**WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53**

**ORDER MAKING AUTHORITY: WARWICKSHIRE COUNTY COUNCIL**

**TITLE OF ORDER: PARISH OF ASTON CANTLOW SHEETS SP16SW, SP16SE, SP15NE**

**ORDER NO. 1 2019, PATH NO. AL223**

**ROW/3254955**

# STATEMENT OF CASE

# TRAIL RIDERS FELLOWSHIP

---

**Index of Appendices**

---


| Tab | Appendix | Page Number |
|---|---|---|
| 1. | TRF Objection | TRF 1.1 |
| 2. | Memorandum 'Survey and Maps of Public Rights of Way' January 1950 | TRF 2.1 – 2.17 |
| 3. A | Definitive Map (July 1961) | [To follow] |
| 3. B | Definitive Statement (July 1961) | TRF 3B.1 – 3B.31 |
| 4. | Handover Map and Schedule (LGA 1929) | TRF 4.1 – 4.19 |
| 5. | Highways Expenditure Analysis | TRF 5.1 – 5.66 |
| 6. | Extract from Oliver R. 'Ordnance Survey Maps' | TRF 6.1 – 6.4 |
| 7. A | User Evidence Forms (Old) | TRF 7A. |
| | Richard Lillington (1) | 1 – 4 |
| | Richard Hawker | 5 - 6 |
| | M. Broome | 7 – 10 |
| | Tim Dinsdale | 11 – 14 |
| | David Gunster | 15 – 16 |
| | Lee Porter | 17 – 20 |
| | D. Hayter | 21 – 24 |

| | | |
|---|---|---|
| | Jack Hallows | 25 – 28 |
| | Andre Bluteau | 29 – 32 |
| | Robert Chance | 33 – 36 |
| | Paul Taylor | 37 – 40 |
| | Stephen Lupton | 41 – 44 |
| | Peter Guilfoil | 45 – 48 |
| | David Wright | 49 – 52 |
| | M. Banner | 53 – 56 |
| | James Savage | 57 – 60 |
| | Roger Fairclough | 61 – 64 |
| | M. Williams | 65 – 68 |
| | Christopher O Brien | 69 – 70 |
| | Peter Cookson | 71 – 74 |
| | Jonathan Hughes | 75 – 76 |
| | Richard Holmes | 77 - 78 |
| | T. Archer | 79 - 86 |
| 7. B | User Evidence Forms (New) | TRF 7B. |
| | Alan Jeffers | 1 – 4 |
| | Aleck Coulson | 5 – 8 |
| | Gary Payne-Kirtley | 9 – 12 |
| | Michael Corkery | 13 – 16 |
| | Stewart Bosworth | 17 – 20 |
| | Daniel Trewitt | 21 – 24 |
| | Sam North | 25 – 28 |
| | Martin Whitehouse | 29 – 32 |
| | David Bennett | 33 – 36 |
| | Robin Evans | 37 - 40 |
| | Jeffrey Annand | 41 |
| | Gregory Williams | 42 – 45 |
| | Martin Young | 46 - 49 |

## APPENDIX 1 – TRF OBJECTION

Hodology Limited

Registered in England 2179480

1 Foxley Close
Newcastle upon Tyne
NE12 6FX
hodology@mac.com

Strategic Director, Communities Group
Warwickshire County Council
Shire Hall
Warwick
CV34 4SX

15 July 2019

Dear Sir,

**Re: The Warwickshire County Council Definitive Map Modification Order Parish Of Aston Cantlow SHEETS SP16SW, SP16SE, SP15NE Order No. 1 2019 Path No. AL223**

Reference your order of 10 July 2019, on behalf of the Directors of the Trail Riders Fellowship I object to the order on the following grounds.

According to Geoplace the order route embraces *Newnham Lane*, recorded as a highway maintainable at public expense, and that lane's northward continuation into Newnham, similarly publicly maintainable.

It seems to me that this road is an ancient public general-purpose highway, and is not a public bridleway.

Yours faithfully,

Alan Kind

## APPENDIX 2 – MEMORANDUM ‘SURVEY AND MAPS OF PUBLIC RIGHTS OF WAY’ JANUARY 1950

# SURVEYS AND MAPS

of

# PUBLIC RIGHTS OF WAY

for the purposes of PART IV of the National Parks and Access to the Countryside Act, 1949

---

**Memorandum prepared by the COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY in collaboration with the Ramblers Association; recommended by the County Councils Association**

**and approved by the**

**MINISTRY OF TOWN AND COUNTRY PLANNING**

---

COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY

71 ECCLESTON SQUARE, WESTMINSTER, S.W.1

January, 1950 Price 9d.

# SURVEYS AND MAPS

of

# PUBLIC RIGHTS OF WAY

for the purposes of PART IV of the National Parks and Access to the Countryside Act, 1949

---

**Memorandum prepared by the COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY in collaboration with the Ramblers Association; recommended by the County Councils Association**

**and approved by the**

**MINISTRY OF TOWN AND COUNTRY PLANNING**

---

COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY

71 ECCLESTON SQUARE, WESTMINSTER, S.W.1

January, 1950 Price 9d.

# SURVEYS AND MAPS OF PUBLIC RIGHTS OF WAY

## 1. INTRODUCTION

Ever since the coming into force of the Rights of Way Act, 1932, the Society has been impressing upon local authorities in general, and Parish Councils in particular, the importance of making surveys and records of public rights of way. Such surveys were valuable because they removed uncertainties, lessened the risk of disputes as to whether particular paths were public or not, enabled any obstructions of, or interference with, public rights of way to be dealt with promptly, and were helpful to law-abiding members of the public who were anxious to use fieldpaths but did not want to tresspass.

A considerable number of local authorities, from County Councils downwards, either on their own initiative or at the Society's suggestion, made surveys, but these have covered only a small fraction of England and Wales.

The need for a national survey has been constantly emphasised by the Society and its associates, and has become urgent, partly because of the many interferences with, and temporary loss of, public rights of way during and since the war (of which the ploughing up of footpaths is a conspicuous example), and partly because of the increasing number of townsfolk who come out into the country for recreation.

This need has now been recognised by the Government whose National Parks and Access to the Countryside Act (which was introduced in March and received the Royal Assent on December 16th, 1949) contains a section (Part IV) dealing with this very subject.

The Act defines the Rights of Way which are covered by the Survey as follows:

" Footpath " means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road.

" Bridleway " means a highway over which the public have the following but no other rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse with or without a right to drive animals of any description along the highway.

Footpaths and bridleways are also combined in the Act in the expression " public paths."

" Road used as a public path " means a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used.

Under the Act, it is the duty of every County Council in England and Wales to carry out a Survey of the rights of way as defined above and to compile a map showing them. The maps will be prepared in three stages and will be called " draft," " provisional," and " definitive " and the last of these will be conclusive proof that every way marked on it is either a " Footpath," " Bridleway " or " Road used as a public path " as defined above. If a Bridleway is also a Driftway, i.e., a highway on which the public have a right to drive animals, this should be mentioned in the schedule (see Section 5 below), for the information of the Surveying Authority.

The fact that a way is marked on the map as a Bridleway or as a Road mainly used as a public path, does not prejudice any other right of way which the public may have over it.

Provision is made for corrections in the draft and provisional maps, so as to ensure that the definitive map contains no mistakes, and the last will be kept up to date by revision at intervals of not more than five years, so that it will always be an authentic record of the public rights.

While it is the duty of the County Council as " Surveying Authority " to compile the record, it is quite impossible for them to do this unaided, and the Act therefore provides that before carrying out the survey the County Council shall consult with the councils of county districts and parishes, as to the arrangements to be made for the provision by such councils of information for the purposes of the survey. It also provides that in parishes where there is a Parish Council, that council must cause a Parish Meeting to be held to consider the information which it is proposed should be submitted to the Surveying Authority, and that where there is no Parish Council, the District Council must require " the representative body of the Parish or a member of that body " to cause a Parish Meeting to be held for the same purpose. District and Parish Councils must furnish the information as required by the County Council and can be compelled by legal proceedings to do so.

What this amounts to, in plain language, is that every County Council requires to be informed, by all District and Parish Councils in the county, what public footpaths, bridleways and roads mainly used by pedestrians and horse riders, there are in the parish.

Many points of procedure will arise in the preparation of the three successive maps by the County Council, including deposit of the map (or the appropriate section of it) in each parish,

advertisement, opportunity for criticism by owners and the public, and so on. Pamphlets will shortly be issued by the Society, explaining the Act fully; but all District and Parish Councils ought to embark without delay upon the task of collecting the information that will be required about the public rights of way in the parishes; and the following notes are intended as a practical guide for this purpose.

2. HOW to PREPARE for a RIGHTS OF WAY MAP

(i) The first step is to give an existing committee the function of dealing with, or to appoint a committee to deal with, the matter. It is permissible to add to such a committee persons who are not members of the Parish Council. (Local Government Act 1933, Section 85 (1) and (3)).

(ii) The Committee should obtain a set of the six inch Ordnance quarter-sheets covering the parish. Unless officially supplied free, these maps will cost 2/- each, and can be obtained from a local bookseller or from Messrs. Edward Stanford Ltd., 12/14 Long Acre, London, W.C.2, authorised London Agents for the sale of Ordnance Survey Maps.

These six inch sheets will be the maps which, when completed, will be submitted to the Surveying Authority.

(iii) The Committee should then consult any other maps and records which may help. These include Inclosure Award maps, Tithe maps, Parish maps, maps of admitted public rights of way deposited by owners under Section 1 (4) of the Rights of Way Act, 1932, statements in writing by owners expressly dedicating paths, old Ordnance Surveys, maps in local guide books and histories, footpath rambling guides and old minutes of the Parish and District Councils.

Inclosure Awards were made when common lands were enclosed. A copy of the Award was deposited in the Parish Chest, and should now be under the care of the Parish Council. Another copy was usually lodged with the Clerk of the Peace for the County, in which case it should be available for inspection in the County Archives. These Awards show whether any paths or other ways were set out or awarded as public, or stopped up, over the common lands ordered to be enclosed. There were some 4,700 Inclosure Awards, which dealt with over 5,000,000 acres of common land, so that it is always useful to enquire if an Award affects any parish, and the Commons, Open

Spaces and Footpaths Preservation Society will be able to say from its records if an Award was made.

Many of these Inclosure Awards, however, are nearly 200 years old, so that even if they did not set out public paths over the Commons enclosed, it is probable that paths freely used as public throughout living memory are public now, although they may not have been awarded.

Tithe maps frequently show paths, and if they do so they are valuable evidence. The Tithe maps and Awards are public documents which should in most cases be in the care of the Parish Council or of the Incumbent.

Some parishes possess Parish maps, which were generally made about 100 years ago. Where they exist they should be consulted.

Maps deposited by owners under Section 1 (4) of the Rights of Way Act, 1932 are in the custody of the District and County Councils.

If any of the earlier Ordnance maps are available they should be examined and compared with the latest edition. It will often be found that tracks which used to exist and are described by old witnesses as public are no longer in use and are not shown on the later editions, but if a path has once become public, mere disuse does not extinguish the public right. Ordnance maps do not distinguish between public and private paths, but mark all visible tracks. Where they describe a path as "B.R." the surveyors found a path apparently used as a bridleway; or if "F.P." as a footpath; but the use of such letters does not necessarily mean that such paths are public, nor does the omission of the letters signify that they are not public.

By consulting the maps referred to, much information will be gained as to the location and antiquity of many tracks.

(iv) Having examined all the documentary evidence, the next step will be to consider what footpaths and bridleways must be presumed to have been "dedicated" as public rights of way because they have been used by the public as of right and without interference for not less than 20 years, without any indication by the owners (for example, by the display of "Private" or similar notices referring to the path) that they did not intend to "dedicate." In this connection it must not be forgotten that, if public use for the necessary period can be proved, the fact that the path may have gone out of use recently, or that the owner may have put up such a notice recently, makes no difference to its public status.

(v) Other pamphlets issued by the Society describe public paths and how they arise.* It may be helpful to indicate here how most public paths can be recognised.

Paths are likely to be public:

(1) Where they have been signposted by the County, District, or Parish Council.

(2) Where they are, or have been, provided with stiles, wicket gates, footbridges, stepping stones, or other means of passage.

(3) Where they, or any of the means of passage along their route, have been repaired at the public expense.

(4) Where they are useful to the general public and not only to the tenants or employees on the estate, and have long been used by the public as rights of way.

(5) Where they lead to wells, view-points, the sea, rivers, etc., which are much visited by the public.

(6) Where no objection to public passage has ever been raised.

Paths are not likely to be public:

(1) If they are devious tracks of no obvious use to the public as thoroughfares or to give access to view-points, etc.

(2) If they are of use only to persons living or working on the estate through which they pass.

(3) If they have only recently come into existence (unless statutorily created or expressly dedicated in writing).

(4) If steps have been taken to close them occasionally.

(5) If pedestrians or horseriders, as the case may be, have been systematically or even occasionally turned back.

(6) If notices have been displayed clearly denying the existence of any public right of way.

In respect of (4), (5) and (6) local authorities should be on their guard against cases where such action has only been taken recently and there are good reasons to suppose the paths are public. These should be considered and marked as public, though disputed.

---

* See in particular *The Dedication of Highways,* by Humphrey Baker, M.A. Price 1s. (Which has been revised in light of the new Act and will be re-issued soon.)

## 3. MARKING THE MAPS

As the inspection of all these maps and documents, and consideration of all other evidence bearing on the question, proceeds, the information obtained should be checked, where necessary, by walking the paths, and the Committee should mark on the six inch Ordnance sheets the ways which appear to them to be public, on the following principles: —

They should mark with a single continuous line for each way and number as explained in (h) below (both in *ordinary* pencil at this stage): —

(a) All public rights of way which were set out by an Inclosure Award and actually came into use by the public, and all which are shown as public in maps deposited by owners under Section 1 (4) of the Rights of Way Act, 1932.

(b) All ways which are known to have been repaired at the public expense, or are provided with stiles or footbridges which have been so repaired, or have been sign-posted as public by County, District, or Parish Council.

(c) All highways which the public have a right to use with vehicles, e.g., public cart-roads and lanes, including green (i.e., unmetalled) lanes, but which are mainly used as footpaths or bridleways.

(d) All ways which have been expressly "dedicated" in writing, or which are believed to have become "dedicated" in consequence of public use, as explained in section (2) (iv) above. These may include a public right of way on foot on a towpath. They may also include public rights of footway or bridleway over accommodation roads which are not open to the public with vehicles. These should be marked as footpaths or bridleways. Prohibitory notices referring to such roads (e.g., "Private Road" or "No Thoroughfare") unless they clearly deny any public right of way, can be disregarded as being intended to refer to vehicular traffic and not to a public right of passage on foot or on horseback.

(e) In general, all paths, even though their public status is now disputed by the owner, which have any of the characteristic attributes of public paths mentioned under Section 2 (v) above, unless they are obviously private. Evidence may be forthcoming later to show how they are public, or no one may object to their inclusion.

Special care should be taken to include any paths believed to be public but omitted from the Ordnance Survey.

They should mark with a single broken line (---------), again only lightly in *ordinary* pencil in the first instance: —

(f) All paths about which there is any reasonable doubt. Further information about them should be obtained. It will probably be necessary to collect evidence of their use by old inhabitants.

If there is sufficient evidence from which it is reasonable to conclude that there may be a public right of way, the Committee should decide to treat it as public and should mark in the path firmly with a continuous line; if the evidence is insufficient the broken line should be rubbed out.

Having marked in all the ways which are ascertained to be public from maps, other documents, and local knowledge, the Committee should now: —

(g) Walk over the whole of the reputed public ways in the parish, to confirm that they exist and to note their condition: to ensure that they have not omitted any path, and to enable them to complete the numbering and other marking of the maps as explained below, and to prepare the schedule, explained in section 5 below.

(h) The paths or sections of paths (see further below) should be separately numbered on the map or maps, starting with 1 for each parish; detailed remarks about status and condition being given under corresponding numbers in a schedule accompanying the map or maps.

Every junction of two or more paths must be the starting point for a fresh number for each path.

For ease of reference, it will be advisable to break up any path, which is of considerable length, into separately numbered sections, the end of each section corresponding with some incidental feature such as a river, road, or rail crossing, or even a stream or sharp bend. *Each section thus separately numbered will count as a separate path.*

The number of each path should be placed on the map as closely as possible to its starting point, this being clearly described at the beginning of the entry, referring to that path in the schedule.

The order and direction of numbering should be on some systematic and consistent basis throughout the parish.

(i) Public paths should be distinguished on the maps (in the first instance in *ordinary* pencil) with the symbols "F.P.", "B.R.", "C.R.F.", or "C.R.B.", as explained in section 4 below, irrespective of what is printed on the Ordnance Survey.

(j) It is advisable to show on the maps with the appropriate symbol suggested in section 4 below, the position of every stile, gate, or other means of passage on a public path, and of direction posts and notice-boards referring to it. In this connection steps on a locked gate should be considered as stiles. Such marking of means of passage, etc., would facilitate the subsequent maintenance of public paths.

(k) Obstructions are of two kinds: (i) Unlawful; (ii) Due to neglect. Both kinds should be marked with " O " except for barbed wire which merits a separate symbol. Details showing the nature of the obstruction should be recorded in the schedule.

(l) Where a ferry provides a means of passage for the public across a river or other water which interrupts the course of a public path, enter the word " Ferry " on the map, with details (if known) in the schedule.

(m) Highways which the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths or bridleways, should be marked on the map " C.R.F." or " C.R.B." as explained in section 4 below, with a note in the schedule also that their main use is as a footpath or bridleway as the case may be.

(n) Use arrows, where necessary, on the map to indicate the exact site of stiles, obstructions, etc.

(o) When all the information is complete, the lines and numbers of the paths and all the various symbols should be inked in. Before doing this it would be as well to walk all the paths again for a final check.

It will also be found helpful to mark the parish boundary clearly in a heavy black *broken* line.

Once the numbers have been inked in, they should not be altered again before the maps are submitted to the Surveying Authority. If a path is found at this late stage to have been wrongly included, strike out its number and make a note in the schedule but do *not* renumber all the paths.

(p) The names and addresses of the persons who carried out the survey and the dates between which the survey was carried out should be inserted at the bottom of the map or maps.

## 4. THE USE OF SYMBOLS

The use of uniform symbols on the maps will obviously facilitate the work of the survey. Nearly all the following have been in use for a number of years and have been found satisfactory, and it is suggested that they be adopted. New composite symbols have been devised in two cases only (C.R.F. and C.R.B.) to meet the present purpose.

Symbols, where used, should be as few, as short and as clear as possible. All marking of symbols on maps should be made in the first instance in *ordinary* pencil.

The information required falls under four heads: —

(1) The kind of path.

(2) The position and nature (e.g., stile) of all means of passage.

(3) The position of all obstructions, notice-boards and diversions.

(4) The condition of paths and of their means of passage.

### SYMBOLS TO BE USED IN MARKING MAPS

(*Mark the symbols in* CAPITALS)

| KIND OF PATH | *Mark* |
|---|---|
| Footpath | F.P. |
| Bridle Road (including Driftway for cattle) | B.R. |
| Public Carriage or Cart Road or Green (unmetalled) Lane mainly used as (1) Footpath | C.R.F. |
| Public Carriage or Cart Road or Green (unmetalled) Lane mainly used as (2) Bridleway | C.R.B. |

| MEANS OF PASSAGE | |
|---|---|
| Cartbridge | C.B. |
| Footbridge | F.B. |
| Stepping Stones | S.S. |
| Fieldgate | F.G. |
| Bridle or Hunting Gate (usually about 5ft. wide) | B.G. |
| Wicket Gate | W.G. |
| Kissing Gate | K.G. |
| Turnstile | T. |
| Stile | S. |
| Gap (in fence or hedge) | GAP. |
| Finger or Direction Post | D. |
| Hurdles | H. |
| Posts | P. |
| Rails or Bars | R. |
| Low Fence | F. |

OBSTRUCTIONS, NOTICE-BOARDS, DIVERSIONS

| | |
|---|---|
| Obstruction ... ... ... ... ... ... | O. |
| Notice-board ... ... ... ... ... ... | N. |
| Barbed Wire ... ... ... ... ... ... | B.W. |
| Former course of path diverted or closed ... | /-/-/-/- |

CONDITION OF PATHS, STILES, ETC.

Where a path is ill-defined or a stile, gate, etc., is in defective condition, a bracket should be placed round the symbol, e.g.: (F.P.), (F.B.). Details should be given in the schedule.

5. THE SCHEDULE.

This will accompany the maps and will form part of the survey. It will be the basis for the " Statement " which the Act requires that every Surveying Authority should prepare, containing, as respects any public path or other way shown on the " Draft " map, " such particulars appearing to the Authority to be reasonably alleged as to the position and width thereof, or as to any limitations or conditions affecting the public right of way thereover, as in the opinion of the Authority it is expedient to record in the Statement." Entries in the schedule should be concise but should contain all the detailed information about each path which cannot be conveniently recorded on the maps but is necessary for the purposes of the survey, or likely to be helpful to the Highway Authority in respect of its duty to maintain all public paths.

(a) For the schedule it would be most convenient to purchase (unless supplied free officially) two sets of cards, postcard size, or of loose-leaf sheets, and to use one card or sheet for each path having a separate number on the map, or a continuous log-sheet can be made, provided that each path is entered under its own number.

The duplicate set of cards or loose-leaf sheets or log-sheet should be similarly entered up and retained by the Parish Council.

(b) Entries in the schedule should be numbered to correspond with each path separately numbered on the map. Directly after the number give the symbol distinguishing the status of the path, e.g., F.P., and if considered helpful, the name of the path or its ultimate destination; *next describe its starting point* and then give concise information about such features occurring on the path, including symbols shown on the map, which require further explanation; for example, the nature of obstructions, the full wording

of notice-boards or direction posts, the nature of damage or of repairs required, etc., etc.

Next mention the grounds for believing the path to be public (if known) as briefly as possible, e.g., " Awarded " or " Repaired at public expense (with date) " or " Mentioned in minutes of Parish Council dated . . . . . when second stile was repaired by the Parish Council."

It might be helpful to the Surveying Authority to add a brief note on the general condition of the path and of the means of passage along it.

Finally the names and addresses of the persons who carried out the survey and the dates between which it was carried out, should be inserted at the bottom of each entry or, if all the paths in the parish have been surveyed by the same persons in the same season, at the end of the completed schedule.

(c) Stiles and gates should be described in the schedule in more detail, where necessary, e.g., " with " or " without steps," " squeezer stile," " bachelor gate," etc.

(d) Where a path is ploughed, the stretch over which it is ploughed should be described and its position identified, in the schedule; for example, " path ploughed in field after first stile " or " ploughed for 150 yards after second footbridge," and it should be stated (if known) whether it has been ploughed from time to time throughout living memory, or only recently.

(e) Where a path is metalled, the metalled stretch should be similarly described, and its position identified, in the schedule.

(f) If the surveying authority require particulars to be furnished of the width of any public paths, these should be given in the schedule, as far as possible. If, for example, a way was set out by an Inclosure Award as a public footpath 4 feet wide, or a public bridleway 8 feet wide, these widths can and should be specified. Again, there is a legal presumption (in default of evidence to the contrary) that where a way runs between defined boundaries such as hedges or walls, the public right of passage extends over the whole width between those boundaries, and this width also can be specified. Where, however, a path runs in the open, though the width dedicated to public passage may be, and often is, greater than that of the " beaten " track, it will seldom be possible

to ascertain exactly what that greater width is, and in such cases no width should be stated, unless proof of it can be produced which would satisfy a court of law.

(g) The kind of record that should be made may be gathered from the following specimens: —

(1) 12 F.P. to Norton. Starts in High Street from wicket gate beside White Cottage; first stile has stepping board; in next field path ploughed for 100 yards (throughout living memory); second stile consists of steps on locked gate, obstructed one strand barbed wire along top; footbridge immediately after this stile has handrail missing; path in second field from footbridge ploughed (for first time in 1941); exit into West Lane 150 yards from West Farm (and not at West Farm as shown in O.S.) over ladder stile alongside locked farm gate and Notice-board "Public Footpath to Snorting." Path "Awarded"; well-defined throughout; all stiles and gates in fair condition. Walked . . . (date) . . . by A. . . . B . . .

(2) 37. B.R. to Combe. Starts from the Wheatsheaf in N.E. direction over private metalled carriage road between hedges 120 yards to bridle gate on right. At start, Notice-board on left, "Private Road. Please Shut All Gates." From first bridle gate distinct path 6 to 8 feet wide along grass verges of three arable fields to bridle gate; over two meadows, then exit by bridle gate into Barrow Lane.

Used by the public for at least 80 years without objection. Tendency of owner to encroach on grass verges in arable fields. Direction Post is required at start of Bridle road.

(3) 38. B.R. (continuation of 37). Starts from Barrow Lane by fieldgate (broken), where Direction Post, "Bridle Road to Combe"; follows closely round east garden wall of Sykes Cottage; via two bridle gates into Cowleaze Wood; along ride through woods between banks and out by third bridle gate; bears round Spray Coppice into main Wotton-Combe road by fourth hunting gate (obstructed wire) where is Direction Post, "Bridle Road to Wotton" (requires repainting). First bridle gate by Sykes Cottage repaired by County Council 1926. 37. and 38. walked (or ridden) . . . (date) . . . by C. . . . D . . .

## 6. PREVIOUS SURVEYS

Where a previous Map and Schedule of all public rights of way have been made, there will, of course, be no necessity to make a complete survey again. It will only be necessary to perambulate all paths again, and to bring the previous Map and Schedule up to date, keeping in mind the provisions of the new Act and these instructions in order to secure uniformity of presentation.

## 7. ANNUAL REVIEW

All public paths should be systematically perambulated once a year, and a report should be presented to the Parish Council upon their condition at each perambulation. It is suggested that Rogation Sunday might be a suitable day for this annual perambulation, as it is already associated with the ancient custom of " beating the bounds."

The copy of the original schedule kept by the Parish Council should be amended in the light of changes made (if any) in the " definitive " map deposited by the Surveying Authority, but on no other account. If any supplementary notes are required as a result of an annual review, they can be made on separate cards, loose-leaf sheets or pages, and should be signed and dated, and a copy kept before they are sent to the County Council for action.

## 8. THE RIGHTS OF WAY ACT, 1932

For the purpose of surveying and surveillance how far is the Rights of Way Act, 1932, affected by the new Act?

(i) The principle that a public right of way can arise by presumed dedication will *not* be affected.

(ii) Under the 1932 Act it was necessary in some cases (for example, where the land over which the path runs has been in the possession of someone who could not dedicate a public right of way over it, such as a tenant for life under a family settlement) to prove 40 years' public use (instead of 20) to establish dedication. This distinction is abolished by the new Act, and 20 years' use will be sufficient in all cases.

(iii) The right of the owner under Section 1 (3) and (5) to erect notices will still remain, and Parish Councils should be alert to challenge notices erected by owners on public paths.

(iv) Section 1 (4) which gave an owner the right to deposit maps and statements and statutory declarations admitting or denying the public nature of rights of way, will remain but will be ineffective in respect of paths shown as public on the definitive map and all new paths created by public path agreements or orders under the New Act.

(v) Section 1 (7) which explains the incapacity of a Corporation, etc., in possession of land for public or statutory purposes to dedicate a right of way where this would be incompatible with such public or statutory purposes; Section 1 (8) which defines land as including land covered with water; Section 2 (2) which states that there is nothing to prevent the dedication of a highway being presumed on proof of user for any less period than 20 years, etc.; Section 3 which empowers Courts to take into consideration any map, plan or other relevant document that is tendered in evidence; and Section 4 which safeguards the interests of the person entitled to a remainder or reversion of the property, will all remain operative.

## 9. CONCLUSION

The first complete survey will constitute a kind of "Domesday" book of Rights of Way, but its value will depend on its accuracy. The more thorough the preparatory work, the less trouble subsequently to all concerned. Carefully prepared maps and notes will furnish reliable information to the Surveying Authority. Careless work may lead to protracted, vexatious, and expensive disputes. At the periodic revision the District and Parish Councils may again be called upon to supply information, and they will therefore have to keep in touch with local developments. The powers given to Borough and District Councils to create new public paths will mean that they must keep themselves informed of new local needs.

Although the legal responsibility for maintaining all public paths, which has been stated to include the removal of obstructions, is placed clearly on the Highway Authority, the Act does not repeal Section 13 (2) of the Local Government Act, 1894, or Section 26 of the same Act. Parish Councils therefore still have powers under Section 13 (2) to carry out minor repairs and will undoubtedly be expected to use them. They will be well advised to do so in their own interests: —

(i) In order to retain one of their most important functions;

(ii) because they should be able to carry out such minor repairs more quickly and cheaply than the higher authority.

Similarly, District Councils still have a duty, under Section 26, to remove obstructions. If these Councils cease to exercise these functions, they are bound to lose touch with local needs and developments, and to that extent will find it more difficult to represent the real needs of the locality for new paths, diversions, etc. Although the duty of creating new paths is laid on the District Councils by the new Act, it is highly desirable that Parish Councils should report the need for new footpaths and obstructions of existing ones to the District Councils, and cases of serious lack of repair to the County Council.

The Commons, Open Spaces and Footpaths Preservation Society will continue to give advice to its members on any doubtful points that may arise and will be pleased to assist with legal advice any other local authority in serious difficulty over this survey.

Councils will find their general powers with regard to the preservation and repair of footpaths described in two pamphlets, issued free to members of the Society, entitled respectively (1) *The Maintenance of Public Ways,* and (2) *The Powers and Duties of Parish Councils with Regard to Public Rights of Way.* These can be obtained on application to the Secretary, 71 Eccleston Square, Westminster, S.W.1. These pamphlets have been revised in the light of the new Act and will shortly be re-issued.

WATFORD PRINTERS LIMITED, VICARAGE ROAD, WATFORD

## APPENDIX 3 – DEFINITIVE MAP AND STATEMENT (JULY 1961)

### Appendix 3A – Definitive Map (July 1961)

(to follow)

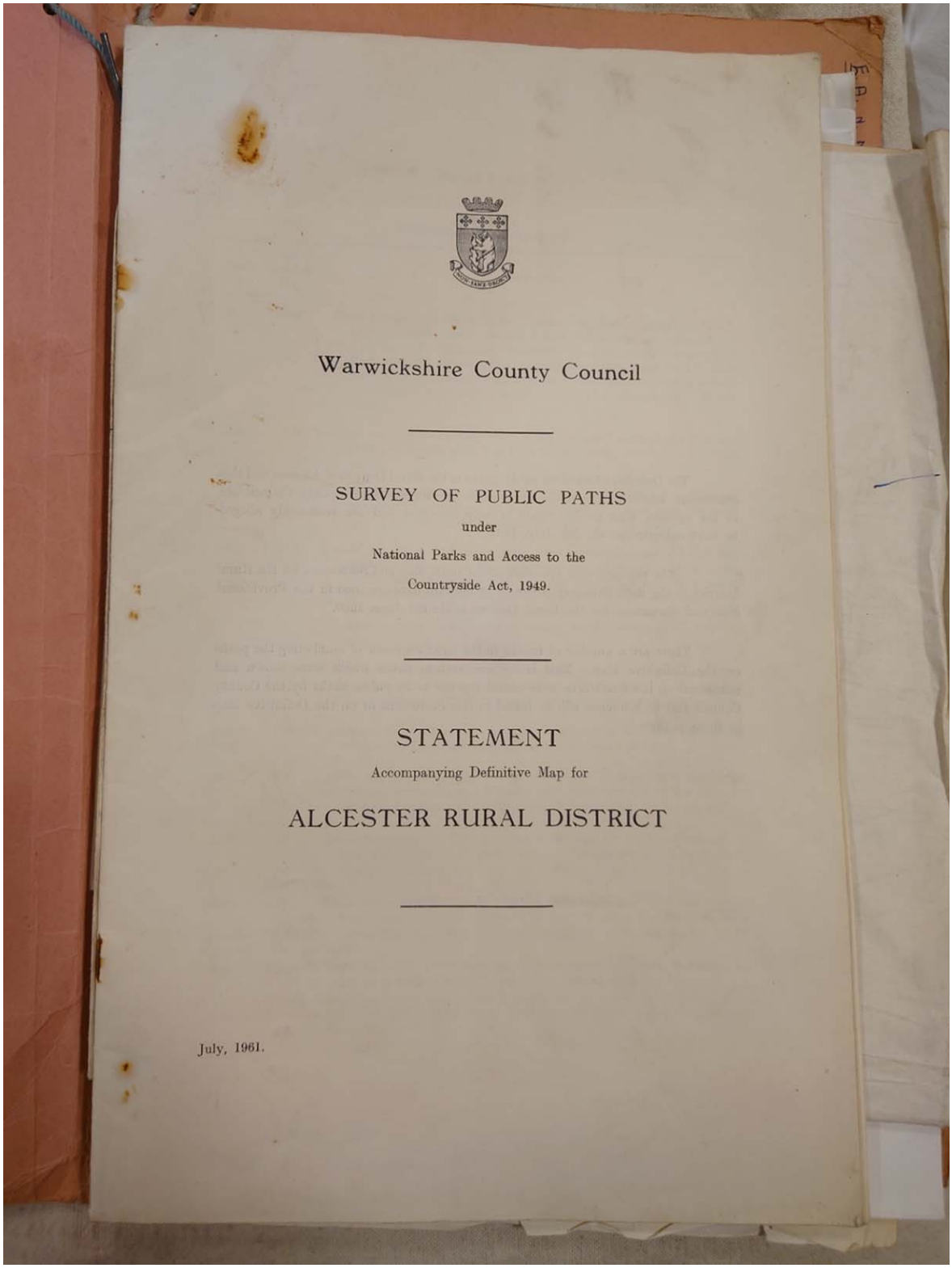
### Appendix 3B – Defintive Statement (July 1961)

## APPENDIX 3 – DEFINITIVE MAP AND STATEMENT (JULY 1961)

### Appendix 3A – Definitive Map (July 1961)

(to follow)

### Appendix 3B – Defintive Statement (July 1961)



Warwickshire County Council

SURVEY OF PUBLIC PATHS

under

National Parks and Access to the

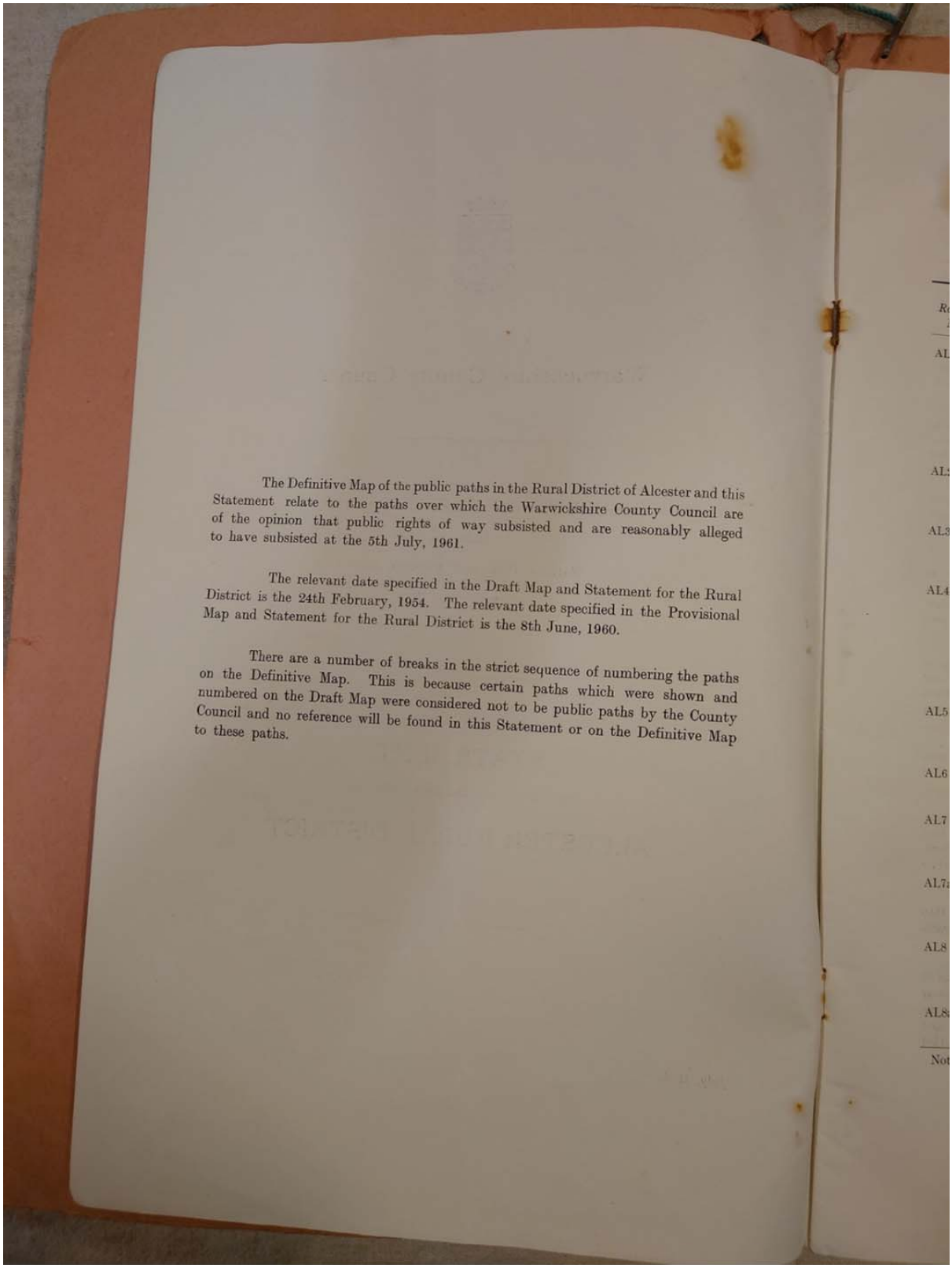
Countryside Act, 1949.

STATEMENT

Accompanying Definitive Map for

ALCESTER RURAL DISTRICT

July, 1961.



The Definitive Map of the public paths in the Rural District of Alcester and this Statement relate to the paths over which the Warwickshire County Council are of the opinion that public rights of way subsisted and are reasonably alleged to have subsisted at the 5th July, 1961.

The relevant date specified in the Draft Map and Statement for the Rural District is the 24th February, 1954. The relevant date specified in the Provisional Map and Statement for the Rural District is the 8th June, 1960.

There are a number of breaks in the strict sequence of numbering the paths on the Definitive Map. This is because certain paths which were shown and numbered on the Draft Map were considered not to be public paths by the County Council and no reference will be found in this Statement or on the Definitive Map to these paths.

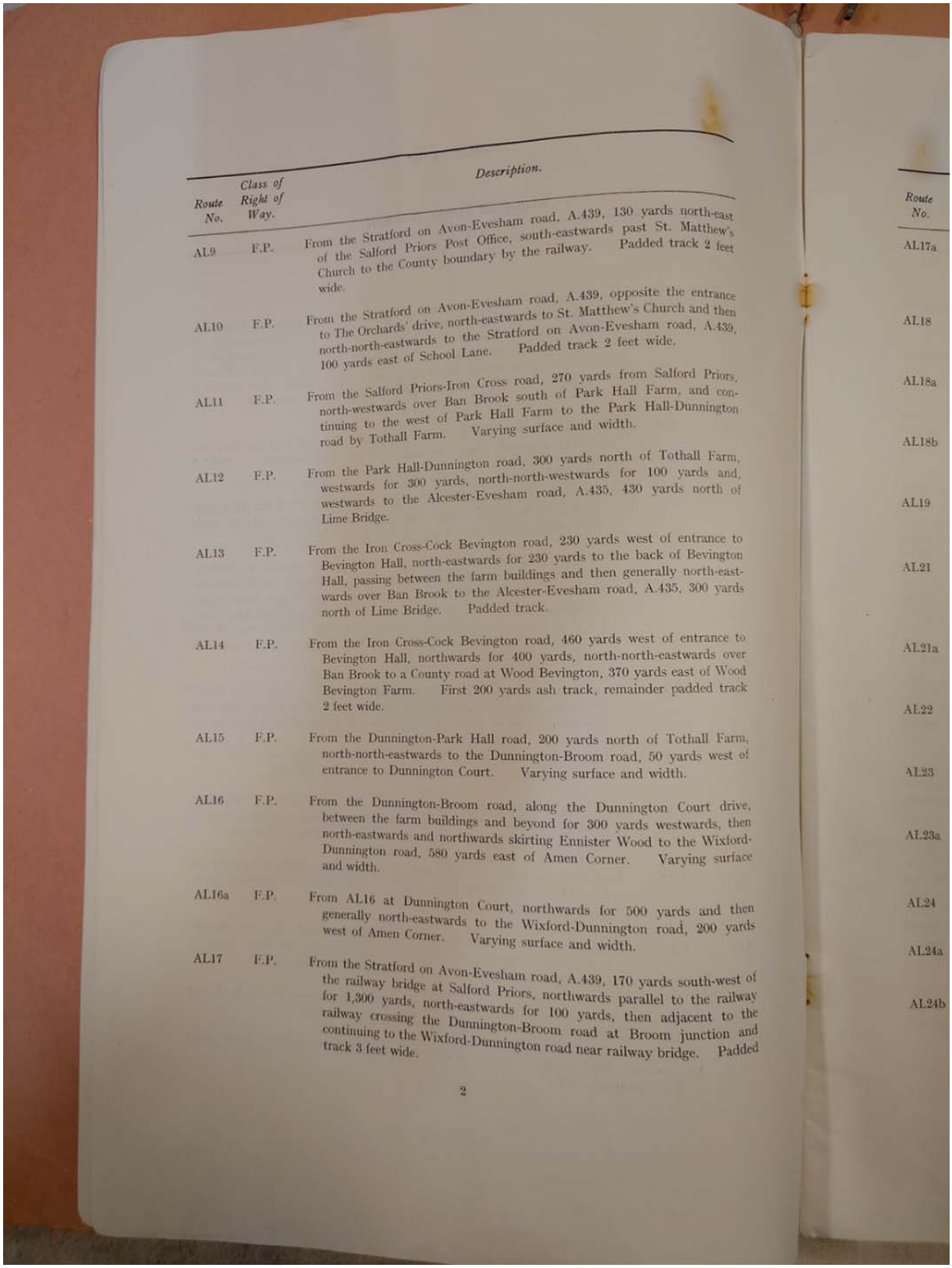
## PUBLIC PATHS.

### ALCESTER RURAL DISTRICT.

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL1 | B.R. | From the junction of the Church Lench-Rous Lench road and Franklin's Lane, eastwards along Franklin's Lane to the southern extremity of King Edward's Plantation, northwards along the eastern boundary of King Edward's Plantation and Commissioners Wood, and for 116 yards north of Commissioners Wood along the County boundary, then eastwards for 800 yards to the end of the Iron Cross-Cock Bevington road. Gravel track. |
| AL2 | B.R. | From the Alcester-Evesham road, A.435, 270 yards north of the New Inn (P.H.), westwards along Can Lane to the County boundary. Padded track. |
| AL3 | F.P. | From the Alcester-Evesham road, A.435, 30 yards north of Pitchill Lodge, north-north-westwards to the Iron Cross-Cock Bevington road, 500 yards west of the entrance to Bevington Hall Drive. Ash track. |
| AL4 | F.P. | From the Alcester-Evesham road, A.435, opposite entrance to Pitchill, eastwards to the rear of Rushford House, south-eastwards for 1,040 yards, north-eastwards for 370 yards crossing over the stream, then south-eastwards to pass The Orchards on the north side and continuing along the drive to The Orchards to the Stratford on Avon-Evesham road, A.439. Varying surface apart from the drive to The Orchards which is metalled road. |
| AL5 | F.P. | From AL4, 150 yards from its junction with Alcester-Evesham road, A.435, generally north-eastwards to the Salford Priors-Iron Cross road, 250 yards south-east of Salford Farm. Ash and padded track 2 feet wide. |
| AL6 | F.P. | From the Salford Priors-Iron Cross road opposite Tothall Lane, southwards to New Inn Lane, 400 yards north-west of Abbot's Salford. |
| AL7 | F.P. | From the Alcester-Evesham road, A.435, 100 yards north of Brickyard Cottages, eastwards for 600 yards, then south-eastwards to the Stratford on Avon-Evesham road, A.439, opposite Salford Hall. Ash road. |
| AL7a | F.P. | From New Inn Lane, 540 yards east of the New Inn (P.H.), southwards to join AL7, south of Portway Barn. Ash surface to Portway Barn, remainder padded track. |
| AL8 | F.P. | From the southern extremity of the unclassified road over the railway, from Abbot's Salford, eastwards to the ford across the River Avon at Cleeve Mill, that being the County boundary. Padded track. |
| AL8a | F.P. | From AL8, 350 yards from its commencement, east-north-eastwards for 200 yards to the County boundary. Padded track. |

Note.—Abbreviations used in 2nd Column:—Cart road and bridleway—C.R.B.; bridle road —B.R.; footpath—F.P.

1

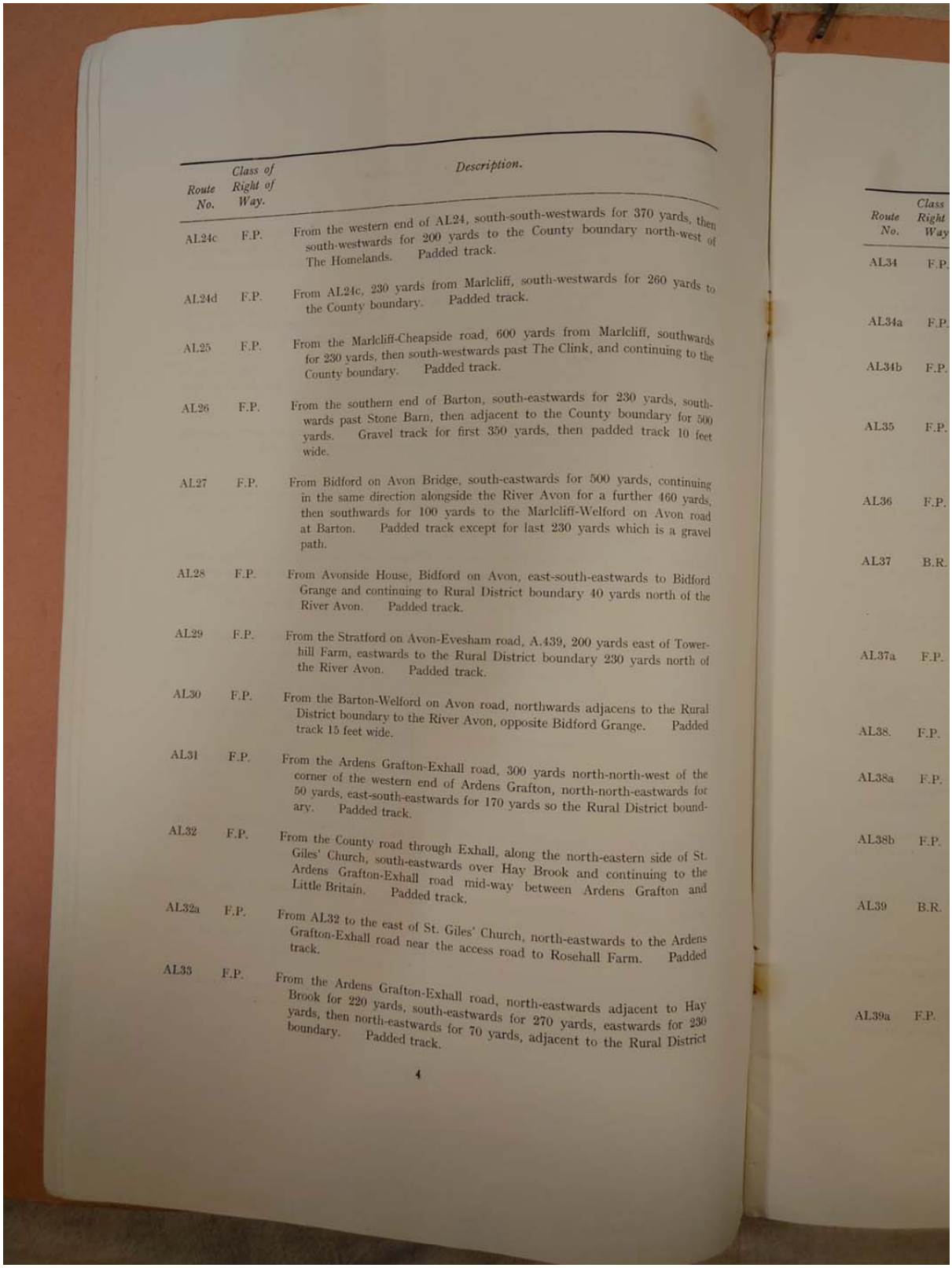


| Route No. | Class of Right of Way. | Description. |
|---|---|---|
| AL9 | F.P. | From the Stratford on Avon-Evesham road, A.439, 130 yards north-east of the Salford Priors Post Office, south-eastwards past St. Matthew's Church to the County boundary by the railway. Padded track 2 feet wide. |
| AL10 | F.P. | From the Stratford on Avon-Evesham road, A.439, opposite the entrance to The Orchards' drive, north-eastwards to St. Matthew's Church and then north-north-eastwards to the Stratford on Avon-Evesham road, A.439, 100 yards east of School Lane. Padded track 2 feet wide. |
| AL11 | F.P. | From the Salford Priors-Iron Cross road, 270 yards from Salford Priors, north-westwards over Ban Brook south of Park Hall Farm, and continuing to the west of Park Hall Farm to the Park Hall-Dunnington road by Tothall Farm. Varying surface and width. |
| AL12 | F.P. | From the Park Hall-Dunnington road, 300 yards north of Tothall Farm, westwards for 300 yards, north-north-westwards for 100 yards and, westwards to the Alcester-Evesham road, A.435, 430 yards north of Lime Bridge. |
| AL13 | F.P. | From the Iron Cross-Cock Bevington road, 230 yards west of entrance to Bevington Hall, north-eastwards for 230 yards to the back of Bevington Hall, passing between the farm buildings and then generally north-eastwards over Ban Brook to the Alcester-Evesham road, A.435, 300 yards north of Lime Bridge. Padded track. |
| AL14 | F.P. | From the Iron Cross-Cock Bevington road, 460 yards west of entrance to Bevington Hall, northwards for 400 yards, north-north-eastwards over Ban Brook to a County road at Wood Bevington, 370 yards east of Wood Bevington Farm. First 200 yards ash track, remainder padded track 2 feet wide. |
| AL15 | F.P. | From the Dunnington-Park Hall road, 200 yards north of Tothall Farm, north-north-eastwards to the Dunnington-Broom road, 50 yards west of entrance to Dunnington Court. Varying surface and width. |
| AL16 | F.P. | From the Dunnington-Broom road, along the Dunnington Court drive, between the farm buildings and beyond for 300 yards westwards, then north-eastwards and northwards skirting Ennister Wood to the Wixford-Dunnington road, 580 yards east of Amen Corner. Varying surface and width. |
| AL16a | F.P. | From AL16 at Dunnington Court, northwards for 500 yards and then generally north-eastwards to the Wixford-Dunnington road, 200 yards west of Amen Corner. Varying surface and width. |
| AL17 | F.P. | From the Stratford on Avon-Evesham road, A.439, 170 yards south-west of the railway bridge at Salford Priors, northwards parallel to the railway for 1,300 yards, north-eastwards for 100 yards, then adjacent to the railway crossing the Dunnington-Broom road at Broom junction and continuing to the Wixford-Dunnington road near railway bridge. Padded track 3 feet wide. |

2

| Route No. |
|---|
| AL17a |
| AL18 |
| AL18a |
| AL18b |
| AL19 |
| AL21 |
| AL21a |
| AL22 |
| AL23 |
| AL23a |
| AL24 |
| AL24a |
| AL24b |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL17a | F.P. | From AL17, 1,300 yards from its commencement, northwards past Hillocky Barn to the Dunnington-Broom road, 500 yards west of Broom junction. Gravel road, 10 feet wide from Hillocky Barn to the Dunnington-Broom road. |
| AL18 | B.R. | From the Stratford on Avon-Evesham road, A.439, at the top of Marriage Hill, north-north-westwards for 960 yards, joining AL18a 300 yards west-south-west of Broom Court. Padded cart track. |
| AL18a | B.R. | From AL18, 300 yards west-south-west of Broom Court, north-north-eastwards for 600 yards, over railway to a County road 100 yards north of railway at King's Broom. |
| AL18b | C.R.B. | From a County road 360 yards south of Broom Bridge north-north-eastwards to the High Street, Broom, opposite entrance to Corn Mill. Ash track, minimum width 10 feet. |
| AL19 | F.P. | From railway bridge on the Bidford on Avon-Broom road, north-westwards for 200 yards, then northwards to Broom High Street near the Post Office. Partly gravelled path. |
| AL21 | F.P. | From the Bidford on Avon-Broom road, 250 yards south of the railway bridge, south-eastwards for 830 yards, east-south-eastwards to near the Methodist Chapel and south-eastwards to the County road off the High Street, Bidford on Avon, opposite Bell Court. Gravel track. |
| AL21a | F.P. | From AL21, 830 yards from the Bidford on Avon-Broom road, west-south-westwards for 120 yards to Victoria Road, Bidford on Avon, near the school. Gravel track. |
| AL22 | F.P. | From the High Street, Bidford on Avon, 60 yards west of Bell Court, south-westwards for 170 yards, then along Gas House Lane to the High Street, opposite Victoria Road. Gravel track. |
| AL23 | F.P. | From the Bidford on Avon-Marlcliff road, B.4085, near the Bidford on Avon Bridge, south-south-westwards to the northern end of the County road through Marlcliff. Padded track. |
| AL23a | F.P. | From AL23, 280 yards from Marlcliff, southwards for 280 yards, then east-south-eastwards for 100 yards to the Bidford on Avon-Marlcliff road, B.4085, 190 yards from Marlcliff. Padded track. |
| AL24 | B.R. | From the western end of Marlcliff, west-south-westwards for 160 yards to the County boundary. Padded track. |
| AL24a | B.R. | From the eastern end of AL24 westwards for 120 yards to the River Avon. Gravel track first 20 yards then padded track 15 feet wide. |
| AL24b | F.P. | From AL24, 100 yards from the County boundary, northwards for 40 yards, then westwards parallel to the River Avon to the County boundary. Padded track. |

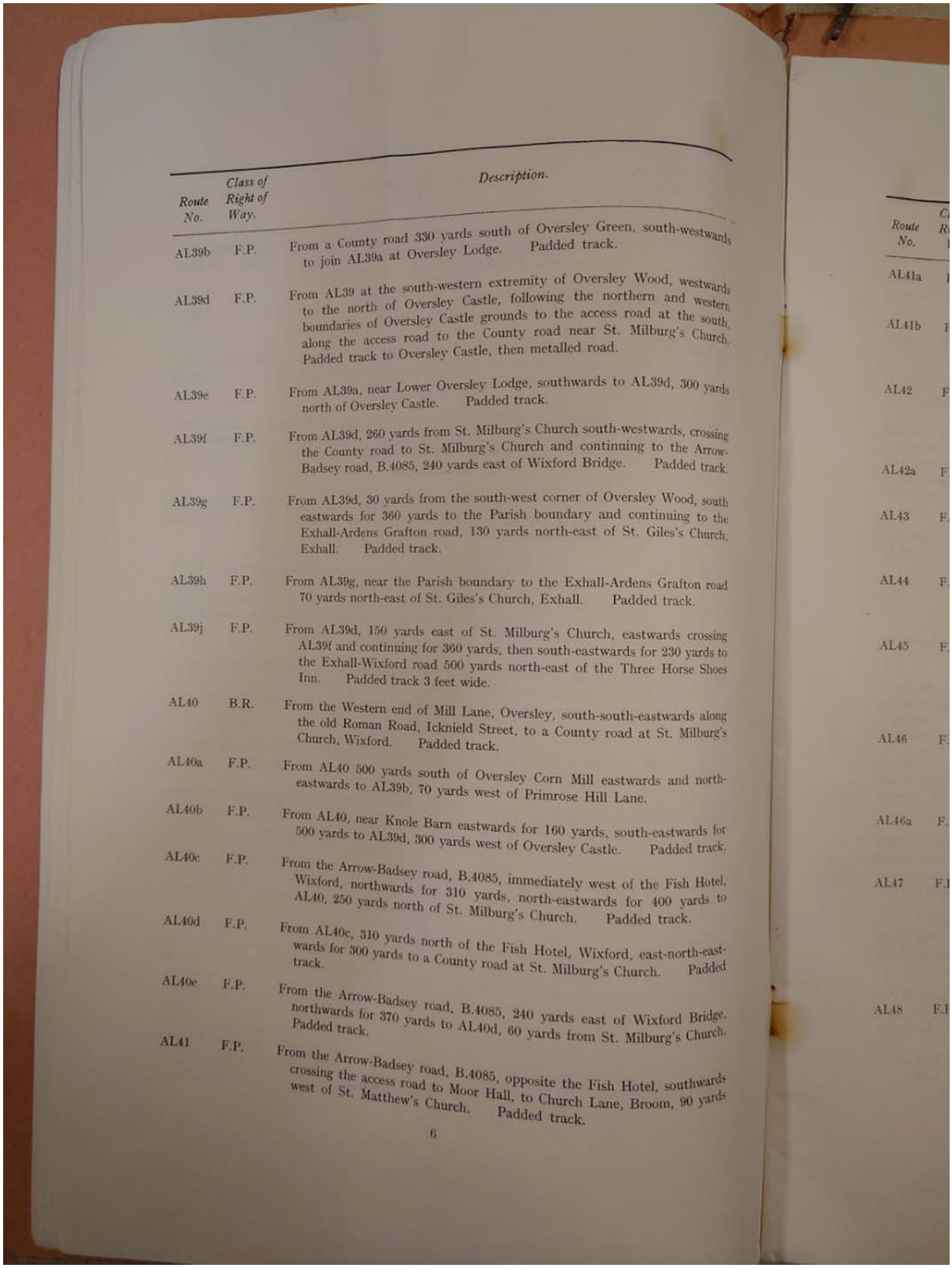


| Route No. | Class of Right of Way. | Description. |
|---|---|---|
| AL24c | F.P. | From the western end of AL24, south-south-westwards for 370 yards, then south-westwards for 200 yards to the County boundary north-west of The Homelands. Padded track. |
| AL24d | F.P. | From AL24c, 230 yards from Marlcliff, south-westwards for 260 yards to the County boundary. Padded track. |
| AL25 | F.P. | From the Marlcliff-Cheapside road, 600 yards from Marlcliff, southwards for 230 yards, then south-westwards past The Clink, and continuing to the County boundary. Padded track. |
| AL26 | F.P. | From the southern end of Barton, south-eastwards for 230 yards, southwards past Stone Barn, then adjacent to the County boundary for 500 yards. Gravel track for first 350 yards, then padded track 10 feet wide. |
| AL27 | F.P. | From Bidford on Avon Bridge, south-eastwards for 500 yards, continuing in the same direction alongside the River Avon for a further 460 yards, then southwards for 100 yards to the Marlcliff-Welford on Avon road at Barton. Padded track except for last 230 yards which is a gravel path. |
| AL28 | F.P. | From Avonside House, Bidford on Avon, east-south-eastwards to Bidford Grange and continuing to Rural District boundary 40 yards north of the River Avon. Padded track. |
| AL29 | F.P. | From the Stratford on Avon-Evesham road, A.439, 200 yards east of Towerhill Farm, eastwards to the Rural District boundary 230 yards north of the River Avon. Padded track. |
| AL30 | F.P. | From the Barton-Welford on Avon road, northwards adjacens to the Rural District boundary to the River Avon, opposite Bidford Grange. Padded track 15 feet wide. |
| AL31 | F.P. | From the Ardens Grafton-Exhall road, 300 yards north-north-west of the corner of the western end of Ardens Grafton, north-north-eastwards for 50 yards, east-south-eastwards for 170 yards so the Rural District boundary. Padded track. |
| AL32 | F.P. | From the County road through Exhall, along the north-eastern side of St. Giles' Church, south-eastwards over Hay Brook and continuing to the Ardens Grafton-Exhall road mid-way between Ardens Grafton and Little Britain. Padded track. |
| AL32a | F.P. | From AL32 to the east of St. Giles' Church, north-eastwards to the Ardens Grafton-Exhall road near the access road to Rosehall Farm. Padded track. |
| AL33 | F.P. | From the Ardens Grafton-Exhall road, north-eastwards adjacent to Hay Brook for 220 yards, south-eastwards for 270 yards, eastwards for 230 yards, then north-eastwards for 70 yards, adjacent to the Rural District boundary. Padded track. |

4

| Route No. | Class Right Way |
|---|---|
| AL34 | F.P. |
| AL34a | F.P. |
| AL34b | F.P. |
| AL35 | F.P. |
| AL36 | F.P. |
| AL37 | B.R. |
| AL37a | F.P. |
| AL38. | F.P. |
| AL38a | F.P. |
| AL38b | F.P. |
| AL39 | B.R. |
| AL39a | F.P. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL34 | F.P. | From the western end of Ardens Grafton, westwards for 700 yards, then southwards for 100 yards to the Wixford-Golden Cross road, 430 yards north-west of the Exhall Lodge. Padded track. |
| AL34a | F.P. | From the Wixford-Golden Cross road, 70 yards west of Exhall Lodge, northwards for 300 yards to AL34. Padded track. |
| AL34b | F.P. | From she Ardens Grafton-Golden Cross road, 200 yards from Golden Cross, westwards for 50 yards northwards for 280 yards to AL34. Padded track. |
| AL35 | F.P. | From the Haselor-Temple Grafton road, 480 yards south of junction with A.422, eastwards and south-eastwards to follow the southern boundary of West Grove Wood, past Barley Leys Farm to a County road at the top of Haselor Hill. Padded track. |
| AL36 | F.P. | From a County road at the top of Haselor Hill, east-north-eastwards to the Rural District boundary at the southern extremity of Red Hill Wood. Padded track. |
| AL37 | B.R. | From the Exhall-Ardens Grafton road, near access road to Rosehall Farm, north-eastwards to the south-eastern extremity of Oversley Wood, northwards along eastern boundary of Oversley Wood for 400 yards, eastwards to Alcock's Arbour, following its southern and eastern boundaries to the Alcester-Stratford on Avon road, A.422. Padded track. |
| AL37a | F.P. | From AL37 mid-way along the eastern boundary of Oversley Wood, northwards following the eastern boundary of Oversley Wood and continuing northwards along the Parish boundary to the Alcester-Stratford on Avon road, A.422. Padded track. |
| AL38. | F.P. | From AL38a at Oversley Hill Farm eastwards to the Alcester-Stratford on Avon rood, A.422, at Alcock's Arbour. |
| AL38a | F.P. | From AL38 at Oversley Hill Farm, west-north-westwards for 430 yards, north-westwards for 460 yards to the Alcester-Stratford on Avon road, A.422, 750 yards from Oversley Green. Padded track. |
| AL38b | F.P. | From AL38a, 230 yards from the Alcester-Stratford on Avon road, A.422, south-westwards for 250 yards, westwards for 600 yards to the Alcester-Stratford on Avon road, A.422, near Oversley Green. Padded track. |
| AL39 | B.R. | From the Exhall-Ardens Grafton road, along the access road to Rosehall Farm, continuing past Rosehall Farm to Oversley Wood, westwards to follow the western boundary of Oversley Wood to a County road from Oversley Green, 360 yards north of the north-west corner of Oversley Wood. The access road to Rosehall Farm is gravelled 10 feet wide, the remainder is padded track. |
| AL39a | F.P. | From Primrose Hill Lane, 330 yards north-west of the north-western corner of Oversley Wood south-westwards to AL39b, 100 yards north-east of Lower Oversley Lodge. |



| Route No. | Class of Right of Way. | Description. |
|---|---|---|
| AL39b | F.P. | From a County road 330 yards south of Oversley Green, south-westwards to join AL39a at Oversley Lodge. Padded track. |
| AL39d | F.P. | From AL39 at the south-western extremity of Oversley Wood, westwards to the north of Oversley Castle, following the northern and western boundaries of Oversley Castle grounds to the access road at the south along the access road to the County road near St. Milburg's Church. Padded track to Oversley Castle, then metalled road. |
| AL39e | F.P. | From AL39a, near Lower Oversley Lodge, southwards to AL39d, 300 yards north of Oversley Castle. Padded track. |
| AL39f | F.P. | From AL39d, 260 yards from St. Milburg's Church south-westwards, crossing the County road to St. Milburg's Church and continuing to the Arrow-Badsey road, B.4085, 240 yards east of Wixford Bridge. Padded track. |
| AL39g | F.P. | From AL39d, 30 yards from the south-west corner of Oversley Wood, south eastwards for 360 yards to the Parish boundary and continuing to the Exhall-Ardens Grafton road, 130 yards north-east of St. Giles's Church, Exhall. Padded track. |
| AL39h | F.P. | From AL39g, near the Parish boundary to the Exhall-Ardens Grafton road 70 yards north-east of St. Giles's Church, Exhall. Padded track. |
| AL39j | F.P. | From AL39d, 150 yards east of St. Milburg's Church, eastwards crossing AL39f and continuing for 360 yards, then south-eastwards for 230 yards to the Exhall-Wixford road 500 yards north-east of the Three Horse Shoes Inn. Padded track 3 feet wide. |
| AL40 | B.R. | From the Western end of Mill Lane, Oversley, south-south-eastwards along the old Roman Road, Icknield Street, to a County road at St. Milburg's Church, Wixford. Padded track. |
| AL40a | F.P. | From AL40 500 yards south of Oversley Corn Mill eastwards and north-eastwards to AL39b, 70 yards west of Primrose Hill Lane. |
| AL40b | F.P. | From AL40, near Knole Barn eastwards for 160 yards, south-eastwards for 500 yards to AL39d, 300 yards west of Oversley Castle. Padded track. |
| AL40c | F.P. | From the Arrow-Badsey road, B.4085, immediately west of the Fish Hotel, Wixford, northwards for 310 yards, north-eastwards for 400 yards to AL40, 250 yards north of St. Milburg's Church. Padded track. |
| AL40d | F.P. | From AL40c, 310 yards north of the Fish Hotel, Wixford, east-north-eastwards for 300 yards to a County road at St. Milburg's Church. Padded track. |
| AL40e | F.P. | From the Arrow-Badsey road, B.4085, 240 yards east of Wixford Bridge, northwards for 370 yards to AL40d, 60 yards from St. Milburg's Church. Padded track. |
| AL41 | F.P. | From the Arrow-Badsey road, B.4085, opposite the Fish Hotel, southwards crossing the access road to Moor Hall, to Church Lane, Broom, 90 yards west of St. Matthew's Church. Padded track. |

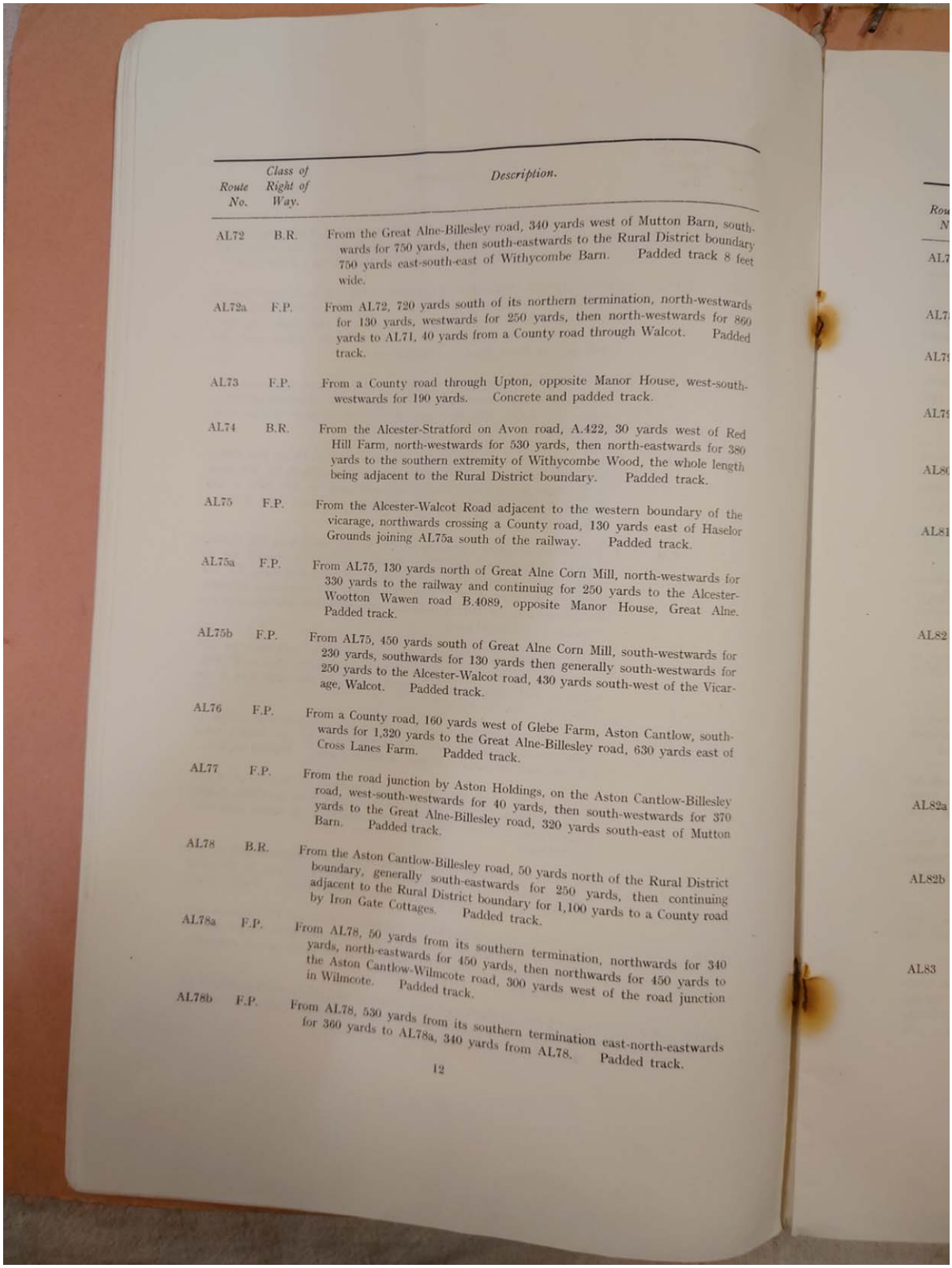
| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL41a | F.P. | From AL41, 250 yards north of Church Lane, Broom, south-westwards to Church Lane, 180 yards west of St. Matthew's Church. Padded track. |
| AL41b | F.P. | From the Arrow-Badsey road, B.4085, 70 yards south of the Three Horse Shoes Inn, south-westwards for 350 yards, then southwards for 320 yards to AL41 near access road to Moor Hall. Padded track. |
| AL42 | F.P. | From the Crabbs Cross-Dunnington road, A.441, at Weethley Gate, southwards crossing a County road to Wood Bevington, south-south-eastwards past Bevington Lodge to Mudwalls Farm, then along the Mudwalls Farm access road to the Alcester-Evesham road, A.435. Padded track. |
| AL42a | F.P. | From AL42, 500 yards south of Weethley Gate, westwards for 260 yards to the County road to Wood Bevington. Padded track. |
| AL43 | F.P. | From the Crabbs Cross-Dunnington road, A.441, along the access road to Lower Weethley Farm and continuing westwards to the County boundary in Weethley Wood, 800 yards north of Marton Spirt. Padded track. |
| AL44 | F.P. | From the Crabbs Cross-Dunnington road, A.441, 90 yards south-east of entrance to Lower Weethley Farm, west-south-westwards for 200 yards to St. James's Church, Weethley. Padded track. |
| AL45 | F.P. | From the Crabbs Cross-Dunnington road, A.441, opposite entrance to Lower Weethley Farm, east-north-eastwards for 350 yards then following the north-western boundary of Ragley Park and the western boundary of Arrow Lane Plantation to the Worcester-Alcester road, A.422. Padded track. |
| AL46 | F.P. | From the Alcester-Evesham road, A.435, 30 yards north of the Trough at the Springs, north-north-eastwards crossing the access road to Arrow Corn Mill, then to the west of Holy Trinity Church, Arrow, to the Alcester-Evesham road, A.435, opposite Rockmill Waterworks. Padded track. |
| AL46a | F.P. | From the Alcester-Evesham road, A.435, opposite Rockmill Waterworks, southwards to the access road to Holy Trinity Church, 40 yards south of the Rectory. Macadam path. |
| AL47 | F.P. | From the Alcester-Evesham road, A.435, 90 yards south-west of the Rockmill Waterworks, eastwards for 130 yards, north-eastwards over the railway to the north of Alcester Sewage Works, eastwards for 300 yards to bend in River Arrow, then north-eastwards to the Alcester-Stratford on Avon road, A.422, 120 yards north-west of Oversley Bridge. Padded track except for length along the north of the Sewage Works which is gravelled. |
| AL48 | F.P. | From the southern end of Abbey Lane, Alcester, southwards crossing AL47 to the west of the Sewage Works, along the southern boundary of the Sewage Works to the southern end of Bleachfield Street, then southwards crossing over the River Arrow to Mill Lane, 280 yards from its western extremity. Padded track except for first 160 yards which is gravelled. |

| Route No. | Class of Right of Way. | Description. |
|---|---|---|
| AL48a | F.P. | From AL47, 60 yards south-west of the junction between AL47 and AL48, north-eastwards to AL48, 60 yards north of the before mentioned junction. Padded track. |
| AL48b | F.P. | From the junction of AL48 and AL48a, south-eastwards to AL47, 60 yards north-east of the junction of AL47 and AL48. Gravel track. |
| AL48c | F.P. | From the junction of AL47 and AL48b south-south-westwards to AL48, 100 yards south of junction between AL47 and AL48. Padded track. |
| AL49 | F.P. | From the Worcester-Alcester road, A.422, eastwards along the southern boundary of Old Park Wood, continuing eastwards across the north side of Newman's Plantation and beyond for 670 yards, then south-eastwards for 400 yards, north-eastwards for 320 yards, eastwards crossing Spittle Brook and the railway, to Evesham Street, Alcester, 100 yards south-west of Segs Lane. Padded track. |
| AL49a | F.P. | From the Worcester-Alcester road, A.422, 40 yards east of the north-west corner of Arrow Lane Plantation, north-eastwards for 320 yards to AL49. Padded track. |
| AL49b | F.P. | From AL49, immediately east of the railway, north-eastwards to Segs Lane, opposite Cross Road. |
| AL49c | F.P. | From Segs Lane, Alcester, opposite Cross Road, south-south-eastwards for 70 yards to AL49, 140 yards east of the railway. |
| AL50 | F.P. | From the northern end of Allimore Lane, Alcester, north-westwards alongside Spittle Brook, to the north of Coldcomfort Wood, then past Chicken Meadow Barn, to the north of Alcester Park Farm and along the northern boundary of Park Farm Plantation to the County boundary, 100 yards south-east of the Nevill Arms (P.H.), New End. Padded track. |
| AL50a | F.P. | From the Alcester-Droitwich road, B.4090, 320 yards south-east of the access road to Alcester Lodge, west-south-westwards, past Alcester Lodge, and beyond for 380 yards to AL50. Padded track. |
| AL50b | F.P. | From Station Road, Alcester, by the entrance to the Warwickshire County Council's depot, north-north-westwards crossing the railway, then parallel to the railway for 800 yards, then parallel to the Alcester-Droitwich road, B.4090 for 900 yards, to AL50a by Alcester Lodge. Gravel track by the railway crossing, padded track beyond. |
| AL50c | F.P. | From the Alcester-Droitwich road, B.4090, 400 yards north-west of the railway bridge, near Alcester, south-westwards for 70 yards to AL50b. Padded track. |
| AL51 | B.R. | From the Alcester-Droitwich road, B.4090, immediately south-east of Park Farm Cottages, south-south-westwards to Alcester Park Farm, then west-south-westwards for 400 yards to the County boundary. Padded track. |
| AL51a | F.P. | From AL51, near Alcester Park Farm, north-westwards to AL50 at the north-eastern corner of Park Farm Plantation. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL51b | F.P. | From AL51, 230 yards west-south-west of Alcester Park Farm, southwards to the County boundary by the north-western corner of Asplands Husk Coppice. Padded track. |
| AL52 | B.R. | From the Alcester-Droitwich road, B.4090, 520 yards north-west of the access road to Alcester Lodge, south-westwards to Chicken Meadow Barn and 400 yards beyond, southwards for 370 yards to Parish boundary, then westwards for 650 yards to the County boundary, 100 yards north of Cook Hill Post Office. Padded track. |
| AL53 | F.P. | From the Sambourne-Hanging Well road, 160 yards north-west of Hanging Well corner, westwards for 400 yards to the County boundary. |
| AL54 | B.R. | From the Alcester-Droitwich road, B.4090, at Hanging Well Corner, east-north-eastwards for 320 yards to Coughton Park, eastwards through Coughton Park, then north-eastwards for 190 yards along western boundary of Coughton Park and east-north-eastwards for 360 yards to the Coughton-Sambourne road, 160 yards north-west of Coughton Station. Padded track. |
| AL55 | F.P. | From the Coughton-Sambourne road, opposite Coughton Station, south-westwards to Coughton Lodge, south-south-eastwards crossing the Coughton Alcester Heath road, 230 yards west of the railway bridge, and approximately parallel to the railway for 1,100 yards, then south-eastwards for 250 yards and southwards, adjacent to the railway for 450 yards, to the Alcester-Droitwich road, B.4090, at the railway bridge. Padded track. |
| AL55a | F.P. | From AL55, 140 yards north-east of Coughton Lodge, south-south-eastwards for 240 yards to AL55, 150 yards south-east of Coughton Lodge. Padded track. |
| AL55b | F.P. | From AL55 near Coughton Lodge, east-south-eastwards for 200 yards, then east-north-eastwards for 430 yards, crossing the railway, to the Coughton-Sambourne road, 140 yards north-west of Coughton school. Padded track. |
| AL56 | F.P. | From the Coughton-Alcester Heath road, 180 yards from the Droitwich-Alcester road, B.4090, south-eastwards for 530 yards, then south-westwards for 100 yards, to the Droitwich-Alcester road, 50 yards south-east of the entrance to Alcester Lodge. Padded track. |
| AL57 | B.R. | From the Droitwich-Alcester road, B.4090, 400 yards south-east of the entrance to Alcester Lodge, north-eastwards for 140 yards, south-eastwards for 140 yards, then east-north-eastwards under the railway to the Alcester-Birmingham road A.435 opposite entrance of access road to King's Coughton Corn Mill. Padded track. |
| AL58 | F.P. | From the Alcester-Birmingham road A.435, 300 yards north of the Roebuck Inn, westwards for 100 yards, north-north-eastwards for 650 yards to King's Coughton Corn Mill, then north-north-westwards to the Coughton-Coughton Fields road, opposite St. Peter and St. Paul's R.C. Church. Padded track. |

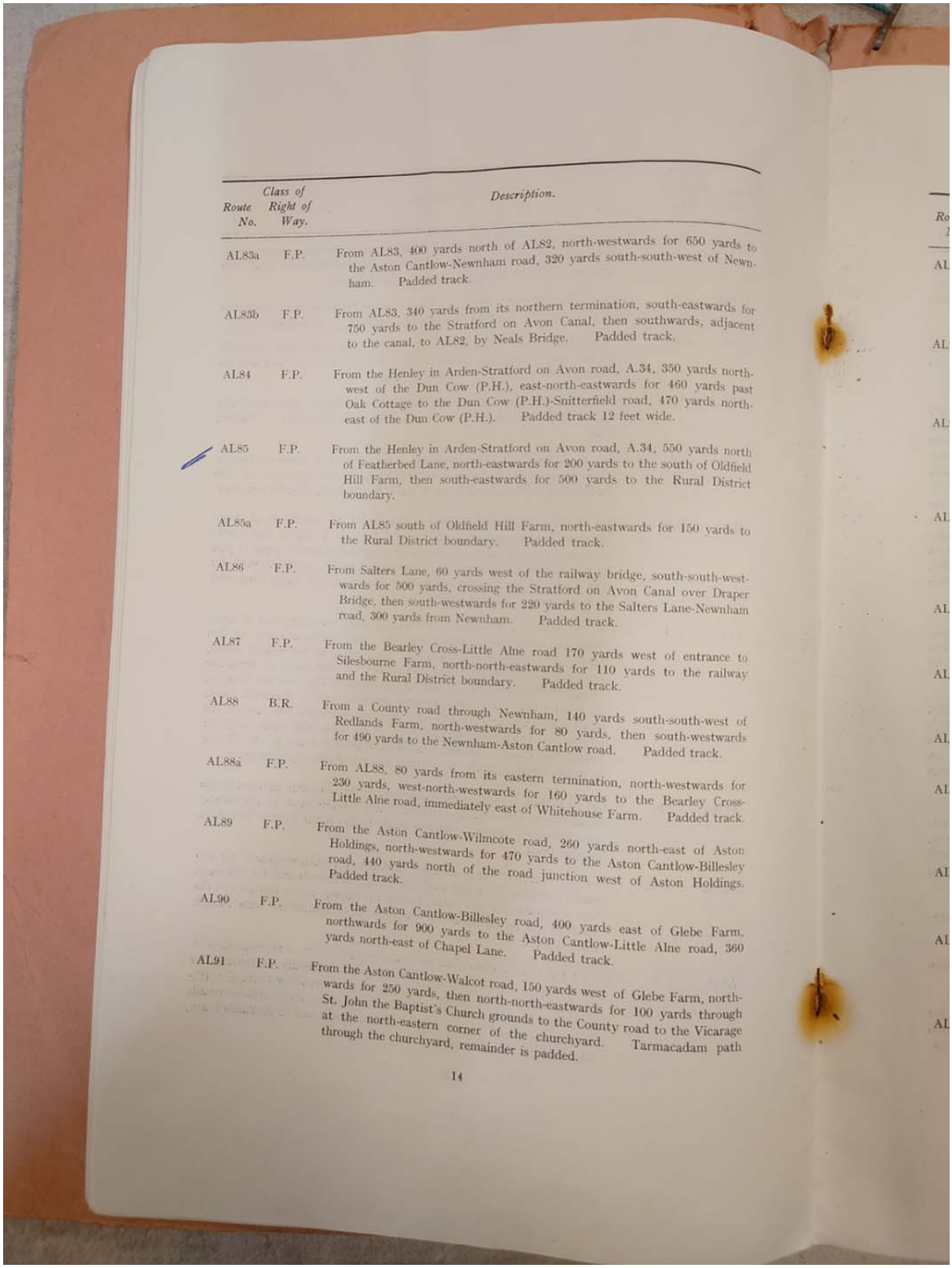
| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL58a | F.P. | From AL58, 15 yards south of the Coughton-Coughton Fields road, south-eastwards for 550 yards, crossing the River Arrow to the Coughton-Coughton Fields road, opposite Mill Ford Farm. Padded track. |
| AL59 | F.P. | From the Priory, Alcester, 120 yards south-east of Back Lane, east-north-eastwards for 150 yards to Moorfield Road, 150 yards north-east of The Priory. Tarmacadam surface. |
| AL60 | F.P. | From Moorfield Road, Alcester, 170 yards north-east of The Priory, south-eastwards for 180 yards to the High Street, 70 yards south-west of Alcester church. Tarmacadam surface. |
| AL61 | F.P. | From the Stratford Road, Alcester, 240 yards east of the High Street, northwards across the Recreation Ground for 120 yards, to the western end of Gas House Lane. Tarmacadam surface. |
| AL62 | F.P. | From the Coughton-Great Alne road by Church Farm, south-eastwards to join AL63a, 800 yards north of Wootton Wawen-Alcester road. Padded track. |
| AL62a | F.P. | From the northern termination of AL62, southwards to the Alcester-Bearley railway, 380 yards east of the railway bridge over the River Arrow, then west-south-westwards for 200 yards along the old railway line, then south-south-eastwards for 900 yards to the Alcester-Wootton Wawen Road B.4089, 70 yards north-east if Gunnings Bridge. Padded track. |
| AL62b | F.P. | From AL62, 200 yards south of Church Farm, generally eastwards for 200 yards then southwards for 600 yards to AL62, 1,130 yards rom the Alcester-Wootton Wawen road B.4089. Padded track. |
| AL63 | F.P. | From the Alcester-Wootton Wawen road, B.4089, 270 yards south-west of the entrance of Kinwarton House, north-westwards for 160 yards adjacent to the western boundary of Kinwarton House grounds, north-eastwards for 430 yards, then crossing railway and generally north-eastwards for 970 yards, to a County road 160 yards north-west of Canada Farm. Padded track. |
| AL63a | F.P. | From AL63, 100 yards north of the railway, west-north-westwards for 530 yards then north-westwards to AL62, 560 yards north of the railway. Padded track. |
| AL64 | F.P. | From the Alcester-Wootton Wawen road, B.4089, 230 yards north-east of the entrance to Kinwarton House, south-eastwards for 250 yards to a County road, 130 yards south-west of Glebe Farm. Padded track. |
| AL65 | F.P. | From a County road by Glebe Farm, Kinwarton, north-eastwards past St. Mary's Church for 750 yards to the Alcester-Bearley railway, then northwards for 200 yards to the Alcester-Wootton Wawen road, B.4089, 50 yards south of Parishes Barn. Padded track. |
| AL65a | F.P. | From AL65, 50 yards north-east of St. Mary's Church, north-westwards for 300 yards to the Alcester-Wootton Wawen road, B.4089, 150 yards south-west of the railway bridge. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL66 | B.R. | From the southern termination of the Kinwarton-Glege Farm road, south-south-eastwards for 300 yards across the River Alne to the County road that terminates at Hoo Corn Mill ford. Padded track 6 feet wide. |
| AL67 | F.P. | From the Alcester-Stratford on Avon road, A.422, 280 yards south-east of Hoo Mill Corner, eastwards for 360 yards to the north of Honeyditch Barn, north-eastwards for 250 yards to the south of Upton Barn, then east-north-eastwards for 500 yards to the Upton-Temple Grafton road, 160 yards west of Manor Farm. Padded track. |
| AL68 | F.P. | From the Upton-Temple Grafton road, by Manor Farm, south-eastwards for 670 yards, then southwards for 480 yards to the Alcester-Stratford on Avon road, A.422, 400 yards east of the Upton-Temple Grafton road. Padded track. |
| AL69 | F.P. | From a County road through Upton, 30 yards south of Upton Post Office, east-north-easswards for 130 yards, then north-eastwards for 230 yards to St. Mary & All Saints Church and continuing for 250 yards to the Alcester-Walcot road, opposite the Vicarage. Gravel track 2 feet 6 inches wide. |
| AL70 | B.R. | From the north-eastern extremity of the County road from the Upton-Temple Grafton road by Manor Farm, north-north-westwards for 90 yards, north-eastwards for 100 yards, then north-westwards for 130 yards to St. Mary & All Saints Churchyard and continuing generally north-eastwards for 270 yards to the Alcester-Walcot road opposite the Vicarage. Metalled track. |
| AL70a | F.P. | From AL70, 50 yards from its southern termination, northwards for 220 yards to AL69, west of St. Mary & All Saints Church, then north-westwards for 200 yards to the Alcester-Walcot road, 340 yards west of the Vicarage. Padded track. |
| AL71 | B.R. | From the Alcester-Stratford on Avon road, A.422, 270 yards west of Haselor Lodge, north-north-westwards for 1,870 yards to the Walcot-Aston Cantlow road, 50 yards south-east of Manor Farm. Padded track. |
| AL71a | F.P. | From AL71, 900 yards from the Alcester-Stratford on Avon road, A.422, north-westwards for 800 yards to a County road, from the Upton-Temple Grafton road by Manor Farm, 30 yards from its north-eastern extremity. Padded track. |
| AL71b | F.P. | From AL71, 60 yards from its northern extremity, south-westwards for 450 yards, crossing AL70 and continuing west-south-westwards for 230 yards to AL69, 130 yards from a County road through Upton. Padded track. |
| AL71c | F.P. | From AL71b, 30 yards east of the junction of AL69 and AL71b, south-eastwards for 200 yards to a County road, from the Upton-Temple Grafton road by Manor Farm, 100 yards from its north-eastern extremity. Padded track. |
| AL71d | F.P. | From AL71b, 30 yards east of its junction with AL70, north-eastwards for 400 yards, to a County road through Walcot, 30 yards north-west of Manor Farm. Padded track. |



| Route No. | Class of Right of Way. | Description. |
|---|---|---|
| AL72 | B.R. | From the Great Alne-Billesley road, 340 yards west of Mutton Barn, southwards for 750 yards, then south-eastwards to the Rural District boundary 750 yards east-south-east of Withycombe Barn. Padded track 8 feet wide. |
| AL72a | F.P. | From AL72, 720 yards south of its northern termination, north-westwards for 130 yards, westwards for 250 yards, then north-westwards for 860 yards to AL71, 40 yards from a County road through Walcot. Padded track. |
| AL73 | F.P. | From a County road through Upton, opposite Manor House, west-south-westwards for 190 yards. Concrete and padded track. |
| AL74 | B.R. | From the Alcester-Stratford on Avon road, A.422, 30 yards west of Red Hill Farm, north-westwards for 530 yards, then north-eastwards for 380 yards to the southern extremity of Withycombe Wood, the whole length being adjacent to the Rural District boundary. Padded track. |
| AL75 | F.P. | From the Alcester-Walcot Road adjacent to the western boundary of the vicarage, northwards crossing a County road, 130 yards east of Haselor Grounds joining AL75a south of the railway. Padded track. |
| AL75a | F.P. | From AL75, 130 yards north of Great Alne Corn Mill, north-westwards for 330 yards to the railway and continuiug for 250 yards to the Alcester-Wootton Wawen road B.4089, opposite Manor House, Great Alne. Padded track. |
| AL75b | F.P. | From AL75, 450 yards south of Great Alne Corn Mill, south-westwards for 230 yards, southwards for 130 yards then generally south-westwards for 250 yards to the Alcester-Walcot road, 430 yards south-west of the Vicarage, Walcot. Padded track. |
| AL76 | F.P. | From a County road, 160 yards west of Glebe Farm, Aston Cantlow, southwards for 1,320 yards to the Great Alne-Billesley road, 630 yards east of Cross Lanes Farm. Padded track. |
| AL77 | F.P. | From the road junction by Aston Holdings, on the Aston Cantlow-Billesley road, west-south-westwards for 40 yards, then south-westwards for 370 yards to the Great Alne-Billesley road, 320 yards south-east of Mutton Barn. Padded track. |
| AL78 | B.R. | From the Aston Cantlow-Billesley road, 50 yards north of the Rural District boundary, generally south-eastwards for 250 yards, then continuing adjacent to the Rural District boundary for 1,100 yards to a County road by Iron Gate Cottages. Padded track. |
| AL78a | F.P. | From AL78, 50 yards from its southern termination, northwards for 340 yards, north-eastwards for 450 yards, then northwards for 450 yards to the Aston Cantlow-Wilmcote road, 300 yards west of the road junction in Wilmcote. Padded track. |
| AL78b | F.P. | From AL78, 530 yards from its southern termination east-north-eastwards for 360 yards to AL78a, 340 yards from AL78. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL78c | F.P. | From AL78a, 160 yards from the Aston Cantlow-Wilmcote road, north westwards for 1,530 yards to the Aston Cantlow-Wilmcote road, 200 yards north-east of Aston Holdings. Padded track. |
| AL78d | F.P. | From AL78a, 190 yards from the Aston Cantlow-Wilmcote road, eastwards for 260 yards to the road junction in Wilmcote. Ash track. |
| AL79 | F.P. | From a County road, immediately south of Wilmcote Post Office, eastwards for 480 yards to the intersection of the Stratford on Avon Canal and the Rural District boundary. Padded track. |
| AL79a | F.P. | From AL79, 120 yards east of the Wilmcote Post Office, north-westwards for 150 yards to a County road, 80 yards north of the Post Office. Padded track. |
| AL80 | F.P. | From the Wilmcote-Billesley road, 200 yards south of St. Andrew's Church, Wilmcote, eastwards adjacent to the Rural District boundary for 110 yards, then north-eastwards for 90 yards to the Rural District boundary. |
| AL81 | B.R. | From the Aston Cantlow-Wilmcote road, 290 yards north-east of Aston Holdings, north-north-eastwards for 550 yards to a quarry, then north-westwards for 100 yards and north-north-eastwards for 350 yards to pass to the west of the quarry, and continuing generally north-eastwards for 500 yards to the Aston Cantlow-Newnham road, 540 yards south-west of Newnham. Padded track. |
| AL82 | F.P. | From the Aston Cantlow-Wilmcote road, 470 yards east-north-east of Aston Holdings, east-north-eastwards for 350 yards, north-eastwards for 250 yards, then generally eastwards for 350 yards past the cement works, north-eastwards for 260 yards, eastwards for 230 yards to Broadlow Cottage, north-eastwards for 330 yards to Neals Bridge over the Stratford on Avon Canal, east-south-eastwards for 370 yards to Hardwick Farm, south-south-eastwards for 400 yards then eastwards for 960 yards to the Henley in Arden-Stratford on Avon road, A.34, 400 yards north of Featherbed Lane. Concrete road from Hardwick Farm to the Henley in Arden-Stratford road, 12 feet wide, the remainder is padded track. |
| AL82a | F.P. | From AL82 east of Neals Bridge, northwards for 150 yards adjacent to the Stratford on Avon Canal, north-eastwards for 180 yards to the railway then generally eastwards for 640 yards to the Rural District boundary. Padded track. |
| AL82b | F.P. | From the eastern termination of AL82a, south-south-westwards for 600 yards, southwards for 260 yards to AL82, south-westwards for 400 yards then westwards for 200 yards crossing the railway to the tow-path of the Stratford on Avon Canal 340 yards north of Featherbed Lane Bridge. Padded track. |
| AL83 | F.P. | From the Aston Cantlow-Wilmcote road, 70 yards north of the road junction in Wilmcote, north-eastwards for 40 yards, generally northwards for 1,390 yards, crossing AL82, 200 yards west of Broadlow Cottage, north-westwards for 200 yards, northwards for 600 yards then north-westwards for 340 yards to a County road, 170 yards south-east of Redlands Farm, Newnham. Padded track. |



