURT FOR THE
DIVISION OF ARMAGH AND SOUTH DOWN**

BETWEEN:

NEWRY AND MOURNE DISTRICT COUNCIL

Plaintiff/Respondent;

-and-

FRANCIS HAMILL

Defendant/Appellant.

AND THE ATTORNEY GENERAL FOR NORTHERN IRELAND

Notice Party.

KEEGAN J

Introduction

[1] The subject matter of this case is a disputed public right of way. This ruling is in relation to a preliminary issue as to whether settlement terms should be accepted by the Court in the context of an appeal.

[2] The appeal is from the decision of His Honour Judge Finnegan QC sitting at Newry County Court on 14 October 2014 whereby it was ordered that the following substantive relief should be granted:

- (1) A declaration that the laneway located on the Mulligan Reside Larkin map 13599 dated November 2009 (the 2009 map) which is attached hereto and the said laneway being marked in blue, which in part,

passes over Folio 20356 County Armagh is a public right of way for all purposes.

- (2) Accordingly, the defendant is hereby by order of the Court enjoined to do or refrain from doing certain acts namely:
 - (a) The defendant is prohibited and restrained whether by himself, his servants or agents or however otherwise from obstructing or interfering with the public enjoyment of the right of way;
 - (b) The defendant is compelled to remove any and all obstacles or interferences with the enjoyment of the public to pass and repass over the public right of way whether including but not limited to a stone wall as declared on 2009 map insofar as it obstructs or interferes with the use and enjoyment of the public right of way; and
 - (c) The defendant is compelled to remove all such obstacles or conditions which interfere with the public's ability to pass and repass the public right of way in the manner set out at (b) above on or before the day of September 2015.

(3) The above 2(a) to (c) shall remain in force until further order of the Court.

[3] This ruling come on foot of an equity civil bill issued by the plaintiff and dated 28 August 2009 whereby declaratory relief was sought in relation to an asserted public right of way. His Honour Judge Finnegan issued a written ruling comprising his decision. I was informed that the case proceeded over 20 and more days in the County Court.

[4] A Notice of Appeal was lodged dated 5 December 2014. The appeal was listed on various occasions before Stephens J in the High Court. There were delays due to issues of public funding. However, that was resolved and then during the course of preparation for the appeal the parties entered into an agreement between themselves to dispose of the matter. That agreement has been provided to me and it is dated January 2016.

[5] The terms of the agreement are pertinent and reflect in particular that the proceedings be stayed on the terms save for the purposes of enforcing the terms set out for that schedule and for that purpose the parties have liberty to apply. The schedule sets out as follows:

- (1) The plaintiff/respondent agrees that the whole of the defendant/appellant's appeal be allowed save as appears in the terms of this order.

- (2) The plaintiff/respondent further agrees the assertion of a public right of way pursuant to Article 3 of the Access to the Countryside (Northern Ireland) Order 1983 by the plaintiff/appellant over the way marked blue on the attached map, and comprised in Folio No. 20356 County Armagh (the said folio) is vacated, that the said plaintiff/respondent shall remove the said way from its record of public rights of way. If required by the registered owner of the said folio, or their successors in title, the plaintiff/respondent and its successors in title shall sign and/or execute such documents as are necessary to have that public right of way removed as a burden registered against the said folio on the statutory charges register.
- (3) The plaintiff/respondent shall cause the vacation of the assertion referred to in paragraph 2 above to be effective within six weeks of the date hereof.
- (4) In consideration of the plaintiff/respondent agreements contained in paragraphs (1) to (3) hereof, the defendant/appellant agrees that he shall not raise any objection in respect of any assertion of a public right of way made by the plaintiff/respondent or its successors in title over the way coloured red on the map attached hereto. The defendant/appellant further agrees that there should be no order as to costs both above and below, save in respect of the taxation of his own costs as an assisted person.

[6] Pursuant to this agreement Stephens J directed that the Attorney General of Northern Ireland be put on notice as the subject matter involved an issue of a public right of way. This course was undertaken and resulted in the Attorney General making representations to the Court that the agreement was in fact ultra vires and should not be approved by a Court due to the manner in which a public right of way was dealt with.

