



**ramblers**  
at the heart of walking

Mr Nick Tustian  
Chief Executive  
Eastleigh Borough Council  
Eastleigh House  
Upper Market Street  
EASTLEIGH  
SO50 9YN

Ramblers  
2nd Floor Camelford House  
87-90 Albert Embankment  
London SE1 7TW

Phone 020 7339 8500  
Fax 020 7339 8501

Email [ramblers@ramblers.org.uk](mailto:ramblers@ramblers.org.uk)  
[www.ramblers.org.uk](http://www.ramblers.org.uk)

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Our ref: VG/AE/ES/01

Dear Mr Tustian

### **DEVELOPMENT OBSTRUCTING BRIDLEWAY NO. 724 AT BISHOPSTOKE**

Thank you for your Council's reply of 11 June 2018 to my letter of 18 April 2018. I appreciate it that you have taken time to consult colleagues and provide a detailed response.

I understand from Richard Kenchington, our Footpath Secretary for Eastleigh Borough, that a meeting was held on 9 July 2018 at which were discussed at length the matters that need to be resolved before the replacement bridleway referred to in the 2017 Order will be constructed to the reasonable satisfaction of the Borough Council. I understand that the route has not been constructed in accordance with the specification in the planning permission, and that additional works will be required to overcome problems associated with surface water run off from adjoining land across the route which has been eroding the route and adversely affecting the surface. It is now clear that the Borough Council will need to forcibly engage with Bellway Homes to secure an acceptable outcome and I would be grateful if you would confirm what action your Council is proposing to take.

You say that enforcement action in relation to the excavation of the current bridleway route prior to legal implementation of a diversion order 'would have been for Hampshire County Council to undertake', but in fact both your Council and Hampshire County Council were parties to the section 106 agreement, so your Council (who gave the grant of planning permission from which this problem results) could have enforced the physical provision of the replacement bridleway once the first house was occupied. You will know that your Council has the power to assert and protect the rights of the public to the use and enjoyment of any highway in its territory even though it is not the highway authority, see section 130(2) of the Highways Act 1980. We would seldom expect a district or borough council (i.e a council which is not the highway authority) to deploy this power over any ordinary obstruction of the highway outside the planning context, but where a planning authority gives planning permission out of which directly arises the obstruction or other unavailability of a highway, it is reasonable to expect them to utilise their statutory powers, especially where it is the principal party to a section 106 agreement.

We therefore think it reasonable to ask your Council to take enforcement action without demur. Any person can prosecute for the offence of obstruction of the highway, and it seems to the Ramblers that developers who breach the terms on which they are granted planning permission need to know that they are in line for prosecution by the authority who gave the permission. As it is, they seem to have been allowed to expect to be at liberty to do things like this as a matter of entitlement, as though the grant of planning permission were a permission to obstruct a right of way, when any reasonable interpretation of the law is that it is no such thing. This is confirmed (if confirmation were needed) by DEFRA Circular 1/09, *Public rights of way—guidance for local authorities*, paragraph 7.11, 'The grant of planning permission does not entitle developers to obstruct a public right of way.' We would, then, be grateful to learn that you will be taking the appropriate enforcement action.

We look forward to hearing from you.

Yours faithfully



VANESSA GRIFFITHS  
CHIEF EXECUTIVE