| Route No. | Class of Right of Way. | Description. |
|---|---|---|
| AL83a | F.P. | From AL83, 400 yards north of AL82, north-westwards for 650 yards to the Aston Cantlow-Newnham road, 320 yards south-south-west of Newnham. Padded track. |
| AL83b | F.P. | From AL83, 340 yards from its northern termination, south-eastwards for 750 yards to the Stratford on Avon Canal, then southwards, adjacent to the canal, to AL82, by Neals Bridge. Padded track. |
| AL84 | F.P. | From the Henley in Arden-Stratford on Avon road, A.34, 350 yards north-west of the Dun Cow (P.H.), east-north-eastwards for 460 yards past Oak Cottage to the Dun Cow (P.H.)-Snitterfield road, 470 yards north-east of the Dun Cow (P.H.). Padded track 12 feet wide. |
| AL85 | F.P. | From the Henley in Arden-Stratford on Avon road, A.34, 550 yards north of Featherbed Lane, north-eastwards for 200 yards to the south of Oldfield Hill Farm, then south-eastwards for 500 yards to the Rural District boundary. |
| AL85a | F.P. | From AL85 south of Oldfield Hill Farm, north-eastwards for 150 yards to the Rural District boundary. Padded track. |
| AL86 | F.P. | From Salters Lane, 60 yards west of the railway bridge, south-south-westwards for 500 yards, crossing the Stratford on Avon Canal over Draper Bridge, then south-westwards for 220 yards to the Salters Lane-Newnham road, 300 yards from Newnham. Padded track. |
| AL87 | F.P. | From the Bearley Cross-Little Alne road 170 yards west of entrance to Silesbourne Farm, north-north-eastwards for 110 yards to the railway and the Rural District boundary. Padded track. |
| AL88 | B.R. | From a County road through Newnham, 140 yards south-south-west of Redlands Farm, north-westwards for 80 yards, then south-westwards for 490 yards to the Newnham-Aston Cantlow road. Padded track. |
| AL88a | F.P. | From AL88, 80 yards from its eastern termination, north-westwards for 230 yards, west-north-westwards for 160 yards to the Bearley Cross-Little Alne road, immediately east of Whitehouse Farm. Padded track. |
| AL89 | F.P. | From the Aston Cantlow-Wilmcote road, 260 yards north-east of Aston Holdings, north-westwards for 470 yards to the Aston Cantlow-Billesley road, 440 yards north of the road junction west of Aston Holdings. Padded track. |
| AL90 | F.P. | From the Aston Cantlow-Billesley road, 400 yards east of Glebe Farm, northwards for 900 yards to the Aston Cantlow-Little Alne road, 360 yards north-east of Chapel Lane. Padded track. |
| AL91 | F.P. | From the Aston Cantlow-Walcot road, 150 yards west of Glebe Farm, northwards for 250 yards, then north-north-eastwards for 100 yards through St. John the Baptist's Church grounds to the County road to the Vicarage at the north-eastern corner of the churchyard. Tarmacadam path through the churchyard, remainder is padded. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL91a | F.P. | From the northern termination of AL91, diagonally across the churchyard to the school, then generally south-westwards for 310 yards to the Aston Cantlow-Walcot road by Aston Cantlow Mill. Tarmacadam path 6 feet wide through the churchyard, the remainder is padded track. |
| AL92 | F.P. | From the Aston Cantlow-Walcot road, by the Aston Cantlow Mill, north-westwards for 250 yards to the railway, north-eastwards for 80 yards adjacent to the railway, then north-eastwards for 200 yards to the Alcester-Wootton Wawen road, B.4089. Padded track. |
| AL92a | F.P. | From AL92, 140 yards from Aston Cantlow Mill, west-south-westwards for 300 yards to the railway, south-westwards adjacent to the railway for 230 yards then north-westwards crossing the railway immediately north of the railway bridge to Ford Lane, 100 yards from the Alcester-Wootton Wawen road, B.4089. Padded track. |
| AL93 | F.P. | From the northern extremity of Chapel Lane, Aston Cantlow, northwards for 130 yards, across the railway and continuing north-westwards for 280 yards crossing the River Alne, then west-north-westwards for 380 yards to the Alcester-Wootton Wawen road, B.4089, 660 yards south-west of Pool's Farm, Little Alne. Padded track. |
| AL93a | F.P. | From AL93 immediately north of the railway, north-north-eastwards for 470 yards, then north-eastwards for 370 yards to the Bearley Cross-Little Alne road by the bridge over the River Alne. Padded track. |
| AL93b | F.P. | From AL93 immediately north of the River Alne, northwards for 530 yards to the Alcester-Wootton Wawen road, B.4089, 120 yards south-west of Pool's Farm, Little Alne. Padded track. |
| AL94 | F.P. | From the Little Alne Ford-Grey Mill House road, 230 yards from the railway bridge, north-eastwards for 290 yards to the Rural District boundary. |
| AL95 | F.P. | From the Alcester-Wootton Wawen road, B.4089, 70 yards north of road junction with the Little Alne-Bearley Cross road, north-eastwards for 410 yards to the Rural District boundary, 130 yards west of the Gray Corn Mill. Padded track. |
| AL96 | F.P. | From Little Alne, opposite the eastern end of Hollyoake Farm, north-north-westwards for 330 yards to the Little Alne-Shelfield road, 30 yards west of junction with the Wootton Wawen road. Padded track. |
| AL96a | F.P. | From the northern extremity of AL96, southwards for 180 yards, then south-south-eastwards for 180 yards to the Alcester-Wootton Wawen road, B.4089, 100 yards north-east of Pool's Farm, Little Alne. Padded track. |
| AL97 | F.P. | From the Little Alne-Shelfield road, 130 yards south-east of Shelfield Park Farm, north-eastwards for 670 yards to the Rural District boundary. Padded track. |

| Route No. | Class of Right of Way. | Description. |
|---|---|---|
| AL98 | F.P. | From the Alcester-Wootton Wawen road, B.4089, 110 yards south-west of Pool's Farm, Little Alne, north-westwards for 60 yards, westwards for 1,500 yards, then north-westwards for 400 yards to the New End-Shelfield Park Farm road at Shelfield Green. Padded track. |
| AL98a | F.P. | From AL98, 620 yards from its eastern termination, generally south-eastwards for 420 yards to the Alcester-Wootton Wowen road, B.4089, 660 yards south-west of Pool's Farm, Little Alne. Padded track. |
| AL98b | F.P. | From AL98, 920 yards from its eastern termination, northwards for 480 yards to the south-western corner of Bengraves Wood, west-north-westwards for 150 yards then north-north-westwards for 1,100 yards crossing a County road 300 yards west of Shelfield Park Farm, to the Little Alne-Shelfield road, 550 yards south-east of Shelfield Lodge. Padded track. |
| AL99 | F.P. | From the Alcester-Wootton Wawen road, B.4089, 70 yards west of the Boot Inn, Great Alne, generally north-north-east for 450 yards only. The path continues from a point 80 yards to the north, generally north-north-westwards via Hill Farm to the New End-Shelfield road by Glebe Farm, with a branch path from a point 80 yards south of Hill Farm, generally south-westwards to Dark Lane, 500 yards north of its junction with Alcester-Wootton Wawen road. Padded track. |
| AL99a | F.P. | From AL99 by Hill Farm, eastwards for 30 yards, northwards for 330 yards, north-eastwards for 170 yards to pass to the east of Labrador Farm, then generally northwards for 660 yards to AL98, 130 yards from Shelfield Green. Padded track. |
| AL100 | F.P. | From a County road to the east of the Old Mother Huff Cap Inn, Great Alne, east-north-eastwards for 420 yards to the north of St. Mary Magdalene's Church, southwards for 30 yards, eastwards for 420 yards, crossing a County road 50 yards south of the West Lodge to Great Alne Hall, then east-south-eastwards for 470 yards to the Alcester-Wootton Wawen road, B.4089, by East Lodge. Partly gravelled, partly padded |
| AL100a | F.P. | From AL100, 90 yards east of St. Mary Magdalene's Church, north-westwards for 600 yards, across a County road, northwards for 490 yards, then north-north-westwards for 730 yards to the New End-Shelfield Park Farm road, 250 yards north-east of New End Farm. Padded track. |
| AL100b | F.P. | From AL100, 40 yards north-east of St. Mary Magdalene's Church, northwards for 160 yards to a County road. |
| AL100c | F.P. | From AL100, 50 yards north of the Church eastwards for 50 yards to rejoin AL100. |
| AL101 | F.P. | From the Alcester-Wootton Wawen road, B.4089, opposite the Old Mother Huff Cap Inn, south-eastwards for 350 yards to the Alcester-Wootton Wawen road, B.4089, 210 yards east of Great Alne Railway Station. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL102 | F.P. | From the New End-Great Alne road, 460 yards south-east of New End, generally north-eastwards for 410 yards then north-northeastwards for 400 yards to the New End-Shelfield Park Farm road, 300 yards south-west of Woodhouse Farm. Padded track. |
| AL103 | F.P. | From the New End-Shelfield Park Farm road, 270 yards south-west of Woodhouse Farm, south-eastwards for 170 yards, southwards for 170 yards to Dinglewell Farm, south-eastwards for 440 yards then southwards for 210 yards to the northern termination of a County road from Great Alne. Padded track. |
| AL104 | B.R. | From the New End-Shelfield Park Farm road, 570 yards from New End, northwards for 400 yards partly adjacent to the eastern boundary of Alne Wood, eastwards for 60 yards, northwards to follow the western and northern boundaries of Burnet Brake, then along the southern boundary of Newslands Wood and continuing north-eastwards for 90 yards, northwards for 80 yards and eastwards for 140 yards to the Shelfield Green-Burford Lane road by Mount Pleasant. Padded track. |
| AL104a | F.P. | From AL104, 400 yards from its southern termination, northwards for 500 yards to the south-eastern corner of Spernall Parish then generally northwards to Burford Lane, 450 yards west of junction with the Shelfield Green road. Padded track. |
| AL104b | F.P. | From AL104a, 35 yards north of the junction of AL104a and AL104, north-north-eastwards for 540 yards partly adjacent to the north-western boundary of Newslands Wood, then northwards for 430 yards to Burford Lane, 130 yards west of the junction with the Shelfield Green road. Padded track. |
| AL104c | F.P. | From AL104, 220 yards from the Shelfield Green-Burford Lane road, westwards crossing AL104b to AL104a at the south-eastern corner of Spernall Parish. |
| AL105 | F.P. | From the New End-Shelfield Park Farm road, 400 yards west of Shelfield Green, north-westwards for 620 yards so cross AL104, 150 yards south-west of Mount Pleasant, then continuing north-westwards for 480 yards to Burford Lane, 80 yards west of the Shelfield Green road. Padded track. |
| AL106 | F.P. | From the Shelfield Green-Burford Lane road, opposite Mount Pleasant, east-north-eastwards for 530 yards, then north-eastwards for 310 yards through Shelfield Square Farm to a County road at the farm entrance. Padded track. |
| AL106a | F.P. | From AL106, 80 yards from its northern termination, south-eastwards for 440 yards to the New End-Shelfield Park Farm road, 620 yards north of Shelfield Green. Padded track. |
| AL107 | F.P. | From a County road, opposite Shelfield Square Farm, northwards for 400 yards to the Shelfield Lodge access road, 50 yards east of Shelfield Lodge. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL108 | F.P. | From a County road, 350 yards south-east of Shelfield Lodge, north-eastwards for 120 yards, then eastwards for 110 yards and north-eastwards for 40 yards to a County road, 70 yards north-west of The Poplars. Padded track. |
| AL109 | F.P. | From the access road to Shelfield Lodge, 50 yards east of Shelfield Lodge, north-north-westwards for 100 yards, north-north-eastwards for 290 yards, north-north-westwards for 140 yards then generally northwards for 240 yards to the Rural District boundary by the western extremity of Stoopers Wood. Padded track. |
| AL110 | F.P. | From Burford Lane, opposite the Shelfield Green road, generally northwards, adjacent to a County road, for 770 yards, then north-westwards for 110 yards so the eastern extremity of Spernall Park and northwards for 750 yards to the Spernall-Morton Bagot road, 40 yards west of Greenhill Farm. Padded track. |
| AL110a | F.P. | From the Spernall-Morton Bagot road, 40 yards west of Greenhill Farm, south-eastwards for 380 yards, then generally southwards for 520 yards to the northern termination of a County road from Burford Lane. Padded track. |
| AL110b | F.P. | From AL110a, 380 yards south-east of Greenhill Farm, eastwards for 200 yards, then south-eastwards for 950 yards to AL109, 130 yards north of Shelfield Lodge. Padded track. |
| AL111 | B.R. | From the Spernall-Morton Bagot road, 40 yards north of Greenhill Farm, eastwards for 550 yards to the Rural District boundary, 20 yards south of the southern extremity of Limekiln Range. Padded track. |
| AL112 | F.P. | From the Spernall-Burford Lane road, 550 yards west of the Burford Lane-Shelfield Green road, north-westwards for 450 yards, south-westwards for 140 yards, then adjacent to the south-western boundary of Spernall Park for 400 yards, north-north-westwards for 280 yards and north-westwards for 250 yards to the Spernall-Morton Bagot road, adjacent to the northern corner of Morgrove Coppice. Padded track. |
| AL112a | F.P. | From AL112, at the southern extremity of Spernall Park, south-south-westwards for 160 yards to the Spernall-Burford Lane road, 90 yards west of the Upper Spernall Farm road. Padded track. |
| AL112b | F.P. | From AL112, 450 yards from the northern corner of Morgrove Coppice, generally northwards for 680 yards to the Spernall-Morton Bagot road, 410 yards north-east of the northern corner of Morgrove Coppice. Padded track. |
| AL113 | F.P. | From the New End-Great Alne road, 500 yards south of New End, south-westwards for 200 yards, then generally south-south-westwards for 630 yards to a County road, 350 yards north of Canada Farm. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL114 | F.P. | From the Spernall-New End road, opposite the Upper Spernall Farm road, south-westwards for 290 yards to Middle Spernall Farm, south-south-westwards for 960 yards, west-south-westwards for 400 yards, then south-wards for 150 yards to the Coughton-New End road, 500 yards north-east of Coughton ford. Padded track. |
| AL115 | F.P. | From the Spurnall-Burford Lane road, 40 yards west of the road to Morton Bagot, west-south-westwards for 700 yards, passing along the northern boundary of Romell's Hill Pit, to the Lower Spernall Farm access road, then south-westwards for 200 yards over the River Arrow, south-south-westwards for 930 yards, southwards for 250 yards, then west-south-west-wards for 360 yards to the Birmingham-Alcester road, A.435, immediately north of Cain bridge. Padded track. |
| AL115a | F.P. | From AL115, at the north-east corner of Romell's Hill Pit to the south-east corner, south-eastwards for 470 yards, then eastwards for 240 yards to the Spernall-New End road, opposite the Upper Spernall Farm road. Padded track. |
| AL115b | F.P. | From AL115 at the bridge over the River Arrow, south-westwards for 220 yards, generally westwards for 790 yards to the Birmingham-Alcester road, A.435, 410 yards south of Haydon Way Farm. Padded track. |
| AL116 | F.P. | From the Spernall Ash-Spernall road, southwards along the access to St. Leonard's Church, Spernall, and continuing generally southwards to the west of Lower Spernall Farm, to the west of Timm's Grove, and to the east of the River Arrow, crossing the Coughton ford-New End road, 170 yards north-east of the Coughton ford, then south-south-eastwards to the Coughton-Coughton Fields road, 160 yards north of Mill Ford Farm. Padded track. |
| AL116a | F.P. | From AL116, at the south-eastern corner of St. Leonard's Churchyard, Spernall, south-south-westwards for 270 yards to AL115, at the bridge over the River Arrow. Padded track. |
| AL117 | F.P. | From the Birmingham-Alcester road, A.435, immediately south of the Vicarage grounds, Coughton, westwards for 150 yards to the Coughton-Sambourne road, 80 yards north-west of the School. Padded track. |
| AL118 | F.P. | From the Birmingham-Alcester road, A.435, immediately north of the Throckmorton Arms (P.H.), south-westwards for 440 yards over Cain Brook to the Coughton-Sambourne road, 220 yards south-east of the railway bridge. Padded track. |
| AL119 | F.P. | From the Birmingham-Alcester road, A.435, immediately south of Cain Bridge, generally north-westwards for 1,120 yards, the first 290 yards being adjacent to Cain Brook, then west-north-westwards for 1,300 yards past Sambourne Hall, across the railway to a County road through Sam-bourne, 100 yards east of the Mission Room. Padded track. |
| AL119a | F.P. | From AL119, 200 yards south-east of Sambourne Hall, northwards for 80 yards, north-north-westwards for 150 yards, then north-westwards for 470 yards to Middle Town Lane, 80 yards north-east of the railway bridge. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL119b | F.P. | From AL119 at the railway, north-eastwards for 460 yards, then northwards for 180 yards to the ford in Middle Town Lane. Padded track. |
| AL119c | F.P. and B.R. | From AL119b, 150 yards north-east of the railway crossing, north-eastwards for 700 yards, then north-westwards for 80 yards to the south-eastern extremity of a County road through Middle Town. Padded track. |
| AL119d | F.P. and B.R. | From AL119c, 80 yards from the south-eastern extremity of a County road through Middle Town, east-south-eastwards for 500 yards, south-south-eastwards for 730 yards, then east-north-eastwards for 240 yards to the Birmingham-Alcester road, A.435, 410 yards south of Haydon Way Farm. Padded track. |
| AL120 | F.P. and B.R. | From the Birmingham-Alcester road, A.435, at Spernall Ash, westwards for 370 yards, northwards for 290 yards, then north-eastwards for 170 yards to the Studley-Bromsgrove road, A.448, 70 yards south-east of Spernall Ash Farm. Padded track 7 feet wide. |
| AL120a | B.R. | From AL120, 370 yards from Spernall Ash, westwards for 40 yards, then southwards for 30 yards to AL119d. Padded track. |
| AL121 | F.P. | From the Sambonrne-Hanging Well road, 260 yards south-west of the Mission Room, Sambourne, westwards for 500 yards, then generally west-south-westwards for 1,030 yards, passing to the south of Sambourne Warren, to the County boundary, 800 yards south of the Woodman Inn, Astwood Bank. Padded track. |
| AL122 | F.P. | From the Sambourne-Hanging Well road, 240 yards south-west of the Mission Room, Sambourne, south-eastwards for 320 yards to the Coughton-Sambourne road, 120 yards south of the access road to Sambourne Hall. Padded track. |
| AL123 | F.P. | From a County road, immediately north of the Mssion Room, Sambourne, westwards for 730 yards, north-westwards for 220 yards, then west-north-westwards for 870 yards, crossing the access road to Sambourne Warren, to the Redditch-Evesham road, A.441, opposite the Woodman Inn, Astwood Bank. Padded track. |
| AL123a | F.P. | From AL123, 200 yards west-south-west of The Shrubbery, northwards for 60 yards to the Sambourne-Astwood Bank road. Padded track. |
| AL124 | F.P. | From the Sambourne-Astwood Bank road, 330 yards east of the entrance to The Shrubbery, southwards for 100 yards, south-westwards for 150 yards to AL123, then southwards for 310 yards to the Sambourne-Hanging Well road, 470 yards south-west of the Mission Room, Sambourne. Padded track. |
| AL124a | F.P. | From AL124, 100 yards south of the Sambourne-Astwood Bank road, generally eastwards for 290 yards to a County road, 65 yards north of the Mission Room, Sambourne. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL125 | F.P. | From the Sambourne-Astwood Bank road, 300 yards east of the entrance to The Shrubbery, northwards for 290 yards, then north-eastwards for 60 yards to Marlpitt Lane, 290 yards north-west of the Astwood Bank road. Padded track. |
| AL126 | F.P. | From Perrymill Lane, 60 yards south-west of Perrymill Farm, generally southwards for 360 yards to a County road, 140 yards north-west of the Mission Room, Sambourne. |
| AL126a | F.P. | From Perrymill Lane, 60 yards south-west of Perrymill Farm, generally south-eastwards for 310 yards to Middle Town Lane, 50 yards south-west of the railway bridge. Padded track. |
| AL126b | F.P. | From a County road, 140 yards north-west of the Mission Room, Sambourne, east-north-eastwards for 80 yards, then north-eastwards for 160 yards to AL126a, 70 yards from Middle Town Lane. |
| AL127 | F.P. | From the Sambourne-Littlewood Green road, 100 yards south-west of Slough Lane, north-westwards for 40 yards, westwards for 190 yards, then adjadent to a private road for 130 yards, north-north-westwards adjacent to the railway, for 190 yards, then north-eastwards for 800 yards to the Studley-Bromsgrove road, A.448, 460 yards north-west of the Littlewood Green-Sambourne road. Padded track. |
| AL127a | F.P. | From AL127, 170 yards from the Studley-Bromsgrove road, A.448, south-eastwards for 470 yards to the Sambourne-Littlewood Green road, 110 yards from the Studley-Bromsgrove road, A.448. Padded track. |
| AL128 | F.P. | From Perrymill Lane, 50 yards north-east of Perrymill Farm, north-westwards for 720 yards to Marlpitt Lane, 200 yards south of Oak Farm. Padded track. |
| AL129 | F.P. | From Marlpitt Lane, 240 yards south of Oak Farm, north-westwards for 210 yards to the Astwood Bank-Studley road, B.4092, 170 yards south-west of Oak Farm. Padded track. |
| AL130 | F.P. | From the Astwood Bank-Studley road, B.4092, 360 yards north-east of the junction with the Sambourne road, west-south-westwards for 620 yards to the Astwood Bank-Studley road, B.4092, 30 yards east of its junction with the Redditch-Evesham road, A.441. Padded track. |
| AL131 | F.P. | From the Astwood Bank-Studley road, B.4092, 160 yards south-west of Oak Farm, generally north-westwards for 670 yards, northwards for 550 yards then north-eastwards for 90 yards to the Studley-Bromsgrove road, A.448, 50 yards south-west of the south-west corner of Rough Hill Wood. Padded track. |
| AL131a | F.P. | From AL131, 430 yards from the Astwood Bank-Studley road, B.4092, generally east-south-eastwards for 530 yards to the Astwood Bank-Studley road, B.4092, immediately north-east of Oak Farm. |
| AL131b | F.P. | From AL131, 710 yards from the Astwood Bank-Studley road, B.4092, west-south-westwards for 660 yards to the County boundary, 200 yards north of the road junction at Eastern Hill. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL131c | F.P. | From AL131, 90 yards from the Studley-Bromsgrove road, A.448, generally west-south-westwards for 800 yards to the County boundary, 100 yards north of Northbank House. Padded track. |
| AL132 | F.P. | From the Astwood Bank-Studley road, B.4092, 400 yards north-east of Oak Farm, north-westwards for 440 yards, then northwards for 80 yards to the Studley-Bromsgrove road, A.448, 330 yards west of Studley and Astwood Bank Station. Padded track. |
| AL133 | F.P. | From the Studley-Bromsgrove road, A.448, 330 yards west of Studley and Astwood Bank Station, north-north-eastwards for 420 yards to a County road, 160 yards north-west of Woodland View. Padded track. |
| AL134 | F.P. | From the Studley-Bromsgrove road, A.448, 180 yards east of the railway bridge, south-westwards for 260 yards, across the railway, to the Astwood Bank-Studley road, B.4092, 560 yards north-east of Oak Farm. Padded track. |
| AL135 | F.P. | From the Studley-Bromsgrove road, A.448, 170 yards north-west of the Falcon Inn, north-eastwards for 200 yards, then north-north-westwards for 100 yards to Station Road, 230 yards south-west of New Farm. Padded track. |
| AL136 | F.P. | From Station Road, Studley, immediately south-west of New Farm, north-westwards for 180 yards, generally northwards for 380 yards, then north-north-westwards for 440 yards to a County road from Green Lane, 210 yards south-west of Tanhouse Farm. Padded track. |
| AL137 | F.P. | From Cooks Lane, Studley, 150 yards south of Station Road, south-eastwards for 50 yards then eastwards to New Road, 160 yards north of Church Street. |
| AL138 | F.P. | From the Birmingham-Alcester road, A.435, 180 yards north-north-west of the Boot Inn, Mappleborough Green, west-south-westwards for 700 yards, southwards for 200 yards, then south-westwards for 760 yards crossing Icknield Street and the River Arrow, 20 yards south of Needle Scouring Mill, to the County boundary, 160 yards north-east of Tanhouse Farm. Padded track. |
| AL138a | F.P. | From AL138, 200 yards north-east of Needle Scouring Mill, southwards for 150 yards to the Birmingham-Alcester road, A.435, 40 yards north-east of its junction with Icknield Street. Padded track. |
| AL139 | F.P. | From the Birmingham-Alcester road, A.435, immediately north of Washford Bridge, south-south-eastwards for 510 yards, then across the River Arrow and west-south-westwards for 250 yards, through The Priory grounds along The Priory drive to the Birmingham-Alcester road, A.435. Padded track except for The Priory drive which is gravelled 8 feet wide. |
| AL140 | F.P. | From Castle Road, Studley, 120 yards north-east of Priory Needle Mill, north-north-eastwards for 190 yards, north-eastwards for 530 yards, east-north-eastwards for 540 yards, then south-south-eastwards for 180 yards through Field Farm and south-south-westwards for 150 yards to a County road, 230 yards north-east of the main entrance to Studley Castle. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL140a | F.P. | From Castle Road, Studley, 120 yards north-east of Priory Needle Mill, north-westwards for 340 yards to AL139 immediately north of the River Arrow. Padded track. |
| AL140b | F.P. | From AL140, 400 yards west-south-west of Field Farm, north-north-westwards for 470 yards, northwards for 310 yards to a County road, 360 yards south of Pratt's Farm. Padded track. |
| AL140c | F.P. | From AL140 by Field Farm, north-westwards to a County road, 360 yards south of Pratt's Farm. Padded track. |
| AL140d | F.P. | From AL140c, 500 yards north-west of Field Farm, generally north-north-westwards for 500 yards, then eastwards for 30 yards, northwards for 40 yards, then westwards for 60 yards to a County road, immediately south of Pratt's Farm. Padded track. |
| AL141 | F.P. | From the Birmingham-Alcester road, A.435, north of the Boot Inn, Mappleborough Green, east-south-eastwards for 170 yards to a County road, 340 yards south of Pratt's Farm. Padded track. |
| AL142 | F.P. | From the Birmingham-Alcester road, A.435, 290 yards north of the Royal Oak (P.H.), generally north-eastwards for 350 yards across The Park, Studley, and continuing north-eastwards for 560 yards, over the River Arrow to a County road, 50 yards south of St. Mary's Church. Padded track. |
| AL142a | F.P. | From AL142, immediately inside the eastern boundary of The Park, generally westwards for 320 yards to the Birmingham-Alcester road, A.435, immediately south of St. Mary's R.C. Churchyard. Padded track 3 feet wide. |
| AL142b | F.P. | From AL142, immediately west of the River Arrow, westwards for 270 yards, west-north-westwards for 150 yards, then south-westwards for 160 yards, and north-westwards for 280 yards to Castle Road, 110 yards from Alcester Road, Studley. Padded track. |
| AL143 | F.P. | From the Birmingham-Alcester road, A.435, immediately south of Holt Farm access road, eastwards for 110 yards, east-south-eastwards fo 360 yards, eastwards for 450 yards, then southwards for 260 yards and south-eastwards for 160 yards to the Spernall Ash-Spernall road, 30 yards west of the River Arrow. Padded track. |
| AL144 | F.P. | From the Spernall Ash-Spernall road, 30 yards east of the River Arrow, along the access road to Spernall Hall Farm and continuing northwards for 540 yards, north-westwards for 230 yards, north-north-eastwards for 170 yards then north-north-westwards for 590 yards to a County road, 90 yards south of St. Mary's Church, Studley. Metalled road to Spernall Hall Farm, remainder padded track. |
| AL145 | F.P. | From a County road, 90 yards south-east of St. Mary's Church, north-eastwards past Studley Castle and Castle Farm, then north-westwards for 300 yards to a County road, 300 yards north-east of the entrance to Hardwick House. Padded track for the first 650 yards then remainder is a metalled road, 6-12 feet wide. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL146 | F.P. | From the Spurnall-Burford Lane road, 340 yards north-east of St. Leonard's Church, Spernall, generally north-eastwards for 890 yards to 50 yards south-east of St. Giles, then north-north-eastwards for 320 yards and east-north-eastwards for 450 yards to the Spernall-Morton Bagot road, 360 yards north-east of the northern extremity of Morgrove Coppice. Padded track. |
| AL146a | F.P. | From AL146, 320 yards north-north-east of St. Giles, south-westwards for 60 yards, westwards for 300 yards, then west-north-westwards for 1,300 yards, to a County road, 90 yards south-east of St. Mary's Church, Studley. Padded track. |
| AL147 | F.P. | From the Spernall-Morton Bagot road, 430 yards north-east of the northern extremity of Morgrove Coppice, northwards for 310 yards to Morton Common, north-westwards for 510 yards, then generally west-north-westwards for 1,360 yards, through a tunnel, 270 yards east-south-east of Studley Castle to a County road, 230 yards north-east of the main entrance to Studley Castle. Padded track. |
| AL147a | F.P. | From AL147, 120 yards from the Spernall-Morton Bagot road, south-south-westwards for 90 yards, then south-westwards for 260 yards to AL146, 250 yards north of the northern corner of Morgrove Coppice. Padded track. |
| AL147b | F.P. | From AL147, 310 yards north of the Spernall-Morton Bagot road, south-eastwards for 350 yards to the Spernall-Morton Bagot road, 380 yards west of the access road to Netherstead Farm. Padded track. |
| AL147c | F.P. | From AL147, 340 yards north of the Spernall-Morton Bagot road, north-eastwards for 330 yards, east-north-eastwards for 310 yards, north-eastwards for 720 yards, then eastwards for 350 yards to the Spernall-Morton Bagot road, 290 yards south-west of Church Farm, Morton Bagot. Padded track. |
| AL148 | F.P. | From the Spernall-Morton Bagot road, along the access road to Netherstead Farm, then north-westwards for 790 yards to the western extremity of Stapenhill Wood, north-eastwards for 360 yards, then generally northwards for 1,340 yards to the Studley-Outhill road, 30 yards north-east of Fir Cottages. Padded track. |
| AL148a | F.P. | From AL148, 100 yards north of Stapenhill Wood, east-north-eastwards for 1,030 yards to the Spernall-Morton Bagot road, 130 yards west of Morton Bagot Church. Padded track. |
| AL149 | F.P. | From the Studley-Outhill road, 210 yards north-east of Clarke's Green, south-eastwards for 370 yards, east-south-eastwards for 260 yards, then east-north-eastwards for 660 yards to a County road, 110 yards south of Manor Farm. Padded track. |
| AL149a | F.P. | From AL149, 610 yards from the Studley-Outhill road, west-south-westwards for 340 yards, south-westwards for 470 yards to the western extremity of Mars Hill, then generally west-south-westwards for 520 yards and westwards for 230 yards to AL145, 100 yards south-west of Castle Farm. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description.* |
|---|---|---|
| AL149b | F.P. | From AL149a, 230 yards south-east of Castle Farm, generally south-south-eastwards to follow the eastern boundary of Studley Park to AL147. Padded track. |
| AL150 | F.P. | From the Spernall-Morton Bagot road, by the south-west corner of Bannam's Wood, generally north-eastwards through Bannam's Wood to the Rural District boundary, 70 yards north-east of the north-eastern corner of Bannam's Wood. Padded track. |
| AL151 | F.P. | From the Rural District boundary, 220 yards south of Owl Wood, west-south-westwards for 770 yards to the Rural District boundary, 180 yards north-east of the intersection of the Outhill-Wootton Wawen road and the Rural District boundary. Padded track. |
| AL152 | F.P. | From Morton Bagot Church, crossing the Morton Bagot-Oldberrow road, north-westwards for 110 yards, then northwards for 470 yards to a County road, 140 yards east of Morton Bagot Manor. |
| AL153 | F.P. | From the Morton Bagot-Oldberrow road, 180 yards north-east of Morton Bagot Church, generally northwards for 450 yards, across the Outhill-Wootton Wawen road, then north-eastwards for 600 yards to the Morton Bagot-Oldberrow road, 60 yards south-west of the access road to Bishop's Farm. Padded track. |
| AL154 | F.P. | From the Morton Bagot-Oldberrow road, along the access to Bishop's Farm and continuing south-south-eastwards for 840 yards to the Outhill-Wootton Wawen road, 140 yards from the Rural District boundary. Padded track. |
| AL155 | F.P. | From the Outhill-Wootton Wawen road, 80 yards south-east of the County road to Manor Farm, north-eastwards for 200 yards, south-eastwards for 150 yards, then generally east-north-eastwards for 460 yards to the Morton Bagot-Oldberrow road, 20 yards north of Spring Farm. Padded track. |
| AL156 | F.P. | From a County road by Manor Farm, Morton Bagot, north-eastwards crossing the Outhill-Wootton Wawen road and after 110 yards, turning north-westwards for 40 yards, north-eastwards for 560 yards, south-eastwards for 110 yards, north-north-eastwards for 60 yards, and east-north-eastwards for 270 yards to the Redditch-Henley in Arden road, B.4095, 150 yards north-west of the Rectory, Oldberrow. Padded track. |
| AL156a | F.P. | From AL156, 80 yards from the Redditch-Henley in Arden road, B.4095, southwards for 260 yards to the Morton Bagot-Oldberrow road, 130 yards north-east of Spring Farm. Padded track. |
| AL157 | F.P. | From the Redditch-Henley in Arden road, B.4095, 440 yards east of Oldberrow Court, west-north-westwards for 550 yards, north-westwards for 560 yards to the Redditch-Henley in Arden road, B.4095, 40 yards from the Rural District boundary. Padded track. |
| AL158 | F.P. | From the Outhill-Wootton Wawen road, 20 yards north of Chester's Green Cottages, north-north-eastwards for 90 yards, north-eastwards for 410 yards, then east-north-eastwards for 730 yards, following the northern boundary of Cadborough Coppice, to the Redditch-Henley in Arden road, B.4095, 30 yards from the Rural District boundary. Padded track. |

| *Route No.* | *Class of Right of Way.* | *Description of Route.* |
|---|---|---|
| AL158a | F.P. | From AL158, 60 yards from the Redditch-Henley in Arden road, B.4095 north-westwards to the Redditch-Henley in Arden road, B.4095, 220 yards south-west of Tracy Farm. |
| AL159 | F.P. | From the Outhill-Wootton Wawen road, 150 yards south of Chester's Green Cottages, south-westwards for 420 yards to a County road immediately east of Manor Farm. |
| AL160 | F.P. | From the Redditch-Henley in Arden road, B.4095, opposite Tracy Farm, north-north-eastwards for 110 yards to the Rural District boundary. Padded track. |
| AL161 | F.P. | From the Redditch-Henley in Arden road, B.4095, 200 yards west of Tracy Farm, west-south-westwards for 290 yards, then north-westwards to Ullenhall Street, B.4480, 180 yards south-east of Oldberrow Lane Farm. Padded track. |
| AL161a | F.P. | From AL161, 1,420 yards from Ullenhall Street, B.4480, north-north-eastwards for 550 yards to Oldberrow Hill, north-north-westwards for 430 yards, then north-north-eastwards for 160 yards to Ullenhall Street, B.4480, 170 yards east of Newhouse Farm. Padded track to Oldberrow Hill, then gravel road. |
| AL162 | F.P. | From the Redditch-Henley in Arden road, B.4095, immediately west of Outhill Farm, generally north-westwards for 320 yards, west-north-westwards for 430 yards immediately to the north of Lower Skilts, northwards for 230 yards, westwards for 160 yards, north-north-westwards for 310 yards, westwards for 360 yards to the southern extremity of Round Coppice, then west-south-westwards for 650 yards, south of Holy Ascension Church, to the Birmingham-Alcester road, A.435, immediately south of Mappleborough Green School. Padded track. |
| AL162a | F.P. | From AL162, immediately north of Outhill Farm, north-north-eastwards for 800 yards to AL161, 1,540 yards from Ullenhall Street, B.4480. Padded track. |
| AL162b | F.P. | From AL162, 70 yards north-west of Lower Skilts, southwards for 410 yards to the Redditch-Henley in Arden road, B.4095, 330 yards west of the access to Outhill House. Gravel track. |
| AL163 | F.P. | From Ullenhall Street, B.4480, 50 yards north-west of Oldberrow Lone Farm, north-eastwards for 460 yards to the County boundary. Padded track. |
| AL164 | F.P. | From the Studley-Outhill road, at Clarke's Green, north-eastwards for 680 yards then north-westwards to Haye Lane, 500 yards south of its junction with the Redditch-Henley in Arden road, B.4095. |
| AL164a | F.P. | From the Studley-Outhill road, 110 yards north-east of Gattax Farm, westwards to AL164, 120 yards north-west of the northern corner of Cranhills Wood. |

| Route No. | Class of Right of Way. | Description of Route. |
|---|---|---|
| AL164b | F.P. | From the Studley-Outhill road, 60 yards north-east of Fir Cottages, westwards for 320 yards to AL164. |
| AL165 | F.P. | From the Birmingham-Alcester road, A.435, at the entrance to Lower House Farm, Mappleborough Green, westwards along the farm access road for 100 yards, north-westwards for 180 yards then continuing north-westwards parallel to a private road for 360 yards then westwards for 430 yards to the County boundary, 770 yards north-east of Ipsley Alders Farm. |
| AL165a | F.P. | From AL165, at Lower House Farm, Mappleborough Green, south-westwards to the County boundary, 530 yards east of Ipsley Alders Farm. |
| AL165b | F.P. | From AL165, 500 yards north-west of Lower House Farm, Mappleborough Green, north-westwards and parallel to a private road for 180 yards to the County boundary. |
| AL165c | F.P. | From AL165, 700 yards north-west of Lower House Farm, Mappleborough Green, north-eastwards for 67 yards to the County boundary. |
| AL166 | F.P. | From the Redditch-Henley in Arden road, B.4095, at the Breaches, southwards for 160 yards then south-eastwards to the Birmingham-Alcester road, A.435, 280 yards north-east of Claybrook Farm, Mappleborough Green. Grass track. |
| AL166a | F.P. | From the Redditch-Henley in Arden road, B.4095, 440 yards north-west of The Breaches, south-westwards for 130 yards, north-westwards for 150 yards to the County boundary. Grass track. |
| AL167 | F.P. | From the Birmingham-Alcester road, A.435, 110 yards north-east of Moat House Farm, westwards and south-westwards passing to the south of Putchin's Field to Icknield Street, 600 yards north-west of Washford Farm Mill. Grass track. |
| AL168 | F.P. | From the Birmingham-Alcester road, A.435, opposite Moat House Farm, north-westwards for 330 yards then generally west-north-westwards to the County boundary at Matchboro' Hill. Grass track. |
| AL168a | F.P. | From the Birmingham-Alcester road, A.435, opposite Moat House Farm, westwards and northwards to AL168, 340 yards north-west of Moat House Farm. Grass track. |
| AL169 | F.P. | From the Spernall-Morton Bagot road, opposite its junction with AL112, north-westwards for 300 yards, to the junction of AL146 and AL146a. |
| AL171 | F.P. | Fron AL82 at a point a quarter of a mile from its eastern end, north-eastwards to Stratford-Birmingham road, A.34, 50 yards south of the access to Oldfield Hill Farm (Aston Cantlow). |
| AL172 | F.P. | From the junction of AL83 and AL83b, north-north-eastwards to a County road, 300 yards east of Newnham. |
| AL173 | F.P. | From the northern termination of AL90, east-south-east for 150 yards, then north-east to County road, 200 yards south-west of Whitehouse Farm (Aston Cantlow). |

| *Route No.* | *Class of Right of Way.* | *Description of Route.* |
|---|---|---|
| AL175 | F.P. | From a County road at its junction with AL157 on the Rural District boundary, south-westwards crossing a County road 300 yards south-east of Oldberrow, then south-westwards to join AL154, 200 yards south of Bishops Farm. |
| AL176 | F.P. | From the village of Barton, south-eastwards skirting Barton Farm to the Rural District boundary to join SD34b, 600 yards east-south-east of Dorsington Manor. |
| AL177 | F.P. | From the southern termination of AL113, south-westwards to the Coughton-Kinwarton road, 30 yards north-east of the northern extremity of AL63. |
| AL178 | B.R. | From the northern extremity of AL99 at Glebe Farm, Great Alne east-north-east, crossing AL99a, 300 yards south of Shelfield Green, to join AL98, 400 yards from its northern extremity. |
| AL179 | F.P. | From the County boundary adjacent to The Old House, Arrow, south-eastwards, skirting the western side of Old Park Wood, Arrow, to the Inkberrow-Alcester road at the south-western corner of the wood. |
| AL180 | F.P. | From AL50 at its junction with Spittle Brook, southwards to Cold Comfort Farm, Arrow, then south-south-eastwards to join AL49, 400 yards north-west of its junction with AL49a. |
| AL181 | F.P. | From the Inkberrow-Alcester road, A.422, opposite the south-west corner of Old Park Wood, south-westwards to Thornhill Farm, then west-south-westwards to a County road, 150 yards south of Nunnery Wood, Arrow. |
| AL182 | F.P. | From the junction of AL50 and AL180 at Spittle brook, Arrow, north-westwards, through Cold Comfort Wood, then west-north-westwards to AL52, 280 yards east of County boundary. |
| AL183 | F.P. | From St. James' Church, Weethley, south-westwards by Lower Barn to a County road at the south-eastern corner of Weethley Wood. |
| AL184 | F.P. | From the Weethley-Cook Hill road, 400 yards south of its junction with Inkberrow Road west and south-westwards along the eastern boundary of Weethley Wood to the Abbots Morton-Dunnington road, 200 yards south-east of the County boundary. |
| AL185 | F.P. | From the Weethley-Cook Hill road, 200 yards south of junction with Inkberrow Road, south-westwards to AL184 at the north-western corner of Weethley Wood. |
| AL186 | F.P. | From a County road at Wood Bevington Farm, northwards for 100 yards, then westwards for 330 yards, then north-north-westwards to a County road at the north-eastern corner of Ling Grounds. |
| AL187 | F.P. | From the termination of a County road 1,000 yards north-west of Cock Bevington, south-westwards to join AL1, 200 yards south of Commissioners Wood. |

| *Route No.* | *Class of Right of Way.* | *Description of Route.* |
|---|---|---|
| AL188 | F.P. | From the junction of the Evesham-Alcester-Dunnington roads, southwards for 120 yards to AL12. |
| AL189 | F.P. | From the County boundary at the north-western corner of Grove Wood, Studley, south-south-eastwards to AL162, 150 yards south of Upper Skilts. |
| AL190 | F.P. | From the Alcester-Birmingham road, 200 yards south of the school, Mappleborough Green, south-eastwards to a County road, 200 yards south-east of Common Farm. |
| AL191 | F.P. | From Crooks Lane, Studley, 200 yards south of its junction with AL137, south-westwards to join a County road south of its junction with AL127. |
| AL192 | F.P. | From the southern termination of AL82b, southwards along the eastern side of the canal, to join a County road 100 yards west of Wilmcote Station. |
| AL193 | F.P. | From Cooks Lane, Studley, 350 yards south of its junction with Station Road, eastwards to New Road 60 yards south of the School. |
| AL194 | F.P. | From the Alcester-Birmingham road, A.435, 150 yards south of Coughton House, Coughton, eastwards to the access road to St. Peter's Church. |
| AL195 | F.P. | From the Alcester-Wootton Wawen road, B.4089, 150 yards south-east of The Manor House, Great Alne, north-eastwards for 120 yards. |
| AL196 | F.P. | From Bleachfield Street, Alcester, opposite The Almshouses, westwards to AL48 at Abbey School. |
| AL197 | F.P. | From Cross Road, Alcester, 25 yards north-east of its junction with Segs Lane, east-north-eastwards to The Priory, 80 yards north-west of its junction with Moorfield Road. |

## APPENDIX 4 - HANDOVER MAP AND SCHEDULE (LGA 1929)


BOURN
SPERNALL
COUGHTON
ALCESTER
KINWARTON
GREAT ALNE
ASTON CANTLOW
HASELOR
8
3
B4088
B4089
XXXVII

# WARWICKSHIRE COUNTY COUNCIL.

(County Roads and Bridges Department).

Rural District of Alcester

Information required from Rural District Councils under Local Government Act, 1929.

## TABLE 1.

MILEAGE OF PUBLIC HIGHWAYS

## IN RURAL DISTRICT (excluding Main Roads).

| No. of Road on Plan. | Route No. if Classified Road. | Name of Road. | Class I. | | Class II. | | Scheduled Roads. | | Other Roads, including Bridle Roads. | | | | Public Footpaths maintained by R.D.C. | Total Mileage. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. Granite. | Waterbound. Gravel or Flint, etc. | Unmetalled. | | |
| | | | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | | |
| 1 | | Coughton via Sambourne to Astwood Bank | | | | | | 2·42 | | | | ✓ | | 2·42 |
| 2 | | Littlewood Green via Sambourne to Hanging Hill | | | | | | 1·89 | | | | | C38 | 1·89 |
| 3 | | Spernal Ash via Morton Baggot to Oldberrow | | | | | 0·38 | 4·02 | | | | | C39 C46 | 4·40 |
| 4 | | Spernal to Great Alne | | | | | | 2·32 | | | | | C46 | 2·32 |
| 5 | | Studley to Outhill | | | | | | 2·92 | | | | ✓ | | 2·92 |
| 6 | | Packlow via Wilmcote, Aston Cantlow to Bearley Boundary | | | | | | 5·30 | | | | | C41 C100 C39 | 5·30 |
| 7 | | Wasford via Ipsley to Watkins Boundary | | | | | | 1·93 | | | | | C101 | 1·83 |
| 8 | | Worcester Road, Wythley Oak to Morton Spiel | | | | | | 0·89 | | | | | C103 | 0·89 |
| 9 | | Wixford, near Three Horse Shoes to Stratford Boundary | | | | | | 1·59 | | | | | C47 | 1·59 |
| 10 | | Cunnington to Bidford via Broom Junction Station | | | | | | 2·69 | | | | ✓ | C103 | 2·69 |
| 11 | | Barton, Welford Pastures, Honeyington | | | | | 0·57 | 1·06 | | | | | C47 | 1·63 |
| 12 | | Salford Priors Church to Burnt Wash via Four Cross | | | | | | 2·12 | | | | ✓ | | 2·12 |
| 13 | | Barton Cross Roads to Bickmarsh | | | | | | 0·87 | | | | | C47 | 0·87 |
| 14 | | Aston Cantlow, Bilesley Road Boundary of Stratford R.D.C. | | | | | | 0·53 | | | | | C100 | 0·53 |
| 15 | | Spernal to Little Alne | | | | | | 3·18 | | | | | C39 | 3·18 |
| 16 | | From 2nd Class Road, Outhill to Stratford R.D. at Wootton Wawen | | | | | | 1·87 | | | | | C99 | 1·87 |
| 17 | | Barley Lays to Stratford R.D. Bdy | | | | | | 0·54 | | | | | C46 | 0·54 |
| 18 | | Haselor to Aston Cantlow via Wilcot | | | | | | 2·65 | | | | | | 2·65 |
| 19 | | Park Halls to Cunnington | | | | | | 1·23 | | | | | | 1·23 |
| 20 | | St. Alne Station to Temple Grafton | | | | | | 2·38 | | | | | C46 (pt 11) | 2·38 |
| | | TOTALS .. | | | | | 0·95 | 42·30 | | | | | | 43·25 |

It would be helpful if the roads could be placed approximately in order of their importance.

Please state approximate mileage of waterbound roads which have been surfaced tarred. _____ miles.

# WARWICKSHIRE COUNTY COUNCIL.

Rural District of ... Alcester ...

(County Roads and Bridges Department).

Information required from Rural District Councils under Local Government Act, 1929.

## TABLE 1.

MILEAGE OF PUBLIC HIGHWAYS

## IN RURAL DISTRICT (excluding Main Roads).

| No. of Road on Plan. | Route No. if Classified Road. | Name of Road. | Class I. | | Class II. | | Scheduled Roads. | | Other Roads, including Bridle Roads. | | | | Public Footpaths maintained by R.D.C. | Total Mileage. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. Granite. | Waterbound. Gravel or Flint, etc. | Unmetalled. | | |
| | | | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | | |
| | | Brought Forward | | | | | 0·95 | 42·30 | | | | | | 43·25 |
| ✓ 21 | | Holt Road, Studley | | | | | | 0·17 | | | | | | 0·17 |
| ✓ 22 | | Watts' Road Do | | | | | | 0·26 | | | | | | 0·26 |
| ✓ 23 | | Thomas Town Do | | | | | | 0·41 | | | | | C38 | 0·41 |
| ✓ 24 | | Exhall from Wixford to Ardens Grafton, Stratford Bdry | | | | | | 1·99 | | | | | | 1·99 |
| ✓ 25 | | Bannister Road, Wixford to Evesham Main Road | | | | | | 0·64 | | | | | | 0·64 |
| ✓ 26 | | School Road, Alcester | | | | | | 0·30 | | | | | | 0·30 |
| ✓ 27 | | Cross Lane, & Seggs Lane, Alcester | | | | | | 0·28 | | | | | | 0·28 |
| ✓ 28 | | Crick's Lane Studley | | | | | | | | 0·38 | | | | 0·38 |
| ✓ 29 | | George's Elm, Exhall Lodge | | | | | | | | 0·92 | | | | 0·92 |
| ✓ 30 | | Hasler, Grounds - Aston Cantlow, Billesley Road | | | | | | | | 1·89 | | | C41. | 1·89 |
| ✓ 31 | | Coughton Lane | | | | | | | | 0·83 | | | | 0·83 |
| ✓ 32 | | New Inn, Abbotts Salford | | | | | | | | 0·97 | 0·21 | | | 1·18 |
| ✓ 33 | | Green Lane, Studley | | | | | | | | 0·70 | | | | 0·70 |
| ✓ 34 | | Marble Alley, Studley | | | | | | | | 0·09 | | | | 0·09 |
| ✓ 35 | | Mill Lane, &c., Broom | | | | | | | | 0·38 | | | | 0·38 |
| ✓ 36 | | Oak Farm, Perrymill Farm, Bambourne | | | | | | | | 0·79 | | | | 0·79 |
| ✓ 37 | | Bunnington Lane | | | | | | | | | 0·17 | | | 0·17 |
| ✓ 38 | | Gaskenes & Maltmill Lanes, Alcester | | | | | | | | 0·19 | | | | 0·19 |
| ✓ 39 | | Butler St. & Road to Chapel n | | | | | | | | | 0·11 | | | 0·11 |
| ✓ 40 | | Kings Coughton Lane | | | | | | | | | 0·21 | | | 0·21 |
| ✓ 41 | | Church Lane, Wixford | | | | | | | | | 0·25 | | | 0·25 |
| ✓ 42 | | Burford Lane - Sheffield Green | | | | | | | | | 0·70 | | | 0·70 |
| ✓ 43 | | Coughton Ford - New End Farm | | | | | | | | | 1·32 | | | 1·32 |
| ✓ 44 | | Coughton Fields Rd Great Alne | | | | | | | | | | 1·08 | | 1·08 |
| ✓ 45 | | New End - Sheffield Park Farm | | | | | | | | | 2·08 | | | 2·08 |
| ✓ 46 | | The Poplars | | | | | | | | 0·40 | | | | 0·40 |
| | | TOTALS .. | | | | | 0·95 | 46·35 | | 7·54 | 5·05 | 1·08 | | 60·97 |

It would be helpful if the roads could be placed approximately in order of their importance.

Please state approximate mileage of waterbound roads which have been surfaced tarred. _____ miles.

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 31 | Coughton Lane | | | | | | | 1.89 | | | C41. | | 1.89 |
| 32 | New Inn. Abbotts Salford | | | | | | | 0.83 | | | | | 0.83 |
| 33 W. | Green Lane. Studley | | | | | | | 0.97 | 0.21 | | | | 1.18 |
| 34 | Marble Alley, Studley | | | | | | | 0.70 | | | | | 0.70 |
| 35 | Mill Lane, &c. Broom | | | | | | | 0.09 | | | | | 0.09 |
| 36 | Oak Farm. Perrymill Farm, Samborne | | | | | | | 0.38 | | | | | 0.38 |
| 37 | Bunnington Lane | | | | | | | 0.79 | | | | | 0.79 |
| 38 | Gashouse & Maltmill Lanes, Alcester | | | | | | | | 0.17 | | | | 0.17 |
| 39 | Butler St. & Road to Chapel | | | | | | | 0.19 | | | | | 0.19 |
| 40 | Kings Coughton Lane | | | | | | | | 0.11 | | | | 0.11 |
| 41 | Church Lane, Wixford | | | | | | | | 0.21 | | | | 0.21 |
| 42 | Burford Lane - Sheffield Green | | | | | | | | 0.25 | | | | 0.25 |
| 43 | Coughton Ford - New End Farm | | | | | | | | 0.70 | | | | 0.70 |
| 44 | Coughton Fields Rd. Great Alne | | | | | | | | 1.32 | | | | 1.32 |
| 45 | New End - Sheffield Park Farm | | | | | | | | | 1.08 | | | 1.08 |
| 46 | The Poplars | | | | | | | | 2.08 | | | | 2.08 |
| | | | | | | | | 0.40 | | | | | 0.40 |
| | TOTALS ... | | | | | 0.95 | 46.35 | 7.54 | 5.05 | 1.08 | | | 60.97 |

It would be helpful if the roads could be placed approximately in order of their importance.

Please state approximate mileage of waterbound roads which have been surfaced tarred. ..... miles.

R

Please state approxima

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sunford Lane - Sheffield Green | | | | | | | | | | | | |
| Broughton Ford - New End Farm | | | | | | | | | 1.32 | | | 1.32 |
| Broughton Fields Rd. Great Close | | | | | | | | | | 1.08 | | 1.08 |
| New End - Sheffield Park Farm | | | | | | | | | 2.08 | | | 2.08 |
| The Poplars | | | | | | | | 0.40 | | | | 0.40 |
| TOTALS ... | | | | | 0.95 | 46.35 | | 7.54 | 5.05 | 1.08 | | 60.97 |

It would be helpful if the roads could be placed approximately in order of their importance.

Please state approximate mileage of waterbound roads which have been surfaced tarred. .....miles.

Please state approxima...

# WARWICKSHIRE COUNTY COUNCIL.

Rural District of ....Alcester....

(County Roads and Bridges Department).

Information required from Rural District Councils under Local Government Act, 1929.

## TABLE 1.

MILEAGE OF PUBLIC HIGHWAYS

## IN RURAL DISTRICT (excluding Main Roads).

| No. of Road on Plan. | Route No. if Classified Road. | Name of Road. | Class I. | | Class II. | | Scheduled Roads. | | Other Roads, including Bridle Roads. | | | | Public Footpaths maintained by R.D.C. | Total Mileage. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. Granite. | Waterbound. Gravel or Flint, etc. | Unmetalled. | | |
| | | | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | | |
| | | Brought Forward | | | | | 0·95 | 46·35 | | 7·54 | 5·05 | 1·08 | | 60·97 |
| 47 | | Kinwarton Road | | | | | | | | | 0·47 | | | 0·47 |
| 48 | | Town Hill - Arden's Grafton | | | | | | | | 0·59 | 0·76 | | | 1·35 |
| 49 | | Brickyard Lane, Studley | | | | | | | | | 0·32 | | | 0·32 |
| 50 | | Pratts Lane, Studley | | | | | | | | 0·37 | 0·08 | | | 0·45 |
| 51 | | Clopsleborough Green to B4095 | | | | | | | | 0·30 | 0·70 | | | 1·00 |
| 52 | | Coughton Fields Road | | | | | | | 0·47 | 0·32 | 1·44 | | | 2·23 |
| 53 | | Great Alne Roads, Sheffield Green | | | | | | | | 0·43 | | | | 0·43 |
| 54 | | Aston Ford Lane | | | | | | | | | 0·26 | | | 0·26 |
| 55 | | Upper Spernal Lane | | | | | | | | | | 0·45 | | 0·45 |
| 56 | | Marlcliff - Clink | | | | | | | | 0·49 | | 0·19 | | 0·68 |
| 57 | | Burford Lane, Green Hill | | | | | | | | | | 0·47 | | 0·47 |
| 58 | | Newnham Lane | | | | | | | | 0·70 | | | | 0·70 |
| 59 | | Chapel Street, Aston Cantlow | | | | | | | | | 0·10 | | | 0·10 |
| 60 | | Church Road, Aston Cantlow | | | | | | | | | 0·10 | | | 0·10 |
| 61 | | Allimore Lane, Alcester | | | | | | | | | 0·45 | | | 0·45 |
| 62 | | The Moors, Alcester | | | | | | | | 0·27 | | | | 0·27 |
| 63 | | Blackfield Street Alcester | | | | | | | | 0·23 | | | | 0·23 |
| 64 | | Abbey Lane, Alcester | | | | | | | | 0·11 | | | | 0·11 |
| 65 | | Church Road Spernal | | | | | | | | | 0·06 | | | 0·06 |
| 66 | | Middle Town Studley | | | | | | | | | 0·11 | | | 0·11 |
| 67 | | Mill Lane, Oversley Green | | | | | | | | 0·25 | 0·32 | | | 0·80 |
| 68 | | Streets in Bidford | | | | | | | | 0·19 | | | | 0·19 |
| 69 | | Wood Berrington Lane | | | | | | | | | 0·57 | | | 0·57 |
| 70 | | Church End Studley | | | | | | | | | 0·25 | | | 0·25 |
| 71 | | Morton, Manor Lane | | | | | | | | | 0·36 | | | 0·36 |
| 72 | | Aston Cantlow-Newnham | | | | | | | | | | 1·36 | | 1·36 |
| 72A | | Little Alne Ford Road | | | | | | | | | 0·13 | | | 0·13 |
| | | TOTALS ... | | | | | 0·95 | 46·35 | 0·47 | 11·82 | 11·76 | 3·55 | | 74·90 |

It would be helpful if the roads could be placed approximately in order of their importance.

Please state approximate mileage of waterbound roads which have been surfaced tarred. _____ miles.

R

R Please state approx...

# WARWICKSHIRE COUNTY COUNCIL.

Rural District of ... Alcester

(County Roads and Bridges Department).

Information required from Rural District Councils under Local Government Act, 1929.

## TABLE 1.

MILEAGE OF PUBLIC HIGHWAYS

## IN RURAL DISTRICT (excluding Main Roads).

| No. of Road on Plan. | Route No. if Classified Road. | Name of Road. | Class I. | | Class II. | | Scheduled Roads. | | Other Roads, including Bridle Roads. | | | | Public Footpaths maintained by R.D.C. | Total Mileage. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. | Tarmacadam. | Waterbound. Granite. | Waterbound. Gravel or Flint, etc. | Unmetalled. | | |
| | | | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | Miles. | | |
| | | Broughton Kinwarton | | | | | 0·95 | 46·35 | 0·47 | 11·82 | 11·76 | 3·55 | | 74·90 |
| | | Footpaths | | | | | | | | | | | | |
| 73 | Alcester | Thro' Recreation Ground | | | | | | | | | | | 0·06 | 0·06 |
| 74 | | Priory to Whitehall | | | | | | | | | | | 0·05 | 0·05 |
| 75 | | Abbey Lane to Bleachfield | | | | | | | | | | | 0·05 | 0·05 |
| 76 | | Bulls Head Yard - Moorfield | to Priory | | | | | | | | | | 0·19 | 0·19 |
| 76A | | Evesham St. Leggs Lane | | | | | | | | | | | 0·13 | 0·13 |
| 77 | | F.P. to Station Road | | | | | | | | | | | 0·19 | 0·19 |
| 78 | | Kinwarton Church | | | | | | | | | | | 0·26 | 0·26 |
| 79 | Arrow | Path to Church | | | | | | | | | | | 0·09 | 0·09 |
| 80 | | Beside Ragley Park to Wixthley | | | | | | | | | | | 1·49 | 1·49 |
| 81 | Aston Cantlow | From Mill thro' Churchyard | | | | | | | | | | | 0·23 | 0·23 |
| 82 | Gt. Alne | Sufflap. - Great Alne Lodge | | | | | | | | | | | 0·40 | 0·40 |
| 83 | | to Church | | | | | | | | | | | 0·07 | 0·07 |
| 84 | Bidford | Bidford - Kings Broom | | | | | | | | | | | 0·96 | 0·96 |
| 85 | | Bidford - Marlcliff | | | | | | | | | | | 0·69 | 0·69 |
| 86 | | Bidford - Barton | | | | | | | | | | | 0·62 | 0·62 |
| 87 | Coughton | Church Path | | | | | | | | | | | 0·19 | 0·19 |
| 88 | | Field Path, to Mill Ford | | | | | | | | | | | 0·33 | 0·33 |
| 89 | Haselor | Church Path, to Walcot | | | | | | | | | | | 0·32 | 0·32 |
| 90 | Ipsley | By Mill Stream | | | | | | | | | | | 0·17 | 0·17 |
| 91 | Morton Bagot | Church to Rectory | | | | | | | | | | | 0·36 | 0·36 |
| 92 | Studley | New Road, Crooks Lane | | | | | | | | | | | 0·23 | 0·23 |
| | | TOTALS ... | | | | | 0·95 | 46·35 | 0·47 | 11·82 | 11·76 | 3·55 | 7·11 | 92·01 |

It would be helpful if the roads could be placed approximately in order of their importance.

Please state approximate mileage of waterbound roads which have been surfaced tarred. _____ miles.

## BRIDGES (other than County Bridges) 6 feet and over in total span, maintained by Rural District Council on all Public Highways.

| Route No. if on Classified Road. | Name of Road. | Name of Bridge. | Location as Numbered on Plan. | Type. | Span. | Width between parapets. | Particulars of any restrictions as to weight, etc. |
|---|---|---|---|---|---|---|---|
| | Barton, Wilford Pastures, & Dorrington | Wilford Pastures Boundary | 1 X | Stone & Concrete | 18'-0" | 15'-0" | |
| | Exhall, Wixford, to Arden's Grafton | Exhall Bridge | 2 X | Concrete | 9'-0" | 14'-0" | |
| | Littlewood Green & Hanging Mill Hill | Middletown | 3 X | Concrete | 7'-0" | 19'-4" | |
| | Great Alne Station to Temple Grafton | Great Alne Road | 4 X | Iron Girder | 32'-0" | 12'-0" | Road |
| | Spernal Ash, to Oldberrow | Spernal | 5 X | Iron Girder | 32'-0" | 12'-0" | |
| | | Little Alne | 6 X | Brick Arches | 86'-0" | 11'-6" | |
| | Footbridges | | | | | | |
| | | Salford Priors | 7 X | Timber | 19'-0" | 3'-0" | |
| | | Wixford, opp. Fish Inn | 8 X | " | 32'-0" | 2'-6" | |
| | | Do Do | 9 X | " | 18'-0" | 3'-6" | |
| X | | Hoo Mill | 10 X | " | 37'-0" | 3'-0" | |
| X | | Coughton Ford | 11 X | " | 95'-0" | 4'-3" | |
| X | | Milford | 12 X | " | 55'-0" | 3'-0" | |
| X | | Spernal to Coughton | 13 X | " | 38'-0" | 2'-0" | |
| X | | Morgrove, to Studley | 14 X | " | 12'-6" | 2'-0" | |
| X | | Black Firs to Studley Castle | 15 X | " | 23'-0" | 2'-0" | |
| X | | Do Do | 16 X | " | 16'-0" | 2'-0" | |
| X | | Do Do | 17 X | " | 14'-6" | 2'-0" | |
| X | | Hazelor Grounds | 18 X | " | 20'-0" | 1'-6" | |
| X | | Studley to Morton | 19 X | " | 16'-0" | 2'-0" | |
| X | | Astons Cawkwell to Little Alne | 20 X | " | 43'-0" | 1'-6" | |
| X | | Astons Mill to Great Alne | 21 X | " | 48'-0" | 1'-6" | |
| X | | Ipsley Race Course | 22 X | " | 31'-0" | 2'-0" | |
| X | | Ipsley Mill | 23 X | " | 51'-0" | 2'-6" | |
| X | | Washford Mill | 24 X | Brick | 27'-0" | 3'-9" | |
| X | | Do Do | 25 X | Timber | 77'-0" | 2'-6" | |
| X | | Studley Church Mill | 26 X | Steel | 30'-0" | 2'-7" | |
| X | | Old Forge Bridge | 27 X | " | 34'-0" | 2'-8" | |
| X | | Ipsley to Old Forge | 28 X | Timber | 20'-0" | 1'-6" | |

R

R Please state approx

## AGREEMENTS entered into with Railway, Canal or other Companies or Persons for Maintenance of Roads over Bridges, and/or of the Structures of Bridges on all Public Highways in Rural District.

| Route No. if Classified Road. | Name of Road. | Name or No. of Bridge as shewn on Plan. | Location. | Name and Address of Company or Persons. | Precis of Agreement. | Annual Payments (if any). | Dates due. |
|---|---|---|---|---|---|---|---|
| | Wilmcote Station Bridge | M. ch. 113 · 43 from Addington | Wilmcote | S. W. Railway | The Council agree to repair the roadways & footpaths on such bridges. Agreement is dated 2 Oct 1907 & is subject to six months notice on either side | £20 | 24 June & 25 Dec |
| | Little Alne Road Bridge | 116 · 78½ " | Bearley | " | | | |
| | Aston Cantlow Road Bridge | 118 · 17 " | Great Alne | " | | | |

## TABLE 4.

### MISCELLANEOUS FIXED INCOME (e.g., Acknowledgments, Wayleaves, etc.) in connection with all Public Highways in Rural District.

| Route No. if Classified Road. | Name of Road. | Location. | Name and Address of Payee. | Particulars giving date of Agreement. | Annual Payments. | Dates due. |
|---|---|---|---|---|---|---|
| | None | - | - | - | | |

## TABLE 5.

### MISCELLANEOUS FIXED EXPENDITURE (e.g., Acknowledgments, Wayleaves, etc.) in connection with all Public Highways in Rural District.

| Route No. if Classified Road. | Name of Road. | Location. | Name and Address of person to whom payable. | Particulars, giving date of Agreement. | Annual Payments. | Dates due. |
|---|---|---|---|---|---|---|
| | None | - | - | - | | |

R

Please state appropriate

(1) PARTICULARS of QUARRIES and SAND and GRAVEL PITS owned or leased by Council and also those from which the Council have a right to take Gravel without royalty for repair of highways.

| Location on Plan. | Acreage. | Particulars of Lease, Royalties, etc. | Rent and dates due. | Name and Address of Owner. |
|---|---|---|---|---|
| Broom | | The Council pay a royalty of 6d per yard to the County Council under an agreement dated 5/2/13. | | Warwickshire County Council |

## TABLE 7.

(2) DEPOTS and TOOL STORES.

| Location. | Particulars of Buildings. | Whether owned by Council. | If Leased or Rented, Terms of Tenancy. | | | |
|---|---|---|---|---|---|---|
| | | | Date. | Period. | Rent and date due. | Name and Address of Owner. |
| Alcester | Land near Station | No | 3/7/25 | 21 years from 25/7/24 Determinable 1932 or 1939 | £5 30 June 31 Dec | Warwick C. C. |

## TABLE 8.

(3) Particulars of Land acquired by Council for Improvement of all Highways in Rural District which will not on April 1st, 1930, form part of Highway.

| No. of Road on Plan. | Route No. | Name of Road. | Location. (Strip plan to 25" scale to be supplied). | Frontage. Feet. | Area. Sq. Yds. | Date of Conveyance. | Purchase Price. | Whether purchased out of Revenue or Loan. If Loan, give reference to entry on Table 11. |
|---|---|---|---|---|---|---|---|---|
| | | | No Land. | | | | | |

R

miles.

R

Please state approximate [illegible]

## PARTICULARS OF PLANT owned by RURAL DISTRICT COUNCIL.

| Plant. | No. | Make. | Capacity or Weight. | Date of Purchase. | Initial Cost. | State any Grant made by Government Dept. towards purchase. | State whether purchased out of Revenue or by Loan. | No. of Loan referred to on Table 11. | Present estimated value. |
|---|---|---|---|---|---|---|---|---|---|
| Steam Wagons .. .. .. | 1 | Combination Wagons | To carry 5 Tons | Feb. 1922 | £1100 | none | | | |
| Petrol Lorries .. .. .. | | | | | | | | | |
| Trailers .. .. .. .. | | | | | | | | | |
| Tipping Trailers .. .. .. | | | | | | | | | |
| Steam Rollers .. .. .. | | | | | | | | | |
| Petrol Rollers .. .. .. | | | | | | | | | |
| Water Carts and Vans .. .. | 1 | W. Carl. Bamford & Evershed | 200 Gal | 1926 | | | | | |
| Living Vans .. .. .. | | | | | | | | | |
| Gritting Machines .. .. | | | | | | | | | |
| Slop Carts .. .. .. .. | | | | | | | | | |
| Machine Sweepers .. .. | | | | | | | | | |
| Bitumen Boilers .. .. .. | 4 | | 1/50 2/50 1/150 Gallons | | | | | | |
| Tarring Machines .. .. .. | | | | | | | | | |
| Snow Ploughs .. .. .. | | | | | | | | | |
| Quarry Plant :— | | | | | | | | | |
| | 1 | Stone Breaker Messrs Hunt Bros. | 16" Rollers | | £45 | | | | |
| Mixing Plant :— | | Messrs Jones Poplar London | | | | | | | |
| (a) Macadam .. .. .. | 1 | Concreting Co. | | | | | | | |
| (b) Concrete .. .. .. | | 1 Dipping Tank 4×4×3 | | 1924 | | | | | |
| Other light and heavy plant (describe) .. .. | | 2 Half yard Iron Wagons | | | | | | | |
| | | 1 Tow Crane | | | | | | | |
| | | 1 Iron Lattice framed Dipper | | | £15 | | | | |

R

miles

R

Please state approximate [illegible]

## Statement of Expenditure and Receipts on Maintenance and Improvement Works on Highways and Bridges (other than County Bridges), for the years 1927-28, 1928-29, and 1929-30.

| | 1927-28. £ | 1928-29. £ | 1929-30. Estimate. £ |
|---|---|---|---|
| **GROSS EXPENDITURE.** | | | |
| 1st Class Roads | ✓ | ✓ | |
| 2nd Class Roads | ✓ | ✓ | |
| Scheduled Roads | 5339 | 4583 | |
| Other Roads | 1283 | 1615 | |
| Depots, Tools, Plant, etc. | | | |
| Establishment Charges (Salaries, Travelling, Office Expenses, etc.) | 318 | 359 | |
| Loan Charges | 1729 | 191 | |
| £ | 8669 | 6718 | |
| **RECEIPTS.** | | | |
| 1. Grants from Ministry of Transport:— | | | |
| (a) Classified Roads and Bridges | ✓ | ✓ | |
| (b) Scheduled Roads and Bridges | 1072 | 1510 | |
| (c) Special Grant Works | | | |
| (d) Salaries | 121 | 164 | |
| (e) Travelling Expenses | | | |
| (f) Other Grants | | | |
| 2. Other Receipts:— | | | |
| (g) Rents, Wayleaves, etc. | 20 | 20 | |
| (h) Re-instatement of Trenches | | | |
| (i) Hire of Plant | | | |
| (j) Other Receipts | 26 | 19 | |
| 3. Proportionate share of Agricultural Rates Act Grant applicable to Road Expenditure | | | |
| £ | | | |
| **SUMMARY.** | | | |
| Gross Expenditure as above | 8669 | 6718 | |
| *Deduct* Receipts as above | | | |
| Net Charge on Rates £ | | | |
| „ per £ of assessable value | | | |
| Rateable value of District on which rates were levied for each year | | | |
| Approximate tonnage of materials used per annum | 1200 | 900 | |
| „ mileage of roads surface tarred | 7.50 | 14.25 | |

**NOTE.**

Please state whether the Authority's accounts are kept on the basis of—

(a) Receipts and Payments, or

(b) Income and Expenditure.

R

miles.

Please state approximate mileage of waterbo...

R

*Statement of Expenditure and Receipts on Maintenance and Improvement Works on Highways and Bridges (other than County Bridges), for the years 1927-28, 1928-29, and 1929-30.*

| | 1927-28. £ | 1928-29. £ | 1929-30. Estimate. £ | |
|---|---|---|---|---|
| **GROSS EXPENDITURE.** | | | | |
| 1st Class Roads | ✓ | ✓ | | |
| 2nd Class Roads | ✓ | ✓ | | |
| Scheduled Roads | 5339 | 4553 | 4553 | 14445 |
| Other Roads | 1283 | 1615 | 1615 | 4513 |
| Depots, Tools, Plant, etc. | | | | 18,958 |
| Establishment Charges (Salaries, Travelling, Office Expenses, etc.) | 318 | 359 | | 639 |
| Loan Charges | 1729 | 191 | | |
| £ | 8669 | 6718 | | |
| **RECEIPTS.** | | | | |
| 1. Grants from Ministry of Transport :— | | | | |
| (a) Classified Roads and Bridges | ✓ | ✓ | | |
| (b) Scheduled Roads and Bridges | 1072 | 1510 | 1510 | 3582 |
| (c) Special Grant Works | | | | 1260 |
| (d) Salaries | 121 | 154 | | |
| (e) Travelling Expenses | | | | |
| (f) Other Grants | | | | |
| 2. Other Receipts :— | | | | |
| (g) Rents, Wayleaves, etc. | 20 | 20 | | |
| (h) Re-instatement of Trenches | | | | |
| (i) Hire of Plant | | | | |
| (j) Other Receipts | 26 | 19 | | |
| 3. Proportionate share of Agricultural Rates Act Grant applicable to Road Expenditure | | | | |
| £ | 1239 | 1703 | | |
| **SUMMARY.** | | | | |

WARWICKSHIRE COUNTY COUNCIL.

TABLE 11.

# PARTICULARS OF LOANS RAISED FOR HIGHWAY PURPOSES

## (excluding Main Roads).

| of an. | Purpose for which Loan was raised. (If for Road Improvement Works give road or route No.) | Amount of Loan. £ | Name of Lender. | Date of Borrowing. | Period yrs. | Rate of Interest. | Method of repayment. (Annuity, equal half-yearly instalment of principal, etc.) | Dates Loan charges fall due. | Total Principal repaid at 31st March, 1930. £ | Amount of Loan outstanding at 31st March, 1930. £ | State if Mortgage in "Break Clause," if particulars. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Putting in Repair and Widening District Roads for Classification | 8.000 | | 1922 | | | | | | | |
| | Erection of Broom Bridge 1900 | | | 1900 | | | | | | | |
| | Purchasing Mann-stein Tip Cart Convertable to Steam Roll | | | 1922 | | | All outstanding loans will be paid off before March 30th 1930 — | | | | |

R

It would be ...

R

Please state approximate ... mileage of waterbound ...

TABLE XII.

## CAPITAL MONIES, Etc.

**Full details of any capital monies received during the past twenty years, or annual contributions receivable in respect of financial adjustments to which Section 117 (Sub-section 4) of the Local Government Act, 1929, applies.**

*(Particulars of Outstanding Claims should also be given).*

| Date. | Authority from whom received. | Full Particulars. |
|---|---|---|
| | | Negotiations are in progress for raising a loan of £1000 but the loan has not yet been taken up. to |
| | | Negotiations are in progress for raising a loan of £1000 but the loan has not yet been taken up. |

PARTICULARS OF [illegible] OFFICE ACCOM[illegible] HIGHWAYS and BRIDGES.

[illegible] owned or rented by Cou[illegible] Staff.

| Description of Office. | Name. | Date of Appointment. | Address of Property. | No. of Rooms. | Freehold or Leasehold, or other state terms of tenancy. | Salary at 31st March, 1930. Technical. Allocation: [illegible] etc. £ | Total. £ | Clerical. Allocation. Highways. £ | Sanitary, etc. £ | Total. £ |
|---|---|---|---|---|---|---|---|---|---|---|
| Surveyor .. | W. Withers | ~~2 rooms in~~ Surveyor's Residence | 1 room | — | | W. Withers, Surveyor | | | | 230 |
| Other members of Staff .. | | | | | | | | | | 70 |

Give particulars of an[illegible]

Signed William Withers

~~Clerk or~~ Surveyor to The Leicester R.D.C

Date Sept 27 1929

R

R

It would be helpful if the roads could be place[illegible] miles.

Please state approximate mileage of waterbound roads which have been surfaced tarred.

R

## PARTICULARS OF STAFF employed on HIGHWAYS and BRIDGES.

### (a) Technical and Clerical Staff.

| Description of Office. | Name. | Date of Appointment. | Whether whole, part time, or temporary appointment. | Age. | Local Government and other Officers' Superannuation Act, 1922. | | Salary at 31st March, 1930. | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Technical. | | | Clerical. | | |
| | | | | | | | Allocation. | | | Allocation. | | |
| | | | | | State if adopted. | If so, date of adoption. | Highways. £ | Sanitary, etc. £ | Total. £ | Highways. £ | Sanitary, etc. £ | Total. £ |
| Surveyor .. | W. Withers | 1/4/09 | Whole | 74 | No | No | £200. | — | | £30. | | 230 |
| Other members of Staff .. | | | | | | | | Travelling Expenses | | | | 70 |
| | | | | | | | | | | | | £300 |

Give particulars of any remuneration in connection with special work such as Housing, Town Planning, etc.

### Annual Cost of Transport.

| | | Highways. | Sanitary. | Total. |
|---|---|---|---|---|
| Surveyor: | Actual, 1927—28. | £70 | | £70 |
| | ,, 1928—29. | | | |
| | Estimated, 1929—30. | | | |
| Other Members of Staff: | Actual, 1927—28. | | | |
| | ,, 1928—29. | ✓ | | ✓ |
| | Estimated, 1929—30. | | | |

Give particulars of transport officially provided or scale of allowances for travelling:

### (b) Other Permanent Staff.

| | Average number Employed. | Rate of Weekly Wage. Maximum. | Rate of Weekly Wage. Minimum. | Travelling or other Allowance. | Working Hours per Week. Summer. | Working Hours per Week. Winter. |
|---|---|---|---|---|---|---|
| Road Foremen. | One | £ 2-8-0 | £ 2-8-0 | When necessary or Lodgings | 8½ Hours | Daylight To |
| Transport Drivers. | | | | | | |
| Steam Roller Drivers. | One | 2-10-0 | 2-10-0 | | 9 Hours | Dark |
| Petrol Roller Drivers. | | | | | | |
| Roller Foremen. | One | | | | | |
| Stone Spreaders. | As required | | | | | |
| Lengthsmen. | 25 to 30 and as required | | | | | |

Please state if Wages are regulated by the West Midland Joint Industrial Council for Non-Trading Purposes.

TOTALS ...

It would be helpful if the roads could be placed approximately in order of their importance.

Please state approximate mileage of waterbound roads which have been surfaced tarred 24 miles.

R

# WARWICKSHIRE COUNTY COUNCIL.

Rural District of Atherstone

(County Roads and Bridges Department).

Information required from Rural District Councils under Local Government Act, 1929.

## TABLE 1.

MILEAGE OF PUBLIC HIGHWAYS

## IN RURAL DISTRICT (excluding Main Roads).

| No. of Road on Plan. | Route No. if Classified Road. | Name of Road. | Class I. Tarmacadam. Miles. | Class I. Waterbound. Miles. | Class II. Tarmacadam. Miles. | Class II. Waterbound. Miles. | Scheduled Roads. Tarmacadam. Miles. | Scheduled Roads. Waterbound. Miles. | Other Roads, including Bridle Roads. Tarmacadam. Miles. | Waterbound. Granite. Miles. | Waterbound. Gravel or Flint, etc. Miles. | Unmetalled. Miles. | Public Footpaths maintained by R.D.C. | Total Mileage. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | ✓ | Hartshill Road | | | | | 1·38 | ·92 | | | | D 1·24 | C12 m². | |
| 2 | ✓ | Birchley Heath Road | | | | | | 2·90 | | | | | C6. | |
| 3 | ✓ | Nevervale Road | | | | | | 4·50 | | | | | C120 | |
| 4 | ✓ | Dordon – Polesworth | | | | | | 2·30 | | | | | C7 | |
| 5 | ✓ | Grendon – Amington | | | | | | 2·80 | | | | | C1/4 | |
| 6 | ✓ | Polesworth – Orton | | | | | | 2·20 | | | | | C5 | |
| 7 | ✓ | Warton – Austrey | | | | | | 1·90 | | | | | C1 | |
| 8 | ✓ | Spon Lane, Grendon | | | | | | 1·00 | | | | | C81 | |
| 9 | ✓ | Chapel Farm Lane | | | | | | 1·00 | | | | | C6/187 | |
| 10 | ✓ | Ansley Village | | | | | | 1·10 | | | | | B4112 | |
| 11 | ✓ | Abbey Road | | | | | | 1·70 | | | | D 1·12. | | |
| 12 | ✓ | Pipers Lane | | | | | | 1·~~25~~ | | | | | C123 | |
| 13 | ✓ | Arley Road | | | | | | ·90 | | | | | C126 | |
| 14 | ✓ | Twenty-one Oaks | | | | | | ·50 | | | | | C68 | |
| 15 | ✓ | Wickson Hill – Hurley | | | | | | 1·50 | | | | | C68 | |
| 16 | ✓ | North St, Atherstone | | | | | S ·40 | | | | | D 1·00 | | |
| 17 | ✓ | Brook End – Bentley | | | | | | ·50 | | | | | C187 | |
| 18 | ✓ | Station St re Atherstone | | | | | S ·80 | · | | | | D | | |
| 6a | ✓ | ✓ | Church Rd Warton | | | | | | ·50 | | | | D 24. | |
| TOTALS ... | | | | | | | 2·58 | 27·57 | | | | | | |

It would be helpful if the roads could be placed approximately in order of their importance.

Please state approximate mileage of waterbound roads which have been surfaced tarred 24 miles.

## APPENDIX 5 – HIGHWAYS EXPENDITURE ANALYSIS

# Byways and Bridleways Trust

**PO Box 117**
**Newcastle upon Tyne**
**NE3 5YT**
**Tel: 0191 2364086**
**E-mail: bbtrust@mac.com**

The Secretary
CIPFA
3 Robert Street
London
WC2N 6RL

25 April 2012

Dear Sir,

I am researching some background for a paper on the mileage of roads in England and Wales in past years.

Some years ago, in the era of the Standard Spending Assessment, every highway authority in England and Wales had to give the government (variously the Departments of Transport and Environment) annual returns setting out the mileage of the various types of road in their area. This was quite detailed and extensive as to the different classes of road.

These returns were eventually distilled into the National Transport Statistics (which I have), but the breadth of information was condensed. At the time, CIPFA used to collect and collate the actual returns from each highway authority (counties and county boroughs, if you go back far enough): I have, in the past, seen these tabulations.

I should very much like to get hold of the actual county returns for 1973, because that is the last year of the 'old shire counties' before the major 1974 reorganisations. Can you please assist me, or tell me where I might find these? I am happy to pay copying and postage.

Yours faithfully,

Alan Kind

Editor.

**Registered Charity Number 280214**

**From:** "Hole, Martin" <Martin.Hole@cipfa.org.uk>
**Subject:** Highways Statistics
**Date:** 4 May 2012 14:15:35 GMT+01:00
**To:** bbtrust@me.com

1 Attachment, 3.3 MB

Alan,

Please find attached the Highways statistics that you requested.

Many thanks

Martin Hole
CIPFAstats Manager

Tel: 0203 1171864
Ext: 2264

Survival of the Fittest? - The CIPFA/PublicFinance Conference 2012
Liverpool, 3-5 July

CIPFA, registered with the Charity Commissioners of England and Wales No.231060
CIPFA Business Limited, the trading arm of CIPFA that provides a range of services to public sector clients, registered in England and Wales no.2376684
Registered Office 3 Robert Street, London WC2N 6RL

This email and any attachments to it may be confidential and are intended solely for the use of the individual to whom it is addressed. Any views or opinions expressed are solely those of the author and do not necessarily represent those of CIPFA. If you are not the intended recipient of this email, you must neither take any action based upon its contents, nor copy or show it to anyone. Please contact the sender if you believe you have received this email in error. We do not accept liability for any viruses that may be transmitted in or with this message or attachments.

This e-mail has been scanned for all viruses by Star. The service is powered by MessageLabs. For more information on a proactive anti-virus service working around the clock, around the globe, visit: http://www.star.net.uk

201205041….pdf (3.3 MB)

SOCIETY OF COUNTY TREASURERS

and

COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE

# 1959-1960

## NOTES

1. The road mileages in columns 2 to 7 exclude :—

   Unclassified roads in urban areas maintained at expense of borough and urban district councils. Unmetalled green lanes and bridle paths for which surface maintenance is not required (except in a few counties where the exact mileage of this type of road is not known).

   Trunk road lengths maintained under special agency arrangements by borough and urban district councils.

   The mileage differs from that given on Ministry of Transport form 197 (Roads) because of different treatment for unmetalled roads and trunk roads. Details of this mileage can be obtained from the compiler of the return if desired.

2. Trunk roads include Motorways (columns 2, 8 and 13).

3. Expenditure on maintenance and improvements (columns 8 to 17) has been reduced by all income other than grant.

4. Administration expenses (columns 21 and 22) are the gross cost including establishment expenses paid to Claiming and Delegated Authorities before allocations are made to trunk roads, private street works and other recoverable expenditure. These allocations are shown as income in column 28.

5. Column 23 " Other expenditure " includes in 25 counties, improvements on unclassified roads in livestock rearing areas under the Agriculture (Improvement of Roads) Act, 1955. The grant is included in column 29, " Other Income." The total expenditure during the year was £419,957 and grant £310,764.

   Details are available if required.

6. Column 24 " Financing items " includes :—

   Depots — Purchase and adaptations.
   Purchase of vehicles and plant charged direct to rate account.
   Contributions to repairs and renewals fund.
   Depreciation allowances credited back to rate account in respect of vehicles and plant purchased from rates.
   Differences between actual costs and Ministry of Transport schedule rates.
   Surpluses or deficiencies on plant and tools and oncost accounts.

   Details are available if required.

7. Capital expenditure (columns 33 to 37) excludes capital expenditure met from revenue included in the appropriate items.

| | COUNTY (1) | MILEAGE OF ROADS | | | | | | REVENUE · EXPENDITURE Maintenance and Minor Improvement | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Trunk (2) | Class I (3) | Class II (4) | Class III (5) | Unclassified (6) | Total (7) | Trunk (8) | Class I (9) | Class II (10) | Class III (11) |
| | | Miles | Miles | Miles | Miles | Miles | Miles | £ | £ | £ | £ |
| 1 | BEDFORD | 65 | 103 | 85 | 295 | 358 | 906 | 101,861 | 122,759 | 78,654 | 157,122 |
| 2 | BERKSHIRE | 64 | 229 | 177 | 499 | 643 | 1,612 | 122,414 | 184,559 | 87,452 | 208,030 |
| 3 | BUCKINGHAM | 50 | 200 | 165 | 530 | 672 | 1,617 | 119,311 | 247,431 | 120,829 | 232,393 |
| 4 | CAMBRIDGE | 69 | 67 | 105 | 278 | 289 | 808 | 98,302 | 87,145 | 51,943 | 168,737 |
| 5 | CHESHIRE | 204 | 314 | 255 | 714 | 817 | 2,304 | 322,322 | 362,656 | 224,288 | 364,733 |
| 6 | CORNWALL | 150 | 283 | 352 | 1,521 | 1,688 | 3,994 | 144,454 | 220,331 | 168,494 | 332,823 |
| 7 | CUMBERLAND | 117 | 162 | 257 | 834 | 1,021 | 2,391 | 152,009 | 150,266 | 144,769 | 201,767 |
| 8 | DERBY | 117 | 306 | 274 | 800 | 839 | 2,336 | 183,090 | 357,250 | 215,896 | 388,011 |
| 9 | DEVON | 191 | 511 | 456 | 2,621 | 3,000 | 6,779 | 199,861 | 311,337 | 236,395 | 420,292 |
| 10 | DORSET | 55 | 235 | 211 | 686 | 808 | 1,995 | 54,801 | 197,002 | 110,361 | 195,576 |
| 11 | DURHAM | 64 | 295 | 282 | 528 | 659 | 1,828 | 124,141 | 421,493 | 246,831 | 328,446 |
| 12 | ESSEX | 91 | 393 | 432 | 1,045 | 1,086 | 3,047 | 169,734 | 471,867 | 291,843 | 414,411 |
| 13 | GLOUCESTER | 166 | 278 | 310 | 1,035 | 1,395 | 3,184 | 214,449 | 251,960 | 175,880 | 284,692 |
| 14 | HAMPSHIRE | 144 | 371 | 299 | 1,229 | 1,451 | 3,494 | 266,157 | 410,554 | 174,507 | 343,659 |
| 15 | HEREFORD | 69 | 208 | 182 | 650 | 763 | 1,872 | 86,605 | 142,601 | 66,641 | 140,800 |
| 16 | HERTFORD | 132 | 173 | 166 | 462 | 681 | 1,614 | 191,880 | 210,839 | 129,813 | 259,648 |
| 17 | HUNTINGDON | 48 | 63 | 116 | 183 | 133 | 543 | 64,220 | 69,016 | 66,498 | 64,981 |
| 18 | ISLE OF ELY | 33 | 60 | 136 | 185 | 214 | 628 | 54,985 | 59,645 | 73,642 | 72,655 |
| 19 | ISLE OF WIGHT | — | 75 | 55 | 110 | 202 | 442 | — | 73,253 | 40,254 | 63,021 |
| 20 | KENT | 117 | 497 | 396 | 1,113 | 1,912 | 4,035 | 235,966 | 547,736 | 255,255 | 382,349 |
| 21 | LANCASHIRE | 226 | 502 | 417 | 1,130 | 1,050 | 3,325 | 369,174 | 727,757 | 454,232 | 776,205 |
| 22 | LEICESTER | 87 | 160 | 247 | 610 | 665 | 1,769 | 172,389 | 214,174 | 135,581 | 193,495 |
| 23 | LINCOLN, HOLLAND | 50 | 59 | 96 | 430 | 524 | 1,159 | 68,066 | 53,845 | 34,379 | 104,577 |
| 24 | LINCOLN, KESTEVEN | 59 | 117 | 152 | 571 | 675 | 1,574 | 76,155 | 92,278 | 49,076 | 128,172 |
| 25 | LINCOLN, LINDSEY | 122 | 347 | 296 | 1,002 | 949 | 2,716 | 146,873 | 216,070 | 118,925 | 224,910 |
| 26 | MIDDLESEX | 68 | 233 | 123 | 196 | 2 | 622 | 265,590 | 735,088 | 219,505 | 355,582 |
| 27 | NORFOLK | 120 | 389 | 499 | 1,727 | 1,956 | 4,691 | 126,215 | 314,507 | 184,564 | 318,263 |
| 28 | NORTHAMPTON | 162 | 188 | 124 | 596 | 696 | 1,766 | 182,836 | 171,028 | 82,522 | 227,282 |
| 29 | NORTHUMBERLAND | 144 | 258 | 363 | 953 | 1,826 | 3,544 | 301,711 | 267,871 | 170,149 | 283,237 |
| 30 | NOTTINGHAM | 119 | 227 | 155 | 470 | 484 | 1,455 | 174,942 | 200,369 | 99,885 | 215,847 |
| 31 | OXFORD | 129 | 132 | 205 | 513 | 656 | 1,635 | 208,330 | 145,579 | 139,019 | 147,580 |

| | COUNTY (1) | MILEAGE OF ROADS | | | | | | REVENUE EX | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | Maintenance and Mi | |
| | | Trunk (2) | Class I (3) | Class II (4) | Class III (5) | Unclassified (6) | Total (7) | Trunk (8) | Class I (9) |
| | | Miles | Miles | Miles | Miles | Miles | Miles | £ | £ |
| 32 | PETERBOROUGH, SOKE OF .. | 21 | 6 | 17 | 69 | 62 | 175 | 15,264 | 2,964 |
| 33 | RUTLAND .. .. .. .. | 21 | 32 | 21 | 108 | 128 | 310 | 27,684 | 38,094 |
| 34 | SALOP .. .. .. .. .. | 149 | 245 | 335 | 1,163 | 1,472 | 3,364 | 177,678 | 179,976 |
| 35 | SOMERSET .. .. .. .. | 119 | 444 | 321 | 1,623 | 1,997 | 4,504 | 131,972 | 306,035 |
| 36 | STAFFORD .. .. .. .. | 131 | 343 | 241 | 862 | 1,003 | 2,580 | 258,442 | 471,541 |
| 37 | SUFFOLK, EAST .. .. .. | 65 | 155 | 279 | 664 | 796 | 1,959 | 76,801 | 103,412 |
| 38 | SUFFOLK, WEST .. .. .. | 30 | 144 | 126 | 426 | 482 | 1,208 | 52,521 | 132,657 |
| 39 | SURREY .. .. .. .. | 51 | 372 | 264 | 404 | 479 | 1,570 | 193,459 | 560,613 |
| 40 | SUSSEX, EAST .. .. .. | 53 | 262 | 217 | 492 | 535 | 1,559 | 77,392 | 239,684 |
| 41 | SUSSEX, WEST .. .. .. | 36 | 255 | 123 | 396 | 375 | 1,185 | 48,086 | 214,867 |
| 42 | WARWICK .. .. .. .. | 179 | 186 | 243 | 596 | 688 | 1,892 | 254,093 | 202,275 |
| 43 | WESTMORLAND .. .. .. | 75 | 113 | 83 | 377 | 341 | 989 | 130,659 | 83,718 |
| 44 | WILTSHIRE .. .. .. .. | 128 | 348 | 193 | 1,025 | 729 | 2,423 | 133,543 | 231,927 |
| 45 | WORCESTER .. .. .. .. | 54 | 242 | 212 | 647 | 746 | 1,901 | 120,193 | 305,861 |
| 46 | YORK, EAST RIDING .. .. | 91 | 169 | 228 | 693 | 991 | 2,172 | 149,272 | 128,219 |
| 47 | YORK, NORTH RIDING .. .. | 126 | 342 | 232 | 1,130 | 1,312 | 3,142 | 193,967 | 243,467 |
| 48 | YORK, WEST RIDING .. .. | 286 | 595 | 483 | 1,237 | 1,718 | 4,319 | 544,897 | 808,855 |
| | **ENGLISH COUNTIES** excluding MONMOUTH .. .. | 4,847 | 11,688 | 11,006 | 35,428 | 41,968 | 104,937 | 7,584,766 | 12,292,431 |
| 49 | ANGLESEY .. .. .. .. | 22 | 64 | 72 | 237 | 282 | 677 | 19,374 | 58,997 |
| 50 | BRECON .. .. .. .. | 106 | 49 | 65 | 434 | 540 | 1,194 | 113,029 | 46,074 |
| 51 | CAERNARVON .. .. .. | 74 | 100 | 104 | 398 | 439 | 1,115 | 102,005 | 85,614 |
| 52 | CARDIGAN .. .. .. .. | 70 | 99 | 201 | 514 | 408 | 1,292 | 77,267 | 66,663 |
| 53 | CARMARTHEN .. .. .. | 88 | 154 | 185 | 789 | 855 | 2,071 | 69,778 | 85,036 |
| 54 | DENBIGH .. .. .. .. | 80 | 129 | 217 | 671 | 749 | 1,846 | 104,745 | 78,839 |
| 55 | FLINT .. .. .. .. .. | 42 | 121 | 63 | 241 | 267 | 734 | 64,285 | 123,210 |
| 56 | GLAMORGAN .. .. .. .. | 59 | 241 | 188 | 398 | 544 | 1,430 | 134,838 | 322,162 |
| 57 | MERIONETH .. .. .. .. | 105 | 72 | 85 | 296 | 362 | 920 | 95,074 | 38,222 |
| 58 | MONMOUTH .. .. .. .. | 91 | 110 | 142 | 378 | 531 | 1,252 | 152,723 | 113,890 |
| 59 | MONTGOMERY .. .. .. | 121 | 43 | 185 | 541 | 640 | 1,530 | 97,743 | 25,826 |
| 60 | PEMBROKE .. .. .. .. | 57 | 99 | 149 | 577 | 482 | 1,364 | 54,157 | 48,327 |
| 61 | RADNOR .. .. .. .. | 43 | 63 | 76 | 324 | 523 | 1,029 | 38,584 | 45,926 |
| | **WELSH COUNTIES** including MONMOUTH .. .. | 958 | 1,344 | 1,732 | 5,798 | 6,622 | 16,454 | 1,123,602 | 1,138,786 |
| | **ALL COUNTIES** .. .. .. | 5,805 | 13,032 | 12,738 | 41,226 | 48,590 | 121,391 | 8,708,368 | 13,431,217 |

SOCIETY OF COUNTY TREASURERS

and

COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1960 - 1961

MARCH, 1962

## NOTES

1. The road mileages in columns 2 to 7 exclude:—,

   Unclassified roads in urban areas maintained at expense of borough and urban district councils.
   Unmetalled green lanes and bridle paths for which surface maintenance is not required (except in a few counties where the exact mileage of this type of road is not known).