[7] Following from the above I decided that I should determine a preliminary issue as to whether the agreement was in fact ultra vires or whether the Court could receive and approve the settlement. If the latter course were taken that would be the end of proceedings. As such I heard oral submissions from all parties on this preliminary issue. Mr McEwan BL appeared for the defendant/appellant, Mr Dowd BL appeared for the plaintiff/respondent, and Ms Ellison BL appeared on behalf of the Attorney General. I am very grateful to counsel for their oral submissions and also for their exposition of the law contained in a number of written arguments.

Factual background

[8] I do not intend to reflect the factual background in substantial detail for the purposes of this ruling given that I am dealing with a preliminary issue. I stress that I am not making any factual determination about the existence or characteristics of

the way in question. Suffice to say that this case relates to a contested issue of a public right of way. It is apposite to look at the originating proceedings comprised in the equity civil bill issued by the plaintiff/respondent. In that the plaintiff avers that by virtue of the Access to the Countryside (Northern Ireland) Order 1983 the authority is responsible for the assertion, protection and keeping open and free from obstruction or encroachment the public right of way that is comprised of a portion of the Drumboy Road leading from the border with County Monaghan into the Concession Road, Crossmaglen, County Armagh and shown coloured red and blue on the attached map. Further, it is pleaded that the defendant resides at 201A Concession Road, Crossmaglen adjacent to the public right of way.

[9] The plaintiff averred that the said way has been continuously used openly and without interruption for a long time for the public as a right of way. Further, it was alleged that the defendant has wrongfully obstructed the said public right of way which obstruction was shown coloured blue on the attached map. The civil bill states that the public right of way along Drumboy Road from County Monaghan is a single track road that subsequently forks into two separate laneways each of which exit onto the Concession Road, Crossmaglen, County Armagh. The case being made was that this public right of way has been in existence for some considerable period of time. However, it is stated that in and about 2005 the defendant, his servants or agents began development works at his property adjacent to the public right of way. As a result of these works the case was made that the public right of way was obstructed by way of prominent high kerbing and a dry stone wall.

[10] This dispute relates to the left fork marked X to Y which is marked blue on the civil bill map. Until 1953 the plaintiff claims that the minor road joined Concession Road at one point but after that the main Concession Road was realigned. The curve that was part of the Concession Road became the two forks referred to. The public right of way along Concession Road continued to include both forks. There was undisputed evidence in the form of correspondence from the Department for Regional Development that the disputed stretch marked X to Y has not been adopted and that therefore avoids any threat to its alleged status as a public right of way. So the plaintiff contended that if such an alleged public right of way existed prior to 1953 in the absence of any lawful extinguishment of the public right of way it continues to exist to date. The Court heard evidence at the County Court from the plaintiff and from the Public Records Office that there is no record of any extinguishing order or termination order by Newry and Mourne District Council or its Local Government Office. Further, there was correspondence from the Ministry of Defence which has indicated no record of any blocking up of the disputed section.

[11] This case made by the Council was based upon dedication. There was no express document or deed creating the dedication and so the Court was asked to presume and/or imply the dedication. That was on the basis of various parts of evidence. In addition to the evidence called in relation to the physical attributes of this road evidence was provided by user forms that there was on-going use of this road. The plaintiff relied on 29 user evidence forms which referred to use of the road

over a substantial period of time. It is correct that none of the persons who completed the user evidence forms attended at the trial and the case made by the plaintiff is that they have no intention of giving evidence to this Court should the appeal proceed. The appellant argues that there is an issue with title to the land in that it vests with his late father and in the personal representative of his estate so on that basis the defendant said the claim should fail. Further the defendant/appellant said that the public right of way could not be established on evidence for various reasons including the fact that the user evidence forms were not strong evidence and should not have been admitted under the Civil Evidence (Northern Ireland) Order 1997.

[12] It is clear that substantial evidence was called before the County Court and His Honour Judge Finnegan heard expert evidence about this road and he also heard from the defendant. After the hearing he gave his judgment as I have said. The judge decided to admit the user evidence forms under the Civil Evidence Order and he made a declaration as to a public right of way. I have read the arguments that were lodged for the County Court and in particular the plaintiff's submissions which refer to the assertion of a public right of way.

Statutory context

[13] This case involves consideration of various provisions of the Access to the Countryside (Northern Ireland) Order 1983. In particular Article 3 of this Order states as follows:

“(1) A District Council shall assert, protect and keep open and free from obstruction or encroachment any public right of way; and for this purpose a district council may institute proceedings in its own name.

