

## **Extracts from Legal Judgement in the Crown Court: October 2007**

24. Even by the time of the prosecution, the approach of SCC towards the alleged obstruction which the structure constituted was unfocused, illogical and inconsistent. Unfortunately there was no immediate improvement, as is apparent from correspondence to which we have been referred in considerable detail.

28. In an excerpt from the minutes of South Petherton Parish Council dated 13/03/07, it is recorded under the heading 'District Councillor's Report' that 'SCC ... say they have discharged their duty relating to the gates of Barcroft Hall and the gates should be kept locked open at all times;' Mary Liezers was unable to confirm or deny that SCC had said to the District Council that it had discharged its duty.

29. In a further letter dated 10/05/07, Mr Jones wrote: '. . . the County Council does not oppose the action taken by Mr Kidner, nor could it when the claim is brought on the basis that the gates and pillars amount to an obstruction. This is the view consistently held by the County Council.' We feel compelled to observe that the view held by the County Council appears to us to have been anything but consistent, at any rate up until this point, and the view that the pillars amount to an obstruction certainly does not appear to have been consistently held or expressed by SCC.

35. We heard evidence from many witnesses who have walked in the area for many years, and are familiar with the location both before and after the structure was built. We found there to be a general consensus that the actual usable width of the footpath was not reduced by the erection of the pillars, which were sufficiently wide apart to accommodate the previous usable width of the footpath at that point. As one witness with 18 years' walking experience in the area, Martyn Helliwell, told us: Barcroft Lane after the bridge was never wider to walk upon than the tarmac lane leading to the property. Others testified to the passable width being no greater than that currently available between the gate pillars.

38. According to agreed expert evidence, the usable width of the track to the east of the structure varies between 2.5m and 5m depending on exactly where the measurements were taken, compared to a width of between approximately 5m and 9m taken from the historic plans. On the county road to the west of the structure and the bridge, the usable width was between 2.5m and 2.8m, compared to a width measured off the OS plans of between 3.8 and 4.9m.

57. The order we make is that:

- 1) SCC remove the central pillar and corresponding uplighter and all gates and the

electronic opening and closing mechanism.

2) SCC install a fingerpost to the west of the gateway indicating the route of Y24/10.

59. Although we recognise that 5CC still has the power under section 143 to remove any remaining part of the structure, we can see no circumstances in which they would consider it right to do so on their own initiative. We recognise also that it remains open to an individual to apply under section 130B for the removal of those parts of the structure which remain on the highway. We anticipate and hope that any such individual would be discouraged from doing so by the terms of this judgment.