   Trunk road lengths maintained under special agency arrangements by borough and urban district councils.

   The mileage differs from that given on Ministry of Transport form 197 (Roads) because of different treatment for unmetalled roads and trunk roads. Details of this mileage can be obtained from the compiler of the return if desired.

2. Expenditure on maintenance and improvements (columns 8 to 17) has been reduced by all income other than grant.

3. Administration expenses (columns 23 and 24) are the gross cost including establishment expenses paid to Claiming and Delegated Authorities before allocations are made to trunk roads, private street works and other recoverable expenditure. These allocations are shown as income in column 31.

4. Column 26 "Financing items" includes:—

   Depots — Purchase and adaptations.
   Purchase of vehicles and plant charged direct to rate account.
   Contributions to repairs and renewals fund.
   Depreciation allowances credited back to rate account in respect of vehicles and plant purchased from rates.
   Differences between actual costs and Ministry of Transport schedule rates.
   Surpluses or deficiencies on plant and tools and oncost accounts.

   Details are available if required.

5. Capital expenditure (columns 36 to 40) excludes capital expenditure met from revenue included in the appropriate items.

4

| COUNTY (1) | MILEAGE OF ROADS | | | | | | REVENUE EXPENDI | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Maintenance and Minor Im | | |
| | Trunk and Motorways (2) | Class I (3) | Class II (4) | Class III (5) | Unclassified (6) | Total (7) | Trunk and Motorways (8) | Class I (9) | Class II (10) |
| | Miles | Miles | Miles | Miles | Miles | Miles | £ | £ | £ |
| BEDFORD .. .. .. .. | 80 | 103 | 86 | 295 | 359 | 923 | 119,926 | 100,612 | 68,044 |
| BERKSHIRE .. .. .. .. | 64 | 228 | 177 | 499 | 643 | 1,611 | 111,081 | 216,632 | 100,289 |
| BUCKINGHAM .. .. .. | 60 | 200 | 165 | 530 | 682 | 1,637 | 121,893 | 250,661 | 139,515 |
| CAMBRIDGE .. .. .. .. | 69 | 67 | 105 | 278 | 291 | 810 | 103,964 | 88,103 | 71,918 |
| CHESHIRE .. .. .. .. | 204 | 312 | 257 | 714 | 825 | 2,312 | 329,141 | 388,984 | 247,030 |
| CORNWALL .. .. .. .. | 150 | 283 | 352 | 1,521 | 1,688 | 3,994 | 143,562 | 218,152 | 168,456 |
| CUMBERLAND .. .. .. | 117 | 162 | 257 | 834 | 1,027 | 2,397 | 150,831 | 182,093 | 126,265 |
| DERBY .. .. .. .. .. | 117 | 306 | 274 | 801 | 848 | 2,346 | 192,385 | 363,806 | 216,104 |
| DEVON .. .. .. .. | 191 | 511 | 456 | 2,625 | 3,009 | 6,792 | 200,035 | 357,552 | 263,602 |
| DORSET .. .. .. .. | 55 | 236 | 211 | 686 | 808 | 1,996 | 58,650 | 186,372 | 140,922 |
| DURHAM .. .. .. .. | 64 | 295 | 282 | 529 | 645 | 1,815 | 129,177 | 453,769 | 259,398 |
| ESSEX .. .. .. .. .. | 94 | 394 | 432 | 1,045 | 1,089 | 3,054 | 192,193 | 453,091 | 285,512 |
| GLOUCESTER .. .. .. | 175 | 278 | 310 | 1,034 | 1,403 | 3,200 | 204,151 | 246,202 | 198,166 |
| HAMPSHIRE .. .. .. .. | 144 | 371 | 299 | 1,230 | 1,461 | 3,505 | 291,913 | 409,780 | 228,376 |
| HEREFORD .. .. .. .. | 85 | 209 | 182 | 650 | 764 | 1,890 | 91,030 | 141,901 | 64,480 |
| HERTFORD .. .. .. .. | 134 | 171 | 170 | 466 | 691 | 1,632 | 211,296 | 221,979 | 127,764 |
| HUNTINGDON .. .. .. | 48 | 63 | 116 | 182 | 131 | 540 | 69,449 | 61,735 | 72,661 |
| ISLE OF ELY .. .. .. .. | 33 | 60 | 137 | 185 | 222 | 637 | 52,413 | 63,518 | 71,209 |
| ISLE OF WIGHT .. .. .. | — | 75 | 55 | 110 | 72 | 312 | — | 72,965 | 36,975 |
| KENT .. .. .. .. .. | 125 | 498 | 394 | 1,114 | 1,920 | 4,051 | 212,133 | 547,185 | 262,864 |
| LANCASHIRE .. .. .. .. | 228 | 501 | 420 | 1,131 | 1,055 | 3,335 | 397,562 | 866,448 | 501,505 |
| LEICESTER .. .. .. .. | 87 | 160 | 248 | 611 | 673 | 1,779 | 174,206 | 224,928 | 152,900 |
| LINCOLN, HOLLAND .. .. | 50 | 59 | 96 | 430 | 524 | 1,159 | 72,244 | 47,042 | 46,761 |
| LINCOLN, KESTEVEN .. .. | 56 | 117 | 152 | 571 | 676 | 1,572 | 73,529 | 87,165 | 74,645 |
| LINCOLN, LINDSEY .. .. | 122 | 347 | 296 | 1,002 | 951 | 2,718 | 144,813 | 239,900 | 146,248 |
| MIDDLESEX .. .. .. .. | 68 | 233 | 123 | 196 | 2 | 622 | 276,020 | 650,154 | 287,974 |
| NORFOLK .. .. .. .. | 120 | 389 | 499 | 1,727 | 1,959 | 4,694 | 89,596 | 326,687 | 205,893 |
| NORTHAMPTON .. .. .. | 163 | 189 | 123 | 596 | 699 | 1,770 | 159,349 | 182,427 | 80,430 |
| NORTHUMBERLAND .. .. | 144 | 258 | 363 | 953 | 997 | 2,715 | 277,183 | 288,413 | 178,281 |
| NOTTINGHAM .. .. .. | 119 | 227 | 154 | 470 | 488 | 1,458 | 171,382 | 213,470 | 78,732 |
| OXFORD .. .. .. .. | 129 | 132 | 205 | 513 | 657 | 1,636 | 231,520 | 152,263 | 131,798 |

| COUNTY (1) | MILEAGE OF ROADS | | | | | | REVENUE EXPEND | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Maintenance and Minor Im | | |
| | Trunk and Motorways (2) | Class I (3) | Class II (4) | Class III (5) | Unclassified (6) | Total (7) | Trunk and Motorways (8) | Class I (9) | Class II (10) |
| | Miles | Miles | Miles | Miles | Miles | Miles | £ | £ | £ |
| PETERBOROUGH, SOKE OF .. | 21 | 6 | 17 | 69 | 62 | 175 | 17,713 | 8,613 | 5,106 |
| RUTLAND .. .. .. .. | 21 | 32 | 21 | 108 | 128 | 310 | 22,810 | 51,032 | 13,267 |
| SALOP .. .. .. .. .. | 149 | 245 | 335 | 1,163 | 1,472 | 3,364 | 201,528 | 210,687 | 164,633 |
| SOMERSET .. .. .. .. | 119 | 444 | 321 | 1,623 | 2,024 | 4,531 | 145,775 | 284,991 | 161,509 |
| STAFFORD .. .. .. .. | 131 | 343 | 241 | 863 | 1,007 | 2,585 | 232,225 | 452,409 | 184,206 |
| SUFFOLK, EAST .. .. .. | 65 | 155 | 279 | 664 | 798 | 1,961 | 73,705 | 93,461 | 97,276 |
| SUFFOLK, WEST .. .. .. | 30 | 145 | 126 | 426 | 482 | 1,209 | 26,322 | 134,239 | 52,363 |
| SURREY .. .. .. .. | 52 | 372 | 264 | 405 | 508 | 1,601 | 143,724 | 587,911 | 345,026 |
| SUSSEX, EAST .. .. .. | 53 | 262 | 217 | 492 | 597 | 1,621 | 79,549 | 242,742 | 124,351 |
| SUSSEX, WEST .. .. .. | 36 | 256 | 124 | 396 | 379 | 1,191 | 58,489 | 223,712 | 102,406 |
| WARWICK .. .. .. .. | 179 | 186 | 243 | 596 | 697 | 1,901 | 273,174 | 197,186 | 249,724 |
| WESTMORLAND .. .. .. | 75 | 113 | 83 | 377 | 345 | 993 | 141,541 | 92,912 | 34,068 |
| WILTSHIRE .. .. .. .. | 128 | 348 | 193 | 1,025 | 688 | 2,382 | 133,073 | 257,700 | 92,263 |
| WORCESTER .. .. .. .. | 54 | 242 | 212 | 647 | 749 | 1,904 | 129,226 | 289,587 | 184,574 |
| YORK, EAST RIDING .. .. | 91 | 169 | 228 | 693 | 992 | 2,173 | 158,949 | 120,197 | 102,199 |
| YORK, NORTH RIDING .. .. | 126 | 345 | 232 | 1,130 | 1,331 | 3,164 | 185,598 | 268,818 | 98,254 |
| YORK, WEST RIDING .. .. | 286 | 597 | 484 | 1,237 | 1,717 | 4,321 | 590,619 | 796,121 | 315,374 |
| **ENGLISH COUNTIES** excluding MONMOUTH .. .. | 4,911 | 11,694 | 11,016 | 35,442 | 41,235 | 104,298 | 7,666,647 | 12,616,307 | 7,361,316 |
| ANGLESEY .. .. .. .. | 21 | 64 | 72 | 237 | 283 | 677 | 21,577 | 44,839 | 38,579 |
| BRECON .. .. .. .. | 106 | 49 | 65 | 434 | 541 | 1,195 | 112,665 | 39,842 | 20,530 |
| CAERNARVON .. .. .. | 74 | 100 | 104 | 398 | 439 | 1,115 | 99,087 | 87,678 | 62,109 |
| CARDIGAN .. .. .. .. | 70 | 99 | 202 | 514 | 409 | 1,294 | 80,136 | 69,073 | 70,747 |
| CARMARTHEN .. .. .. | 88 | 154 | 185 | 789 | 858 | 2,074 | 77,152 | 84,496 | 94,379 |
| DENBIGH .. .. .. .. | 73 | 129 | 217 | 671 | 749 | 1,839 | 114,071 | 95,771 | 81,034 |
| FLINT .. .. .. .. .. | 42 | 121 | 63 | 241 | 267 | 734 | 69,935 | 159,463 | 34,356 |
| GLAMORGAN .. .. .. | 59 | 241 | 188 | 398 | 552 | 1,438 | 139,829 | 347,563 | 193,277 |
| MERIONETH .. .. .. .. | 105 | 72 | 85 | 296 | 363 | 921 | 107,355 | 46,783 | 41,914 |
| MONMOUTH .. .. .. .. | 91 | 110 | 142 | 377 | 531 | 1,251 | 134,812 | 123,066 | 120,920 |
| MONTGOMERY .. .. .. | 121 | 43 | 185 | 541 | 645 | 1,535 | 106,202 | 24,259 | 67,942 |
| PEMBROKE .. .. .. .. | 57 | 99 | 149 | 577 | 484 | 1,366 | 59,583 | 54,455 | 67,803 |
| RADNOR .. .. .. .. | 43 | 63 | 76 | 324 | 523 | 1,029 | 42,447 | 49,868 | 31,208 |
| **WELSH COUNTIES** including MONMOUTH .. .. | 950 | 1,344 | 1,733 | 5,797 | 6,644 | 16,468 | 1,164,851 | 1,227,156 | 924,798 |
| **ALL COUNTIES** .. .. .. | 5,861 | 13,038 | 12,749 | 41,239 | 47,879 | 120,766 | 8,831,498 | 13,843,463 | 8,286,114 |

SOCIETY OF COUNTY TREASURERS

and

COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1961 - 1962

JANUARY, 1963

## NOTES

1. The road mileages in columns 2 to 8 exclude:—

   Unclassified roads in urban areas maintained at expense of borough and urban district councils.
   Unmetalled green lanes and bridle paths for which surface maintenance is not required (except in a few counties where the exact mileage of this type of road is not known).

   Trunk road lengths maintained under special agency arrangements by borough and urban district councils.

   The mileage differs from that given on Ministry of Transport form 197 (Roads) because of different treatment for unmetalled roads and trunk roads in about one-third of the counties.

2. Expenditure on maintenance and improvements (columns 9 to 20) has been reduced by all income other than grant.

3. Administration expenses (columns 26 and 27) are the gross cost including establishment expenses paid to Claiming and Delegated Authorities before allocations are made to trunk roads, private street works and other recoverable expenditure. These allocations are shown as income in column 35.

4. Column 29 "Financing items" includes:—

   Depots — Purchase and adaptations.
   Purchase of vehicles and plant charged direct to rate account.
   Contributions to repairs and renewals fund.
   Depreciation allowances credited back to rate account in respect of vehicles and plant purchased from rates.
   Differences between actual costs and Ministry of Transport schedule rates.
   Surpluses or deficiencies on plant and tools and oncost accounts.

   Details are available from the compiler of the return if desired.

5. Capital expenditure (columns 40 to 44) excludes capital expenditure met from revenue included in the appropriate items.

| COUNTY (1) | MILEAGE OF ROADS | | | | | | | REVENUE EXPENDITURE Maintenance and Minor Improvem | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk (2) | Motorways (3) | Class I (4) | Class II (5) | Class III (6) | Unclassified (7) | Total (8) | Trunk (9) | Motorways (10) | Class I (11) | Class II (12) |
| | Miles | Miles | Miles | Miles | Miles | Miles | Miles | £ | £ | £ | £ |
| BEDFORD .. .. .. .. | 65 | 15 | 105 | 86 | 295 | 366 | 932 | 122,607 | 28,902 | 120,536 | 82,480 |
| BERKSHIRE .. .. .. .. | 67 | 6 | 229 | 176 | 499 | 662 | 1,639 | 125,046 | 7,052 | 282,990 | 112,081 |
| BUCKINGHAM .. .. .. | 49 | 12 | 200 | 165 | 530 | 691 | 1,647 | 117,107 | 37,241 | 263,092 | 169,185 |
| CAMBRIDGE .. .. .. .. | 68 | — | 67 | 105 | 278 | 295 | 813 | 122,661 | — | 80,021 | 85,974 |
| CHESHIRE .. .. .. .. | 197 | — | 319 | 258 | 716 | 827 | 2,317 | 394,381 | — | 427,142 | 292,986 |
| CORNWALL .. .. .. .. | 150 | — | 283 | 353 | 1,521 | 1,687 | 3,994 | 163,531 | — | 249,892 | 172,828 |
| CUMBERLAND .. .. .. | 117 | — | 162 | 257 | 834 | 1,031 | 2,401 | 183,405 | — | 200,601 | 155,472 |
| DERBY .. .. .. .. .. | 117 | — | 306 | 274 | 801 | 861 | 2,359 | 198,651 | — | 544,916 | 288,789 |
| DEVON .. .. .. .. .. | 191 | — | 511 | 456 | 2,625 | 3,021 | 6,804 | 220,729 | — | 363,478 | 254,659 |
| DORSET .. .. .. .. | 55 | — | 236 | 211 | 686 | 811 | 1,999 | 59,317 | — | 192,632 | 156,764 |
| DURHAM .. .. .. .. | 65 | — | 295 | 284 | 527 | 650 | 1,821 | 141,525 | — | 472,175 | 319,095 |
| ESSEX .. .. .. .. .. | 91 | — | 394 | 433 | 1,050 | 1,094 | 3,062 | 215,481 | — | 682,910 | 517,584 |
| GLOUCESTER .. .. .. | 166 | — | 278 | 310 | 1,035 | 1,410 | 3,199 | 254,596 | — | 360,720 | 198,126 |
| HAMPSHIRE .. .. .. .. | 144 | — | 371 | 299 | 1,230 | 1,474 | 3,518 | 297,787 | — | 606,037 | 262,094 |
| HEREFORD .. .. .. .. | 75 | 12 | 209 | 181 | 650 | 767 | 1,894 | 86,971 | 13,099 | 160,038 | 70,036 |
| HERTFORD .. .. .. .. | 119 | 15 | 170 | 170 | 468 | 680 | 1,622 | 213,847 | 52,493 | 257,735 | 156,276 |
| HUNTINGDON .. .. .. | 48 | — | 63 | 116 | 183 | 131 | 541 | 84,228 | — | 69,476 | 76,028 |
| ISLE OF ELY .. .. .. .. | 33 | — | 60 | 137 | 186 | 222 | 638 | 52,418 | — | 74,434 | 71,112 |
| ISLE OF WIGHT .. .. .. | — | — | 75 | 55 | 110 | 72 | 312 | — | — | 96,281 | 42,117 |
| KENT .. .. .. .. .. | 117 | 8 | 504 | 394 | 1,114 | 1,933 | 4,070 | 238,193 | 4,300 | 693,593 | 345,097 |
| LANCASHIRE .. .. .. .. | 207 | 21 | 501 | 421 | 1,132 | 1,061 | 3,343 | 435,145 | 40,256 | 957,170 | 562,831 |
| LEICESTER .. .. .. .. | 87 | — | 160 | 248 | 611 | 781 | 1,887 | 186,017 | — | 238,165 | 197,914 |
| LINCOLN, HOLLAND .. .. | 50 | — | 63 | 90 | 430 | 526 | 1,159 | 66,574 | — | 42,555 | 54,927 |
| LINCOLN, KESTEVEN .. .. | 58 | — | 117 | 154 | 570 | 669 | 1,568 | 76,356 | — | 109,614 | 75,901 |
| LINCOLN, LINDSEY .. .. | 122 | — | 347 | 296 | 1,002 | 951 | 2,718 | 157,567 | — | 317,234 | 147,268 |
| MIDDLESEX .. .. .. .. | 69 | — | 233 | 123 | 197 | 2 | 624 | 260,202 | — | 895,605 | 321,363 |
| NORFOLK .. .. .. .. | 120 | — | 389 | 499 | 1,728 | 1,963 | 4,699 | 148,123 | — | 390,692 | 241,821 |
| NORTHAMPTON .. .. .. | 134 | 29 | 189 | 122 | 598 | 700 | 1,772 | 157,998 | 62,623 | 214,290 | 92,522 |
| NORTHUMBERLAND .. .. | 144 | — | 258 | 364 | 953 | 1,002 | 2,721 | 248,832 | — | 324,459 | 231,884 |
| NOTTINGHAM .. .. .. | 122 | — | 226 | 156 | 470 | 495 | 1,469 | 192,735 | — | 277,040 | 107,245 |
| OXFORD .. .. .. .. | 129 | — | 132 | 205 | 513 | 658 | 1,637 | 256,006 | — | 136,589 | 151,240 |

8

| COUNTY (1) | MILEAGE OF ROADS | | | | | | | REVENUE EXPENDITURE Maintenance and Minor Improveme | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk (2) | Motorways (3) | Class I (4) | Class II (5) | Class III (6) | Unclassified (7) | Total (8) | Trunk (9) | Motorways (10) | Class I (11) | Class II (12) |
| | Miles | Miles | Miles | Miles | Miles | Miles | Miles | £ | £ | £ | £ |
| PETERBOROUGH, SOKE OF .. | 21 | — | 6 | 18 | 69 | 62 | 176 | 23,390 | — | 2,563 | 6,314 |
| RUTLAND .. .. .. .. | 21 | — | 32 | 22 | 108 | 128 | 311 | 30,948 | — | 34,699 | 13,935 |
| SALOP .. .. .. .. .. | 149 | — | 245 | 335 | 1,163 | 1,475 | 3,367 | 195,401 | — | 215,680 | 183,480 |
| SOMERSET .. .. .. .. | 119 | — | 444 | 321 | 1,624 | 2,058 | 4,566 | 171,472 | — | 334,015 | 145,990 |
| STAFFORD .. .. .. .. | 131 | — | 342 | 242 | 864 | 1,013 | 2,592 | 245,852 | — | 483,387 | 225,505 |
| SUFFOLK, EAST .. .. .. | 65 | — | 155 | 279 | 664 | 799 | 1,962 | 99,527 | — | 164,830 | 117,611 |
| SUFFOLK, WEST .. .. .. | 30 | — | 145 | 126 | 426 | 483 | 1,210 | 41,009 | — | 120,038 | 63,435 |
| SURREY .. .. .. .. | 52 | — | 372 | 264 | 405 | 516 | 1,609 | 162,604 | — | 769,619 | 417,221 |
| SUSSEX, EAST .. .. .. | 53 | — | 262 | 217 | 492 | 598 | 1,622 | 97,827 | — | 280,074 | 124,969 |
| SUSSEX, WEST .. .. .. | 36 | — | 256 | 124 | 396 | 385 | 1,197 | 60,269 | — | 281,871 | 127,068 |
| WARWICK .. .. .. .. | 179 | 2 | 186 | 246 | 595 | 703 | 1,911 | 289,846 | — | 212,432 | 260,879 |
| WESTMORLAND .. .. .. | 75 | — | 113 | 82 | 377 | 418 | 965 | 149,355 | — | 91,482 | 38,085 |
| WILTSHIRE .. .. .. .. | 128 | — | 348 | 193 | 1,019 | 689 | 2,377 | 144,839 | — | 274,202 | 107,486 |
| WORCESTER .. .. .. .. | 54 | 11 | 242 | 212 | 647 | 750 | 1,916 | 132,348 | 20,239 | 363,205 | 186,966 |
| YORK, EAST RIDING .. .. | 91 | — | 169 | 229 | 694 | 993 | 2,176 | 164,390 | — | 144,125 | 119,051 |
| YORK, NORTH RIDING .. .. | 126 | — | 345 | 232 | 1,133 | 1,338 | 3,174 | 235,874 | — | 303,990 | 106,797 |
| YORK, WEST RIDING .. .. | 286 | 15 | 598 | 485 | 1,237 | 1,741 | 4,362 | 651,763 | 23,737 | 955,179 | 405,510 |
| **ENGLISH COUNTIES** excluding MONMOUTH .. .. | 4,792 | 146 | 11,712 | 11,025 | 35,455 | 41,642 | 104,672 | 8,374,750 | 289,942 | 15,133,503 | 8,664,001 |
| ANGLESEY .. .. .. .. | 21 | — | 64 | 72 | 237 | 283 | 677 | 46,926 | — | 52,853 | 45,899 |
| BRECON .. .. .. .. | 106 | — | 49 | 65 | 434 | 543 | 1,197 | 122,665 | — | 58,586 | 28,830 |
| CAERNARVON .. .. .. | 74 | — | 100 | 104 | 398 | 440 | 1,116 | 103,983 | — | 92,752 | 69,853 |
| CARDIGAN .. .. .. .. | 70 | — | 99 | 202 | 514 | 412 | 1,297 | 88,344 | — | 78,029 | 81,012 |
| CARMARTHEN .. .. .. | 88 | — | 155 | 184 | 789 | 862 | 2,078 | 76,618 | — | 101,190 | 108,875 |
| DENBIGH .. .. .. .. | 73 | — | 128 | 218 | 671 | 757 | 1,847 | 121,786 | — | 141,793 | 90,897 |
| FLINT .. .. .. .. .. | 44 | — | 121 | 63 | 241 | 271 | 740 | 77,104 | — | 209,549 | 52,935 |
| GLAMORGAN .. .. .. | 59 | — | 241 | 188 | 398 | 558 | 1,444 | 155,654 | — | 422,588 | 233,855 |
| MERIONETH .. .. .. .. | 103 | — | 72 | 86 | 296 | 362 | 919 | 114,207 | — | 55,419 | 57,451 |
| MONMOUTH .. .. .. .. | 91 | — | 110 | 142 | 375 | 531 | 1,249 | 151,285 | — | 150,319 | 127,805 |
| MONTGOMERY .. .. .. | 121 | — | 43 | 185 | 541 | 652 | 1,542 | 88,572 | — | 31,465 | 69,805 |
| PEMBROKE .. .. .. .. | 57 | — | 99 | 149 | 577 | 488 | 1,370 | 63,528 | — | 95,939 | 73,207 |
| RADNOR .. .. .. .. | 43 | — | 63 | 76 | 324 | 523 | 1,029 | 38,192 | — | 64,833 | 39,567 |
| **WELSH COUNTIES** including MONMOUTH .. .. | 950 | — | 1,344 | 1,734 | 5,795 | 6,682 | 16,505 | 1,248,864 | — | 1,555,315 | 1,079,991 |
| **ALL COUNTIES** .. .. .. | 5,742 | 146 | 13,056 | 12,759 | 41,250 | 48,324 | 121,177 | 9,623,614 | 289,942 | 16,688,818 | 9,743,992 |

SOCIETY OF COUNTY TREASURERS

and

COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1962 - 1963

JANUARY, 1964

## NOTES

1. The road mileages in columns 2 to 8 exclude:—

   Unclassified roads in urban areas maintained at expense of borough and urban district councils.
   Unmetalled green lanes and bridle paths for which surface maintenance is not required.

   Trunk road lengths maintained under special agency arrangements by borough and urban district councils.

   The mileage differs from that given on Ministry of Transport form 197 (Roads) because of different treatment for unmetalled roads and trunk roads.

2. Expenditure on maintenance and improvements (columns 9 to 20) has been reduced by all income other than grant.

3. Administration expenses (columns 26 and 27) are the gross cost including establishment expenses paid to Claiming and Delegated Authorities before allocations are made to trunk roads, private street works and other recoverable expenditure. These allocations are shown as income in column 35.

4. Column 29 "Financing items" includes:—

   Depots — Purchase and adaptations.
   Purchase of vehicles and plant charged direct to rate account.
   Contributions to repairs and renewals fund.
   Depreciation allowances credited back to rate account in respect of vehicles and plant purchased from rates.
   Differences between actual costs and Ministry of Transport schedule rates.
   Surpluses or deficiencies on plant and tools and oncost accounts.

   Details are available from the compiler of the return if desired.

5. Capital expenditure (columns 40 to 44) excludes capital expenditure met from revenue included in the appropriate items.

4

| COUNTY | MILEAGE OF ROADS | | | | | | | REVENUE EXPENDITUR | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | Maintenance and Minor Improv | | | |
| | Trunk | Motorways | Class I | Class II | Class III | Unclassified | Total | Trunk | Motorways | Class I | Class I |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| | Miles | Miles | Miles | Miles | Miles | Miles | Miles | £ | £ | £ | £ |
| BEDFORD ... ... ... ... | 65 | 15 | 105 | 86 | 295 | 374 | 940 | 94,486 | 64,492 | 117,076 | 83,5 |
| BERKSHIRE ... ... ... ... | 67 | 12 | 229 | 179 | 498 | 671 | 1,656 | 142,739 | 7,132 | 252,834 | 139,7 |
| BUCKINGHAM ... ... ... | 49 | 12 | 201 | 165 | 530 | 699 | 1,656 | 101,858 | 29,551 | 292,781 | 182,2 |
| CAMBRIDGE ... ... ... | 68 | — | 67 | 105 | 278 | 298 | 816 | 164,825 | — | 114,251 | 99,4 |
| CHESHIRE ... ... ... ... | 198 | — | 318 | 258 | 717 | 835 | 2,326 | 334,448 | — | 418,428 | 300,7 |
| CORNWALL ... ... ... | 150 | — | 282 | 353 | 1,523 | 1,687 | 3,995 | 205,122 | — | 235,153 | 160,2 |
| CUMBERLAND ... ... ... | 117 | — | 162 | 257 | 834 | 969 | 2,339 | 198,424 | — | 206,762 | 175,5 |
| DERBY ... ... ... ... | 117 | — | 306 | 274 | 802 | 845 | 2,344 | 217,623 | — | 526,563 | 301,6 |
| DEVON ... ... ... ... | 191 | — | 511 | 456 | 2,625 | 2,857 | 6,640 | 288,749 | — | 391,902 | 279,1 |
| DORSET ... ... ... ... | 55 | — | 236 | 210 | 685 | 824 | 2,010 | 72,970 | — | 221,895 | 144,8 |
| DURHAM ... ... ... ... | 64 | — | 294 | 285 | 526 | 640 | 1,809 | 202,048 | — | 579,088 | 404,2 |
| ESSEX ... ... ... ... | 91 | — | 394 | 433 | 1,055 | 1,099 | 3,072 | 214,393 | — | 649,654 | 529,9 |
| GLOUCESTER ... ... ... | 166 | — | 278 | 311 | 1,034 | 1,346 | 3,135 | 319,082 | — | 328,129 | 268,8 |
| HAMPSHIRE ... ... ... ... | 144 | — | 371 | 299 | 1,230 | 1,215 | 3,259 | 427,617 | — | 623,403 | 246,9 |
| HEREFORD ... ... ... ... | 70 | 12 | 209 | 181 | 650 | 758 | 1,880 | 87,204 | 13,701 | 185,719 | 86,3 |
| HERTFORD ... ... ... ... | 122 | 19 | 171 | 170 | 466 | 694 | 1,642 | 293,560 | 58,761 | 271,242 | 188,2 |
| HUNTINGDON ... ... ... | 48 | — | 63 | 116 | 183 | 132 | 542 | 58,305 | — | 57,217 | 82, |
| ISLE OF ELY ... ... ... | 33 | — | 69 | 121 | 193 | 223 | 639 | 66,179 | — | 64,226 | 72, |
| ISLE OF WIGHT ... ... ... | — | — | 75 | 55 | 110 | 73 | 313 | — | — | 88,982 | 53, |
| KENT ... ... ... ... | 113 | 8 | 504 | 394 | 1,114 | 1,612 | 3,745 | 255,891 | 118,539 | 721,722 | 399, |
| LANCASHIRE ... ... ... | 207 | 21 | 501 | 421 | 1,133 | 1,061 | 3,344 | 467,746 | 41,532 | 901,843 | 535, |
| LEICESTER ... ... ... ... | 87 | — | 161 | 248 | 611 | 692 | 1,799 | 155,725 | — | 203,520 | 175, |
| LINCOLN, HOLLAND ... ... | 50 | — | 63 | 90 | 430 | 528 | 1,161 | 100,292 | — | 71,446 | 50, |
| LINCOLN, KESTEVEN ... ... | 61 | — | 123 | 154 | 570 | 597 | 1,505 | 95,054 | — | 112,748 | 66, |
| LINCOLN, LINDSEY ... ... | 122 | — | 347 | 296 | 1,002 | 951 | 2,718 | 187,090 | — | 293,549 | 269, |
| MIDDLESEX ... ... ... | 69 | — | 233 | 124 | 196 | 2 | 624 | 350,329 | — | 1,007,476 | 362 |
| NORFOLK ... ... ... ... | 120 | — | 389 | 499 | 1,727 | 1,970 | 4,705 | 164,352 | — | 322,402 | 272 |
| NORTHAMPTON ... ... ... | 134 | 29 | 189 | 123 | 597 | 597 | 1,669 | 179,966 | 171,556 | 247,347 | 89 |
| NORTHUMBERLAND ... ... | 144 | — | 258 | 364 | 954 | 1,000 | 2,720 | 238,890 | — | 358,462 | 288 |
| NOTTINGHAM ... ... ... | 122 | — | 227 | 156 | 469 | 500 | 1,474 | 243,879 | — | 267,599 | 124 |
| OXFORD ... ... ... ... | 129 | — | 132 | 205 | 513 | 661 | 1,640 | 375,354 | — | 158,532 | 148 |

| COUNTY | MILEAGE OF ROADS | | | | | | | REVENUE EXPENDITURE Maintenance and Minor Improver | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk | Motorways | Class I | Class II | Class III | Unclassified | Total | Trunk | Motorways | Class I | Class II |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| | Miles | Miles | Miles | Miles | Miles | Miles | Miles | £ | £ | £ | £ |
| PETERBOROUGH, SOKE OF ... | 21 | — | 6 | 18 | 69 | 61 | 175 | 21,025 | — | 4,647 | 10,468 |
| RUTLAND ... ... ... ... | 21 | — | 32 | 22 | 108 | 129 | 312 | 28,613 | — | 30,899 | 8,487 |
| SALOP ... ... ... ... | 149 | — | 245 | 335 | 1,164 | 1,419 | 3,312 | 291,215 | — | 210,040 | 206,845 |
| SOMERSET ... ... ... ... | 119 | — | 444 | 321 | 1,624 | 1,841 | 4,349 | 219,715 | — | 510,973 | 240,360 |
| STAFFORD ... ... ... ... | 131 | 17 | 342 | 242 | 864 | 991 | 2,587 | 297,877 | 16,292 | 445,992 | 260,992 |
| SUFFOLK, EAST ... ... ... | 65 | — | 155 | 279 | 665 | 773 | 1,937 | 109,616 | — | 136,789 | 147,679 |
| SUFFOLK, WEST ... ... ... | 30 | — | 145 | 126 | 426 | 451 | 1,178 | 49,478 | — | 108,945 | 62,086 |
| SURREY ... ... ... ... | 52 | — | 372 | 264 | 405 | 509 | 1,602 | 184,810 | — | 791,461 | 398,224 |
| SUSSEX, EAST ... ... ... | 53 | — | 262 | 217 | 492 | 607 | 1,631 | 91,819 | — | 281,215 | 150,224 |
| SUSSEX, WEST ... ... ... | 36 | — | 256 | 124 | 397 | 389 | 1,202 | 72,881 | — | 416,449 | 110,301 |
| WARWICK ... ... ... ... | 179 | — | 186 | 246 | 595 | 709 | 1,915 | 329,299 | — | 225,550 | 227,865 |
| WESTMORLAND ... ... ... | 75 | — | 112 | 83 | 377 | 424 | 1,071 | 208,671 | — | 101,814 | 40,685 |
| WILTSHIRE ... ... ... ... | 128 | — | 348 | 192 | 1,019 | 692 | 2,379 | 202,031 | — | 359,199 | 135,968 |
| WORCESTER ... ... ... | 54 | 36 | 241 | 212 | 647 | 691 | 1,881 | 132,611 | 57,685 | 366,474 | 200,695 |
| YORK, EAST RIDING ... ... | 91 | — | 169 | 229 | 694 | 996 | 2,179 | 181,383 | — | 159,734 | 127,998 |
| YORK, NORTH RIDING ... | 127 | — | 345 | 232 | 1,134 | 1,349 | 3,187 | 302,924 | — | 322,587 | 138,539 |
| YORK, WEST RIDING ... ... | 286 | 15 | 598 | 485 | 1,240 | 1,542 | 4,166 | 738,419 | 43,944 | 893,856 | 532,646 |
| **ENGLISH COUNTIES** excluding MONMOUTH ... ... | 4,790 | 196 | 11,726 | 11,015 | 35,470 | 39,983 | 103,180 | 9,766,587 | 623,185 | 15,658,575 | 9,582,830 |
| ANGLESEY ... ... ... ... | 21 | — | 64 | 72 | 237 | 283 | 677 | 22,313 | — | 77,029 | 41,76 |
| BRECON ... ... ... ... | 106 | — | 49 | 65 | 434 | 419 | 1,073 | 144,495 | — | 61,814 | 33,92 |
| CAERNARVON ... ... ... | 74 | — | 100 | 104 | 398 | 441 | 1,117 | 113,287 | — | 84,527 | 65,57 |
| CARDIGAN ... ... ... ... | 71 | — | 99 | 202 | 514 | 424 | 1,310 | 95,210 | — | 76,693 | 85,91 |
| CARMARTHEN ... ... ... | 88 | — | 155 | 184 | 789 | 863 | 2,079 | 92,764 | — | 89,605 | 94,74 |
| DENBIGH ... ... ... ... | 71 | — | 128 | 218 | 671 | 591 | 1,679 | 138,772 | — | 120,287 | 103,84 |
| FLINT ... ... ... ... | 44 | — | 121 | 63 | 241 | 261 | 730 | 74,010 | — | 190,734 | 40,15 |
| GLAMORGAN ... ... ... | 59 | — | 241 | 188 | 400 | 531 | 1,419 | 171,886 | — | 452,794 | 274,64 |
| MERIONETH ... ... ... | 103 | — | 72 | 86 | 296 | 260 | 817 | 111,838 | — | 52,368 | 52,57 |
| MONMOUTH ... ... ... | 82 | — | 109 | 142 | 376 | 533 | 1,242 | 161,050 | — | 169,550 | 142,65 |
| MONTGOMERY ... ... ... | 121 | — | 43 | 185 | 541 | 670 | 1,560 | 109,260 | — | 14,940 | 69,89 |
| PEMBROKE ... ... ... ... | 57 | — | 99 | 149 | 578 | 490 | 1,373 | 73,197 | — | 73,819 | 92,51 |
| RADNOR ... ... ... ... | 41 | — | 63 | 75 | 325 | 579 | 1,083 | 46,965 | — | 57,546 | 38,88 |
| **WELSH COUNTIES** including MONMOUTH ... ... | 938 | — | 1,343 | 1,733 | 5,800 | 6,345 | 16,159 | 1,355,047 | — | 1,521,706 | 1,137,09 |
| **ALL COUNTIES** ... ... | 5,728 | 196 | 13,069 | 12,748 | 41,270 | 46,328 | 119,339 | 11,121,634 | 623,185 | 17,180,281 | 10,719,92 |

SOCIETY OF COUNTY TREASURERS

and

COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE

# 1963 - 1964

JANUARY, 1965

## NOTES

1. The road mileages in columns 2 to 9 exclude unclassified roads in urban areas maintained at the expense of borough and urban district councils, and trunk road lengths maintained under special agency arrangements by those councils.

"Motorways" include trunk roads and by-passes of motorway standard. The latter are in Buckingham 10 miles, Hertford 19 miles, Kent 8 miles, and York, West Riding 12 miles.

Continuing lengths of motorways are maintained in adjoining counties by Berkshire 6 miles, Buckingham 2 miles, Hereford 6 miles, Hertford 1 mile, Northampton 3 miles, Worcester 4 miles and York, West Riding 4 miles. In the return these mileages are included as those of the maintaining authority.

Lancashire maintains 6 miles of Class I road of motorway standard.

"Green Lanes" are unsurfaced roads with right of passage for vehicles, included on Ministry of Transport form 197(Roads).

2. "Population per mile of road" is calculated on total road mileage in the county, including unclassified roads and special agency trunk roads in urban areas, but excluding "Green Lanes".

3. Expenditure on maintenance and improvements (columns 11 to 30) has been reduced by all income other than grant.

4. Land purchased in advance, column 31, includes land purchased for schemes within the forward grant programmes (Ministry of Transport circulars 799/61 and 21/62) and land purchased by reason of "planning blight" (circular 782/61). Further particulars on classification of roads concerned can be obtained from the compiler of the return if desired.

5. Administration expenses (columns 38 and 39) are the gross cost including establishment expenses paid to Claiming and Delegated Authorities before allocations are made to trunk roads, private street works and other recoverable expenditure. These allocations are shown as income in column 49.

The figures include in many counties the salaries of additional staff engaged for motorway and other major projects.

6. Column 41 "Financing items" includes:—

Depots — Purchase and adaptations.

Purchase of vehicles and plant charged direct to rate account.

Contributions to repairs and renewals fund.

Depreciation allowances credited back to rate account in respect of vehicles and plant purchased from rates.

Differences between actual costs and Ministry of Transport schedule rates.

Surpluses or deficiencies on plant and tools and oncost accounts.

Details are available from the compiler if desired.

7. Total revenue expenditure (column 42) comprises columns 11 to 16, 19 to 24, 32, and 34 to 41, and total revenue income (column 51) is all income columns except 45.

8. Capital expenditure excludes capital expenditure met from revenue included in the appropriate items.

| COUNTY | MILEAGE OF ROADS | | | | | | | | Population per mile of road | MAINTENANCE AND MINOR IMPROVEMENT | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk | Motorways | Class I | Class II | Class III | Unclassified | "Green Lanes" | Total | | Trunk | Motorways | Class I | Class II | Class III | Unclassified | Total cols. 11 to 16 | Winter ting and clearing ded in 11 to |
| (56) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | (14) | (15) | (16) | (17) | (18) |
| | Miles | Miles | Miles | Miles | Miles | Miles | Miles | Miles | | £ | £ | £ | £ | £ | £ | £ | £ |
| BEDFORD ... ... | 64 | 15 | 105 | 86 | 295 | 379 | 50 | 994 | 335 | 152,542 | 116,815 | 151,548 | 97,600 | 181,992 | 162,748 | 863,245 | 29,9 |
| BERKSHIRE ... ... | 67 | 12 | 229 | 180 | 498 | 674 | 229 | 1,889 | 232 | 175,530 | 10,177 | 301,949 | 178,653 | 389,623 | 275,142 | 1,331,074 | 46,6 |
| BUCKINGHAM ... | 49 | 12 | 201 | 165 | 530 | 709 | 121 | 1,787 | 264 | 168,233 | 22,895 | 313,246 | 184,181 | 340,806 | 314,772 | 1,344,133 | 46,7 |
| CAMBRIDGE ... ... | 68 | — | 67 | 105 | 278 | 301 | 94 | 913 | 213 | 306,656 | — | 113,248 | 96,538 | 167,694 | 132,172 | 816,308 | 18,6 |
| CHESHIRE ... ... | 198 | 25 | 318 | 258 | 717 | 825 | 18 | 2,359 | 290 | 575,985 | 45,514 | 540,019 | 364,318 | 506,063 | 206,274 | 2,238,173 | 81,1 |
| CORNWALL ... ... | 150 | — | 282 | 352 | 1,523 | 1,685 | — | 3,992 | 77 | 247,641 | — | 294,551 | 201,821 | 471,493 | 215,282 | 1,430,788 | — |
| CUMBERLAND ... | 117 | — | 162 | 257 | 834 | 975 | 73 | 2,418 | 91 | 269,493 | — | 243,779 | 172,754 | 476,565 | 247,175 | 1,409,766 | 30,8 |
| DERBY ... ... | 117 | — | 306 | 275 | 802 | 854 | 134 | 2,488 | 270 | 250,471 | — | 516,166 | 295,411 | 472,571 | 267,221 | 1,801,840 | 24,2 |
| DEVON ... ... ... | 191 | — | 511 | 456 | 2,624 | 2,869 | 176 | 6,827 | 74 | 385,713 | — | 477,950 | 313,164 | 702,273 | 363,623 | 2,242,723 | 26,5 |
| DORSET ... ... | 55 | — | 236 | 210 | 685 | 825 | 555 | 2,566 | 143 | 108,048 | — | 273,889 | 192,681 | 305,003 | 157,962 | 1,037,583 | 19,3 |
| DURHAM ... ... | 64 | — | 294 | 285 | 526 | 646 | 29 | 1,844 | 345 | 226,195 | — | 622,441 | 401,670 | 484,732 | 236,638 | 1,971,676 | 265,1 |
| ESSEX ... ... ... | 91 | — | 396 | 434 | 1,056 | 1,102 | 150 | 3,229 | 407 | 244,860 | — | 712,439 | 544,961 | 779,728 | 294,260 | 2,576,248 | 46,5 |
| GLOUCESTER ... | 167 | 9 | 280 | 311 | 1,034 | 1,343 | 106 | 3,250 | 155 | 431,934 | — | 470,714 | 247,226 | 407,425 | 290,200 | 1,847,499 | 58,7 |
| HAMPSHIRE ... ... | 167 | — | 371 | 299 | 1,230 | 1,231 | 277 | 3,575 | 210 | 447,681 | — | 781,057 | 336,104 | 707,621 | 325,028 | 2,597,491 | 85,9 |
| HEREFORD ... ... | 70 | 11 | 209 | 181 | 650 | 770 | 9 | 1,900 | 68 | 121,351 | 32,441 | 252,121 | 84,619 | 195,948 | 130,824 | 817,304 | 19,3 |
| HERTFORD ... ... | 109 | 28 | 173 | 177 | 470 | 686 | 155 | 1,798 | 366 | 293,433 | 56,940 | 288,408 | 197,440 | 406,160 | 324,176 | 1,566,557 | 41,0 |
| HUNTINGDON ... | 48 | — | 63 | 116 | 183 | 132 | 37 | 579 | 148 | 114,572 | — | 56,754 | 84,858 | 82,580 | 62,069 | 400,833 | 11,1 |
| ISLE OF ELY ... ... | 33 | — | 69 | 121 | 193 | 223 | — | 639 | 120 | 66,049 | — | 76,944 | 63,996 | 60,458 | 47,530 | 314,977 | 7,6 |
| ISLE OF WIGHT ... | — | — | 75 | 55 | 110 | 73 | 16 | 329 | 222 | — | — | 111,570 | 47,602 | 83,465 | 26,181 | 268,818 | 1,6 |
| KENT ... ... ... | 113 | 35 | 500 | 395 | 1,124 | 1,628 | 92 | 3,887 | 323 | 319,217 | 185,363 | 887,401 | 412,470 | 698,776 | 549,550 | 3,052,777 | 113,1 |
| LANCASHIRE ... ... | 207 | 49 | 501 | 420 | 1,133 | 1,071 | — | 3,381 | 397 | 622,432 | 97,068 | 1,290,817 | 809,065 | 1,363,959 | 360,365 | 4,543,706 | 170,0 |
| LEICESTER ... ... | 87 | — | 161 | 248 | 611 | 700 | 100 | 1,907 | 208 | 219,037 | — | 254,354 | 223,375 | 284,947 | 151,970 | 1,133,683 | 60,5 |
| LINCOLN, HOLLAND | 50 | — | 63 | 90 | 430 | 522 | 24 | 1,179 | 87 | 89,606 | — | 88,838 | 48,418 | 248,423 | 123,661 | 598,946 | 7,8 |
| LINCOLN, KESTEVEN | 61 | — | 123 | 154 | 570 | 600 | 72 | 1,580 | 90 | 87,942 | — | 97,550 | 98,840 | 120,929 | 56,147 | 461,408 | 25,0 |
| LINCOLN, LINDSEY | 122 | — | 347 | 297 | 1,001 | 961 | 218 | 2,946 | 117 | 216,751 | — | 385,098 | 206,249 | 442,267 | 250,239 | 1,500,604 | 33,6 |
| MIDDLESEX ... ... | 69 | — | 233 | 124 | 196 | 2 | — | 624 | 906 | 357,041 | — | 1,115,928 | 365,962 | 518,602 | 3,344 | 2,360,877 | 15,3 |
| NORFOLK ... ... | 120 | — | 389 | 499 | 1,729 | 1,985 | 179 | 4,901 | 81 | 196,793 | — | 353,119 | 272,453 | 354,505 | 426,274 | 1,603,144 | 65,9 |
| NORTHAMPTON ... | 125 | 30 | 189 | 123 | 597 | 602 | 103 | 1,769 | 164 | 282,747 | 158,943 | 308,490 | 102,255 | 355,374 | 217,276 | 1,425,085 | 63,6 |
| NORTHUMBERLAND | 144 | — | 258 | 363 | 953 | 1,001 | 8 | 2,727 | 153 | 386,540 | — | 420,516 | 307,142 | 466,848 | 231,672 | 1,812,718 | 154,1 |
| NOTTINGHAM ... | 108 | — | 240 | 156 | 469 | 506 | 84 | 1,563 | 313 | 279,348 | — | 330,224 | 148,616 | 345,565 | 132,226 | 1,235,979 | 54,4 |
| OXFORD ... ... | 129 | — | 132 | 205 | 513 | 664 | 25 | 1,668 | 127 | 366,038 | — | 242,371 | 195,367 | 327,328 | 82,221 | 1,213,325 | 58,2 |

| COUNTY | MILEAGE OF ROADS | | | | | | | | Population per mile of road | MAINTENANCE AND MINOR IMPROVEMENT | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk | Motorways | Class I | Class II | Class III | Unclassified | "Green Lanes" | Total | | Trunk | Motorways | Class I | Class II | Class III | Unclassified | Total cols. 11 |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | (14) | (15) | (16) | (17) |
| | Miles | Miles | Miles | Miles | Miles | Miles | Miles | Miles | | £ | £ | £ | £ | £ | £ | £ |
| PETERBOROUGH, SOKE OF | 21 | — | 6 | 18 | 69 | 53 | 4 | 171 | 342 | 35,546 | — | 14,625 | 19,088 | 50,814 | 23,728 | 143,8 |
| RUTLAND ... ... ... | 21 | — | 32 | 22 | 108 | 129 | 24 | 336 | 83 | 64,213 | — | 39,335 | 9,514 | 40,548 | 15,091 | 168,7 |
| SALOP ... ... ... ... | 149 | — | 245 | 335 | 1,166 | 1,422 | 58 | 3,375 | 86 | 299,511 | — | 237,672 | 283,136 | 484,334 | 301,903 | 1,606,5 |
| SOMERSET ... ... ... | 119 | — | 445 | 321 | 1,625 | 1,853 | 221 | 4,584 | 113 | 280,036 | — | 400,199 | 197,167 | 537,334 | 328,366 | 1,743,1 |
| STAFFORD ... ... ... | 133 | 26 | 342 | 242 | 864 | 998 | 32 | 2,637 | 294 | 315,890 | 24,402 | 530,074 | 284,396 | 542,678 | 214,669 | 1,912,1 |
| SUFFOLK, EAST ... ... | 65 | — | 155 | 278 | 665 | 775 | 29 | 1,967 | 114 | 148,910 | — | 180,137 | 138,314 | 238,469 | 123,955 | 829,7 |
| SUFFOLK, WEST ... ... | 30 | — | 145 | 126 | 427 | 455 | 33 | 1,216 | 110 | 86,427 | — | 82,192 | 58,663 | 111,560 | 86,781 | 425,6 |
| SURREY ... ... ... | 52 | — | 373 | 264 | 406 | 515 | 17 | 1,627 | 495 | 237,563 | — | 911,909 | 453,662 | 473,577 | 298,731 | 2,375,4 |
| SUSSEX, EAST ... ... | 53 | — | 262 | 217 | 492 | 612 | 22 | 1,658 | 208 | 123,005 | — | 314,531 | 210,069 | 341,252 | 211,656 | 1,200,5 |
| SUSSEX, WEST ... ... | 36 | — | 256 | 124 | 397 | 397 | 152 | 1,362 | 282 | 94,597 | — | 491,878 | 183,103 | 272,591 | 121,398 | 1,163,5 |
| WARWICK ... ... ... | 179 | — | 186 | 246 | 595 | 709 | — | 1,915 | 265 | 383,095 | — | 273,537 | 290,110 | 421,074 | 226,890 | 1,594,7 |
| WESTMORLAND ... ... | 75 | — | 112 | 83 | 377 | 393 | 56 | 1,096 | 59 | 249,060 | — | 127,624 | 23,378 | 95,822 | 57,738 | 553,6 |
| WILTSHIRE ... ... ... | 126 | — | 348 | 193 | 1,019 | 695 | 439 | 2,820 | 169 | 167,243 | — | 328,529 | 138,650 | 355,305 | 139,267 | 1,128,9 |
| WORCESTER ... ... | 54 | 36 | 241 | 212 | 647 | 695 | 61 | 1,946 | 198 | 161,939 | 80,917 | 417,851 | 244,731 | 385,122 | 174,719 | 1,465,2 |
| YORK, EAST RIDING ... | 91 | — | 169 | 229 | 694 | 1,001 | 62 | 2,246 | 99 | 218,446 | — | 192,184 | 144,790 | 252,859 | 150,342 | 958,6 |
| YORK, NORTH RIDING ... | 126 | — | 347 | 232 | 1,135 | 1,356 | 74 | 3,270 | 115 | 410,641 | — | 434,391 | 174,902 | 470,558 | 228,358 | 1,718,8 |
| YORK, WEST RIDING ... | 286 | 15 | 598 | 485 | 1,240 | 1,557 | 153 | 4,334 | 275 | 805,167 | 43,274 | 980,979 | 587,769 | 948,688 | 565,108 | 3,930,9 |
| **ENGLISH COUNTIES** excluding MONMOUTH | 4,776 | 303 | 11,745 | 11,024 | 35,490 | 40,159 | 4,571 | 108,068 | | 12,091,168 | 874,749 | 18,331,146 | 10,737,251 | 18,772,308 | 9,932,922 | 70,739,5 |
| ANGLESEY ... ... ... | 21 | — | 64 | 72 | 237 | 283 | — | 677 | 72 | 32,977 | — | 86,680 | 62,621 | 86,009 | 43,665 | 311,9 |
| BRECON ... ... ... | 108 | — | 50 | 65 | 434 | 425 | 132 | 1,214 | 49 | 178,569 | — | 79,935 | 48,110 | 140,873 | 66,776 | 514,2 |
| CAERNARVON ... ... | 74 | — | 100 | 105 | 398 | 442 | 25 | 1,144 | 97 | 126,663 | — | 108,750 | 98,521 | 185,894 | 48,268 | 568,0 |
| CARDIGAN ... ... ... | 71 | — | 99 | 202 | 514 | 431 | 177 | 1,494 | 39 | 108,805 | — | 93,424 | 82,385 | 120,148 | 82,387 | 487,1 |
| CARMARTHEN ... ... | 88 | — | 155 | 185 | 789 | 864 | 1,550 | 3,631 | 76 | 106,877 | — | 112,455 | 123,725 | 238,590 | 137,338 | 718,9 |
| DENBIGH ... ... ... | 71 | — | 128 | 218 | 671 | 593 | 166 | 1,847 | 94 | 145,847 | — | 174,445 | 114,395 | 191,370 | 87,494 | 713,5 |
| FLINT ... ... ... ... | 44 | — | 121 | 63 | 241 | 262 | 12 | 743 | 182 | 106,100 | — | 330,037 | 92,271 | 101,578 | 73,423 | 703,4 |
| GLAMORGAN ... ... ... | 59 | — | 241 | 188 | 400 | 540 | 34 | 1,462 | 339 | 192,526 | — | 520,481 | 327,328 | 440,829 | 245,637 | 1,726,8 |
| MERIONETH ... ... ... | 104 | — | 72 | 86 | 296 | 260 | 103 | 921 | 44 | 129,737 | — | 62,569 | 67,705 | 77,137 | 25,698 | 362,8 |
| MONMOUTH ... ... ... | 82 | — | 111 | 142 | 375 | 534 | 90 | 1,334 | 191 | 216,390 | — | 215,264 | 172,655 | 258,126 | 165,321 | 1,027,7 |
| MONTGOMERY ... ... | 121 | — | 43 | 185 | 541 | 685 | 301 | 1,876 | 26 | 178,832 | — | 31,969 | 89,317 | 191,970 | 108,436 | 600,5 |
| PEMBROKE ... ... ... | 57 | — | 99 | 149 | 578 | 491 | — | 1,374 | 66 | 76,051 | — | 84,166 | 87,899 | 186,186 | 82,978 | 517,2 |
| RADNOR ... ... ... | 45 | — | 63 | 75 | 325 | 579 | — | 1,087 | 17 | 66,212 | — | 64,985 | 45,640 | 97,939 | 25,172 | 299,9 |
| **WELSH COUNTIES** including MONMOUTH ... | 945 | — | 1,346 | 1,735 | 5,799 | 6,389 | 2,590 | 18,804 | | 1,665,586 | — | 1,965,160 | 1,412,572 | 2,316,649 | 1,192,593 | 8,552,5 |
| **ALL COUNTIES** ... ... | 5,721 | 303 | 13,091 | 12,759 | 41,289 | 46,548 | 7,161 | 126,872 | | 13,756,754 | 874,749 | 20,296,306 | 12,149,823 | 21,088,957 | 11,125,515 | 79,292,1 |

## NOTES

1. This return is a supplement to the tabulation of "Highways Expenditure 1963-64" issued by the two Societies.

2. The return shows the average expenditure per mile of each type of road on maintenance and minor improvement and the amount of Ministry of Transport grants for classified roads.

3. The average expenditure per mile on maintenance and minor improvement of unclassified roads (Col. 7) is after deduction of expenditure (estimated in some cases) on unmetalled green lanes and bridle paths for which surface maintenance is not required, and improvements under the Agriculture (Improvement of Roads) Act, 1955.

4. Grants for maintenance and minor improvement exclude pedestrian crossings, traffic signals, speed limit signs, etc.

5. Grants for major improvements include those financed from revenue and capital.

***

County Hall,
CHESTER.

R.H.A. Chisholm,
Honorary Secretary,
Society of County Treasurers.

County Hall,
CHICHESTER.

M. Milne,
Honorary Secretary,
County Surveyors' Society.

Return compiled by J.L. HAMPSHIRE, County Treasurer,
County Hall, Maidstone, Kent.

SOCIETY OF COUNTY TREASURERS

and

COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1964-1965

FEBRUARY, 1966

## NOTES

1. The road mileages in columns 2 to 9 exclude unclassified roads in urban areas maintained at the expense of borough and urban district councils, and trunk road lengths maintained under special agency arrangements by those councils.

"Motorways" include trunk roads and by-passes of motorway standard. The latter are in Buckingham 10 miles, Hertford 19 miles, and Kent 8 miles.

Continuing lengths of motorways are maintained in adjoining counties by Bedford 2 miles, Berkshire 8 miles, Buckingham 2 miles, Hereford 6 miles, Leicester 3 miles, Northampton 3 miles, Worcester 4 miles and York, West Riding 3 miles. In the return these mileages are included as those of the maintaining authority.

"Green Lanes" are unsurfaced roads with right of passage for vehicles, included on Ministry of Transport form 197(Roads).

2. "Population per mile of road" is calculated on total road mileage in the county, including unclassified roads and special agency trunk roads in urban areas, but excluding "Green Lanes".

3. Expenditure on maintenance and improvements (columns 11 to 30) has been reduced by all income other than grant.

4. Land purchased in advance, column 31, includes land purchased for schemes within the forward grant programmes (Ministry of Transport circulars 799/61 and 21/62) and land purchased by reason of "planning blight" (circular 782/61). Further particulars on classification of roads concerned can be obtained from the compiler of the return if desired.

5. Administration expenses (columns 38 and 39) are the gross cost including establishment expenses paid to Claiming and Delegated Authorities before allocations are made to trunk roads, private street works and other recoverable expenditure. These allocations are shown as income in column 49.

The figures include in many counties the salaries of additional staff engaged for motorway and other major projects.

6. Column 41 "Financing items" includes:—

Depots — Purchase and adaptations.

Purchase of vehicles and plant charged direct to rate account.

Contributions to repairs and renewals fund.

Depreciation allowances credited back to rate account in respect of vehicles and plant purchased from rates.

Differences between actual costs and Ministry of Transport schedule rates.

Surpluses or deficiencies on plant and tools and oncost accounts.

Details are available from the compiler if desired.

7. Total revenue expenditure (column 42) comprises columns 11 to 16, 19 to 24, 32, and 34 to 41, and total revenue income (column 51) is all income columns except 45.

8. Capital expenditure excludes capital expenditure met from revenue included in the appropriate items.

| COUNTY | MILEAGE OF ROADS | | | | | | | | Population per mile of road | MAINTENANCE AND MINOR IMPROVEMENT | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk | Motorways | Class I | Class II | Class III | Unclassified | "Green Lanes" | Total | | Trunk | Motorways | Class I | Class II | Class III | U |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | (14) | (15) | |
| | Miles | Miles | Miles | Miles | Miles | Miles | Miles | Miles | | £ | £ | £ | £ | £ | |
| BEDFORD | 64 | 15 | 99 | 79 | 280 | 360 | 50 | 947 | 253 | 116,904 | 36,823 | 72,458 | 60,108 | 205,567 | |
| BERKSHIRE | 67 | 12 | 229 | 180 | 498 | 691 | 229 | 1,906 | 237 | 169,252 | 14,661 | 387,003 | 233,648 | 535,585 | |
| BUCKINGHAM | 49 | 12 | 199 | 162 | 529 | 717 | 120 | 1,788 | 269 | 133,715 | 21,176 | 350,313 | 179,293 | 372,925 | |
| CAMBRIDGE | | | | | | | | | | | | | | | |
| CHESHIRE | 202 | 25 | 317 | 258 | 717 | 826 | 18 | 2,363 | 293 | 486,152 | 67,343 | 493,421 | 383,885 | 443,270 | |
| CORNWALL | 147 | — | 285 | 352 | 1,523 | 1,685 | 2,160 | 6,152 | 78 | 219,309 | — | 295,305 | 209,801 | 444,071 | |
| CUMBERLAND | 117 | — | 162 | 257 | 834 | 980 | 73 | 2,423 | 91 | 249,610 | — | 229,067 | 198,522 | 286,036 | |
| DERBY | 121 | — | 306 | 275 | 800 | 857 | 134 | 2,493 | 270 | 244,448 | — | 528,090 | 356,778 | 597,451 | |
| DEVON | 191 | — | 511 | 461 | 2,618 | 2,879 | 176 | 6,836 | 76 | 325,399 | — | 316,446 | 268,604 | 808,930 | |
| DORSET | 55 | — | 237 | 211 | 687 | 836 | 555 | 2,581 | 144 | 104,266 | — | 307,560 | 201,590 | 321,085 | |
| DURHAM | 64 | — | 294 | 285 | 526 | 661 | 29 | 1,859 | 342 | 143,316 | — | 579,578 | 377,125 | 479,847 | |
| ESSEX | 91 | — | 396 | 437 | 1,050 | 1,110 | 150 | 3,234 | 412 | 245,995 | — | 845,830 | 585,392 | 947,966 | |
| GLOUCESTER | 167 | — | 280 | 311 | 1,034 | 1,356 | 106 | 3,254 | 157 | 394,034 | — | 504,692 | 324,358 | 463,388 | |
| HAMPSHIRE | 167 | — | 371 | 300 | 1,229 | 1,243 | 277 | 3,587 | 216 | 411,282 | — | 854,337 | 336,302 | 685,514 | |
| HEREFORD | 70 | 11 | 209 | 181 | 650 | 773 | 9 | 1,903 | 69 | 106,668 | 25,575 | 198,717 | 96,742 | 200,469 | |
| HERTFORD | 106 | 27 | 172 | 176 | 470 | 690 | 155 | 1,796 | 374 | 289,615 | 44,987 | 312,574 | 215,564 | 357,568 | |
| HUNTINGDON | 49 | — | 63 | 116 | 183 | 133 | 37 | 581 | 150 | 82,804 | — | 57,738 | 89,587 | 90,869 | |
| ISLE OF ELY | | | | | | | | | | | | | | | |
| ISLE OF WIGHT | — | — | 75 | 55 | 110 | 73 | 16 | 329 | 225 | — | — | 112,177 | 61,380 | 89,847 | |
| KENT | 113 | 35 | 500 | 395 | 1,124 | 1,642 | 93 | 3,902 | 323 | 233,674 | 62,136 | 857,283 | 403,211 | 677,189 | |
| LANCASHIRE | 207 | 70 | 496 | 420 | 1,133 | 1,078 | — | 3,404 | 397 | 572,971 | 151,880 | 1,302,970 | 823,580 | 1,383,036 | |
| LEICESTER | 86 | 26 | 161 | 248 | 614 | 708 | 100 | 1,943 | 207 | 195,357 | 17,936 | 246,273 | 216,112 | 269,657 | |
| LINCOLN, HOLLAND | 50 | — | 63 | 90 | 430 | 523 | 24 | 1,180 | 56 | 91,225 | — | 103,807 | 64,550 | 203,802 | |
| LINCOLN, KESTEVEN | 61 | — | 123 | 154 | 570 | 598 | 74 | 1,580 | 91 | 95,797 | — | 99,973 | 93,288 | 140,689 | |
| LINCOLN, LINDSEY | 122 | — | 348 | 297 | 998 | 968 | 218 | 2,951 | 118 | 213,138 | — | 417,392 | 200,405 | 482,668 | |
| MIDDLESEX | | | | | | | | | | | | | | | |
| NORFOLK | 120 | — | 389 | 499 | 1,729 | 1,992 | 179 | 4,908 | 82 | 199,656 | — | 461,610 | 242,161 | 398,963 | |
| NORTHAMPTON | 125 | 30 | 185 | 122 | 594 | 588 | 103 | 1,747 | 168 | 242,948 | 581,796 | 262,558 | 99,732 | 309,571 | |
| NORTHUMBERLAND | 144 | — | 258 | 363 | 954 | 1,007 | 8 | 2,734 | 153 | 316,877 | — | 336,939 | 275,718 | 418,125 | |
| NOTTINGHAM | 119 | — | 241 | 155 | 469 | 516 | 84 | 1,584 | 315 | 223,285 | — | 321,761 | 193,029 | 321,475 | |
| OXFORD | 131 | — | 132 | 205 | 513 | 666 | 25 | 1,672 | 131 | 312,998 | — | 275,133 | 218,064 | 348,594 | |

| COUNTY | MILEAGE OF ROADS | | | | | | | | Population per mile of road | MAINTENANCE AND MINOR IMPROVEMENT | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk | Motorways | Class I | Class II | Class III | Unclassified | "Green Lanes" | Total | | Trunk | Motorways | Class I | Class II | Class III | U |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | (14) | (15) | |
| | Miles | Miles | Miles | Miles | Miles | Miles | Miles | Miles | | £ | £ | £ | £ | £ | |
| PETERBOROUGH, SOKE OF | 21 | — | 6 | 18 | 69 | 53 | 4 | 171 | 345 | 32,977 | — | 17,199 | 19,536 | 58,268 | |
| RUTLAND | 22 | — | 32 | 22 | 108 | 129 | 24 | 337 | 81 | 47,885 | — | 48,729 | 9,653 | 33,420 | |
| SALOP | 149 | — | 247 | 337 | 1,116 | 1,427 | 58 | 3,334 | 87 | 259,090 | — | 303,126 | 245,705 | 445,057 | |
| SOMERSET | 119 | — | 444 | 323 | 1,624 | 1,862 | 221 | 4,593 | 115 | 360,220 | — | 487,433 | 208,326 | 552,605 | |
| STAFFORD | 137 | 26 | 342 | 242 | 864 | 1,004 | 32 | 2,647 | 294 | 300,522 | 51,501 | 485,372 | 303,830 | 583,083 | |
| SUFFOLK, EAST | 65 | — | 155 | 278 | 665 | 776 | 29 | 1,968 | 116 | 139,761 | — | 201,194 | 156,047 | 225,945 | |
| SUFFOLK, WEST | 30 | — | 145 | 131 | 422 | 457 | 33 | 1,218 | 111 | 51,070 | — | 123,439 | 65,598 | 129,109 | |
| SURREY | 52 | — | 373 | 264 | 406 | 499 | 36 | 1,630 | 504 | 199,996 | — | 984,178 | 469,448 | 555,091 | |
| SUSSEX, EAST | 53 | — | 262 | 217 | 492 | 639 | 22 | 1,685 | 210 | 152,270 | — | 328,128 | 198,939 | 280,330 | |
| SUSSEX, WEST | 36 | — | 256 | 124 | 398 | 402 | 152 | 1,368 | 286 | 105,000 | — | 551,033 | 142,153 | 214,048 | |
| WARWICK | 168 | — | 186 | 234 | 578 | 733 | — | 1,899 | 247 | 389,319 | — | 312,855 | 300,718 | 342,379 | |
| WESTMORLAND | 75 | — | 112 | 83 | 377 | 426 | 56 | 1,129 | 57 | 191,152 | — | 159,738 | 44,926 | 119,625 | |
| WILTSHIRE | 127 | — | 348 | 193 | 1,019 | 697 | 439 | 2,823 | 172 | 251,775 | — | 358,827 | 128,045 | 368,624 | |
| WORCESTER | 54 | 36 | 241 | 212 | 647 | 695 | 61 | 1,946 | 201 | 195,131 | 92,044 | 439,901 | 225,220 | 380,473 | |
| YORK, EAST RIDING | 91 | — | 169 | 229 | 695 | 1,003 | 62 | 2,249 | 99 | 184,621 | — | 204,039 | 150,779 | 234,793 | |
| YORK, NORTH RIDING | 127 | — | 347 | 233 | 1,135 | 1,362 | 74 | 3,278 | 116 | 303,882 | — | 319,388 | 139,775 | 433,871 | |
| YORK, WEST RIDING | 286 | 15 | 598 | 485 | 1,241 | 1,572 | 153 | 4,350 | 275 | 569,067 | 42,090 | 987,826 | 536,499 | 1,001,282 | |
| **ENGLISH COUNTIES** excluding MONMOUTH | 4,617 | 340 | 11,364 | 10,669 | 34,722 | 39,892 | 6,658 | 108,262 | | 10,154,433 | 1,209,948 | 17,443,410 | 10,353,726 | 18,242,160 | |
| ANGLESEY | 21 | — | 64 | 72 | 237 | 283 | 373 | 1,050 | 75 | 46,766 | — | 72,727 | 69,147 | 100,347 | |
| BRECON | 106 | — | 50 | 66 | 438 | 433 | 132 | 1,225 | 49 | 172,399 | — | 69,828 | 42,777 | 171,120 | |
| CAERNARVON | 74 | — | 100 | 105 | 398 | 444 | 25 | 1,146 | 96 | 137,664 | — | 138,942 | 86,209 | 189,769 | |
| CARDIGAN | 71 | — | 99 | 202 | 514 | 436 | 177 | 1,499 | 39 | 92,653 | — | 84,598 | 99,087 | 160,181 | |
| CARMARTHEN | 88 | — | 155 | 185 | 789 | 866 | 1,550 | 3,633 | 76 | 131,396 | — | 125,854 | 126,727 | 264,900 | |
| DENBIGH | 71 | — | 128 | 218 | 671 | 593 | 166 | 1,847 | 95 | 124,314 | — | 171,356 | 109,370 | 203,197 | |
| FLINT | 44 | — | 121 | 63 | 241 | 274 | 425 | 1,168 | 183 | 84,877 | — | 293,692 | 103,551 | 97,621 | |
| GLAMORGAN | 59 | — | 241 | 188 | 397 | 542 | 34 | 1,461 | 341 | 154,275 | — | 453,238 | 253,577 | 342,306 | |
| MERIONETH | 104 | — | 72 | 94 | 289 | 267 | 103 | 929 | 44 | 122,619 | — | 66,610 | 61,580 | 86,668 | |
| MONMOUTH | 82 | — | 111 | 145 | 375 | 534 | 90 | 1,337 | 194 | 207,054 | — | 216,890 | 161,734 | 216,402 | |
| MONTGOMERY | 121 | — | 43 | 185 | 541 | 691 | 302 | 1,883 | 26 | 188,883 | — | 30,493 | 106,566 | 204,391 | |
| PEMBROKE | 57 | — | 99 | 148 | 579 | 491 | 826 | 2,200 | 66 | 160,275 | — | 89,611 | 96,988 | 201,317 | |
| RADNOR | 43 | — | 63 | 76 | 325 | 287 | 292 | 1,086 | 23 | 81,096 | — | 80,702 | 48,676 | 110,419 | |
| **WELSH COUNTIES** including MONMOUTH | 941 | — | 1,346 | 1,747 | 5,794 | 6,141 | 4,495 | 20,464 | | 1,704,271 | — | 1,894,541 | 1,365,989 | 2,348,638 | |
| **ALL COUNTIES** | 5,558 | 340 | 12,710 | 12,416 | 40,516 | 46,033 | 11,153 | 128,726 | | 11,858,704 | 1,209,948 | 19,337,951 | 11,719,715 | 20,590,798 | |

SOCIETY OF COUNTY TREASURERS
and
COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1965-66

December 1966

## NOTES

1. The road mileages in columns 2 to 9 exclude unclassified roads in urban areas maintained at the expense of borough and urban district councils, and trunk road lengths maintained under special agency arrangements by those councils.

"Motorways" include trunk roads and by-passes of motorway standard. The latter are in Hertford 8 miles, Kent 8 miles, and Lancashire 6 miles.

Continuing lengths of motorways are maintained in adjoining counties by Bedford 2 miles, Berkshire 8 miles, Buckingham 2 miles, Hereford 6 miles, Leicester 3 miles, Northampton 3 miles, Worcester 4 miles, York, North Riding 3 miles and York, West Riding 3 miles. In the return these mileages are included as those of the maintaining authority. The Kent trunk roads mileage also includes 6 miles in the Greater London area.

"Green Lanes" are unsurfaced roads with right of passage for vehicles, included on Ministry of Transport form 197 (Roads).

2. "Population per mile of road" is calculated on total road mileage in the county, including unclassified roads and special agency trunk roads in urban areas, but excluding "Green Lanes".

3. Expenditure on maintenance and improvements (columns 11 to 30) has been reduced by all income other than grant.

4. Land purchased in advance, column 31, includes land purchased for schemes within the forward grant programmes (Ministry of Transport circulars 799/61 and 21/62) and land purchased by reason of "planning blight" (circular 782/61). Further particulars on classification of roads concerned can be obtained from the compiler of the return if desired.

5. Administration expenses (columns 38 and 39) are the gross cost including establishment expenses paid to Claiming and Delegated Authorites before allocations are made to trunk roads, private street works and other recoverable expenditure. These allocations are shown as income in column 49. In each of the following cases the amount shown in column 38 includes the cost of employing temporary site staff on agency work for the Ministry of Transport (amount indicated in brackets): Durham (£53,807), Leicester (£3,442), Somerset (£17,393), and Worcester (£58,839). Other counties have charged any such costs directly to the job.

6. Column 41 "Financing items" includes:-

Depots - Purchase and adaptations.
Purchase of vehicles and plant charged direct to rate account.
Contributions to repairs and renewals fund.
Depreciation allowances credited back to rate account in respect of vehicles and plant purchased from rates.
Differences between actual costs and Ministry of Transport schedule rates.
Surpluses or deficiencies on plant and tools and oncost accounts.
Details are available from the compiler if desired.

7. Total revenue expenditure (column 42) comprises columns 11 to 16, 19 to 24, 32, and 34 to 41, and total revenue income (column 51) excludes column 45.

8. Capital expenditure excludes capital expenditure met from revenue included in the appropriate items.

9. The Greater London Council has not been included in the following table but a completed questionnaire has been submitted by that Council and details can be obtained from the compiler if required.

DITURE ON MAINTEI

| Trunk Roads (11) £ | Principal County Roads (12) £ |
|---|---|
| 90,620 | 91,130 |
| 31,142 | 337,245 |
| 65,429 | 277,726 |
| 84,535 | 104,337 |
| 96,463 | 501,819 |
| 27,573 | 322,546 |
| 96,415 | 172,904 |
| 98,561 | 396,262 |
| 30,153 | 505,929 |
| 38,253 | 281,591 |
| 38,060 | 427,421 |
| 40,003 | 442,065 |
| 39,976 | 321,767 |
| 39,455 | 512,359 |
| 39,417 | 195,187 |
| 38,749 | 352,294 |
| 22,427 | 87,073 |
| - | 70,090 |
| 320,144 | 611,038 |
| 531,160 | 1,788,235 |
| 103,911 | 176,285 |
| 69,011 | 57,359 |
| 99,137 | 116,713 |
| 145,099 | 308,76[illegible] |
| 124,661 | 237,6[illegible] |
| 174,248 | 189,0 |
| 254,747 | 498,0 |
| 149,879 | 297,[illegible] |
| 212,805 | 196,[illegible] |

**4**

| COUNTY | MILEAGE OF ROADS | | | | | | | | Population per mile of road | MAINT | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk | Motorways | Class I | Class II | Class III | Unclassified | "Green Lanes" | Total | | Trunk | Motorways |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| | | | | | | | | | | £ | £ |
| BEDFORD .. .. | 61 | 15 | 99 | 82 | 279 | 363 | 50 | 949 | 259 | 107,651 | 514,701 |
| BERKSHIRE .. .. | 67 | 12 | 229 | 180 | 498 | 706 | 229 | 1,921 | 245 | 153,639 | 12,263 |
| BUCKINGHAM .. | 48 | 12 | 199 | 162 | 530 | 726 | 120 | 1,797 | 268 | 90,951 | 16,711 |
| CAMBRIDGE & ISLE OF ELY .. | | | | | | | | | | | |
| CHESHIRE .. .. | 202 | 25 | 317 | 258 | 717 | 840 | 18 | 2,377 | 297 | 598,575 | 67,343 |
| CORNWALL .. .. | 147 | - | 285 | 352 | 1,523 | 1,685 | - | 3,992 | 78 | 253,531 | - |
| CUMBERLAND .. | 117 | - | 162 | 257 | 834 | 985 | 73 | 2,428 | 90 | 232,213 | - |
| DERBY .. .. .. | 118 | 11 | 309 | 275 | 800 | 911 | 90 | 2,514 | 265 | 233,991 | 2,450 |
| DEVON .. .. .. | 191 | - | 513 | 457 | 2,623 | 2,886 | 176 | 6,846 | 77 | 380,969 | - |
| DORSET .. .. | 55 | - | 238 | 214 | 688 | 854 | 491 | 2,540 | 143 | 110,730 | - |
| DURHAM .. .. | 64 | 2 | 294 | 285 | 527 | 697 | 29 | 1,898 | 337 | 149,537 | 4,191 |
| ESSEX .. .. .. | 73 | - | 335 | 398 | 969 | 1,119 | 150 | 3,044 | 281 | 167,863 | - |
| GLOUCESTER .. | 166 | - | 279 | 312 | 1,036 | 1,366 | 106 | 3,265 | 160 | 412,491 | - |
| HAMPSHIRE .. .. | 144 | - | 371 | 300 | 1,229 | 1,257 | 279 | 3,580 | 222 | 479,652 | - |
| HEREFORD .. .. | 70 | 11 | 209 | 182 | 652 | 775 | 9 | 1,908 | 70 | 144,527 | 42,490 |
| HERTFORD .. .. | 109 | 27 | 168 | 177 | 476 | 684 | 155 | 1,796 | 360 | 252,222 | 172,989 |
| HUNTINGDON & PETERBOROUGH | | | | | | | | | | | |
| ISLE OF WIGHT .. | - | - | 75 | 55 | 110 | 73 | 16 | 329 | 226 | - | - |
| KENT .. .. .. | 110 | 35 | 415 | 369 | 1,061 | 1,657 | 93 | 3,740 | 270 | 225,298 | 75,681 |
| LANCASHIRE .. .. | 208 | 72 | 497 | 418 | 1,140 | 1,089 | - | 3,424 | 398 | 637,474 | 197,707 |
| LEICESTER .. .. | 106 | 38 | 162 | 249 | 615 | 705 | 100 | 1,975 | 209 | 218,108 | 59,975 |
| LINCOLN, HOLLAND | 50 | - | 63 | 90 | 430 | 523 | 24 | 1,180 | 86 | 85,774 | - |
| LINCOLN, KESTEVEN | 64 | - | 123 | 154 | 569 | 602 | 74 | 1,586 | 93 | 95,715 | - |
| LINCOLN, LINDSEY | 122 | - | 348 | 298 | 998 | 969 | 218 | 2,953 | 119 | 226,093 | - |
| NORFOLK .. .. | 120 | - | 389 | 498 | 1,729 | 2,004 | 179 | 4,919 | 83 | 150,090 | - |
| NORTHAMPTON .. | 124 | 30 | 185 | 122 | 593 | 591 | 103 | 1,748 | 162 | 206,265 | 1,078,221 |
| NORTHUMBERLAND | 144 | - | 258 | 363 | 954 | 1,019 | 8 | 2,746 | 153 | 317,670 | - |
| NOTTINGHAM .. | 112 | - | 248 | 154 | 468 | 525 | 84 | 1,591 | 317 | 201,442 | - |
| OXFORD .. .. | 133 | - | 133 | 205 | 513 | 670 | 25 | 1,679 | 133 | 368,433 | - |

**8**

| COUNTY | MILEAGE OF ROADS | | | | | | | | Population per mile of road | MAINTENANCE A | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk | Motorways | Class I | Class II | Class III | Unclassified | "Green Lanes" | Total | | Trunk | Motorways |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| | | | | | | | | | | £ | £ |
| RUTLAND .. .. | 22 | - | 32 | 22 | 108 | 130 | 24 | 338 | 86 | 35,550 | - |
| SALOP .. .. .. | 159 | - | 247 | 337 | 1,167 | 1,429 | 58 | 3,397 | 88 | 300,169 | - |
| SOMERSET .. .. | 119 | - | 444 | 323 | 1,624 | 2,089 | 221 | 4,820 | 110 | 416,085 | - |
| STAFFORD .. .. | 139 | 34 | 340 | 244 | 867 | 998 | 32 | 2,654 | 300 | 272,128 | 72,106 |
| SUFFOLK EAST .. | 65 | - | 155 | 278 | 665 | 775 | 32 | 1,970 | 117 | 115,020 | - |
| SUFFOLK WEST .. | 30 | - | 145 | 131 | 422 | 461 | 33 | 1,222 | 113 | 30,695 | - |
| SURREY .. .. | 56 | - | 308 | 224 | 375 | 496 | 36 | 1,495 | 404 | 291,639 | - |
| SUSSEX EAST .. | 53 | - | 262 | 217 | 492 | 630 | 21 | 1,675 | 215 | 124,615 | - |
| SUSSEX WEST .. | 36 | - | 256 | 124 | 398 | 408 | 152 | 1,374 | 289 | 144,704 | - |
| WARWICK .. .. | 166 | - | 182 | 229 | 572 | 643 | 71 | 1,863 | 251 | 422,617 | - |
| WESTMORLAND .. | 75 | - | 112 | 83 | 377 | 398 | 52 | 1,097 | 59 | 259,860 | - |
| WILTSHIRE .. .. | 128 | - | 348 | 193 | 1,019 | 702 | 439 | 2,829 | 174 | 234,468 | - |
| WORCESTER .. .. | 54 | 47 | 239 | 204 | 635 | 697 | 61 | 1,937 | 204 | 143,732 | 135,614 |
| YORK, EAST RIDING | 91 | - | 169 | 229 | 695 | 1,007 | 62 | 2,253 | 102 | 142,105 | - |
| YORK, NORTH RIDING | 119 | 9 | 347 | 233 | 1,140 | 1,365 | 74 | 3,287 | 117 | 293,891 | 2,788 |
| YORK, WEST RIDING | 286 | 15 | 598 | 485 | 1,242 | 1,592 | 152 | 4,370 | 276 | 563,241 | 65,265 |
| ENGLISH COUNTIES excluding MONMOUTH | 4,523 | 395 | 11,087 | 10,422 | 34,359 | 40,101 | 4,419 | 105,306 | | 10,291,423 | 2,520,495 |
| ANGLESEY .. .. | 21 | - | 64 | 72 | 237 | 290 | - | 684 | 76 | 48,183 | - |
| BRECON .. .. | 106 | - | 50 | 66 | 438 | 436 | 132 | 1,228 | 49 | 170,810 | - |
| CAERNARVON .. | 74 | - | 100 | 105 | 398 | 448 | 23 | 1,148 | 43 | 156,332 | - |
| CARDIGAN .. .. | 71 | - | 99 | 202 | 514 | 444 | 170 | 1,500 | 39 | 95,291 | - |
| CARMARTHEN .. | 88 | - | 155 | 185 | 789 | 870 | 1,550 | 3,637 | 76 | 144,548 | - |
| DENBIGH .. .. | 71 | - | 128 | 218 | 671 | 593 | 166 | 1,847 | 96 | 131,785 | - |
| FLINT .. .. .. | 44 | - | 121 | 63 | 241 | 265 | 12 | 746 | 188 | 87,047 | - |
| GLAMORGAN .. | 58 | - | 242 | 188 | 399 | 550 | 34 | 1,471 | 339 | 201,982 | - |
| MERIONETH .. .. | 104 | - | 72 | 94 | 289 | 269 | 103 | 931 | 44 | 135,003 | - |
| MONMOUTH .. .. | 82 | - | 111 | 145 | 376 | 538 | 90 | 1,342 | 195 | 207,303 | - |
| MONTGOMERY .. | 121 | - | 43 | 185 | 541 | 693 | 302 | 1,885 | 26 | 207,913 | - |
| PEMBROKE .. .. | 57 | - | 99 | 148 | 581 | 490 | - | 1,375 | 66 | 210,733 | - |
| RADNOR .. .. | 43 | - | 63 | 76 | 325 | 287 | 292 | 1,086 | 22 | 85,121 | - |
| WELSH COUNTIES including MONMOUTH | 940 | - | 1,347 | 1,747 | 5,799 | 6,173 | 2,874 | 18,880 | | 1,882,051 | - |
| ALL COUNTIES .. | 5,463 | 395 | 12,434 | 12,169 | 40,158 | 46,274 | 7,293 | 124,186 | | 12,173,474 | 2,520,495 |

SOCIETY OF COUNTY TREASURERS
and
COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1966-67

December 1967

## NOTES

1. The road mileages in columns 2 to 9 exclude unclassified roads in urban areas maintained at the expense of borough and urban district councils, and trunk road lengths maintained under special agency arrangements by those councils.

"Motorways" include trunk roads and by-passes of motorway standard. The latter are in Gloucester 1 mile, Hertford 8 miles, Kent 8 miles, and Lancashire 6 miles.

Continuing lengths of motorways are maintained in the areas of adjoining authorities by Bedford 1 mile, Berkshire 8 miles, Buckingham 2 miles, Hereford 6 miles, Leicester 3 miles, Northampton 3 miles, Worcester 4 miles, York, North Riding 3 miles, York, West Riding 3 miles, and Monmouth, 7 miles. In the return these mileages are included as those of the maintaining authority. The trunk road mileages also includes 5 miles maintained by Kent and 7 miles by Surrey in the Greater London area.

"Green Lanes" are unsurfaced roads with right of passage for vehicles, included on Ministry of Transport form 197 (Roads).

2. "Population per mile of road" is calculated on total road mileage in the county, including unclassified roads and special agency trunk roads in urban areas, but excluding "Green Lanes".

3. Expenditure on maintenance and improvements (columns 11 to 30) has been reduced by all income other than grant.

4. Land purchased in advance, column 31, includes land purchased for schemes within the forward grant programmes (Ministry of Transport circulars 799/61 and 21/62) and land purchased by reason of "planning blight" (circular 782/61). Further particulars on classification of roads concerned can be obtained from the compiler of the return if desired.

5. Administration expenses (columns 38 and 39) are the gross cost including establishment expenses paid to Claiming and Delegated Authorities before allocations are made to trunk roads, private street works and other recoverable expenditure. These allocations are shown as income in column 49. In the following cases the amount shown in column 38 includes the cost of employing temporary site staff on agency work for the Ministry of Transport (amount indicated in brackets): Derby (£16,500), Durham (£88,785), Leicester (£5,625), Somerset (£17,114), Stafford (£2,213), Worcester (£36,926), and York, West Riding (£176,386). Other counties have charged any such costs directly to the job.

6. Column 41 "Financing items" includes:-

Depots - Purchase and adaptations.
Purchase of vehicles and plant charged direct to rate account.
Contributions to repairs and renewals fund.
Depreciation allowances credited back to rate account in respect of vehicles and plant purchased from rates.
Differences between actual costs and Ministry of Transport schedule rates.
Surpluses or deficiencies on plant and tools and oncost accounts.

Details are available from the compiler if desired.

7. Total revenue expenditure (column 42) comprises columns 11 to 16, 19 to 24, 32, and 34 to 41, and total revenue income (column 51) excludes column 45.