(2) A District Council may, after consultation with the owner of the land concerned, maintain any public right of way; but this paragraph shall not relieve any person from any liability to maintain a public right of way.

(3) A District Council shall compile and preserve maps and other records of public rights of way in its district.”

Article 14 reads as follows:

“(1) Where it appears to a District Council that it is expedient that a public path should be closed on the ground that the path is not needed for public use, the District Council may by order (a public path

extinguishment order) made by the District Council and submitted to and confirmed by the Department, or confirmed by the District Council as an unopposed order, extinguish the right of way over the path.

(2) The Department shall not confirm a public path extinguishment order, and a District Council shall not confirm such an order as an unopposed order, unless the Department or the District Council, as the case may be, is satisfied that it is expedient to do so, having regard –

- (a) To the extent to which the path would, apart from the order, be likely to be used by the public, and
- (b) To the effect which the extinguishment of the right of way would have as respects land served by the path,

account being taken of the provisions as to compensation contained in Article 17.

(3) A public path extinguishment order shall be in such form as may be prescribed.

(4) Schedule 1 shall apply to a public path extinguishment order.

(5) Proceedings preliminary to the confirmation of the public path extinguishment order may be taken concurrently with proceedings preliminary to the confirmation of a public path creation order or of a public path diversion order, but, in considering –

- (a) Under paragraph (1) whether the path to which the public path extinguishment order relates is needed for public use, or
- (b) Under paragraph (2) to what extent that path would, apart from the order, be likely to be used by the public,

the District Council or the Department, as the case may be, may have regard to the extent to which the

public path creation order or the public path diversion order would provide an alternative path.

(6) For the purposes of paragraphs (1) and (2), any temporary circumstances preventing or diminishing the use of a path by the public shall be disregarded.”

Article 18 reads as follows:

“(1) Before making a public path creation agreement, a public path creation order, a public path extinguishment order or a public path diversion order, the District Council shall consult the Department and any body appearing to the district council to be representative of persons likely to be affected by the agreement or order.

(2) The District Council shall have the like power under Articles 11 and 12 to enter into a public path creation agreement or to make a public path creation order for the purpose of securing the widening of an existing public right of way as it has for the purpose of securing the creation of a public path, and references in those Articles to the creation of a public path shall be construed accordingly.

(3) Articles 14 to 16 and 19 shall apply in relation to all public rights of way whether created before or after the commencement of this Order as they apply to public paths.”

[14] The definition section of the Order states as follows:

Public path means a way over which the public have by virtue of Articles 11, 12, 15 or 16 (but subject to any conditions, limitations, orders or bye-laws) a right of way on foot, on horseback and (by virtue of Article 20) on pedal cycle, but not using a motor vehicle.

Public right of way does not include a road or any other way which is maintainable by a Government department.

Submissions of the parties

[15] Mr McEwan on behalf of the plaintiff/respondent submitted written arguments and he made oral arguments to me which I can summarise as follows:

- (i) Mr McEwan argued that the public interest was adequately represented in the form of the local council so the Court should not be attracted by the Attorney General's arguments. The role of the Attorney General is clear from cases such as McNulty v Ross [2015] NIQB 42 and the Seaport Investments Limited & Others (unreported 16 June 1999) case in terms of the Attorney General being needed where the public interest was not otherwise represented.
- (ii) He submitted that this case lasted in the County Court for over 20 days. There were also user forms in terms of evidence but no one came to pursue the case from the public and as such that is an indicator of the interest in the case.
- (iii) Mr McEwan said that his client was not the registered owner of the land in any event and that it belonged to his late father and so he had absolute defence. Mr McEwan also referred to the alternative route.
- (iv) Mr McEwan made some points about the purpose of the legislation being to protect ramblers and not vehicles. He also said that this was not an area of natural beauty.
- (v) He submitted that if the Attorney General is correct there is no discretion given to the local council which he argued could not be right in law. He said that the effect on this would be that settlements in the past could be void and there would be a paralysing effect upon a local council transacting business in the future. Mr McEwan urged the Court to accept a compromise in this case on the basis of the settlement made. He also referred to the public duty to be careful in relation to costs and he referred to the fact that the Council had a duty to spend ratepayers money properly and that the Council could be faced with an allegation of maladministration if costs were run up unreasonably.

