

RE AN APPLICATION TO REGISTER PUBLIC RIGHTS OF WAY  
ACROSS RIVER LAWN, TONBRIDGE

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OBJECTION BY  
TONBRIDGE & MALLING BOROUGH COUNCIL

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The Kent County Council (Footpaths MU98, MU99 and MU100 at Tonbridge)  
Definitive Footpath Map Modification Order 2020

Tonbridge & Malling Borough Council ('TMBC') OBJECTS to the above order.

It does so on the following grounds:

1. The land of which the footpaths the subject of the order form part was acquired by the Urban District Council of Tonbridge (predecessor to TMBC) for recreational purposes in 1922, and at all times thereafter has been held (subject to paragraph 3 below) by TMBC or a predecessor authority for such purposes under s164 of the Public Health Act 1875 and/or s19 of the Local Government (Miscellaneous Provisions) Act 1976.
2. Accordingly, the use of the footpaths by the public has at all times been 'of right', not 'as of right' as required in order for a public right of way to have arisen by reason of s31(1) of the Highways Act 1980 or at common law (and in particular the reasoning in paragraphs 20-21 of *R (Barkas) v North Yorkshire County Council & Anr* [2015] AC 195 is relied on).
3. Further or in the alternative, the footpaths identified as numbers MU98 and MU99 for part of their length (marked approximately A-B and C-D for identification purposes on the maps appended to the Order and produced hereto) form part of land appropriated by TMBC to the provision of an old

people's club on 26 July 1971, which appropriation was confirmed by the Secretary of State by letter dated 16 March 1972 with effect from 14 March 1972. A copy of the appropriation Order is attached.

4. Dedication of the land referred to in paragraph 3 above as public rights of way (by use over the period of time relied on to make the modification) would have been incompatible with the statutory powers under which that land was held by TMBC, and the purposes for which it was so held, and there was no capacity in TMBC to so dedicate it (and in particular the reasoning in paragraphs 55- 58 of *R (Lancashire CC) v Secretary of State* [2020] 2 WLR 1, and s31(8) of the Highways Act 1980, is relied on).
5. Further or in the alternative, the footpaths the subject of the order have not been used without interruption for a sufficient period preceding the application to Kent County Council to support an implication of dedication of the land as public rights of way or for the modification order to be made. The closures referred to in paragraph 44 of the report of the County Council's Public Rights of Way Officer dated 30 April 2020 are relied on (together with further evidence that TMBC reserves the right to produce should it be necessary to do so).

STEVEN GASZTOWICZ QC