8. Capital expenditure excludes capital expenditure met from revenue included in the appropriate items.

**4**

| COUNTY | MILEAGE OF ROADS | | | | | | | | Population per mile of road | MAINTENANCE AND | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk | Motorways | Class I | Class II | Class III | Unclassified | "Green Lanes" | Total | | Trunk | Motorways | Class I |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) |
| | | | | | | | | | | £ | £ | £ |
| BEDFORD .. .. | 61 | 15 | 99 | 82 | 279 | 368 | 50 | 954 | 262 | 124,022 | 35,321 | 88,470 |
| BERKSHIRE .. .. | 67 | 12 | 229 | 180 | 498 | 706 | 229 | 1,921 | 251 | 171,972 | 37,122 | 714,734 |
| BUCKINGHAM .. | 48 | 21 | 199 | 162 | 530 | 736 | 120 | 1,816 | 269 | 81,404 | 11,812 | 378,885 |
| CAMBRIDGE & ISLE OF ELY .. | 95 | - | 136 | 214 | 454 | 550 | 94 | 1,543 | 177 | 196,791 | - | 262,006 |
| CHESHIRE .. .. | 201 | 24 | 318 | 262 | 713 | 842 | 18 | 2,378 | 299 | 641,906 | 64,198 | 590,714 |
| CORNWALL .. .. | 147 | - | 285 | 355 | 1,534 | 1,705 | - | 4,026 | 78 | 257,441 | - | 268,028 |
| CUMBERLAND .. | 117 | - | 162 | 257 | 834 | 989 | 73 | 2,432 | 90 | 274,395 | - | 202,918 |
| DERBY .. .. .. | 118 | 11 | 309 | 275 | 800 | 911 | 90 | 2,514 | 267 | 295,831 | 14,770 | 491,654 |
| DEVON .. .. .. | 192 | - | 512 | 447 | 2,600 | 2,865 | 176 | 6,792 | 76 | 422,379 | - | 448,463 |
| DORSET .. .. | 55 | - | 238 | 214 | 689 | 858 | 491 | 2,545 | 144 | 122,292 | - | 365,977 |
| DURHAM .. .. | 64 | 2 | 295 | 285 | 527 | 673 | 29 | 1,875 | 341 | 143,845 | 6,731 | 585,203 |
| ESSEX .. .. .. | 82 | - | 341 | 397 | 964 | 1,088 | 150 | 3,022 | 289 | 188,368 | - | 899,027 |
| GLOUCESTER .. | 166 | 18 | 279 | 312 | 1,036 | 1,400 | 106 | 3,317 | 161 | 419,797 | 24,315 | 358,613 |
| HAMPSHIRE .. .. | 144 | - | 373 | 300 | 1,233 | 1,273 | 279 | 3,602 | 225 | 483,079 | - | 677,138 |
| HEREFORD .. .. | 70 | 11 | 209 | 182 | 652 | 783 | 19 | 1,926 | 70 | 146,510 | 45,332 | 232,992 |
| HERTFORD .. .. | 109 | 27 | 168 | 179 | 480 | 687 | 155 | 1,805 | 360 | 283,741 | 60,585 | 309,537 |
| HUNTINGDON & PETERBOROUGH | 79 | - | 71 | 147 | 272 | 218 | 35 | 822 | 201 | 156,322 | - | 88,275 |
| ISLE OF WIGHT .. | - | - | 75 | 55 | 110 | 75 | 16 | 331 | 226 | - | - | 124,339 |
| KENT .. .. .. | 110 | 35 | 415 | 369 | 1,061 | 1,671 | 93 | 3,754 | 273 | 308,589 | 69,862 | 702,915 |
| LANCASHIRE.. .. | 208 | 72 | 497 | 418 | 1,140 | 1,090 | - | 3,425 | 402 | 619,509 | 195,591 | 1,700,775 |
| LEICESTER .. .. | 89 | 38 | 163 | 248 | 616 | 715 | 100 | 1,969 | 203 | 214,646 | 67,515 | 224,228 |
| LINCOLN, HOLLAND | 50 | - | 63 | 90 | 431 | 524 | 24 | 1,182 | 86 | 114,320 | - | 142,106 |
| LINCOLN, KESTEVEN | 64 | - | 123 | 154 | 569 | 607 | 74 | 1,591 | 94 | 134,513 | - | 117,133 |
| LINCOLN, LINDSEY | 122 | - | 354 | 294 | 997 | 977 | 219 | 2,963 | 120 | 264,319 | - | 417,483 |
| NORFOLK .. .. | 121 | - | 391 | 505 | 1,794 | 1,964 | 241 | 5,016 | 84 | 159,021 | - | 601,602 |
| NORTHAMPTON .. | 124 | 29 | 185 | 122 | 593 | 593 | 103 | 1,749 | 165 | 325,637 | 863,237 | 318,402 |
| NORTHUMBERLAND | 144 | - | 258 | 363 | 953 | 1,019 | 8 | 2,745 | 154 | 356,022 | - | 505,943 |
| NOTTINGHAM .. | 112 | - | 252 | 149 | 472 | 532 | 84 | 1,601 | 318 | 242,077 | 1,428 | 370,839 |
| OXFORD .. .. | 133 | - | 133 | 205 | 513 | 670 | 25 | 1,679 | 139 | 370,780 | - | 374,611 |

# 8

| COUNTY | MILEAGE OF ROADS | | | | | | | | Population per mile of road | MAINTENANCE AND MINOR IMP | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Trunk | Motorways | Class I | Class II | Class III | Unclassified | "Green Lanes" | Total | | Trunk | Motorways | Class I | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | |
| | | | | | | | | | | £ | £ | £ | |
| RUTLAND .. .. | 22 | - | 32 | 22 | 108 | 130 | 24 | 338 | 87 | 54,740 | - | 35,100 | |
| SALOP .. .. .. | 149 | - | 247 | 337 | 1,175 | 1,136 | 58 | 3,102 | 99 | 352,706 | - | 415,336 | |
| SOMERSET .. .. | 118 | - | 451 | 318 | 1,628 | 2,101 | 221 | 4,837 | 111 | 361,638 | - | 472,462 | |
| STAFFORD .. .. | 128 | 40 | 273 | 217 | 836 | 1,005 | 32 | 2,531 | 222 | 236,251 | 76,101 | 641,760 | |
| SUFFOLK EAST .. | 65 | - | 155 | 278 | 666 | 780 | 32 | 1,976 | 119 | 125,807 | - | 273,937 | |
| SUFFOLK WEST .. | 30 | - | 144 | 131 | 423 | 464 | 33 | 1,225 | 117 | 35,044 | - | 167,814 | |
| SURREY .. .. | 55 | - | 309 | 224 | 376 | 497 | 36 | 1,497 | 405 | 235,088 | - | 750,172 | |
| SUSSEX EAST .. | 53 | - | 262 | 217 | 492 | 630 | 21 | 1,675 | 218 | 148,043 | - | 334,312 | |
| SUSSEX WEST .. | 36 | - | 256 | 124 | 398 | 420 | 152 | 1,386 | 289 | 133,843 | - | 537,059 | |
| WARWICK .. .. | 166 | - | 182 | 228 | 572 | 648 | 71 | 1,867 | 255 | 378,215 | - | 318,609 | |
| WESTMORLAND .. | 75 | - | 112 | 83 | 377 | 401 | 52 | 1,100 | 59 | 286,442 | - | 168,961 | |
| WILTSHIRE .. .. | 128 | - | 347 | 195 | 1,022 | 709 | 438 | 2,839 | 175 | 235,663 | - | 464,939 | |
| WORCESTER .. .. | 54 | 42 | 240 | 204 | 637 | 700 | 61 | 1,938 | 186 | 147,985 | 113,705 | 460,247 | |
| YORK, EAST RIDING | 91 | - | 169 | 230 | 695 | 1,011 | 62 | 2,258 | 103 | 188,954 | - | 197,903 | |
| YORK, NORTH RIDING | 122 | 9 | 347 | 233 | 1,140 | 1,371 | 74 | 3,296 | 118 | 312,494 | 11,199 | 521,124 | |
| YORK, WEST RIDING | 286 | 15 | 598 | 486 | 1,243 | 1,616 | 152 | 4,396 | 277 | 741,862 | 52,438 | 1,343,078 | |
| ENGLISH COUNTIES excluding MONMOUTH | 4,670 | 421 | 11,256 | 10,749 | 35,132 | 40,708 | 4,620 | 107,556 | 197 | 11,494,303 | 1,751,262 | 19,665,823 | 12 |
| ANGLESEY .. .. | 21 | - | 64 | 72 | 237 | 290 | - | 684 | 77 | 57,767 | - | 80,863 | |
| BRECON .. .. | 106 | - | 59 | 61 | 438 | 436 | 132 | 1,232 | 49 | 248,064 | - | 85,755 | |
| CAERNARVON .. | 74 | - | 101 | 105 | 398 | 449 | 23 | 1,150 | 95 | 188,303 | - | 133,769 | |
| CARDIGAN .. .. | 71 | - | 99 | 202 | 514 | 444 | 170 | 1,500 | 39 | 135,415 | - | 87,827 | |
| CARMARTHEN .. | 88 | - | 155 | 185 | 789 | 798 | 76 | 2,091 | 78 | 172,064 | - | 131,911 | |
| DENBIGH .. .. | 71 | - | 128 | 218 | 671 | 593 | 166 | 1,847 | 96 | 143,485 | - | 148,842 | |
| FLINT .. .. .. | 44 | - | 121 | 63 | 241 | 268 | 12 | 749 | 188 | 104,199 | - | 258,279 | |
| GLAMORGAN .. | 56 | 4 | 242 | 192 | 399 | 594 | 34 | 1,521 | 341 | 330,815 | - | 559,206 | |
| MERIONETH .. .. | 104 | - | 72 | 94 | 289 | 270 | 102 | 931 | 43 | 160,457 | - | 88,065 | |
| MONMOUTH .. .. | 80 | 7 | 112 | 142 | 373 | 537 | 90 | 1,341 | 194 | 227,179 | 3,482 | 231,033 | |
| MONTGOMERY .. | 121 | - | 43 | 185 | 541 | 705 | 302 | 1,897 | 26 | 202,419 | - | 36,756 | |
| PEMBROKE .. .. | 57 | - | 99 | 148 | 580 | 493 | - | 1,377 | 67 | 144,788 | - | 84,176 | |
| RADNOR .. .. | 43 | - | 63 | 76 | 325 | 234 | 346 | 1,087 | 24 | 104,544 | - | 83,626 | |
| WELSH COUNTIES including MONMOUTH | 936 | 11 | 1,358 | 1,743 | 5,795 | 6,111 | 1,453 | 17,407 | 116 | 2,219,499 | 3,482 | 2,010,108 | |
| ALL COUNTIES .. | 5,606 | 432 | 12,614 | 12,492 | 40,927 | 46,819 | 6,073 | 124,963 | 186 | 13,713,802 | 1,754,744 | 21,675,931 | 1 |
| ALL COUNTIES 1965-66 | 5,638 | 395 | 12,641 | 12,530 | 40,884 | 47,038 | 7,422 | 126,548 | | 12,541,333 | 2,520,495 | 20,682,336 | 1 |

SOCIETY OF COUNTY TREASURERS
and
COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE
# 1967-68

November 1968

## NOTES

1. The road mileages in columns 2 to 7 exclude unclassified roads in urban areas maintained at the expense of borough and urban district councils, and trunk road lengths maintained under special agency arrangements by those councils.

"Motorways" include trunk roads and by-passes of motorway standard. Continuing lengths of motorways are maintained in the areas of adjoining authorities by Bedford 1 mile, Berkshire 8 miles, Buckingham 3 miles, Hereford 6 miles, Leicester 3 miles, Northampton 3 miles, Nottingham 1 mile, Worcester 4 miles, York, North Riding 3 miles, York, West Riding 6 miles, and Monmouth, 7 miles. In the return these mileages are included as those of the maintaining authority.

The trunk road mileages also includes 5 miles maintained by Kent, 7 miles by Surrey and 2 miles by York, West Riding outside the administrative counties.

"Green Lanes" are unsurfaced roads with right of passage for vehicles, included on Ministry of Transport form 197 (Roads).

2. "Population per mile of road" is calculated on total road mileage in the county, including unclassified roads and special agency trunk roads in urban areas, but excluding "Green Lanes".

3. Expenditure on maintenance and improvements (columns 10 to 21) has been reduced by all income other than grant.

4. Expenditure on winter gritting and snow clearing (col. 15) was incurred as follows:-

| | £ |
|---|---|
| On motorways and trunk roads | 1,273,325 |
| On principal county roads | 1,537,048 |
| On other county roads | 3,438,504 |
| | 6,248,877 |

5. Land purchased in advance, column 22, includes land purchased for schemes within the forward grant programmes (Ministry of Transport circulars 799/61 and 21/62) and land purchased by reason of "planning blight" (circular 782/61). Further particulars on classification of roads concerned can be obtained from the compiler of the return if desired.

6. Administration expenses (columns 29 and 30) are the gross cost including establishment expenses paid to Claiming and Delegated Authorities before allocations are made to trunk roads, private street works and other recoverable expenditure. These allocations are shown as income in column 44. In the following cases the amount shown in column 29 includes the cost of employing temporary site staff on agency work for the Ministry of Transport (amount indicated in brackets): Buckingham (£67,821), Derby (£27,200), Durham (£167,074), Kent (£38,104), Leicester (£14,629), Lincoln, Kesteven (£12,993), Norfolk (£2,916), Stafford (£27,023), Sussex, West (£7,033), Warwick (£30,760), Wiltshire (£8,551), Worcester (£36,340), York, West Riding (£229,777) and Denbigh (£22,348). Other counties have charged any such costs directly to the job.

7. Column 32 "Financing items" includes:-

Depots - Purchase and adaptations.
Purchase of vehicles and plant charged direct to rate account.
Contributions to repairs and renewals fund.
Depreciation allowances credited back to rate account in respect of vehicles and plant purchased from rates.
Differences between actual costs and Ministry of Transport schedule rates.
Surpluses or deficiencies on plant and tools and oncost accounts.

Details are available from the compiler if desired.

8. Column 42, Grants for special improvements in Development Areas, includes grants for maintenance in Devon (£247,794), Caernarvon (£71,573), Carmarthen (£142,406) and Flint (£15,543). It also includes grants for maintenance and improvements in areas of high winter unemployment, Norfolk (£70,289), Brecon (£212,518), Merioneth (£16,025) and Radnor (£95,074).

EXPENDITURE ON MAINTEN

| ys | Trunk Roads (11) | Principal County Roads (12) |
|---|---|---|
| | £ | £ |
| 2 | 90,620 | 91,130 |
| 1 | 131,142 | 337,245 |
| 0 | 65,429 | 277,726 |
| | 84,535 | 104,337 |
| 9 | 496,463 | 501,819 |
| | 227,573 | 322,546 |
| | 196,415 | 172,904 |
| 2 | 198,561 | 396,262 |
| | 330,153 | 505,929 |
| | 68,253 | 281,591 |
| 3 | 128,060 | 427,421 |
| | 150,003 | 442,065 |
| 0 | 229,976 | 321,767 |
| | 199,455 | 512,359 |
| 4 | 99,417 | 195,187 |
| 0 | 158,749 | 352,294 |
| | 122,427 | 87,073 |
| | - | 70,090 |
| 340 | 320,144 | 611,038 |
| 607 | 531,160 | 1,788,235 |
| 712 | 103,911 | 176,285 |
| - | 69,011 | 57,359 |
| - | 99,137 | 116,713 |
| - | 145,099 | 308,767 |
| - | 124,661 | 237,61 |
| 44,677 | 174,248 | 189,0 |
| - | 254,747 | 498,0 |
| 17,761 | 149,879 | 297,( |
| - | 212,805 | 196,' |

4

| COUNTY | MILEAGE OF ROADS | | | | | | Population | Population per mile of road | EXPENDITURE ON MAINTENANCE | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | | | Motorways | Trunk Roads | Principal County Roads | Other County Roads | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | |
| | | | | | | | | | £ | £ | £ | £ | |
| BEDFORD .. .. | 15 | 61 | 113 | 720 | 50 | 959 | 279,120 | 263 | 46,692 | 90,620 | 91,130 | 246,139 | |
| BERKSHIRE .. .. | 12 | 67 | 225 | 1,413 | 229 | 1,946 | 471,840 | 253 | 24,941 | 131,142 | 337,245 | 876,878 | 1 |
| BUCKINGHAM .. .. | 21 | 48 | 201 | 1,435 | 120 | 1,825 | 552,470 | 271 | 18,660 | 65,429 | 277,726 | 959,103 | 1 |
| CAMBRIDGE & ISLE OF ELY.. .. | - | 95 | 146 | 1,215 | 94 | 1,550 | 296,930 | 177 | - | 84,535 | 104,337 | 499,887 | |
| CHESHIRE .. .. | 25 | 201 | 349 | 1,790 | 18 | 2,383 | 1,039,060 | 302 | 46,249 | 496,463 | 501,819 | 1,278,317 | 2 |
| CORNWALL .. .. | - | 147 | 286 | 3,595 | - | 4,028 | 354,240 | 79 | - | 227,573 | 322,546 | 1,239,685 | 1 |
| CUMBERLAND .. .. | - | 117 | 162 | 2,082 | 73 | 2,434 | 225,100 | 90 | - | 196,415 | 172,904 | 607,949 | |
| DERBY .. .. .. | 25 | 118 | 305 | 2,042 | 90 | 2,580 | 754,320 | 250 | 35,502 | 198,561 | 396,262 | 1,297,961 | 1 |
| DEVON .. .. .. | - | 190 | 508 | 5,878 | 176 | 6,752 | 529,890 | 73 | - | 330,153 | 505,929 | 1,638,075 | 2 |
| DORSET .. .. .. | - | 55 | 238 | 1,773 | 491 | 2,557 | 337,910 | 145 | - | 68,253 | 281,591 | 589,724 | |
| DURHAM .. .. | 5 | 64 | 310 | 1,405 | 29 | 1,813 | 936,480 | 334 | 9,053 | 128,060 | 427,421 | 805,448 | 1 |
| ESSEX .. .. .. | - | 84 | 351 | 2,459 | 150 | 3,044 | 1,102,850 | 288 | - | 150,003 | 442,065 | 1,226,848 | 1 |
| GLOUCESTER .. .. | 18 | 166 | 294 | 2,740 | 106 | 3,324 | 545,190 | 158 | 158,480 | 229,976 | 321,767 | 896,133 | 1 |
| HAMPSHIRE .. .. | - | 144 | 385 | 2,809 | 279 | 3,617 | 932,350 | 230 | - | 199,455 | 512,359 | 1,207,430 | 1 |
| HEREFORD .. .. | 11 | 70 | 209 | 1,618 | 19 | 1,927 | 140,760 | 71 | 53,014 | 99,417 | 195,187 | 465,911 | |
| HERTFORD .. .. | 31 | 103 | 188 | 1,328 | 155 | 1,805 | 881,870 | 362 | 574,100 | 158,749 | 352,294 | 860,558 | 1 |
| HUNTINGDON & PETERBOROUGH .. | - | 79 | 81 | 630 | 35 | 825 | 189,560 | 201 | - | 122,427 | 87,073 | 408,865 | |
| ISLE OF WIGHT .. | - | - | 75 | 240 | 16 | 331 | 98,040 | 227 | - | - | 70,090 | 144,968 | |
| KENT .. .. .. | 35 | 111 | 424 | 3,121 | 93 | 3,784 | 1,312,610 | 275 | 69,340 | 320,144 | 611,038 | 1,757,327 | 2 |
| LANCASHIRE .. .. | 72 | 208 | 539 | 2,636 | - | 3,455 | 2,396,000 | 435 | 192,607 | 531,160 | 1,788,235 | 3,075,960 | 5 |
| LEICESTER .. .. | 38 | 89 | 177 | 1,576 | 100 | 1,980 | 444,010 | 207 | 98,712 | 103,911 | 176,285 | 595,219 | |
| LINCOLN, HOLLAND .. | - | 50 | 63 | 1,049 | 22 | 1,184 | 105,120 | 86 | - | 69,011 | 57,359 | 246,134 | |
| LINCOLN, KESTEVEN.. | - | 64 | 137 | 1,323 | 74 | 1,598 | 152,990 | 96 | - | 99,137 | 116,713 | 333,358 | |
| LINCOLN, LINDSEY | - | 122 | 351 | 2,271 | 219 | 2,963 | 360,960 | 121 | - | 145,099 | 308,761 | 879,117 | 1 |
| NORFOLK .. .. | - | 121 | 392 | 4,242 | 249 | 5,004 | 423,470 | 86 | - | 124,661 | 237,616 | 965,479 | 1 |
| NORTHAMPTON .. | 29 | 124 | 198 | 1,298 | 103 | 1,752 | 311,990 | 167 | 744,677 | 174,248 | 189,011 | 686,247 | 1 |
| NORTHUMBERLAND .. | - | 145 | 272 | 2,323 | 8 | 2,748 | 504,200 | 154 | - | 254,747 | 498,036 | 1,003,326 | 1 |
| NOTTINGHAM .. .. | 9 | 110 | 260 | 1,162 | 84 | 1,625 | 652,710 | 318 | 17,761 | 149,879 | 297,034 | 548,709 | 1 |
| OXFORD .. .. | - | 133 | 150 | 1,376 | 25 | 1,684 | 249,340 | 145 | - | 212,805 | 196,732 | 541,761 | |

8

| COUNTY | MILEAGE OF ROADS | | | | | | Population | Population per mile of road | EXPENDITURE ON MAIN' | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | | | Motorways | Trunk Roads | Principl County Roads |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| | | | | | | | | | £ | £ | £ |
| RUTLAND .. .. | - | 22 | 35 | 258 | 24 | 339 | 29,110 | 90 | - | 40,329 | 27,9 |
| SALOP .. .. | - | 148 | 249 | 2,708 | 62 | 3,167 | 326,010 | 98 | - | 143,121 | 204,3 |
| SOMERSET .. .. | - | 118 | 451 | 4,051 | 221 | 4,841 | 558,590 | 111 | - | 147,478 | 388,7 |
| STAFFORD .. .. | 40 | 128 | 285 | 2,058 | 33 | 2,544 | 693,960 | 225 | 87,441 | 165,395 | 331,8 |
| SUFFOLK EAST .. | - | 65 | 150 | 1,734 | 32 | 1,981 | 254,520 | 121 | - | 70,666 | 146,5 |
| SUFFOLK WEST .. | - | 30 | 153 | 1,013 | 33 | 1,229 | 155,240 | 121 | - | 22,758 | 96,7 |
| SURREY .. .. | - | 55 | 324 | 1,087 | 36 | 1,502 | 985,930 | 405 | - | 127,311 | 512,6 |
| SUSSEX EAST .. .. | - | 53 | 245 | 1,360 | 21 | 1,679 | 421,990 | 220 | - | 53,413 | 246,9 |
| SUSSEX WEST .. .. | - | 36 | 247 | 965 | 152 | 1,400 | 455,930 | 287 | - | 41,070 | 288,6 |
| WARWICK .. .. | - | 166 | 193 | 1,471 | 71 | 1,901 | 568,650 | 255 | - | 330,372 | 232,9 |
| WESTMORLAND .. | - | 75 | 112 | 863 | 52 | 1,102 | 68,030 | 59 | - | 426,559 | 115,0 |
| WILTSHIRE .. .. | - | 128 | 357 | 1,931 | 439 | 2,855 | 479,080 | 177 | - | 169,420 | 320,5 |
| WORCESTER .. .. | 42 | 49 | 243 | 1,543 | 61 | 1,938 | 429,730 | 188 | 134,095 | 115,794 | 449,6 |
| YORK, EAST RIDING .. | - | 91 | 167 | 1,941 | 62 | 2,261 | 248,330 | 104 | - | 106,048 | 123,9 |
| YORK, NORTH RIDING | 9 | 124 | 347 | 2,822 | 74 | 3,376 | 435,510 | 117 | 14,364 | 178,393 | 338,2 |
| YORK, WEST RIDING | 45 | 286 | 597 | 3,337 | 155 | 4,420 | 1,750,170 | 274 | 76,582 | 616,455 | 1,128,3 |
| ENGLISH COUNTIES excluding MONMOUTH | 482 | 4,660 | 11,544 | 86,691 | 4,635 | 108,012 | | 198 | 2,402,270 | 7,916,615 | 14,829,5 |
| ANGLESEY .. .. | - | 21 | 64 | 599 | - | 684 | 56,670 | 78 | - | 31,295 | 45,0 |
| BRECON .. .. | - | 113 | 54 | 940 | 132 | 1,239 | 54,230 | 43 | - | 142,846 | 113,8 |
| CAERNARVON .. .. | - | 74 | 101 | 953 | 23 | 1,151 | 119,720 | 93 | - | 134,619 | 93,5 |
| CARDIGAN .. .. | - | 71 | 99 | 1,162 | 169 | 1,501 | 53,430 | 35 | - | 99,232 | 97,3 |
| CARMARTHEN .. | - | 88 | 157 | 1,770 | 76 | 2,091 | 165,110 | 75 | - | 101,934 | 108,6 |
| DENBIGH .. .. | - | 71 | 128 | 1,484 | 166 | 1,849 | 179,780 | 88 | - | 118,573 | 182,5 |
| FLINT .. .. | - | 42 | 129 | 577 | - | 748 | 163,110 | 188 | - | 138,680 | 143,4 |
| GLAMORGAN .. .. | 4 | 57 | 253 | 1,147 | 34 | 1,495 | 737,620 | 323 | - | 188,864 | 496,8 |
| MERIONETH .. .. | - | 104 | 90 | 635 | 102 | 931 | 37,710 | 38 | - | 215,756 | 175,7 |
| MONMOUTH .. .. | 19 | 79 | 116 | 1,059 | 90 | 1,363 | 351,750 | 183 | 48,578 | 162,607 | 182,7 |
| MONTGOMERY .. | - | 121 | 43 | 1,433 | 302 | 1,899 | 43,590 | 22 | - | 253,848 | 48,2 |
| PEMBROKE .. .. | - | 71 | 95 | 1,212 | - | 1,378 | 98,330 | 68 | - | 113,038 | 47,0 |
| RADNOR .. .. | - | 43 | 63 | 639 | 342 | 1,087 | 18,320 | 17 | - | 52,290 | 80,1 |
| WELSH COUNTIES including MONMOUTH | 23 | 955 | 1,392 | 13,610 | 1,436 | 17,416 | | 106 | 48,578 | 1,753,582 | 1,815,3 |
| ALL COUNTIES .. | 505 | 5,615 | 12,936 | 100,301 | 6,071 | 125,428 | | 186 | 2,450,848 | 9,670,197 | 16,644,9 |

SOCIETY OF COUNTY TREASURERS
and
COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1968-69

JANUARY 1970

## NOTES

1. The road mileage in columns 2 to 7 exclude unclassified roads in urban areas maintained at the expense of Borough and Urban District Councils and the trunk road lengths maintained under special agency arrangements by those Councils.

   "Motorways" include trunk roads and by-passes of motorway standard. Continuing lengths of motorways are maintained in the areas of adjoining authorities by Bedford one mile, Berkshire eight miles, Buckingham three miles, Hereford six miles, Leicester three miles, Northampton three miles, Nottingham one mile, Worcester four miles, York (North Riding) three miles, York (West Riding) ten miles, and Monmouth seven miles. In the return these mileages are included as those of the maintaining authority.

   "Green Lanes" are unsurfaced roads with right of passage for vehicles included in Ministry of Transport Form 197 (Roads).

2. "Population per Mile of Road" is calculated on total road mileage in the county, including unclassified roads and special agency trunk roads in urban areas, but excluding "Green Lanes".

3. Expenditure on maintenance and improvements (columns 10 to 21) has been reduced by all income other than grants.

4. Expenditure on winter gritting and snow clearing (column 15) was incurred as follows:—

| | £ |
|---|---|
| On motorways and trunk roads ... ... ... | 1,573,328 |
| On principal county roads ... ... ... ... | 2,160,391 |
| On other county roads ... ... ... ... ... | 4,893,669 |
| | £8,627,388 |

5. "Land purchased in advance" (column 22) includes land purchased for schemes within the future grant programmes and land purchased by reason of "planning blight." (Ministry of Transport's circular 9/68).

   Further particulars on the split of this expenditure between principal and other county roads can be obtained from the compiler of the return.

6. "Administration expenses" (columns 29 and 30) are the gross cost including establishment expenses paid to claiming and delegated authorities before allocations are made to trunk roads, private street works, and other recoverable expenditure.

   These allocations are shown as income in column 45. In the following cases the amount shown in column 29 includes the cost of employing temporary site staff on agency work for the Ministry of Transport (amount indicated in brackets); Buckingham (£41,696), Durham (£145,576), Leicester (£8,500), Lincoln (Kesteven) (£4,877), Norfolk (£6,896), Stafford (£4,285), Sussex West (£49,798), Worcester (£2,703), and York (West Riding) (£130,844).

7. (a) Column 28 "Capital Expenditure other than Road Improvements" includes:—

   Depots — purchases and adaptations
   Roadmen's cottages
   Radio Communication Systems

   (b) Column 32 "Financing Items" includes:—

   Purchase of vehicles and plant charged direct to Rate Account
   Contributions to Repairs and Renewals Fund
   Depreciation allowances credited in respect of vehicles and plant
   Differences between the actual cost of plant and Ministry of Transport scheduled rates
   Surpluses or deficiencies on plant and tools and on-cost accounts
   (Details are available from the compiler).

8. Column 20 "Special Works" includes:—

   Special improvements and maintenance in development areas
   Maintenance and improvements in areas of high winter unemployment
   (Details are available from the compiler).

4

| COUNTY | MILEAGE OF ROADS | | | | | | Population | Population per mile of road | EXPENDITURE ON MAINTENAN | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | | | Motorways | Trunk Roads | Principal County Roads | Other Count Roads |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) |
| | | | | | | | | | £ | £ | £ | £ |
| BEDFORD ... ... ... | 15 | 61 | 113 | 724 | 50 | 963 | 283,800 | 264 | 42,997 | 68,427 | 109,213 | 275,2 |
| BERKSHIRE ... ... | 12 | 67 | 226 | 1,428 | 229 | 1,962 | 484,850 | 257 | 26,691 | 193,924 | 309,911 | 1,108,8 |
| BUCKINGHAM ... ... | 25 | 48 | 201 | 1,442 | 120 | 1,836 | 568,110 | 275 | 23,873 | 68,198 | 340,969 | 954,9 |
| CAMBRIDGE & ISLE OF ELY ... ... | — | 95 | 146 | 1,222 | 94 | 1,557 | 301,470 | 178 | — | 95,901 | 140,081 | 519,0 |
| CHESHIRE ... ... | 25 | 201 | 349 | 1,797 | 18 | 2,390 | 1,056,370 | 302 | 49,689 | 416,027 | 577,011 | 1,111,7 |
| CORNWALL ... ... | — | 147 | 286 | 3,599 | 16 | 4,048 | 357,710 | 80 | — | 173,761 | 302,617 | 1,133,8 |
| CUMBERLAND ... ... | 4 | 151 | 148 | 2,062 | 73 | 2,438 | 225,700 | 90 | 7,408 | 204,734 | 120,512 | 648,8 |
| DERBY ... ... ... | 25 | 109 | 305 | 1,853 | 82 | 2,374 | 667,660 | 237 | 36,644 | 215,091 | 420,771 | 1,131,8 |
| DEVON ... ... ... | — | 190 | 507 | 5,994 | 176 | 6,867 | 436,810 | 61 | — | 330,132 | 478,034 | 1,584,0 |
| DORSET ... ... ... | — | 55 | 238 | 1,777 | 495 | 2,565 | 343,240 | 146 | — | 75,433 | 278,715 | 607,5 |
| DURHAM ... ... ... | 10 | 59 | 295 | 1,392 | 29 | 1,785 | 823,370 | 319 | 19,696 | 97,700 | 404,700 | 892,5 |
| ESSEX ... ... ... | — | 84 | 348 | 2,461 | 150 | 3,043 | 1,129,870 | 291 | — | 122,309 | 434,943 | 1,105,0 |
| GLOUCESTER ... ... | 21 | 165 | 294 | 2,723 | 106 | 3,309 | 553,160 | 161 | 125,679 | 172,191 | 304,820 | 817,0 |
| HAMPSHIRE ... ... | — | 144 | 386 | 2,822 | 285 | 3,637 | 955,960 | 234 | — | 216,439 | 467,247 | 1,370,1 |
| HEREFORD ... ... | 11 | 70 | 209 | 1,627 | 9 | 1,926 | 141,990 | 71 | 223,489 | 102,252 | 207,437 | 440,8 |
| HERTFORD ... ... | 30 | 102 | 193 | 1,329 | 155 | 1,809 | 892,470 | 363 | 204,854 | 339,264 | 359,630 | 976,5 |
| HUNTINGDON & PETERBOROUGH ... | — | 79 | 80 | 632 | 35 | 826 | 193,100 | 204 | — | 201,603 | 64,695 | 481,3 |
| ISLE OF WIGHT ... | — | — | 76 | 251 | 17 | 344 | 100,860 | 228 | — | — | 63,889 | 134,4 |
| KENT ... ... ... | 27 | 119 | 431 | 3,140 | 93 | 3,810 | 1,336,290 | 277 | 58,754 | 237,704 | 662,370 | 1,944,3 |
| LANCASHIRE ... ... | 72 | 208 | 540 | 2,637 | — | 3,457 | 2,428,040 | 405 | 231,847 | 486,139 | 1,468,658 | 3,227,8 |
| LEICESTER... ... ... | 38 | 89 | 179 | 1,586 | 100 | 1,992 | 452,450 | 208 | 71,203 | 85,541 | 210,843 | 625,9 |
| LINCOLN, HOLLAND ... | — | 50 | 64 | 1,048 | 22 | 1,184 | 104,940 | 86 | — | 74,594 | 55,010 | 278,9 |
| LINCOLN, KESTEVEN ... | — | 64 | 137 | 1,329 | 74 | 1,604 | 153,840 | 96 | — | 150,940 | 105,791 | 329,9 |
| LINCOLN, LINDSEY ... | — | 122 | 351 | 2,280 | 218 | 2,971 | 363,550 | 121 | — | 147,817 | 333,414 | 879,0 |
| NORFOLK ... ... | — | 121 | 391 | 4,260 | 249 | 5,021 | 432,580 | 87 | — | 121,350 | 248,941 | 994,1 |
| NORTHAMPTON ... | 29 | 124 | 198 | 1,299 | 103 | 1,753 | 321,120 | 172 | 107,255 | 170,617 | 188,091 | 716,0 |
| NORTHUMBERLAND ... | — | 145 | 240 | 2,355 | 8 | 2,748 | 504,690 | 154 | — | 251,115 | 362,519 | 982,4 |
| NOTTINGHAM ... ... | 9 | 110 | 260 | 1,171 | 84 | 1,634 | 659,400 | 319 | 17,025 | 152,068 | 315,609 | 551,3 |
| OXFORD ... ... ... | — | 133 | 150 | 1,381 | 25 | 1,689 | 255,490 | 147 | — | 252,921 | 156,895 | 470,0 |

8

| COUNTY | MILEAGE OF ROADS | | | | | | Population | Population per mile of road | EXPENDITURE ON MAINTENANC | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | | | Motorways | Trunk Roads | Principal County Roads | Other County Roads |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) |
| | | | | | | | | | £ | £ | £ | £ |
| RUTLAND ... ... | — | 22 | 35 | 258 | 24 | 339 | 29,680 | 92 | — | 88,703 | 23,960 | 63,031 |
| SALOP ... ... ... | — | 148 | 249 | 2,717 | 58 | 3,172 | 327,530 | 100 | — | 145,501 | 203,703 | 862,505 |
| SOMERSET ... ... | — | 118 | 452 | 3,828 | 221 | 4,619 | 572,960 | 119 | — | 210,048 | 434,780 | 1,362,154 |
| STAFFORD ... ... | 41 | 130 | 288 | 2,110 | 33 | 2,602 | 710,010 | 225 | 102,344 | 192,330 | 395,497 | 1,181,494 |
| SUFFOLK EAST ... | — | 65 | 151 | 1,741 | 31 | 1,988 | 258,830 | 123 | — | 98,590 | 132,467 | 637,215 |
| SUFFOLK WEST ... ... | — | 30 | 153 | 1,021 | 33 | 1,237 | 159,430 | 124 | — | 30,445 | 107,211 | 365,224 |
| SURREY ... ... ... | — | 49 | 324 | 1,130 | 36 | 1,539 | 990,800 | 398 | — | 111,579 | 589,435 | 1,034,761 |
| SUSSEX EAST ... ... | — | 53 | 245 | 1,376 | 21 | 1,695 | 428,250 | 220 | — | 44,568 | 208,938 | 553,097 |
| SUSSEX WEST ... ... | — | 36 | 248 | 976 | 152 | 1,412 | 465,660 | 290 | — | 56,560 | 283,691 | 531,035 |
| WARWICK ... ... | — | 165 | 200 | 1,479 | 71 | 1,915 | 582,530 | 259 | — | 337,417 | 242,462 | 815,700 |
| WESTMORLAND... ... | 4 | 75 | 112 | 861 | 55 | 1,107 | 70,340 | 62 | 8,797 | 202,541 | 112,538 | 295,830 |
| WILTSHIRE ... ... | — | 127 | 356 | 1,942 | 438 | 2,863 | 490,250 | 179 | — | 166,948 | 364,944 | 570,629 |
| WORCESTER ... ... | 42 | 49 | 243 | 1,549 | 61 | 1,944 | 438,840 | 191 | 230,442 | 109,187 | 420,820 | 934,199 |
| YORK, EAST RIDING ... | — | 90 | 166 | 1,941 | 62 | 2,259 | 250,030 | 105 | — | 94,886 | 144,806 | 589,588 |
| YORK, NORTH RIDING | 9 | 123 | 309 | 2,789 | 74 | 3,304 | 323,970 | 92 | 23,148 | 189,314 | 324,473 | 1,056,567 |
| YORK, WEST RIDING ... | 66 | 287 | 599 | 3,360 | 149 | 4,461 | 1,774,270 | 278 | 184,438 | 601,500 | 1,324,391 | 2,523,038 |
| ENGLISH COUNTIES excluding MONMOUTH | 515 | 4,679 | 11,471 | 86,699 | 4,634 | 107,998 | 24,402,270 | 197 | 1,796,273 | 7,904,309 | 14,807,452 | 39,670,310 |
| ANGLESEY ... ... | — | 21 | 64 | 599 | — | 684 | 57,800 | 80 | — | 37,141 | 72,788 | 186,759 |
| BRECON ... ... ... | — | 108 | 54 | 940 | 133 | 1,235 | 55,120 | 49 | — | 121,701 | 58,716 | 309,908 |
| CAERNARVON ... ... | — | 74 | 101 | 953 | 23 | 1,151 | 120,770 | 95 | — | 99,141 | 93,493 | 254,677 |
| CARDIGAN ... ... | — | 71 | 99 | 1,163 | 168 | 1,501 | 53,710 | 39 | — | 105,957 | 69,428 | 383,343 |
| CARMARTHEN ... ... | — | 95 | 150 | 1,771 | 76 | 2,092 | 164,790 | 78 | — | 107,970 | 100,745 | 454,323 |
| DENBIGH ... ... ... | — | 77 | 131 | 1,488 | 166 | 1,862 | 181,440 | 96 | — | 114,906 | 173,519 | 647,625 |
| FLINT ... ... ... | — | 42 | 129 | 570 | 12 | 753 | 166,160 | 192 | — | 95,857 | 169,270 | 377,123 |
| GLAMORGAN ... ... | 4 | 57 | 253 | 1,148 | 34 | 1,496 | 742,920 | 327 | 13,764 | 108,036 | 415,749 | 791,988 |
| MERIONETH ... ... | — | 104 | 90 | 636 | 102 | 932 | 37,530 | 43 | — | 164,979 | 84,611 | 219,923 |
| MONMOUTH ... ... | 19 | 79 | 114 | 1,064 | 90 | 1,366 | 350,810 | 191 | 59,550 | 106,970 | 250,432 | 639,484 |
| MONTGOMERY ... ... | — | 121 | 43 | 1,434 | 302 | 1,900 | 42,800 | 25 | — | 192,311 | 40,335 | 533,850 |
| PEMBROKE ... ... | — | 71 | 95 | 1,213 | — | 1,379 | 100,360 | 69 | — | 84,456 | 51,714 | 387,428 |
| RADNOR ... ... ... | — | 43 | 63 | 639 | 58 | 803 | 18,210 | 24 | — | 53,758 | 68,678 | 206,684 |
| WELSH COUNTIES including MONMOUTH ... | 23 | 963 | 1,386 | 13,618 | 1,164 | 17,154 | 2,092,420 | 115 | 73,314 | 1,393,183 | 1,649,478 | 5,393,115 |
| ALL COUNTIES ... ... | 538 | 5,642 | 12,857 | 100,317 | 5,798 | 125,152 | 26,494,690 | 187 | 1,869,587 | 9,297,492 | 16,456,930 | 45,063,425 |

SOCIETY OF COUNTY TREASURERS
and
COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1969-70

JANUARY 1971

## NOTES

1. The road mileage in columns 2 to 7 exclude unclassified roads in urban areas maintained at the expense of Borough and Urban District Councils and the trunk road lengths maintained under special agency arrangements by those Councils.

   "Motorways" include trunk roads and by-passes of motorway standard. Continuing lengths of motorways are maintained in the areas of adjoining authorities by Bedford one mile, Berkshire eight miles, Buckingham three miles, Derby five miles, Hereford six miles, Leicester three miles, Northampton two miles, Nottingham one mile, Worcester four miles, York (North Riding) three miles, York (West Riding) ten miles, and Monmouth seven miles. In the return these mileages are included as those of the maintaining authority.

   "Green Lanes" are unsurfaced roads with right of passage for vehicles included in Ministry of Transport Form 197 (Roads).

2. "Population per Mile of Road" is calculated on total road mileage in the county, including unclassified roads and special agency trunk roads in urban areas, but excluding "Green Lanes".

3. Expenditure on maintenance and improvements (columns 10 to 22) has been reduced by all income other than grants.

4. Expenditure on winter gritting and snow clearing (column 16) was incurred as follows:—

| | £ |
|---|---|
| On motorways and trunk roads .... .... .... | 1,711,214 |
| On principal county roads .... .... .... .... | 2,132,352 |
| On other county roads .... .... .... .... .... | 4,554,354 |
| | £8,397,920 |

5. "Land purchased in advance" (column 23) includes land purchased for schemes within the future grant programmes and land purchased by reason of "planning blight". (Ministry of Transport's circular 9/68).

   Further particulars on the split of this expenditure between principal and other county roads can be obtained from the compiler of the return.

6. "Administration expenses" (columns 30 and 31) are the gross cost including establishment expenses paid to claiming and delegated authorities before allocations are made to trunk roads, private street works, and other recoverable expenditure.

   These allocations are shown as income in column 43. In the following cases the amount shown in column 30 includes the cost of employing temporary site staff on agency work for the Ministry of Transport (amount indicated in brackets); Durham (£86,417), Norfolk (£5,577), Nottingham (£2,538), Stafford (£632), Surrey (£18,346), Sussex West (£54,038), Worcester (£21,332), York (North Riding) (£15,575), and York (West Riding) (£62,038).

7. (a) Column 29 "Capital Expenditure other than Road Improvements" includes:—
   Depots—purchases and adaptations
   Radio Communication Systems

   (b) Column 33 "Financing Items" includes:—
   Purchase of vehicles and plant charged direct to Rate Account
   Contributions to Repairs and Renewals Fund
   Depreciation allowances credited in respect of vehicles and plant
   Differences between the actual cost of plant and Ministry of Transport scheduled rates
   Surpluses or deficiencies on plant and tools and on-cost accounts
   (Details are available from the compiler).

8. Columns 14 and 21 "Special Works" includes:—
   Special improvements and maintenance in development areas
   Maintenance and improvements in areas of high winter unemployment
   (Details are available from the compiler).

4

| COUNTY | MILEAGE OF ROADS | | | | | | Population | Population per mile of road | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | | | Motorways | Trunk Road |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
| | | | | | | | | | £ | £ |
| RUTLAND .... .... | — | 22 | 35 | 258 | 24 | 339 | 29,860 | 93 | — | 34,0 |
| WESTMORLAND.... .... | 7 | 75 | 112 | 862 | 55 | 1,111 | 71,710 | 62 | 6,925 | 161,1 |
| ISLE OF WIGHT .... .... | — | — | 76 | 251 | 17 | 344 | 102,100 | 236 | — | — |
| LINCOLN, HOLLAND | — | 50 | 63 | 1,050 | 22 | 1,185 | 105,170 | 86 | — | 86,0 |
| HEREFORD .... .... | 11 | 70 | 208 | 1,631 | 9 | 1,929 | 142,060 | 71 | 41,091 | 126,7 |
| LINCOLN, KESTEVEN .... | — | 64 | 137 | 1,339 | 74 | 1,614 | 157,470 | 98 | — | 193,8 |
| SUFFOLK, WEST .... | — | 30 | 153 | 1,027 | 33 | 1,243 | 163,760 | 127 | — | 27,5 |
| HUNTINGDON & PETERBOROUGH .... | — | 78 | 81 | 643 | 35 | 837 | 196,670 | 207 | — | 148,8 |
| CUMBERLAND .... .... | 4 | 156 | 145 | 2,070 | 73 | 2,448 | 224,440 | 89 | 9,210 | 223,8 |
| YORK, EAST RIDING .... | — | 90 | 166 | 1,945 | 62 | 2,263 | 252,830 | 106 | — | 117,9 |
| SUFFOLK, EAST .... .... | — | 65 | 156 | 1,740 | 32 | 1,993 | 262,160 | 124 | — | 131,9 |
| OXFORD .... .... .... | — | 133 | 150 | 1,402 | 25 | 1,710 | 264,890 | 150 | — | 347,3 |
| BEDFORD .... .... .... | 15 | 60 | 113 | 728 | 50 | 966 | 287,270 | 268 | 32,007 | 109,7 |
| CAMBRIDGE & ISLE OF ELY .... .... .... | — | 95 | 147 | 1,225 | 94 | 1,561 | 302,560 | 185 | — | 112,7 |
| YORK, NORTH RIDING | 9 | 123 | 309 | 2,721 | 74 | 3,236 | 328,060 | 96 | 22,998 | 294,0 |
| NORTHAMPTON .... | 28 | 133 | 198 | 1,302 | 103 | 1,764 | 330,120 | 175 | 88,141 | 209,9 |
| SALOP .... .... .... | — | 148 | 250 | 2,724 | 58 | 3,180 | 332,330 | 101 | — | 187,4 |
| DORSET .... .... .... | — | 55 | 238 | 1,786 | 495 | 2,574 | 348,840 | 147 | — | 73,1 |
| CORNWALL .... .... | — | 147 | 286 | 3,600 | 16 | 4,049 | 360,200 | 80 | — | 198,3 |
| LINCOLN, LINDSEY .... | — | 122 | 353 | 2,291 | 218 | 2,984 | 367,850 | 122 | — | 221,4 |
| SUSSEX, EAST .... .... | — | 53 | 245 | 1,391 | 21 | 1,710 | 434,140 | 221 | — | 78,9 |
| DEVON .... .... .... | — | 190 | 510 | 5,827 | 176 | 6,703 | 439,420 | 63 | — | 392,3 |
| NORFOLK .... .... | — | 120 | 398 | 4,247 | 249 | 5,014 | 440,370 | 90 | — | 172,0 |
| WORCESTER .... .... | 42 | 49 | 244 | 1,549 | 61 | 1,945 | 444,470 | 192 | 655,285 | 97,3 |
| LEICESTER.... .... .... | 38 | 89 | 180 | 1,598 | 100 | 2,005 | 461,700 | 212 | 74,032 | 100,2 |
| SUSSEX, WEST .... .... | — | 36 | 248 | 986 | 152 | 1,422 | 469,900 | 290 | — | 43,8 |
| BERKSHIRE .... .... | 12 | 67 | 227 | 1,445 | 229 | 1,980 | 496,010 | 259 | 20,072 | 208,7 |
| WILTSHIRE .... .... | — | 127 | 357 | 1,968 | 438 | 2,890 | 496,930 | 180 | — | 209,4 |

**8**

| COUNTY | MILEAGE OF ROADS | | | | | | Population | Population per mile of road | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | | | Motorways | Trunk Roads |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
| | | | | | | | | | £ | £ |
| NORTHUMBERLAND .... | — | 145 | 243 | 2,359 | 8 | 2,755 | 510,300 | 155 | — | 324,861 |
| GLOUCESTER .... .... | 25 | 165 | 294 | 2,737 | 106 | 3,327 | 560,290 | 162 | 106,057 | 234,140 |
| BUCKINGHAM .... .... | 26 | 48 | 201 | 1,442 | 121 | 1,838 | 578,210 | 280 | 54,953 | 52,596 |
| SOMERSET .... .... | — | 118 | 453 | 3,834 | 221 | 4,626 | 579,930 | 121 | — | 186,643 |
| WARWICK .... .... | — | 165 | 204 | 1,485 | 71 | 1,925 | 607,240 | 268 | — | 375,976 |
| NOTTINGHAM .... .... | 9 | 110 | 260 | 1,171 | 84 | 1,634 | 666,640 | 321 | 19,668 | 160,133 |
| DERBY .... .... .... | 25 | 119 | 308 | 1,877 | 82 | 2,411 | 670,330 | 235 | 43,141 | 211,105 |
| STAFFORD .... .... | 41 | 130 | 288 | 2,095 | 32 | 2,586 | 721,850 | 230 | 112,345 | 204,839 |
| DURHAM .... .... | 22 | 59 | 295 | 1,427 | 29 | 1,832 | 825,400 | 313 | 56,153 | 84,076 |
| HERTFORD .... .... | 31 | 102 | 193 | 1,333 | 155 | 1,814 | 903,390 | 371 | 170,355 | 320,872 |
| HAMPSHIRE .... .... | — | 148 | 389 | 2,839 | 284 | 3,660 | 977,280 | 236 | — | 232,286 |
| SURREY .... .... .... | — | 49 | 325 | 1,137 | 36 | 1,547 | 1,002,140 | 399 | — | 111,817 |
| CHESHIRE .... .... | 25 | 201 | 349 | 1,827 | 18 | 2,420 | 1,068,600 | 308 | 66,088 | 405,067 |
| ESSEX .... .... .... | — | 78 | 349 | 2,468 | 150 | 3,045 | 1,149,980 | 299 | — | 113,226 |
| KENT .... .... .... | 27 | 118 | 433 | 3,144 | 93 | 3,815 | 1,355,680 | 280 | 51,933 | 304,194 |
| YORK, WEST RIDING .... | 66 | 287 | 600 | 3,385 | 159 | 4,497 | 1,786,280 | 277 | 133,046 | 784,524 |
| LANCASHIRE .... .... | 85 | 211 | 535 | 2,665 | — | 3,496 | 2,457,280 | 404 | 265,295 | 540,820 |
| **English Counties excluding Monmouth** | **548** | **4,700** | **11,504** | **86,831** | **4,644** | **108,227** | **24,734,110** | **199** | **2,028,795** | **8,956,294** |
| RADNOR .... .... .... | — | 43 | 63 | 639 | 58 | 803 | 18,250 | 24 | — | 50,769 |
| MERIONETH .... .... | — | 104 | 90 | 640 | 102 | 936 | 37,700 | 44 | — | 144,926 |
| MONTGOMERY .... .... | — | 121 | 43 | 1,436 | 301 | 1,901 | 42,870 | 26 | — | 237,665 |
| CARDIGAN .... .... | — | 71 | 99 | 1,166 | 167 | 1,503 | 53,500 | 39 | — | 125,023 |
| BRECON .... .... .... | — | 108 | 54 | 942 | 132 | 1,236 | 54,940 | 49 | — | 146,677 |
| ANGLESEY .... .... | — | 21 | 64 | 599 | — | 684 | 58,210 | 81 | — | 36,132 |
| PEMBROKE .... .... | — | 70 | 95 | 1,213 | — | 1,378 | 101,150 | 70 | — | 92,946 |
| CAERNARVON .... .... | — | 74 | 101 | 954 | 23 | 1,152 | 120,620 | 95 | — | 130,356 |
| CARMARTHEN .... .... | — | 95 | 150 | 1,773 | 76 | 2,094 | 163,600 | 77 | — | 128,05 |
| FLINT .... .... .... | — | 42 | 130 | 563 | 12 | 747 | 169,210 | 197 | — | 87,88 |
| DENBIGH .... .... | — | 77 | 128 | 1,492 | 166 | 1,863 | 182,050 | 96 | — | 99,75 |
| MONMOUTH .... .... | 19 | 79 | 119 | 1,070 | 90 | 1,377 | 351,990 | 190 | 67,306 | 140,96 |
| GLAMORGAN .... .... | 4 | 61 | 253 | 1,179 | 34 | 1,531 | 744,910 | 317 | 16,016 | 102,12 |
| **Welsh Counties including Monmouth** | **23** | **966** | **1,389** | **13,666** | **1,161** | **17,205** | **2,099,000** | **115** | **83,322** | **1,523,29** |
| **ALL COUNTIES** | **571** | **5,666** | **12,893** | **100,497** | **5,805** | **125,432** | **26,833,110** | **189** | **2,112,117** | **10,479,58** |

SOCIETY OF COUNTY TREASURERS
and
COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1970-71

JANUARY 1972

## NOTES

1. The road mileage in columns 2 to 7 exclude unclassified roads in urban areas maintained at the expense of Borough and Urban District Councils and the trunk road lengths maintained under special agency arrangements by those Councils.

   "Motorways" include trunk roads and by-passes of motorway standard. Continuing lengths of motorways are maintained in the areas of adjoining authorities by Bedford one mile, Berkshire eight miles, Buckingham three miles, Derby five miles, Hereford six miles, Leicester three miles, Northampton two miles, Nottingham one mile, Worcester eight miles, York (North Riding) three miles, York (West Riding) ten miles, and Monmouth seven miles. In the return these mileages are included as those of the maintaining authority.

   "Green Lanes" are unsurfaced roads with right of passage for vehicles included in Department of Environment Form 197 (Roads).

2. "Population per Mile of Road" is calculated on total road mileage in the county, including unclassified roads and special agency trunk roads in urban areas, but excluding "Green Lanes".

3. Expenditure on maintenance and improvements (columns 10 to 22) has been reduced by all income other than grants.

4. Expenditure on winter gritting and snow clearing (column 16) was incurred as follows:—

| | £ |
|---|---|
| On motorways and trunk roads .... .... .... | 1,210,018 |
| On principal county roads .... .... .... .... | 1,398,122 |
| On other county roads .... .... .... .... .... | 2,694,922 |
| | £5,303,062 |

5. "Land purchased in advance" (column 23) includes land purchased for schemes within the future grant programmes and land purchased by reason of "planning blight". (Ministry of Transport's circular 9/68).

   Further particulars on the split of this expenditure between principal and other county roads can be obtained from the compiler of the return.

6. Expenditure on motorways improvements (column 17) includes amounts in respect of motorways under construction at 31st March, 1971, and opened in 1971/72, in the case of Hampshire and Surrey. The mileages involved are 22 and 6 respectively.

7. "Administration expenses" (columns 29 and 30) are the gross cost including establishment expenses paid to claiming and delegated authorities before allocations are made to trunk roads, private street works, and other recoverable expenditure. These allocations are shown as income in column 41. In the following cases the amount shown in column 29 includes the cost of employing temporary site staff on agency work for the Ministry of Transport (amount indicated in brackets); Durham (£89,460), Norfolk (£3,291), Nottingham (£8,275), Oxford (£7,490), Surrey (£57,290), Sussex West (£18,468), Worcester (£50,113), York (North Riding) (£7,125), and York (West Riding) (£60,742).

8. (a) Column 28 "Capital Expenditure other than Road Improvements" includes:—
   Depots—purchases and adaptations
   Radio Communication Systems

   (b) Column 32 "Financing Items" includes:—
   Purchase of vehicles and plant charged direct to Rate Account
   Contributions to Repairs and Renewals Fund
   Depreciation allowances credited in respect of vehicles and plant
   Differences between the actual cost of plant and Ministry of Transport scheduled rates
   Surpluses or deficiencies on plant and tools and on-cost accounts
   Depots expenditure less any re-charge.
   (Details are available from the compiler).

9. Columns 14 and 21 "Special Works" includes:—
   Special improvements and maintenance in development areas
   Maintenance and improvements in areas of high winter unemployment
   (Details are available from the compiler).

4

| COUNTY | MILEAGE OF ROADS | | | | | | Population | Population per mile of road | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | | | Motorways | Trunk Roads |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
| | | | | | | | | | | £ |
| RUTLAND .... | — | 22 | 35 | 258 | 24 | 339 | 30,070 | 93 | — | 35,113 |
| WESTMORLAND.... .... | 37 | 75 | 112 | 869 | 55 | 1,148 | 72,700 | 61 | 62,415 | 224,620 |
| ISLE OF WIGHT .... .... | — | — | 76 | 253 | 17 | 346 | 104,800 | 255 | — | — |
| LINCOLN HOLLAND .... | — | 53 | 63 | 1,050 | 21 | 1,187 | 105,090 | 86 | — | 81,036 |
| HEREFORD .... .... | 11 | 70 | 209 | 1,635 | 9 | 1,934 | 141,620 | 70 | 116,428 | 130,727 |
| LINCOLN KESTEVEN .... | — | 63 | 137 | 1,344 | 74 | 1,618 | 160,080 | 99 | — | 122,898 |
| SUFFOLK WEST .... .... | — | 30 | 153 | 1,033 | 33 | 1,249 | 166,830 | 128 | — | 33,805 |
| HUNTINGDON & PETERBOROUGH .... | — | 78 | 81 | 646 | 35 | 840 | 199,040 | 208 | — | 243,683 |
| CUMBERLAND .... .... | 11 | 155 | 142 | 2,073 | 73 | 2,454 | 223,040 | 88 | 15,972 | 280,888 |
| YORK, EAST RIDING .... | — | 90 | 166 | 1,948 | 62 | 2,266 | 255,410 | 107 | — | 122,308 |
| SUFFOLK, EAST .... .... | — | 65 | 150 | 1,746 | 32 | 1,993 | 263,610 | 124 | — | 139,997 |
| OXFORD .... .... | — | 133 | 148 | 1,419 | 25 | 1,725 | 270,530 | 152 | — | 362,032 |
| BEDFORD .... .... .... | 15 | 60 | 114 | 731 | 50 | 970 | 290,260 | 269 | 58,761 | 87,062 |
| CAMBRIDGE & ISLE OF ELY .... .... | — | 95 | 146 | 1,234 | 94 | 1,569 | 304,680 | 185 | — | 104,624 |
| YORK, NORTH RIDING | 9 | 123 | 309 | 2,728 | 74 | 3,243 | 331,920 | 96 | 20,298 | 245,813 |
| SALOP .... .... .... | — | 148 | 250 | 2,730 | 58 | 3,186 | 335,520 | 102 | — | 187,803 |
| NORTHAMPTON .... | 28 | 133 | 196 | 1,302 | 103 | 1,762 | 338,620 | 179 | 122,798 | 194,298 |
| DORSET .... .... .... | — | 55 | 238 | 1,795 | 495 | 2,583 | 357,370 | 150 | — | 76,987 |
| CORNWALL .... .... | — | 147 | 286 | 3,600 | 16 | 4,049 | 361,930 | 81 | — | 237,075 |
| LINCOLN LINDSEY .... | — | 121 | 353 | 2,299 | 218 | 2,991 | 370,740 | 123 | — | 177,724 |
| SUSSEX, EAST .... .... | — | 53 | 245 | 1,400 | 21 | 1,719 | 440,860 | 223 | — | 102,678 |
| DEVON .... .... .... | — | 190 | 511 | 5,841 | 176 | 6,718 | 442,050 | 63 | — | 440,603 |
| NORFOLK .... .... | — | 120 | 396 | 4,273 | 249 | 5,038 | 447,060 | 91 | — | 217,284 |
| WORCESTER .... .... | 49 | 49 | 244 | 1,556 | 61 | 1,959 | 449,660 | 192 | 924,670 | 87,338 |
| LEICESTER.... .... .... | 38 | 89 | 180 | 1,606 | 100 | 2,013 | 469,050 | 214 | 98,540 | 138,016 |
| SUSSEX, WEST .... ... | — | 36 | 248 | 998 | 152 | 1,434 | 481,330 | 293 | — | 46,764 |
| WILTSHIRE .... .... | — | 127 | 356 | 1,978 | 438 | 2,899 | 500,400 | 180 | — | 257,442 |
| BERKSHIRE .... .... | 12 | 67 | 226 | 1,466 | 229 | 2,000 | 503,770 | 259 | 18,085 | 169,022 |

8

| COUNTY | MILEAGE OF ROADS | | | | | | Population | Population per mile of road | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | | | Motorways | Trunk Roads |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
| | | | | | | | | £ | £ | £ |
| NORTHUMBERLAND .... | — | 145 | 243 | 2,359 | 8 | 2,755 | 512,600 | 155 | — | 279,227 |
| GLOUCESTER .... .... | 33 | 164 | 295 | 2748 | 106 | 3,346 | 564,050 | 162 | 152,343 | 235,013 |
| SOMERSET .... .... | — | 118 | 453 | 3,855 | 221 | 4,647 | 585,330 | 121 | — | 204,240 |
| BUCKINGHAM .... .... | 28 | 48 | 201 | 1,452 | 120 | 1,849 | 585,560 | 281 | 51,363 | 65,038 |
| WARWICK .... .... | 6 | 165 | 204 | 1,519 | 71 | 1,965 | 625,470 | 270 | 4,585 | 358,712 |
| NOTTINGHAM .... .... | 9 | 110 | 260 | 1,192 | 84 | 1,655 | 669,730 | 318 | 18,714 | 200,697 |
| DERBY .... .... .... | 25 | 119 | 308 | 1,877 | 82 | 2,411 | 671,540 | 235 | 51,124 | 276,341 |
| STAFFORD .... .... | 51 | 130 | 288 | 2,106 | 33 | 2,608 | 731,710 | 231 | 197,824 | 220,696 |
| DURHAM .... .... | 27 | 56 | 296 | 1,454 | 29 | 1,862 | 823,720 | 307 | 64,037 | 113,713 |
| HERTFORD .... .... | 30 | 102 | 197 | 1,364 | 155 | 1,848 | 912,000 | 366 | 146,143 | 278,700 |
| HAMPSHIRE .... .... | — | 146 | 397 | 2,864 | 284 | 3,691 | 992,610 | 237 | — | 238,011 |
| SURREY .... .... .... | — | 49 | 326 | 1,151 | 36 | 1,562 | 1,005,790 | 409 | — | 123,926 |
| CHESHIRE .... .... | 25 | 201 | 344 | 1,843 | 18 | 2,431 | 1,078,380 | 300 | 56,783 | 499,047 |
| ESSEX .... .... .... | — | 78 | 349 | 2,498 | 150 | 3,075 | 1,178,730 | 303 | — | 130,466 |
| KENT .... .... .... | 27 | 118 | 431 | 3,156 | 93 | 3,825 | 1,361,190 | 279 | 86,340 | 276,536 |
| YORK, WEST RIDING .... | 66 | 287 | 599 | 3,376 | 159 | 4,487 | 1,794,020 | 278 | 153,017 | 868,254 |
| LANCASHIRE .... .... | 112 | 212 | 543 | 2,671 | — | 3,538 | 2,477,560 | 400 | 419,408 | 535,188 |
| **English Counties excluding Monmouth** | **649** | **4,695** | **11,504** | **87,296** | **4,643** | **108,787** | **24,988,030** | **200** | **2,839,648** | **9,451,445** |
| RADNOR .... .... .... | — | 43 | 63 | 640 | 58 | 804 | 18,590 | 24 | — | 61,642 |
| MERIONETH .... .... | — | 104 | 90 | 641 | 102 | 937 | 37,450 | 43 | — | 155,717 |
| MONTGOMERY .... .... | — | 121 | 43 | 1,436 | 301 | 1,901 | 43,270 | 26 | — | 248,520 |
| CARDIGAN .... .... | — | 71 | 99 | 1,167 | 166 | 1,503 | 53,180 | 39 | — | 153,944 |
| BRECON .... .... .... | — | 113 | 53 | 943 | 133 | 1,242 | 54,690 | 48 | — | 193,003 |
| ANGLESEY .... .... | — | 22 | 64 | 598 | — | 684 | 60,000 | 83 | — | 41,468 |
| PEMBROKE .... .... | — | 71 | 95 | 1,218 | — | 1,384 | 101,200 | 69 | — | 89,811 |
| CAERNARVON .... .... | — | 74 | 101 | 955 | 23 | 1,153 | 120,500 | 95 | — | 137,235 |
| CARMARTHEN .... .... | — | 95 | 150 | 1,775 | 76 | 2,096 | 164,300 | 78 | — | 133,159 |
| FLINT .... .... | — | 42 | 130 | 577 | 12 | 761 | 173,070 | 198 | — | 97,094 |
| DENBIGH .... .... | — | 77 | 128 | 1,494 | 166 | 1,865 | 182,860 | 96 | — | 134,172 |
| MONMOUTH .... .... | 19 | 79 | 120 | 1,083 | 90 | 1,391 | 352,780 | 188 | 88,491 | 154,929 |
| GLAMORGAN .... .... | 4 | 61 | 261 | 1,183 | 34 | 1,543 | 748,190 | 316 | 13,180 | 159,544 |
| **Welsh Counties including Monmouth** | **23** | **973** | **1,397** | **13,710** | **1,161** | **17,264** | **2,110,080** | **115** | **101,671** | **1,760,238** |
| **ALL COUNTIES** .... | **672** | **5,668** | **12,901** | **101,006** | **5,804** | **126,051** | **27,098,110** | **189** | **2,941,319** | **11,211,683** |

SOCIETY OF COUNTY TREASURERS
and
COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1971-72

DECEMBER 1972

## NOTES

1. The road distances in columns 3 to 8 exclude unclassified roads in urban areas maintained at the expense of Borough and Urban District Councils and the trunk road lengths maintained under special agency arrangements by those Councils.

   "Motorways" include trunk roads and by-passes of motorway standard. Continuing lengths of motorways are maintained in the areas of adjoining authorities by Bedford three kms., Berkshire twenty five kms., Buckingham four kms., Derby nine kms., Hereford ten kms.,Hertford two kms., Lancashire one km., Leicester six kms., Northampton three kms., Nottingham two kms., Worcester eleven kms., York (North Riding) five kms., York (West Riding) seventeen kms., and Monmouth eleven kms. In the return these distances are included as those of the maintaining authority.

   "Green Lanes" are unsurfaced roads with right of passage for vehicles included in Department of Environment Form 197 (Roads).
2. Expenditure on maintenance and improvements (columns 9 to 21) has been reduced by all income other than grants.
3. Expenditure on winter gritting and snow clearing (column 15) was incurred as follows:—

| | £ |
|---|---|
| On motorways and trunk roads .... .... .... .... .... | 1 480 834 |
| On principal county roads .... .... .... .... .... .... | 1 572 371 |
| On other county roads .... .... .... .... .... .... | 2 826 044 |
| | £5 879 249 |

4. "Land purchased in advance" (column 22) includes land purchased for schemes within the future grant programmes and land purchased by reason of "planning blight". (Ministry of Transport's circular 9/68).

   Further particulars on the split of this expenditure between principal and other county roads can be obtained from the compiler of the return.
5. Expenditure on motorways improvements (column 16) includes an amount in respect of motorway under construction at 31st March, 1972, and due to be opened in 1974, in the case of Oxford.
6. "Administration expenses" (columns 28 and 29) are the gross cost including establishment expenses paid to claiming and delegated authorities before allocations are made to trunk roads, private street works, and other recoverable expenditure. These allocations are shown as income in column 40. In the following cases the amount shown in column 28 includes the cost of employing temporary site staff on agency work for the Department of the Environment (amount indicated in brackets); Derby (£4 960), Durham (£59 587), Norfolk (£3 965), Nottingham (£2 728), Somerset (£6 158), Surrey (£43 402), Sussex West (£3 450), Worcester (£102 722), York (North Riding) (£2 000), York (West Riding) (£59 303), and Denbigh (£16 775).
7. (a) Column 27 "Capital Expenditure other than Road Improvements" includes:—
   Depots and Divisional Offices—purchases and adaptations
   Radio Communication Systems
   Housing of Roadmen
   Car Park Construction
   Land Drainage
   2nd Dartford Tunnel

   (b) Column 31 "Financing Items" includes:—
   Purchase of vehicles and plant charged direct to Rate Account
   Contributions to Repairs and Renewals Fund
   Depreciation allowances credited in respect of vehicles and plant
   Differences between the actual cost of plant and Ministry of Transport scheduled rates
   Surpluses or deficiencies on plant and tools and on-cost accounts
   Depots expenditure less any re-charge.
   (Details are available from the compiler).
8. Columns 13 and 20 "Special Works" includes:—
   Special improvements and maintenance in development areas
   Maintenance and improvements in areas of high winter unemployment

**4**

| COUNTY | Population | DISTANCE (kms.) OF ROADS | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | Motorways | Trunk Roads |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| | | | | | | | | £ | £ |
| RUTLAND .... | 29 230 | — | 34 | 57 | 423 | 39 | 553 | — | 32 095 |
| WESTMORLAND.... .... | 71 830 | 60 | 122 | 180 | 1 403 | 88 | 1 853 | 86 621 | 311 843 |
| LINCOLN HOLLAND .... | 105 600 | — | 81 | 102 | 1 681 | 34 | 1 898 | — | 102 997 |
| ISLE OF WIGHT .... .... | 107 060 | — | — | 122 | 408 | 28 | 558 | — | — |
| HEREFORD .... .... | 139 070 | 18 | 113 | 336 | 2 631 | 15 | 3 113 | 242 516 | 197 525 |
| LINCOLN KESTEVEN .... | 160 200 | — | 100 | 221 | 2 172 | 119 | 2 612 | — | 120 932 |
| SUFFOLK WEST .... .... | 168 740 | — | 48 | 247 | 1 670 | 53 | 2 018 | — | 45 496 |
| HUNTINGDON & PETERBOROUGH .... | 205 780 | — | 126 | 130 | 1 045 | 57 | 1 358 | — | 320 632 |
| CUMBERLAND .... .... | 219 270 | 31 | 243 | 236 | 3 366 | 123 | 3 999 | 39 036 | 354 450 |
| YORK, EAST RIDING .... | 259 510 | — | 144 | 268 | 3 159 | 100 | 3 671 | — | 117 987 |
| SUFFOLK, EAST .... .... | 262 540 | — | 105 | 252 | 2 857 | 52 | 3 266 | — | 220 309 |
| OXFORD .... .... | 277 560 | — | 214 | 239 | 2 319 | 40 | 2 812 | — | 505 217 |
| BEDFORD .... .... .... | 304 570 | 25 | 96 | 185 | 1 182 | 80 | 1 568 | 84 141 | 123 394 |
| CAMBRIDGE & ISLE OF ELY .... .... | 304 570 | — | 153 | 235 | 1 986 | 151 | 2 525 | — | 155 244 |
| YORK, NORTH RIDING .... | 332 790 | 15 | 198 | 497 | 4 392 | 119 | 5 221 | 31 041 | 505 263 |
| SALOP .... .... .... | 341 960 | — | 238 | 402 | 4 403 | 93 | 5 136 | — | 250 842 |
| NORTHAMPTON .... | 344 130 | 45 | 214 | 315 | 2 108 | 166 | 2 848 | 363 122 | 313 284 |
| DORSET .... .... .... | 364 420 | — | 89 | 385 | 2 897 | 797 | 4 168 | — | 90 623 |
| LINCOLN LINDSEY .... | 376 810 | — | 195 | 568 | 3 713 | 351 | 4 827 | — | 303 680 |
| CORNWALL .... .... | 377 460 | — | 237 | 460 | 5 796 | 26 | 6 519 | — | 352 809 |
| NORFOLK .... .... | 445 910 | — | 194 | 638 | 6 903 | 402 | 8 137 | — | 245 077 |
| SUSSEX, EAST .... .... | 446 410 | — | 86 | 395 | 2 264 | 34 | 2 779 | — | 199 781 |
| DEVON .... .... .... | 453 720 | — | 306 | 822 | 9 685 | 283 | 11 096 | — | 383 589 |
| WORCESTER .... .... | 459 520 | 78 | 80 | 395 | 2 502 | 98 | 3 153 | 656 076 | 149 342 |
| WILTSHIRE .... .... | 489 370 | 46 | 204 | 573 | 3 204 | 706 | 4 733 | 42 372 | 400 714 |
| LEICESTER.... .... .... | 489 900 | 65 | 146 | 289 | 2 600 | 161 | 3 261 | 106 943 | 174 514 |
| SUSSEX, WEST .... ... | 492 710 | — | 61 | 400 | 1 624 | 244 | 2 329 | — | 56 025 |
| NORTHUMBERLAND .... | 505 720 | — | 233 | 396 | 3 809 | 13 | 4 451 | — | 294 198 |

**8**

| COUNTY | Population | DISTANCE (kms.) OF ROADS | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | Motorways | Trunk Roads |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| | | | | | | | | £ | £ |
| BERKSHIRE .... .... | 513 650 | 98 | 109 | 363 | 2 375 | 368 | 3 313 | 73 795 | 223 833 |
| GLOUCESTER .... .... | 563 690 | 106 | 266 | 476 | 4 437 | 171 | 5 456 | 231 488 | 359 207 |
| BUCKINGHAM .... .... | 592 750 | 43 | 77 | 323 | 2 352 | 194 | 2 989 | 82 535 | 123 007 |
| SOMERSET .... .... | 600 630 | — | 201 | 729 | 6 217 | 355 | 7 502 | — | 260 443 |
| WARWICK .... .... | 627 810 | 41 | 265 | 328 | 2 460 | 109 | 3 203 | 40 771 | 530 496 |
| DERBY .... .... .... | 665 630 | 40 | 175 | 496 | 3 021 | 132 | 3 864 | 63 738 | 326 262 |
| NOTTINGHAM .... .... | 675 380 | 15 | 177 | 418 | 1 933 | 135 | 2 678 | 26 705 | 246 375 |
| STAFFORD .... .... | 741 340 | 82 | 213 | 464 | 3 390 | 53 | 4 202 | 209 139 | 236 330 |
| DURHAM .... .... | 820 030 | 48 | 102 | 486 | 2 378 | 47 | 3 061 | 74 343 | 133 213 |
| HERTFORD .... .... | 930 390 | 49 | 166 | 315 | 2 215 | 250 | 2 995 | 505 281 | 304 558 |
| SURREY .... .... .... | 1 011 230 | 7 | 79 | 526 | 1 800 | 60 | 2 472 | 10 563 | 190 465 |
| HAMPSHIRE .... .... | 1 013 130 | 38 | 235 | 657 | 4 803 | 457 | 6 190 | 44 783 | 235 826 |
| CHESHIRE .... .... | 1 113 560 | 71 | 323 | 554 | 2 974 | 29 | 3 951 | 95 298 | 453 949 |
| ESSEX .... .... .... | 1 196 840 | — | 126 | 561 | 4 032 | 193 | 4 912 | — | 175 293 |
| KENT .... .... .... | 1 373 290 | 68 | 182 | 699 | 5 102 | 150 | 6 201 | 163 309 | 274 608 |
| YORK, WEST RIDING .... | 1 801 560 | 126 | 463 | 963 | 5 732 | 256 | 7 540 | 605 389 | 1 411 538 |
| LANCASHIRE .... .... | 2 513 400 | 226 | 342 | 865 | 4 366 | — | 5 799 | 502 384 | 792 325 |
| **English Counties excluding Monmouth** | **25 290 670** | **1 441** | **7 561** | **1 8568** | **141 789** | **7 431** | **176 790** | **4 381 389** | **12 605 590** |
| RADNOR .... .... .... | 18 270 | — | 69 | 101 | 1 030 | 93 | 1 293 | — | 71 131 |
| MERIONETH .... .... | 34 810 | — | 168 | 147 | 1 029 | 164 | 1 508 | — | 153 035 |
| MONTGOMERY .... .... | 43 110 | — | 195 | 69 | 2 308 | 485 | 3 057 | — | 187 745 |
| BRECON .... .... .... | 52 910 | — | 174 | 87 | 1 519 | 213 | 1 993 | — | 191 744 |
| CARDIGAN .... .... | 56 160 | — | 115 | 160 | 1 880 | 265 | 2 420 | — | 152 109 |
| ANGLESEY .... .... | 60 170 | — | 35 | 103 | 962 | — | 1 100 | — | 45 609 |
| PEMBROKE .... .... | 97 870 | — | 114 | 153 | 1 961 | — | 2 228 | — | 86 592 |
| CAERNARVON .... .... | 122 410 | — | 119 | 163 | 1 541 | 37 | 1 860 | — | 154 395 |
| CARMARTHEN .... .... | 163 170 | — | 153 | 241 | 2 859 | 122 | 3 375 | — | 160 033 |
| FLINT .... .... | 176 830 | — | 68 | 209 | 933 | 19 | 1 229 | — | 86 768 |
| DENBIGH .... .... | 184 830 | — | 124 | 208 | 2 405 | 273 | 3 010 | — | 147 238 |
| MONMOUTH .... .... | 349 860 | 30 | 127 | 193 | 1 750 | 144 | 2 244 | 84 509 | 201 836 |
| GLAMORGAN .... .... | 749 760 | 7 | 98 | 418 | 1 924 | 55 | 2 502 | 14 099 | 159 577 |
| **Welsh Counties including Monmouth** | **2 110 160** | **37** | **1 559** | **2 252** | **22 101** | **1 870** | **27 819** | **98 608** | **1 797 812** |
| **ALL COUNTIES** .... | **27 400 830** | **1 478** | **9 120** | **20 820** | **163 890** | **9 301** | **204 609** | **4 479 997** | **14 403 402** |

SOCIETY OF COUNTY TREASURERS
and
COUNTY SURVEYORS' SOCIETY

# HIGHWAYS EXPENDITURE 1972-73

JANUARY 1974

## NOTES

1. The road distances in columns 3 to 8 exclude unclassified roads in urban areas maintained at the expense of Borough and Urban District Councils and the trunk road lengths maintained under special agency arrangements by those Councils.

   "Motorways" include trunk roads and by-passes of motorway standard. Continuing lengths of motorways are maintained in the areas of adjoining authorities by: Bedford three kms., Berkshire twenty five kms., Buckingham five kms., Derby nine kms., Hereford ten kms., Hertford two kms., Lancashire one km., Leicester six kms., Northampton three kms., Nottingham two kms., Wiltshire ten kms., Worcester thirteen kms., York (North Riding) five kms., York (West Riding) twenty kms., and Monmouth eleven kms. In the return these distances are included as those of the maintaining authority.

   "Green Lanes" are unsurfaced roads with right of passage for vehicles included in Department of Environment Form 197 (Roads).

2. Expenditure on maintenance and improvements (columns 9 to 19) has been reduced by all income other than grants.

3. Expenditure on winter gritting and snow clearing (column 14) was incurred as follows:—

| | £ |
|---|---|
| On motorways and trunk roads .... .... .... .... .... | 1 711 881 |
| On principal county roads .... .... .... .... .... .... | 1 879 979 |
| On other county roads .... .... .... .... .... .... | 3 295 252 |
| | £6 887 112 |

4. "Land purchased in advance" (column 20) includes land purchased for schemes within the future grant programmes and land purchased by reason of "planning blight". (Ministry of Transport's circular 9/68).

   Further particulars on the split of this expenditure between principal and other county roads can be obtained from the compiler of the return.

5. "Administration expenses" (columns 26 and 27) are the gross cost, including establishment expenses, paid to claiming and delegated authorities before allocations are made to trunk roads, private street works, and other recoverable expenditure. These allocations are shown as income in column 37. In the following cases the amount shown in column 26 includes the cost of employing temporary site staff on agency work for the Department of the Environment (amount indicated in brackets): Derby (£2 026), Durham (£18 538), Norfolk (£28 675), Somerset (£4 000), Surrey (£16 694), Warwick (£12 237), Worcester (£120 841), York (West Riding) (£35 739), and Denbigh (£8 002).

6. (a) Column 25 "Capital Expenditure other than Road Improvements" includes:—
   - Depots and Divisional Offices—purchases and adaptations
   - Radio Communication Systems
   - Housing of Roadmen
   - Car Park Construction
   - Land Drainage
   - 2nd Dartford Tunnel

   (b) Column 29 "Financing Items" includes:—
   - Purchase of vehicles and plant charged direct to Rate Account
   - Contributions to Repairs and Renewals Fund
   - Depreciation allowances credited in respect of vehicles and plant
   - Differences between the actual cost of plant and Ministry of Transport scheduled rates
   - Surpluses or deficiencies on plant and tools and on-cost accounts
   - Depots expenditure less any re-charge.
   - (Details are available from the compiler).

**4**

| COUNTY | Population | DISTANCE (kms.) OF ROADS | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | Motorways | Trunk Roads |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| | | | | | | | | £ | £ |
| RUTLAND .... | 29 700 | — | 34 | 57 | 424 | 39 | 554 | — | 43 396 |
| WESTMORLAND.... .... | 72 310 | 60 | 122 | 186 | 1 403 | 88 | 1 859 | 123 480 | 472 006 |
| LINCOLN HOLLAND .... | 105 950 | — | 80 | 102 | 1 693 | 34 | 1 909 | — | 191 880 |
| ISLE OF WIGHT .... .... | 108 670 | — | — | 122 | 412 | 28 | 562 | — | — |
| HEREFORD .... .... | 139 660 | 18 | 113 | 336 | 2 631 | 15 | 3 113 | 284 084 | 265 308 |
| LINCOLN KESTEVEN .... | 161 520 | — | 101 | 221 | 2 178 | 119 | 2 619 | — | 169 509 |
| SUFFOLK WEST .... .... | 173 430 | — | 48 | 248 | 1 680 | 53 | 2 029 | — | 89 532 |
| HUNTINGDON & PETERBOROUGH .... | 211 550 | — | 126 | 131 | 1 053 | 57 | 1 367 | — | 564 668 |
| CUMBERLAND .... .... | 219 410 | 37 | 242 | 239 | 3 343 | 123 | 3 984 | 55 040 | 554 891 |
| YORK, EAST RIDING .... | 263 980 | — | 144 | 270 | 3 164 | 100 | 3 678 | — | 227 118 |
| SUFFOLK, EAST .... .... | 266 650 | — | 105 | 252 | 2 861 | 52 | 3 270 | — | 212 705 |
| OXFORD .... .... | 283 980 | — | 214 | 239 | 2 331 | 41 | 2 825 | — | 645 384 |
| CAMBRIDGE & ISLE OF ELY .... .... | 308 280 | — | 153 | 235 | 2 003 | 152 | 2 543 | — | 344 910 |
| BEDFORD .... .... .... | 311 000 | 25 | 96 | 185 | 1 188 | 80 | 1 574 | 129 175 | 160 439 |
| YORK, NORTH RIDING | 337 140 | 15 | 201 | 499 | 4 408 | 119 | 5 242 | 34 448 | 844 306 |
| SALOP .... .... .... | 345 860 | — | 238 | 416 | 4 413 | 93 | 5 160 | — | 530 874 |
| NORTHAMPTON .... | 351 000 | 45 | 214 | 315 | 2 118 | 166 | 2 858 | 354 074 | 500 594 |
| DORSET .... .... .... | 373 060 | — | 89 | 385 | 2 921 | 797 | 4 192 | — | 132 273 |
| LINCOLN LINDSEY .... | 380 270 | — | 193 | 568 | 3 730 | 97 | 4 588 | — | 613 865 |
| CORNWALL .... .... | 383 390 | — | 237 | 460 | 5 798 | 26 | 6 521 | — | 350 850 |
| SUSSEX, EAST .... .... | 452 340 | — | 86 | 397 | 2 273 | 34 | 2 790 | — | 169 628 |
| NORFOLK .... .... | 453 750 | — | 194 | 636 | 6 928 | 402 | 8 160 | — | 359 920 |
| DEVON .... .... .... | 459 280 | — | 308 | 824 | 9 443 | 283 | 10 858 | — | 456 654 |
| WORCESTER .... .... | 468 220 | 79 | 80 | 394 | 2 506 | 98 | 3 157 | 793 831 | 183 792 |
| WILTSHIRE .... .... | 495 280 | 53 | 212 | 573 | 3 219 | 706 | 4 763 | 46 709 | 500 202 |
| LEICESTER.... .... .... | 497 460 | 65 | 146 | 290 | 2 610 | 161 | 3 272 | 148 679 | 341 051 |
| SUSSEX, WEST .... .... | 500 900 | — | 61 | 400 | 1 636 | 244 | 2 341 | — | 131 232 |
| NORTHUMBERLAND .... | 507 820 | — | 233 | 433 | 3 846 | 13 | 4 525 | — | 253 960 |

**8**

| COUNTY | Population | DISTANCE (kms.) OF ROADS | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total | Motorways | Trunk Roads |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| | | | | | | | | £ | £ |
| BERKSHIRE .... .... | 523 280 | 98 | 109 | 363 | 2 377 | 368 | 3 315 | 180 090 | 370 438 |
| GLOUCESTER .... .... | 571 070 | 106 | 277 | 475 | 4 474 | 171 | 5 503 | 258 400 | 520 849 |
| BUCKINGHAM .... .... | 598 290 | 55 | 77 | 322 | 2 398 | 194 | 3 046 | 189 883 | 293 026 |
| SOMERSET .... .... | 608 470 | 35 | 189 | 729 | 6 239 | 355 | 7 547 | 40 000 | 481 682 |
| WARWICK .... .... | 638 890 | 53 | 265 | 328 | 2 567 | 109 | 3 322 | 96 843 | 1 018 823 |
| DERBY .... .... .... | 667 680 | 39 | 175 | 497 | 3 068 | 133 | 3 912 | 111 021 | 493 708 |
| NOTTINGHAM .... .... | 682 570 | 15 | 177 | 418 | 1 942 | 135 | 2 687 | 31 803 | 460 359 |
| STAFFORD .... .... | 751 640 | 83 | 214 | 468 | 3 419 | 54 | 4 238 | 532 169 | 366 111 |
| DURHAM .... .... | 822 580 | 48 | 102 | 490 | 2 387 | 47 | 3 074 | 120 670 | 131 020 |
| HERTFORD .... .... | 940 630 | 49 | 166 | 322 | 2 220 | 250 | 3 007 | 663 241 | 614 261 |
| SURREY .... .... .... | 1 014 890 | 7 | 79 | 524 | 1 804 | 72 | 2 486 | 22 640 | 257 010 |
| HAMPSHIRE .... .... | 1 035 150 | 38 | 235 | 656 | 4 664 | 458 | 6 051 | 43 947 | 395 531 |
| CHESHIRE .... .... | 1 130 140 | 82 | 323 | 554 | 2 995 | 29 | 3 983 | 151 145 | 456 028 |
| ESSEX .... .... .... | 1 222 910 | — | 126 | 574 | 4 064 | 193 | 4 957 | — | 238 172 |
| KENT .... .... .... | 1 390 120 | 69 | 171 | 705 | 5 123 | 150 | 6 218 | 196 634 | 467 258 |
| YORK, WEST RIDING .... | 1 814 830 | 148 | 462 | 964 | 5 782 | 256 | 7 612 | 631 348 | 1 905 329 |
| LANCASHIRE .... .... | 2 534 780 | 231 | 342 | 877 | 4 426 | — | 5 876 | 807 241 | 2 054 048 |
| **English Counties excluding Monmouth** | **25 609 780** | **1 553** | **7 559** | **18 679** | **142 162** | **7 194** | **177 147** | **6 046 595** | **19 834 600** |
| RADNOR .... .... .... | 18 530 | — | 69 | 101 | 1 024 | 92 | 1 286 | — | 55 176 |
| MERIONETH .... .... | 34 710 | — | 168 | 147 | 1 029 | 164 | 1 508 | — | 198 815 |
| MONTGOMERY .... .... | 43 320 | — | 195 | 69 | 2 310 | 485 | 3 059 | — | 213 716 |
| BRECON .... .... .... | 53 020 | — | 174 | 87 | 1 520 | 213 | 1 994 | — | 161 295 |
| CARDIGAN .... .... | 54 300 | — | 115 | 160 | 1 880 | 265 | 2 420 | — | 136 245 |
| ANGLESEY .... .... | 60 590 | — | 35 | 103 | 962 | — | 1 100 | — | 80 557 |
| PEMBROKE .... .... | 98 420 | — | 114 | 153 | 1 959 | — | 2 226 | — | 148 702 |
| CAERNARVON .... .... | 122 530 | — | 119 | 163 | 1 548 | 37 | 1 867 | — | 184 828 |
| CARMARTHEN .... .... | 162 530 | — | 153 | 241 | 2 860 | 123 | 3 377 | — | 144 408 |
| FLINT .... .... | 179 950 | — | 70 | 209 | 936 | 19 | 1 234 | — | 154 080 |
| DENBIGH .... .... | 186 100 | — | 124 | 208 | 2 405 | 267 | 3 004 | — | 256 279 |
| MONMOUTH .... .... | 351 660 | 30 | 129 | 195 | 1 750 | 144 | 2 248 | 98 447 | 275 513 |
| GLAMORGAN .... .... | 753 290 | 7 | 98 | 423 | 1 937 | 54 | 2 519 | 23 598 | 150 801 |
| **Welsh Counties including Monmouth** | **2 118 950** | **37** | **1 563** | **2 259** | **22 120** | **1 863** | **27 842** | **122 045** | **2 160 415** |
| **ALL COUNTIES** .... | **27 728 730** | **1 590** | **9 122** | **20 938** | **164 282** | **9 057** | **204 989** | **6 168 640** | **21 995 015** |

SOCIETY OF COUNTY TREASURERS

and

COUNTY SURVEYORS' SOCIETY

# HIGHWAYS STATISTICS 1973-74

JUNE 1974

## NOTES

1. The road lengths in columns 5 to 10 exclude unclassified roads in urban areas maintained at the expense of Borough and Urban District Councils and the trunk road lengths maintained under special agency arrangements by those councils.

   "Motorways" include trunk roads and by-passes of motorway standard. Continuing lengths of motorways are maintained in the areas of adjoining authorities by: Bedfordshire three kms., Berkshire twenty-five kms., Buckingham four kms., Derbyshire nine kms., Worcestershire thirteen kms., Hertfordshire two kms., Lancashire one km., Leicestershire seven kms., Northamptonshire three kms., Nottinghamshire two kms., Wiltshire five kms., York (North Riding) five kms., and Monmouthshire eleven kms. In the return these distances are included as those of the maintaining authority.

   "Green Lanes" are unsurfaced roads with right of passage for vehicles included in Department of Environment Form 197 (Roads).

2. Expenditure on maintenance and improvements (columns 11 to 21) has been reduced by all estimated income other than grants.

3. Expenditure on winter gritting and snow clearing (column 16) was incurred as follows:

| | £ |
|---|---|
| On motorways and trunk roads .... .... .... .... .... | 1 257 551 |
| On principal county roads .... .... .... .... .... .... | 1 252 691 |
| On other county roads .... .... .... .... .... .... | 2 159 384 |
| | £4 669 626 |

4. "Land purchased in advance" (column 22) includes land purchased for schemes within the future grant programmes and land purchased by reason of "planning blight".

5. "Administration expenses" (columns 28 and 29) are the gross cost, including establishment expenses paid to claiming and delegated authorities before allocations are made to trunk roads, private street works, and other recoverable expenditure. These allocations are shown as income in column 39. In the following cases the amount shown in column 28 includes the cost of employing temporary site staff on agency work for the Department of the Environment (amount indicated in brackets): Derbyshire (£2,226), Devon (£56,094), Durham (£3,963), Norfolk (£56,650), Somerset (£5,000), Surrey (£29,663), Warwickshire (£23,682) and York (North Riding) (£1,700).

6. Column 27 "Capital Expenditure other than Road Improvements", includes:—

   Depots, Divisional Offices, Laboratories & Quarry—purchases and adaptations
   Radio Communication Systems
   Housing of Roadmen
   2nd Dartford Tunnel

   Column 30 "Other Expenditure" includes:—

   Censuses and surveys
   Maintenance of Highways properties
   Training of Roadmen
   Provision of weighbridges
   Tree and plant nurseries
   Tyne Tunnel
   Ist Dartford Tunnel
   Cleddau Bridge

   Column 31 "Financing items", includes:—

   Purchase of vehicles and plant charged direct to Rate Account
   Contributions to Repairs and Renewals Fund
   Depreciation allowances credited in respect of vehicles and plant
   Surpluses or deficiencies on plant and tools and on cost accounts
   Depots Expenditure less any re-charge

7. At the time of printing, returns from five English Counties and five Welsh Counties had not been received and consequently no information is shown for these authorities.

   The totals of expenditure shown are therefore not the total expenditure of all the counties.