[16] Mr Dowd on behalf of the Council made the following points:

- (i) He said that this settlement was binding and should be accepted by the Court as a compromise between the parties.
- (ii) In the alternative if the Court wishes to hear evidence in the case. Mr Dowd indicated that the Council would cooperate and present the evidence as best it could.
- (iii) He said that the cases of Ross v McNulty and Seaport were distinguishable.

- (iv) Mr Dowd referred to the fact that the legislation now allows the Council not just to assert but to bring proceedings and he said that that effectively protected the position of the public and that that altered the discretion of the Attorney General. Mr Dowd said that the position of the Council was as a guardian of the public interest and so the Court should be satisfied that the public interest was represented.
- (v) Mr Dowd placed reliance upon the case of R v Lancashire County Council [1980] WLR 1024 and he relied on the dicta from that case to the effect that a Council did not have to pursue a case which it had no faith in.
- (vi) Finally, Mr Dowd argued that the extinguishment provisions do not apply to an existing right of way by vehicle.

[17] Ms Ellison on behalf of the Attorney General submitted as follows:

- (i) Firstly she said that the Attorney General needs to be involved if a compromise is put forward in this case. She said the conditions were not met as in R v Lancashire because in this case there was no assertion by the Council that they had no faith in the case. The evidence had not changed.
- (ii) Ms Ellison made the point that there was a procedure to extinguish or divert public rights of way which involved public participation and that this procedure should be undertaken if that was really the purpose behind the settlement. When asked, Ms Ellison could refer to no other case where this issue had arisen. In response to the Court about the issue of this paralysing decision-making Ms Ellison said that this was a discrete issue only raised in the particular context of a public right of way.
- (iii) Ms Ellison submitted that the decision of the Council to revoke its assertion of a right of way is not in accordance with the duty imposed by Article 3(1) of the 1993 Order.
- (iv) Ms Ellison refers to the following proposition which is found at paragraph 18 of the Attorney General's skeleton argument:

“The effect of the purported settlement goes beyond merely putting the parties back into the position they would have been in had proceedings never been issued. It precludes the Council from asserting the right of way in the future. Any attempt to bring future proceedings on the same point would presumably be met with a claim of res judicata. The Council is therefore purporting to act ultra

vires by limiting its ability to properly fulfil its mandatory duty to assert, protect and keep open the right of way by tying its hands viz a viz in future proceedings”.

- (v) Ms Ellison also referred to the requirement that the public interest be properly represented. She argued that the Attorney General for Northern Ireland has a constitutional role to protect the public interest and she referred to the case of Gouriet v Post Office Workers Union [1978] AC 435 in this regard. She argued that there is thus a requirement that the Attorney General be placed on notice where the public interest is at issue. She argued that the public interest cannot be limited without the consent of the Attorney General. Ms Ellison referred to the fact that the Attorney General took part in the case of Seaport Investments Limited (unreported 16 June 1999). She also referred to the case of McNulty v Ross [2015] NIQB 42 and pointed out that in that case Gillen J considered that the argument that a public right of way existed was so devoid of substance that it was unnecessary to invoke the assistance of the Attorney General. Ms Ellison distinguished that case and said that the factual circumstances in this case were very different.
- (vi) Ms Ellison argued that the extinguishment provisions applied by virtue of Article 18(3) of the Countryside (Northern Ireland) Order 1983.
- (vii) The overall effect of Ms Ellison’s submissions was that the Court should not accept the compromised terms given that the Attorney General was not satisfied that they represented the public interest given the duty contained in Article 3(1) of the Order.

Consideration

[18] This case concerns a dispute about whether a public right of way exists over the area in question. Such a right can be found in statute or by dedication and is accepted either at common law or by statutory presumption. Dedication can be expressed or implied. There can be inferred dedication by user. The case of R (On Application of Smith) v Land Registry [2010] EWCA 2000 establishes that it is not possible to create a public right of way by adverse possession. The burden of establishing a public right of way is on the person asserting it in this case the local council. There are different types of public right of way namely footpaths, bridleways and carriageways. This allows various types of user such as walkers, horses, cyclists and vehicles. A road is not precluded from consideration unless it is maintained.