**4**

| COUNTY | Population | Acreage | Population per Acre | DISTANCE (kms.) OF ROAD | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| RUTLAND .... .... | | | | | | | | | |
| WESTMORLAND.... .... | 73 010 | 504 917 | 0·14 | 60 | 122 | 186 | 1 491 | 88 | 1 947 |
| LINCOLN HOLLAND .... | | | | | | | | | |
| ISLE OF WIGHT .... .... | 109 680 | 94 146 | 1·17 | — | — | 122 | 594 | 32 | 748 |
| HEREFORD .... .... | | | | | | | | | |
| LINCOLN KESTEVEN .... | | | | | | | | | |
| SUFFOLK, WEST .... .... | 179 310 | 390 916 | 0·46 | — | 48 | 248 | 1 680 | 53 | 2 029 |
| HUNTINGDON & PETERBOROUGH .... | 218 100 | 310 863 | 0·70 | — | 126 | 130 | 1 110 | 57 | 1 423 |
| CUMBERLAND .... .... | 218 450 | 967 055 | 0·23 | 37 | 242 | 239 | 3 343 | 123 | 3 984 |
| SUFFOLK, EAST .... .... | 268 130 | 547 396 | 0·49 | — | 105 | 252 | 2 886 | 52 | 3 295 |
| YORK, EAST RIDING .... | 268 810 | 732 704 | 0·37 | — | 144 | 270 | 3 166 | 100 | 3 680 |
| OXFORD .... .... .... | 289 240 | 470 392 | 0·61 | — | 214 | 239 | 2 331 | 41 | 2 825 |
| CAMBRIDGE & ISLE OF ELY .... .... | 315 380 | 531 578 | 0·59 | — | 153 | 237 | 2 000 | 152 | 2 542 |
| BEDFORD .... .... .... | 317 150 | 294 366 | 1·08 | 25 | 96 | 185 | 1 194 | 80 | 1 580 |
| YORK, NORTH RIDING | 342 910 | 1 333 350 | 0·26 | 15 | 195 | 499 | 4 408 | 119 | 5 236 |
| SALOP .... .... .... | 347 770 | 862 458 | 0·40 | — | 238 | 402 | 4 417 | 93 | 5 150 |
| NORTHAMPTON .... | 359 640 | 571 375 | 0·63 | 45 | 214 | 316 | 2 284 | 166 | 3 025 |
| DORSET .... .... .... | 379 680 | 625 460 | 0·61 | — | 89 | 385 | 2 940 | 797 | 4 211 |
| LINCOLN LINDSEY .... | 384 270 | 959 353 | 0·40 | — | 194 | 568 | 3 729 | 96 | 4 587 |
| CORNWALL .... .... | 391 490 | 876 245 | 0·45 | — | 237 | 460 | 5 798 | 26 | 6 521 |
| SUSSEX, EAST .... .... | 456 040 | 494 583 | 0·92 | — | 86 | 397 | 2 273 | 34 | 2 790 |
| NORFOLK .... .... | 465 750 | 1 301 014 | 0·36 | — | 194 | 636 | 6 928 | 403 | 8 161 |
| DEVON .... .... .... | 468 160 | 1 612 323 | 0·29 | — | 308 | 824 | 9 443 | 283 | 10 858 |
| WORCESTER .... .... | 472 940 | 434 792 | 1·09 | 79 | 80 | 394 | 2 506 | 98 | 3 157 |
| WILTSHIRE .... .... | 501 200 | 860 099 | 0·58 | 48 | 211 | 573 | 3 241 | 706 | 4 779 |
| SUSSEX,WEST .... .... | 506 530 | 405 349 | 1·25 | — | 61 | 400 | 1 648 | 244 | 2 353 |
| LEICESTER.... .... .... | 506 880 | 515 436 | 0·98 | 66 | 146 | 290 | 2 610 | 162 | 3 274 |
| NORTHUMBERLAND .... | 510 300 | 1 276 205 | 0·40 | — | 233 | 433 | 3 846 | 13 | 4 525 |
| BERKSHIRE .... .... | 529 560 | 454 725 | 1·16 | 98 | 109 | 363 | 2 377 | 368 | 3 315 |
| GLOUCESTER .... .... | 579 980 | 770 297 | 0·75 | 106 | 277 | 475 | 4 474 | 171 | 5 503 |
| BUCKINGHAM .... .... | 604 460 | 477 756 | 1·27 | 54 | 77 | 324 | 2 400 | 194 | 3 049 |
| SOMERSET .... .... | 617 130 | 1 024 963 | 0·60 | 51 | 201 | 729 | 6 239 | 355 | 7 575 |

| COUNTY | Population | Acreage | Population per Acre | DISTANCE (kms.) OF ROAD | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Motorways | Trunk Roads | Principal County Roads | Other County Roads | "Green Lanes" | Total |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| WARWICK .... .... | 643 940 | 538 126 | 1·20 | 53 | 265 | 328 | 2 567 | 109 | 3 322 |
| DERBY .... .... .... | 668 960 | 618 955 | 1·08 | 39 | 175 | 497 | 3 068 | 133 | 3 912 |
| NOTTINGHAM .... .... | 689 490 | 520 930 | 1·32 | 16 | 176 | 416 | 1 942 | 135 | 2 685 |
| STAFFORD .... .... | 764 370 | 657 200 | 1·16 | 83 | 214 | 467 | 3 436 | 54 | 4 254 |
| DURHAM .... .... | 824 890 | 594 816 | 1·39 | 43 | 102 | 484 | 2 396 | 47 | 3 072 |
| HERTFORD .... .... | 939 520 | 403 788 | 2·33 | 54 | 170 | 325 | 2 225 | 241 | 3 015 |
| SURREY .... .... .... | 1 012 230 | 418 299 | 2·42 | 7 | 79 | 524 | 1 800 | 72 | 2 482 |
| HAMPSHIRE .... .... | 1 048 880 | 929 423 | 1·13 | 38 | 217 | 662 | 4 702 | 457 | 6 076 |
| CHESHIRE .... .... | 1 148 790 | 622 042 | 1·85 | 82 | 324 | 554 | 3 001 | 116 | 4 077 |
| ESSEX .... .... .... | 1 235 650 | 897 563 | 1·38 | — | 126 | 578 | 4 104 | 193 | 5 001 |
| KENT .... .... .... | 1 400 450 | 918 545 | 1·52 | 69 | 222 | 705 | 5 124 | 150 | 6 270 |
| YORK, WEST RIDING .... LANCASHIRE .... .... | 2 551 770 | 1 032 746 | 2·47 | 247 | 345 | 875 | 4 461 | — | 5 928 |
| **English Counties excluding Monmouth (40)** | **23 610 890** | **27 852 549** | | **1 415** | **6 815** | **16 991** | **130 182** | **6 813** | **162 216** |
| RADNOR .... .... .... MERIONETH .... .... MONTGOMERY .... .... BRECON .... .... .... | 34 690 | 422 372 | 0·08 | — | 168 | 147 | 1 029 | 164 | 1 508 |
| CARDIGAN .... .... | 62 020 | 176 694 | 0·35 | — | 35 | 103 | 962 | — | 1 100 |
| ANGLESEY .... .... | 98 760 | 393 003 | 0·25 | — | 114 | 153 | 1 959 | — | 2 226 |
| PEMBROKE .... .... | 122 790 | 364 108 | 0·34 | — | 119 | 163 | 1 548 | 37 | 1 867 |
| CAERNARVON .... .... | 162 770 | 588 472 | 0·28 | — | 153 | 241 | 2 860 | 122 | 3 376 |
| CARMARTHEN .... .... | 183 650 | 163 707 | 1·12 | — | 70 | 209 | 936 | 19 | 1 234 |
| FLINT .... .... .... | 187 820 | 427 977 | 0·44 | — | 124 | 208 | 2 405 | 267 | 3 004 |
| DENBIGH .... .... | 352 120 | 335 617 | 1·05 | 30 | 127 | 196 | 1 771 | 144 | 2 268 |
| MONMOUTH .... .... GLAMORGAN .... .... | | | | | | | | | |
| **Welsh Counties including Monmouth (8)** | **1 204 620** | **2 871 950** | | **30** | **910** | **1 420** | **13 470** | **753** | **16 583** |
| **ALL COUNTIES (48)** | **24 815 510** | **30 724 499** | | **1 445** | **7 725** | **18 411** | **143 652** | **7 566** | **178 799** |

The

# Highways and Transportation Statistics 1993-94 Estimates and 1991-92 Actuals

*Copyright © 1993*

THE CHARTERED INSTITUTE OF PUBLIC FINANCE AND ACCOUN

3 ROBERT STREET, LONDON WC2N 6BH

ALL RIGHTS RESERVED

*The Chartered Institute of Public Finance and Accountancy is one of the six leading Institu profession. Under its Royal Charter, the Institute provides a professional accountancy body fo members work in public bodies of all kinds, including central and local government, the health se and other public corporations.*

*November 1993*

£52.00 per copy to non-SIS subscribers

ISSN 0964-5624

*Printed by Reed's Limited, Penrith, Cumbria.*

CIPFA

Statistica
Information
Service

SIS Ref
14.93

## COUNTY COUNCILS, METROPOLITAN DISTRICT COUNCILS AND LONDON BOROUGHS

Symbols used

indicates that t e informat ilabl
indicates that t ıe authority
indicates nil.

In determining the categorisation of expenditure, accc ɔnventions adopted in the Transport Policies and Programmes (TPF nd Capital Outturn forms (RO and CO) and the General Fund Rev

For clarification on such points, reference should be ıade to th lance on completion of the forms. The following point, however, should be articula expenditure reflects what would be entered on the capital outturn fori reqardl od of financing, i.e. including expenditure of a capital nature financed f

3. There is a need for caution and discret authorit comparisons.

4 Column notes

| Columns | Notes |
|---|---|
| 21 to 24 | **Demographic Features** - data in these columns CIPF Pı ulation is the local authorities' own estimate for mid 199 |
| 25 to 28 | **Distance (kms) of Roads Maintained** - the tained by the authority including those in adjoining autl ties ained for the Department of Transport under agency agre ien |
| 26 | **Other Roads** incorporates Green nsurf passage for vehicles). |
| 30 | **TSG - Gross Approved Spending** - with Grant at 50%, Accepted Expenditure can be derived from Column 31. Gross approved expenditure may exceed the sum of grant and borrowing approval if an authority holds unused grant from previous years. |
| 32 to 34 | **Capital Expenditure on Bridges Principal Roads and Other Highways Expenditure** - authorities' capital expe nditure on r ads for w hich they are responsible. |
| 40 to 42 | **Current Expenditure on Bridges, LA Roads and Other Highways Expenditure** authorities' current expenditure on roads for which they are responsible. |
| 44 | **Concessionary Fares** - includes the cost of s elderly blind and physically disabled, except child concessions, whi is Publ Transport Revenue Support and Home to School Transport |
| 52 and 53 | **Gross Expenditure on Motorways and Trunk Roads** - Local Authorities carry out this type of work as agents for the Department of Transport. Authorities are reimbursed for this work, which means the cost does not normally fall on local taxpayers. |
| 56 to 58 | **Revenue Support** - is another area where caution omparisons is required as expenditure is related to local policies for fare level and service provision and the viability of local networks in terms of passenger loa There may be additional problems arising from the deregulation of public trar (Transport Act 1985) |

# STATISTICS 1987–88 ACTUALS



DISTANCE (kms) OF ROADS MAINTAINED AT 1/4/87

| Trunk Roads (7) | Principal Roads (8) | Other (County) Roads (9) | Green Lanes (10) | Total (11) | Urban Roads (12) | Local Authority |
|---|---|---|---|---|---|---|
| | | | | | | NON-METROPOLITAN COUNTIES |
| | | | | | | *England:* |
| 36 | 400 | 4,104 | 114 | 4,740 | 2,872 | Avon C C |
| 113 | 215 | 2,004 | 80 | 2,437 | 929 | Bedfordshire C C |
| 51 | 323 | 2,720 | 320 | 3,540 | 1,472 | Berkshire C C |
| 78 | 409 | 3,184 | 194 | 3,951 | 1,643 | Buckinghamshire C C |
| 299 | 455 | 4,003 | 222 | 5,002 | 1,785 | Cambridgeshire C C |
| 215 | 684 | 4,544 | 160 | 5,891 | 2,600 | Cheshire C C |
| 70 | 277 | 1,882 | 20 | 2,249 | 1,765 | Cleveland C C |
| 283 | 495 | 6,767 | 48 | 7,593 | 1,141 | Cornwall C C |
| 349 | 645 | 6,425 | 346 | 7,862 | 1,280 | Cumbria C C |
| 250 | 518 | 4,930 | 175 | 5,913 | 2,652 | Derbyshire C C |
| 413 | 979 | 12,526 | 312 | 14,268 | 3,102 | Devon C C |
| 93 | 466 | 4,154 | 821 | 5,534 | 1,881 | Dorset C C |
| 100 | 371 | 3,418 | 83 | 4,039 | 2,064 | Durham C C |
| 100 | 395 | 3,076 | 32 | 3,603 | 1,568 | East Sussex C C |
| 156 | 660 | 6,653 | 800 | 8,370 | 3,351 | Essex C C |
| 164 | 463 | 4,509 | 149 | 5,336 | 1,259 | Gloucestershire C C |
| 191 | 757 | 7,455 | 774 | 9,301 | 3,855 | Hampshire C C |
| 180 | 763 | 6,298 | 116 | 7,465 | 1,638 | Hereford & Worcester C C |
| 123 | 367 | 3,664 | 251 | 4,554 | 2,774 | Hertfordshire C C |
| 150 | 488 | 4,897 | 32 | 5,676 | 2,450 | Humberside C C |
| 0 | 122 | 657 | 32 | 811 | 404 | Isle of Wight C C |
| 219 | 767 | 7,546 | 234 | 8,937 | 3,799 | Kent C C |
| 178 | 630 | 6,405 | 21 | 7,408 | 4,141 | Lancashire C C |
| 187 | 428 | 4,456 | 173 | 5,348 | 2,979 | Leicestershire C C |
| 368 | 780 | 7,489 | 235 | 8,872 | 1,045 | Lincolnshire C C |
| 247 | 663 | 8,062 | 397 | 9,369 | 1,745 | Norfolk C C |
| 208 | 426 | 3,123 | 166 | 3,972 | 1,446 | Northamptonshire C C |
| 275 | 404 | 4,455 | 21 | 5,155 | 1,031 | Northumberland C C |
| 388 | 751 | 8,228 | 482 | 9,871 | 2,212 | North Yorkshire C C |
| 232 | 473 | 3,954 | 187 | 4,870 | 2,888 | Nottinghamshire C C |
| 275 | 386 | 3,277 | 286 | 4,239 | 1,226 | Oxfordshire C C |
| 225 | 425 | 5,107 | 100 | 5,895 | 998 | Shropshire C C |
| 96 | 631 | 5,625 | 305 | 6,722 | – | Somerset C C |
| 239 | 599 | 5,276 | 0 | 6,185 | 2,805 | Staffordshire C C |
| 257 | 486 | 5,555 | 109 | 6,407 | 1,268 | Suffolk C C |
| 62 | 584 | 3,837 | 73 | 4,721 | 2,763 | Surrey C C |
| 242 | 292 | 2,872 | 109 | 3,617 | 753 | Warwickshire C C |
| 88 | 491 | 3,148 | 190 | 3,917 | 1,779 | West Sussex C C |
| 136 | 631 | 4,143 | 727 | 5,685 | – | Wiltshire C C |
| *7,337* | *20,099* | *190,428* | *8,896* | *229,325* | *75,363* | *(39)Total English Counties* |
| | | | | | | *Wales:* |
| 200 | 443 | 4,039 | 258 | 4,940 | 1,228 | Clwyd |
| 378 | 555 | 7,172 | 924 | 9,029 | 975 | Dyfed |
| 134 | 222 | 2,937 | 112 | 3,456 | 1,558 | Gwent |
| 336 | 446 | 4,015 | 197 | 4,994 | 1,036 | Gwynedd |
| 63 | 339 | 2,300 | 2,000 | 4,729 | 2,012 | Mid Glamorgan |
| 425 | 238 | 5,003 | 785 | 6,451 | 307 | Powys |
| 42 | 109 | 1,605 | 0 | 1,778 | 965 | South Glamorgan |
| 37 | 208 | 1,420 | – | 1,710 | 1,273 | West Glamorgan |
| *1,615* | *2,560* | *28,491* | *4,276* | *37,087* | *9,354* | *(8)Total Welsh Counties* |
| *8,952* | *22,659* | *218,919* | *13,172* | *266,412* | *84,717* | *(47) Total All Counties* |

## APPENDIX 6 – EXTRACT FROM OLIVER R. ‘ORDNANCE SURVEY MAPS’

# ORDNANCE SURVEY MAPS

## a concise guide for historians

*Second Edition, revised and expanded*

Richard Oliver

*Research fellow in the*
*History of Cartography*
*University of Exeter*

London

The Charles Close Society

2005

were to be shown when over 1 metre in width (1.4 metres for 1:2500 up to 1956). (RB52, C16, Amt.13)

**Parish:** this can be both an ecclesiastical and an administrative unit; though the two often coincide, it is for administrative reasons that parishes have been depicted on OS maps.

***Civil parishes*** were effectively defined by the Poor Law Amendment Act of 1866 as 'a place for which a separate poor rate is or can be made, or a separate overseer can be appointed or elected.' They were officially sanctioned for use on OS maps in 1879, but only started to appear on such mapping prepared two or three years later. Before 1879 1:10,560 and larger scale maps showed ancient parishes and, if applicable, their constituent townships or hamlets. The effect of the change of policy in 1879 was that henceforth townships were treated as civil parishes, and the ancient 'mother parish' name and boundary no longer appeared *per se*. In April 1974 urban civil parishes were abolished in England and Wales and rural Welsh ones became Communities, and a year later parishes ceased to exist altogether for administrative purposes in Scotland.

**Parks:** these are usually referred to as 'ornamental ground' in OS internal instructions. On the County Series 1:10,560 and 1:25,000 Provisional Editions they were shown by stipple; on all other published mapping at 1:25,000 and larger scales no special symbol has been used, and 'parkland' must be inferred from names and tree-symbol patterns. Parkland is shown at 1:63,360 and 1:50,000 mapping; the minimum size to be shown has varied, but by 1936 was about 50 acres (20 ha). (IRDF36, 10)

No OS definition of 'ornamental ground' has been found: presumably surveyors were expected to recognise it when they saw it. Whilst no problem would arise with, for example, municipal parks and large ornamental gardens such as those immediately adjoining country houses, the definition of deer and similar parks (described as 'ornamental pasture': IFE32, s.69) might be more problematic. The description 'deer park' was to be used for 'any part of a park which may be railed off for deer'. (IFE32, s.188)

**Parsonage:** see *Clergy residences*

**Paths**

From 1883 to the late 1940s the OS recorded two types of path: foot and bridle. These were not normally distinguished as such on 1:10,560 and larger scale mapping prepared before *circa* 1883, though occasional exceptions are encountered, *e.g.* on several 1:10,560 or 1:2500 first edition sheets in Yorkshire, North Riding and southern Durham, an annotation possibly added at the behest of the OS divisional officer in charge of the survey parties thereabouts. Otherwise, particularly on 1:10,560 maps, foot and bridle ways, tracks, and very minor roads look much the same. From 1883 onwards footpaths were shown by 'F.P.', 'the object of... F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic' (SC, 16:2:83); from 1884 bridle roads were shown by 'B.R.'. (SC, 13:2:1884)

'A path, made or unmade, is defined as any established way other than a road or track... Made paths are those whose surfaces are paved or metalled... Unmade paths... [will only be shown] whose existence is indicated by the evidence of disturbance to the ground and are continuous between successive access points...' (RB63, B66)[26] Paths are to be shown with a minimum width of 1 metre at 1:1250 and 1:2500; (BB69, B63); on 1:10,560 and 1:10,000 mapping their width is exaggerated.

[26] These definitions are similar to those in OS MasterMap user guide, chapter 2.7, v5.3, 10/2004: viewed on OS website, 3 February 2005.

In 1952 access points were defined as 'stiles, gates or permanent gaps; they must also lead to some place to which the public want to go, *e.g.* between two roads or groups of houses, to a church, assembly room, etc.'. (RB52, C54; cf IFE32, s.91) 'Paths and tracks which are made, *i.e.* gravelled or raised and therefore not liable to be ploughed up, should be shown in correct alignment. Paths which are unmade and therefore liable to vary in position should be shown as running straight between fixed points, *e.g.* stiles, gates, guide posts, etc., unless deviations are necessary owing to the existence of obstacles such as clumps of trees, a pond or boggy land, etc., which it is necessary to avoid or, in hilly ground, where the line of least resistance determines the alignment of the way.' (RB52, C54; cf IFE32, s.91)

On National Grid mapping both foot and bridle ways have been treated as paths. Where they run across a field and are not clearly evident on the ground, they are shown by straight lines running between gates, stiles or similar access points. The policy in 2002 was that no unmade path was to be deleted on revision 'unless clearly no longer existing'. (OSIP02) The practice in recent years has been to annotate unmade paths '(um)'.

***Bridle roads*** were regarded as passable on horseback. From 1884 they were shown by 'B.R.'. (SC, 13:2:1884) 'They are sometimes the width of the cart-tracks, sometimes only of foot-paths.' (IFE05, 95; cf IFE32, s.90) 'A Bridle road is generally a footpath but the initials *B.R.* take precedence over the initials *F.P.*' (IPEA37, s.32) The OS abandoned the use of the term in the late 1940s and the abbreviation was thereafter omitted from published National Grid mapping (notably the 1:25,000). (cf RB52, C54) As with footpaths, it should be noted that the description 'Bridle Road' is a physical description.

***Footpaths***

From 1883 onwards footpaths were shown by 'F.P.', 'the object of... F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic'. (SC, 16:2:83)

In 1893 it was specified that 'all footpaths over which there is a well known and undisputed public right of way' were to be shown and also 'private footpaths through fields (but not in gardens)... if they are of a permanent character. This will generally be indicated by their being made or gravelled or provided with stiles and footgates... all gravelled and paved paths in public parks, gardens and recreation grounds... the principal paths in market and allotment gardens... should be shown... Mere convenience footpaths, for the use of a household, cottage or farm, or for the temporary use of workmen, should not be shown, but paths leading to any well-defined object of use or interest, as to a public well, should be shown... Private paths in woods... [and] temporary cart tracks should not be shown.' (SC, 7:7:1893)

***Paths within grounds, parks, etc.***

Only 'the major made paths' were to be shown in public gardens, parks and cemeteries by 1963, (RB63, B66) though on the 1:1056 and 1:500 they all appear to have been mapped.

Earlier practice showed some minor variations, though some may have been as much semantic as real. In 1932 only the principal paths were to be shown in private gardens of 5 acres or more in extent. (IFE32, s.76) Metalled paths were to be shown in cemeteries and public gardens of any size, but only in private gardens over 8000 square metres in extent. (RB52, C54, Amt.19) 'Paths in woods will not be shown unless they are plainly marked and there is evidence of constant use. Only the principal shooting rides of permanent character will be shown. Fire slashes and breaks will be treated as clearings.' (RB52, C54) In mid 2002 there was a 'clarification' from OS that only 'significant paths', *i.e.* 'main access paths', should be recorded within 'office complexes, schools and so on' (OSIP02).

***On small scale maps:*** Except on early 1:25,000 Provisional Edition sheets, no distinction between foot and bridle ways has been made on those maps which do not carry public rights of way information. The depiction of paths on Old Series sheets seems haphazard (cf Hodson, 1999, 119-20); they have been part of the specification of the 1:63,360 and 1:50,000 since the

By the 1950s carriage drives were to be shown in public gardens, and also in private gardens of 8000 square metres or greater extent if the drive was more than 40 metres in length. (RB52, C52)

***Classification of roads by administrative status*** was practised from 1884 onwards. 'All metalled public roads for wheeled traffic kept in good repair by highway authority ['includes county, district and parish surveyors'] will in future be shaded.' (SC, 25:6:1884)

'The object of this instruction is to enable the draftsman preparing the 1" map to distinguish by proper characteristics between carriage roads and cart tracks, or disused carriage roads, and also to distinguish between these and bridle roads and foot paths.' (*Ibid.*)

By 1896 roads were to be classed as first or second class according to whether they were Main or District roads, as classified by the surveyors to Rural District Councils; other roads were to be classed as second class if they were metalled and 'kept in good repair'. (CB) 'Good repair' meant that 'it should be possible to drive carriages and light carts over them at a trot.' (IFE05, 85) Both first and second class roads are shown on the published maps in the same way, by 'shading' one side. Third class metalled and unmetalled roads are shown without such shading.

The abolition in November 1912 of 'shading' for the 1:2500 ended this system at that scale, but it was retained for the 1:10,560, and continued to appear on the National Grid Provisional Edition. In 1932 metalled roads were divided into three classes. First class roads were 'Main roads, generally leading from town to town, metalled and kept in good repair, exclusive of edges and footway, of 18 feet' [about 5.5 metres]. Second class roads were 'in good repair, fit for fast traffic at all seasons. This class will, as a rule, include roads between villages, or between villages and towns, or between one first class road and another, with 14-feet [about 4.3 metres] or more of metalling... no road should be shown as second class unless throughout the part so shown it is fit for fast wheeled traffic at all seasons.' Third class roads were all other metalled 'public' roads. (IFE32, s.79)

***Cycle tracks or paths*** alongside roads were to be mapped. (IFE32, amendment to s.82; cf OSIP02)

***Drives across sidewalks:*** 'The "drive-in" which crosses a made sidewalk will be shown only if the line of road kerb is broken and the edges of the "drive-in" are defined by a kerb complete from roadway to gate or gap in the boundary fence of the road.' (RB52, C52) By 1963 they were only shown when the kerb is continued across the sidewalk or verge or the kerb line is broken. (RB63, B57)

***Dual carriageways:*** in 1952 it was stipulated that dividing strips were to be shown, if necessary, a minimum of 1 metre wide at 1:1250 and 1.4 metres wide at 1:2500. (RB52, C57) 'Where scrub or trees have been planted on traffic islands or between dual carriageways, the symbols will be shown only if they do not obscure the limits of the island or strip.' (BB69, B29; cf RB52, C57)

***Elevated roads:*** normally only the following detail is shown beneath the road alignment: '(a) the outline of the carriageway of public roads, public paths and important named buildings, where this cannot be inferred...; (b) bench marks, permanent [survey] control and boundary symbols.' (RB63, B58)

***Fords:*** in 1932 fords were to be shown when over 10 links [about 2 metres] in width. (IFE32, s.137) In 1952 fords were to be shown by double pecked lines joining the limits of the approach roads. (RB52, C60)

***Gates:*** 'All gates and toll gates across roads and tracks will be shown closed.' (RB63, B60) See also the separate section on *Gates*.

A solid line across a thoroughfare may reasonably be interpreted as a gate, though the writer is not aware of any specific instruction which confirms this.

Gates on 1:25,000 and smaller-scale maps are indicated by a discreet 'bar' across the road.

| | | |
|---|---|---|
| | Richard Lillington (2) | 50 - 53 |
| | David Wright | 54 - 55 |
| | Simon Reid | 56 - 59 |
| | Mark Buswell | 60 - 63 |
| | Andrew Simkins | 64 - 67 |
| | Garrett Felton | 68 - 71 |
| | Jonathan Canning | 72 - 75 |
| | George Stepney | 76 - 78 |
| 8. | Chart of Vehicular User Evidence | TRF 8.1 |

## APPENDIX 7 – USER EVIDENCE FORMS

Appendix 7A – those attached to OMA's Statement of Case

Appendix 7B – new forms

29 NOV 2006

60.51

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

Members of the West Mids TRF have been using the route with vehicles for decades.

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..R. Lillington.. Date ..9/11/06..



Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) ..E5341..

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ..Richard Lillington..

2. Address ..51, St. Laurence Way, Bidford-on-Avon, Warwickshire B50 4FG..

Daytime Telephone ..07981 904236..

email address ..richard.lillington@delphi.com..

3. Date of Birth ..30/04/73..

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? ☑ Yes ☐ No
(See note above)
If no, please state reason; for example, infirmity or ill-health.

60.52

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

Please see highlighting on map attached.
The road path starts along a hedgeline from the Nuts Cottage end, this then follows a line around a field, alongside a ditch up to a line through a small wood. This area was graded: the last few years.
The route then follows a hedge along the side of a field. The road then continues across the middle of a further field. Then on again through another. Finally, the route turns left onto a better made (partially sealed) track into Newham.
At the start, midpoint (across field) and there are UCR signs.

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No
In that it is easily discernable,

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.



9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑
UCR with vehicular rights

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 2000 and present

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year *please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 6 times a ~~day/week/month~~/year * - although at one time during 2003/2004 I was using the route on a weekly basis as I took items unsuited roads on my way home from work every Friday afternoon.

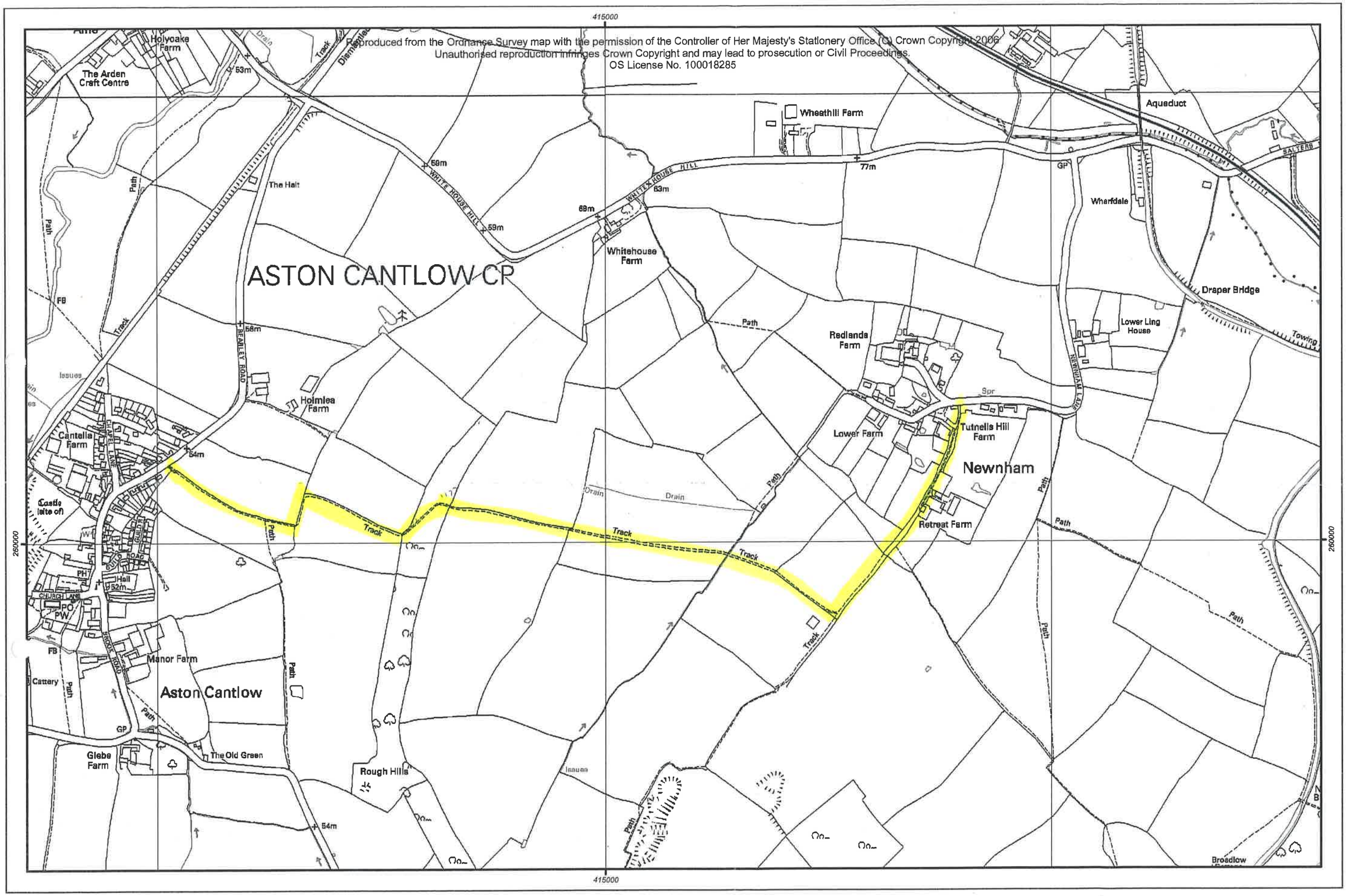
12. For what purpose did you use the route? (e.g. going to work, shopping, leisure, etc.)
leisure.

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

60.53

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2006
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.
OS License No. 100018285




| | | | |
|---|---|---|---|
| **Title:**<br>Subtitle: | ***Produced By:***<br>***Date:*** | Scale 1:8,000<br>N<br>0 62.5 125 250 375 500 Metres | This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Warwickshire County Council, 100018285, 2005 | Warwickshire County Council<br>COUNTRYSIDE RECREATION |

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☑ Yes ☐ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

VOLUNTARY RESTRAINT FROM VEHICULAR USE (LARA) SIGNS — I PUT THEM THERE WITH AGREEMENT OF PAUL WILLIAMS

17. Has there ever been an obstruction on the route? (e.g. a fence, locked gate, barbed wire, etc.) ☐ Yes ☑ No

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☑ Yes ☐ No

LARA SIGNS OF VOLUNTARY RESTRAINT.

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

WEST MIDS TRF FOR PROBABLY UPWARDS OF 30/40 YEARS.

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date 16 NOVEMBER 2006



22 NOV 2006

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) ..UCR E5341

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ..RICHARD HAWKER..
2. Address ..7 POVERTY.. ..ASTWOOD BANK, WORCS, B96 6DG..
   Daytime Telephone ..01527 893874..
   email address ..RICHARD@POVERTY.CO.UK..
3. Date of Birth ..1.1.1946..
4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above) ☑ Yes ☐ No
   If no, please state reason; for example, infirmity or ill-health.

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

MAP ATTACHED AND INDICATED BY RED ARROWS.

USED BY ME IN BOTH DIRECTIONS

THIS IS A FORMERLY UNSURFACED UNCLASSIFIED COUNTY ROAD, AND THE W.M. TRF. HAVE BEEN AWARE OF ITS NUMBER – E 5341 – BY REFERENCE TO VARIOUS COUNTY COUNCIL SOURCES, INCLUDING COUNTY ENGINEER'S RECORDS.

IT WAS CONFIRMED BY PAUL WILLIAMS AT RIGHTS OF WAY FORUM, 17 MARCH 1999, ITEM 13, "THAT E ROADS ARE VEHICULAR ROUTES ALREADY RECOGNISED AND RECORDED ON THE COUNTY HIGHWAY RECORD". THAT WOULD ALSO APPLY @ COMPTON SCORPION; THREE GATES STUD; ARLESCOMBE AND OTHERS.

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☐ No
If yes, describe their locations, or mark them on the map/sketch.
REMAINS OF A GATE @ A, BUT GATE NEVER BEEN ON SITE SINCE AT LEAST 1986 – ONLY THE POST.



9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☐

UNCLASSIFIED ROAD – VEHICULAR

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 1986 and 2005

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year *please delete as appropriate

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle APPROX 2 TO 6 times a ~~day/week/month~~/year *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

LEISURE

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

27 NOV 2006 60.56

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☑ Yes ☐ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

At the lower end of the route (roadside) it said that it was proposed that the route become a BOAT. Then a plaque was affixed calling it an unclassified county road.

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No (NOT TO MY KNOWLEDGE)
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

Members of West Midland T.R.F.

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature M P Broome Date 22:11:06



Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) E5341 Newnham Lane Aston Cantlow

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ..... M.P. BROOME .....

2. Address ..... 5, CORSTONE DRIVE, DORRIDGE, SOLIHULL .....
..... WEST MIDLANDS B93 8DJ .....
Daytime Telephone ..... 01564 774504 .....
email address .....

3. Date of Birth ..... 11.12.1944 .....

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? ☑ Yes ☐ No
(See note above)
If no, please state reason; for example, infirmity or ill-health.

60.57

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☐ Yes ☑ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle (motor-cycle) ☑ between 1990 and 2004

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 1 or 2 times a ~~day/week/month~~/year *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

LEISURE AND TO TRY TO ENSURE THE ROUTE WAS PASSABLE

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

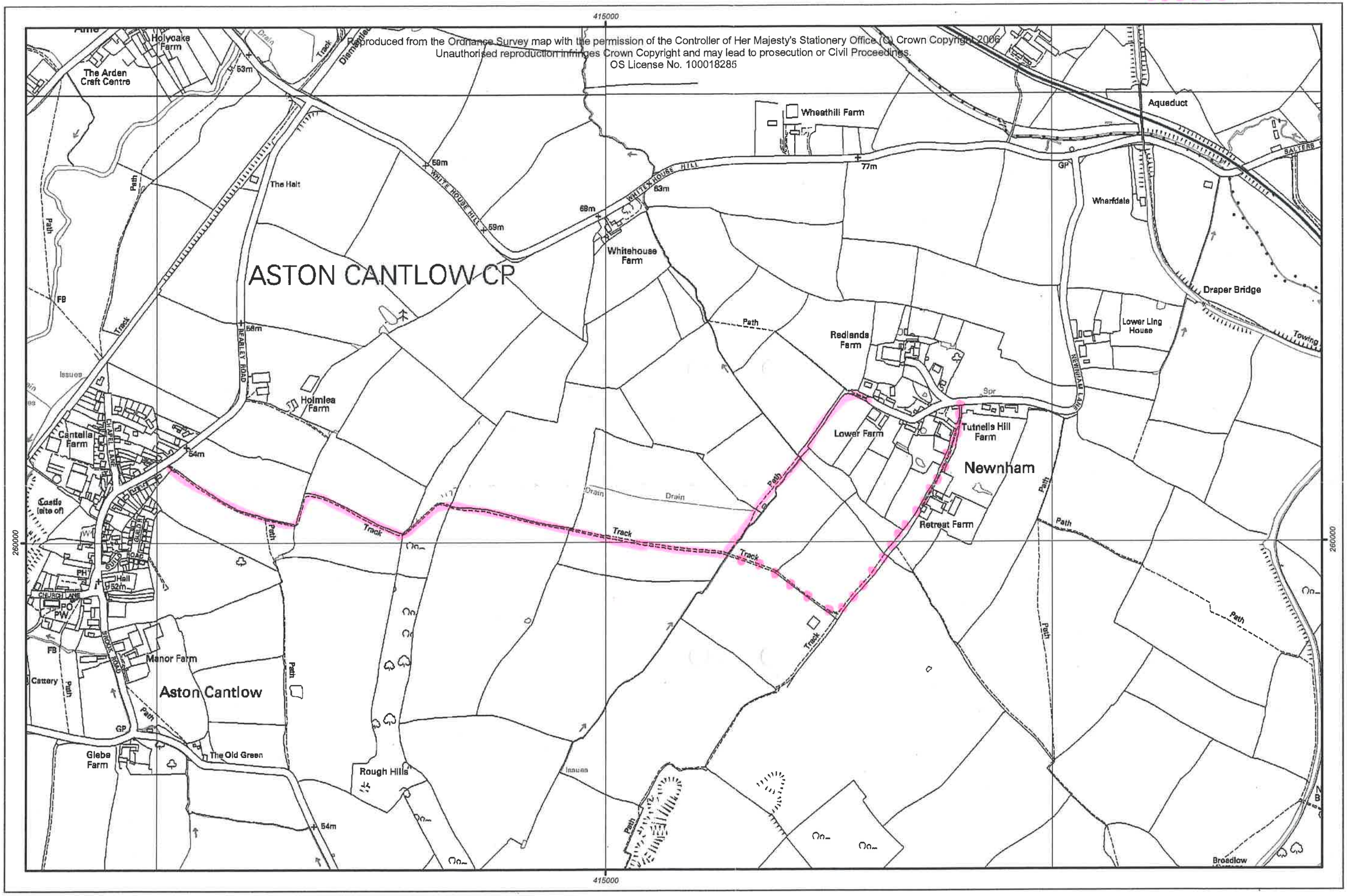


WCC Countryside Access – Witness Statement Form

Normal route
Occasional route -

60.58

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2006
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.
OS License No. 100018285




| | | | | |
|---|---|---|---|---|
| **Title:**<br>Subtitle: | ***Produced By:***<br>***Date:*** | Scale 1:8,000<br>N<br>0 62.5 125 250 375 500 Metres | This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Warwickshire County Council, 100018285, 2005 | Warwickshire County Council<br>COUNTRYSIDE RECREATION |

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

ITS KNOWN AS A UCR
AND SHOWN ON TRF MAPS
BOTH WEST MIDS TRF + WORCESTER TRF

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature T. Dinsdale Date 9.11.06.



Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) ..... E534 (U.C.R)

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ..... TIM DINSDALE .....

2. Address ..... 8 BERLETT CLOSE .....
..... WORCESTER WR3 7NL .....

Daytime Telephone ..... 07929 340280 .....

email address ..... timothydinsdale@hotmail.com .....

3. Date of Birth ..... 8.9.63 .....

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above) ☑ Yes ☐ No
If no, please state reason; for example, infirmity or ill-health.

IF WORK PERMITS.

60.60

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

SEE ROUTE ON MAP

AS MARKED.

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☐ Yes ☑ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 2003 and 2005

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year *please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 2-3 times a ~~day/week/month~~/year *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

TRAVEL A → B.

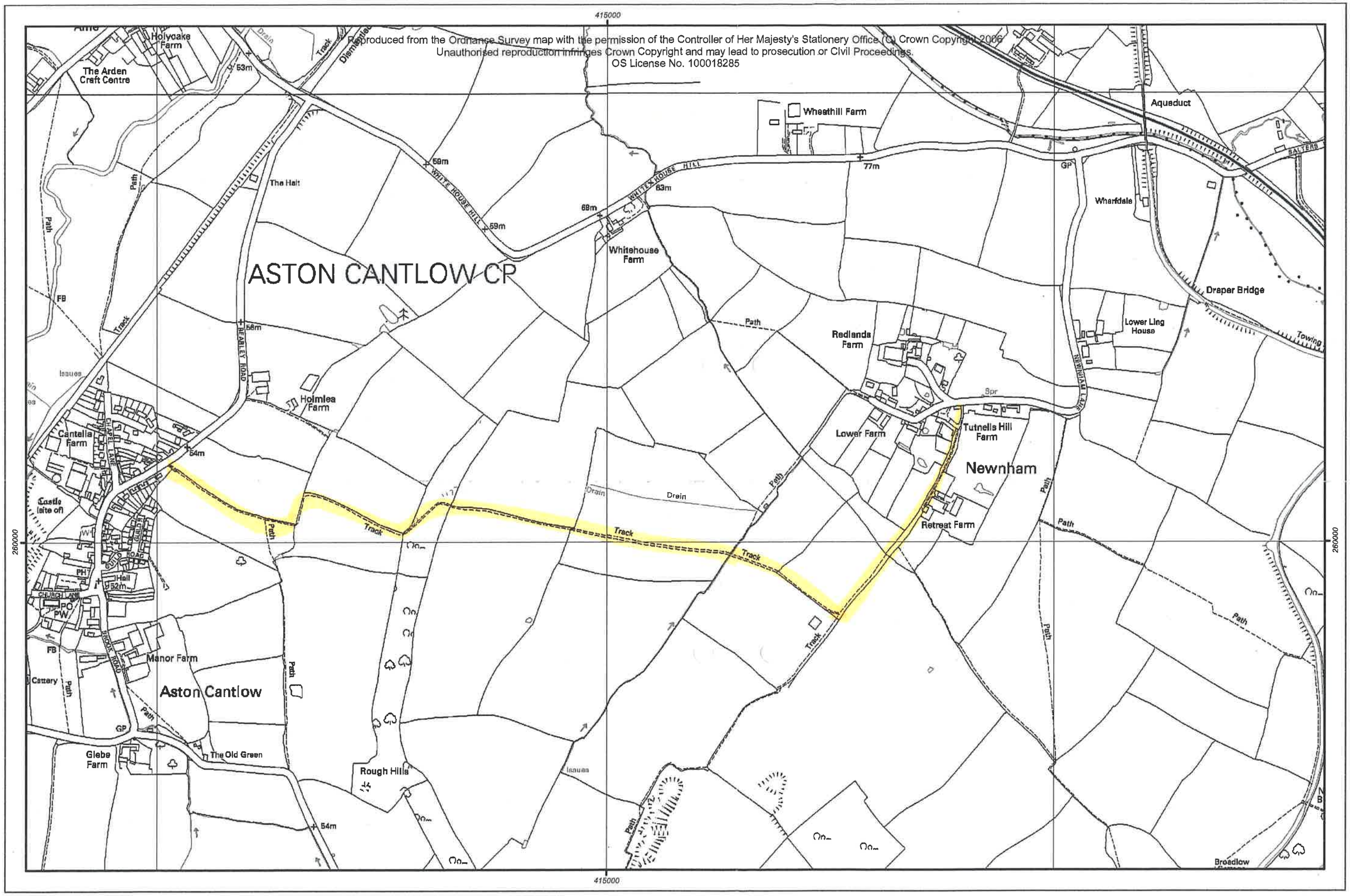
13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.



WCC Countryside Access – Witness Statement Form

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2006
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.
OS License No. 100018285




| | | | | |
|---|---|---|---|---|
| **Title:**<br>Subtitle: | ***Produced By:***<br>***Date:*** | Scale 1:8,000 N<br>0 62.5 125 250 375 500 Metres | This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Warwickshire County Council, 100018285, 2005 | Warwickshire County Council<br>COUNTRYSIDE RECREATION |

13 NOV 2006

60.62

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)
MEMBERS OF THE WORCESTERSHIRE TRAIL RIDERS FELLOWSHIP BETWEEN 1995 & 2006

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature D S ..... Date 07/11/06



Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) .....

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name DAVID JOHN GUNSTON

2. Address 54 ATCHAM CLOSE REDDITCH WORCS

.....

Daytime Telephone 07960 422523

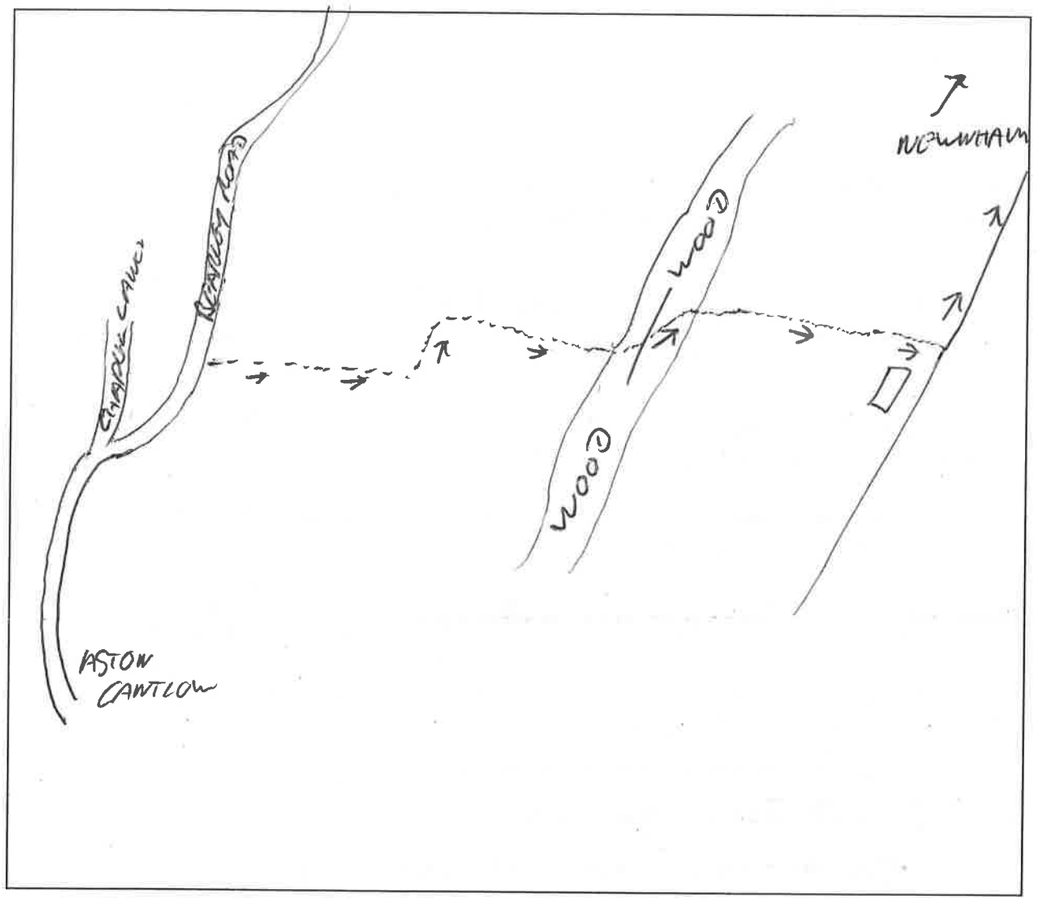
email address .....

3. Date of Birth 05/03/66

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? ☑ Yes ☐ No
(See note above)
If no, please state reason; for example, infirmity or ill-health.

60.63

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.




6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map..

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 1995 and 2006

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 5 times a day/week/month/year *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.



WCC Countryside Access – Witness Statement Form

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

SEE MAP

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☐ Yes ☑ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.



13 NOV 2006 60.64

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) E5341. NEWNHAM LANE

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

.ease complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

1. Name ... LEE PORTER

2. Address ... 65 FULBROOK CLOSE, CHURCHILL SOUTH, REDDITCH, B98 8QP

Daytime Telephone ... 01527 66500

email address ... LEE@STEALTHMOTORCYCLES.CO.UK

3. Date of Birth ... 5.5.1975

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? ☑ Yes ☐ No
(See note above)
If no, please state reason; for example, infirmity or ill-health.

60.65

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date ...6/11/06.....



9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 1999 and 2006

11. How often did you use the route during the period stated in Q.10?

on foot 1 times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 12 times a day/week/month/year *

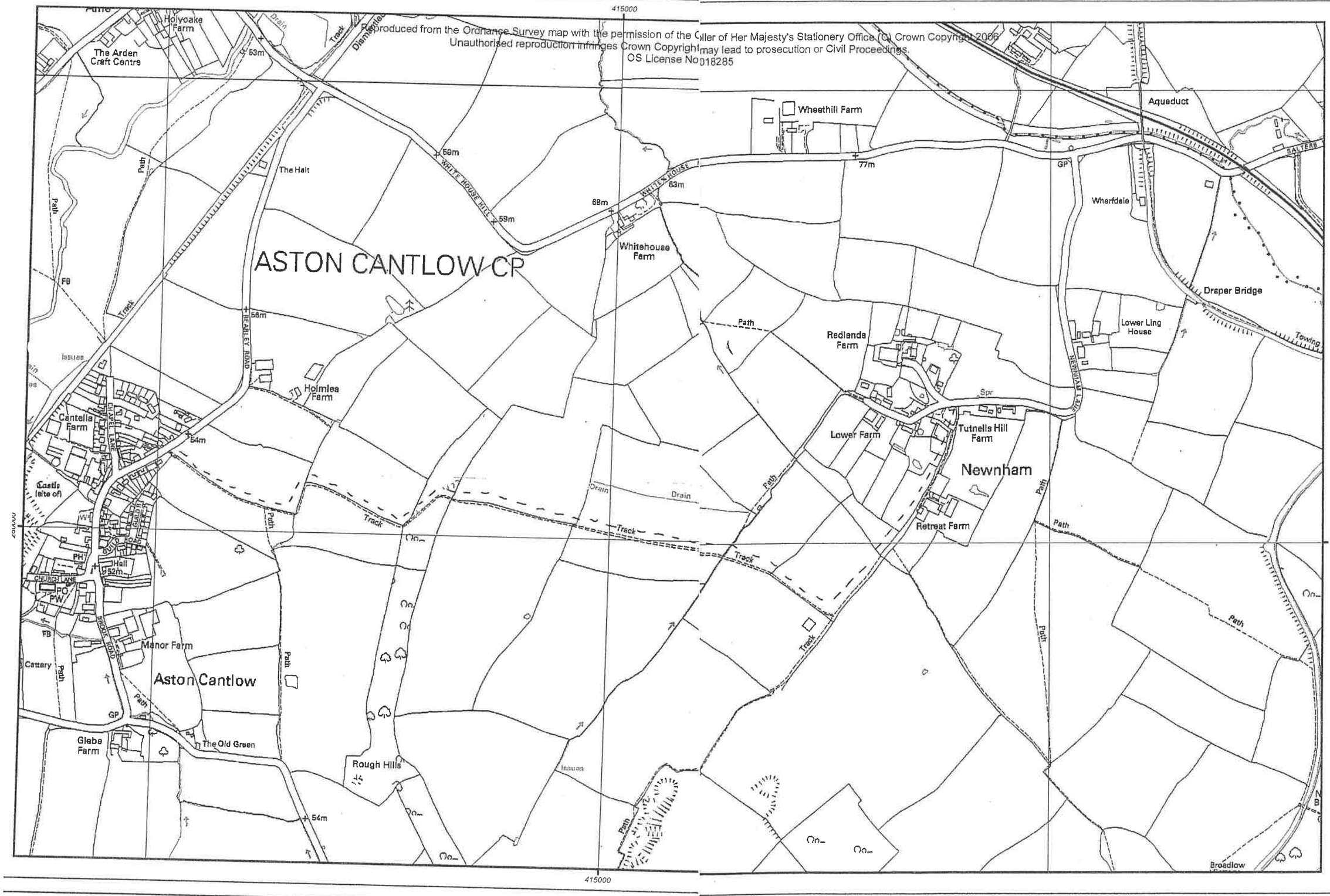
12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

LEISURE

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

60.66




**Title:** - - - - - -

Subtitle: ROUTE TAKEN

***Produced By:***

***Date:***

Scale 1:8,000

N

0 62.5 125 250 375 500 Metres

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Warwickshire County Council, 100018285, 2005

Warwickshire County Council
COUNTRYSIDE RECREATION

13 NOV 2006

60.67

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? (e.g. a fence, locked gate, barbed wire, etc.) ☐ Yes ☑ No

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date 06/11/06



Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) E5341. NEWNHAM LANE

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

1. Name MR D. HAYES

2. Address 4 ITHUXTON CLOSE, WINYATES WEST REDDITCH. WORC. B98 0JN

Daytime Telephone 07793449860

email address DENHR@BTINTERNET.CO.UK

3. Date of Birth 29/DEC/1949.

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above) ☑ Yes ☐ No
If no, please state reason; for example, infirmity or ill-health.

60.68

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

SEE MAP

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between 1983 and 2006
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☐ between 1983 and 2006

11. How often did you use the route during the period stated in Q.10?

on foot 1 times a ~~day/week/month~~/year *please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 10 ~~times a day/week/month~~/year *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

LEISURE

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.



WCC Countryside Access – Witness Statement Form

60.69

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2006
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.
OS License No. 100018285

415000

260000

ASTON CANTLOW CP

Aston Cantlow

Holycake Farm
The Arden Craft Centre
Wheathill Farm
Aqueduct
The Halt
Whitehouse Farm
Wharfdale
Draper Bridge
Lower Ling House
Redlands Farm
Holmlea Farm
Cantelia Farm
Lower Farm
Tutnells Hill Farm
Newnham
Retreat Farm
Castle (site of)
Manor Farm
Glebe Farm
The Old Green
Rough Hills
Broadlow

Track
Path
Drain
Issues
Spr
FB
GP
PH
PO
PW
Hall
Cattery

53m
59m
68m
63m
77m
58m
54m
52m

WHITE HOUSE HILL
BEARLEY ROAD
CHURCH LANE
BROOM ROAD
NEWNHAM LANE
BALTERS

415000

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Warwickshire County Council, 100018285, 2005

**Title:** ROUTE USED

Subtitle:

***Produced By:***

***Date:***

Scale 1:8,000

0 62.5 125 250 375 500 Metres

N

Warwickshire County Council
COUNTRYSIDE RECREATION

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date Nov 7th '06



13 NOV 2006

60.70

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) ...not known.....

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ..... JACK ~~HALLOWS~~ .....

2. Address ..... 10 WHITE HOUSE WAY .....
..... SOLIHULL B91 1SE .....
Daytime Telephone ..(0121) 705 7753 .....
email address .....ODDATD.AREA@WAREDATDEN.CO.UK (all lower case)

3. Date of Birth ..... Oct 15th 1931 .....

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? ☐ Yes ☑ No
(See note above)
If no, please state reason; for example, infirmity or ill-health.
I'm in the process of selling my house & we expect to be re-locating about mid-December

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

I have ridden this track twice in company with fellow members of the West Midland branch of the T.R.F., and on each occasion from west to east. I cannot recall in which years these two occasions fell, let alone on what dates. The only feature of the track that I recall is the fairly steep muddy (usually) climb up the escarpment about 500 metres from the beginning of the track. To the best of my recollection the line followed is as marked on the enclosed map

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. ~~Does~~ Did the route appear to be well ~~worn~~ used? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.
not that I recall



9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle (motorcycle) ☑ between 1985 and 1995

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle (motorcycle) ~~___ times a day/week/month/year *~~ twice in total

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

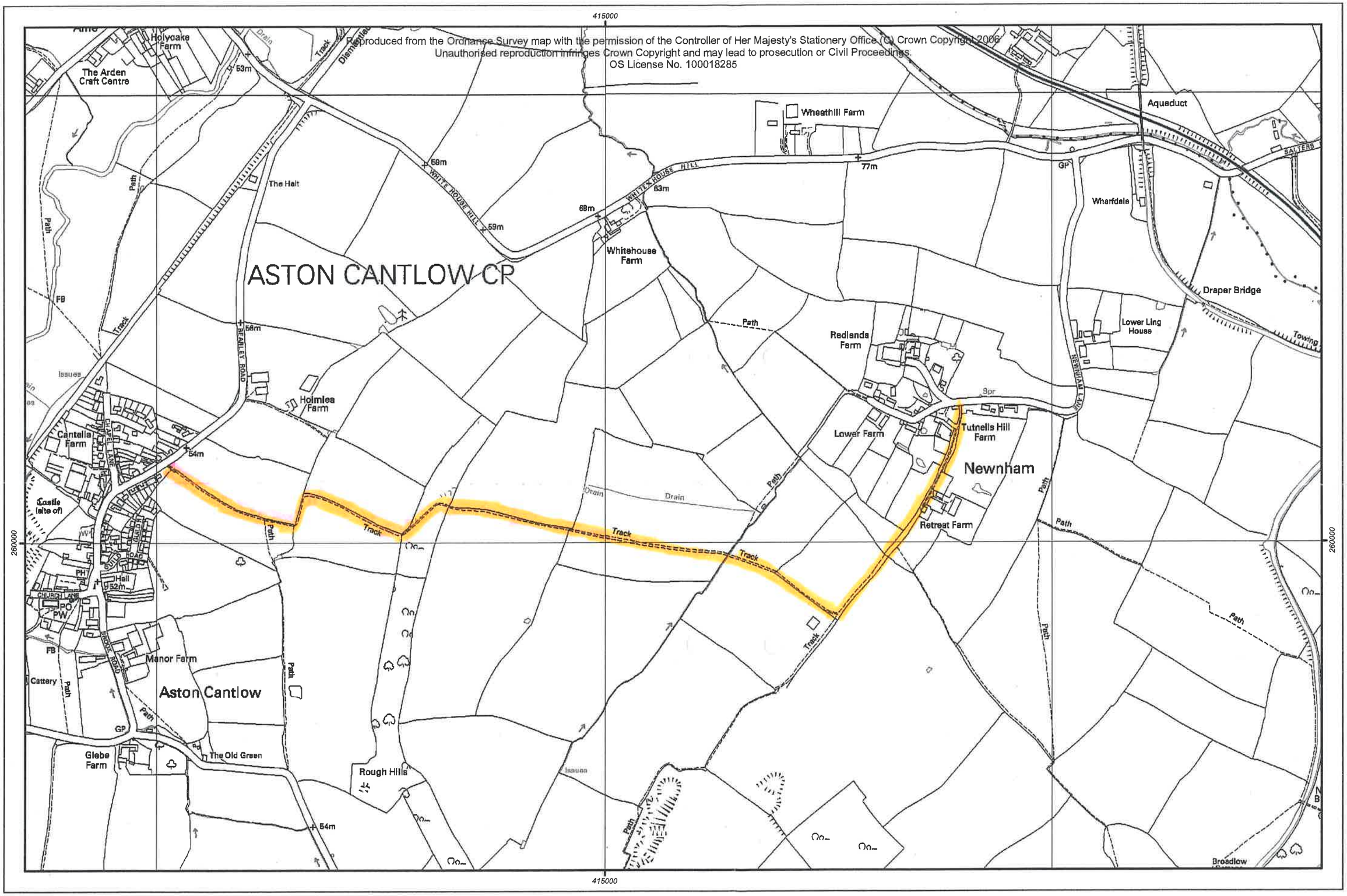
LEISURE (TRAIL RIDING WITH A GROUP OF FRIENDS)

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

60.72

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2006
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.
OS License No. 100018285




| | | | | |
|---|---|---|---|---|
| **Title:**<br>Subtitle: | ***Produced By:***<br>***Date:*** | Scale 1:8,000<br>N<br>0 62.5 125 250 375 500 Metres | This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Warwickshire County Council, 100018285, 2005 | Warwickshire County Council<br>COUNTRYSIDE RECREATION |

60.73

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form G

# Witness Statement

27 FEB 2008

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) ... E5341 Newnham Lane

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ... MR ANDRE BLOTEAU ...

2. Address ... 'FERNSIDE' 29 CAPE RD, WARWICK, WARWICKSHIRE, CV34 4JP ...

   Daytime Telephone ... 07813 936041 ...

   email address ... bloat1@tiscali.co.uk ...

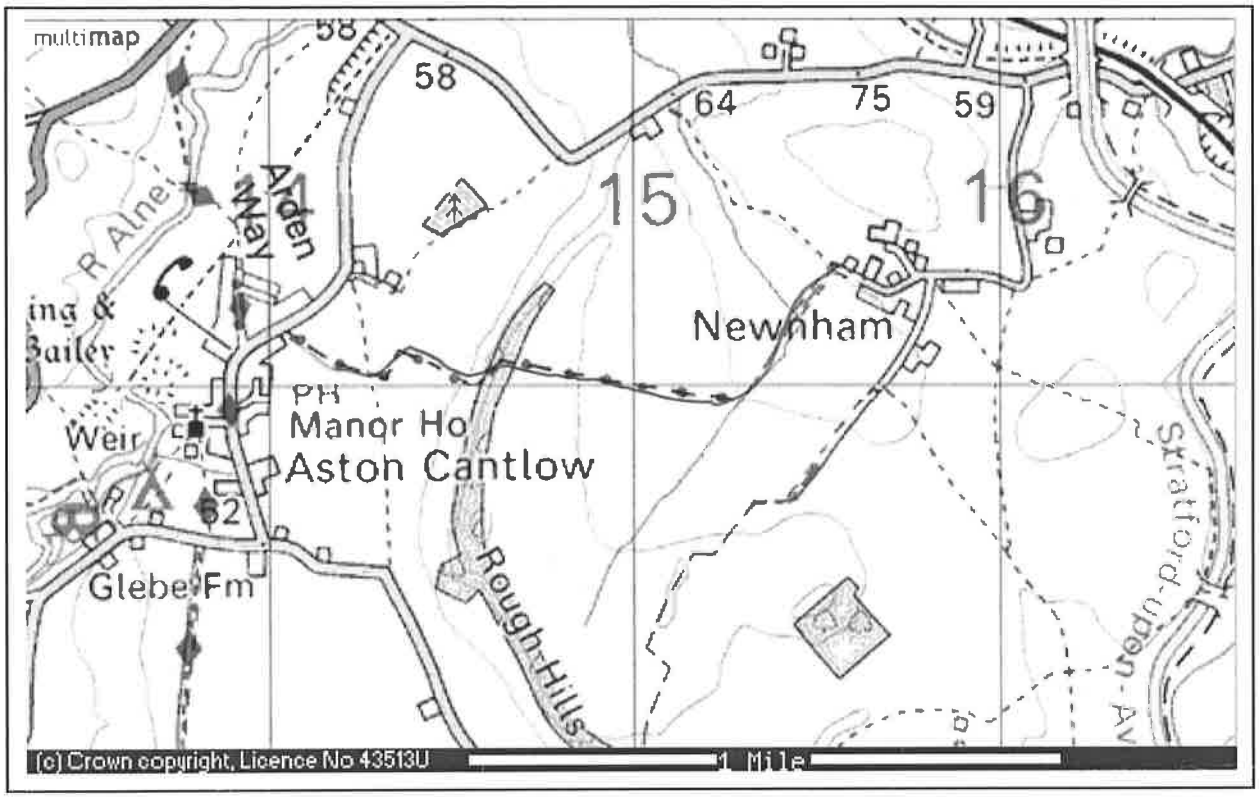
3. Date of Birth ... 07.07.61 ...

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above)
   If no, please state reason; for example, infirmity or ill-health.

   ☑ Yes ☐ No

60.74

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.




The route is that of the E5341 on the List of Street of Warwickshire County Council.

6. Have you always followed the route described above?

If the route was different at any time, please describe the changes, or mark them on the above map.

☑ Yes ☐ No

7. Does the route appear to be well worn?

☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use?
If yes, describe their locations, or mark them on the map/sketch.

☐ Yes ☑ No

60.75

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- A public road or byway* open to all traffic ☑
  (*open to vehicles, but mainly used by pedestrians and/or horseriders)?

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 2006 and 2007

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year *please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 2 times a day/week/month/year *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

LEISURE

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☐ No

N/A

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ... A.T. Blutcher ... Date ... 05.02.08

60.77

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) …F5341 Newnham Lane

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name …ROBERT CHANCE

2. Address …9, CRANHILL CLOSE, SOLIHULL, WEST MIDS B92 8RX

Daytime Telephone …0777 0111 6

email address …X

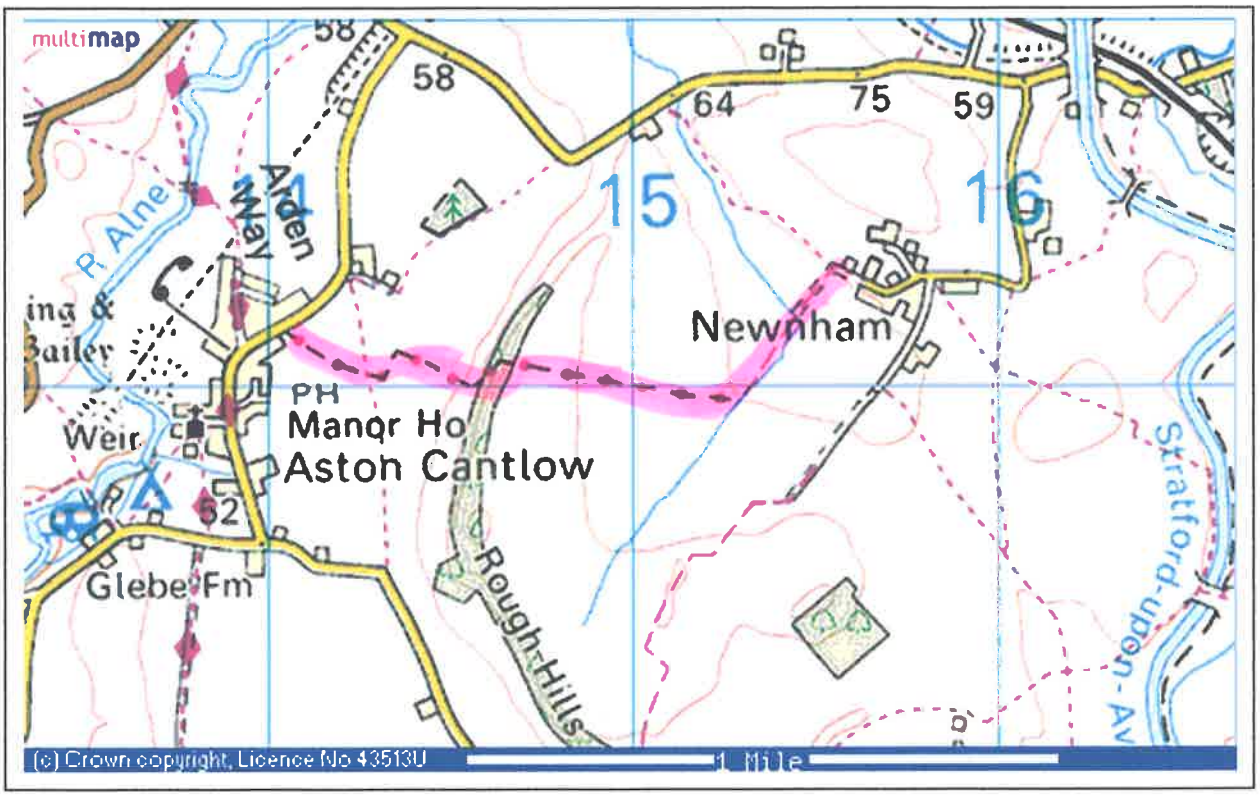
3. Date of Birth …9/4/47

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above) ☑ Yes ☐ No

If no, please state reason; for example, infirmity or ill-health.

60.78

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.




The route is that of the E5341 on the List of Street of Warwickshire County Council.

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- A public road or byway* open to all traffic (*open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 1996 and 2008

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 2/3 times a ~~day~~/~~week~~/month/~~year~~ *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

LEISURE

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land?

☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. (What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date ....5/02/08.....

60.81

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

W.C.C. COUNTRYSIDE ACCESS
27 FEB 2008

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) …E5341 Newnham Lane

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name PAUL TAYLOR

2. Address 133 SUMMERFIELD ROAD SOLIHULL
WESTMIDLANDS B92 8PZ

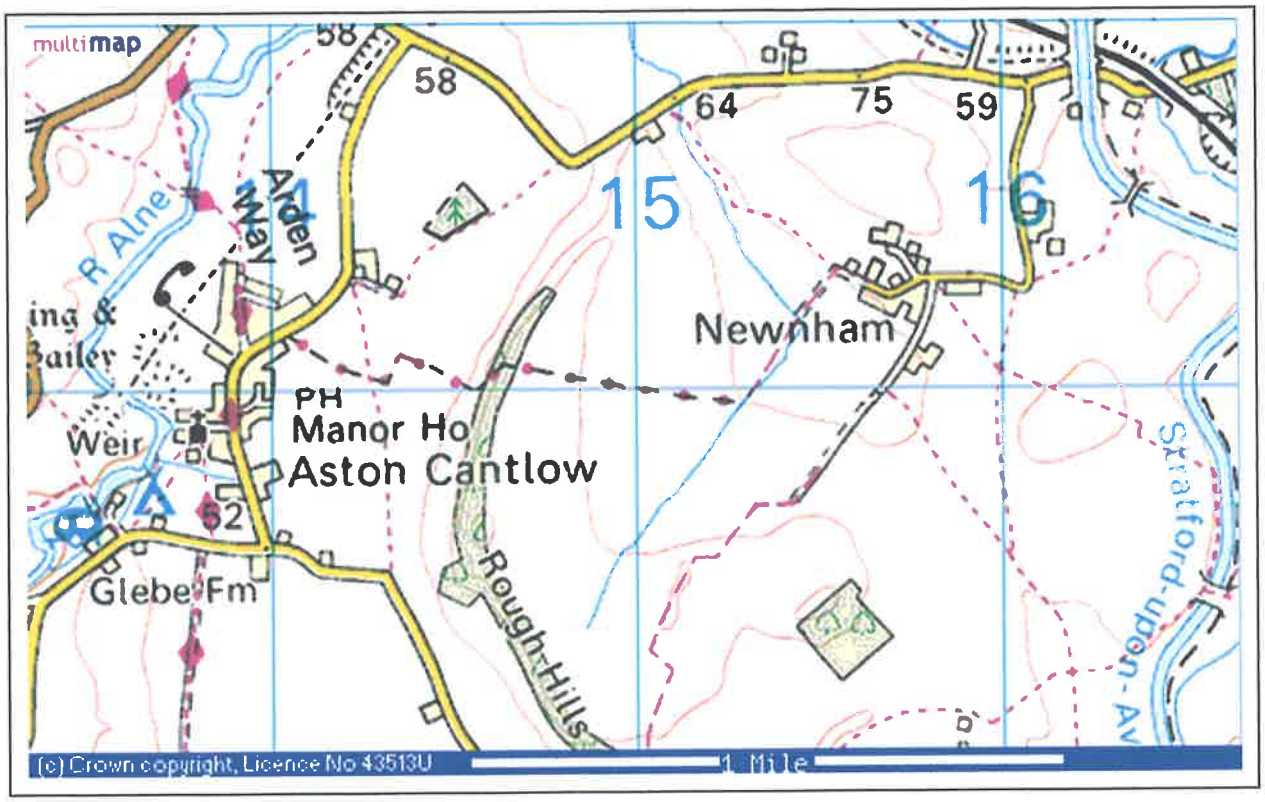
Daytime Telephone 07747754671

email address A

3. Date of Birth 18/5/1964

4. **Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above)** ☑ Yes ☐ No
If no, please state reason; for example, infirmity or ill-health.

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.




The route is that of the E5341 on the List of Street of Warwickshire County Council.

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

60.83

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- A public road or byway* open to all traffic ☑
  (*open to vehicles, but mainly used by pedestrians and/or horseriders)?

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 2001 and 2008

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 3 times a ~~day~~/~~week~~/month/~~year~~ *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.) LEISURE

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land?

Yes ☐ No ☑

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

60.84

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. (What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date 6/2/2008

60.85

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

27 FEB 2008

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) …E5341 Newnham Lane

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name …STEPHEN JOHN LUPTON

2. Address …58 GERARD ROAD

ALCESTER WARWICKSHIRE B49 6QQ

Daytime Telephone …01527 63676 work

email address …S.J.Lupton@apuleandson.co.uk

3. Date of Birth …06/12/68

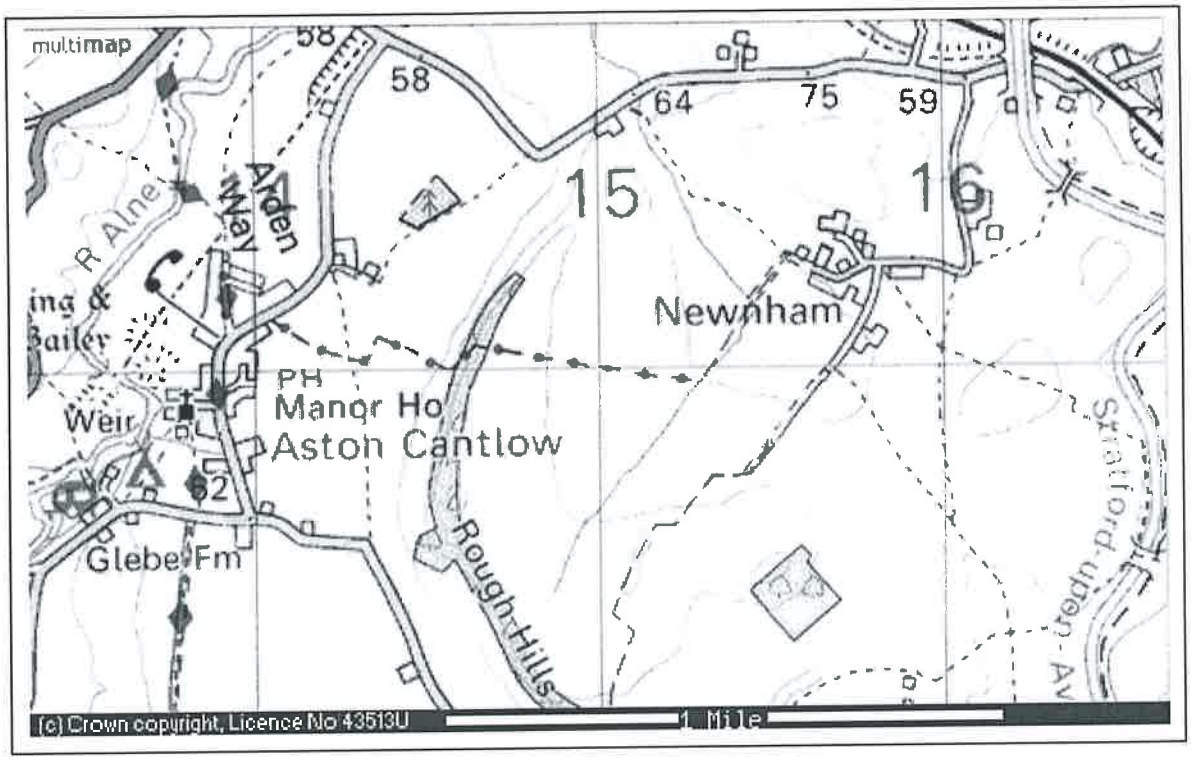
4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above)
If no, please state reason; for example, infirmity or ill-health.

☑ Yes ☐ No

33

60.86

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.




The route is that of the E5341 on the List of Street of Warwickshire County Council.

6. Have you always followed the route described above?

If the route was different at any time, please describe the changes, or mark them on the above map.

☑ Yes ☐ No

7. Does the route appear to be well worn?

Middle of route section only.

☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use?
If yes, describe their locations, or mark them on the map/sketch.

☐ Yes ☑ No

60.87

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- A public road or byway* open to all traffic (*open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☑ between 2005 and 2007
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 2006 and 2007

MOTOR BIKES

11. How often did you use the route during the period stated in Q.10?

on foot 3X ~~times a day/week/~~month/~~year~~ *please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 2 times ~~a day/week~~/month/~~year~~ *

12. For what purpose did you use the route?
(e.g. ~~going to work, shopping,~~ leisure, ~~etc.~~)

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land?

☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

60.88

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

except Route is clearly marked & signed as an unclassified Road.

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.,

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date 18/1/08.....

WCC Countryside Access – Witness Statement Form

60.89

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

27 FEB 2008

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) ...E5341 Newnham Lane

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name Peter Gulson

2. Address 43 Haywood Road
Tyle Cross, West Midlands

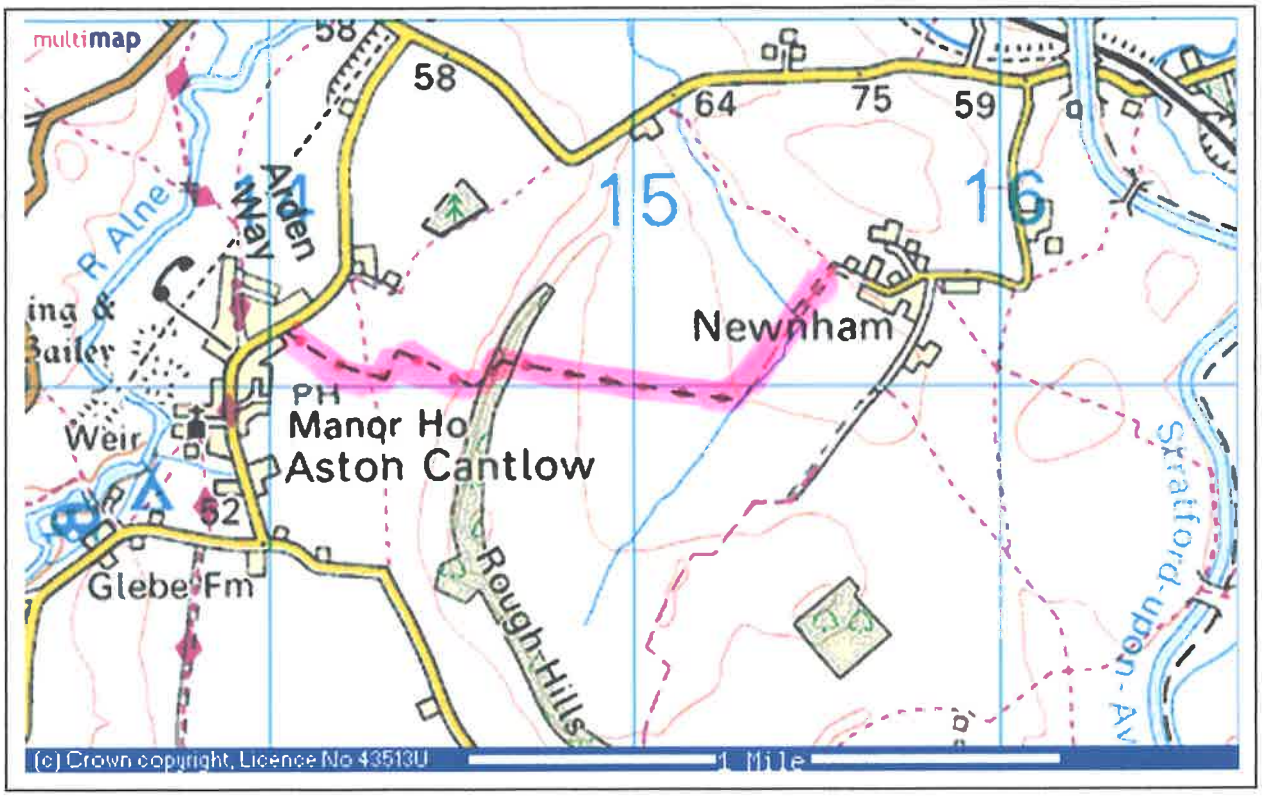
Daytime Telephone 07909889140

email address .....

3. Date of Birth 12-1-69

4. **Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above)** ☑ Yes ☐ No
If no, please state reason; for example, infirmity or ill-health.

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.




The route is that of the E5341 on the List of Street of Warwickshire County Council.

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

60.91

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- A public road or byway* open to all traffic ☑
  (*open to vehicles, but mainly used by pedestrians and/or horseriders)?

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 1999 and 2008

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 2-3 ___ ~~times a day/week~~/month/~~year~~ *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

leisure

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land?

☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

60.92

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route?
(e.g. a fence, locked gate, barbed wire, etc.) ☐ Yes ☑ No

If yes, please give details. (What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date 17-1-08

60.93

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form G

# Witness Statement

W.C.C. COUNTRYSIDE RECREATION 27 FEB 2008

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) …E5341 Newnham Lane

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ..... DAVID WRIGHT

2. Address ..... 46 GERARD ROAD

..... ALCESTER WARKS B49 6QQ

Daytime Telephone ... 01789 764175 or 07971 269388

email address ..... ~~DAVID.WRIGHT~~ DAVID@GERARD-WAIN-FSNET.CO.UK

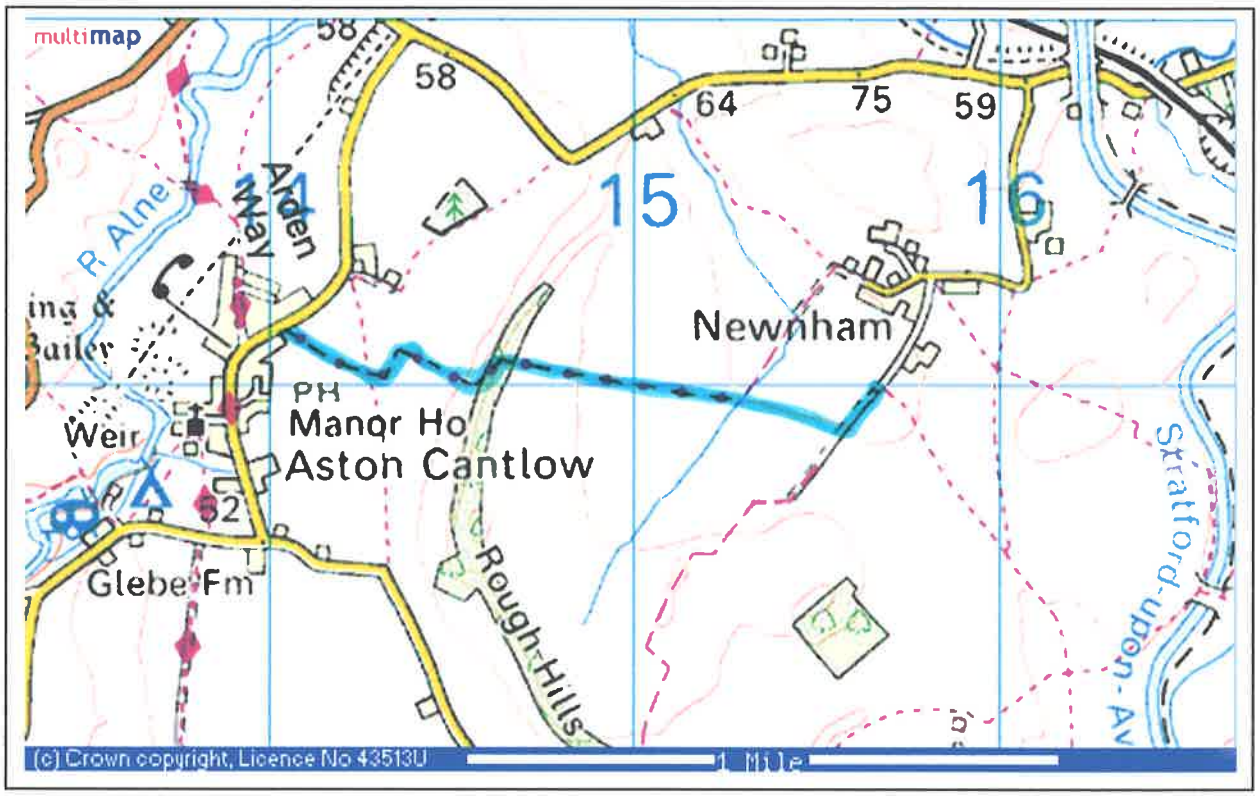
3. Date of Birth ..... 27TH MARCH 1957

4. **Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above)** ☑ Yes ☐ No

If no, please state reason; for example, infirmity or ill-health.

60.94

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
**Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.**




The route is that of the E5341 on the List of Street of Warwickshire County Council.

~~[redacted]~~ ROUTE

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

60.95

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- A public road or byway* open to all traffic (*open to vehicles, ~~but mainly used by pedestrians and/or horseriders~~)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 1982 and PRESENT DAY

MOTORCYCLE

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 2 times a ~~day/week~~/month/~~year~~*

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

LEISURE & COMMUTING

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

**If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.**

60.96

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) …E5341 Newnham Lane

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

1. Name MR M. DANIEL

2. Address 15, BISHOPSTONE CLOSE
MATCHBOROUGH, REDDITCH.

Daytime Telephone 01527 500796

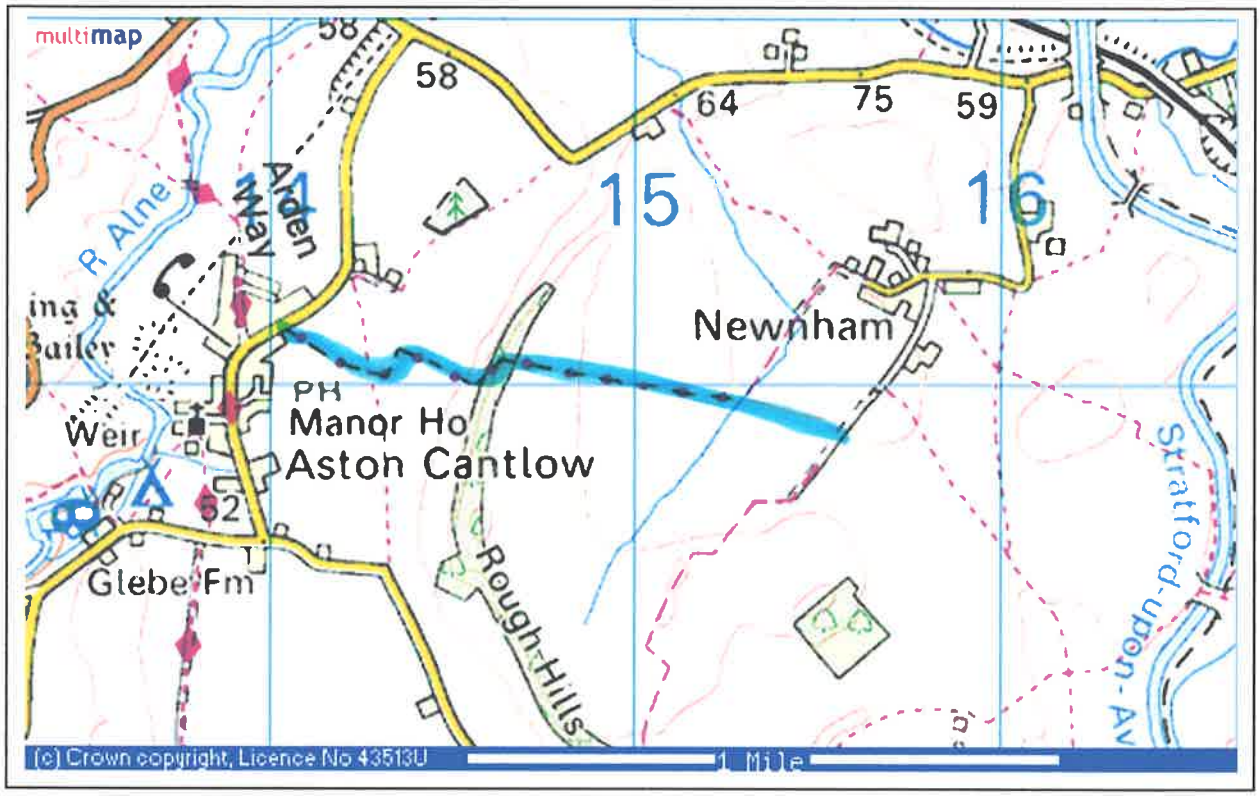
email address DANNERTIGER46@AOL.COM

3. Date of Birth 1ST MARCH 1956

4. **Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above)** ☑ Yes ☐ No
If no, please state reason; for example, infirmity or ill-health.

60.97

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
**Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.**




The route is that of the E5341 on the List of Street of Warwickshire County Council.

6. Have you always followed the route described above?

If the route was different at any time, please describe the changes, or mark them on the above map.

☒ Yes ☐ No

7. Does the route appear to be well worn?

☒ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use?
If yes, describe their locations, or mark them on the map/sketch.

☒ Yes ☐ No

14. Have you ever been given permission to use the route? ☒ Yes ☐ No

If yes, who gave you permission, and when?

County Council
See 16

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☒ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☑ Yes ☐ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

W.C.C. Unclassified Road Signs

17. Has there ever been an obstruction on the route? ☐ Yes ☒ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☒ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date 06.02.08

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- A public road or byway* open to all traffic (*open to vehicles, but mainly used by pedestrians and/or horseriders)? ☒

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- ~~in a vehicle~~ ☒ between 1982 and - Present Day.
  Motor-cycle

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a ~~vehicle~~ ___ times a ~~day/week/month/year~~ * Month
Motor-Cycle

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

Leisure & Commuting

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☒ No

**If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.**

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

BY OTHER MEMBERS OF THE MIDLAND ROVER OWNERS CWB LTD & MEMBERS OF G.L.A.S.S

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature James Savage Date 22 NOVEMBER 2006



SORRY ABOUT BOO WINE STAINS.

60.142

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) ..... E5341 .....

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ..... JAMES SAVAGE .....
2. Address ..... 32 ALDENSMORE CLOSE .....
..... REDDITCH .....
Daytime Telephone ..... 01527 524995 .....
email address ..... SAVAGEJJ@BUBYONDOL.CO.UK .....
3. Date of Birth ..... 10 MAY 1939 .....
4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? ☑ Yes ☐ No
(See note above)
If no, please state reason; for example, infirmity or ill-health.

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

SEE ATTACHED MAP.

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☐ Yes ☑ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 1985 and 2006.

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year *please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 2 times a ~~day/week/month~~/year *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

ORGANISED GREEN LANE DAY WITH A MOTOR CWB / G.L.A.S.S MEMBERS

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2006
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.
OS License No. 100018285

415000

260000

ASTON CANTLOW CP

Holycake Farm
The Arden Craft Centre
Drain
Track
Disused Pit
53m
Wheathill Farm
Aqueduct
58m
WHITE HOUSE HILL
59m
77m
63m
68m
GP
SALTERS
The Halt
Path
Wharfdale
Whitehouse Farm
FB
Track
Draper Bridge
Towing
Path
Redlands Farm
Lower Ling House
NEWNHAM LANE
Issues
REARLEY ROAD
56m
Holmlea Farm
Spr
Cantelia Farm
CHAPEL LANE
54m
Lower Farm
Tutnells Hill Farm
Newnham
OPEN FIELDS WITH HEDGE ROWS
SPARSELY WOODED AREA.
Drain
Path
Castle (site of)
Track
Retreat Farm
Path
PH
Hall
52m
CHURCH LANE
PO
PW
BROOK ROAD
FB
Manor Farm
Path
OPEN FIELDS WITH HEDGE ROWS
Catlery
Aston Cantlow
Path
GP
The Old Green
Glebe Farm
Rough Hills
Issues
54m
Path
Broadlow

415000

| | | | | | |
|---|---|---|---|---|---|
| **Title:**<br>Subtitle: | ***Produced By:***<br>***Date:*** | Scale<br>1:8,000<br>N | 0 62.5 125 250 375 500 Metres | This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Warwickshire County Council, 100018285, 2005 | Warwickshire County Council<br>COUNTRYSIDE RECREATION |

14. Have you ever been given permission to use the route? ☑ Yes ☐ No

If yes, who gave you permission, and when?

CHECKED WITH R OF W AT WARWICK CC.

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☑ Yes ☐ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

YOUR UCR PLATES AT BOTH ENDS

17. Has there ever been an obstruction on the route? (e.g. a fence, locked gate, barbed wire, etc.) ☐ Yes ☑ No

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

MY WIFE HAS DRIVEN THE ROUTE TWICE IN HER OWN CAR.

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature R.K. Fairclough Date 8TH NOV. 06



15 NOV 2006

60.148

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form G

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) ..... E 5341 .....

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ..... ROGER K. FAIRCLOUGH .....

2. Address ..... 28 SUTTON CLOSE .....
..... REDDITCH WORCS. B98 0JR .....

Daytime Telephone ..... 01527 - 502912 .....

email address .....

3. Date of Birth ..... 22.11.42 .....

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above) ☑ Yes ☐ No
If no, please state reason; for example, infirmity or ill-health.

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

SEE PLAN ATTACHED

NOTES :

1) ROUTE SHOWN IN YELLOW IS CORRECT ROUTE
2) ROUTE SHOWN IN ORANGE WAS FIRST ROUTE I USED IN THE BELIEF THAT IT WAS CORRECT.
3) TRACK FROM A-B RUNS ALONGSIDE FIELD BOUNDARY, IT IS GRASS COVERED AND APPROX 9' WIDE. IT IS FLAT.
4) B TO C CLIMBS THROUGH A WOODED SECTION. THIS WAS HEAVILY RUTTED BUT HAS RECENTLY BEEN GRADED.
5) C-D IS A RAISED, GRASS COVERED, RUTTED IN PLACES, FIELD ROAD APPROX 9' WIDE.
6) D-E IS A BASIC COMPACTED SOIL ROUTE DEFINED BY RUTS
7) E-F CONSISTS OF VARIOUS MATERIALS FROM HARDCORE TO CONCRETE.

6. Have you always followed the route described above? ☐ Yes ☑ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.



9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

| | | |
|---|---|---|
| • on foot | ☐ | between _____ and _____ |
| • on horseback | ☐ | between _____ and _____ |
| • on a bicycle | ☐ | between _____ and _____ |
| • in a vehicle | ☑ | between 1992 and PRESENT |

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year *please delete as appropriate

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 4 times ~~a day/week/month/year~~ * IN ALL

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

LEISURE

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

60.150

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2006
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.
OS License No. 100018285

415000

260000

ASTON CANTLOW CP

USED THIS ROUTE ONCE.
TRAVELLING EAST REACHED
POINT D, MARKER POST INDICATED
ROUTE AHEAD B/WAY, SO I
TURNED LEFT ON WELL USED
FARM TRACK

MARKER POST AT
THIS POINT INDICATING
BRIDLEWAY GOING TOWARDS E.

A B C D E F

The Arden Craft Centre
Holyoake Farm
Wheathill Farm
Aqueduct
The Halt
Whitehouse Farm
Wharfdale
Draper Bridge
Lower Ling House
Redlands Farm
Holmlea Farm
Cantella Farm
Castle (site of)
Lower Farm
Tutnells Hill Farm
Newnham
Retreat Farm
Manor Farm
Aston Cantlow
Glebe Farm
The Old Green
Rough Hills
Broadlow

Title: E 5341
Subtitle: STATEMENT BY R.K. FAIRCLOUGH

Produced By:
Date: 8.11.06

Scale 1:8,000

0 62.5 125 250 375 500 Metres

N

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Warwickshire County Council, 100018285, 2005

Warwickshire County Council
COUNTRYSIDE RECREATION

24 NOV 2006

60.151

14. Have you ever been given permission to use the route? ☐ Yes ☑ No Not Required

If yes, who gave you permission, and when? Ro No E 5341

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)
other Members of the West Mids T.R.F.

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date ...6-11-06.....



Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) ..Rom No. E 5341.....

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ..M J WILLIAMS.....

2. Address ..Ryecot, Owletts Lane.....
..Wick Nr Pershore WR10 3PB.....

Daytime Telephone ..01386 553442.....

email address .....

3. Date of Birth ..09-04-44.....

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? ☑ Yes ☐ No
(See note above)
If no, please state reason; for example, infirmity or ill-health.

60.152

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

Route as Per Map in County Records offici
I can't remember any gates on the Road and the
base of the road was unsurfaced

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☐ between 1970 ABOUT and 1990 ABOUT

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year *please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 4/6 ___ times ~~a day/week/month~~/year *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

leisure

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.