[19] There is a legal adage that “once a highway always a highway” which emanates from R v Inhabitants of Taunton St James [1815] Selwyn’s NSR and Harvey v Truro RDC [1903] 2 Chancery 638. This well-worn territory is instructive in pointing to the pervasive nature of this right. It can only be ended by operation of

law. There seems to me to be two elements to establishment namely physical proof and an incorporeal element which involves proof of user. I caution against importation of concepts from the countryside regime in England and Wales which is substantially different see R (on the application of Trail Riders Fellowship & Another) v Dorset County Council [2015] UKSC 18.

[20] This is an appeal and it is important to note that the Council expended considerable effort in bringing the case before the County Court in the first place. I have read the skeleton argument prepared by Mr Dowd for that which is clear in asserting a strong case on behalf of the Council. That case emanated from members of the public approaching the Council about this area. Following from that there were meetings and a decision was taken. The Council then gathered together an amalgam of important evidence such as mapping, surveillance evidence and expert evidence. Finally, as part of the preparation for trial, user evidence forms were obtained. That evidence was used to found the assertion, however the assertion itself does not create the right.

[21] The Council succeeded in proving the public right of way by declaration before the County Court. That of course is not the end of the matter because an appeal to this Court is an appeal by rehearing. It is right that the authors of the user evidence forms did not attend at the County Court and that remains the position. But I was not told that there has been any other change in the evidence that was put forward. It therefore seems to me that the change of view on behalf of the Council cannot equate to the same type of scenario that applied in the Lancashire case whereby there was no faith in the case being made from the outset. The facts of that case are of course different because that was a judicial review where a member of the public challenged the Council who had refused to assert a public right of way. The Council's decision-making process in that case was found to be unimpeachable on the basis that they had no faith in the case.

[22] It is important to note that assertion is only part of the process under the Order. Pursuant to Article 3(1) there is also a duty to protect and keep open and free from obstruction and encroachment a public right of way. The second part in Article 3(2) is significant because it also looks at an obligation to maintain. I venture that this important provision is at the heart of much decision-making in this area. Article 3(3) requires records to be kept. Reference has been made to Article 3(1) and the fact that it now includes the words that the Council may bring proceedings in its own right. That seems to me to be an appropriate course if there is a dispute about the assertion made. However, I do not consider that the insertion of these words in the current legislation automatically leads to a position whereby the Attorney General cannot also have an active role in proceedings.

[23] If I then turn to the role of the Attorney General. I am persuaded by Ms Ellison's arguments about the overriding role of the Attorney General to protect the public interest. She has pointed to authority on that point and it follows as a matter of common sense. I do not accept the arguments that the Council represents

the same interest. I accept that the Council is democratically elected but decision-making by the Council involves a number of different factors and it seems to me right that the Attorney General should have been involved in these proceedings on the initiation of Stephens J and that the Attorney General can argue in relation to the public interest at large. I pause to observe that paragraph 18 of Ms Ellison's argument is important because she says that in effect the agreement precludes the assertion of a public right of way in the future. So if a member of the public in the future wanted to assert a public right of way over this area he or she could not do so. That to me seems to me to be the core of the dispute.

[24] Ms Ellison also referred to Foskett, The Law and Practice of Compromise paragraph 4-10 which reads as follows:

"A local authority's action may fall foul of the ultra vires doctrine. A local authority may act only within the powers conferred upon it by statute. Where it acts beyond those powers the doctrine of ultra vires, the object of which is the protection of the public will invalidate the act in question. Whilst it is perfectly permissible for a local authority to compromise disputes in which it becomes involved, entering into a compromise that lies beyond its powers is ultra vires and the agreement apparently reached will be struck down as void ab initio."

[25] It is important to record that the Attorney General accepts that the Council can change position. The Attorney General does accept the line of authority from the Lancashire case that if there is no faith in the case the position can change. But the Attorney General says there is no change of evidence here. That may or may not be correct as it is hard to assess the point without an actual hearing. However, the real issue seems to me that there is an agreement between the parties effectively extinguishing a public right of way over part of the road and confirming it over the other part. The argument is that the agreement therefore by-passes the legal process for extinguishment. That process is a public process which involves notification, the facility for objection and it also engages the Department.

[26] An argument was made by the Council that the extinguishment provisions do not apply as the County Court judge determined that the characteristics of this right of way was to include vehicles. Of course the argument is also made by the Council that this ruling is not binding and so there is an inconsistency with the argument being made. Nonetheless, in deference to Mr Dowd's industry I will make some brief comment on the point although it obviously depends on exactly how the public right of way is characterised if established.