WCC Countryside Access – Witness Statement Form

60.153

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2006
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.
OS License No. 100018285

415000

260000

ASTON CANTLOW CP

Holycake Farm
The Arden Craft Centre
53m
Track
Drain
Disused
The Halt
Path
59m
WHITE HOUSE HILL
68m
Whitehouse Farm
Wheathill Farm
77m
63m
WHITE HOUSE HILL
GP
Aqueduct
SALTERS
Wharfdale
Draper Bridge
Towing
Lower Ling House
FB
Track
REABLEY ROAD
56m
Issues
Holmlea Farm
Redlands Farm
Path
Spr
NEWNHAM LANE
Lower Farm
Tutnells Hill Farm
Newnham
Retreat Farm
Path
Cantelia Farm
54m
Castle (site of)
CHAPEL LANE
CHURCH ROAD
PH
Hall
52m
PO
PW
BROOK ROAD
Drain
Drain
Track
Track
Track
Path
Path
Path
Path
Path
Manor Farm
Aston Cantlow
Cattery
Path
GP
Glebe Farm
The Old Green
Rough Hills
54m
Issues
Path
Broadlow

415000

**Title:** Route of Road E5341 as supplied by County Record office in about 1974?

Subtitle:

***Produced By:***

***Date:***

Scale 1:8,000

N

0 62.5 125 250 375 500 Metres

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Warwickshire County Council, 100018285, 2005

Warwickshire County Council
COUNTRYSIDE RECREATION

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I am a member of the TRF (West Midlands) and we have details of members using this route during the 1970s

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature C J O'Brien Date 10/11/06



16 NOV 2006

60.154

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) ..... E5341 .....

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name CHRISTOPHER O'BRIEN

2. Address 17 OAKSLADE DRIVE, SOLIHULL, W'MIDS, B92 9QG

Daytime Telephone 0121-705-9417

email address .....

3. Date of Birth 13/11/64

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? ☑ Yes ☐ No
(See note above)
If no, please state reason; for example, infirmity or ill-health.

60.155

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

See attached map.

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☐
- Byway open to all traffic (mainly used by vehicles) ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 1999 and 2006

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year *please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 2 times a ~~day/week~~/month/~~year~~ *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

Leisure

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.



WCC Countryside Access – Witness Statement Form

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date 7-NOV-06



08 NOV 2006

60.156

Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) .....

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name ..... PETER COOKSON .....

2. Address ..... 44 BURMAN RD .....
..... SHIRLEY, SOLIHULL B90 2BG .....
Daytime Telephone ..... 0121 745 6129 .....
email address .....

3. Date of Birth ..... 28-9-48 .....

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? ☑ Yes ☐ No
(See note above)
If no, please state reason; for example, infirmity or ill-health.

60.157

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

6. Have you always followed the route described above? Yes ☑ No ☐

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? Yes ☐ No ☑

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? Yes ☐ No ☑
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 1980 and 2006

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 2 times a ~~day/week/month/year~~ * A YEAR

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? Yes ☐ No ☑

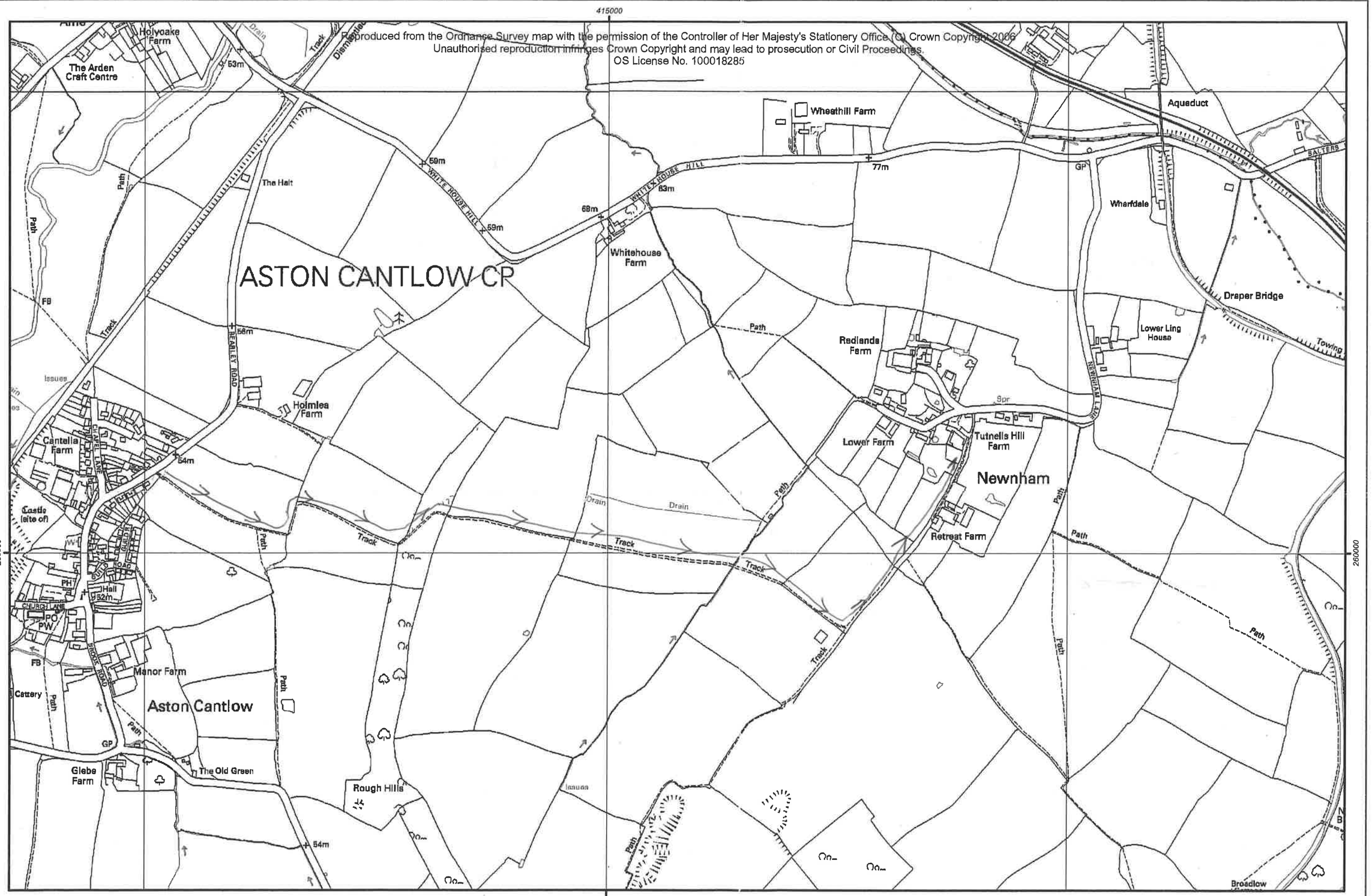
If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.



WCC Countryside Access – Witness Statement Form

60.158

Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2006
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings.
OS License No. 100018285




| | | | | |
|---|---|---|---|---|
| **Title:**<br>Subtitle: | ***Produced By:***<br>***Date:*** | Scale 1:8,000<br>N<br>0 62.5 125 250 375 500 Metres | This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office (c) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Warwickshire County Council, 100018285, 2005 | Warwickshire County Council<br>COUNTRYSIDE RECREATION |

24 NOV 2006

60.159

14. Have you ever been given permission to use the route? ☐ Yes ☑ No

If yes, who gave you permission, and when?

15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☐ Yes ☑ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

17. Has there ever been an obstruction on the route? ☐ Yes ☑ No
(e.g. a fence, locked gate, barbed wire, etc.)

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☑ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature Jonathan Hughes Date November 14th 2006



Warwickshire County Council
Countryside Access

Wildlife & Countryside Act 1981 form **G**

# Witness Statement

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) .....

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name JONATHAN HUGHES

2. Address 71 CALLOW HILL ROAD
ALVECHURCH B48 7LS

Daytime Telephone 0121 - 744 2096

email address N/A

3. Date of Birth 5/6/57

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? ☐ Yes ☑ No
(See note above)
If no, please state reason; for example, infirmity or ill-health.
YES if on MONDAY or Evening as I work for myself and cannot get away from work

5. Description and sketch map of the route.
(You may choose to attach a map extract showing the route.)
Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.

95 on enclosed Map.

have marked gates ||

6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☑ Yes ☐ No
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly used by pedestrians and/or horseriders)? ☑

10. How have you used the route, and during which years?

- on foot ☐ between _____ and _____
- on horseback ☐ between _____ and _____
- on a bicycle ☐ between _____ and _____
- in a vehicle ☑ between 1979 and 2006

11. How often did you use the route during the period stated in Q.10?

on foot ___ times a day/week/month/year **please delete as appropriate*

on horseback ___ times a day/week/month/year *

on a bicycle ___ times a day/week/month/year *

in a vehicle 5or6 times a day/week/month/year *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

LEISURE

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

used by pedestrians and/or horseriders)?

10. How have you used the route, and during which years?

- on foot ☑ between 04/07 and 11/08
- on horseback ☐ between _____ and _____
- on a bicycle ☑ between 04/07 and 11/08
- in a vehicle ☑ between 04/07 and 11/08

11. How often did you use the route during the period stated in Q.10?

on foot 6 times a ~~day/week/month/year~~ *please delete as appropriate

on horseback 0 times a day/week/month/year *

on a bicycle 1 times a ~~day/week/month/year~~ *

in a vehicle 6 times a ~~day/week/month/year~~ *

12. For what purpose did you use the route?
(e.g. going to work, shopping, leisure, etc.)

Going to work, School, leisure, shopping - our house is located on E5341 which means we use the route every time we leave / enter our house.

13. At the time when you used the route, were you, or did you work for, any land owner, occupier or tenant of the land over which the route runs, or any adjoining land? ☐ Yes ☑ No

If yes, please give details of any instructions given to you about the public using the route, and whether you regarded the route as public or private.

14. Have you ever been given permission to use the route? ☑ Yes ☐ No

If yes, who gave you permission, and when?

Current Road Signs and highway laws indicate permission. Searches of area when purchasing house indicated Route to be public highway.



Warwickshire County Council

Environment & Economy Directorate,
PO Box 43, Shire Hall,
Warwick, CV34 4SX

Wildlife & Countryside Act 1981
Definitive Map of Public Rights of Way for Warwickshire

**Witness Statement**

form **G**

W.C.C.
COUNTRYSIDE RECREATION
02 DEC 2008

Please use **ink** on this form.

Parish and/or reference number of route (*if known*) E5341.

This form should relate to one route only, and should be completed by one person only. Please make copies of this form if more are needed.

This Witness Statement will be used to help establish whether or not there is a public right of way over the route claimed, and if so, what kind of usage the route has (on foot, horseback, with vehicles).

Please complete this form as fully and carefully as possible – the more information the County Council has, the better a decision it can make.

The information you give in this form will **not** be treated as confidential. The form may be shown to any person who wishes to see it.

If the claimed path is contested (e.g. by a landowner) there may be a local Public Inquiry or Hearing. This will be held close to the location of the claimed route (e.g. in a Village Hall). User evidence is of much greater value if the witness attends in person and is prepared to answer questions on their statement. It is for this reason that you are asked if you are prepared to attend such an Inquiry (Question 4, below).

---

1. Name Richard Holmes

Address Retreat Farm
Newnham B95 6DU

Daytime Telephone 07976 685719 / 01789 488482

email address richardpholmes@mac.com

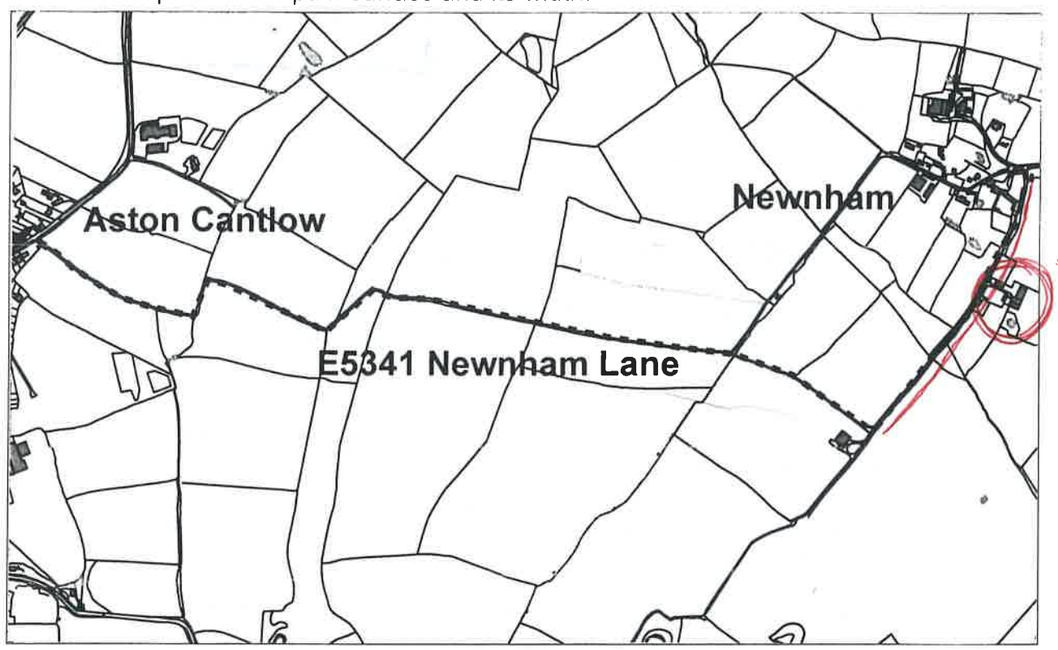
3. Date of Birth 2/10/73

4. Would you be prepared to attend a Public Inquiry or Hearing in respect of the evidence you have given in this form? (See note above) ☑ Yes ☐ No
If no, please state reason; for example, infirmity or ill-health.

60.197

5. Description and sketch map of the route (You may choose to attach a map extract showing the route.)

Describe the route fully, and mark or label the map to show where the route starts and ends, and any features, e.g. gates, hedges, fences, signs, etc. Include a description of the path surface and its width.




6. Have you always followed the route described above? ☑ Yes ☐ No

If the route was different at any time, please describe the changes, or mark them on the above map.

in Parts indicated in Red.

7. Does the route appear to be well worn? ☑ Yes ☐ No

8. Were there, or are there, any stiles, gates or bridges making the route easier to use? ☐ Yes ☑ No
If yes, describe their locations, or mark them on the map/sketch.

9. Do you believe the route to be a:

- footpath (for pedestrians only)? ☐
- bridleway (for pedestrians, horseriders and cyclists)? ☐
- byway open to all traffic (open to vehicles, but mainly ☑



15. Have you ever been stopped, or turned back, when using the route? ☐ Yes ☑ No

If yes, please give details.
(When, by whom, what was said, etc.)

16. Have you ever seen any notices on or near the route? ☑ Yes ☐ No

If yes, please give details.
(Where they were, what they said, when they were there, etc.)

highway notices - public footbath / unclassified Road etc.

17. Has there ever been an obstruction on the route? (e.g. a fence, locked gate, barbed wire, etc.) ☐ Yes ☑ No

If yes, please give details. ( What/where/when)

18. Did any notice or obstruction stop you using the route? ☐ Yes ☐ No

19. Please give any further information about the route.
(e.g. other people who have used it, land ownership, etc.)

As we live on the route we see approx traffic as follows:-
offroad leisure vehicles = 1/week.
Horses = 6/day
Other vehicles incl. ours = 8-10/day
Walkers = 6/day

I confirm that to the best of my knowledge and belief the information I have given is true.

Signature ..... Date 25/11/08

60.204

Application Number Witness Number (for office use only)

Warwickshire County Council

Wildlife & Countryside Act 1981
Definitive Map and Statement of Public Rights of Way for Warwickshire

form **4**

Rights of Way, Communities,
PO Box 43, Shire Hall,
Warwick, CV34 4SX

**User Evidence Form**

RECEIVED 15 AUG 2018
COMMUNITIES GROUP
LEADERSHIP TEAM

**ABOUT YOU**

Name MR. T. ARCHER

Address 'SHERWOOD ACRE'
GEORGES ELM LANE,
BIDFORD ON AVON
ALCESTER Postcode B50 4BX

Year of Birth 1958.

Have you lived at any other addresses during the time you have used the path or way?
If so, please provide details and years [full addresses are not required]

1986 - 1997 BIDFORD ON AVON.
1997 - CURRENT ADDRESS.

**ABOUT THE APPLICATION ROUTE**

How do you think the application route should be recorded?

- ☐ As a footpath (public rights on foot only)
- ☐ As a bridleway (public rights on foot and on horseback or bicycle)
- ☐ As a restricted byway (public rights on foot, on horseback or any non-motorised vehicle)
- ☒ As a byway open to all traffic (public rights for all classes of use, including motor vehicles)

Describe the application route (include start and finish points and provide OS grid references if you can)

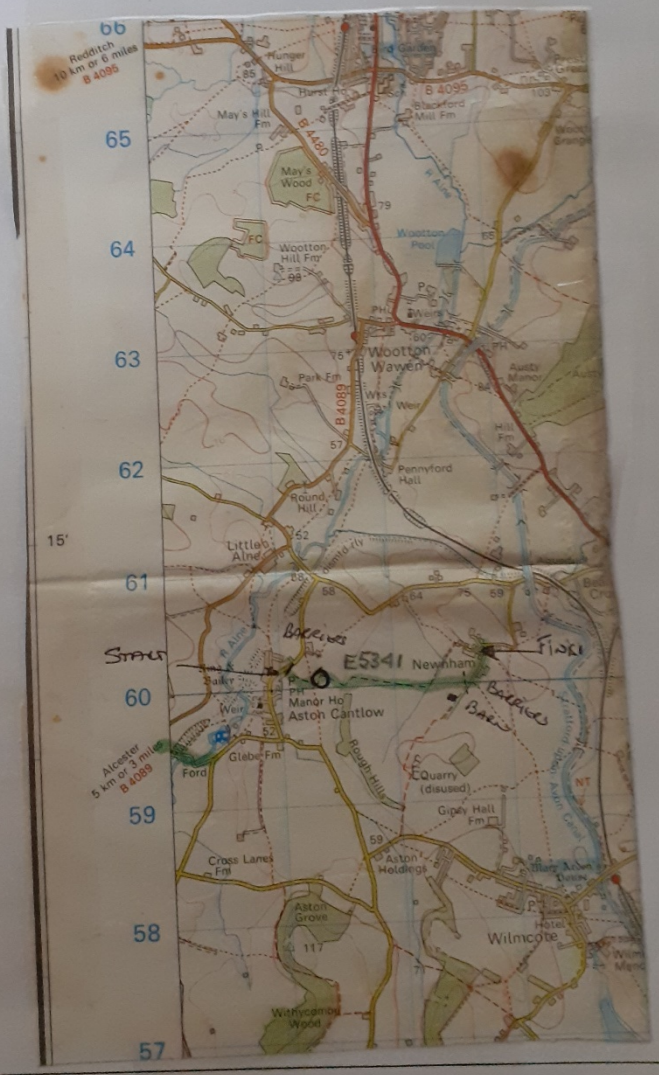
BEGINS SP1416 02 TO 15860 3. TRACK AT RIGHT ANGLE TO MAIN ROAD THROUGH ASTON CANTLOW, TRAVELLING LARGELY DUE EAST, RISING UP HILLSIDE AND LEFT INTO HAMLET OF NEWNHAM.

Application Number Witness Number (for office use only)

.....

**MAP OF THE APPLICATION ROUTE**

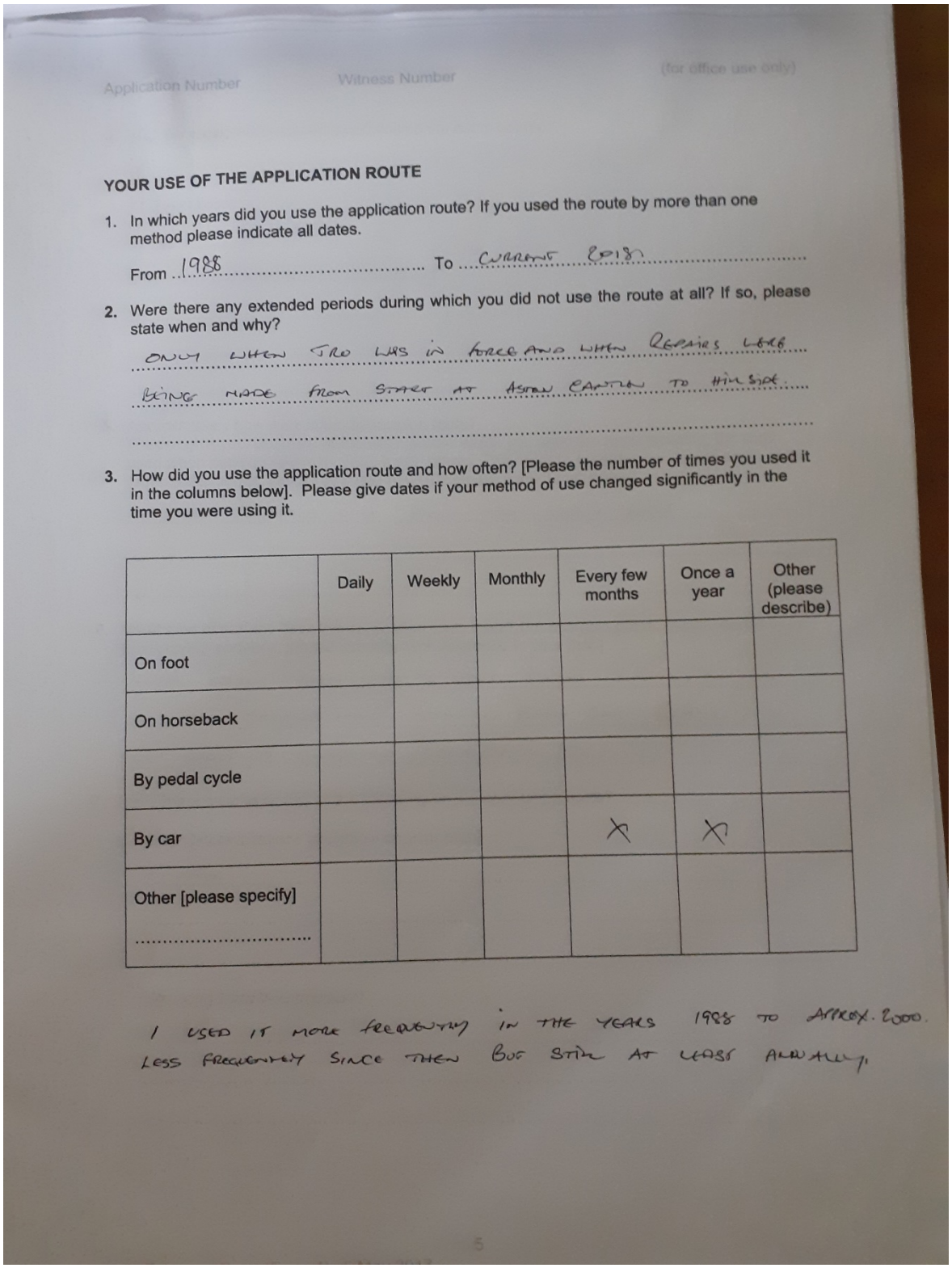
Please attach an extract from a map of your own choice to identify the route you are providing evidence about, and annotate it with anything you provide details about in this statement. Please sign and date your map.




4

User Evidence Form (Form 4) v5 May 2017

60.206



Application Number Witness Number (for office use only)

**YOUR USE OF THE APPLICATION ROUTE**

1. In which years did you use the application route? If you used the route by more than one method please indicate all dates.

   From 1988 To CURRENT 2015

2. Were there any extended periods during which you did not use the route at all? If so, please state when and why?

   ONLY WHEN JRO WAS IN FORCE AND WHEN REGATTAS WERE BEING MADE FROM START AT ASTON CANTLOW TO HIM SIDE

3. How did you use the application route and how often? [Please the number of times you used it in the columns below]. Please give dates if your method of use changed significantly in the time you were using it.

| | Daily | Weekly | Monthly | Every few months | Once a year | Other (please describe) |
|---|---|---|---|---|---|---|
| On foot | | | | | | |
| On horseback | | | | | | |
| By pedal cycle | | | | | | |
| By car | | | | X | X | |
| Other [please specify] ..... | | | | | | |

I USED IT MORE FREQUENTLY IN THE YEARS 1988 TO APPROX. 2000. LESS FREQUENTLY SINCE THEN BUT STILL AT LEAST ANNUALLY.

60.207

Application Number Witness Number (for office use only)

4. Has the application route always followed the same course?

☒ Yes

☐ Don't know

☐ No

If no – how and when was the route altered?

.....

.....

.....

5. Approximately how wide is the application route?
[Please give your estimate of the width across which you used the route including the width used when passing others or using it with others. Take care to consider the overall width of the route. If this varies, please describe how] [Or please state 'Don't know']

APPROX. 3 METRES WIDE ALONG THE WHOLE ROUTE.

.....

.....

6. What type of surface does the application route have? (for example grass, gravel, earth)
[For varying surfaces, please describe with reference to your map]

IN THE EARLY YEARS JUST A HARD EARTH SURFACE, SOFTER

ON THE SECOND HALF TOWARD BARN. SINCE REPAIRS THE

FIRST HALF IS COMPACTED STONE/GRANICL/GRIT.

7. Have there ever been any of the following on the application route?

a. Stiles [state locations and show on your map]

N/A.

.....

.....

How long were they in place?

N/A

.....

.....

6

User Evidence Form (Form 4) v5 May 2017

Application Number Witness Number (for office use only)

b. Gates [state locations, indicate whether locked – and when - and show on your map]

NO

c. Other barriers [state what they were and location, how long they were in place and show on your map]

BARRIERS LEFT ON PLACE AFTER CESSATION OF T.R.O AND AT BOTH ENDS OF LANE. FOR A FEW MONTHS. DIFFICULT TO MOVE AS WATER FILLED.

8. Did any of the above prevent you from using the application route?

☐ No

☒ Yes

If yes, please give details

THE BARRIER AT THE START WAS DIFFICULT TO MOVE AND IMPASSABLE OTHER THAN BY FOOT/BICYCLE OR HORSE. PLASTIC BARRIER, WHITE OR RED, WATER FILLED. VERY HEAVY!

9. Have you ever seen any signs or notices suggesting whether or not the application route is a public right of way? (for example "Private", "Keep Out", No Right of Way "Trespassers will be Prosecuted" etc)

☒ No

☐ Yes

☐ Don't know

If yes – state when and give details, including when they were present and mark their location on your map

User Evidence Form (Form 4) v5 May 2017

60.209

Application Number Witness Number (for office use only)

**10.** Have you seen other people using the application route whilst you have been using it?

☐ No

☒ Yes

If yes, please provide any additional information about this

OVER THE YEARS A COUPLE OF LAND ROVERS, ONE JEEP, ONCE TWO MOTORCYCLES AND LAST TIME A SOLO RIDER FROM WILTSHIRE.

**Land Ownership**

**11.** Were you working for any owner or occupier of land crossed by the application route at the time when you used it, or were you then a tenant / licensee of any such owner?

☒ No

☐ Yes

If yes, provide details and dates

**12.** Did the owner or occupier ever give you permission (or did you seek permission) to use the application route?

☐ No

☐ Yes N/A

If yes,

a. From whom? .....

b. When? .....

60.210

Application Number Witness Number (for office use only)

**13.** Has anyone ever told you the application route was not public (including by an owner, tenant of the land or by anyone in their employment)?

☒ No

☐ Yes

If yes, by whom and when?

.....

.....

.....

**14.** Have you ever been stopped or turned back when using the application route?

☐ No

☒ Yes

If yes, please give details including when this happened

SEE ATTACHED SHEET REF Ex 1

.....

.....

**15.** Has anyone else ever told you that they were prevented from using the application route?

☒ No

☐ Yes

If yes, please give details including when this happened

.....

.....

.....

**16.** Have you ever had a private right to use the application route? (for example, an easement, private right of access, licence, etc)

☒ No

☐ Yes

If yes, please give full details, including who gave the permission, why and when

.....

.....

.....

60.211

Application Number Witness Number (for office use only)

**Other Information**

**17.** Do you have, or do you have knowledge of, any documentary evidence which is relevant to the application route or which indicates public use? (for example photographs, guidebooks, letters, sale documents, old maps, etc)

☐ No

☐ Yes

If yes – please provide details

I HAVE PREVIOUSLY SEEN AN OLD MAP WHICH SHOWED THE 'SALTWAY' RUNNING FROM THE JUNCTION OF THE FOOTPATH AND SHARP LEFT HAND BEND TO THE SOUTH TO THE JUNCTION OF THE FOOTPATH AND SHARP BEND TO THE NORTH. THE FIRST LEFT HAND BEND AND STRAIGHT TO THE RIGHT HAND BEND OF THE ROUTE, DO, I BELIEVE, FOLLOW THE HISTORIC ROUTE OF THE SALTWAY (A DISTANCE OF 100 METRES) CIRCLED IN BLACK.

**18.** Please give any further information which you consider would be helpful in reaching a decision as to whether the application route should be recorded as a public right of way?
[Continue on a separate sheet if necessary]
[If you wish to provide a separate sketch map, please do so and attach to this statement]

SEE ATTACHED SHEET Ex1a

**19.** During the investigation Warwickshire County Council may want to interview some or all of the claimants in order to gather additional information. Would you be willing to talk to an officer from Warwickshire County Council about your knowledge of the application route?

☒ Yes

☐ No

**20.** Would you be willing to attend a hearing, or public inquiry to give evidence if necessary?

☒ Yes

☐ No

**APPENDIX 7 – USER EVIDENCE FORMS**

Appendix 7A – those attached to OMA's Statement of Case

Appendix 7B – new forms

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/~~Mrs/Miss/Ms/Dr.~~) Alan Jeffers

2. Address Meadow Croft, Binton Road

Welford on Avon

CV37 8PP

3 Contact Phone Number 07765103549

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years? 7

4. Do you regard it as:
A public footpath (i.e for walkers only)…… NO

A public bridleway (i.e. for walkers and horse riders/cyclists)…… NO

A public restricted byway (i.e. for walkers, horse riders/cyclists…… NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**
If yes: a) When did you first use it? Year…2013….
b).When did you last use it? Year…2020….
During this period have there been any years when you have not used it? **Yes**
If yes, which years were they and why? Years Part of 2016 -2017 _____
Reason: Temporary TRO was in place

6. Do you still use the Road? **Yes/~~No~~**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above | to | As Above |

8. Where were you going to: Newnham/~~Aston Cantlow~~

and from: ~~Newnham~~/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | | 7 per year |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

***12.*** Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present? 2016 / 2017

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way? **No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?
**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **No**

If so, what if anything did they say to you?

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes/~~No~~***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:**



**Date:**

**02/11/22**

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) MR. ALECK COULSON

2. Address 29 LONGFELLOW CLOSE

REDDITCH WORCS B97 5HW

3 Contact Phone Number 01527 546447

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes** ✓ OVER 25YRS
If yes, for how many years?

4. Do you regard it as:
A public footpath (i.e for walkers only)..... NO

A public bridleway (i.e. for walkers and horse riders/cyclists)..... NO

A public restricted byway (i.e. for walkers, horse riders/cyclists..... NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**
If yes: a) When did you first use it? Year.....1994
b).When did you last use it? Year....2021
During this period have there been any years when you have not used it? **No**
If yes, which years were they and why? Years _____
Reason:_____

6. Do you still use the Road? **Yes/~~No~~**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years 25 + | As above | to | As Above |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?*

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | | ✓ |

*If less than once a month, please state how many times per year you used the way.

3 - 4

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

12. Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**

If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**

If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**

If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present?

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**

If yes, please give details:

Did you consider the way to be public or private? **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way?
**No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?
**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **Yes**

If so, what if anything did they say to you?

Nothing

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes/No***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:** A. C. Cousin

**Date:** 3/11/21

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) MR GARY KIRTLEY-PAINE

2. Address 23 MALT MILL CLOSE
KILSBY
RUGBY CV23 8XN

3 Contact Phone Number 0771 4725201

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years? 30+

4. Do you regard it as:
A public footpath (i.e for walkers only)..... NO

A public bridleway (i.e. for walkers and horse riders/cyclists)..... NO

A public restricted byway (i.e. for walkers, horse riders/cyclists..... NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**
If yes:
a) When did you first use it?
Year. 1990

b).When did you last use it?
Year. 2020 (NOT USED THIS YEAR DUE TO OTHER COMMITMENTS)

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years

Reason:

6. Do you still use the Road? **Yes/~~No~~**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above | to | As Above |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow YES

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | | 6 x Per Year |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

12. Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**

If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road?

**Yes**

If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present?

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way? **No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate? **No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **Yes**

If so, what if anything did they say to you?

Nothing

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes/~~No~~***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:**

**Date:** 2/11/21

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/~~Mrs/Miss/Ms/Dr~~.) Michael Corkery

2. Address 392 Birmingham Road, Lickey End, Bromsgrove, B61 0HJ

---

3 Contact Phone Number 07855 258352

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years?

4. Do you regard it as:
A public footpath (i.e for walkers only)…… NO

A public bridleway (i.e. for walkers and horse riders/cyclists)……. NO

A public restricted byway (i.e. for walkers, horse riders/cyclists……. NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**

If yes: a) When did you first use it? Year 2010

b). When did you last use it? Year 2021

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years _____

Reason:_____

6. Do you still use the Road? **Yes**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |

| | | | | |
|---|---|---|---|---|
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above | to | As Above |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 5?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | | 3 times per year |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

***12.*** Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present?

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way? **No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate? **No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **Yes**

If so, what if anything did they say to you?

Nothing

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:** *M J Corkery*

**Date: 03.11.21**

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) Mr Stewart Bosworth

2. Address _21 Offchurch Road, Cubbington, Royal Leamington Spa

3. _Warwickshire_____
_____

_____

_____

3 Contact Phone Number

___07434744728_____

Description of the E5310 & 5341 road

**The E5301 is a hard packed stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire**

Do you regard this road to be public? **Yes for 18 years**
If yes, for how many years?

4. Do you regard it as:
A public footpath (i.e for walkers only)…… NO

A public bridleway (i.e. for walkers and horse riders/cyclists)……. NO

A public restricted byway (i.e. for walkers, horse riders/cyclists…… NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) **YES**

5. Have you **used** the above path? **Yes**

If yes: a) When did you first use it? Year…2003…….

b).When did you last use it? Year 2021…….

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years _____

Reason:_____

6. Do you still use the Road? **Yes**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | 2003 | to | 2021 |

8. Where were you going to: **Newnham/ to Aston Cantlow**

**and from:** **Newnham to Aston Cantlow**

9. a) Has this way always run over the same route? **YES**

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | **X** | | |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

**Main use is Pleasure – Trail Riding on my motorcycle. However I have used the road for commuting to work on my motorcycle when I worked in Alcester for a period around 2008/9.**

12. Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
**Warwickshire County Council had a sign showing the road as an unclassified road and this information was also public facing on their own website. The road was described as a 'E'road on the WCC website**

If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. **A culvert runs NE/SE at the Newnham end of the lane**

14. Have you ever seen any signs or notices on the road? **Yes**

If yes, where were they and what did they say? **Over the years there have been some traffic regulation orders in place restricting some mechanical vehicle use. Also there have been clear post signs in place by Warwickshire County Council. These are a white disc with a black arrow and the words 'Unclassified road' on them. These have been at both ends of the road.**

15. Between which dates were they present?

**WCC signs displaying it as an unclassified road have been present throughout. Temporary traffic regulation signs in place when orders were in place.**

16. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

17. Did anyone ever attempt to turn you back or say that you had no right to use the way? **No**

18. Was there ever any obstruction to your use of the path, such as a fence or locked gate? **No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **NO**

If so, what if anything did they say to you?

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

**The road is regularly used by fellow members of my local TRF motorcycle trail riding group. I am aware of other use by other motoring organisations which is on their websites.**

Would you be willing to give evidence at a Public Local Inquiry? **Yes**

21. Do you have any other information about the 'way' which you think might be useful?

**The road is an important link in a small network of unclassified roads in South Warwickshire. It allows me to divert from the sealed public roads in the area and travel between Newnham and Aston Cantlow(and return). I have ridden the road throughout the year on my motorcycle and I have always been able to travel its length easily on my motorcycle.**

**As a vulnerable road user, the route affords me greater protection and risk of injury from travelling on the sealed road network. I also stop to enjoy my lunch on occasion on the route and enjoy the wonderful views.**

I hereby confirm that to the best of my knowledge and belief the information stated in this form is

true.

**Signature:**

**Stewart**

**Bosworth**

**Date: 3rd**

**November**

**2021**

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/M~~rs/Miss/Ms/Dr.~~) Daniel Trewhitt

2. Address 16 Sedge Avenue Birmingham B38 8SJ

3 Contact Phone Number 07957897303

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years?

4. Do you regard it as:
A public footpath (i.e for walkers only)…… NO

A public bridleway (i.e. for walkers and horse riders/cyclists)…… NO

A public restricted byway (i.e. for walkers, horse riders/cyclists…… NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**
If yes: a) When did you first use it? Year…2012….
b).When did you last use it? Year…2021….
During this period have there been any years when you have not used it? **No**
If yes, which years were they and why? Years _____
Reason:_____

6. Do you still use the Road? **Yes/~~No~~**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above | to | As Above |

8. Where were you going to: Newnham/Aston Cantlow

and from: Aston Cantlow/ Newnham

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | **X** | |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

***12.*** Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present?

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way?
**No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?
**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **Yes**

If so, what if anything did they say to you? Nothing

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes/~~No~~***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:** Dan Trewhitt

**Date:** 2nd November 2021

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) Mr Sam North

2. Address 50 Chestnut Way, Bidford on Avon. B50 4GF

3 Contact Phone Number 07527 558423

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to its termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years?

4. Do you regard it as:
A public footpath (i.e for walkers only)…… NO

A public bridleway (i.e. for walkers and horse riders/cyclists)…… NO

A public restricted byway (i.e. for walkers, horse riders/cyclists…… NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**
If yes: a) When did you first use it? Year…2016.
b).When did you last use it? Year…2021
During this period have there been any years when you have not used it? **No**
If yes, which years were they and why? Years _____
Reason:_____

6. Do you still use the Road? **Yes**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above | to | As Above |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | X | |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure, visiting friends & commuting

***12.*** Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present? Cannot recall.

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way?
**No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?
**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **Yes**

If so, what if anything did they say to you?

Nothing

19. Do you know anyone else who has used the path? ***Yes (but it's a road, not a path)***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community. I have also ridden along this road with friends outside of these organisations both on motorcycles suited to unmetalled surfaces and dedicated road motorcycles as the road surface is more than sufficient to support this.

Would you be willing to give evidence at a Public Local Inquiry? ***Yes***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:**



**Date:**

**03-11-2021**

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) **Mr Martin Whitehouse**

2. **Address 7 Warrinton Close Sutton Coldfield**

3. **West Midlands B76 2BL**

---

3 Contact Phone Number 0121 3130126 or 07963585289

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years? **Prior to my first use in1999/2000**

4. Do you regard it as:
A public footpath (i.e for walkers only).....**No**.....

A public bridleway (i.e. for walkers and horse riders/cyclists).....**No**.....

A public restricted byway (i.e. for walkers, horse riders/cyclists.....**No**.....
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) **Yes open to all**

5. Have you **used** the above path? **Yes**

If yes: a) When did you first use it? **Year late 1999 or early 2000**

b).When did you last use it? Year...**2019**.....

During this period have there been any years when you have not used it? **Yes**

If yes, which years were they and why? **Years 2006 or2007 and again in 2020** __

Reason: **During foot and mouth outbreak and again during Covid restrictions also during temporary TRO but not sure of date**

6. Do you still use the Road? **Yes**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | **1999/2000** | to | **2019** |

8. Where were you going to: **Newnham to Aston Cantlow**

and from: **Aston Cantlow to Newnham**

**9.** a)Has this way always run over the same route? **yes**

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | | |

*If less than once a month, please state how many times per year you used the way.
**Not used in bad weather so varies year to year but between 6 to 8 times**

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

**Pleasure**

***12.*** Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes believe it to be a road**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road?
If yes, please give details.

1. Have you ever seen any signs or notices on the road? **Yes**

If yes, where were they and what did they say? **Temporary TRO road closed**

Between which dates were they present? **Not sure**

2. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

**3.** Did anyone ever attempt to turn you back or say that you had no right to use the way? **No**

4. Was there ever any obstruction to your use of the path, such as a fence or locked gate? **No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **No**

If so, what if anything did they say to you?

19. Do you know anyone else who has used the path? **Yes**

20. If yes, please give details.

**A number or friends and acquaintances use this road on a regular basis**

Would you be willing to give evidence at a Public Local Inquiry? **Yes**

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:** M. W. Stretton

**Date:** NOV 1ST 2021

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) Mr David Bennett

2. Address 9 Sargeants Street
Leamington Spa
CV31 3HS

3 Contact Phone Number 07766 100 487

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**

If yes, for how many years?

4. Do you regard it as:

A public footpath (i.e for walkers only)..... NO

A public bridleway (i.e. for walkers and horse riders/cyclists)..... NO

A public restricted byway (i.e. for walkers, horse riders/cyclists..... NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**

If yes: a) When did you first use it? Year.....

b).When did you last use it? Year. 2021

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years

Reason:

6. Do you still use the Road? **Yes/~~No~~**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above | to | As Above |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

| 10. How often have you used the path throughout the period you have stated in question 6? | | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|---|
| | On foot | | | | |
| | On horseback | | | | |
| | By bicycle | | | | |
| | With non-mechanically-propelled vehicles | | | | |
| | With mechanically-propelled vehicles | | | | |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

12. Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**

If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**

If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes** If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present?

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**

If yes, please give details:

Did you consider the way to be public or private? **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way?

**No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?

**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **Yes**

If so, what if anything did they say to you?

Nothing

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes/No***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:**
**Date:**

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/~~Mrs/Miss/Ms/Dr~~.) ROBIN EVANS.

2. Address 33 SHELBOURNE PLACE

CLARENDON STREET

LEAMINGTON SPA CV32 5SW

3 Contact Phone Number 07967 388976.

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years?

4. Do you regard it as:

| | |
|---|---|
| A public footpath (i.e for walkers only)..... | NO |
| A public bridleway (i.e. for walkers and horse riders/cyclists)..... | NO |
| A public restricted byway (i.e. for walkers, horse riders/cyclists..... and non-mechanically propelled vehicles -e.g. horse and cart) | NO |
| A public Carriageway (i.e. open to vehicles use) | YES |

5. Have you **used** the above path? **Yes**

If yes: a) When did you first use it? Year..2004

b).When did you last use it? Year..2021

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years _____

Reason: _____

6. Do you still use the Road? **(Yes/No)**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above 2004 | to | As Above 2021 |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | ✓ | |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

12. Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present?

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way?
**No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?
**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **No**

If so, what if anything did they say to you?

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes/No***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:** 

**Date:** 03-11-2021.

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) JEFFREY ANNAND

2. Address 18 CLADSWELL LANE
COOKHILL, ALCESTER
WARWICKSHIRE, B49 5SU

3 Contact Phone Number 07968 668 906

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? Yes
If yes, for how many years?

4. Do you regard it as:
A public footpath (i.e for walkers only)..... NO

A public bridleway (i.e. for walkers and horse riders/cyclists)..... NO

A public restricted byway (i.e. for walkers, horse riders/cyclists..... NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? Yes
If yes: a) When did you first use it? Year 2014
b).When did you last use it? Year 2018

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years_____
Reason: I WAS WITHOUT MY OFFROAD MOTORCYCLE

6. Do you still use the Road? Yes/No

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/~~Mrs/Miss/Ms/Dr~~.) GREGORY WILLIAMS

2. Address 9, KINGS GREEN AVENUE
KINGS NORTON
BIRMINGHAM B38 8DP

3 Contact Phone Number 07513126514

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years? BEFORE I STARTED USING IT IN 1976

4. Do you regard it as:
A public footpath (i.e for walkers only)..... NO

A public bridleway (i.e. for walkers and horse riders/cyclists)..... NO

A public restricted byway (i.e. for walkers, horse riders/cyclists..... NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**
If yes: a) When did you first use it? Year..... NOVEMBER 1976
b).When did you last use it? Year..... OCTOBER 2021

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years_____

Reason: _____

6. Do you still use the Road? **Yes/~~No~~**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | 1976 | to | PRESENT |
| On horseback | Years | n/a | to | |
| By bicycle | Years | 1983 | to | PRESENT |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above 1976 | to | As Above PRESENT |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * | |
|---|---|---|---|---|---|
| On foot | | | | ✓ | 2 TIMES |
| On horseback | | | | | |
| By bicycle | | | | ✓ | 5 TIMES |
| With non-mechanically-propelled vehicles | | | | | |
| With mechanically-propelled vehicles | | | ✓ | | |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure, TRAVELING TO STRATFORD

12. Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present?

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way?

**No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?

**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? ~~Yes~~ No

If so, what if anything did they say to you?

Nothing

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes/~~No~~***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:** [signature]

**Date:** 2nd November 2021

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/~~Mrs/Miss/Ms/Dr.~~) MARTIN YOUNG

2. Address EDGE HOUSE, EDGE LANE,
HENLEY IN ARDEN, B95 5DS

3 Contact Phone Number 07500 461035

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years? 5 YEARS

4. Do you regard it as:

A public footpath (i.e for walkers only)..... NO

A public bridleway (i.e. for walkers and horse riders/cyclists)..... NO

A public restricted byway (i.e. for walkers, horse riders/cyclists..... NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**

If yes:

a) When did you first use it? Year..2016

b).When did you last use it? Year..2021

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years

Reason:

6. Do you still use the Road? **Yes/No**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | 2018 | to | 2020 |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | ~~As above~~ 2016 | to | ~~As Above~~ 2021 |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | ONCE PER YEAR |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | | TWICE PER YEAR |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

12. Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**

If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road?

**Yes**

If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**

If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present? CANNOT RECALL

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**

If yes, please give details:

Did you consider the way to be public or private? **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way?

~~No~~ YES A FARMER ONCE OBSTRUCTED THE TARMAC HIGHWAY BETWEEN NEWNHAM + SALTERS LANE WITH A TRACTOR + LARGE IMPLEMENT

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate? **No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? ~~Yes~~ NO

If so, what if anything did they say to you?

Nothing

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***(Yes)/No***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:** 

**Date:** 3/4/21

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (~~Mr/Mrs/Miss/Ms~~/Dr.) Richard Lillington

2. Address 51 St. Laurence Way
Bidford on Avon
Warwickshire, B50 4FG.

3 Contact Phone Number 07503 975432

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? (Yes)
If yes, for how many years? Warwickshire records indicate this has been a road for many decades.

4. Do you regard it as:
A public footpath (i.e for walkers only)..... NO

A public bridleway (i.e. for walkers and horse riders/cyclists)..... NO

A public restricted byway (i.e. for walkers, horse riders/cyclists..... NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) (YES)

5. Have you **used** the above path? Yes ✓
If yes: a) When did you first use it? Year...approx 2002
b).When did you last use it? Year..approx 2020.
During this period have there been any years when you have not used it? **No**
If yes, which years were they and why? Years n/a
Reason: _____

6. Do you still use the Road? (Yes)/No

7. How have you used the Road?

| | | | | | |
|---|---|---|---|---|---|
| On foot | Yes | Years | approx 2010 | to | on. |
| On horseback | NO | Years | | to | |
| By bicycle | Yes | Years | | to | |
| By non-mechanically-propelled vehicles | | Years | NO | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | | Years | As above Yes 2002 (approx) | to | As Above current |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES, as far as I know.

b) If it has been diverted, please give details and dates: n/a

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | ✓ |
| On horseback | | | | never |
| By bicycle | | | | ✓ |
| With non-mechanically-propelled vehicles | | | | never |
| With mechanically-propelled vehicles | | | | ✓ |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

12. Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when? It is on the list of streets.

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane + Road signs.

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary Traffic Regulation Orders, also other signs such as Unclassified County Road signs.
Between which dates were they present? ~~Approx 2002 at least~~

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way?
**No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?
**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? ~~Yes~~ NO

If so, what if anything did they say to you?

Nothing

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ~~Yes/No~~

21. Do you have any other information about the 'way' which you think might be useful?
This road is marked as a UCRoad on the list of streets. It is a road.

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:**

**Date:** 3/11/21.

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name Mr David Arthur Wright

2. 46 Gerard Road, Alcester, Warwickshire. B49 6QQ

3 Contact Phone Number0785 2274466

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years? 45 years

4. Do you regard it as:
A public footpath (i.e for walkers only)..... NO

A public bridleway (i.e. for walkers and horse riders/cyclists)..... NO

A public restricted byway (i.e. for walkers, horse riders/cyclists..... NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**
If yes: a) When did you first use it? Year.....1974.....
b).When did you last use it? Year.....2021....
During this period have there been any years when you have not used it? **No**
If yes, which years were they and why? Years
Reason: N/A

6. Do you still use the Road YES

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/~~Mrs/Miss/Ms/Dr.~~) SIMON REID

2. Address 1 NEW END COTTAGES, SPERNAL LANE, GREAT ALNE, B49 6HZ

3 Contact Phone Number 07912 303083

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years? 16 years.

4. Do you regard it as:
A public footpath (i.e for walkers only)..... NO

A public bridleway (i.e. for walkers and horse riders/cyclists)..... NO

A public restricted byway (i.e. for walkers, horse riders/cyclists..... NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**

If yes: a) When did you first use it? Year..2006

b).When did you last use it? Year..2019

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years_____

Reason: _____

6. Do you still use the Road? **Yes/~~No~~**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | 2015 | to | 2019 |
| By non-mechanically-propelled vehicles | Years | ~~2015~~ | to | ~~2019~~ |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | ~~As above~~ 2006 | to | ~~As Above~~ 2019 |

8. Where were you going to: Newnham/~~Aston Cantlow~~

and from: ~~Newnham~~/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | ✓ |
| With non-mechanically-propelled vehicles | | | | ~~✓~~ |
| With mechanically-propelled vehicles | | | | ✓ |

*If less than once a month, please state how many times per year you used the way.

6

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

12. Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present?

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way?
**No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?
**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **Yes**

If so, what if anything did they say to you?

Nothing

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes/No***

21. Do you have any other information about the 'way' which you think might be useful?

VIDEO FOOTAGE OF USE. (2011)

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:** 

**Date:** 3/11/21

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) Mr Mark Buswell

2. Address 22 Timberdine Close Halesowen B632SP

3 Contact Phone Number - 07775750112

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years?

4. Do you regard it as:
A public footpath (i.e for walkers only)…… **NO**

A public bridleway (i.e. for walkers and horse riders/cyclists)……. **NO**

A public restricted byway (i.e. for walkers, horse riders/cyclists…… **NO**
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) **YES**

5. Have you **used** the above path? **Yes**

If yes: a) When did you first use it? Year…**2016**…….

b).When did you last use it? Year……**2020**…….

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years _____

Reason:_____

6. Do you still use the Road? **Yes**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |

| | | | | |
|---|---|---|---|---|
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above | to | As Above |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? **Yes**

b) If it has been diverted, please give details and dates: **No**

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | | **6 times** |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

**For pleasure with motorcycle club**

***12.*** Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary Traffic Regulation Orders

Between which dates were they present?

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way? **No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate? **No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **No**

If so, what if anything did they say to you?

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends who are members of the local TRF and have seen other bike and 4x4 users over the years

Would you be willing to give evidence at a Public Local Inquiry? ***Yes***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:** 

**Date:**

**03/11/2021**

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) Mr Andrew Simkins

2. Address, 1 Foley Wood Close

Birmingham B74 3PJ

3 Contact Phone Number

07771 748218

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tarred road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years? Always known as a road

4. Do you regard it as:

A public footpath (i.e for walkers only)……. NO

A public bridleway (i.e. for walkers and horse riders/cyclists)…… NO

A public restricted byway (i.e. for walkers, horse riders/cyclists……. NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use)
YES

5. Have you **used** the above path? **Yes**

If yes: a) When did you first use it? Year ...1990…….

b).When did you last use it? Year…2021…….

During this period have there been any years when you have not used it?

**No**

If yes, which years were they and why? Years

Reason:

6. Do you still use the Road? **Yes**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | 1990 | to | 2021 |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above | to | As Above |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

Now known.

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | 6 |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | | 10 |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Recreation, pleasure.

12. Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**

If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates,bridges or culverts or any other structures which helped you to use the road? N/A

If yes, please give details.

14. Have you ever seen any signs or notices on the road? None noticed.

15. If yes, where were they and what did they say?Temporary Traffic Regulation Orders Between which dates were they present?

16. During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**

If yes, please give details:

Did you consider the way to be public or private? **Public road**

17. Did anyone ever attempt to turn you back or say that you had no right to use the way? **No**

18. Was there ever any obstruction to your use of the path, such as a fence or locked gate? **No**

Did you ever meet the landowner, his tenant or any of his employees or family? **No**

If so, what if anything did they say to you?

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by myself and friends, colleagues and also members of the local motorcycle clubs and the 4x4's.

Would you be willing to give evidence at a Public Local Inquiry? ***Yes/No***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:**

**Date:** *Andy*

*Simkins*

*3rd*

*November*

*2021*

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/~~Mrs/Miss/Ms/Dr.~~) Garret Felton

2. Address 32 Waterloo Road

Bidford on Avon

Warwickshire

B50 4JH

3 Contact Phone Number 07870679406

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years?

4. Do you regard it as:
A public footpath (i.e for walkers only)…… NO

A public bridleway (i.e. for walkers and horse riders/cyclists)…….. NO

A public restricted byway (i.e. for walkers, horse riders/cyclists…… NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**

If yes: a) When did you first use it? Year……2014

b).When did you last use it? Year……2021

During this period have there been any years when you have not used it? **No**

If yes, which years were they and why? Years _____

Reason: _____

6. Do you still use the Road? **Yes**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | 2014 | to | 2021 |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | 2014 | to | 2021 |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | 2 per yr |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | X | |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

***12.*** Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary TRO

Between which dates were they present?

Unsure of exact dates but during spring/summer 2016

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such

owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way? **No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate? **No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **No**

If so, what if anything did they say to you?

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes***

Do you have any other information about the 'way' which you think might be useful?

During an event held at Ragley Hall in July 2019, I took several groups of motorcycles along this road as part of a guided ride out. I took groups in both directions, without the need for consent, safe in the knowledge that it is a public right of way.

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:** GFolton

**Date:** 04/11/2021

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) Mr Jonathan Canning

2. Address

10 Royal Oak Lane Middleton Cheney OX17 2LX

3 Contact Phone Number __07742 851036____

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years? Don't know

4. Do you regard it as:
A public footpath (i.e for walkers only)…… NO

A public bridleway (i.e. for walkers and horse riders/cyclists)…… NO

A public restricted byway (i.e. for walkers, horse riders/cyclists…… NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**
If yes: a) When did you first use it? Year…2018….
b).When did you last use it? Year…2020….
During this period have there been any years when you have not used it? **No**
If yes, which years were they and why? Years _____
Reason: I only use this route occasionally

6. Do you still use the Road? **Yes**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above | to | As Above |

8. Where were you going to: Newnham/Aston Cantlow

and from: Newnham/Aston Cantlow

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | | 1 or 2 |

*If less than once a month, please state how many times per year you used the way.

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

***12.*** Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. A culvert runs NE/SE at the Newnham end of the lane

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? Temporary TROs

Between which dates were they present?

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way?
**No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?
**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **No**

If so, what if anything did they say to you?

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community

Would you be willing to give evidence at a Public Local Inquiry? ***Yes***

21. Do you have any other information about the 'way' which you think might be useful?

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:**

**J Canning**

**Date:**

**3 November 2021**

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

# E5310 5341
# USER EVIDENCE FORM

1. Full Name (Mr/Mrs/Miss/Ms/Dr.) Mr George Stepney

2. Address Stockleys Orchard Banbury Road Pillerton Priors Warwickshire CV35 0PG Formerly 60 Bishopton Lane Stratford CV37_

3 Contact Phone Number 07771834445

Description of the E5310 & 5341 road

The E5301 is a hard stoned road from its beginning at Aston Cantlow to point c on the order map, from there it is a dirt road to it's termination at Newnham the last 10m or so being a Tared road as one would encounter on any public carriageway in Warwickshire

Do you regard this road to be public? **Yes**
If yes, for how many years?

4. Do you regard it as:
A public footpath (i.e for walkers only)…… NO

A public bridleway (i.e. for walkers and horse riders/cyclists)…… NO

A public restricted byway (i.e. for walkers, horse riders/cyclists……. NO
and non-mechanically propelled vehicles -e.g. horse and cart)

A public Carriageway (i.e. open to vehicles use) YES

5. Have you **used** the above path? **Yes**
If yes: a) When did you first use it? Year 1974
b).When did you last use it? Year 2020.
During this period have there been any years when you have not used it? **No**
If yes, which years were they and why? Years _____
Reason:_____

6. Do you still use the Road? **Yes**

7. How have you used the Road?

| | | | | |
|---|---|---|---|---|
| On foot | Years | | to | |
| On horseback | Years | | to | |

| | | | | |
|---|---|---|---|---|
| By bicycle | Years | | to | |
| By non-mechanically-propelled vehicles | Years | | to | |
| With mechanically-propelled vehicles (e.g. motor-bike or car) | Years | As above | to | Motorcycle |

8. Where were you going to: Newnham/Aston Cantlow

and from: Aston Cantlow to Newnham

9. a) Has this way always run over the same route? YES

b) If it has been diverted, please give details and dates:

10. How often have you used the path throughout the period you have stated in question 6?

| | Daily | Once a week | Once a month | Less than once a month * |
|---|---|---|---|---|
| On foot | | | | |
| On horseback | | | | |
| By bicycle | | | | |
| With non-mechanically-propelled vehicles | | | | |
| With mechanically-propelled vehicles | | | | X |

*If less than once a month, please state how many times per year you used the way.

**See paragraph 21**

11. For what purpose did you use the road (e.g. for pleasure, visiting friends, going shopping etc)?

Pleasure

***12.*** Did you think you had a right to use the road (i.e. you did not have a private right and did not ask for permission)? **Yes**
If no, who gave you permission and when?

13. Have there, to your knowledge, ever been on the road any gates, bridges or culverts or any other structures which helped you to use the road? **Yes**
If yes, please give details. **A culvert runs NE/SE at the Newnham end of the lane**

14. Have you ever seen any signs or notices on the road? **Yes**
If yes, where were they and what did they say? **Temporary Traffic Regulation Orders**

Between which dates were they present? **I can't recall**

15. a) During the period when you used the road, were you an owner or occupier of any land adjoining or crossed by the path, or were you an employee or relative of any such owner or occupier? **No**
If yes, please give details:

Did you consider the way to be public or private? ____ **Public**

16. Did anyone ever attempt to turn you back or say that you had no right to use the way? **No**

17. Was there ever any obstruction to your use of the path, such as a fence or locked gate?

**No**

18. Did you ever meet the landowner, his tenant or any of his employees or family? **Yes**

If so, what if anything did they say to you?

**Nothing**

19. Do you know anyone else who has used the path? ***Yes***

20. If yes, please give details.

**The road is regularly used by my friends and colleagues and also members of the local TRF and the 4x4 community**

Would you be willing to give evidence at a Public Local Inquiry? ***Yes***

21. Do you have any other information about the 'way' which you think might be useful?

I secured my first motorcycle at the age of 14 -1974. This renewed my father's interest in motorcycling and I was regularly a passenger and later at 17 a rider with my father exploring the rights of way and green lanes of Warwickshire.

A regular route – close to our family home in Bishopton Lane off the A34 Birmingham Road was to the green lane running between Newnham/Aston Cantlow and return. We often commented to each other on the sign that stated Newnham only - when the reality was that the lane – (E5310 & 5341) was passable at all times of the year but could be more challenging from Aston Cantlow in winter up to the ridge line.

My father continued to ride green lanes until 2013 as a weekly activity in retirement - especially the one at Newnham as it was the most accessible. I continue to use his motorcycle and have incorporated this route in rides out in memory of my childhood with my son. Not on a weekly or monthly basis but possibly 4 times a year - as it is now further from my current home address.

I hereby confirm that to the best of my knowledge and belief the information stated in this form is true.

**Signature:**



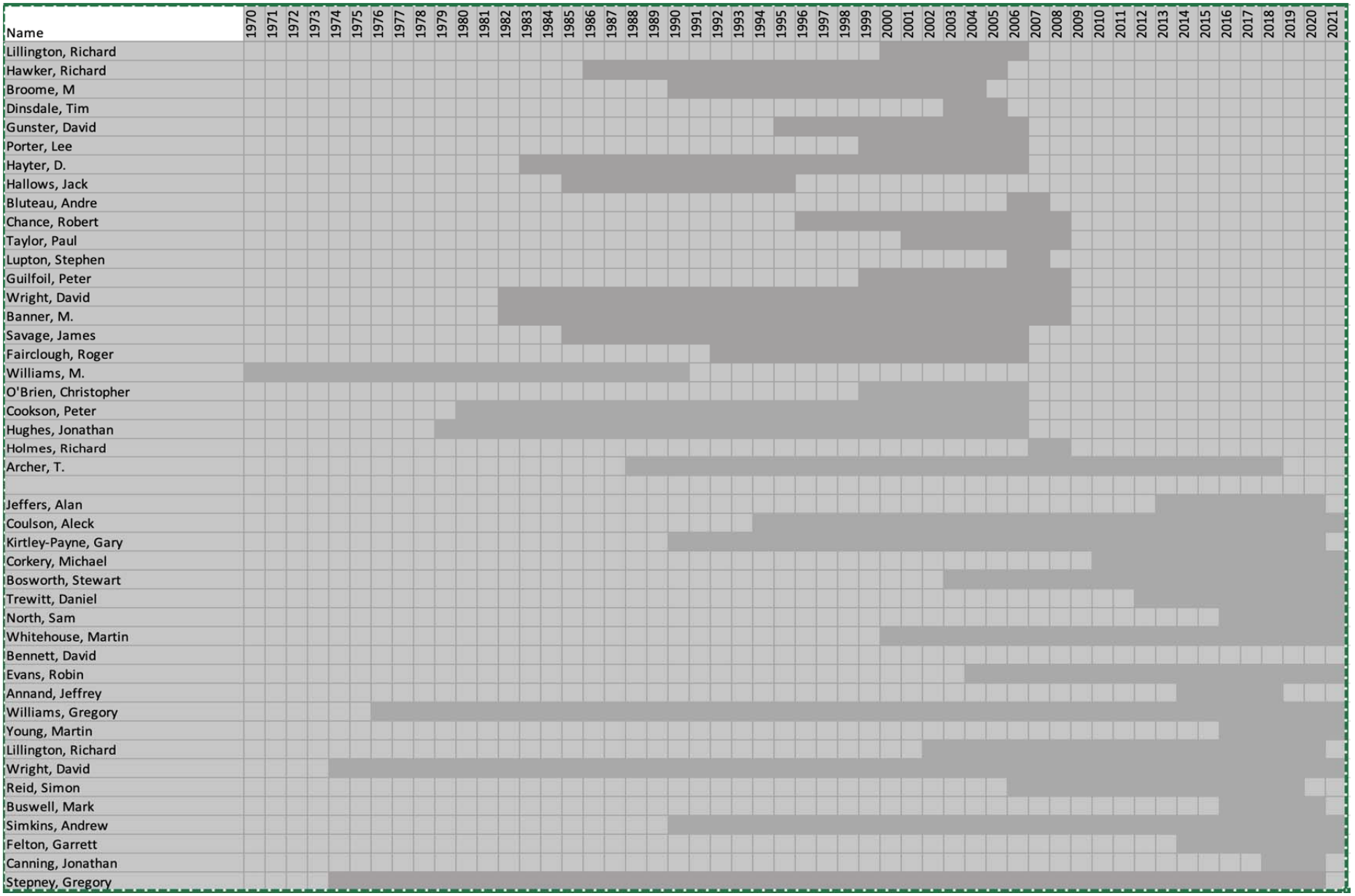
**Date:**

**08/11/2021**

*Thank you for your assistance.*

***INFORMATION GIVEN IN THIS FORM IS IN THE PUBLIC DOMAIN AND MAY BE MADE AVAILABLE FOR PUBLIC SCRUTINY BUT NOT YOUR PERSONAL DETAILS.***

## APPENDIX 8 – CHART OF VEHICULAR USER EVIDENCE


Name
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Lillington, Richard
Hawker, Richard
Broome, M
Dinsdale, Tim
Gunster, David
Porter, Lee
Hayter, D.
Hallows, Jack
Bluteau, Andre
Chance, Robert
Taylor, Paul
Lupton, Stephen
Guilfoil, Peter
Wright, David
Banner, M.
Savage, James
Fairclough, Roger
Williams, M.
O'Brien, Christopher
Cookson, Peter
Hughes, Jonathan
Holmes, Richard
Archer, T.
Jeffers, Alan
Coulson, Aleck
Kirtley-Payne, Gary
Corkery, Michael
Bosworth, Stewart
Trewitt, Daniel
North, Sam
Whitehouse, Martin
Bennett, David
Evans, Robin
Annand, Jeffrey
Williams, Gregory
Young, Martin
Lillington, Richard
Wright, David
Reid, Simon
Buswell, Mark
Simkins, Andrew
Felton, Garrett
Canning, Jonathan
Stepney, Gregory

**RE NEWNHAM LANE, ASTON CANTLOW**

---

**AUTHORITIES**
**ON BEHALF OF THE TRAIL RIDERS FELLOWSHIP**

---


| | |
|---|---|
| Local Government Act 1929 | 3-22 |
| Part IV National Parks and Access to the Countryside Act 1949 | 23-51 |
| Countryside Act 1968, Section 31 and Schedule 3 | 52-62 |
| Wildlife and Countryside Act 1981, Part III | 63-80 |
| Natural Environment and Rural Communities Act 2006, Part 6 | 81-88 |
| Mann v Brodie (1885) 10 App Cas 378 | 89-101 |
| Folkestone Corp v Brockman [1914] AC 338 | 102-142 |
| R v Sos for Environment ex parte Hood [1975] QB 891 | 143-159 |
| Suffolk v Mason [1979] AC 705 | 160-186 |
| Oxford v Austin [1981] RTR. 416 pdf | 187-191 |
| Lang v Hindhaugh [1986] RTR 271 | 192-197 |
| Masters v SoS for Environment and Somerset CC (2000) 79 P. C.R. 338 | 198-211 |
| Trevelyan v SoS for Environment [2001] 1 WLR 1264 | 212-226 |
| Robinson v Agombar [2002] 1 PCR 20 | 227-247 |
| Cutter v Eagle Star Insurance Co Ltd [1997] 1 WLR 1082 | 248-257 |
| Kind v SoS for Environment [2006] Q.B. 113 | 258-269 |
| R (Godmanchester Town Council) v SoS Environment, Food and Rural Affairs [2007] UKHL 28, [2008] 1 AC 221 | 270-317 |
| Fortune v Wiltshire CC [2010] EWHC B33 (Ch) | 318-668 |
| Fortune v Wiltshire CC [2013] 1 WLR 808, CA | 669-714 |
| TRF v SoS for Environment [2015] EWHC 85 (Admin) | 715-724 |
| Encyclopedia of Highways Law 2-064 (re section 31 HA 1980) | 725-746 |
| Encyclopedia of Highways Law 2-068 (re section 32 HA 1980) | 747-753 |

Motoring Organisations LARA Unsealed Unclassified Roads 754-784

‘Highway Authority Records’ Sugden, J. (1995) RWLR 9.1 pp. 1-9 785-793

Wildlife and Countryside Act 1981 - Definitive Map Orders Consistency Guidelines - GOV.UK 794-862

A.D. 1929.

PART II. —*cont.*

(*c*) references to clerks of county councils and town clerks shall be construed as references to the town clerks of the City of London and metropolitan boroughs.

Construction and citation. 16 & 17 Geo. 5. c. 48.

**28.**—(1) The Births and Deaths Registration Act, 1926, shall be construed as one with the Births and Deaths Registration Acts, 1836 to 1901, and this Part of this Act, so far as it relates to the registration of births and deaths, shall be construed as one with the Births and Deaths Registration Acts, 1836 to 1926, and, so far as it relates to marriages shall be construed as one with the Marriage Acts, 1811 to 1898, and accordingly in this Part of this Act the expression "prescribed" shall mean prescribed by regulations made by the Minister, or by the Registrar-General with the approval of the Minister, under the Registration Acts.

(2) The Births and Deaths Registration Acts, 1836 to 1926, and this Part of this Act may be cited together as the Births and Deaths Registration Acts, 1836 to 1929, and the Marriage Acts, 1811 to 1898, and this Part of this Act may be cited together as the Marriage Acts, 1811 to 1929.

## PART III.

## ROADS AND TOWN PLANNING.

### *Roads.*

County roads.

**29.**—(1) The council of every county shall be the highway authority as respects every road in the county which at the appointed day is a main road, or which would, apart from this section, at any time thereafter have become a main road, and every such road and every other road as respects which a county council become by virtue of this Part of this Act the highway authority, shall be termed a county road, and all enactments relating to main roads shall as from the appointed day have effect as if for references therein to main roads there were substituted references to county roads.

(2) The council of every county shall, in relation to county roads in the county (not being roads with respect to which an urban district council have claimed or are deemed to have claimed to exercise the functions of maintenance and repair) have the like functions as with respect to main roads and all roads in relation to which



AUTH003

they have those functions and the materials thereof and all drains belonging thereto shall vest in the county council, and where any other drain or any sewer is used for any purpose in connection with the drainage of any such road, the county council shall continue to have the right of using the drain or sewer for such purpose.

(3) If any difference arises between the county council and any district council as respects the council in whom a drain is vested, or as to the use of any drain or sewer, the difference shall, if either council so require, be determined by the Minister.

(4) As from the appointed day, the council of every county shall exercise the functions of maintenance, repair and improvement of, or other dealing with, every bridge in the county repairable by the inhabitants at large which carries a county road, and section one hundred and nineteen of the Municipal Corporations Act, 1882 (which relates to the maintenance of borough bridges), shall cease to have effect as respects any bridge which carries a county road, and notwithstanding anything in subsection (2) of section thirty-five of the Local Government Act, 1888, no borough shall be exempt from contributing towards the costs incurred by a county council for the purpose of the maintenance, repair and improvement of, or other dealing with, bridges.

Transfer to county councils of functions with respect to highways in rural districts.

**30.**—(1) As from the appointed day, every county council shall be the highway authority as respects such part of the county as is for the time being comprised in any rural district and as respects the highways therein, and as such shall have all such functions under the Highway Acts, 1835 to 1885, as were exercisable by rural district councils who by virtue of the Local Government Act, 1894, became successors of highway boards, and rural district councils shall cease to be highway authorities:

Provided that nothing in this section shall affect the functions of rural district councils under the Local Government Act, 1894, as respects rights of way and encroachments on roadside wastes, or any functions not being functions with respect to highways exercisable at the appointed day by rural district councils as successors to surveyors of highways or highway boards.



AUTH004

A.D. 1929.

PART III. —*cont.*

(2) As from the appointed day, a county council shall with respect to such part of the county as is for the time being comprised in any rural district have the functions of an urban district council or a local authority under the enactments mentioned in the first column of Parts I and II of the First Schedule to this Act, as amended by any subsequent enactment, subject however to such modifications as are mentioned in the second column of that Schedule; and those enactments shall apply accordingly.

(3) Functions under section one hundred and fifty of the Public Health Act, 1875, and under the enactments mentioned in the first column of Part I of the First Schedule to this Act shall as from the appointed day cease to be exercisable by rural district councils, and any rural district council who for the time being are invested with functions under any of the enactments mentioned in the first column of Part II of that Schedule shall not be entitled to exercise those functions except with the consent of the county council.

(4) Nothing in this section shall affect the right of any rural district council having such power to exercise the power of making byelaws under section one hundred and fifty-seven of the Public Health Act, 1875, with respect to the level, width and construction of new streets:

Provided that a rural district council before making any such byelaws shall consult with the county council, and if a rural district council do not within six months after a notice from the county council requiring them to do so exercise the power of making such byelaws, the county council may themselves exercise the power.

Transfer of classified roads in urban districts to county council.

**31.**—(1) As from the appointed day, the county council shall be the highway authority as respects all classified roads which, immediately before the appointed day, were vested in the councils of urban districts within the county.

(2) When after the appointed day any road vested in an urban district council becomes a classified road, the county council shall thereupon become the highway authority as respects that road.

(3) It shall not be lawful for the Minister of Transport on or after the appointed day to make an order



AUTH005

declaring that a road which is for the time being a classified road has ceased to be a county road.

(4) Section four of the Highways and Bridges Act, 1891, shall as from the appointed day cease to have effect so far as it provides that no order declaring that a county road within a municipal borough has ceased to be a county road and has become an ordinary road shall be made without the consent of the council of the borough having been first obtained; but before any such order is made by the Minister of Transport he shall consider any representation which the council of the borough may make with reference thereto and shall, if so requested by the council of the borough, hold a local inquiry.

54 & 55 Vict. c. 63.

(5) As from the appointed day, a county council shall, with respect to county roads, and roads which, when constructed, are intended to become county roads (not being roads with respect to which an urban district council have claimed or are deemed to have claimed to exercise the functions of maintenance and repair), have within an urban district in the county the functions of an urban district council or a local authority under the enactments mentioned in the first column of Parts III, IV and V of the First Schedule to this Act, as amended by any subsequent enactment, subject, however, to such modifications as are mentioned in the second column of that Schedule; and those enactments shall apply accordingly.

As respects such roads as aforesaid, functions under the enactments mentioned in the first column of Part III of the said Schedule shall, as from the appointed day, cease to be exercisable by an urban district council, and functions under the enactments mentioned in the first column of Parts IV and V of the said Schedule shall, as from the appointed day, be exercisable by the urban district council as well as by the county council; but as respects the functions mentioned in the first column of Part V of that Schedule, only with the consent of the county council.

(6) Where after the appointed day any area, being or forming part of a rural district, is by a provisional or other order constituted an urban district, the order may provide that any unclassified roads within that area shall continue to be county roads and where the order contains such a provision as respects any roads the order



AUTH006

A.D. 1929.
—
PART III.
—*cont.*

may provide for contributions being made by the urban district council to the county council towards the cost of the maintenance and repair of those roads of such amounts as may be agreed between the councils or, in default of agreement, determined by the Minister of Transport.

Rights of certain urban district councils to maintain county roads.

**32.**—(1) Where an urban district has a population exceeding twenty thousand, the urban district council may claim to exercise the functions of maintenance and repair of any county road within their district, and if a claim is made within the time hereinafter limited, then, as from such date as is hereinafter mentioned, the urban district council shall be entitled to exercise those functions, and the road shall vest in that council, and for the purpose of the maintenance, repair and improvement of, and other dealing with, any such road, that council shall have the same functions as if they were as respects that road the highway authority and the road were an ordinary road vested in them.

(2) Such claim as aforesaid must be made—

(*a*) in the case where the population of the urban district exceeds twenty thousand at the appointed day and the road is a road which will by virtue of the foregoing provisions of this Part of this Act become a county road on the appointed day, before the appointed day;

(*b*) in the case where the population of the urban district is found by the Registrar General's preliminary report on any census subsequent to the appointed day to exceed for the first time twenty thousand and the road is a county road at the date of the publication of the report, within twelve months after that date;

(*c*) in the case of any enactment adding an area to an existing urban district of which the population exceeds twenty thousand, within twelve months after the date when the enactment takes effect;

(*d*) in the case of any enactment constituting a new urban district or adding an area to an existing urban district, in consequence whereof the urban district becomes an urban



AUTH007

district of which the population exceeds twenty thousand, within twelve months after the date when the enactment takes effect;

(*e*) in the case of any road which becomes a county road after the appointed day, or after the date mentioned in any of the last three foregoing paragraphs, as the case may require, within twelve months after the date when it so becomes a county road.

(3) The date as from which the right of maintenance and repair shall be exercisable shall—

(*a*) where the claim is made before the appointed day, be the appointed day;

(*b*) in any other case be the first day of April in the year following the calendar year in which the claim is made:

Provided that as respects any county roads which—

(*a*) may be declared by the Minister of Transport to be roads towards the construction or improvement of which by the county council advances have been made under the Development and Road Improvement Funds Act, 1909, as amended by any subsequent enactment, and to be roads the maintenance and repair of which should, having regard to the best means of promoting economy and efficiency in highway administration, remain vested in the county council; or

9 Edw. 7. c. 47.

(*b*) being situate in a county within which at the commencement of this Act there was in force a local Act empowering urban district councils to relinquish any functions of maintenance and repair retained by them in pursuance of a claim made under subsection (2) of section eleven of the Local Government Act, 1888, are roads as respects which the urban district council were not exercising the functions of maintenance and repair at the commencement of this Act;

the date as from which the right of maintenance and repair claimed under this section shall be exercisable shall be deferred until such date as the Minister of Transport may by order determine, and every such order shall



AUTH008

A.D. 1929.

PART III. —*cont.*

be laid before Parliament as soon as may be after it is made.

(4) Any urban district council for the time being so responsible for the maintenance and repair of any county road within their district may at any time, with the consent of the county council, relinquish their functions as regards the maintenance and repair of the county road, and as from the first day of April next after the date of relinquishment the county road and the functions of maintaining and repairing it shall vest in the county council in like manner as if the urban district council had made no claim under subsection (1) of this section.

In the event of the county council withholding consent under this subsection, the urban district council may appeal to the Minister of Transport, who may make such order thereon as he thinks fit, and the order shall be binding on the county council and the urban district council.

(5) Where at the appointed day any urban district council are in pursuance of subsection (2) of section eleven of the Local Government Act, 1888, exercising the functions of maintaining and repairing any main road, then—

(*a*) if the population of the urban district exceeds twenty thousand at the appointed day the council thereof shall be deemed to have duly made a claim under this section as respects the road, unless before the appointed day they give to the county council notice in writing to the contrary;

(*b*) in any other case the right of the urban district council to maintain and repair the road shall as from the appointed day determine, and the road and the functions of maintaining and repairing it shall vest in the county council.

(6) For the purposes of this section—

(*a*) the expression "road" does not include county bridges; and

(*b*) the population of an urban district shall, subject as hereinafter provided, be ascertained according to the last census for the time being:

Provided that the population of an urban district at the appointed day shall be taken to be the estimated population of that district for the year nineteen hundred and twenty-eight.



AUTH009

Contributions by county councils to county roads maintained by urban district councils.

**33.**—(1) Where an urban district council are in pursuance of the last foregoing section of this Act responsible for the maintenance and repair of a county road within their district, the county council shall—

(*a*) make annual payments (by quarterly instalments) towards the cost of the maintenance and repair of the road and any reasonable improvement connected with the maintenance and repair thereof, of such amount as may be determined in manner hereinafter provided; and

(*b*) contribute towards the expenses of any improvement of the road, not being expenses in connection with the maintenance and repair of the road, in any such case and to such extent, if any, as, failing agreement between the urban district council and the county council, may be determined by the Minister of Transport; and the Minister of Transport in making his determination shall have regard to the extent to which the improvement is required for the purposes of through traffic and local traffic respectively, and to the extent to which the improvement is of the nature of a town improvement.

(2) Every urban district council so responsible for the maintenance and repair of a county road shall, on or before the fifteenth day of December in each year, submit to the county council for their approval (which shall not be unreasonably withheld) a detailed estimate of the cost of maintenance and repair and reasonable improvement connected with the maintenance and repair of the road for the ensuing financial year, and on such estimate being so approved, either with or without modifications, the amount to be paid by the county council under the last foregoing subsection in respect of such maintenance, repair and improvement shall be the amount of that estimate, or of that estimate as amended by any supplementary estimate submitted and approved as hereinafter provided, or such less sum as may have been actually expended thereon by the urban district council during the said financial year:

Provided that in no case shall a county council be liable to make a payment towards such costs until they are satisfied by a report of their surveyor or such other person as they may appoint for the purpose that the



AUTH010

A.D. 1929.
—
PART III.
—*cont.*

works of maintenance, repair or improvement are being or have been properly executed.

(3) The urban district council may at any time and from time to time submit a detailed supplementary estimate for the approval of the county council, which approval shall not be unreasonably withheld.

(4) Any question whether the approval of the county council has been unreasonably withheld, or whether any works of maintenance, repair or improvement are being or have been properly executed, or as to the liability of a county council to make a payment under this section shall be determined by the Minister of Transport.

Agreements between county councils and urban district councils with respect to unclassified roads.

**34.** As from the appointed day, a county council may by agreement with the council of any urban district within the county undertake, in consideration of such payments as may be agreed, the maintenance, repair and improvement of any unclassified road within the urban district, and any road with respect to which such an agreement is for the time being in force shall be vested in the county council, and that council and the urban district council, respectively, shall have in regard to it the same functions as they would have if it were a county road.

Delegation of road functions by county councils to district councils.

**35.**—(1) The council of any district wholly or partly within a county may within three months after the commencement of this Act apply to the county council for the delegation to them as from the appointed day of the functions of the county council with respect to the maintenance, repair and improvement of, and other dealing with—

(*a*) the whole of the unclassified roads, exclusive of county bridges, within the district or such part of the district as is within the county;

(*b*) all or any of the classified roads, exclusive of county bridges, within the district or such part of the district as is within the county;

(*c*) all or any of the county bridges within the district or such part of the district as is within the county.

(2) In so far as the application is in respect of unclassified roads, the county council shall grant the application unless they are satisfied that having regard to the best means of promoting economy and efficiency



AUTH011

in highway administration throughout the county and to the particular circumstances of the district in respect of which the application is made the application ought not to be granted.

(3) In so far as the application is in respect of classified roads or county bridges, the county council shall have unfettered discretion whether or not to grant the application.

(4) Before the first day of October, nineteen hundred and twenty-nine, every county council shall prepare and submit to the Minister of Transport a statement specifying the applications made under this section and the council's decisions thereon, and in any case in which an application for the delegation of functions in respect of unclassified roads has been refused, the grounds on which the refusal was based and shall send to the council of every district who have made application under this section a copy of so much of the statement as affects the district, and the council of any district whose application for the delegation of functions relating to unclassified roads has not been granted by the county council may within one month after the receipt of such copy, or, if the county council have failed to comply with the provisions of this subsection, before the first day of November, nineteen hundred and twenty-nine, appeal to the Minister of Transport, who, if satisfied that the application should have been granted, may by order direct the county council to grant the application, and the county council shall comply with any direction so given.

(5) After the appointed day the council of any district wholly or partly within a county to whom any such functions as are mentioned in subsection (1) of this section are not for the time being delegated may apply to the county council for the delegation of those functions, and in the event of the county council refusing or failing within three months to grant the application so far as it relates to unclassified roads, the district council may within one month of such refusal or failure appeal to the Minister of Transport, who, if satisfied that the application should have been granted, may by order direct the county council to grant the application so far as it relates to unclassified roads; and the county council shall comply with any direction so given:



AUTH012

A.D. 1929.

PART III. —*cont.*

Provided that an application under this subsection shall not, without the consent of the Minister of Transport, be made except in the year nineteen hundred and thirty-four, the year nineteen hundred and thirty-nine or any succeeding year being the fifth year after the last year in which such an application might have been made.

(6) The council of any district wholly or partly within a county to whom any functions have been delegated under this section may, by giving notice in writing to the county council, relinquish those functions.

(7) The county council by whom any functions have been delegated to a district council under this section may, by giving notice in writing to the district council, determine the delegation:

Provided that, if and so far as the notice relates to unclassified roads, the district council shall be entitled within one month after receiving the notice, to appeal to the Minister of Transport who, if satisfied that the delegation of functions as respects unclassified roads should not be determined, may by order cancel the notice given by the county council.

(8) An application for the delegation of functions and a notice of the relinquishment of the delegation of functions or of the determination of the delegation of functions under the three last foregoing subsections of this section must be made before the first day of October in any year, and the delegation, relinquishment or determination shall take effect as from the first day of April in the next following year.

Conditions and effect of delegation of functions.

**36.**—(1) Where in pursuance of the last foregoing section functions are delegated to a district council, the district council, in the discharge of those functions, shall act as agents for the county council, and it shall be a condition of any such delegation—

(*a*) that the works to be executed and the expenditure to be incurred by the district council in the discharge of those functions shall be subject to the approval of the county council; and

(*b*) that the district council shall comply with any requirement of the county council as to the manner in which and the persons by whom any works are to be carried out and with any



AUTH013

general directions of the county council as to the terms of contracts to be entered into for such purposes; and

(*c*) that the works shall be completed to the satisfaction of the county council;

and if at any time the county council are satisfied on the report of their surveyor or other person appointed for the purpose that any portion of a road with respect to which functions are so delegated is not in proper repair and condition, the county council may cause notice to be given to the district council requiring them to place the road in proper repair and condition, and if such notice is not complied with within a reasonable time, the county council may do anything that seems to them necessary to place the road in proper repair and condition.

(2) Where in pursuance of the foregoing section functions are delegated to a district council, then, so long as the delegation is in force, the district council shall discharge as agents for the county council the functions of the county council within the district under the enactments mentioned in Part I or Part III of the First Schedule to this Act, as the case may require, except so far as those functions relate to roads with respect to which functions are not delegated to the district council:

Provided that—

(*a*) the county council may impose on the district council such conditions as they think fit with respect to any action to be taken by the district council in the discharge of such functions as aforesaid, and with respect to any work being completed to their satisfaction;

(*b*) if for the purpose of making any contribution towards the cost of private street works or for any other purpose in connection with such functions as aforesaid the district council desire to incur expenditure which in the opinion of the county council would not be properly chargeable as general county expenses, the district council shall have the same powers of raising money for the purposes of any such expenditure as they would have had if the functions under the said enactments had been directly vested in them;



AUTH014

A.D. 1929.

PART III. —*cont.*

(*c*) the surveyor of the district council shall be the surveyor for the purposes of the Private Street Works Act, 1892.

55 & 56 Vict. c. 57.

Amendment of law with respect to declaring roads to be county roads.

41 & 42 Vict. c. 77.

**37.**—(1) The grounds on which an application by an urban district council can be made under section fifteen of the Highways and Locomotives (Amendment) Act, 1878, for an order declaring a road to be a county road shall include the ground that the road is a road situate in a part of the urban district which is of a rural character.

(2) If on an application made under section fifteen of the said Act a county council refuse to make an order declaring the highway which is the subject of the application to be a county road, or fail for a period of six months after the application to make such an order, or if, having made such an order, the county council refuse or fail to confirm the order within six months of the making thereof, the applicant authority may appeal to the Minister of Transport who may, after considering any representations made by the county council, and, if the council so require, after holding a local inquiry, make an order declaring the highway to be a county road.

(3) An order of the Minister of Transport under this section shall have effect as if it were an order made and confirmed by the county council under the said section fifteen, and shall come into operation on such date as may be fixed by the order.

Saving as to highways repairable by persons other than highway authorities.

5 & 6 Will. 4. c. 50.

**38.**—(1) Nothing in this Act with respect to main roads or county roads shall affect the liability of any person or body of persons to maintain and repair any highway or part of a highway not repairable by the inhabitants at large, or, subject as hereinafter provided, affect any exemption from a highway rate granted under section thirty-three of the Highway Act, 1835, or under any other enactment, as continued by any scheme in force under section sixty-four of the Rating and Valuation Act, 1925:

Provided that for the purpose of securing the continued operation of any such exemption as aforesaid—

(*a*) the council of every county in which any such exemption is in force shall submit to the Minister



AUTH015

a scheme making provision for the purpose aforesaid; and

(*b*) the provisions contained or incorporated in paragraphs (*b*), (*c*) and (*d*) of subsection (2) of the said section sixty-four and in the proviso to such subsection with respect to the making, approval and effect of schemes to be made thereunder shall apply to schemes to be made under this section with the substitution of references to county councils for references to rating authorities.

(2) For the purposes of this section, the expression "highway" includes any bridge carrying the highway.

Application of 38 & 39 Vict. c. 55. s. 308 in certain cases.

**39.**—(1) In any case in which a public utility undertaking sustains damage by reason of the exercise by a county council, in relation to any road vested in them by virtue of this Part of this Act, of functions which before the road was so vested were only exercisable in relation thereto by district councils under the powers of the Public Health Act, 1875, section three hundred and eight of that Act (which relates to compensation) shall apply as if for the reference therein to a local authority there were substituted a reference to the county council, and as if the functions had been exercised under the powers of that Act.

(2) In this section "public utility undertaking" means any company or authority which carries on a gas, water, hydraulic power, electricity, tramway, light railway or trolley vehicle undertaking, and the expression "trolley vehicle" has the same meaning as in the Road Transport Lighting Act, 1927. 17 & 18 Geo. 5. c. 37.

*Town Planning.*

Power of county councils to act jointly with other local authorities in preparation or adoption of a town planning scheme. 15 Geo. 5. c. 16.

**40.**—(1) Where after the appointed day the council of a county and any local authority or local authorities under the Town Planning Act, 1925, are desirous of acting jointly in the preparation or adoption of a town planning scheme, they shall be entitled to do so, and the council and the local authority or authorities may concur in appointing out of their respective bodies a joint committee for the purpose, and in conferring, with or without restrictions, on such a joint committee any powers which the local authority or local authorities might exercise for the purpose.



AUTH016

A.D. 1929.

PART VIII. —*cont.*

Transitory and temporary provisions and adaptation of enactments.

of anything previously done thereunder or to the making of a new order or regulation.

**132.**—(1) The provisions set out in the Ninth Schedule to this Act (which relate to transitional and temporary matters) shall have effect for the purposes of this Act.

(2) The enactments mentioned in the Tenth Schedule to this Act shall have effect subject to the adaptations specified in that Schedule and the said adaptations shall, save as in that Schedule otherwise expressly provided, come into operation as from the appointed day.

Special temporary provisions for adjustment of reduced and unreduced rateable value.

**133.** Where a valuation list in force on the first day of October, nineteen hundred and twenty-nine, is amended with respect to any hereditament on the ground that it was or was not on that date an agricultural, industrial, or freight transport hereditament, then, whether or not the amendment has under this Act retrospective effect for other purposes, the reduced and unreduced rateable value of the hereditament shall, if—

(*a*) in the county of London the provisional list by which the amendment was made was sent to the assessment committee before the first day of October, nineteen hundred and thirty, or sent to them in compliance with a requisition served on the rating authority before that date; or

(*b*) elsewhere, the proposal for the amendment was served on the rating authority or, as the case may be, notified to the occupier or owner of the hereditament before the first day of October, nineteen hundred and thirty;

be ascertained for the purposes of all the provisions of this Act, except section one hundred and twelve thereof, as if the amendment had been made immediately before the first day of October, nineteen hundred and twenty-nine.

Definitions.

**134.** In this Act unless the context otherwise requires—

"Appointed day" means the first day of April, nineteen hundred and thirty, except that for the purposes of Part V of this Act it means the first day of October, nineteen hundred and twenty-nine:



AUTH017

"Appropriate percentage" means as respects the first and second fixed grant periods seventy-five per cent., as respects the third fixed grant period fifty per cent., and as respects the fourth fixed grant period twenty-five per cent.:

"Appropriate year" means as respects the first fixed grant period the standard year, and as respects any subsequent fixed grant period the last year of the preceding fixed grant period:

"Certified" means—

in relation to roads or road grants, certified by the Minister of Transport:

in relation to the number of unemployed insured men or women, certified by the Minister of Labour:

in relation to any other matter, certified by the Minister of Health or such district auditor or officer of the Ministry of Health as he may appoint for the purpose:

"Classified road" means a road classified by the Minister of Transport under the Ministry of Transport Act, 1919, in Class I. or Class II., or in any class declared by him to be not inferior to those classes for the purposes of this Act:

"County" means an administrative county, but does not include a county borough:

"County bridge" includes any bridge which a county council are liable to repair, except a bridge which they are liable to repair only by reason of the facts that the bridge is repairable by the inhabitants at large and that the road carried by the bridge is, for the time being, a county road:

"County of London" means the administrative County of London:

"District" means county district, that is to say, a non-county borough or other urban district or a rural district:

"Drainage rate" means any rate which is assessed under any commission of sewers or in respect of any drainage, wall, embankment or other work for the benefit of the land:



AUTH018

A.D. 1929.

PART VIII. —*cont.*

"Enactment" includes any public general, local or private Act and any rule, regulation, byelaw order, or award made under any Act:

"Estimated population" and "estimated number of children under five years of age per thousand of the estimated population" mean in relation to any year, the population or number as estimated by the Registrar-General for the calendar year in which the year in question begins:

"Functions" includes powers and duties:

"Gross annual value for income tax purposes" means the annual value for the time being in force for the purposes of income tax under Schedule A of the Income Tax Act, 1918, as amended by any subsequent enactment:

"Local Act" includes a Provisional Order confirmed by Act of Parliament:

"Losses on account of grants" means such losses calculated in accordance with the rules set out in Part II. of the Fourth Schedule to this Act:

"Losses on account of rates" means such losses calculated in accordance with the rules set out in Part I. of the Fourth Schedule to this Act:

"Minister" means the Minister of Health:

"Net annual value for income tax purposes" means the gross annual value for income tax purposes as reduced for the purpose of collection in accordance with the provisions of Rule 7 of No. V. of Schedule A of the Income Tax Act, 1918, as amended by any subsequent enactment:

"Officer" includes servant:

"Parish rate" means a rate or an additional item of a rate levied to defray the expenses of a parish council or parish meeting other than expenses defrayed out of a special rate, and also includes any additional item of the general rate which by virtue of section three of the Rating and Valuation Act, 1925, is to be levied in lieu of a special rate:



AUTH019

"Poor law authority" means a board of guardians, the board of management of a school district, an asylum board, and a joint committee constituted under section three of the Poor Law Act, 1927, or the corresponding provision of any Act repealed by that Act:

"Poor law area" means, in relation to a board of guardians, the poor law union, in relation to the board of management of a school district, the school district, in relation to an asylum board, the asylum district, and in relation to a joint committee, the combination of poor law unions for which the joint committee acts:

"Prescribed" means, save as otherwise expressly provided in Part II of this Act, prescribed by regulations made by the Minister under this Act:

"Property" and "liabilities" have the same meanings as in the Local Government Act, 1888:

"Public health services" includes services relating to maternity and child welfare, lunacy and mental deficiency, and the welfare of the blind:

"Rate" has the same meaning as in the Rating and Valuation Act, 1925:

"Rating area" has the same meaning as in the Rating and Valuation Act, 1925:

"Reduced rateable value" means, subject to the provisions of the last foregoing section, in relation to any hereditament, the rateable value thereof according to the valuation lists in force on the first day of October, nineteen hundred and twenty-nine, and in relation to any area the aggregate of such rateable values of all the hereditaments in the area:

"Registration Acts" means the Births and Deaths Registration Acts, 1836 to 1926, and the Marriage Acts, 1811 to 1898:

"Registration officer" means, for the purposes of Part II and Part VII of this Act, any superintendent registrar and registrar of births and deaths:

"Road" means a highway repairable by the inhabitants at large, and, save as in this Act



AUTH020

A.D. 1929.

PART VIII. —*cont.*

otherwise expressly provided, includes any bridge so repairable carrying the road, and "improvement" in relation to a road includes the fixing of a building line or improvement line under any enactment:

"Road officer" means an officer employed as the road surveyor of a highway authority or employed under the control of such a surveyor in the surveying, making, maintenance or repair of roads:

"Separately rated area" means any parish, part of a parish or place which is either a contributory place or an area otherwise subject to separate or differential rating (other than differential rating which is not of a permanent character), or as respects any county borough or any district in which there is no such parish or part of a parish or place, means the county borough or the district, as the case may be:

"Sinking fund" includes any fund for the redemption of debt:

"Special rate" means a special rate as defined in section three of the Rating and Valuation Act, 1925:

"Spending authority" means the council of a county, county borough or district, the common council of the City of London, the council of a metropolitan borough, or a board of guardians:

"Standard year" means the year beginning on the first day of April, nineteen hundred and twenty-eight, and ending on the thirty-first day of March, nineteen hundred and twenty-nine:

"Transferred officer" means an officer who by virtue of this Act is in respect of any office transferred from one authority to another:

"Transferred services" means the services in respect of which functions are transferred to councils by Parts I and III of this Act:

"Unemployed insured men" and "unemployed insured women" mean, respectively, men and



AUTH021

women of or over the age of eighteen years being insured contributors under the Unemployment Insurance Acts, 1920 to 1928, who are for the time being recorded as being unemployed for the purpose of the returns of unemployment made by the Minister of Labour:

"Unreduced rateable value" means, subject to the provisions of the last foregoing section, in relation to any hereditament what would have been the rateable value thereof on the first day of October, nineteen hundred and twenty-nine, if that rateable value had been calculated in accordance with the enactments which were in force immediately before the commencement of this Act, but on the assumption that the net annual value of the hereditament was the net annual value thereof as on the said first day of October; and in relation to any area the aggregate of such rateable values of all the hereditaments in the area:

"Water-rate" means any rate or other charge payable by consumers for the supply of water:

"Weighted population" means in relation to any county or county borough, the weighted population calculated in accordance with the rules set out in Part III. of the Fourth Schedule to this Act.

Declaration of intention as to future increases of local expenditure.

**135.** It is hereby declared that it is the intention of this Act that, in the event of material additional expenditure being imposed on any class of local authorities by reason of the institution of a new public health or other service after the commencement of this Act, provision should be made for increased contributions out of moneys provided by Parliament.

Transmission of benefit of rate-relief in respect of freight transport hereditaments.

**136.**—(1) Whereas it is intended that occupiers of freight transport hereditaments, lands and heritages should allow rebates from, or make reductions in, the charges made by them in connection with the user of such hereditaments, lands and heritages for transport purposes, corresponding to the relief from rates due to the operation of Part V of this Act and of any corresponding enactment extending to Scotland:



AUTH022

# National Parks and Access to the Countryside Act 1949

**1949 CHAPTER 97**

An Act to make provision for National Parks and the establishment of a National Parks Commission ; to confer on the Nature Conservancy and local authorities powers for the establishment and maintenance of nature reserves; to make further provision for the recording, creation, maintenance and improvement of public paths and for securing access to open country, and to amend the law relating to rights of way; to confer further powers for preserving and enhancing natural beauty; and for matters connected with the purposes aforesaid. [16th December 1949.]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART I

THE NATIONAL PARKS COMMISSION

### 1 The National Parks Commission

There shall be a National Parks Commission which shall be charged with the duty of exercising the functions conferred on them by the following provisions of this Act—

(a) for the preservation and enhancement of natural beauty in England and Wales, and particularly in the areas designated under this Act as National Parks or as areas of outstanding natural beauty ;

(b) for encouraging the provision or improvement, for persons resorting to National Parks, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open air recreation and the study of nature afforded thereby,

fauna, or geological or physiographical features, it shall be the duty of the Conservancy to notify that fact to the local planning authority in whose area the land is situated.

### 24 Annual report of Nature Conservancy

(1) The Nature Conservancy shall, as soon as possible after the thirtieth day of September in each year, make to the Lord President of the Council a report on the discharge by them of their functions during the period of twelve months ending with that day.

(2) The Lord President of the Council shall lay a copy of every report of the Nature Conservancy under this section before each House of Parliament.

### 25 Supplementary provisions as to powers of Conservancy

(1) Nothing in this Part of this Act shall be construed as limiting the powers conferred on the Nature Conservancy by their charter, as for the time being in force.

(2) The provisions of this Part of this Act as to the acquisition and holding of land by the Nature Conservancy shall have effect subject to any limitation contained in the said charter, as for the time being in force, on the aggregate value of the land which may be acquired or held by the Conservancy.

(3) For the purposes of the application of any enactment or rule of law to land an interest in which belongs to the Nature Conservancy, the Conservancy shall be deemed to be a Government department.

### 26 Application of Part III to Scotland

In the application of this Part of this Act to Scotland the expressions " owner " and " limited owner " have the same meanings as in section three of the Forestry Act, 1947.

## PART IV

PUBLIC RIGHTS OF WAY

*Ascertainment of footpaths, bridleways and certain other highways*

### 27 Surveys of public paths, etc., and preparation of draft maps and statements

(1) Subject to the provisions of this Part of this Act, the council of every county in England or Wales shall, as soon as may be after the date of the commencement of this Act, carry out a survey of all lands in their area over which a right of way to which this Part of this Act applies is alleged to subsist, and shall, not later than the expiration of three years after that date or of such extended period as the Minister may in any particular case allow, prepare a draft map of their area, showing thereon a footpath or a bridleway, as may appear to the council to be appropriate, wherever in their opinion such a right of way subsisted, or is reasonably alleged to have subsisted, at the relevant date.

(2) A map prepared in accordance with the last foregoing subsection shall also show thereon any way which, in the opinion of the authority carrying out the survey (hereinafter referred to as " the surveying authority "), was at the relevant date, or was at that date reasonably alleged to be, a road used as a public path.

(3) For the purposes of this section, the relevant date shall, in relation to the preparation of a draft map, be such date, not being earlier than six months before the date on which notice of the preparation of the draft map is published in accordance with the following provisions of this Part of this Act, as the surveying authority may determine.

(4) An authority by whom a draft map is prepared as aforesaid shall annex thereto a statement specifying the relevant date and containing, as respects any public path or other way shown thereon in accordance with the foregoing provisions of this section, such particulars appearing to the authority to be reasonably alleged as to the position and width thereof, or as to any limitations or conditions affecting the public right of way thereover, as in the opinion of the authority it is expedient to record in the statement.

(5) Any duty imposed by this section to prepare a map relating to any area may be discharged by the preparation, whether at the same time or at different times, of two or more maps, each comprising part of the area but together comprising the whole thereof; and where two or more such maps are prepared all proceedings under the following provisions of this Part of this Act may, except as hereinafter expressly provided, be taken separately in relation to each map.

(6) In this Part of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say.—

" footpath " means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road ;

" bridleway " means a highway over which the public have the following, but no other, rights of way, that is to say. a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;

" horse " includes pony, ass and mule, and " horseback " shall be construed accordingly;

" public path " means a highway being either a footpath or a bridleway;

" right of way to which this Part of this Act applies " means a right of way such that the land over which the right subsists is a public path;

" road used as a public path " means a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used.

(7) A highway at the side of a river, canal or other inland navigation shall not be excluded from any definition contained in the last foregoing subsection by reason only that the public have a right to use the highway for purposes of navigation, if the highway would fall within that definition if the public had no such right thereover.

**28 Provision of information by other local authorities**

(1) Before carrying out a survey under the last foregoing section the surveying authority shall consult with the councils of county districts and parishes in the area of the authority as to the arrangements to be made for the provision by such councils of information for the purposes of the survey.

(2) Where the surveying authority and any such council as aforesaid are unable to agree as to the said arrangements, they shall refer the matter to the Minister and he shall determine what arrangements are to be made.

(3) Any arrangements made under this section for the provision of information by a parish council shall require the council to cause a parish meeting to be held for the purpose of considering the information to be provided by the council; and any arrangements so made for the provision of information by the council of a rural district shall, as respects each parish in the district not having a parish council, require the representative body of the parish or a member of that body to cause a parish meeting to be held for the purpose of considering the information to be provided by the district council in relation to the parish.

(4) It shall be the duty of any such council as aforesaid to collect and furnish to the surveying authority such information, in such manner and at such time, as may be provided for by arrangements agreed or determined under this section ; and the said duty shall be enforceable by mandamus on the application of the surveying authority.

**29 Representations and objections as to draft maps and statements**

(1) On completing the preparation of a draft map and statement the surveying authority shall notify the Minister and shall cause notice of the preparation thereof, and of places where copies thereof may be inspected at all reasonable hours, and of the time (not being less than four months) within which, and the manner in which, representations or objections with respect to the draft map and statement may be made to the authority, to be published in the London Gazette and in one or more local newspapers circulating in the area of the authority.

(2) At any time after the publication of a notice under the last foregoing subsection and before the expiration of the period specified in the notice for the making of representations and objections, the owner of any land to which the draft map and statement relate, or any other person interested in such land, may require the surveying authority to inform him what documents (if any) creating or modifying any of the rights of way shown on the draft map, being rights of way required to be shown thereon, were taken into account in preparing the draft map, so far as the said land is concerned, and—

(a) as respects any such documents in the possession of the surveying authority, to permit him to inspect them and take copies thereof,

(b) as respects any such documents not in their possession, to give him any information the authority have as to where the documents can be inspected ;

and on any requirement being made under this subsection the surveying authority shall comply therewith within fourteen days of the making of the requirement:

Provided that nothing in this subsection shall be construed as limiting the documentary or other evidence which may be adduced in any proceedings under this Part of this Act in support of the existence of a right of way.

(3) If any representation or objection is duly made to the surveying authority as to anything contained in or omitted from the draft map and statement, the authority, after considering the representation or objection and affording to the person by whom it was made an opportunity of being heard by a person appointed by the authority for the purpose, shall determine what (if any) modification of the particulars contained in the draft map and statement appears to the authority to be requisite in consequence thereof, and shall serve notice of their determination on the person by whom the representation or objection was made.

(4) Where under the last foregoing subsection the surveying authority determine to modify the particulars contained in the draft map and statement by the deletion of a way shown as a public path, or as a road used as a public path, or by the addition of a way so that it will be so shown,—

(a) they shall cause notice of their determination, in such form as may be prescribed by regulations made by the Minister, to be published in the London Gazette and in one or more local newspapers circulating in the area of the authority, specifying the time (not being less than twenty-eight days) within which, and the manner in which, representations or objections with respect to the determination may be made to the authority, and

(b) if any representation or objection is duly made to the authority under the last foregoing paragraph, the authority shall notify the effect of the representation to the person (hereinafter referred to as " the original objector ") who made the representation or objection under subsection (3) of this section and, after considering the representation or objection under the last foregoing paragraph and affording to the person by whom it was made and to the original objector an opportunity of being heard by a person appointed by the authority for the purpose, shall decide whether to maintain or revoke the determination and serve notice of their decision on the person by whom the representation or objection under the last foregoing paragraph was made and on the original objector.

(5) Any person aggrieved—

(a) by a determination of the surveying authority under subsection (3) of this section not to give effect to a representation or objection as to anything omitted from the draft map and statement (other than a limitation or condition to which a right of way is alleged to be subject), or

(b) by a decision of the surveying authority under the last foregoing subsection to maintain a determination to modify the particulars contained in the draft map and statement by the deletion of a way shown as a public path or as a road used as a public path, or

(c) by a decision of the surveying authority under the last foregoing subsection to revoke a determination to modify the said particulars by the addition of a way so that it will be so shown,

may, at any time within twenty-eight days after the service upon him of notice of the determination or decision, serve notice of appeal against that determination or decision on the Minister and on the surveying authority.

(6) Where notice of appeal is duly served under the last foregoing subsection the Minister, after giving to the appellant and to the surveying authority an opportunity of being heard by a person appointed by him for the purpose, shall either dismiss the appeal or direct the authority, in preparing the provisional map and statement in accordance with the provisions of the next following section.—

(a) in the case of an appeal against a determination under subsection (3) of this section, to modify the particulars contained in the draft map and statement in such manner as may be specified in the direction;

(b) in the case of an appeal against a decision under subsection (4) of this section, to reverse the decision.

(7) Where a notice of appeal duly served under subsection (5) of this section relates to a decision of the surveying authority under subsection (4) of this section, the authority shall serve a copy of the notice on the original objector, and the Minister shall give to

the original objector an opportunity of being heard under the last foregoing subsection at the same time as the appellant.

### 30 Preparation of provisional maps and statements

(1) As soon as may be after the expiration of the period of twenty-eight days next following the date on which notice of the determination made or decision taken on all representations and objections made under the last foregoing section as respects a draft map and statement has been served on the persons by whom the representations or objections were made, or, if no such representations or objections have been duly made, then as soon as may be after the time for making such representations or objections has expired, the surveying authority shall prepare a provisional map and statement, and shall cause notice of the preparation thereof, and of places where copies thereof may be inspected at all reasonable hours, to be published in the London Gazette and in one or more local newspapers circulating in the area of the authority.

(2) If, apart from this subsection, the period mentioned in the last foregoing subsection would expire before the determination of an appeal of which notice has been duly served under the last foregoing section, the said period shall be extended until the appeal is determined.

(3) The particulars to be contained in a provisional map and statement shall be those contained in the draft map and statement, subject to such modifications thereof (if any) as may be specified in any direction given by the Minister under paragraph (a) of subsection (6) of the last foregoing section or as may appear to the surveying authority to be requisite having regard to their determination of any representation or objection made under that section, being a determination as to which the Minister has not given any such direction as aforesaid.

(4) Every provisional statement prepared under this section shall include a note of the relevant date specified in the corresponding draft statement.

### 31 Determination by quarter sessions of disputes as to provisional maps and statements

(1) At any time within twenty-eight days after the publication of a notice under subsection (1) of the last foregoing section, the owner, lessee or occupier of any land shown on the map to which the notice relates, being land on which the map shows a public path, or a road used as a public path, may apply to quarter sessions for a declaration—

(a) that at the relevant date mentioned in the provisional statement there was no public right of way over the land ;

(b) that the rights conferred on the public at that date by the public right of way over the land were such rights as may be specified in the application, and not such rights as are indicated in the provisional map and statement;

(c) that the position or width of that part of the land over which the public right of way subsisted at the said date was as specified in the application, and not as indicated in the provisional map and statement; or

(d) that the public right of way over the land at the said date was not unconditional but was subject to limitations or conditions specified in the application, or, if the said right is indicated in the provisional statement as being subject to limitations or conditions, that the said right was subject to other limitations or

conditions specified in the application either in addition to or in substitution for those indicated in the provisional statement.

(2) Provision may be made by or under regulations made by the Secretary of State—

(a) for prescribing the court of quarter sessions to which applications under this section are to be made or for requiring such applications to be made to a committee, being either an existing committee or a committee specially constituted for the purpose as may be prescribed by the regulations, of such court of quarter sessions as may be so prescribed ;

(b) for the form and manner in which such applications are to be made, and the persons who are to be entitled to-be parties to the hearing of any such application;

(c) as to the publication or service of notice of proposals to make such applications;

(d) for the awarding of costs in any proceedings under this section.

(3) If on the hearing of an application under subsection (1) of this section, being an application for a declaration under paragraph (a), (b) or (c) of that subsection, it is not proved to the satisfaction of the court or committee—

(a) in the case of an application under the said paragraph (a), that there was at the relevant date a public right of way over the land,

(b) in the case of an application under the said paragraph (b), that the rights conferred on the public by the public right of way over the land at the said date were rights other than those specified in the application, or

(c) in the case of an application under the said paragraph (c), that the position or width of the part of the land therein mentioned was other than that specified in the application,

the court or committee shall make the declaration sought by the applicant.

(4) Where the court or committee make a declaration in the case of an application under the said paragraph (a) and it is proved to their satisfaction—

(a) that there was at the relevant date a right of way to which this Part of this Act applies over land other than that to which the application relates, and

(b) that the said right is the right of way which the surveying authority had in view when they showed on the map the disputed public path or road used as a public path,

the court or committee may, if satisfied that every owner, lessee and occupier of any of the land mentioned in paragraph (a) of this subsection has had an opportunity of appearing before them, make a further declaration that a public right of way as specified in the declaration subsisted over that land at that date.

(5) Where, in the case of an application under paragraph (b) or paragraph (c) of subsection (1) of this section, the court or committee do not make the declaration sought by the applicant, but the true nature of the rights conferred on the public by the public right of way in question or, as the case may be, the true position or width of the part of the land over which the public right of way subsisted at the relevant date (being different both from that specified in the application and from that indicated in the provisional map and statement) is proved to the satisfaction of the court or committee, the court or committee may make a declaration accordingly:

Provided that the court or committee shall not make a declaration under this subsection unless they are satisfied that every owner, lessee and occupier of any land which would be affected by the declaration has had an opportunity of appearing before them.

(6) A declaration under paragraph (d) of subsection (1) of this section shall not be made unless the matters to be stated in the declaration have been proved to the satisfaction of the court or committee hearing the application.

(7) Section twenty of the Criminal Justice Act, 1925, (which provides for appeals to the High Court by way of case stated on a point of law) shall with the necessary modifications apply in relation to applications under this section.

(8) Subject to the last foregoing subsection and to the next following section, a declaration made under this section shall be conclusive evidence of the matters stated in the declaration.

**32 Preparation, publication and effect of definitive maps and statements**

(1) As soon as may be after the determination of all applications made under the last foregoing section as respects any map and statement, or if no such applications have been duly made then as soon as may be after the time for making such applications has expired, the surveying authority shall prepare a definitive map and statement, and shall cause notice of the preparation thereof, and of places where copies thereof may be inspected at all reasonable hours, to be published in the London Gazette and in one or more local newspapers circulating in the area of the authority.

(2) The particulars to be contained in a definitive map and statement shall be those contained in the provisional map and statement, subject to such modifications thereof (if any) as may be requisite for giving effect to any declaration made under the last foregoing section ; and every definitive statement shall include a note of the relevant date specified in the corresponding provisional statement.

(3) The authority by whom a definitive map and statement are prepared shall furnish to the Minister such number of copies thereof as he may require.

(4) A definitive map and statement prepared under subsection (1) of this section shall be conclusive as to the particulars contained therein in accordance with the foregoing provisions of this section to the following extent, that is to say—

(a) where the map shows a footpath, the map shall be conclusive evidence that there, was at the relevant date specified in the statement a footpath as shown on the map;

(b) where the map shows a bridleway, or a road used as a public path, the map shall be conclusive evidence that there was at the said date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid; and

(c) where by virtue of the foregoing paragraphs of this subsection the map is conclusive evidence, as at any date, as to a public path, or road used as a public path, shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at the relevant date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive

evidence that at the said date the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date.

(5) A document purporting to be certified on behalf of the surveying authority to be a copy of a definitive map or statement or of any part thereof shall be receivable in evidence and shall be deemed, unless the contrary is shown, to be such a copy.

(6) The provisions in that behalf of Part III of the First Schedule to this Act shall have effect as to the validity of definitive maps and statements prepared under subsection (1) of this section.

**33 Periodical revision of maps and statements**

(1) The authority by whom a definitive map and statement have been prepared under the last foregoing section shall from time to time review the particulars contained therein having regard to events which have occurred at any time between the relevant date specified in the definitive statement and such date as may be determined by the authority for the purposes of the review (in this and the next following section referred to as " the date of review "):

Provided that in the case of a map and statement which have previously been reviewed under this subsection, the foregoing provisions of this subsection shall have effect with the substitution, for the reference to the relevant date specified in the statement, of a reference to the last preceding date of review.

(2) The events so occurring as aforesaid to which an authority shall have regard in carrying out a review under the last foregoing subsection shall include the following events, that is to say—

(a) the coming into operation of any enactment or instrument, or any other event, whereby a highway required to be shown, and shown, on the map has been authorised to be stopped up, diverted, widened or extended ;

(b) the coming into operation of any enactment or instrument, or any other event, whereby a highway shown on the map as being a highway of a particular description required to be shown thereon has ceased to be a highway of that description;

(c) the coming into operation of any enactment or instrument, or any other event, whereby a new right of way has been created, being a right of way to which this Part of this Act applies ;

(d) the expiration, in relation to a way in the area of the authority, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path; and

(e) the discovery by the authority of new evidence such that, if the authority were then preparing a draft map under the foregoing provisions of this Part of this Act, they would be required by those provisions to show on the map, as a highway of a particular description, a way not so shown on the definitive map, or on the revised map last prepared in accordance with the following provisions of this section, as the case may be.

(3) A review under subsection (1) of this section shall be carried out at such time as the authority carrying out the review may consider appropriate, so however that the date of review shall not in any case be a date later than the expiration of five years after the relevant date, or the last preceding date of review, whichever is the later:

Provided that nothing in this subsection shall affect the validity of any review carried out under the said subsection (1) or of any document prepared or thing done in consequence of such a review.

(4) Subject to the following provisions of this section, on completing a review under subsection (1) of this section the authority shall prepare a revised map and statement, consisting of the definitive map and statement, or of the revised map and statement last prepared under this section, as the case may be, subject to such modifications (if any) of the particulars contained therein as may appear to the authority to be requisite having regard to the review, and shall include in the revised statement a note of the date of review.

(5) If after carrying out a review under subsection (1) of this section it appears to the authority as respects the whole or any' part of their area that a revised map and statement prepared in accordance with the last foregoing subsection would not differ from the definitive or last revised map and statement, the authority shall cause notice of that fact, specifying the date of review and how much of their area is affected by the notice, to be published in the London Gazette and in one or more local news papers circulating in the area of the authority, and shall not be required to prepare a revised map and statement in consequence of that review in respect of so much of their area as is specified in the notice:

Provided that if within such time (not being less than twenty-eight days) as may be specified in the notice any representation is made to the authority that as respects the whole or part of so much of their area as is specified in the notice a revised map and statement prepared as aforesaid would differ from the definitive or last revised map and statement—

(a) the authority, after considering the representation and affording to the person by whom it was made an opportunity of being heard by a person appointed by the authority for the purpose, shall determine whether the representation is well founded and shall serve notice of their determination on the person by whom the representation was made;

(b) any person aggrieved by a determination of the authority under the last foregoing paragraph may, at any time within fourteen days after the service upon him of the notice of determination, serve notice of appeal against that determination on the Minister and on the authority;

(c) where notice of appeal is duly served under the last foregoing paragraph, the Minister, after giving to the appellant and to the authority an opportunity of being heard by a person appointed by him for the purpose, shall either dismiss the appeal or direct that effect shall be given to the representation ;

(d) if the authority determine that a representation is well founded or the Minister directs that a representation shall have effect, the authority shall be required to prepare a revised map and statement in consequence of the review, so however that where the representation relates to part only of their area they shell not by virtue of that representation be required so to prepare a revised map and statement for any other part of their area.

**34 Supplementary provisions as to revision of maps and statements**

(1) A revised map and statement prepared in accordance with the last foregoing section shall be prepared in three successive stages, that is to say in draft, provisional and definitive form respectively ; and the provisions of sections twenty-eight to thirty-two

of this Act shall apply in relation to a review under the last foregoing section and to the preparation as aforesaid of a revised map and statement as they apply in relation to a survey and to maps and statements prepared in consequence of a survey, but with the following modifications, that is to say—

(a) for references to the survey, to the surveying authority and to the relevant date there shall be substituted references to the review, to the authority carrying out the review and to the date of review respectively ;

(b) for references to the draft, provisional and definitive map and statement there shall be substituted references to the revised map and statement as prepared in draft, provisional and definitive form respectively ; and

(c) the reference in subsection (1) of section thirty-one of this Act to land on which the map shows a public path, or a road used as a public path, shall be construed as relating only to land on which the path or road was not shown, or was differently shown, on the last preceding revised map prepared in definitive form which included that land, or, if there has been no such map, on the definitive map.

(2) An authority carrying out a review under the last foregoing section shall so determine the date of review as to be not earlier than six months before the date on which notice of the preparation of the revised map and statement in draft form is published in accordance with the provisions of subsection (1) of section twenty-nine of this Act as applied by the last foregoing subsection.

(3) Where in accordance with subsection (5) of section twenty-seven of this Act two or more definitive maps and statements relating to different parts of the area of an authority have been prepared at different times, the authority shall at one and the same time review the particulars contained in each of those maps and statements; and accordingly the provisions of the last foregoing section shall apply as if the relevant date for the purposes of each of those maps and statements were the earliest of the relevant dates specified therein or such later date as, on the application of the authority, the Minister may in any particular case determine.

### 35 Application of ss. 27 to 34 to particular areas

(1) Subject to the provisions of this section, the foregoing provisions of this Part of this Act (in this and the next following section referred to as " the survey provisions ") shall not apply to the administrative county of London.

(2) The London County Council or the council of a county borough may by resolution adopt the survey provisions as respects any part of the said county or of the county borough, as the case may be, specified in the resolution, and those provisions shall thereupon apply accordingly.

(3) If it appears to the Minister, as respects any part of the administrative county of London or of a county borough, that it is expedient that the survey provisions should apply thereto, and the London County Council or the council of the county borough, as the case may be, have not passed a resolution adopting those provisions as respects that part, the Minister may, after consultation with the council in question, make an order directing that those provisions shall apply to that part of the said county or county borough, as the case may be.

(4) The council of a county, other than the administrative county of London, may by resolution exclude from the operation of the survey provisions any part of the county

which appears to the council to be so fully developed that it is inexpedient that those provisions should apply thereto:

Provided that a resolution under this subsection shall not have effect unless approved by the Minister.

(5) Where by virtue of a resolution under subsection (2) of this section, or of an order under subsection (3) thereof, the survey provisions apply to any part of the administrative county of London or of a county borough, those provisions shall have effect in relation thereto—

(a) in the case of a part of the administrative county of London, as if that part were a separate county and the London County Council were the council thereof, and as if, for references in those provisions to a county district, there were substituted references to a metropolitan borough;

(b) in the case of a part of a county borough, as if that part were a county and the county borough council were the council thereof;

(c) in either case, as if, for references in section twenty seven of this Act to the date of the commencement of this Act, there were substituted references to the date on which the resolution or order in question comes into operation;

(d) in either case, subject to the modification that subsection (5) of section thirty-three of this Act shall not apply as respects part only of the area to which the order or resolution relates.

(6) The making or revocation of a resolution or order under this-section, or the happening of any other event whereby land becomes or ceases to be comprised in an area to which the survey provisions apply, shall not, as respects any map or statement prepared before the event happened, affect the application in relation to the map or statement of subsection (4) of section thirty-two of this Act or that subsection as applied by subsection (1) of the last foregoing section.

### 36 Exercise of functions as to surveys, etc., by joint planning boards

(1) Where under the Act of 1947 a joint planning board is for the time being constituted for a united district, then, if the council of every county wholly or partly comprised in that district consents, the powers and duties under the survey provisions of each of those councils as respects any area comprised in the united district may be exercised and performed by the board; and references in this Part of this Act to the surveying authority shall be construed accordingly.

(2) Subsection (1) of section twenty-eight of this Act shall have effect in relation to a survey carried out by a joint planning board as if the reference therein to the councils of county districts and parishes included a reference to the council of every county wholly or partly comprised in the area of the board.

(3) Where by virtue of a resolution passed or order made under the last foregoing section the survey provisions apply to part of a county borough, being a part wholly or partly comprised in a united district for which a joint planning board is constituted, references in the two last foregoing subsections to a county shall be construed as including references to that county borough.

(4) If, at the date when by virtue of such a resolution or order as aforesaid the survey provisions become applicable to part of a county borough, any functions under those provisions are being exercised by a joint planning board for a united district which includes that part, and the county borough council does not consent to the exercise

of those functions by the joint planning board as respects that part, the foregoing provisions of this section shall have effect as if that part were not comprised in the united district.

### 37 Power of Minister to expedite preparation of maps and statements

(1) Where it appears to the Minister that circumstances exist such as are mentioned in the next following subsection and that by reason of those circumstances the preparation of a provisional map and statement under section thirty of this Act, or the preparation of a definitive map and statement under section thirty-two thereof, has been or is likely to be unduly delayed, the Minister, after consultation with the surveying authority, may direct the authority to prepare the provisional or definitive map and statement, as the case may be, within such time (not being less than three months from the date of the direction) as may be specified in the direction.

(2) The circumstances referred to in the last foregoing subsection are the following circumstances, that is to say—

(a) in the case of a provisional map and statement, that the matters for the time being outstanding are so numerous, or that any such matters are of such a character, as to prevent the completion within a reasonable time of the action required to be taken under section twenty-nine of this Act, and

(b) in the case of a definitive map and statement, that by reason of the congestion of business at quarter sessions, or at any committee of quarter sessions to which applications under section thirty-one of this Act are referred, or by reason of the time taken or likely to be taken to dispose of any appeal under subsection (7) of the said section thirty-one, the determination of all applications under the said section thirty-one which, apart from this section, would have to be determined before the definitive map and statement can be prepared is not likely to be completed within a reasonable time.

(3) Where the Minister gives a direction under subsection (1) of this section as respects the preparation of a provisional map and statement, subsection (3) of section thirty of this Act shall have effect in relation to the preparation thereof with the following modifications, that is to say—

(a) the direction may require the surveying authority to disregard representations or objections made under subsection (3) of section twenty-nine of this Act as respects any matter, or matters of any class, specified in the direction, being a matter or matters outstanding at the date of the direction ; and

(b) subject to the provisions of the last foregoing paragraph, the surveying authority shall give effect to any representations or objections made with respect to matters outstanding at the date of the direction, being representations or objections made under the said subsection (3) as to anything omitted from the draft map and statement (other than a limitation or condition to which a right of way is alleged to be subject), and shall disregard all other representations or objections made with respect to matters outstanding at that date.

(4) Where the Minister gives a direction under subsection (1) of this section as respects the preparation of a definitive map and statement, subsection (2) of section thirty-two of this Act shall have effect in relation to the preparation thereof subject to the following modifications, that is to say—

(a) any way in respect of which an application under paragraph (a) or paragraph (c) of subsection (1) of section thirty-one of this Act has been made

but not finally determined at the date of the direction shall be omitted from the definitive map and statement;

(b) any way in respect of which an application under paragraph (6) of the said subsection (1) has been made but not finally determined at the said date shall be shown on the definitive map as if the rights conferred on the public by the public right of way thereover were the rights specified in the application, and not the rights indicated in the provisional map and statement; and

(c) in the case of any way in respect of which an application under paragraph (d) of the said subsection (1) has been made but not filially determined at the said date, the definitive statement shall include a note of the limitations or conditions specified in the application and of the fact that the application has been made and has not been finally determined ;

and subsection (2) of section thirty-three of this Act shall have effect, in relation to any review of the particulars contained in the definitive map and statement, as if the events therein mentioned included the final determination of any such application as is mentioned in paragraphs (a) to (c) of this subsection.

(5) The surveying authority shall furnish the Minister with such information, and produce to him for inspection such documents, as he may require for the purposes of this section.

(6) References in this section to matters outstanding at any time shall be construed as references to matters as to which representations or objections have been made under section twenty-nine of this Act and have not been finally determined before that time.

### 38 Supplementary provisions as to maps and statements

(1) Regulations made by the Minister may prescribe the scale on which maps are to be prepared under any of the foregoing provisions of this Part of this Act, and the method of showing or recording thereon, or in any statement required by those provisions to be annexed thereto, anything required by those provisions to be so shown or recorded.

(2) The places at which copies of a draft, provisional or definitive map and statement, or of a revised map and statement prepared in draft, provisional or definitive form, are to be available for inspection in accordance with the provisions of this Part of this Act in that behalf shall include one or more places in each county district comprised in the area to which the map and statement relate and, so far as appears practicable to the surveying authority or the authority carrying out the review, as the case may be, a place in each parish so comprised:

Provided that the authority shall be deemed to comply with the requirement to have a copy available for inspection in a county district or parish if they have available for inspection there a copy of so much of the map and statement as relates to the county district or parish.

(3) Notwithstanding anything in subsection (1) of section thirty-two of this Act or in the last foregoing subsection, an authority shall not be required to keep available for inspection more than one copy of any definitive map and statement, or revised map and statement prepared in definitive form, if as respects the land to which that map and statement relate a subsequent revised map and statement so prepared have come into operation; and the said one copy may be kept at such place in the area of the authority as they may determine.

*Creation of new public rights of way*

### 39 Creation of rights of way by agreement

(1) The council of a county borough or county district shall have power to enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath or bridleway over land in the county borough or county district, as the case may be:

Provided that the powers conferred by this subsection shall not be exercisable—

(a) by the council of a rural district except with the consent of the county council and, if the county council is not the local planning authority, the consent of that authority;

(b) by the council of any other county district except with the consent of the local planning authority; and

(c) by the council of a county borough, not being the local planning authority, except with the consent of that authority.

(2) An agreement made under the last foregoing subsection (hereinafter referred to as a " public path agreement") shall be on such terms as to payment or otherwise as may be specified in the agreement, and may, if it is so agreed, provide for the dedication of the footpath or bridleway subject to limitations or conditions affecting the public right of way thereover.

(3) Where a public path agreement has been made it shall be the duty of the council to take all necessary steps for securing that the footpath or bridleway is dedicated in accordance therewith.

(4) References in this section to the dedication of a footpath or bridleway shall be construed as including references to the widening or extension of a footpath or bridleway.

### 40 Compulsory powers for creation of public rights of way

(1) Where it appears to the council of a county borough or county district that there is need for a public right of way on foot, or on foot and on horseback, over land in their area and they are satisfied that, having regard to—

(a) the extent to which the right of way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and

(b) the effect which the creation of the right of way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation hereinafter contained,

it is expedient that the right of way should be created, the council may by order (hereinafter referred to as a " public path order") made by them and submitted to and confirmed by the Minister create a public right of way over the land.

(2) A right of way created by a public path order may be either a right of way on foot only, or a right of way on foot and on horseback, as may be specified in the order, and may be either unconditional or subject to such limitations or conditions as may be so specified.

(3) Subject to the provisions of the next following section, the powers conferred by this section shall not be exercisable—

(a) by the council of a rural district except with the consent of the county council and, if the county council is not the local planning authority, the consent of that authority;

(b) by the council of any other county district, except with the consent of the local planning authority ; and

(c) by the council of a county borough, not being the local planning authority, except with the consent of that authority.

(4) A public path order shall be in such form as may be prescribed by regulations made by the Minister, and shall contain a map. on such scale as may be so prescribed, defining the land over which a public right of way is thereby created.

(5) The provisions in that behalf of the First Schedule to this Act shall have effect as to the making, confirmation, coming into operation and validity of public path orders.

(6) References in this section to the creation of a public right of way shall be construed as including references to the widening or extension of the area over which there is an existing public right of way ; and references therein to a right of way on horseback shall be construed as including references to a right of leading a horse along the highway.

**41 Exercise by other authorities of powers under ss. 39 and 40**

(1) The Minister, on the application of the council of a county, may direct, either generally or as respects the creation of a particular right of way, that the powers conferred by the two last foregoing sections or either of them on the council of a county district specified in the direction, being a district in the county in question, shall be exercisable by the county council and shall not be exercisable by the council of the county district:

Provided that, in relation to the creation of rights of way in a National Park, this subsection shall have effect as if—

(a) references to the council of a county included reference to a local planning authority whose area consists of or includes any part of the Park, and

(b) references to a county district in the county included references to a county borough or county district any part of which is comprised in the area of such a local planning authority.

(2) A county council exercising a power by virtue of a direction under the last foregoing subsection shall consult the local planning authority, where that authority is a joint board, but shall not be required to obtain the consent of the board to the exercise of the power.

(3) Where it appears to the Minister in any particular case that there is need for a public right of way as mentioned in subsection (1) of the last foregoing section, and the Minister is satisfied as mentioned in that subsection, the Minister, after consultation with the appropriate authority, may direct the authority to make and submit to him a public path order creating the right of way or may himself make the order; and where the Minister gives a direction under this subsection, the provisions of subsection (3) of the last foregoing section shall not apply.

(4) In the last foregoing subsection the expression " the appropriate authority," in relation to the making of a public path order, means the authority upon whom power to make

the order (whether the power is exercisable with the consent of any other authority or not) is conferred by the last foregoing section or by that section as modified by a direction given under subsection (1) of this section.

*Diversion and Closure of Public Paths*

**42 Diversion of public paths**

(1) Where an owner, lessee or occupier of land crossed by a public path satisfies the council of the county borough or county district in which the land is situated that for securing the efficient use of the land or of other land held therewith or providing a shorter or more commodious path it is expedient that the line of the path across his land, or part of that line, should be diverted (whether on to other land of his or on to land of another owner, lessee or occupier), the council may by order (hereinafter referred to as a "diversion order") made by them and submitted to and confirmed by the Minister—

(a) create, as from such date as may be specified in the order, any such new public right of way as appears to the council requisite for effecting the diversion, and

(b) extinguish, as from such date as may be so specified in accordance with the provisions of the next following subsection, the public right of way over so much of the path as appears to the council requisite as aforesaid.

(2) Where it appears to the council that any work requires to be done to provide necessary facilities for the convenient exercise of any such new public right of way as is mentioned in paragraph (a) of the last foregoing subsection, the date specified under paragraph (b) of that subsection shall be later than the date specified under paragraph (a) thereof by such time as appears to the council requisite for enabling the work to be carried out.

(3) A public right of way created by a diversion order shall be either a right of way on foot only, or a right of way on foot and on horseback (including a right of leading a horse along the highway), as may be specified in the order in accordance with the nature of the right of way extinguished by the order, and may either be unconditional or may (whether or not the last-mentioned right was subject to limitations or conditions of any description) be subject to such limitations or conditions as may be so specified.

(4) Before determining to make a diversion order on the representation of any owner, lessee or occupier, the council may require him to enter into an agreement with the council to defray, or to make such contribution as may be specified in the agreement towards—

(a) any compensation which may become payable under the following provisions of this Part of this Act in consequence of the coming into operation of the order, or

(b) where the council are the highway authority as respects the path in question, any expenses which they may incur in bringing the new site of the path into a fit condition for use by the public, or

(c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority in consequence of the order under the provisions of subsection (4) of section forty-eight of this Act.

(5) The Minister shall not confirm a diversion order unless he is satisfied that the diversion to be effected thereby is expedient as mentioned in subsection (1) of this section,

and further that the path will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

(a) the diversion would have on public enjoyment of the path as a whole.

(b) the coming into operation of the order would have as respects other land served by the existing public right of way, and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and of any land held therewith,

so however that for the purposes of paragraphs (b) and (c) of this subsection the Minister shall take into account the provisions as to compensation hereinafter contained.

(6) A diversion order shall be in such form as may be prescribed by regulations made by the Minister, and shall contain a map, on such scale as may be so prescribed, showing the existing site of so much of the line of the path as is to be diverted by the order and the new site to which it is to be diverted, and indicating whether a new right of way is created by the order over the whole of the new site or whether some part thereof is already comprised in a public path and, in the latter case, defining the part thereof so comprised.

(7) The provisions in that behalf of the First Schedule to this Act shall have effect as to the making, confirmation, coming into operation and validity of diversion orders.

(8) References in this section and in the said First Schedule to the diversion of the line of a path shall be construed as including, in the case of a path which terminates at a point on any public path or other highway, references to modifying the line of the path so as to terminate at another point on the same highway or on a highway connected therewith, being a point substantially as convenient to the public.

### 43 Closure of public paths

(1) Where it appears to the council of a county borough or county district as respects a public path in their area that it is expedient that the path should be stopped up, otherwise than by way of a diversion order, on the grounds that the path is not needed for public use, the council may by order (hereinafter referred to as an " extinguishment order ") made by them and submitted to and confirmed by the Minister extinguish the public right of way over the path.

(2) The Minister shall not confirm an extinguishment order unless he is satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him that the path would, apart from the order, be likely to be used by the public, and having regard 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 hereinafter contained. 40

(3) An extinguishment order shall be in such form as may be prescribed by regulations made by the Minister, and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.

(4) The provisions in that behalf of the First Schedule to this Act shall have effect as to the making, confirmation, coming into operation and validity of extinguishment orders.

(5) Where in accordance with regulations made under paragraph 4 of the said First Schedule proceedings preliminary to the confirmation of an extinguishment order are

taken concurrently with proceedings preliminary to the confirmation of a public path order or a diversion order, then in considering under subsection (1) of this section whether the path to which the extinguishment order relates is needed for public use, or under subsection (2) of this section to what extent (if any) that path would apart from the order be likely to be used by the public, the council or the Minister, as the case may be, may have regard to the extent to which the public path order or diversion order would provide an alternative path.

(6) References in this section to a public path shall be construed as including references to a part of such a path.

(7) For the purposes of subsections (1) and (2) of this section, any temporary circumstances preventing or diminishing the use of a path by the public shall be disregarded.

**44 Exercise of powers of making diversion and extinguishment orders**

(1) Subject to the following provisions of this section, the powers of making diversion orders and extinguishment orders conferred by the two last foregoing sections shall not be exercisable—

(a) by the council of a rural district except with the consent of the county council and, if the county council is not the local planning authority, the consent of that authority;

(b) by the council of any other county district, except with the consent of the local planning authority;

(c) by the council of a county borough, not being the local planning authority, except with the consent of that authority; and

(d) by any local authority as respects a path, or part of a path, in a National Park, except after consultation with the Commission.

(2) Where a public path lies partly within and partly outside a county borough or county district, the powers conferred by the two last foregoing sections on the council of the county borough or county district, as the case may be, shall extend to the whole of the path as if the path lay wholly within their area :

Provided that, in relation to so much of the path as lies outside the area of the council, the said powers shall not be exercisable—

(a) as respects any part of the path in a rural district, except with the consent of the council of that district and of the county council, and, if that county council is not the local planning authority, the consent of that authority;

(b) as respects any part of the path in any other county district, except with the consent of the council of that district and the consent of the local planning authority; and

(c) as respects any part of the path in a county borough, except with the consent of the council of the county borough and, if that council is not the local planning authority, the consent of that authority.

(3) The Minister, on the application of the council of a county, may direct, either generally or as respects the diversion or stopping up of a particular public path or part thereof, that the powers conferred by the two last foregoing sections or either of them (including those powers as extended by the last foregoing subsection) on the council of a county district specified in the direction, being a district in the county in question,

shall be exercisable by the county council and shall not be exercisable by the council of the county district.

(4) A county council exercising a power by virtue of a direction under the last foregoing subsection shall consult the local planning authority, where that authority is a joint board, but shall not be required to obtain the consent of the board to the exercise of the power:

Provided that a county council shall not exercise any such power as aforesaid as respects so much of a public path as lies in another county except with the consent of the council of that county and, if the last mentioned council is not the local planning authority, the consent of that authority.

(5) Where an owner, lessee or occupier of land crossed by a public path satisfies the Minister that a diversion thereof is expedient as mentioned in subsection (1) of the last but one foregoing section, or where it appears to the Minister as respects a public path that it is expedient as mentioned in subsection (1) of the last foregoing section that the path or part thereof should be stopped up, then if—

(a) the appropriate authority have not made and submitted to him a diversion order or an extinguishment order, as the case may be, and

(b) the Minister is satisfied that, if such an order were made and submitted to him, he would have power to confirm the order in accordance with the provisions in that behalf of the two last foregoing sections,

the Minister, after consultation with the said authority, may direct the authority to make and submit to him a diversion order or an extinguishment order, as the case may be, or may himself make the order; and where the Minister gives a direction under this subsection, the provisions of subsection (1) of this section, of that subsection and of the proviso to subsection (2) of this section, or the proviso to the last foregoing subsection, as the case may be, shall not apply.

(6) A council proposing to make a diversion order such that the authority who will be the highway authority in respect of any part of the path after the diversion will be a different body from the existing highway authority in respect thereof shall, before making the order, notify the first-mentioned authority.

(7) In subsection (5) of this section the expression " the appropriate authority," in relation to the making of a diversion order or an extinguishment order, means the authority upon whom power to make the order (whether the power is exercisable with the consent of any other authority or not) is conferred by or under the relevant provisions of the two last foregoing sections and of subsections (2) and (3) of this section.

### 45 Supplementary provisions as to diversion and extinguishment orders

(1) The three last foregoing sections shall apply in relation to public rights of way created before as well as after the commencement of this Act.

(2) The provisions of the three last foregoing sections shall be without prejudice to the provisions of any other enactment under which highways may be stopped up or diverted or public rights of way may be extinguished.

(3) A diversion order or extinguishment order affecting in any way the area of more than one authority may contain provisions requiring one of the authorities to defray, or contribute towards, expenditure incurred in consequence of the order by another of the authorities; and a diversion order diverting any part of the line of a path from a site

in the area of one highway authority to a site in the area of another may provide that the coming into operation of the order shall not discharge any liability to repair of the first mentioned authority or impose any such liability on the last mentioned authority.

(4) A diversion order or extinguishment order shall not be made so as to extinguish a right of way over land on, over or under which there is any apparatus belonging to statutory undertakers unless the undertakers consent to the making of the order, and any such consent may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers as they may reasonably require.

The consent of statutory undertakers to any such order shall not be unreasonably refused, and any question arising under this subsection whether any requirement or refusal is reasonable shall be determined by the appropriate Minister.

*Compensation Provisions*

**46 Compensation for creation, diversion and closure of public paths**

(1) Subject to the following provisions of this section, if, on a claim made in accordance with this section, it is shown that the value of an interest of any person in land is depreciated, or that any person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path order, a diversion order or an extinguishment order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.

(2) A claim for compensation under this section shall be made within such time and in such manner as may be prescribed by regulations made by the Minister, and shall be made to the authority by whom the order was made.

(3) For the purposes of the application of this section to an order made by the Minister under subsection (3) of section forty-one of this Act or subsection (5) of the last but one foregoing section, references in this section to the authority by whom the order was made shall be construed as references to the authority who, immediately before the making of the order, were, for the purposes of the said subsection (3) or (5), the appropriate authority in relation to the making of an order for the creation, diversion or stopping up of the public path or part of a public path to which the order relates.

(4) Nothing in this section shall confer on any person, in respect of a right of way created by a public path order or diversion order, a right to compensation for depreciation of the value of an interest in land, or for disturbance in his enjoyment of land, not being in either case land over which the right of way was created or land held therewith, unless the creation of the right of way would have been actionable at his suit if it had been effected otherwise than in the exercise of statutory powers.

*Liability for Repair of Public Paths*

**47 Liability for repair of public paths**

(1) Subject to the following provisions of this Part of this Act, the rule of law whereby a highway is repairable by the inhabitants at large shall apply to all public paths, whether coming into existence before or after the commencement of this Act, notwithstanding anything contained in any enactment passed or made before the commencement of this

Act and notwithstanding any liability to repair of any other person; and accordingly the enactments relating to highways so repairable shall have effect in relation to all such public paths.

(2) Without prejudice to the generality of the last foregoing subsection—

(a) no order made under section twenty-one of the Highway Act, 1864, or section twenty-four of the Highways and Locomotives (Amendment) Act, 1878 (which sections provide for the making of orders for discontinuing the maintenance of unnecessary highways) shall have effect after the commencement of this Act as respects any public path; and

(b) after the commencement of this Act no proceedings shall be instituted under either of the said sections for an order relating to a public path.

(3) Where apart from this section any person would be under an obligation to repair a public path, whether under any enactment, or by reason of tenure, enclosure or prescription—

(a) the operation of subsection (1) of this section shall not release him from the obligation, but

(b) if in the performance of their duty under the said subsection (1) the highway authority repair the public path, they may recover from the said person the necessary expenses of so doing, and

(c) where the highway authority exercise a right of recovery under the last foregoing paragraph, then, if the said person would have been entitled to recover from some other person the whole or part of the expenses of repairing the path if he had repaired it himself, he shall be entitled to recover from that other person the whole or the like part, as the case may be, of the expenses recovered from him by the highway authority:

Provided that the right of recovery conferred by paragraph (b) of this subsection shall not be exercisable unless, before repairing the path, the highway authority have given notice to the said person that the path is in need of repair, specifying a reasonable time within which he may repair the path, and the said person has failed to repair the path within that time.

### 48 Making up of public paths

(1) On the dedication of a public path in pursuance of a public path agreement, or on the coming into operation of a public path order, being—

(a) an agreement or order made by a local authority who are not the highway authority as respects the path in question, or

(b) an order made by the Minister under subsection (3) of section forty-one of this Act where, in relation to the making of a public path order creating the right of way in question, the appropriate authority for the purposes of the said subsection (3) are such a local authority,

the highway authority shall survey the path and shall certify what work (if any) appears to them to be necessary to bring the path into a fit condition for use by the public as a footpath or bridleway, as the case may be, and shall serve a copy of the certificate on the local authority mentioned in paragraph (a) or (b) of this subsection, as the case may be.

(2) An authority on whom a copy of a certificate is served under the last foregoing subsection may apply to the Minister on the ground that the work specified in the certificate, or any part thereof, is unnecessary or unduly expensive or is undesirable

in the interests of amenity; and where such an application is made the Minister shall either cause a local inquiry to be held or shall give to the applicants and to the highway authority an opportunity of being heard by a person appointed by him for the purpose and, after considering the report of the person appointed to hold the inquiry or the person so appointed as aforesaid, shall make such order confirming, quashing or varying the certificate as he may think fit.

(3) Where the certificate of a highway authority in respect of a public path is quashed under the last foregoing subsection, the path shall not be required to be maintained in a better condition than the condition in which it was at the date of the certificate; and where under the last foregoing subsection such a certificate is varied, the path shall not be required to be maintained in a better condition than the condition in which it is immediately after the completion of the work specified in the certificate as so varied.

(4) Subject to the provisions of subsection (2) of this section, it shall be the duty of the highway authority to carry out any work specified in a certificate under subsection (1) thereof; and where the authority have carried out the work they may recover from the authority on whom a copy of the certificate was served any expenses reasonably incurred by them in carrying out that work, including any expenses so incurred in the discharge of any liability for compensation in respect of the carrying out thereof.

(5) Where a public path order—

(a) is made in compliance with a direction of the Minister under subsection (3) of section forty-one of this Act and is so made by the local authority who, on the coming into operation of the order, become the highway authority as respects the path in question, or

(b) is made by the Minister under the said subsection (3) in a case where, in relation to the making of a public path order creating the right of way in question, the appropriate authority for the purposes of the said subsection (3) are that local authority,

the following provisions shall have effect, that is to say—

(i) the local authority specified in paragraph (a) or (b) of this subsection, as the case may be, shall survey the path and shall certify what work (if any) appears to them to be necessary to bring the path into a fit condition for use by the public as a footpath or bridleway, as the case may be, and shall furnish the Minister with a copy of the certificate;

(ii) if the Minister is not satisfied with a certificate made under the last foregoing paragraph, he shall either cause a local inquiry to be held or shall give to the local authority an opportunity of being heard by a person appointed by him for the purpose and, after considering the report of the person appointed to hold the inquiry or the person so appointed as aforesaid, shall make such order either confirming or varying the certificate as he may think fit; and

(iii) subject to the provisions of the last foregoing paragraph, it shall be the duty of the highway authority to carry out the work specified in a certificate made by them under paragraph (i) of this subsection.

(6) The foregoing provisions of this section shall apply to any public path created by a diversion order with the substitution of references to such an order for references to a public path order and of references to subsection (5) of section forty-four of this Act for references to subsection (3) of section forty-one thereof.

### 49 Acceptance of new paths created by dedication

Section twenty-three of the Highway Act, 1835 (which provides that such highways as are therein mentioned shall not become repairable by the inhabitants at large unless certain conditions are complied with on the dedication thereof) shall apply to any public path dedicated after the commencement of this Act otherwise than in pursuance of a public path agreement.

### 50 Private street works

Where apart from the provisions of section forty-seven of this Act a public path in existence at the passing of this Act would, for the purposes of any of the following enactments, that is to say—

(a) section one hundred and fifty of the Public Health Act, 1875, or

(b) the Private Street Works Act, 1892, or

(c) the corresponding provisions of any other Act (including a local Act),

be a street, or part of a street, not being a highway repairable by the inhabitants at large, nothing in the said section shall prevent a local authority carrying out, or requiring the carrying out of, work under any of the said enactments or recovering expenses thereof.

*Long-Distance Routes*

### 51 General provisions as to long-distance routes

(1) Where it appears to the Commission, as respects any part of England or Wales, that the public should be enabled to make extensive journeys on foot or on horseback along a particular route, being a route which for the whole or the greater part of its length does not pass along roads mainly used by vehicles, the Commission may prepare and submit to the Minister a report under this section.

(2) A report under this section shall contain a map showing the route, defining those parts thereof over which there exists a public right of way, and indicating in each case the nature of that right; and the report shall set out such proposals as the Commission may think fit—

(a) for the maintenance or improvement of any public path or road used as a public path along which the route passes;

(b) for the provision and maintenance of such new public paths as may be required for enabling the public to journey along the route;

(c) for the provision and operation of ferries where they are needed for completing the route; and

(d) for the provision of accommodation, meals and refreshments along the route.

(3) A report under this section may also include such recommendations as the Commission may think fit for the restriction of traffic on existing highways along which the route passes.

(4) Before preparing a report under this section the Commission shall consult every joint planning board, county council, county borough council and county district council through whose area the route passes; and it shall be the duty of every such board or council to furnish to the Commission such information as the Commission may reasonably require for the purposes of the report.

(5) A report under this section shall contain an estimate, in such form as the Minister may require, of the capital outlay likely to be incurred in carrying out any such proposals contained therein as are mentioned in subsection (2) of this section, of the annual cost of maintaining any existing public paths or roads used as public paths along which the route passes and any new public paths provided for by the proposals, and of the annual expenditure likely to be incurred by local authorities in connection with the provision and operation of ferries, and the provision of accommodation, meals and refreshments, so far as those matters are provided for by the proposals.

## 52 Approval of proposals relating to a long-distance route

(1) On the submission to the Minister of a report under the last foregoing section, the Minister shall consider any proposals contained in the report under subsection (2) of that section and may either approve the proposals, with or without modifications, or reject the proposals:

Provided that where the Minister does not propose to approve the proposals as set out in the report he shall, before coming to a determination as to what action to take under this subsection, consult with the Commission and such other authorities and persons as he may think fit.

(2) As soon as may be after the Minister determines under the last foregoing subsection either to approve any proposals, with or without modifications, or to reject them, he shall notify his determination to the Commission and to every joint planning board, county council, county borough council and county district council whose area is traversed by the route to which the report relates.

(3) Proposals approved by the Minister under subsection (1) of this section, either as originally set out in the report or as modified by the Minister, are hereinafter referred to as " approved proposals relating to a long-distance route."

## 53 Ferries for purposes of long-distance routes

(1) Where approved proposals relating to a long-distance route include proposals for the provision and operation of a ferry, the authority who are the highway authority for either or both of the highways to be connected by the ferry—

(a) shall have power to provide and operate the ferry and to carry out such work and do all such things as appear to them expedient for the purpose of operating the ferry;

(b) may with the approval of the Minister agree with any person or body of persons for the provision and operation of the ferry by him or them and for the making by the highway authority of such contributions as may be specified in the agreement:

Provided that nothing in this subsection shall—

(i) be construed as conferring on such an authority any exclusive right to operate a ferry;

(ii) authorise the doing of anything which apart from this subsection would be actionable by any person by virtue of his having an exclusive right to operate a ferry, unless he consents to the doing thereof;

(iii) authorise the doing of anything on land, or as respects water over land, in which any other person has an interest, if apart from this subsection the doing

thereof would be actionable at his suit by virtue of that interest and he does not consent to the doing thereof;

and before carrying out any work in the exercise of powers conferred by this subsection, being work on the bank or bed of any waterway, the highway authority shall consult with such authorities having functions relating to the waterway as the Minister may either generally or in any particular case direct.

(2) A highway authority may acquire land compulsorily for the purpose of any of their functions under paragraph (a) of the last foregoing subsection.

(3) The Minister, on the application of any such authority as is hereafter specified, may direct, either generally or as respects the provision and operation of a particular ferry, that all or any of the powers conferred on a highway authority by subsection (1) of this section shall be exercisable by the applicant authority and not by the highway authority.

(4) An application under the last foregoing subsection may be made, in relation to any highway authority, by any county or county district council (not being the highway authority) whose area includes or is included in the area of the highway authority.

### 54 Accommodation, meals and refreshments along longdistance routes

(1) Where approved proposals relating to a long-distance route include proposals for the provision, along any part of the route, of accommodation, meals and refreshments, any local planning authority through whose area, or in the neighbourhood of whose area, that part of the route passes shall have power to make such arrangements under this section as are requisite for giving effect to the last-mentioned proposals.

(2) The arrangements which may be made by an authority under this section are arrangements for securing, at places in their area convenient for persons using the part of the route in question, the provision, whether by the authority or other persons, of accommodation, meals and refreshments (including intoxicating liquor):

Provided that an authority shall not under this section provide accommodation, meals or refreshments except in so far as it appears to them that the facilities therefor are inadequate or unsatisfactory, either generally or as respects any description of accommodation, meals or refreshments, as the case may be.

(3) For the purposes of arrangements under this section a local planning authority may erect such buildings and carry out such work as may appear to them to be necessary or expedient.

(4) The foregoing provisions of this section shall not authorise an authority, on land in which any other person has an interest, without his consent to do anything which apart from this section would be actionable at his suit by virtue of that interest.

(5) A local planning authority may acquire land compulsorily for the purpose of any of their functions under this section.

### 55 Variation of approved proposals

(1) Where proposals relating to a long-distance route have been approved by the Minister under section fifty-two of this Act, the Commission may from time to time prepare and submit to the Minister a report proposing any such variation of the approved proposals as the Commission may think fit.

(2) Where, as respects any proposals approved as aforesaid, it appears to the Minister, after consultation with the Commission, expedient that the proposals should be varied in any respect and the Commission have not submitted to the Minister a report proposing that variation, the Minister may direct that the proposals shall be so varied.

(3) Subsection (4) of section fifty-one of this Act, and subsections (1) and (2) of section fifty-two thereof, shall with the necessary modifications apply to a report or direction under this section ; and subsection (5) of the said section fifty-one shall with the necessary modifications apply to any such report.

(4) Where the Minister approves, with or without modifications, any proposals contained in a report under subsection (1) of this section, or gives a direction under subsection (2) of this section, the proposals for the variation of which the report was made or direction given shall thereafter have effect subject to the provisions of the report or direction; and references in this Act to approved proposals relating to a long-distance route shall be construed accordingly.

*Minor Amendments of Law relating to Rights of Way*

**56 Rights of way subject to conditions for securing efficient use of agricultural land**

(1) Where a public path crosses agricultural land or land which is being brought into use for agriculture, then if—

(a) it is proposed in accordance with the rules of good husbandry to plough the land, and

(b) it is convenient, in so ploughing the land, to plough the path together with the rest of the land,

the public right of way shall be subject to the condition that the occupier shall have the right, subject to the following provisions of this section, to plough the path as well as the rest of the land.

(2) Before ploughing a public path in the exercise of the right conferred by the last foregoing subsection the occupier shall give to the highway authority not less than seven days' notice of his intention to plough the path ; and any person who fails to comply with the provisions of this subsection shall be liable on summary conviction to a fine not exceeding two pounds.

(3) Where a public path is ploughed in the exercise of the said right, the occupier of the land shall as soon as may be after the ploughing is completed make good the surface of the path so as to make it reasonably convenient for the exercise of the public right of way; and any person who fails to comply with the provisions of this subsection shall be liable on summary conviction to a fine not exceeding ten pounds, and to a further fine not exceeding one pound for every day after conviction on which the failure continues.

(4) Where the owner, lessee or occupier of agricultural land, or land which is being brought into use for agriculture, represents to the highway authority that, for securing that the use, or any particular use, of the land for agriculture shall be efficiently carried on, it is expedient that stiles, gates or other works for preventing the ingress or egress of animals should be erected on a public path crossing the land, the highway authority may, subject to such conditions as they may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public, authorise the erection of the stiles, gates or other works.

(5) If, on a representation duly made under the last foregoing subsection, the highway authority refuse to grant an authorisation thereunder, or grant such an authorisation subject to conditions, the person who made the representation may appeal to the Minister against the refusal or against the imposition of the conditions, as the case may be; and if the Minister, after giving to the appellant and to the highway authority an opportunity of being heard by a person appointed by him for the purpose and considering the report of that person, determines to allow the appeal, he shall—

(a) if the appeal was against a refusal, authorise the erection of the stiles, gates or other works in question, subject to such conditions as he may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public ;

(b) if the appeal was against the imposition of conditions, direct that the authorisation granted by the highway authority shall, as may be specified in the direction, have effect cither unconditionally or subject to such modified conditions as may be so specified.

(6) Where in the case of a public path an authorisation is granted by the highway authority under subsection (4) of this section or by the Minister under the last foregoing subsection, the public right of way shall be deemed to be subject to a condition that the stiles, gates or works may be erected and maintained in accordance with the authorisation and so long as the conditions attached thereto are complied with.

(7) It shall be the duty of a highway authority to enforce the provisions of subsections (2) and (3) of this section as respects any public path for which they are the highway authority; and no proceedings in respect of an offence under those provisions shall be brought except by the authority required by this subsection to enforce those provisions as respects the public path in question.

(8) For the purposes of section fifty-six of the Road Traffic Act, 1930 (which empowers a highway authority to secure the removal from a highway of structures erected thereon otherwise than under or in pursuance of any enactment), any stile, gate or works erected in pursuance of an authorisation under subsection (4) or (5) of this section shall be deemed to be erected under or in pursuance of this section only if the provisions of the authorisation and any conditions attached thereto are complied with.

(9) The foregoing provisions of this section shall apply in relation to rights of way created before as well as after the commencement of this Act.

(10) Nothing in the provisions of this section shall prejudice any limitation or condition having effect apart from those provisions.

### 57 Penalty for displaying on footpaths notices deterring public use

(1) If any person places or maintains, on or near any way shown on a definitive map, or on a revised map prepared in definitive form, as a public path or road used as a public path, a notice containing any false or misleading statement likely to deter the public from using the way, he shall be liable on summary conviction to a fine not exceeding five pounds.

(2) The court before whom a person is convicted of an offence under the last foregoing subsection may, in addition to or in substitution for the imposition of a fine, order him to remove the notice in respect of which he is convicted within such period, not being less than four days, as may be specified in the order; and if he fails' to comply with

the order he shall be liable on summary conviction to a fine not exceeding two pounds for each day on which the failure continues.

(3) It shall be the duty of a highway authority to enforce the provisions of this section as respects any public path, or road used as a public path, for which they are the highway authority; and no proceedings in respect of an offence under those provisions shall be brought except by the authority required by this subsection to enforce those provisions as respects the path or road in question.

### 58 Amendment of 22 & 23 Geo. 5. c. 45, s. 1

(1) In section one of the Rights of Way Act, 1932 (which by subsection (1) of that section raises a presumption of dedication of a highway after twenty years' enjoyment by the public unless there is sufficient evidence of absence of intention to dedicate or unless during such period of twenty years there was no person in possession capable of dedicating, and by subsection (2) of that section raises a presumption of dedication after forty years' enjoyment unless there is sufficient evidence of absence of intention to dedicate) the words from " or unless during such period of twenty years " to the end in the said subsection (1) and the said subsection (2), shall cease to have effect.

(2) Nothing in this section shall affect any proceedings pending at the commencement of this Act, and where in respect of any way a court of competent jurisdiction decides in any proceedings so pending, or has before the commencement of this Act decided, that the way is not a highway, this section shall not apply except as respects enjoyment of the way after the date of the decision.

## PART V

ACCESS TO OPEN COUNTRY

### 59 Provision for public access to open country

(1) The provisions of this Part of this Act shall have effect for enabling the public to have access for open-air recreation to open country—

(a) to which the provisions of the next following section are applied by an agreement under this Part of this Act (hereinafter referred to as an " access agreement") or by an order under this Part of this Act (hereinafter referred to as an " access order "),

(b) acquired under this Part of this Act for the purpose of giving to the public access thereto.

(2) In this Part of this Act the expression " open country " means any area appearing to the authority with whom an access agreement is made or to the authority by whom an access order is made or by whom the area is acquired, as the case may be, to consist wholly or predominantly of mountain, moor, heath, down, cliff or foreshore (including any bank, barrier, dune, beach, flat or other land adjacent to the foreshore).

### 60 Rights of public where access agreement or order in force

(1) Subject to the following provisions of this Part of this Act, where an access agreement or order is in force as respects any land a person who enters upon land comprised in the agreement or order for the purpose of open-air recreation without breaking or




# Countryside Act 1968

**1968 CHAPTER 41**

An Act to enlarge the functions of the Commission established under the National Parks and Access to the Countryside Act 1949, to confer new powers on local authorities and other bodies for the conservation and enhancement of natural beauty and for the benefit of those resorting to the countryside and to make other provision for the matters dealt with in the Act of 1949 and generally as respects the countryside, and to amend the law about trees and woodlands, and footpaths and bridleways, and other public paths. [3rd July 1968]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*The Countryside Commission*

## 1 General functions of the Commission

(1) The functions of the National Parks Commission shall be enlarged in accordance with this Act and in future their name shall be the " Countryside Commission ".

(2) The functions conferred by this Act on the said Commission (in this Act referred to as " the Commission ") are to be exercised for the conservation and enhancement of the natural beauty and amenity of the countryside, and encouraging the provision and improvement, for persons resorting to the countryside, of facilities for the enjoyment of the countryside and of open-air recreation in the countryside.

(3) The Commission shall have power—

(a) to make such charges for any of their services as they think fit,

(b) to accept any gift or contribution made to them for the purposes of any of their functions, and, subject to the terms of the gift or contribution and to the provisions of the National Parks and Access to the Countryside Act 1949 (in

(7) If a footpath or bridleway is ploughed, and the occupier has no right to plough it, or if there is a failure to comply with subsection (3) of the said section 119, the highway authority, after giving to the occupier not less than fourteen days' notice of their intention, may take all necessary steps for making good the surface of the path or way so as to make it reasonably convenient for the exercise of the public right of way, and may recover from the occupier the amount of any expenses reasonably incurred by the highway authority in and in connection with the exercise of their powers under this subsection.

(8) Subsection (1) of this section shall bind the Crown.

(9) This section shall be construed as one with the Highways Act 1959.

**30 Riding of pedal bicycles on bridleways**

(1) Any member of the public shall have, as a right of way, the right to ride a bicycle, not being a motor vehicle, on any bridleway, but in exercising that right cyclists shall give way to pedestrians and persons on horseback.

(2) Subsection (1) above has effect subject to any orders made by a local authority, and to any byelaws.

(3) The rights conferred by this section shall not affect the obligations of the highway authority, or of any other person, as respects the maintenance of the bridleway, and this section shall not create any obligation to do anything to facilitate the use of the bridleway by cyclists.

(4) Subsection (1) above shall not affect any definition of " bridleway " in this or any other Act.

(5) In this section " motor vehicle " has the same meaning as in the Road Traffic Act 1960.

(6) It is hereby declared that sections 9, 10, 11 and 13 of the said Act of 1960 (offences connected with riding of bicycles) apply to bridleways as being highways which are " roads" within the meaning of that Act.

(7) Section 12(1) of the said Act (prohibition of cycle racing on highways) shall have effect as if the expression " public highway " included a bridleway, but without the exception for a race or trial authorised by regulations under that section.

**31 Public paths; amendments as respects procedural and minor matters**

The Acts mentioned in Schedule 3 to this Act shall be amended in accordance with that Schedule.

*Traffic regulation orders*

**32 Traffic regulation orders for special areas in the countryside**

(1) This section has effect in England and Wales, exclusive of Greater London, as respects roads in, or forming part of, or adjacent to or contiguous with—

(a) a National Park,

(b) an area of outstanding natural beauty,

# SCHEDULE 3

Section 31.

## PUBLIC RIGHTS OF WAY

## PART I

### MISCELLANEOUS AMENDMENTS

### ACT OF 1949

*Section 29 (representations and objections as to draft maps and statements)*

The Minister shall give an opportunity of being heard under subsection (6) (appeal to Minister), at the same time as to the appellant, to any other person appearing to the Minister to have an interest in the matter to which the appeal relates.

In paragraph (b) of the said subsection (6) (appeal against decision under subsection (4)) for the words " to reverse the decision " there shall be substituted the words " to vary or reverse the decision ", and the particulars to be contained in the provisional map and statement in accordance with section 30(3) of the Act of 1949 shall reflect any such variation or reversal of the decision.

*Section 33 (revision of maps and statements)*

In carrying out a review under section 33(1) the authority shall have regard to the discovery by the authority, in the period mentioned in that subsection, of any new evidence, or of evidence not previously considered by the authority concerned, showing that there was no public right of way over land shown on the map as a public path, or as a road used as a public path, or that any other particulars in the map or statement were not within the powers of Part IV of the Act of 1949, and their powers of preparing a revised map and statement under subsection (4) or as the case may be proviso (d) to subsection (5), of the said section 33 may be exercised accordingly:

Provided that the authority shall not take account of the evidence if satisfied that the person prejudiced by the public right of way, or his predecessor in title, could have produced the evidence before the relevant date mentioned in the said section 33(1) and had no reasonable excuse for failing to do so.

This amendment applies to a review begun before or after the coming into force of this Act.

*Section 38(2) (places where maps and statements are to be available for inspection)*

The places at which the maps and statements described in section 38(2) are to be available for inspection shall include the offices of the council of each county district comprised in the area to which the map and statement relates, whether or not the offices are in the county district.

## WATER ACT 1945

(1945 c. 42)

*Section 23 (orders authorising construction of works, etc.)*

The applicant for an order under section 23 which would authorise the stopping up or diversion of a footpath or bridleway shall, not later than the date on which the notice required by paragraph 1 of Part I of Schedule 1 to the Act is first published, cause a copy of the notice to be displayed in a prominent position at the ends of the part of the path or way to be stopped up or diverted.

## ACQUISITION OF LAND (AUTHORISATION PROCEDURE) ACT 1946

(1946 c. 49)

*Section 3 (power to extinguish certain public rights of way)*

1 Section 3(1) shall have effect with the substitution for references to the Minister of references to the acquiring authority.

2 In the case of an order under section 3(1) extinguishing a right of way (but not an order reviving a right of way)—

(a) the order shall not take effect unless confirmed by the Minister, as defined in this Act, or unless confirmed, as an unopposed order, by the acquiring authority,

(b) the Minister shall not confirm the order unless satisfied as to the matters set out in section 3(1),

(c) the time specified in the order as the time from which the right of way is extinguished shall not be earlier than confirmation of the order,

(d) Schedule 7 to the Highways Act 1959, as amended below, shall have effect as to the making, confirmation, validity and date of operation of the order,

but paragraphs (a), (b) and (c) above shall not apply where the acquiring authority is the Minister.

3 These amendments of section 3 of the Act of 1946 shall not affect that section as applied by section 15 of the Opencast Coal Act 1958 (suspension of rights of way).

4 These amendments of the said section 3 shall not apply in relation to an order if made before the date of the coming into force of this Act, or if a notice relating to the order was published pursuant to subsection (2) of the said section 3 before that date.

## HIGHWAYS ACT 1959

(1959 c. 25)

*Sections 27 and 28 (creation of footpaths)*

In sections 27 and 28 " local authority " shall include any county council, and any joint planning board, being a board for an area which comprises any part of a National Park, but before a county council or joint planning board exercise any power under either of those sections over

any land they shall consult the council of any county borough or county district comprising any part of that land.

This amendment shall not affect section 29 (exercise by other authorities of powers under sections 27 and 28) and accordingly this amendment shall not require a county council or local planning authority exercising powers by virtue of the said section 29 to consult any other authority.

This amendment shall apply to Greater London as if Greater London were a county, the Greater London Council were the council of that county and the London boroughs and the City of London were county districts in that county.

*Section 32 (protection for agriculture and forestry)*

In section 32 " councils " shall include all local planning authorities.

*Sections 110 and 111 (stopping up and diversion of footpaths)*

In sections 110 and 111 "local authority" shall include any county council, and any joint planning board, being a board for an area which comprises any part of a National Park, but before a county council or joint planning board exercise any power under section 110 or 111 over any land they shall consult the council of any county borough or county district comprising any part of that land.

This amendment shall not affect section 112(3) (exercise by other authorities of powers under sections 110 and 111) or the definition of "appropriate authority" in section 112(7), and accordingly this amendment shall not require a county council exercising powers by virtue of the said section 112(3) to consult any other authority.

*Section 112(5) (public path diversion order made at instance of Minister)*

Where under section 112(5) the Minister directs an authority to make a public path diversion order or decides himself to make a public path diversion order, the local authority, or as the case may be the Minister, may require the owner, lessee or occupier on whose representations the Minister is acting to enter into an agreement with the local authority (that is to say, both where the local authority are directed to make the order and where the Minister himself is to make the order, the " appropriate authority" as denned in section 112(7)) for the owner, lessee or occupier to defray, or to make such contribution as may be specified in the agreement towards, any such compensation or expenses as are specified in paragraphs (a), (b) and (c) of section 111(4) of the Act of 1959.

*Section 126 (authority for erection of stiles etc. in footpath or bridleway)*

In section 126 references to agricultural land, and to land being brought into use for agriculture, shall include references to land used, or as the case may be land being brought into use, for forestry.

*Schedule 7 (Orders for creation, extinguishment or diversion of public paths)*

1 Paragraph 2 of the Schedule shall have effect as respects any order not made by the Minister, as defined in this Act, subject as follows.

2 If no representations or objections are duly made, or if any so made are withdrawn, the authority by whom the order was made may, instead of submitting the order to the Minister, themselves confirm the order (but without any modification).

3 The authority shall not confirm a public path extinguishment order or a public path diversion order unless satisfied on all the matters on which the Minister must, under section 110(2), or as the case may be section 111(5), of the Act be satisfied when it is the Minister who is confirming the order.

4 The words " or confirmed as an unopposed order" shall be inserted—

(a) in section 28(1), section 110(1) and section 111(1) of the Act of 1959 after the words " and submitted to and confirmed by the Minister of Housing and Local Government",

(b) in paragraph 1(1) of Schedule 7 to the Act of 1959 after " Government for confirmation ", and

(c) in paragraph 4 of the said Schedule 7 after " confirmed or made by the Minister of Housing and Local Government",

and in paragraph (a) of the said paragraph 1(1) after "confirmation " insert " or to be confirmed as an unopposed order ".

5 Section 286(2) of the Act of 1959 (variation or revocation of orders) shall apply to a public path creation order, a public path extinguishment order, or a public path diversion order, confirmed as an unopposed order as it applies to such an order confirmed by the Minister, but so that an order confirmed in either way may be revoked or varied by a subsequent order confirmed in the other way.

6 In paragraph 3(1) of the said Schedule 7 (regulations about procedure) the word " making " shall be inserted before " submission and confirmation " .

7 These amendments of the Act of 1959 shall not affect an order made before the corning into force of this Act.

## WATER RESOURCES ACT 1963

(1963 c. 38)

*Section 67 (compulsory powers for carrying out works of building or engineering)*

The applicants for an order under section 67 which would authorise the stopping up or diversion of a footpath or bridleway shall, not later than the date on which the notice required by paragraph 2 of Part I of Schedule 8 to the Act is first published, cause a copy of the notice to be displayed in a prominent position at the ends of the part of the path or way to be stopped up or diverted.

## PART II

REVISION OF MAPS AND STATEMENTS

1 Any review or further review begun under section 33 of the Act of 1949 after the coming into force of this Act shall be carried out in accordance with this Part of this Schedule, and subsections (1) and (2) of section 34 of the Act of 1949 shall not apply to it.

2 (1) Before carrying out the review the authority shall consult with the councils of county districts and parishes in the area of the authority as to the arrangements to be made for the provision by the councils of information for the purposes of the review, and subsections (2), (3) and (4) of section 28 of the Act of 1949 shall apply to the arrangements.

(2) If the authority is a joint planning board the reference in sub-paragraph (1) above to the councils of county districts and parishes shall include a reference to the council of every county or county borough wholly or partly comprised in the area of the board.

3 The review shall include the preparation of a revised map and statement in draft.

4 (1) On completing the preparation of the draft map and statement (hereafter called the " draft revision ") the authority shall notify the Minister and shall publish in the London Gazette and in one or more newspapers circulating in the area of the authority a notice of the preparation of the draft revision stating—

(a) the places where copies of the draft revision can be inspected at all reasonable hours,

(b) the time (not being less than 28 days) within which, and the manner in which, representations or objections with respect to alterations effected by the draft revision, or to anything omitted therefrom, may be made to the Minister.

(2) If the alterations effected by the draft revision include a new item showing a public path, or a road used as a public path, or any alteration of the particulars concerning a public path, or road used as a public path, section 29(2) of the Act of 1949 (right of owner and other interested persons to require the authority to give information about documents taken into account by the authority) shall apply with any necessary modifications.

(3) If any representation or objection is duly made in respect of alterations effected by the draft revision, or of anything omitted therefrom, and is not withdrawn, the Minister shall cause a local inquiry to be held.

(4) If any such representation or objection is duly made, and is not withdrawn, the Minister shall, subject to the following provisions of this paragraph, and after taking into consideration any report by the person appointed to hold the local inquiry, take a decision on the objection or representation, and if he considers that the draft revision should be modified to give effect to his decision he shall give to the authority such directions as appear to him necessary for the purpose.

(5) If it appears to the Minister that any modification which he proposes to make under sub-paragraph (4) above may adversely affect any persons other than the person who made the representation or objection, he shall, before giving any direction to the authority, afford to those persons an opportunity of being heard by a person appointed by the Minister.

5 (1) This paragraph has effect as respects the revised map and statement, if any, to be prepared under subsection (4) or proviso (d) of subsection (5) of section 33 of the Act of 1949 (map and statement to be prepared on completion of the review except where there is no change).

(2) The map and statement shall be prepared as soon as may be after the time prescribed by the notice under paragraph 4(1)(b) above, and after any representations or objections duly made, and not withdrawn, have been dealt with by the Minister.

(3) The authority shall publish in the London Gazette and in one or more newspapers circulating in the area of the authority notice of the preparation of the map and statement, and of places where copies of the map and statement may be inspected at all reasonable hours.

(4) The particulars to be contained in the map and statement shall be those contained in the draft revision, subject to such modifications as may be required for giving effect to any direction given by the Minister under paragraph 4(4) above.

(5) The authority shall furnish to the Minister such number of copies of the revised map and statement, as prepared in definitive form, as he may require.

(6) Subsections (4), (5) and (6) of section 32 of the Act of 1949 (effect of definitive maps and statements) shall apply to the said revised map and statement as they apply to an (unrevised) definitive map and statement.

6 This Part of this Schedule shall be construed as one with section 33 of the Act of 1949.

## PART III

### Roads Used as Public Paths

*The special review*

7 In this Part of this Schedule the " special review " carried out by any authority means the first review begun by that authority after the coming into force of this Act.

8 (1) Subject to the provisions of this paragraph, the draft revision in the special review shall be published not later than three years after the date of the coming into force of this Act.

(2) If on the said date the authority have not completed a survey or revision begun earlier—

(a) the draft revision in the special review shall be published not later than three years after the date of the coming into force of this Act, or one year after notice is published of the completion of the survey or earlier review, whichever is the later,

(b) the special review (hereafter in this Schedule called a " limited special review ") shall be confined to a review of roads used as public paths in accordance with this Part of this Schedule:

Provided that if on a review begun before the date of the coming into force of this Act no revised map and statement has been published in draft before that date, the review shall be abandoned, and shall be begun again under Part II of this Schedule as the special review.

(3) If it appears to the Minister that any stage of a special review has been or is likely to be unduly delayed, he may give to the authority such directions as appear to the Minister appropriate for expediting the review, and it shall be the duty of the authority to comply with the directions.

*Reclassification of roads used as public paths*

9 (1) In the special review the draft revision, and the definitive map and statement, shall show every road used as a public path by one of the three following descriptions—

(a) a " byway open to all traffic ",

(b) a " bridleway ",

(c) a " footpath ",

and shall not employ the expression " road used as a public path " to describe any way.

(2) As from the date of publication of the definitive map and statement in the special review—

(a) each way shown in the map in pursuance of this paragraph by any of the three descriptions shall be a highway maintainable at the public expense,

(b) subject to paragraph (c) below, any entry in the map describing a way as a " byway open to all traffic " shall be conclusive evidence of the existence on the date of publication of a public right of way for vehicular and all other kinds of traffic,

(c) section 32(4)(c) of the Act of 1949 (position and width, and limitations or conditions affecting the public right of way, as shown in the statement) shall apply to any byway so shown as it applies to a footpath or bridleway.

(3) In this paragraph " road used as a public path " means—

(a) a way which is shown as a " road used as a public path " in the last definitive map and statement, or

(b) a way which is shown as a " bridleway " or as a " footpath " in the last definitive map and statement, and which in the opinion of the authority ought to have been there shown as a road used as a public path, or

(c) where the special review is not a limited special review, a way which in the opinion of the authority would, but for the provisions of this Part of this Schedule, have fallen to be shown, in the definitive map and statement resulting from the special review, as a road used as a public path.

(4) In subsection (2)(a) and in subsection (5) of section 51 of the Act of 1949 (long distance routes) references to roads used as public paths shall include references to any way shown on a definitive map and statement as a " byway open to all traffic ".

(5) Nothing in this paragraph shall limit the operation of road traffic orders under the Road Traffic Regulation Act 1967 or oblige a highway authority to provide, on a way shown on a definitive map as a " byway open to all traffic ", a metalled carriage-way, or a carriage-way which is by any other means provided with a surface suitable for the passage of vehicles.

*Test for reclassification*

10 The considerations to be taken into account in deciding in which class a road used as a public path is to be put shall be—

(a) whether any vehicular right of way has been shown to exist,

(b) whether the way is suitable for vehicular traffic having regard to the position and width of the existing right of way, the condition and state of repair of the way, and the nature of the soil,

(c) where the way has been used by vehicular traffic, whether the extinguishment of vehicular rights of way would cause any undue hardship.

*Procedure on special review*

11 (1) Part II of this Schedule shall apply to a special review subject as follows.

(2) The published notices shall state that the review reclassifies roads used as public paths.

(3) The representations or objections referred to in paragraph 4 in Part II shall include representations or objections with respect to the reclassification of any road used as a public path.

(4) The time, as stated in the published notice of the draft revision, within which any representation or objection (of any description) may be made to the draft revision shall not be less than four months.

*Survey begun after commencement of Act*

12 (1) Subject to the provisions of this paragraph, paragraphs 9 and 10 above shall apply to an initial survey begun after the coming into force of this Act as if it were the first review so begun.

(2) In paragraph 9(1), as applied to the survey, for references to the draft revision and the definitive map and statement there shall be substituted references to the map and statement in draft, provisional and definitive form, and in paragraphs 9 and 10, as applied to the survey, " road used as a public path " shall mean a way which in the opinion of the authority would, but for the provisions of this Part of this Schedule, have fallen to be shown, in the definitive map and statement resulting from the survey, as a road used as a public path.

*Interpretation and construction*

13 (1) In this Part of this Schedule references to a definitive map and statement include references to a revised map and statement prepared in definitive form.

(2) This Part, and Part IV, of this Schedule shall be construed as one with Part IV of the Act of 1949.

## PART IV

TIMING OF REVIEWS

14 (1) The period covered by a review, that is to say the period between the two dates specified in section 33(1) of the Act of 1949, shall not exceed five years:

Provided that this sub-paragraph shall not affect the validity of any review or of any document prepared or thing done in consequence of a review.

(2) The interval between the end of the period covered by a review and the publication of the draft revision shall be—

(a) in the case of the special review, not more than two years, and

(b) in the case of any subsequent review, not more than six months.

(3) In the case of a limited special review—

(a) sub-paragraphs (1) and (2) above shall not apply, and

(b) the period covered by the next subsequent review shall begin with the relevant date for the original survey, or the date of review of the last review before the special review, whichever is the later.

(4) Section 33(3) of the Act of 1949 (which is superseded by sub-paragraph (1) above) shall not apply to a review begun after the corning into force of this Act.

## SCHEDULE 4

Section 39.

### Local Authority Committees and Joint Boards

*Planning committees*

1 (1) Part I of Schedule 2 to the Town and Country Planning Act 1962 (appointment of planning committees) shall have effect as if all appropriate countryside functions exercisable by county councils or county borough councils were functions conferred on them as local planning authorities.

(2) The functions to be delegated to a separate planning committee, or separate sub-committee of a planning committee, appointed in pursuance of section 8(3) of the Act of 1949 (for the part of the "area of a local planning authority within a National Park, with or without any part of the remainder of the area) shall include, in addition to such of the local planning authority's functions under the said Act of 1962 and the Act of 1949 as are so delegated in pursuance of the said section 8(3), such other appropriate countryside functions exercisable by the local planning authority (whether as a local planning authority or as the council of a county or county borough) as may be agreed between the local planning authority and the Commission, or as in default of agreement the Minister may determine.

(3) The committee or sub-committee may under the said section 8(3) as extended by sub-paragraph (2) above be authorised to exercise any appropriate countryside functions for all or any part of the area of the local planning authority which is outside the area for which the committee or sub-committee is appointed.

(4) The purposes for which a committee may be appointed under section 85 of the Local Government Act 1933 (general power to appoint local authority committees) shall include the discharge of any appropriate countryside functions, including any such functions which the local authority in question exercise as a local planning authority.

This sub-paragraph has effect notwithstanding that subsection (5) of the said section 85 restricts that section where the local authority are authorised to appoint a committee by any other enactment, and notwithstanding that the said Part I of Schedule 2 to the Act of 1962 as amended by this paragraph is such an enactment; but this sub-paragraph shall not affect the provisions of the said section 8(3) of the Act of 1949.

*Local planning authorities' joint advisory committees*

2 (1) The purposes for which under Part II of Schedule 2 to the said Act of 1962 a joint advisory committee may be established by local planning authorities or the Minister shall include the purpose of advising as to the exercise of any appropriate countryside

# Wildlife and Countryside Act 1981

**1981 CHAPTER 69**

## PART III

PUBLIC RIGHTS OF WAY

*Ascertainment of public rights of way*

### 53 Duty to keep definitive map and statement under continuous review.

(1) In this Part "definitive map and statement", in relation to any area, means, subject to section 57(3) **[**[F1]and 57A(1)**]**,—

(a) the latest revised map and statement prepared in definitive form for that area under section 33 of the 1949 Act; or

(b) where no such map and statement have been so prepared, the original definitive map and statement prepared for that area under section 32 of that Act; or

(c) where no such map and statement have been so prepared, the map and statement prepared for that area under section 55(3).

(2) As regards every definitive map and statement, the surveying authority shall—

(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

(3) The events referred to in subsection (2) are as follows—

(a) the coming into operation of any enactment or instrument, or any other event, whereby—

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(i) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;

(ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or

(iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path **[**F2or a restricted byway**]**;

(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path **[**F3or restricted byway**]** ;

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being **[**F4a right of way such that the land over which the right subsists is a public path **[**F5, a restricted byway**]** or, subject to section 54A, a byway open to all traffic**]**;

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

(4) The modifications which may be made by an order under subsection (2) shall include the addition to the statement of particulars as to—

(a) the position and width of any public path **[**F6, restricted byway**]** or byway open to all traffic which is or is to be shown on the map; and

(b) any limitations or conditions affecting the public right of way thereover.

**[**F7(4A) Subsection (4B) applies to evidence which, when considered with all other relevant evidence available to the surveying authority, shows as respects a way shown in a definitive map and statement as a restricted byway that the public have, and had immediately before the commencement of section 47 of the Countryside and Rights of Way Act 2000, a right of way for vehicular and all other kinds of traffic over that way.

(4B) For the purposes of subsection (3)(c)(ii), such evidence is evidence which, when so considered, shows that the way concerned ought, subject to section 54A, to be shown in the definitive map and statement as a byway open to all traffic.**]**

(5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.

**[**F8(5A) Evidence to which subsection (4B) applies on the commencement of section 47 of the Countryside and Rights of Way Act 2000 shall for the purposes of subsection (5) and any application made under it be treated as not having been discovered by the surveying authority before the commencement of that section.**]**

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) Orders under subsection (2) which make only such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (a) of subsection (3) shall take effect on their being made; and the provisions of Schedule 15 shall have effect as to the making, validity and date of coming into operation of other orders under subsection (2).

**Textual Amendments**

**F1** Words in s. 53(1) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 1(2); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F2** Words in s. 53(3)(a)(iii) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 1(3); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F3** Words in s. 53(3)(b) inserted (2.5.2006 for E. and 16.11.2006 for W.) by Natural Environment and Rural Communities Act 2006 (c. 16), **ss. 70(1)(a)**, 107; S.I. 2006/1176, **art. 6**; S.I. 2006/2992, **art. 2**

**F4** Words in s. 53(3)(c)(i) substituted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 1(4); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F5** Words in s. 53(3)(c)(i) inserted (2.5.2006 for E. and 16.11.2006 for W.) by Natural Environment and Rural Communities Act 2006 (c. 16), **ss. 70(1)(a)**, 107; S.I. 2006/1176, **art. 6**; S.I. 2006/2992, **art. 2**

**F6** Words in s. 53(4)(a) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 1(5); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F7** S. 53(4A)(4B) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 1(6); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F8** S. 53(5A) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 1(7); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**Modifications etc. (not altering text)**

**C1** S. 53: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**
S. 53 excluded (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 49(5), 103(3); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

## [F9 53A Power to include modifications in other orders.

(1) This section applies to any order—

(a) which is of a description prescribed by regulations made by the Secretary of State,

(b) whose coming into operation would, as regards any definitive map and statement, be an event within section 53(3)(a),

(c) which is made by the surveying authority, and

(d) which does not affect land outside the authority's area.

(2) The authority may include in the order such provision as it would be required to make under section 53(2)(b) in consequence of the coming into operation of the other provisions of the order.

(3) An authority which has included any provision in an order by virtue of subsection (2) —

(a) may at any time before the order comes into operation, and

(b) shall, if the order becomes subject to special parliamentary procedure,

withdraw the order and substitute for it an order otherwise identical but omitting any provision so included.

(4) Anything done for the purposes of any enactment in relation to an order withdrawn under subsection (3) shall be treated for those purposes as done in relation to the substituted order.

(5) No requirement for the confirmation of an order applies to provisions included in the order by virtue of subsection (2), but any power to modify an order includes power to make consequential modifications to any provision so included.

(6) Provisions included in an order by virtue of subsection (2) shall take effect on the date specified under section 56(3A) as the relevant date.

(7) Where any enactment provides for questioning the validity of an order on any grounds, the validity of any provision included by virtue of subsection (2) may be questioned in the same way on the grounds—

(a) that it is not within the powers of this Part, or

(b) that any requirement of this Part or of regulations made under it has not been complied with.

(8) Subject to subsections (5) to (7), the Secretary of State may by regulations provide that any procedural requirement as to the making or coming into operation of an order to which this section applies shall not apply, or shall apply with modifications prescribed by the regulations, to so much of the order as contains provision included by virtue of subsection (2).

(9) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

**Textual Amendments**

**F9** S. 53A inserted (21.11.2005 for W. and 18.2.2008 for E.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 2; S.I. 2005/1314, **art. 4**; S.I. 2008/308, **art. 2**

## [F10 53B Register of applications under section 53.

(1) Every surveying authority shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to applications under section 53(5).

(2) The register shall contain such information as may be prescribed with respect to the manner in which such applications have been dealt with.

(3) Regulations may make provision for the register to be kept in two or more parts, each part containing such information relating to applications under section 53(5) as may be prescribed.

(4) Regulations may make provision—

(a) for a specified part of the register to contain copies of applications and of the maps submitted with them, and

(b) for the entry relating to any application, and everything relating to it, to be removed from any part of the register when—

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(i) the application (including any appeal to the Secretary of State) has been finally disposed of, and

(ii) if an order is made, a decision has been made to confirm or not to confirm the order,

(without prejudice to the inclusion of any different entry relating to it in another part of the register).

(5) Every register kept under this section shall be available for inspection free of charge at all reasonable hours.

(6) In this section—

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State by statutory instrument;

and a statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

**Textual Amendments**

**F10** S. 53B inserted (27.9.2005 for E. and 21.11.2005 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 2; S.I. 2005/2459, **art. 2(1)**; S.I. 2005/1314, **art. 4**

## 54 Duty to reclassify roads used as public paths.

F11 . . . . . .

**Textual Amendments**

**F11** S. 54 repealed (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 47(1), 102, 103(3), Sch. 16 Pt. II; S.I. 2006/1172, **art. 2** (with art. 3); S.I. 2006/1279, **art. 2**

PROSPECTIVE

## [F12 54A BOATs not to be added to definitive maps.

(1) No order under this Part shall, after the cut-off date, modify a definitive map and statement so as to show as a byway open to all traffic any way not shown in the map and statement as a highway of any description.

(2) In this section "the cut-off date" means, subject to regulations under subsection (3), 1st January 2026.

(3) The Secretary of State may make regulations—

(a) substituting as the cut-off date a date later than the date specified in subsection (2) or for the time being substituted under this paragraph;

(b) containing such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the operation of subsection (1), including in particular its operation in relation to—

(i) an order under section 53(2) for which on the cut-off date an application is pending,

(ii) an order under this Part which on that date has been made but not confirmed,

(iii) an order under section 55 made after that date, or

(iv) an order under this Part relating to any way as respects which such an order, or any provision of such an order, has after that date been to any extent quashed.

(4) Regulations under subsection (3)(a)—

(a) may specify different dates for different areas; but

(b) may not specify a date later than 1st January 2031, except as respects an area within subsection (5).