[27] In summary, Mr Dowd submits that Article 18(3) which applies extinguishment to all public rights of way does not sit easily alongside Article 15.

Article 15 relates to diversion which is not at the heart of this case. Nonetheless I can see his point about potential consequences. I do not consider that I need to conclusively determine this because he does not argue that there is a tension with Article 14 which is the extinguishment provision. In any event I accept the analysis of the Attorney General in relation to Article 18(3) which applies the extinguishment provisions to all public rights of way. In particular I note Ms Ellison's argument that to accept the Council's interpretation would mean that the Council either has (i) no power to extinguish rights of way at all and the agreement is ultra vires on that basis or (ii) power to extinguish public rights of way by motor vehicle without any statutory procedure being followed i.e. there is a lesser protection to vehicular public rights of way to that afforded to public paths. It follows that either way the agreement is ultra vires.

[28] As such, whilst I have considerable sympathy with the argument made by the parties who have reached a settlement in this case, I accept that the Court cannot endorse such an agreement in the face of objections from the Attorney General.

[29] However, that is not the end of the matter. The rationale of the Attorney General's position is to ensure that the public interest is protected. That interest must reflect reality. It seems to me that there is a practical element to this case because it may be that no member of the public currently engaged with the issue, wants to pursue it. The Council has a duty as regards public rights of way however the provision as regards Court proceedings is in discretionary terms. Arguably, if the Council withdrew the equity civil bill which it had no obligation to bring the fears of Ms Ellison are assuaged because a member of the public could raise the issue in the future. Essentially she is saying that the agreement is a step too far.

[30] It seems to me there are a number of potential options here. The case could be returned to the pre-proceedings position whereby the matter stands without any Court adjudication or the parties could come to a revised agreement or the extinguishment process could be undertaken if the public right of way is accepted or the Court could simply rehear the case and make its own decision. The parties should have costs in mind and the overriding objective in this as in any other case.

Conclusion

[31] It is with reluctance that a Court declines to accept terms entered into by parties. However, the Court must itself not approve terms which are ultra vires. The Attorney General has persuaded me that I am currently being asked to take such a course. This is on the basis of a technical legal argument but it should be clear from what I have said that every party to this dispute should not lose sight of reality. It seems to me that there is real potential for accommodation between the parties with the input of the Attorney General to reflect the actual public interest in this case before further litigation is contemplated. I do not understand the Attorney General's position to be one of absolute veto. I will therefore allow the parties a short period to consider the way forward and the parties may also address me on any other

directions that are needed. I encourage the parties to consider a pragmatic course bearing in mind the realities of this case and the issue of costs.

[32] I direct that this judgment is not published pending the conclusion of the case. Also, if the case requires a full hearing I consider that may be before a different judge however I am willing to assist the parties in the interim.

Postscript

After the delivery of this judgment, the parties resolved this case with the input of the Attorney General and an order was made on consent in the following terms:

- (1) The first-named Defendant agrees to a Declaration of a Public Right of Way on foot and by bicycle over the way X to Y marked on the Milligan Reside Larkin Map No. 13599 [Map 1] which is attached hereto.
- (2) The first-named Defendant accepts that a public right of way then continues south to the border with the Republic of Ireland, over the easterly portion of Folio 20356 County Armagh, which is illustrated by the Assertion Map of the Plaintiff/Respondent [Map 2] and on the Land Registry Folio Map for Folio 20356 County Armagh [Map 3] attached hereto.
- (3) The first-named Defendant shall create an opening in the wall at point 'Y' on the Map 1 not less than 1.5m in width and will create a ramp over the kerbing at the same point. Such works to be effected within 10 weeks of the date the Order effecting this agreement is made.
- (4) The first-named Defendant will not object to any assertion of a public right of way by the Plaintiff (or its successors in title) over the way marked "CDE".
- (5) The first-named Defendant consents to an injunction in favour of the Plaintiff restraining that defendant and his servants or agents from obstructing and/or interfering with the Public Right of Way from X to Y.
- (6) The first-named Defendant agrees not to erect (and to remove) any sign the effect of which is to discourage members of the public from using the Public Right of Way from X to Y.
- (7) The above agreed terms are in full and final settlement of all or any claims arising from these proceedings.