(5) An area is within this subsection if it is in—

(a) the Isles of Scilly, or

(b) an area which, at any time before the repeal by section 73 of this Act of sections 27 to 34 of the 1949 Act—

(i) was excluded from the operation of those sections by virtue of any provision of the 1949 Act, or

(ii) would have been so excluded but for a resolution having effect under section 35(2) of that Act.

(6) Where by virtue of regulations under subsection (3) there are different cut-off dates for areas into which different parts of any way extend, the cut-off date in relation to that way is the later or latest of those dates.

(7) Where it appears to the Secretary of State that any provision of this Part can by virtue of subsection (1) have no further application he may by order make such amendments or repeals in this Part as appear to him to be, in consequence, necessary or expedient.

(8) An order or regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

**Textual Amendments**

**F12** S. 54A inserted (prosp.) by 2000 c. 37, ss. 51, 103(3), **Sch. 5 Pt. I para. 4**

## 55 No further surveys or reviews under the 1949 Act.

(1) No survey under sections 27 to 32 of the 1949 Act, or review under section 33 of that Act, shall be begun after the commencement date; and where on that date a surveying authority have not completed such a survey or review begun earlier, the Secretary of State may, after consultation with the authority, direct the authority—

(a) to complete the survey or review; or

(b) to abandon the survey or review to such extent as may be specified in the direction.

(2) Where such a survey or review so begun is abandoned, the Secretary of State shall give such notice of the abandonment as appears to him requisite.

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) Where, in relation to any area, no such survey has been so begun or such a survey so begun is abandoned, the surveying authority shall prepare for that area a map and statement such that, when they have been modified in accordance with the provisions of this Part, they will serve as the definitive map and statement for that area.

(4) Where such a survey so begun is abandoned after a draft map and statement have been prepared and the period for making representations or objections has expired, the authority shall by order modify the map and statement prepared under subsection (3) so as—

(a) to give effect to any determination or decision of the authority under section 29(3) or (4) of the 1949 Act in respect of which either there is no right of appeal or no notice of appeal has been duly served;

(b) to give effect to any decision of the Secretary of State under section 29(6) of that Act; and

(c) to show any particulars shown in the draft map and statement with respect to which no representation or objection has been duly made, or in relation to which all such representations or objections had been withdrawn.

(5) Where such a review so begun is abandoned after a draft map and statement have been prepared and the period for making representations or objections has expired, the authority shall by order modify the map and statement under review so as—

(a) to give effect to any decision of the Secretary of State under paragraph 4(4) of Part II of Schedule 3 to the 1968 Act; and

(b) to show any particulars shown in the draft map and statement but not in the map and statement under review, and to omit any particulars shown in the map and statement under review but not in the draft map and statement, being (in either case) particulars with respect to which no representation or objection has been duly made, or in relation to which all such representations or objections have been withdrawn.

(6) Orders under subsection (4) or (5) shall take effect on their being made.

**[**[F13](7) Every way which—

(a) in pursuance of an order under subsection (5) is shown in a definitive map and statement as a byway open to all traffic, a bridleway or a footpath, and

(b) before the making of the order, was shown in the map and statement under review as a road used as a public path,

shall be a highway maintainable at the public expense.

(8) Subsection (7) does not oblige a highway authority to provide, on a way shown in a definitive map and statement as a byway open to all traffic, a metalled carriage-way or a carriage-way which is by any other means provided with a surface suitable for the passage of vehicles.**]**

**Textual Amendments**

**F13** S. 55(7)(8) inserted (27.9.2005 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 5; S.I. 2005/2459, **art. 2(1)**; S.I. 2006/1279, **art. 2**

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## 56 Effect of definitive map and statement.

(1) A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely—

(a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover a right of way on foot, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than that right;

(b) where the map shows a bridleway, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than those rights;

(c) where the map shows a byway open to all traffic, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way for vehicular and all other kinds of traffic;

(d) where the map shows a **[**F14restricted byway**]**, the map shall **[**F15, subject to subsection (2A),**]** be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse **[**F16together with a right of way for vehicles other than mechanically propelled vehicles**]**, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than those rights; and

(e) where by virtue of the foregoing paragraphs the map is conclusive evidence, as at any date, as to a highway shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at that date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date.

**[**F17(1A) In subsection (1)(d) "mechanically propelled vehicle" does not include an electrically assisted pedal cycle of a class prescribed for the purposes of section 189(1)(c) of the M1Road Traffic Act 1988.**]**

(2) For the purposes of this section "the relevant date"—

(a) in relation to any way which is shown on the map otherwise than in pursuance of an order under the foregoing provisions of this Part **[**F18or an order to which section 53A applies which includes provision made by virtue of subsection (2) of that section**]**, means **[**F19, subject to subsection (2A),**]** the date specified in the statement as the relevant date for the purposes of the map;

(b) in relation to any way which is shown on the map in pursuance of such an order, means the date which, in accordance with subsection (3) **[**F20or (3A)**]**, is specified in the order as the relevant date for the purposes of the order.

**[**F21(2A) In the case of a map prepared before the date of the coming into force of section 47 of the Countryside and Rights of Way Act 2000—

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) subsection (1)(d) and (e) have effect subject to the operation of any enactment or instrument, and to any other event, whereby a way shown on the map as a restricted byway has, on or before that date—

(i) been authorised to be stopped up, diverted or widened, or

(ii) become a public path, and

(b) subsection (2)(a) has effect in relation to any way so shown with the substitution of that date for the date mentioned there.**]**

(3) Every order under the foregoing provisions of this Part shall specify, as the relevant date for the purposes of the order, such date, not being earlier than six months before the making of the order, as the authority may determine.

**[**F22(3A) Every order to which section 53A applies which includes provision made by virtue of subsection (2) of that section shall specify, as the relevant date for the purposes of the order, such date as the authority may in accordance with regulations made by the Secretary of State determine.**]**

(4) A document purporting to be certified on behalf of the surveying authority to be a copy of or of any part of a definitive map or statement as modified in accordance with the provisions of this Part shall be receivable in evidence and shall be deemed, unless the contrary is shown, to be such a copy.

**[**F23(4A) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

(5) F24 . . . . . .

**Textual Amendments**

**F14** Words in s. 56(1)(d) substituted (2. 5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 6(2)(a); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F15** Words in s. 56(1)(d) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 6(2)(b); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F16** Words in s. 56(1)(d) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 6(2)(c); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F17** S. 56(1A) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 6(3); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F18** Words in s. 56(2)(a) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 6(4)(a)(i); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F19** Words in s. 56(2)(a) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 6(4)(a)(ii); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F20** Words in s. 56(2)(b) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 6(4)(b); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F21** S. 56(2A) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 6(5); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F22** S. 56(3A) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 6(6); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F23** S. 56(4A) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 6(7); S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F24** S. 56(5) repealed (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 102, 103(3), Sch. 5 Pt. I para. 6(8), Sch. 16 Pt. II; S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

**Marginal Citations**
**M1** 1988 c. 52.

## 57 Supplementary provisions as to definitive maps and statements.

(1) An order under the foregoing provisions of this Part shall be in such form as may be prescribed by regulations made by the Secretary of State, and shall contain a map, **[**F25on such scale as may be so prescribed,**]** showing the modifications to which the order relates.

(2) Regulations made by the Secretary of State may prescribe the scale on which maps are to be prepared under **[**F26subsection (1) or any other provision of this Part**]**, and the method of showing in definitive maps and statements anything which is required to be so shown.

(3) Where, in the case of a definitive map and statement for any area which have been modified in accordance with the foregoing provisions of this Part, it appears to the surveying authority expedient to do so, they may prepare a copy of that map and statement as so modified; and where they do so, the map and statement so prepared, and not the map and statement so modified, shall be regarded for the purposes of the foregoing provisions of this Part **[**F27, and for the purposes of section 57A(1),**]** as the definitive map and statement for that area.

**[**F28(3A) Where as respects any definitive map and statement the requirements of section 53(2), and of section 55 so far as it applies, have been complied with, the map and statement are to be regarded for the purposes of subsection (3) as having been modified in accordance with the foregoing provisions of this Part whether or not, as respects the map and statement, the requirements of section 54 have been complied with.**]**

(4) The statement prepared under subsection (3) shall specify, as the relevant date for the purposes of the map, such date, not being earlier than six months before the preparation of the map and statement, as the authority may determine.

(5) As regards every definitive map and statement, the surveying authority shall keep—

(a) a copy of the map and statement; and

(b) copies of all orders under this Part modifying the map and statement,

available for inspection free of charge at all reasonable hours at one or more places in each district comprised in the area to which the map and statement relate and, so far as appears practicable to the surveying authority, a place in each parish so comprised; and the authority shall be deemed to comply with the requirement to keep such copies available for inspection in a district or parish if they keep available for inspection there a copy of so much of the map and statement and copies of so many of the orders as relate to the district or parish.

**[**F29(5A) Subsection (5) shall apply in relation to land in Wales as if "in each district comprised" were omitted.**]**

(6) Notwithstanding anything in subsection (5), an authority shall not be required to keep available for inspection more than one copy of—

(a) any definitive map and statement; or

(b) each order under this Part modifying the map and statement,

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

if, as respects the area to which that map and statement relate, a subsequent map and statement have been prepared under subsection (3); and the said single copies may be kept in such place in the area of the authority as they may determine.

**[**F30(6A) In subsection (1), the reference to an order under the foregoing provisions of this Part includes a reference to so much of an order to which section 53A applies as contains provision made by virtue of subsection (2) of that section; and subsections (5) and (6) apply to—

(a) orders to which section 53A applies modifying the map and statement, and

(b) such documents relating to them as may be prescribed by regulations made by the Secretary of State,

as those subsections apply to orders under this Part modifying the map and statement.

(6B) Regulations under paragraph (b) of subsection (6A) may require any document to be prepared by a surveying authority for the purposes of that paragraph, and any such document shall be in such form as may be prescribed by the regulations.

(6C) Regulations made by the Secretary of State may require any surveying authority—

(a) to keep such other documents as may be prescribed by the regulations available for inspection at such times and places and in such manner as may be so prescribed, or

(b) to provide to any other surveying authority any document so prescribed which that authority is, by regulations under paragraph (a), required to keep available for inspection.**]**

(7) Every surveying authority shall take such steps as they consider expedient for bringing to the attention of the public the provisions of this Part including, in particular, section 53(5) and subsection (5).

(8) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F25** Words in s. 57(1) repealed (2.5.2006 for E. and otherwise prosp.) by 2000 c. 37, ss. 51, 102, 103(3), Sch. 5 Pt. I para. 7(2), Sch. 16 Pt. II; S.I. 2006/1172, **art. 2**

**F26** Words in s. 57(2) substituted (2.5.2006 for E. and otherwise prosp.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 7(3); S.I. 2006/1172, **art. 2**

**F27** Words in s. 57(3) inserted (2.5.2006 for E. and otherwise prosp.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 7(4); S.I. 2006/1172, **art. 2**

**F28** S. 57(3A) inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 7(5); S.I. 2006/1172, **art. 2**

**F29** S. 57(5A) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 65(7)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

**F30** S. 57(6A)(6B)(6C) inserted (2.5.2006 for E. and otherwise prosp.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 7(6); S.I. 2006/1172, **art. 2**

## **[**F31**57A Consolidation of definitive maps and statements.**

(1) Where—

(a) different definitive maps and statements relate to different parts of a surveying authority's area,

(b) as respects so much of each definitive map and statement as relates to that area the requirements of section 53(2), and of section 55 so far as it applies, have been complied with, and

(c) there is no part of that area to which no definitive map and statement relate,

the authority may, if it appears to them expedient to do so, prepare a map and statement comprising copies of so much of each definitive map and statement as relates to the authority's area; and where they do so the map and statement so prepared and not, so far as copied, the earlier maps and statements shall be regarded for the purposes of sections 53 to 56 and 57(2) and (3) as the definitive map and statement for the area to which they relate.

(2) The power conferred by subsection (1) is not exercisable by a surveying authority if the definitive map and statement relating to any part of the authority's area is a map and statement in respect of which a review under section 33 of the 1949 Act was begun before the commencement date but has been neither abandoned in pursuance of a direction under section 55(1) nor completed.

(3) References in subsection (1) to a definitive map and statement are, in the case of a map and statement modified in accordance with any of the foregoing provisions of this Part, references to the map and statement as modified.

(4) The statement prepared under subsection (1) shall specify, as the relevant date for the purposes of the map, such date, not being earlier than six months before the preparation of the map and statement, as the authority may determine.

(5) Every surveying authority shall take such steps as they consider expedient for bringing to the attention of the public the preparation by them of any map and statement under subsection (1).**]**

**Textual Amendments**

**F31** S. 57A inserted (13.2.2004 for E. and 31.5.2005 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 8; S.I. 2004/292, **art. 2**; S.I. 2005/1314, **art. 2**

## 58 Application of ss. 53 to 57 to inner London.

(1) Subject to subsection (2), the foregoing provisions of this Part shall not apply to any area to which this subsection applies; and this subsection applies to any area which, immediately before 1st April 1965, formed part of the administrative county of London.

(2) A London borough council may by resolution adopt the said foregoing provisions as respects any part of their area specified in the resolution, being a part to which subsection (1) applies, and those provisions shall thereupon apply accordingly.

(3) Where by virtue of a resolution under subsection (2), the said foregoing provisions apply to any area, those provisions shall have effect in relation thereto as if for references to the commencement date there were substituted references to the date on which the resolution comes into operation.

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

*Miscellaneous and supplemental*

## 59 Prohibition on keeping bulls on land crossed by public rights of way.

(1) If, in a case not falling within subsection (2), the occupier of a field or enclosure crossed by a right of way to which this Part applies **[**F32or a restricted byway**]** permits a bull to be at large in the field or enclosure, he shall be liable on summary conviction to a fine not exceeding **[**F33level 3 on the standard scale**]**.

(2) Subsection (1) shall not apply to any bull which—

(a) does not exceed the age of ten months; or

(b) is not of a recognised dairy breed and is at large in any field or enclosure in which cows or heifers are also at large.

(3) Nothing in any byelaws, whenever made, shall make unlawful any act which is, or but for subsection (2) would be, made unlawful by subsection (1).

(4) In this section "recognised dairy breed" means one of the following breeds, namely, Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry.

(5) The Secretary of State may by order add any breed to, or remove any breed from, subsection (4); and an order under this subsection shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F32** Words in s. 59(1) inserted (3.7.2006 for E. and 12.7.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177, reg. 1(3)(5), **Sch. Pt. 1**; S.I. 2006/1172, art. 2(a)-(d) (with art. 3); S.I. 2006/1279, art. 2(a)-(d) (with art. 3)

**F33** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46**

**Modifications etc. (not altering text)**

**C2** S. 59 applied (3.7.2006 for E. and 12.7.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(3)(5), 2(1), **Sch. Pt. 1**; S.I. 2006/1172, art. 2(a)-(d) (with art. 3); S.I. 2006/1279, art. 2(a)-(d) (with art. 3)

## F34 60 . . . . . .

**Textual Amendments**

**F34** S. 60 repealed by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), s. 146, **Sch. 14**

## **[**F35X1 61 Ploughing of public rights of way.

(1) Section 134 of the M2Highways Act 1980 (ploughing of footpath or bridleway) shall have effect subject to the amendments provided for by subsections (2) to (9).

(2) Subsection (3) (7 days' notice of intention to plough) shall be omitted.

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) In subsection (4) (duty to resore surface of footpath or bridleway), for paragraphs (a) and (b) there shall be substituted the following paragraphs—

"(a) not later than 2 weeks from the time when the occupier began to plough the footpath or bridleway, or

(b) if prevented from doing so by exceptional weather conditions, as soon as practicable thereafter,".

(4) In subsection (5) (failure to comply with subsection (3) or (4)) the words "(3) or" shall be omitted, for paragraphs (a) and (b) there shall be substituted the words "to a fine not exceeding £200" and for the words "subsection (4)", in the second place where they occur, there shall be substituted the words "that subsection".

(5) After that subsection there shall be inserted the following subsection—

"(5A) A person who ploughs any footpath, bridleway or other highway otherwise than in the exercise of a right to plough it shall be guilty of an offence and liable to a fine not exceeding £200."

(6) In subsection (6) (enforcement of subsections (3) to (5)) for the words "subsections (3) to (5) above as respects any footpath or bridleway" there shall be substituted the words "subsections (4) to (5A) above as respects any footpath, bridleway or other highway".

(7) In subsection (7) (proceedings by parish or community councils) after the words "subsection (4)" there shall be inserted the words "or (5A)".

(8) In subsection (8) (power of competent authority to restore surface of footpath or bridleway) for the words "footpath or bridleway" there shall be substituted the words "footpath, bridleway or other highway".

(9) In subsection (10) (competent authorities for the purposes of subsections (8) and (9)) for the words "footpath or bridleway", in both places where they occur, there shall be substituted the words "footpath, bridleway or other highway".

(10) In section 135(1) of the said Act of 1980 (temporary diversion of footpath or bridleway ploughed up under section 134) the words "6 or" and "6 weeks or" shall be omitted.**]**

**Editorial Information**

**X1** The text of s. 61 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Textual Amendments**

**F35** S. 61 repealed (E.W.) by Rights of Way Act 1990 (c. 24, SIF 59), **s. 6(4)**

**Marginal Citations**

**M2** 1980 c. 66.

## 62 Appointment of wardens for public rights of way.

A local authority may appoint such number of persons as appears to the authority to be necessary or expedient to act as wardens as respects a footpath, bridleway **[**[F36], restricted byway**]** or byway open to all traffic which is both in the countryside and in

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

the area of the authority, and the purpose for which the wardens may be so appointed is to advise and assist the public in connection with the use of the path or way.

**Textual Amendments**

**F36** Words in s. 62 inserted (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), **Sch. Pt. 1**; S.I. 2006/1172, art. 2(a)-(d) (with art. 3); S.I. 2006/1279, art. 2(a)-(d) (with art. 3)

**Modifications etc. (not altering text)**

**C3** S. 62: functions made exercisable concurrently (22.7.2004) by virtue of The Cotswolds Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 (S.I. 2004/1777), **art. 25(1)(2)(xxx)**, Sch. (with art. 35)
S. 62: functions made exercisable concurrently (22.7.2004) by virtue of The Chilterns Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 (S.I. 2004/1778), **art. 25(1)(2)(xxx)**, Sch. (with art. 35)

**C4** S. 62 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2(1), **Sch. Pt. I**; S.I. 2006/1172, art. 2(a)-(d) (with art. 3); S.I. 2006/1279, art. 2(a)-(d) (with art. 3)

## 63 Orders creating, extinguishing or diverting footpaths and bridleways.

The enactments mentioned in Schedule 16 (which relate to the making and confirmation of certain orders creating, extinguishing or diverting footpaths and bridleways) shall have effect subject to the amendments provided for in that Schedule.

## X2 64 Publication of dedication of footpaths and bridleways.

At the end of section 25 of the M3 Highways Act 1980 (creation of footpath or bridleway by agreement) there shall be inserted the following subsection—

"(6) As soon as may be after the dedication of a footpath or bridleway in accordance with a public path creation agreement, the local authority who are party to the agreement shall give notice of the dedication by publication in at least one local newspaper circulating in the area in which the land to which the agreement relates is situated.".

**Editorial Information**

**X2** The text of ss. 64, 65, 72(2)-(9)(11)(13)(14) and 73(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M3** 1980 c. 66.

## X3 65 Signposting of byways open to all traffic.

(1) In section 27 of the 1968 Act (signposting of footpaths and bridleways) for the words "or bridleway", wherever they occur, there shall be substituted the words "bridleway

or byway" ; and for the words "and bridleways" in subsection (6) of that section there shall be substituted the words "bridleways and byways".

(2) After subsection (7) of that section there shall be inserted the following subsection—

"(8) In this section "byway" means a byway open to all traffic, that is to say, a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purposes for which footpaths and bridleways are so used."

**Editorial Information**

**X3** The text of ss. 64, 65, 72(2)-(9)(11)(13)(14) and 73(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

## 66 Interpretation of Part III.

(1) In this Part—

"bridleway" means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;

"byway open to all traffic" means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used;

"definitive map and statement" has the meaning given by section 53(1);

"footpath" means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road;

"horse" includes a pony, ass and mule, and "horseback" shall be construed accordingly;

"public path" means a highway being either a footpath or a bridleway;

**[**F37"restricted byway" has the same meaning as in Part II of the Countryside and Rights of Way Act 2000;**]**

"right of way to which this Part applies" means a right of way such that the land over which the right subsists is a public path or a byway open to all traffic;

**[**F38 "surveying authority", in relation to any area, means the county council, **[**F39county borough council,**]** metropolitan district council, or London borough council whose area includes that area.**]**

(2) A highway at the side of a river, canal or other inland navigation shall not be excluded from any definition contained in subsection (1) by reason only that the public have a right to use the highway for purposes of navigation, if the highway would fall within that definition if the public had no such right thereover.

(3) The provisions of section 30(1) of the 1968 Act (riding of pedal cycles on bridleways) shall not affect the definition of bridleway in subsection (1) and any rights exercisable by virtue of those provisions shall be disregarded for the purposes of this Part.

***Status:*** *This version of this part contains provisions that are prospective.*
***Changes to legislation:*** *Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

**Textual Amendments**

**F37** S. 66(1): definition of "restricted byway" inserted (2.5.2006 for E. and 11.5.2006 for W.) by 2000 c. 37, ss. 51, 103(3), Sch. 5 Pt. I para. 9; S.I. 2006/1172, **art. 2**; S.I. 2006/1279, **art. 2**

**F38** Definition substituted by Local Government Act 1985 (c. 51, SIF 81:1), ss. 1, 2, 7, **Sch. 3 para. 7(6)**

**F39** Words in s. 66(1) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 65(8)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

**Status:**
This version of this part contains provisions that are prospective.

**Changes to legislation:**
Wildlife and Countryside Act 1981, Part III is up to date with all changes known to be in force on or before 30 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 53(3)(c)(ia) inserted by 2015 c. 20 Sch. 7 para. 2(b)
- s. 53B(4A)(4B) inserted by 2015 c. 20 Sch. 7 para. 4
- s. 53ZA inserted by 2015 c. 20 Sch. 7 para. 3
- s. 54B54C inserted by 2015 c. 20 Sch. 7 para. 5
- Sch. 13A inserted by 2015 c. 20 Sch. 7 para. 6
- Sch. 14A inserted by 2015 c. 20 Sch. 7 para. 7

# Natural Environment and Rural Communities Act 2006

**2006 CHAPTER 16**

## PART 6

RIGHTS OF WAY

*Rights of way and mechanically propelled vehicles*

### 66 Restriction on creation of new public rights of way

(1) No public right of way for mechanically propelled vehicles is created after commencement unless it is—

(a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or

(b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.

(2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.

**Commencement Information**

**I1** S. 66 in force at 2.5.2006 for E. immediately after the coming into force of 2000 c. 37, ss. 47-50 by S.I. 2006/1176, **art. 6**

**I2** S. 66 in force at 16.11.2006 for W. by S.I. 2006/2992, **art. 2**

### 67 Ending of certain existing unrecorded public rights of way

(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—

**Changes to legislation:** *There are currently no known outstanding effects for the Natural Environment and Rural Communities Act 2006, Part 6. (See end of Document for details)*

(a) was not shown in a definitive map and statement, or

(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

But this is subject to subsections (2) to (8).

(2) Subsection (1) does not apply to an existing public right of way if—

(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),

(c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,

(d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or

(e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.

(3) Subsection (1) does not apply to an existing public right of way over a way if—

(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,

(b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or

(c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles—

(i) was reasonably necessary to enable that person to obtain access to the land, or

(ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.

(4) "The relevant date" means—

(a) in relation to England, 20th January 2005;

(b) in relation to Wales, 19th May 2005.

(5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies—

(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or

(b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,

the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.

(6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.

(7) For the purposes of subsections (3)(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact—

(a) exercising the existing public right of way, or

(b) able to exercise it.

(8) Nothing in this section applies in relation to an area in London to which Part 3 of the Wildlife and Countryside Act 1981 (c. 69) does not apply.

(9) Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c. 37) has effect subject to this section.

**Commencement Information**

**I3** S. 67 in force at 2.5.2006 for E. immediately after the coming into force of 2000 c. 37, ss. 47-50 by S.I. 2006/1176, **art. 6**

**I4** S. 67 in force at 16.11.2006 for W. by S.I. 2006/2992, **art. 2**

## 68 Presumed dedication of restricted byways and use by pedal cycles etc.

(1) Amend section 31 of the Highways Act 1980 (c. 66) (dedication of highway presumed after public use for 20 years) as follows.

(2) After subsection (1) insert—

"(1A) Subsection (1)—

(a) is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but

(b) applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles."

(3) After subsection (10) insert—

"(10A) Nothing in subsection (1A) affects the obligations of the highway authority, or of any other person, as respects the maintenance of a way."

(4) After subsection (11) insert—

"(12) For the purposes of subsection (1A) "mechanically propelled vehicle" does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (electrically assisted pedal cycle)."

**Commencement Information**

**I5** S. 68 in force at 2.5.2006 for E. immediately after the coming into force of 2000 c. 37, ss. 47-50 by S.I. 2006/1176, **art. 6**

**I6** S. 68 in force at 16.11.2006 for W. by S.I. 2006/2992, **art. 2**

### 69 Presumed dedication and applications under section 53(5) of the 1981 Act

(1) In section 31 of the 1980 Act, after subsection (7) insert—

"(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.

(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act."

(2) The applications in relation to which the amendments made by subsection (1) apply include any application under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) which falls within section 67(3)(a), (b) or (c).

**Commencement Information**

**I7** S. 69 in force at 2.5.2006 for E. immediately after the coming into force of 2000 c. 37, ss. 47-50 by S.I. 2006/1176, **art. 6**

**I8** S. 69 in force at 16.11.2006 for W. by S.I. 2006/2992, **art. 2**

### 70 Supplementary

(1) In section 53(3) of the Wildlife and Countryside Act 1981 (modification of definitive map and statement in consequence of certain events)—

(a) in paragraph (b) (expiration of period raising a presumption of dedication), after "public path" insert " or restricted byway ", and

(b) in paragraph (c)(i) (discovery of evidence of right of way), after "public path" insert " , a restricted byway ".

(2) Amend section 34 of the Road Traffic Act 1988 (c. 52) (prohibition of driving mechanically propelled vehicles elsewhere than on roads) as follows.

(3) In subsection (2), omit "(subject to section 34A of this Act)".

(4) After subsection (2) insert—

"(2A) It is not an offence under this section for a person with an interest in land, or a visitor to any land, to drive a mechanically propelled vehicle on a road if, immediately before the commencement of section 47(2) of the Countryside and Rights of Way Act 2000, the road was—

(a) shown in a definitive map and statement as a road used as a public path, and

(b) in use for obtaining access to the land by the driving of mechanically propelled vehicles by a person with an interest in the land or by visitors to the land."

(5) In subsection (6), for "and section 34A of this Act do" substitute " does ".

(6) In subsection (7), insert at the appropriate place in the alphabetical order—

""interest", in relation to land, includes any estate in land and any right over land (whether exercisable by virtue of the ownership of an estate or

interest in the land or by virtue of a licence or agreement) and, in particular, includes rights of common and sporting rights;".

(7) After subsection (7) insert—

"(8) A person—

(a) entering any land in exercise of rights conferred by virtue of section 2(1) of the Countryside and Rights of Way Act 2000, or

(b) entering any land which is treated by section 15(1) of that Act as being accessible to the public apart from that Act,

is not for the purposes of subsection (2A) a visitor to the land."

(8) In Schedule 7 to the Countryside and Rights of Way Act 2000 (c. 37), omit paragraphs 6 and 7.

**Commencement Information**

**I9** S. 70 in force at 2.5.2006 for E. immediately after the coming into force of 2000 c. 37, ss. 47-50 by S.I. 2006/1176, **art. 6**

**I10** S. 70 in force at 16.11.2006 for W. by S.I. 2006/2992, **art. 2**

## 71 Interpretation

(1) In sections 66 and 67—

"interest", in relation to land, includes any estate in land and any right over land (whether exercisable by virtue of the ownership of an estate or interest in the land or by virtue of a licence or agreement) and, in particular, includes rights of common and sporting rights,

"mechanically propelled vehicle" does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (c. 52) (electrically assisted pedal cycle), and

expressions defined for the purposes of Part 3 of the Wildlife and Countryside Act 1981 (c. 69) by section 66(1) of that Act have the same meaning as in that Part.

(2) In each of sections 66 and 67 "commencement" means the commencement of that section; and in section 67 "existing" means in existence immediately before commencement.

**Commencement Information**

**I11** S. 71 in force at 2.5.2006 for E. immediately after the coming into force of 2000 c. 37, ss. 47-50 by S.I. 2006/1176, **art. 6**

**I12** S. 71 in force at 16.11.2006 for W. by S.I. 2006/2992, **art. 2**

*Traffic regulation in National Parks*

## 72 Traffic regulation on byways etc. in National Parks

After section 22B of the Road Traffic Regulation Act 1984 (c. 27) insert—

**Changes to legislation:** *There are currently no known outstanding effects for the Natural Environment and Rural Communities Act 2006, Part 6. (See end of Document for details)*

"**22BB Traffic regulation on byways etc. in National Parks in England and Wales**

(1) This section applies to a road—

(a) which is in a National Park in England or Wales,

(b) which is—

(i) shown in a definitive map and statement as a byway open to all traffic, a restricted byway, a bridleway or a footpath, or

(ii) a carriageway whose surface, or most of whose surface, does not consist of concrete, tarmacadam, coated roadstone or other prescribed material, and

(c) in respect of which no relevant order is in force.

(2) The National Park authority may—

(a) for a purpose mentioned in section 1(1)(a) to (g) or 22(2), by order make in respect of the road any such provision as is mentioned in section 2(1), (2) or (3) or 4(1);

(b) for the purpose of carrying out an experimental scheme of traffic control, by order make in respect of the road any such provision as is mentioned in section 2(1), (2) or (3) or 4(1);

(c) for a reason given in section 14(1)(a) or (b) or for a purpose mentioned in section 14(1)(c) or 22(2), by order make in respect of the road—

(i) any such provision as is mentioned in section 2(1), (2) or (3) or 4(1), or

(ii) any provision restricting the speed of vehicles.

(3) This Act has effect, subject to subsection (4) and any prescribed modifications, in relation to an order by a National Park authority under subsection (2)(a), (b) or (c) as it has effect in relation to an order by a local traffic authority under section 1, 9 or 14(1).

(4) Before making any order under subsection (2), the National Park authority must consult any authority which is a highway authority for the road.

**22BC Section 22BB: supplementary**

(1) Expressions used in section 22BB(1)(b) that are defined for the purposes of Part 3 of the Wildlife and Countryside Act 1981 by section 66(1) of that Act have the same meaning as in that Part.

(2) In section 22BB(1)(c) "relevant order" means—

(a) a traffic regulation order,

(b) an experimental traffic order,

(c) an order under section 14(1),

(d) an order under section 22(4), or

(e) an order under section 22B,

but does not include an order made under section 22BB(2).

(3) In section 22BB "prescribed" means prescribed by regulations made—

(a) in relation to England, by the Secretary of State;

(b) in relation to Wales, by the National Assembly for Wales.

(4) Any functions exercisable by the National Assembly for Wales by virtue of this section are to be treated for the purposes of section 44 of the Government of Wales Act 1998 (parliamentary procedures for subordinate legislation) as if made exercisable by the Assembly by an Order in Council under section 22 of that Act."

**Commencement Information**

**I13** S. 72 in force at 16.11.2006 for W. by S.I. 2006/2992, **art. 2**

**I14** S. 72 in force at 1.10.2007 for E. by S.I. 2007/2540, **art. 2**

**Changes to legislation:**
There are currently no known outstanding effects for the Natural Environment and Rural Communities Act 2006, Part 6.

[HOUSE OF LORDS.]

H. L. (Sc.) 1885 May 4.

MANN . . . . . APPELLANT;

AND

BRODIE AND ANOTHER . . . . . RESPONDENTS.

*Road—Public Right of Way—Prescription—Non-user for a long Period—Presumption—Scotch Law.*

According to the law of Scotland, the constitution of a public right of way does not depend upon any legal fiction, but upon the fact of user by the public as matter of right, continuously and without interruption for forty years.

And the amount of user must be such as might have been reasonably expected, if the road in dispute had been an undoubted public highway.

Also, the user must be a user of the whole road as a means of passage from one terminus to the other, and must not be such a user as can be reasonably ascribed either to private servitude rights or to the license of the proprietor.

The continued exclusion of the public from the use of an alleged public road for thirty-seven years will not, per se, destroy a pre-existent right of public way, unless it is maintained for the prescriptive period of forty years, but it is strong evidence that no such public right ever existed.

See Lord Blackburn (pp. 385-6) on the difference of English law.

APPEAL from the First Division of the Court of Session, Scotland.

Andrew Brodie and Malcolm Niel, the respondents, inhabitants of the village of Kilbarchan, Renfrewshire, raised this action against Thomas Mann, the appellant, the proprietor of the estate of Glentyan, situate near the village of Kilbarchan, to have a certain track or road established as a public right of way for all purposes. The alleged road is described as connecting by a bridge over a burn the Bruntshields public road and the Lawmarnock public road. This road runs through ground which is known as the Wardhouse Farm. Wardhouse steading is distance about 370 yards north of the Bruntshields Road, and 220 yards south of the Lawmarnock Road.

About the year 1817 the estate of Glentyan, now extending to 266 acres, but which originally consisted of a house and about sixteen acres of land, was purchased by a Captain Stirling. From time to time, between 1817 and the date of his death in 1872,





Captain Stirling, with a view to the enlargement of his estate, purchased several small farms lying contiguous to Glentyan. The farm of Wardhouse, through which the road in question runs, was purchased by him about 1840; but he had been tenant of it from about 1822 until the date of his purchase. One of the previous tenants of the Wardhouse Farm was a Mr. Stevenson, who about 1805 obtained a lease of it, and remained tenant until 1822. In carrying out his improvements Captain Stirling added Wardhouse to the policy of Glentyan. He built a boundary wall along the Bruntshields Road, and at the end of Wardhouse Road (the road in dispute) erected a gate. The appellant and respondents differ as to when the gate was erected, and also as to whether it was locked, or intended to exclude the public. The respondents contend that the gate was not erected until 1851, and that it never was locked so as to exclude the public before 1874; while the appellant maintains that the gate was erected in 1846, and that the public were effectually excluded from that year. The appellant purchased the estate of Glentyan in 1874 from Captain Stirling's trustees. In 1883 disputes arose between the villagers and the appellant, which resulted in the respondents raising this action for declarator that there is a public right of way along the road in question.

The pursuers averred, inter alia:—

(Con. 3). The farm of Wardhouse was one of those farms purchased by Captain Stirling in 1846. At this time there was in existence, and had been from time immemorial, a road about 500 yards in length and about 14 feet wide leading from Bruntshields public road through the farm of Wardhouse, passing near to the farmhouse or steading of Wardhouse, and then joining the Lawmarnock public road. It was then, and had been so far back as the memory of the oldest inhabitant could carry them, a well formed road, with strong and high hedges or substantial dykes running along its whole course on both sides. From time immemorial, or at least for forty years prior to 1846, there existed a public right of way along the said road, and it had been regularly used by the public of Kilbarchan and neighbourhood and the community generally for the purposes of carting, driving, and riding and walking. (Con. 4). About 1851 Captain Stirling, who was then carrying out considerable improvements on his estate, erected a wooden gate at the entrance to the said road from the Bruntshields public road. The gate was not locked, and a smaller gate or door, which could be opened by any one at pleasure, was placed in it for the convenience of persons walking along the road. (Con. 5). In 1860 a boy was drowned in the dam, which is close to the side of the road, and the

AUTH089

H. L. (Sc.) 1885 MANN v. BRODIE.

gate was thereafter locked, but the key was left at the farm steading of Wardhouse, to be used by the public. (Con. 6). The said road formed an easy, expeditious, and convenient road between the villages of Lochwinnoch and Bridge of Weir. By using it people, carts, and other vehicles passed between these places, and others in the neighbourhood were saved a roundabout of about two miles, and they at the same time escaped a steep ascent going in either direction on leaving the village of Kilbarchan. It was a favourite resort of the inhabitants of Kilbarchan for walking.

The defender's averments were, inter alia :—

That the alleged road was made by the tenant of Wardhouse Farm, and was for many years used as a service or estate road by those occupying the farm and the estate of Glentyan. It was required as an accommodation road, as a considerable part of the Wardhouse lands lie to the south of the Bruntshields Road, while the farm steading is to the north of that road. The gate opening into the Bruntshields Road was erected about 1840, and kept locked, and only opened for the convenience of the proprietor, his friends and tenants. The defender and his authors held the estate on a valid, undeniable title, free from any such road or right of way, for more than forty years, and in any event for more than twenty years prior to 1883, and no such right of way has existed, or been claimed or used, during the said period. The public never claimed or exercised, or possessed any right of way in or over the alleged road, or over any part of the defender's estate until the summer of 1883.

A proof was adduced before the Lord Ordinary. Much of the evidence was as to the villagers when boys and girls walking and strolling on the alleged road, and of boys going there for the purpose of fishing in the burn, and in winter for curling. One of the oldest witnesses for the pursuer was Matthew Houston, born in 1793. His evidence was, as far as material, as follows :—

"I remember, when a boy, about ten years old, going up to the burn which crosses the Wardhouse road. There was no bridge across the burn on the Wardhouse road when I first knew it; there was an open ford there. It is not a very big burn, but there are some very deep pools in it. It was shallow where the ford was, and you could go across the burn there quite easily dryshod. There was a road in those days, before the bridge was built, right up past Wardhouse from the Bruntshields road; that road passed the Wardhouse, and ended at the Lawmarnock road." He had seen milk-carts going along the road when he was there.

Cross-examined: He did not remember when the bridge was built or who built it, nor did he see the bridge being erected. The burn ran in a deep hole, where the bridge is, when he first knew it, but it is now filled up. The ford was a little way off. He did not remember Mr. Stevenson being in the Wardhouse Farm. He could not say how often he had seen the milk-carts go through this road.



H. L. (Sc.) 1885 MANN v. BRODIE.

Mr. Stevenson, born in 1812, now resident in England, a witness for the defender, stated :—

That his father, who was tenant of Wardhouse Farm from about 1805 to 1822, and who died in 1849, told him he had made the road in question. "He told me he could not get access to the Bruntshields Road from Wardhouse until there was a bridge made across the burn. He said he had the road made for the convenience of working the farm. My father did not tell me particularly what he had done in the way of making the bridge, but until the bridge was made the road was useless, because the burn formed a kind of gully, which could not be passed with a loaded cart, or perhaps even with an empty one." His father inclosed the lands so that he might work the farm without gates on the road.

The remaining material part of the evidence will be found fully given in the judgments. On December 3, 1883, the Lord Ordinary (1) pronounced the following interlocutor: "Finds it proved that the defender and his predecessors in title have excluded the public from the use of the road in question since the year 1846, and that there is no proof of the assertion of a right on the part of the public since that year: Finds it not proved that the road in question has been a public road during the period of forty years antecedent to the commencement of the year 1847, and finds that such user as the members of the public have enjoyed during that period has been by tolerance, therefore assoilzies the defender form the conclusions of the action," &c.

The respondents reclaimed, and on the 13th of June, 1884, the First Division (2) delivered the following judgment: "Recall the said interlocutor (of the 3rd of December, 1883): Find it proved that the defender and his predecessors in title have excluded the public from the use of the road in question since the year 1846, and that there is no proof of the assertion of a right on the part of the public since that year: Find it proved that the road in question has been a public road during the period of forty years antecedent to the commencement of the year 1847. Therefore find and declare in terms of the declaratory conclusions of the summons, ordain the defender immediately to remove the walls, locked gates, fences, and all other obstructions erected on the road in question, as concluded for" (3).

(1) Lord M'Laren.
(2) Lord President (Inglis) and Lords Mure and Adam.
(3) 11 Court Sess. Cas. 4th Series, 925.

AUTH090

H. L. (Sc.) 1885 MANN v. BRODIE.

On appeal,

April 14, 15–17. *The Lord Advocate* (*Balfour*, Q.C.), and *Dickson*, for the appellant:—

Both the Lord Ordinary and the judges of the First Division in identical terms found it proved that the appellant and his predecessors had excluded the public from the use of the road since 1846, and that there is no proof of the assertion of a right on the part of the public *since* that year. The judges, therefore, have disbelieved the evidence put forward as to this period, and against this finding there has been no cross-appeal. Such a finding not only negatives a large part of the pursuers' case, but puts upon them the very heavy onus of establishing a right of way, in face of effectual exclusion of the public for thirty-seven years absolutely and completely acquiesced in by them. The finding was also a serious blow to the testimony of the same witnesses as to the period previous to 1846. It lay on the pursuers to prove, from at least 1805–6, the use by the public, and that not merely as a matter of tolerance, but as a matter of right. The evidence of Mr. Stevenson, a person aged seventy-one, and in no way connected with the question, proved that in truth there was no road in 1805, but that his father for the convenience of farming operations subsequently built the bridge and made the road; before this date, the ford was not passable for a loaded cart. Matthew Houston's evidence of the earlier period imported nothing, as he did not say whose were the carts he saw, or where they were going to.

In *Jenkins* v. *Murray*, Lord Deasy said (1): "It is quite plain that if a proprietor has on his property an approach or a path which he requires for his own purposes, and if he allows the public to go on it for any length of time by mere tolerance, that gives them no right." And it was there held that the evidence must shew that the road was used by the public in passing on their ordinary avocations between the two termini; see also *Mackintosh* v. *Moir* (2). The exclusion for thirty-seven years was very strong evidence

(1) 12 July, 1866: 4 Court Sess. Cas. 3rd Series, at p. 1054.

(2) 28 Feb. 1871: 9 Court. Sess Cas. 3rd Series, 574, at p. 576.



H. L. (Sc.) 1885 MANN v. BRODIE.

against the road being a public way. They also cited *Forbes* v. *Morrison* (1) (2).

*Finlay*, Q.C., and *James Reid*, for the respondents, were relieved by the House from arguing as to possession of right during the period between 1820 and 1846:—

There was nothing to account for the road being used as of right in 1820, unless it was that it was a public road from time immemorial. A public right of way, according to the law of Scotland, may be acquired by forty years' possession or use on the part of the public; or from possession from time immemorial. And the latter was held equivalent to forty years although the evidence might fall short of that period. In proving possession as far back as 1820, they were entitled to the presumption that they could have proved antecedent use and possession of a like quality if the witnesses had not died off: *Rodgers* v. *Harvie* (3); *Cuthbertson* v. *Young* (4). But even without the presumption, they had at least six witnesses who could remember a use going back to 1805. They submitted that the evidence of the defender did not prove that the road was originally an accommodation road; but that it was an ancient public road. It was equally reasonable to suppose that the farm steading of Wardhouse was built by the side of the ancient highway, as that the road came to be made afterwards, and in consequence of the erection of the farm

(1) 19 July, 1851: 13 Court Sess. Cas. 2nd Series, 1404.

(2) In *Hill* v. *Ramsey* (House of Lords printed papers, 30th March, 1810), there was from twenty to thirty years of interruption; and it was successfully argued by the proprietor this fact afforded a degree of real evidence which no parole testimony could redargue, that if there was any prior possession at all, it must have been of such a qualified, limited, and precarious nature as could not presuppose, much less create any legal right. As to presumption of like possession retro where no evidence, *Nicolson* v. *Bightie*, 14 Nov. 1662, and *Beatton* v. *Ogilbie*, July 13, 1670, 1 Stair Rep. In the former case the Lords held that any interruption was sufficient to shew, that the other party willed not, nor consented not to the right; and if by such interruptions parties got wrong, it was their own fault, who did not either declare their right, or insist in a molestation debito tempore, or use mutual interruptions. And such presumption of use retro may be re-argued: *Magistrates of Elgin* v. *Robertson*, 24 Court Sess. Cas. 2nd Series, 301.

(3) 8 July, 1828: 3 W. & S. 251.

(4) 1 Macq. 455.



AUTH091

H. L. (Sc.) 1885 MANN v. BRODIE.

steading. The road possessed unusual advantages to the public, it led from one public place to another, it was a short cut, and it avoided steep hills. The Lord Ordinary had given too much weight to the evidence of non-user since 1846, for the respondents submitted that the public were not entirely excluded for thirty-seven years; and the evidence of exclusion, or rather the acquiescence, was explained by good neighbourhood,—Captain Sterling being much beloved. But, in fact, the gate put up in 1846 or 1851 did not in any way affect the extent or nature of the use and possession by the public, inasmuch as that they continued to use the road after that time just as they had done formerly.

After the boy was drowned in 1860, down to 1874, there may have been a certain amount of restriction, but the public continued to use the road as before, at least for foot passengers. They therefore submitted that either the proof of forty years user as of right prior to 1846 was proved, or that there was sufficient evidence of user by the public down to 1874, or at least, 1860, to instruct prescriptive possession.

[They cited also *Wallace* v. *Police Commissioners of Dundee* (1)].

*The Lord Advocate*, in reply:—

The possession necessary to acquire a public right of way must be for forty years and must be also a full, continuous, and uninterrupted use as of right. These necessary elements were absent in this case.

Time having been taken for consideration, judgment was delivered as follows:

LORD BLACKBURN:—

[His Lordship having read the interlocutory of the Lord Ordinary and that of the First Division, continued:—] The First Division differed from the Lord Ordinary, not as to any question of law, but as to the effect of the evidence.

There was not anything in the nature of the evidence to give the Lord Ordinary, though he heard the witnesses, better means of judging than the judges of the Frst Division or your Lordships, who only read the notes; and the judges, I think, owed it to the respondents to form their own opinion, and to act upon it if it was different from that of the Lord Ordinary. I think now that your Lordships owe it to the appellant to form your own opinion and to act upon it, though it is different from that of the Inner House. I need not say that I should not lightly differ from them, even though in so doing I agreed with the Lord Ordinary.

(1) 9 March, 18752; Court Scss. Cas. 4th Series, 565.



H. L. (Sc.) 1885 MANN v. BRODIE. Lord Blackburn.

The evidence is voluminous, but there is no difference between the judges below except as to the effect that ought to be given to the evidence relating to the period, I think I may say, between 1805 and 1810, which is directly touched by only a very little of the evidence; and as to the weight to be given to the contrary presumptions arising, one in favour of the pursuers, from the fact, which they all agree is proved by preponderating evidence, that the road was used by the public during a period between 1820 and 1846, affording some reason for acting on slighter evidence during the earlier fourteen years which are required to make up the forty, and one the other way, arising from the fact, which they all agree in finding, that the public have been excluded from 1846, and that there is no proof of the assertion of a right on the part of the public since that year.

Though exclusion for less than forty years will not extinguish a public road which is proved to have been created, the fact of no right having been asserted during an exclusion of so long a period as thirty-seven years affords some reason for requiring more evidence to establish that such a right really existed. There must have been many alive in the period between 1846 and, say, 1856, and now dead, who must have known much more as to what really was the state of user of the road between 1805 and 1820 than those now alive, and if they did not assert a right, it affords some ground for surmising that they did not think that right existed, and, therefore, some ground for looking more critically at the evidence produced to prove that it did.

The case is to be governed by the law of Scotland. Any reference to English law is apt to mislead, unless the difference of the law of the two countries is borne in mind. In both countries a right of public way may be acquired by prescription. In England the common law period of prescription was time immemorial, and any claim by prescription was defeated by proof that the right claimed had originated within the time of legal memory,



AUTH092

H. L. (Sc.) 1885 MANN v. BRODIE. Lord Blackburn.

that is, since A.D. 1189. This was, no doubt, an unreasonably long period. And sometimes, by legal fictions of presumed grants, and in part, by legislation, the period required for prescription as to private rights has, in many cases, been practically cut down to a much shorter definite period (see *Angus* v. *Dalton*) (1). But this has never been done in the case of a public right of way. And it has not been required, though in the way in which the evil of the period of prescription being too long has been avoided, an opposite evil of establishing public rights of way on a very short usurpation has sometimes been incurred.

In *Poole* v. *Huskisson* (2) Baron Parke says: "In order to constitute a valid dedication to the public of a highway by the owner of the soil, it is clearly settled that there must be an *intention* to dedicate—there must be an *animus dedicandi*, of which the user by the public is *evidence*, and no more; and a single act of interruption by the owner is of much more weight upon a question of intention, than many acts of enjoyment."

But it has also been held that where there has been evidence of a user by the public so long and in such a manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on which those who have to find the fact may find that there was a dedication by the owner whoever he was. It is therefore, I may say, in England never practically necessary to rely on prescription to establish a public way.

Now, it is here to be observed that though the length of time during which a road is used as a public highway is an element in determining whether a dedication should be inferred, it is not any definite time, and a very short period of usurpation will often satisfy a jury. But I am far from thinking that the law of England is here at all the perfection of reason, or such as ought to be introduced into the law of Scotland if not so already.

No case is made here as to a right of way created by the owner, either on the titles or by such acts (if any there be) as without any writing might, according to the law of Scotland, preclude the owner and those who claim under him from denying that a right of way had been created. The sole claim is by prescription, and I

(1) 6 App. Cas. 740, at p. 750. (2) 11 M. & W. 830.



H. L. (Sc.) 1885 MANN v. BRODIE. Lord Blackburn.

think there is no dispute that, by the law of Scotland, the period of prescription is forty years. If the public had used the road to such an extent and in such a manner that they may properly be said to be possessed of it, and they have had such possession for forty years, they have acquired the right, and that although it was shewn that the owner in fee was, during that time, not dedicating it; but if less than forty years' possession is proved, there is not, as I understand, any principle or authority for saying that a dedication is to be presumed. And again, when the public are excluded for forty years, their right, however clear it may be that they once had one, is gone, by negative prescription. The question, in short, is as to possession by the public or against the public for a period of forty years, and not, as in England, as to user by the public for such an undefined time, and in such a manner and under such circumstances as to justify the inference that an owner in fee had dedicated.

I think that evidence of possession by the public, such as is proved in this case, between 1820 and 1846, would, in England, justify a jury in finding a dedication before 1846; but it does not justify a finding of prescriptive right, unless it is proved that it continued so long, either at the beginning or end of the period, as to amount to forty years.

I do not propose to enter into the evidence in detail. I agree with the judges below that the fair result of the proof is that, in 1842, when Captain Stirling, already the owner of Glentyan, purchased the adjoining farm of Wardhouse and begun to take steps to throw it into his policies, he did exclude the public from a road which they had possessed for some time. I agree, also, in thinking that this exclusion was not complete till the gate was set up across the road.

The appellant's counsel shewed that there was some conflict of testimony as to whether the exclusion was complete from the time the gate was set up, and also as to the time when the gate was put up, some putting it in 1846, some in 1851; but I think the preponderance of proof was that the gate was set up in 1846, and that the exclusion of the public was complete from that time, and not before. That puts the defender in possession, as against the public, for thirty-seven years, but not for forty.

AUTH093

H. L. (Sc.) 1885 MANN v. BRODIE. Lord Blackburn.

The Wardhouse farm lies between two public roads, the northern being called Lawmarnock Road and the southern one the Bruntshields Road. A small stream of water flows across the Wardhouse farm to Glentyan mill, and a dam was made for the mill close by the Bruntshields Road. The farm steading of Wardhouse farm is erected about halfway between the two public roads on the northern or Lawmarnock side of the stream. When all this was done does not appear, but it certainly was some time before the beginning of this century.

The earliest evidence given for the pursuers is that of an old man, Matthew Houston, who was born in 1793, and continued at school till he was eleven years old, that is, till 1804, when he went away to learn weaving. As I understand his evidence, it is not so strong in favour of the respondents as Lord Mure thinks it, but is some evidence in favour of the existence of and the user by the public of the road at this early time. He says he used to go "ginneling" trout in the burn whilst he was a schoolboy, but after he became a weaver was kept closer to his work, and did not go again till he was grown up, and he also used to go to curl in winter and to bathe in summer in the dam. In all those ways he would see the place; how far he would observe, or how accurately recollect what he observed, is a question. I see no reason to doubt that the boy who was ginneling trout would observe, and probably remember, as long as he remembered anything, that on the spot where there is now a bridge over the little stream there was then no bridge, but a deep pool, now silted up; and as the farmer who occupied the steading must have crossed the stream to get to his fields on the south side, I suppose there probably was at that time some kind of ford across the stream. Whether the boy would so accurately observe or remember that ford there may be a doubt. He says, when he next came after he was grown up (I suppose he would hardly call himself so till he was sixteen or seventeen, that is in 1809 or 1810) the bridge was built, but he does not know by whom or when. He says that he saw carts and horses using the road; it is by no means clear whether he means in his schooldays or in his grown up days. But he does say, and I think it very likely, that in the early morning when he and the other boys were waiting to get their breakfasts, and the



H. L. (Sc.) 1885 MANN v. BRODIE. Lord Blackburn.

milk carts were late in coming, the hungry boys would walk along the Bruntsfields Road to meet them, and he says, "I have seen them on the road in question going past Wardhouse." This is some evidence that light carts, such as milk carts, did come that way before the bridge was built. There is a good deal of evidence that after the bridge was built a number of carts, not very large, but as many as could be reasonably supposed to have an object in going from Lawmarnock Road to Bruntsfields Road, did use the road; but this is, I think, the only direct evidence of such a user before the bridge was built.

Mr. Stevenson, who was tenant of the Wardhouse farm from 1805 to 1823, when he removed to Auchinames in the neighbourhood, built the bridge. He is dead, but his son, who was born in 1812, and cannot of course speak of his own knowledge as to anything happening before 1817 or 1818, is called. He was born at Wardhouse and continued there till they flitted to Auchinames, and there continued to live with his father till his death in 1849, when he succeeded his father in that farm. He tells us, what is very probable, that his father talked to him about what he had done; and as his father is dead that is evidence. It is, of course, subject to the observation that the deceased cannot be cross-examined, and the witness does not say (and probably would not be believed if he did say) that he cross-examined the deceased as to what he told him; but his account of what his father told him is, to my mind, worthy of credit; and without reading what is printed at pages 112 and 113 of the case, I think it strong to shew that before the bridge was built the public could hardly use this road at all, certainly not conveniently, with any except empty or very light carts.

Lord Mure seems to think that because the witness says what, on reflection, is self-evident, that he cannot tell from his own recollection what was the state of the place before the bridge was built, that is, before the witness was born, and cannot tell more from recollection of what his father told him than that he said that until it was made a loaded cart could not cross the ford, this evidence is not so favourable to the appellant's case as I consider it. I do not at all think it conclusive; but when I weigh it against that of Matthew Houston I think it is the more reliable of the two.

AUTH094

H. L. (Sc.) 1885 MANN v. BRODIE. Lord Blackburn.

I agree with Lord Adam that when you find a number of old persons speaking to a certain state of matters, there is a fair presumption that we should have had others, if they had survived, speaking in the same way. But old Mr. Stevenson, if he had survived, would, if his son's recollections are accurate, have spoken very differently from Matthew Houston; who is the only witness who speaks to the state of things before the bridge was built. And Lord Adam lays down very strongly that submission by the public to exclusion for thirty-seven years, though not a bar, throws a heavy onus on those who seek to establish the public use for forty years; yet when the point is brought to be as to what was the state of things in 1807, about the beginning of the forty years (and the evidence is, I think, rather in favour of the defender) Lord Adam seems to give no effect to the onus at all.

I think the Lord Ordinary was right; and as I believe your Lordships are of the same opinion, I move that the appeal be allowed and the interlocutor of the Lord Ordinary restored, the appellant having the expenses in the Court below from the date of the Lord Ordinary's interlocutor, the respondent paying also the costs of this appeal.

LORD WATSON:—

This action was instituted by the respondents in August, 1883, for the purpose of establishing a public right of way for foot passengers, carts, and carriages along a road or track leading northwards from a public road known as the Bruntshields Road, through the appellant's lands of Wardhouse, to another public road known as the Lawmarnock road. The road in dispute, and its termini, are situated in an agricultural district of Renfrewshire, and at no great distance from the village of Kilbarchan.

The respondents sue as members of the public; and the right of road, which they ask the Court to declare, is based, not upon grant or dedication, but upon prescriptive user by the public. In the able arguments addressed to us, from both sides of the Bar, there was really no serious controversy raised in regard to the legal principles applicable to the constitution of a public right of that kind; and, in my opinion, there is little room for controversy on that point. According to the law of Scotland, the constitution of



H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

such a right does not depend upon any legal fiction, but upon the fact of user by the public, as matter of right, continuously and without interruption, for the full period of the long prescription. Lord Stair (1) states prescription to be a rule of "positive law, founded upon utility rather than equity," and he adds (2), that, in Scotland, the common rule is by the course of forty years, "but there must be continued possession free from interruption." According to Erskine (3), "positive prescription is generally defined by our lawyers as the Romans did usucapion, the acquisition of property by the continued possession of the acquirer for such a time as is described by the law to be sufficient for that purpose." These learned writers agree that the definition must be qualified in cases where the law requires an antecedent feudal title as the basis of prescription, as in cases falling under the Act 1617, chap. 12. The effect of prescription, in these cases, is not to constitute the right of the possessor, but to fortify it against all future challenge. But, with the exception of one ingenious author, who says that the possession of the public ought to be ascribed to the jus coronæ (4), no one has suggested that any title is required as the foundation of a prescriptive right of public way. I am aware that there are dicta to be found, in which the prescriptive acquisition of a right of way by the public is attributed to implied grant, acquiescence by the owner of the soil, and so forth; but these appear to me to be mere speculations as to the origin of the rule, and their tendency is to obscure rather than to elucidate its due application to a case like the present.

Although the principles of law which govern the acquisition of a prescriptive right of way are in themselves simple, yet, in their application to facts, questions of nicety frequently arise. It then becomes necessary to consider whether the user has been that of the public, whether it has been continuous and uninterrupted, and whether it has existed for the full period required by law. These are all questions of fact, and it would not be expedient to lay down any specific rules for their solution. As regards the first of these questions, which has occasioned much more controversy than the others, I think it is safe to say generally,

(1) Stair's Inst. 2, 12, 9.
(2) Ibid. 2, 12, 11.
(3) Ersk. Inst. 3, 7, 2.
(4) Napier on Prescriptions, p. 370.

AUTH095

H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

that in order to constitute a public user of the kind of road claimed in the present action, the user must be of the whole road, as a means of passage from the one terminus to the other, and must not be such user as can be reasonably ascribed either to private servitude rights or to the license of the proprietor. Then, as regards the amount of user, that must just be such as might have been reasonably expected if the road in dispute had been an undoubted public highway.

Upon the evidence adduced, the Lord Ordinary and the learned Judges of the First Division have come to the unanimous conclusion that from the year 1846 down to the time when this action was raised, the appellant and his predecessors in title have excluded the public from the road in question, and that there is no proof of the assertion of a right on the part of the public during the whole of that period. With that conclusion I entirely agree; and, after the observations which have been made upon this part of the case by the Lord Ordinary, it would be a waste of time to refer to the evidence in detail. There was, no doubt, some use of the road, prior to the year 1874, by persons unconnected with the lands of Wardhouse; but that use did not amount to the assertion of a public right. Counsel for the respondents endeavoured to press upon your Lordships the consideration that the late Captain Stirling, who was proprietor of Wardhouse from 1844 till his death in December, 1872, was a very popular person, and that, in deference to his feelings, the inhabitants of the district did not assert their right so vigorously as they would otherwise have done. Such considerations are, in my opinion, utterly irrelevant. Public user is a fact which must be inferred from overt acts of possession; and defective evidence of user cannot be strengthened by proof of the motives which induced individuals to abstain from acts of that kind.

The legal consequence of the exclusion of the public from and after the year 1846, is, that the respondents must establish possession on the part of the public for forty years before that date. The Lord Ordinary was of opinion that the respondents have failed to instruct public user before 1846, extending retro for forty years; but the three learned Judges who decided the case in the Inner House took a different view of the evidence. They were of



H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

opinion that the evidence is sufficient to sustain the inference that before their exclusion in 1846 the public had used the road as matter of right for the full prescriptive period.

The evidence of the respondents does, in my opinion, establish that from 1820 to 1846 the public did use the road continuously and as matter of right. That was the view taken by the Lord Ordinary, as well as by the judges of the First Division, and it was not very seriously disputed by the appellant's counsel. It is certainly not proved that the road was used daily, either by foot passengers or by carts, but it is in evidence that it was used in both ways by inhabitants of Kilbarchan, and also by a considerable number of farmers in the neighbourhood, whenever they had occasion. In arriving at that conclusion, I lay aside altogether the evidence as to the road having been used as an access to the mill dam by bathers and curlers, and I attach little weight to the evidence that people used to stroll along part of the road, although such evidence is not altogether devoid of significance when it is coupled with proof of public use of the road throughout its entire length.

The main controversy between the parties related to the condition and use of the road in question during the period antecedent to the year 1820. The respondents have adduced oral testimony of living witnesses, which reaches back as far as the year 1803. The appellant has also led proof which goes back to the year 1805, but that proof consists of the hearsay testimony of a single witness, Stevenson, whose information was derived from his deceased father, who was tenant of the lands of Wardhouse from 1805 until 1823. It seems to be fairly deducible from the evidence on both sides that about the year 1806 a bridge was built by the late Mr. Stevenson, at that time the new tenant of Wardhouse, in order to carry the road in question over a burn which it crosses, between the steading of Wardhouse and the Bruntshields Road. I think it is also proved that a road existed before the bridge was built, and that it previously crossed the burn by means of a ford, a little way further down the burn than the site of the bridge. The condition of that part of the road before 1806 is a matter of some importance, and upon that point I can see no reason for rejecting the testimony of the witness Stevenson, who says that it could not be used by

AUTH096

H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

loaded carts. To my mind, it is extremely improbable that an agricultural tenant would have incurred the expense of erecting a bridge, if the ford and its accesses had not been very unsuitable for ordinary farm traffic. It is also, in my opinion, matter for observation that it is neither proved nor suggested that, at the time when the bridge was built, the road at that point had fallen into temporary disrepair, or that its bad condition was due to other than permanent causes.

I shall now refer to the evidence of possession anterior to 1820. There are six aged witnesses for the respondents, whose combined testimony covers the period from 1803 to 1820, and I begin with those whose recollections are the most recent. William Orr, who was born in 1805, speaks to the use of the road from 1815 by carts from his father's farms of Law and Lawmarnock, and also from two other farms in the vicinity, Pannell and Monkland. He also speaks to the use of the road by persons on foot, but it is by no means clear that his evidence on that point applies to the earlier years between 1815 and 1820. John Gilmour, born in 1802, first saw the road in 1814. When he was a boy he used the road almost daily in the summer time, when he went to bathe in the dam; and he likewise states that he has seen horses and carts using the road, but cannot say whose horses and carts they were. He does not speak to the use of the road by foot-passengers at that early period. James Clark, born in 1802, who recollects the road since 1811 or 1812, says that "in these early days the road in question was very much used by the Kilbarchan people for walking. I went from end to end of the road." He seems to have used the road at that time as an access to the dam, when he went with other boys to bathe, and he says that he has seen carts upon the road, but cannot say whose they were. Archibald Hunter, born in 1803, was first taken to the road about 1808 or 1809, when he was a mere child, by his father, who, on that occasion, went from the Bruntshields Road, a little way up the road in dispute, and then "turned and came away back again." I think it is the import of his evidence that he did not renew his acquaintance with the road until he was a "young lad," whatever that may signify; probably not before 1814 or 1815. He too went at that time for the purpose of bathing in the dam, but he says that the road was a great resort of the



H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

Kilbarchan people, and that he has seen horses and carts going along the road, but cannot say whose they were, as he "did not pay any attention."

The two remaining witnesses for the respondents who had the earliest acquaintance with the road, and upon whose evidence great reliance was placed by Lords Mure and Adam, are Matthew Houston and John Houston. Matthew Houston was born in 1793, and his first knowledge of the road was acquired in 1803 and 1804, when he went to "ginnel" trout in the burn over which the bridge was subsequently built. He left school and began to weave when he was eleven years old, and it plainly appears from his evidence that from that time until he was a "young man" his knowledge of the road was very limited, if indeed he was ever upon it, which is by no means clear. Accordingly he knows nothing about the building of the bridge, save that he saw it after it was built, and he was not even aware that Mr. Stevenson was the tenant of Wardhouse. It is very difficult to ascertain the date at which he first saw the bridge, but, in all probability, it cannot have been before 1809 or 1810. The only occasion of his using the road in his younger days was in going to catch trout, with his hands at first, and afterwards with rod and line, and going to see the curlers on the dam. He does give evidence to the effect that the Kilbarchan people were in the habit of walking along the road; but I do not think that evidence, when closely examined, can be held to refer to the years 1803 and 1804. Then he speaks to the existence of the road and ford in these years, and he adds that the road was "always passable for carts." I believe that statement to be true, subject to the qualification (which it does not exclude) that the ford and its accesses did not afford a convenient passage for carts, and were not passable by a loaded cart. But I doubt very much whether his evidence as to the use of the road by carts is in reality applicable to the years 1803 and 1804. One thing is plain, that even if it be held to apply to these two years, his evidence at that time is limited to milk carts, which supplied a dealer in Kilbarchan.

Then John Houston, who was born in 1799, first went on the road in 1807, and frequently used it afterwards, on his way to the

AUTH097

H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

dam for the purpose of bathing or sliding. He says nothing whatever about the use of the road by other persons on foot, except for these purposes, and he says expressly, "I don't remember seeing carts on the road." This witness, on cross-examination, made a volunteer statement to the effect that "the carts went through the burn until the bridge was built." The statement is not evidence at all. The witness never saw the road before the bridge was built, and he cannot recollect his having seen a single cart upon it after the bridge was built. He does not say at what time, or from whom, he obtained his information, and in the absence of any evidence on these points his hearsay statement is inadmissible.

In my opinion the evidence of these old men, taken by itself, and apart from any presumption which might be derived from other facts proved in the case, would be quite insufficient to establish that the road in question was used as matter of right by the public from 1806 down to 1820. I agree with the Lord Ordinary that the oral evidence applicable to that period "falls very far short of what would be necessary to establish a public right of way," and that it does not prove any use of the road, by members of the public, "except such as may be predicated of any of the ordinary farm roads made and maintained by proprietors throughout the country." If I understand his judgment aright, Lord Mure, though he does refer at some length to the case of *Harvie* v. *Rodgers* (1) was of opinion that the direct oral evidence was sufficient, without the aid of any presumption, to establish public user during that earlier period. Lord Adam does not appear to me to have taken the same view, because he says, "I ask myself what is the presumption which we must draw when all the survivors speak in one direction. I think there is this presumption, that if we had had more survivors they would all have spoken in the same direction." His Lordship then refers to a direction of the Lord Justice Clerk (Hope), which was upheld by this House in *Cuthbertson* v. *Young* (2), and goes on to say, "That charge of the Lord Justice Clerk (Hope) is an authority in the direction I have already indicated, and if there is evidence, uncon-

(1) 3 Wil. & S. 251. (2) 1 Macq. 455.



H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

tradicted and undisputed, going back to an early period, I think we are entitled to have recourse to the presumption that there was an antecedent grant."

In *Harvie* v. *Rodgers* (1) and *Cuthbertson* v. *Young* (2), both of which came to this House upon a bill of exceptions to the charge of the presiding judge, there is no reference made by the noble Lords who decided these cases to any presumption of an antecedent grant. In *Harvie* v. *Rodgers* (1) there was evidence before the jury to the effect that, for at least thirty-four years prior to 1789, the public had enjoyed the free and uninterrupted use of the footpath in question; and that from 1789 to 1822, when the action was brought, the public continued to use it, notwithstanding repeated but unsuccessful attempts to bar their passage. Lord Lyndhurst thus states the import of the direction excepted to. "The learned judge in substance told the jury, There is evidence from which you may assume that for a particular period, namely forty years, this way had been exercised without interruption. If you are of that opinion, then that is, according to the law of Scotland, sufficient to establish a prescriptive right of way; and if that right of way be once established in the manner I have stated, then I tell you that in point of law subsequent interruptions not acquiesced in cannot defeat the right so acquired." In expressing his approval of that direction the noble and learned Lord said that if thirty-four years of uninterrupted exercise of the right of way were established, "it was then competent for the jury to presume, *and they ought in point of law to be directed to presume*, a previous enjoyment of the same kind."

In *Cuthbertson* v. *Young* (3) there was evidence to shew that between 1827 and the raising of the action in 1849, a period of twenty-two years, the public had been excluded from the footpath claimed. The Lord Justice Clerk (Hope) refused to tell the jury that such evidence of interruption was "sufficient in law to exclude such right of way on the part of the public," and he directed the jury that, "if evidence was given satisfactory to their minds of the existence of a public footpath as far back as

(1) 3 Wil. & S. 251, at p. 260.
(2) 1 Macq. 455.
(3) 1 Macq. 455; 14 Court Sess. Cas. 2nd Series, 300, at pp. 306, 307.

AUTH098

H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

the memory of living witnesses could be expected to extend, although such testimony did not either in any instance, or only in a few cases, go distinctly as far back as forty years prior to 1827, still it was competent for the jury to presume, and (the evidence being consistent and uncontradicted) the jury *ought in point of law to presume* a previous enjoyment corresponding with the manner in which it had been enjoyed during the period embraced by the evidence." In affirming that direction the Lord Chancellor (Cranworth) (1) added, "I understand the learned judge, when he used the expression '*the jury ought to presume*,' not to be stating a proposition in law on which the jury were bound to act, but merely to be pointing out what was an almost irresistible inference in point of fact." The expression was borrowed verbatim by the Lord Justice Clerk from the judgment of Lord Lyndhurst in *Harvie* v. *Rodgers* (2); yet it elicited from Lord Cranworth the observation that Scotch judges are "sometimes perhaps a little loose in their mode of directing juries."

There can, I apprehend, be little doubt that Lord Cranworth was right in pointing out that any presumption which the jury were entitled or ought to draw was matter not of law but of fact. The decisions of the House in these two cases go no further than this, that when there is no evidence, or it may be scant evidence, applicable to the commencement of the forty years requisite, the Court or a jury may nevertheless infer, if the evidence is sufficient to sustain the inference, that the public user which is proved to have existed during the later portion of that period must have existed throughout. But these decisions afford no indication whatever of the quantum of evidence which will be sufficient to support such an inference. The House assumed, and was bound to assume, that there was ample evidence to support the inferences drawn by the jury, for in *Harvie* v. *Rodgers* (2) the Court had refused a motion made for a new trial on the ground that the verdict was against the weight of evidence, and in *Cuthbertson* v. *Young* (1) the verdict had never been impeached on that ground.

In the present case there is evidence applicable to the first

(1) 1 Macq. 455, at p. 460; 14 Court Sess. Cas. 2nd Series, 300.
(2) 3 Wil. & S. 241.



H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

fourteen years of the prospective period during which the respondents must establish public user. To my mind the evidence which applies to these earlier years is deficient not only in amount but in quality. If twenty witnesses had merely repeated the statements made by the six old men who gave evidence for the respondents that would not, in my opinion, have strengthened the respondents' case. On the other hand the testimony of a smaller number of witnesses each speaking to persons using and occasions of user other than those observed by these six witnesses, might have been a very material addition to the evidence for the respondents. It is however a just observation that it would not be reasonable to expect that many witnesses could be found capable of speaking to the condition of the road in question and its use during the period of fourteen years ending in 1820, a period ranging from sixty-three to seventy-seven years before proof was taken in this case. The evidence suggests, and it is doubtless the fact, that before this case went to proof the vast majority of those who were qualified to speak to that period of fourteen years had paid the last debt of nature. And I freely concede that in ordinary circumstances that fact might afford reasonable grounds for presuming that the testimony of those witnesses whom death has silenced would have amply supplemented the evidence of the survivors.

But the circumstances of the present case appear to me to be exceptional. For thirty-seven years before the respondents brought their action the public were excluded from the road and never asserted their right to use it. Whatever might have been the case before that date, the proprietors of Wardhouse, by the lapse of seven years from 1846, became entitled in 1853 to a possessory judgment, and thereafter they had no occasion to establish their exclusive right to the road by declarator. It lay with the public to establish their right by judicial decree before they could legally use the road. But that is not the only effect which must be attributed to the exclusion of the public for so long a period as thirty-seven years. The fact of exclusion will not, per se, destroy a pre-existent right of public way, unless it is maintained for the prescriptive period of forty years; but it



AUTH099

H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

is, as stated by Lord Cranworth in *Cuthbertson* v. *Young* (1), evidence that no public right ever existed, which may, of course, be met and overcome by counter evidence. Lord Adam was of opinion that the exclusive possession of the proprietor for thirty-seven years threw a very heavy onus on the respondents; and he adds that "if, in spite of that onus, the pursuers have been able to make out, by proof of use over the whole period of forty years, or upon a presumption arising from proof of use over a lengthened part of that period, that the road was used or enjoyed as a public road for that period, that will be sufficient." So far as it goes I see no reason to differ from that statement; but it appears to me to omit all notice of the most important question which arises in the circumstances of this case, namely, to what extent the presumption to which his Lordship refers is ousted by the fact that there was no assertion of any right by the public for a period only three years short of what was necessary to place the appellant's right to the road beyond question. And I do not find that, in dealing with the evidence, his Lordship entertains that question, or considers the weight which that fact of exclusion ought to have against the presumption which he draws in favour of the respondents.

The Lord Ordinary, in his opinion (2), speaks of "the origin of the road"; and it appears to me that the meaning which his Lordship intended to convey by that phrase has been misapprehended in the Inner House. The Lord Ordinary did not, in my opinion, mean to suggest that there was no road or track along the line now claimed before 1806, but that before the erection of the bridge in that year there was merely a bad farm road, quite unsuitable for the purposes for which the public used the road with carts between 1820 and 1846. And it is a significant fact that those members of the public who used the road with carts between 1820 and 1846 did so mainly because its gradients were more suitable for a loaded cart than those of the neighbouring highways, whereas, prior to the erection of the bridge in 1806, the road was unavailable for such traffic. I also venture to think that Lord Mure has misapprehended the evidence of Mr. Stevenson

(1) 1 Macq. at p. 469. (2) 11 Court Sess. Cas. 4th Series, 925.



H. L. (Sc.) 1885 MANN v. BRODIE. Lord Watson.

as to his father's complaints that the public used the road. His Lordship seems to infer from that evidence that, throughout the term of his father's tenancy, the public used the road as matter of right. What the witness Stevenson does say is: "My father complained of people who took advantage of the road that he had made. It was done in some cases but very rarely." The statements of the witness obviously refer to a use which did not begin until after the bridge was erected, and moreover, on any fair construction of them, they relate to actual complaints made at the time in the hearing of a witness who was born in 1812.

The impression made upon my mind by the evidence applicable to the period between 1806 and 1820 is, that it is quite possible, if not probable, that the appellant has, by the lapse of time, been deprived of as much evidence as the respondents. It is nowhere suggested that a single person who lived upon the farm of Wardhouse between 1805 and 1820, and who must have known, better than any of the aged worthies who have been examined for the respondents, the condition of the road and its uses before and after the erection of the bridge, was alive at the time the proof was taken in this case. That loss of testimony is plainly not imputable to the appellant, and I know of no principle, and can see no good reason for holding, that the public ought, any more than a private litigant, to be exempted from the consequences of their own laches in delaying the judicial assertion of their rights.

In these circumstances, I am very clearly of opinion that the exclusive and undisturbed possession, enjoyed for thirty-seven years by the appellant and his predecessors in title, is absolutely fatal to any presumption of public user prior to the year 1820; and, seeing that the evidence of possession before that date is insufficient of itself, and without the aid of presumption, to instruct user by the public, I have come to the conclusion that the interlocutor appealed from ought to be reversed, and the judgment of the Lord Ordinary restored.

LORD FITZGERALD:—

The statement of the law made by my noble and learned friends has been so very clear and satisfactory that I shall not attempt to add one word to it. By "the law" I mean the law of Scotland



AUTH100

H. L. (Sc.) 1885 MANN v. BRODIE. Lord FitzGerald.

as applicable to the particular case now before us. It differs very much from the English law upon the same subject, but still more from the law of Ireland, which is so clear and simple that a question such as is now before your Lordships could not possibly have arisen.

Having disposed of the legal question, the remaining question is, what is the correct view to take of the evidence in the case, or what legitimate inference is to be drawn from the facts unquestioned and in proof of the case? When, from reading the judgment of the Lord Ordinary and the judgments of the Appellate Court in Scotland, I had learned that there was no real controversy upon the fact that for thirty-seven years before the bringing of this action the public had been excluded from this road, and excluded in a clear and unequivocal manner, and that such exclusion had been continuous; it did appear to me that there was an inference to be drawn so overwhelming against the claim of the pursuers that it would be difficult indeed to rebut that inference.

Now let us go back to the year 1846, when Captain Stirling the owner of Glentyan had acquired the Wardhouse estate. He himself, we may take it, knowing a great deal of the local circumstances connected with the enjoyment of this road before that time, whatever enjoyment there was, proceeds to deal with this road for the purpose of enlarging and completing his policies, and he does it in a most expressive and decided manner, namely, by closing up this road, putting across it a gate which is constantly kept locked or secured, and absolutely excluding the public. He was dealing with the community of Kilbarchan. The act which he was doing was one which was against the interest of every member of that community; it was one to which they would all be adverse; and he was dealing with a community that was quite capable of asserting and defending its own rights. I should come to the conclusion that they would then have asserted the right if a public right of way had existed.

There is another view also to be taken. That was in 1846. At that time a large portion of the community could have spoken to the enjoyment for forty years previously, if enjoyment there had been. If there had been continuous and exclusive possession by the public, there were then a number of people who could



H. L. (Sc.) 1885 MANN v. BRODIE. Lord FitzGerald.

have spoken to it in positive terms and in the most satisfactory manner; and it seems to me incredible that a community who saw its right, if the right existed, violently invaded, would have long submitted to that invasion and have acquiesced in it for thirty-seven years. The inference to be drawn from that is very strong that a public right did not exist, and that the people then living knew that it did not exist, and that it was because of that knowledge that the community acquiesced in the forcible act of Captain Stirling in excluding them. Well, if that is the true view to take of it, it only remains to consider whether in this case there is sufficient evidence of facts in proof to rebut that legitimate and, as I have called it, overwhelming inference.

I do not intend to advert to any of the details. They have been so well criticised by my noble and learned friends who have preceded me that I should only be wasting time by entering upon them. I will only state what occurs to my own mind regarding them, and that is that at an early period, from 1805 to 1820, the evidence is of that character that it cannot be said to be such full, complete, and satisfactory evidence as would rebut the inference deducible from a thirty-seven years acquiescence, which can only be rebutted by proving that for forty years anterior to 1846 the public had a clear and continuous possession as of right and with no interruption.

My Lords, I entirely agree with the judgment of the Lord Ordinary, and I think that the interlocutor under appeal should be reversed and that the interlocutor of the Lord Ordinary should be restored.

*Interlocutor under appeal reversed. Interlocutor of the Lord Ordinary restored. The appellant to receive the expenses in the Court below from the date of the Lord Ordinary's interlocutor, and the respondents to pay the costs of this appeal.*

*Lords' Journals*, 4th May, 1885.

Agents for appellant: *Grahames, Currey, & Spens*, for *Webster, Will, & Ritchie, S.S.C. Edinburgh.*

Agent for respondents: *J. B. Allan*, for *John Macpherson, W.S. Edinburgh.*

AUTH101

H. L. (Sc.) 1914 BANK OF SCOTLAND v. MACLEOD.

familiar one of an unfulfilled promise to give property or security for goods or benefit which have been received. It is no part of Scotch law to admit a claim of that character to preference in the distribution of bankrupt or liquidation assets.

I am humbly of opinion that the judgment of the Court below is upon that ground correct and should be affirmed.

*Interlocutors in part appealed from affirmed and appeal dismissed with costs.*

*Lords' Journals*, November 19, 1913.

Agents for appellants: *Ashurst, Morris, Crisp & Co., for Tods, Murray & Jamieson, W.S., Edinburgh.*

Agents for respondents: *Faithfull & Owen, for Davidson & Syme, W.S., Edinburgh.*

---

[HOUSE OF LORDS.]

H. L. (E.)* 1914 Feb. 6.

FOLKESTONE CORPORATION . . . . . APPELLANTS;

AND

BROCKMAN AND OTHERS . . . . . RESPONDENTS.

*Street—Private Street Works—Highway repairable by Inhabitants at large—Dedication of Private Carriage Road as Highway for Foot Passengers—Long User—Presumption in Favour of Dedication—Private Street Works Act*, 1892 (55 & 56 *Vict. c.* 57), *ss.* 5—8; *Highway Act*, 1835 (5 & 6 *Will.* 4, *c.* 50), *s.* 23.

*Per* Lord Atkinson: Proof of long, continuous, and uninterrupted user of a way by the public, though it is evidence from which dedication may be inferred, does not create a præsumptio juris in favour of dedication which, unless rebutted, must prevail.

*Turner* v. *Walsh* (1881) 6 App. Cas. 636 is not an authority to the contrary.

An objection to a provisional apportionment in respect of certain proposed private street works on the ground that the street in question was a highway repairable by the inhabitants at large was overruled by the justices of the borough, subject to a case stated for the opinion of the King's Bench Division. By a private estate Act of 1825 R., a

---

* *Present:* EARL LOREBURN, LORD KINNEAR, LORD DUNEDIN, and LORD ATKINSON.

AUTH102

tenant for life of settled lands, was empowered to let the lands on building leases and to set out a competent part thereof for public squares, roads, streets or otherwise for the convenience of the occupiers of the houses to be erected thereon. The road in question was made by R. in 1827 on waste land over which the public had previously been allowed to wander, and, on the completion of the road, residential houses were built along its course. It did not appear that the road was required for any other purpose than the use of the occupiers of the houses. A toll gate and a bar were placed across the road, but with a space left on either side for foot passengers, and at the toll gate and bar were notice boards headed "private road." Tolls were charged for horse and wheeled traffic, but there had been a free user of the road by foot passengers for upwards of eighty years without interruption. The road was repaired by the owner and not by the local authority. There had been no formal dedication of the road under the Highway Act, 1835. Upon these facts the justices came to the conclusion that R. did not intend to dedicate the road as a public highway and that there was in fact no dedication of the road as a highway for foot passengers or otherwise prior to 1836, when the Highway Act, 1835, came into operation; they therefore decided that the road was not a highway repairable by the inhabitants at large:—

*Held* (Earl Loreburn doubting), that there was evidence to support the conclusions of the justices and that the Court had no jurisdiction to interfere with their decision.

Decision of the Court of Appeal reversed.

APPEAL from an order of the Court of Appeal reversing an order of the Divisional Court upon a case stated by the justices of the borough of Folkestone under 20 & 21 Vict. c. 43 and 42 & 43 Vict. c. 49.

The appellants, having duly adopted the Private Street Works Act, 1892, pursuant to that Act made a provisional apportionment of expenses to be incurred in executing certain private street works in a portion of a street known as the Lower Sandgate Road lying between the eastern boundary fence of Cliff House and a point 170 yards east of St. Paul's Church Schools, Sandgate. The respondents, who were owners and occupiers of premises situate in this portion of the street, objected to the apportionment on the ground (inter alia) that this portion of the street was a highway repairable by the inhabitants at large.

The justices disallowed the objections, but at the request of the respondents stated a case for the opinion of the King's Bench Division. The facts stated by the special case were as follows:—

The Lower Sandgate Road started from the main highway

AUTH103

H. L. (E.) 1914 — FOLKESTONE CORPORATION v. BROCKMAN.

immediately east of St. Paul's Schools, Sandgate, and continued thence south of the cliff to the highway west of the Bathing Establishment, Folkestone, and was about 7000 feet in length. The whole length of the road was shewn on the ordnance plan annexed to the case and lettered A, B, C, C1, D, E, F, and coloured pink thereon. The part of the road to which the apportionment related was that lying between the points lettered B and D. (Par. 4.)

From the evidence of witnesses called, facts admitted, and documents produced and proved before the justices and from facts and circumstances known to them they found as facts:—

(A) That the road in question was made by and at the expense of Jacob, Earl of Radnor, over and upon his lands, and was completed about Midsummer, 1827.

(B) That previously to the making of such road the whole of the land over which it ran from the base of the cliff southward to the beach was wild, uncultivated, and unenclosed, but that the lands on each side of the road lying between the points C1 and D on plan were leased and probably enclosed in 1827 and 1828.

(C) That the town of Folkestone then lay for the greater part below the cliff and around the harbour and at some distance from the main highway from Hythe through Sandgate to Folkestone and the population consisted mainly of fishermen and seafaring folk.

(D) That there was no evidence before the justices of the existence of any road or footway there prior to 1827 or of any steps having been taken to prevent the public from wandering over the locus in quo prior to the making of the road.

(E) That the main highway from Sandgate to Folkestone passed at the top of the cliff roughly parallel to the road in question at an approximate distance therefrom of 180 to 290 yards and was an ancient and commodious highway.

(F) That immediately upon completion of the road in question in 1827, houses of a residential character were erected along its course from Cliff House (point D on plan) westward to the top of the hill (point C on plan) on building plots leased by Lord Radnor, and that all the available plots on this section of the road were built upon within about fifteen years.

AUTH104

(G) That no houses were erected eastward of Cliff House along the course of the road to Folkestone, and upon the development of Folkestone as a watering place the land east of Cliff House, through which the road ran, was ultimately enclosed and planted with trees and shrubs, and walks made over the same by Lord Radnor for the use and enjoyment of the general public.

(H) That there was no evidence before the justices that the road in question was required for any purpose except the use of the occupiers of the houses erected along its course (by his lordship's lessees), their servants, tradespeople and visitors, for which purpose it was in fact necessary. But there was evidence before them and they found that from the year 1831 the road was to some extent used by inhabitants of Folkestone and Sandgate other than the said lessees, &c., for business and other purposes.

(I) That there was a toll house and gate across the road about 4300 feet east of St. Paul's Schools (point E on plan) at which tolls for horses and vehicular traffic had been levied since a period antecedent to 1836 to the present time.

(J) That spaces were and had been since a period antecedent to 1836 left on either side of the toll gate for foot passengers.

(K) That there was also a bar fixed by the side of the road near Victoria Pier (point F on plan) adapted for closing the road to wheeled traffic, with a footway left clear on either side, but there was no direct evidence when such bar was placed there.

(L) That both at this bar and at the toll house there were notice boards fixing the rate of toll for horse and wheeled traffic, and both boards prohibited the passage of licensed motor cars, cattle and sheep along the road, but did not prohibit the free passage of foot passengers.

(M) That the notice board near Victoria Pier was headed "Private road to Sandgate," and that at the toll house "Private road" only, and both boards were fixed and maintained by the estate office.

(N) That there was also prior to 1836 a bar fixed at the foot of the hill near the Riviera Road (point B on plan) which the justices found to have been used to close the road on one occasion in 1835, but not so as to prevent the passage of foot passengers.



AUTH105

H. L. (E.) 1914 FOLKESTONE CORPORATION v. BROCKMAN.

(o) That the tolls had always been collected at the toll gate only for through wheeled traffic over the road both ways, but carriages had been driven from Sandgate as far as the toll gate and then turned back without payment of toll. The justices had no evidence whether or not Lord Radnor knew of and assented to such acts.

(p) That prior to 1836 the road in question was never kept in proper repair, but was open for foot passengers without interruption and had so continued to the present time.

(q) That there was no evidence before the justices of any made footpath on the road before 1836, but they found that foot passengers used the whole width of the road and the banks by the sides of the roads (where practicable) at that period without let or hindrance.

(r) That the road in question had always been repaired by Lord Radnor or his lessees, and had never been repaired by the local highway authority.

(s) That the local authority had placed lamps along the road and lighted it, but there was no evidence before the justices to shew that this was done prior to the coming into force of the Public Health Act, 1875.

(t) That there had been no formal dedication of any part of the road as prescribed by s. 23 of the Highway Act, 1835. (Par. 5.)

The appellants (the respondents in the case) produced and proved certain minutes of meetings of the Commissioners of Pavements of the town of Folkestone, acting as such under a local Act, and held on November 17, 1851, and February 18, 1852, respectively, which established the fact that William, Earl of Radnor, as the result of negotiations with the commissioners in 1851, made up at his own cost the section of the road lying between the points lettered A and B on the ordnance plan conditionally upon the commissioners adopting the future maintenance thereof. And that the commissioners by resolution took over the section of the road referred to on the terms stated. The minutes did not shew, and no evidence was before the justices, that the provisions of s. 23 of the Highway Act, 1835, were complied with at the time. (Par. 6.)

AUTH106

The respondents (the appellants in the case) produced and put in evidence a copy of Lord Radnor's private Act, 1825 (6 Geo. 4, c. xxvii.), which conferred powers (s. 1) to lease with liberty for the lessees to lay out and appropriate any part or parts of the ground comprised in the lease "as and for streets, paths, passages, or ways for the more convenient enjoyment of such houses, &c.," and (by s. 5) the Earl was empowered to allot and set out a competent part of the ground described in the schedule "for public squares, roads, streets, ways, avenues, or otherwise for the use and convenience of the occupiers, &c." (Par. 7.)

Upon their findings of fact the justices came to the conclusion that it was not the intention of Jacob, Earl of Radnor, in 1827 or later, to dedicate the road in question as a public highway; that there was in fact no dedication of such road as a highway prior to March 20, 1836; and that since that date there had been no dedication as prescribed by s. 23 of the Highway Act, 1835. They therefore decided that the road in question was not, nor was any part thereof, a highway repairable by the inhabitants at large and that it was a "street" within the meaning of the Private Street Works Act, 1892. They accordingly approved and affirmed the provisional apportionment, subject to certain amendments with regard to the character of the proposed works as agreed between the parties.

The question for the opinion of the Court was whether upon the above statement of facts the justices came to a correct determination in point of law, and, if not, what should be done in the premises.

The Divisional Court (Lord Alverstone C.J. and Hamilton and Bankes JJ.) ordered that the matter should be remitted to the justices to say whether they had found that there was no dedication of the road in question as a highway for foot passengers before the year 1836, and that if they had so found their decision should be affirmed, but that if they had found that there was dedication their decision should be reversed.

The justices stated that they had found that there was no dedication of the road in question as a highway for foot passengers, and their decision accordingly stood affirmed.



AUTH107

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

The Court of Appeal (Vaughan Williams and Buckley L.JJ., Fletcher Moulton L.J. dissenting) reversed the decision of the Divisional Court and of the justices.

1913. Oct. 28, 30. *Ryde, K.C.*, and *R. W. Turner* (*Sir Robert Finlay, K.C.*, with them), for the appellants. 1. There was evidence to support the finding of the justices that there was no dedication of this road for foot passengers prior to March 20, 1836, the date at which the Highway Act, 1835, came into operation, and therefore the Court of Appeal had no jurisdiction to disturb that finding. The appellants admit that a dedication for foot passengers only is legally possible—they do not rely upon *Roberts* v. *Karr* (1)—but they contend that no such dedication has taken place in fact. Lord Radnor was developing his property as a building estate and must have intended that there should be some access to the inhabitants of the houses. The leaving of the spaces for foot passengers in the circumstances was not inconsistent with an intention not to dedicate. The notice boards headed "private road" prima facie refer to the whole road including the footpath. Taken as a whole the evidence is as consistent with an intention not to dedicate but to allow a limited user to tradesmen, &c., going to the houses as with an intention to dedicate, and in that state of things dedication will not be inferred.

2. Lord Radnor was tenant for life only and apart from the provisions of the private Act of 1825 he had no power to dedicate a way as a highway as against the remaindermen: *Eyre* v. *New Forest Highway Board.* (2) It was competent for Lord Radnor apart from that Act to lay out private roads for the use of the occupiers of the houses to be erected without dedicating such roads to the public. By s. 5 of that Act power was conferred upon Lord Radnor to set out a competent part of the ground as a public road for the convenience of the occupiers. The Court of Appeal held that that power included a power to dedicate, but upon the evidence there was here no setting out of a public road within that section. Lord Radnor set out a road as a private road and the acquiescence as to the user of the road by foot passengers was not in the

(1) (1808) 1 Camp. 262, n. (2) (1892) 56 J. P. 517.

AUTH108

circumstances sufficient to prove dedication. There was no setting out of a footpath as distinct from the road. A wider user following upon a restricted user is not conclusive as to dedication: *Rex* v. *Inhabitants of St. Benedict.* (1) *Rishton* v. *Haslingden Corporation* (2) is distinguishable from the present case; if not, it was wrongly decided and ought to be overruled. Otherwise a person has only to lay out a road on a public footpath to enable him to set at naught the provisions of the Private Street Works Act, 1892. [They also referred to *Cababé* v. *Walton-on-Thames Urban District Council* (3) as to the effect of s. 23 of the Highway Act, 1835.]

*Cave, K.C.*, and *Randolph A. Glen*, for the respondents. If the street is as a footway a highway repairable by the inhabitants at large the local authority cannot put in force the provisions of the Private Street Works Act, 1892. *Rishton* v. *Haslingden Corporation* (2), which has been followed in *Kingston-upon-Thames Corporation* v. *Baverstock* (4), is expressly in point and there is no ground for impeaching that authority. On the footing of that case being good law the respondents must shew that this is a public footway repairable by the inhabitants at large. It is settled that apart from the Highway Act, 1835, a highway dedicated to the public is repairable by the inhabitants at large: *Rex* v. *Inhabitants of Leake* (5); *Eyre* v. *New Forest Highway Board.* (6) Therefore dedication before 1836 is conclusive. The justices have found, in effect, that there was dedication before that date, for they have themselves found facts amounting to dedication, and it matters not that they have drawn from those facts a conclusion of law that there was no dedication, that being inconsistent with their findings. If the justices find facts which in the minds of reasonable men can only lead to the opposite conclusion to that at which they have arrived, then the matter is not beyond the jurisdiction of the appellate tribunal. It is not suggested that the justices have come to a perverse decision, but

(1) (1821) 4 B. & Ald. 447.
(2) [1898] 1 Q. B. 294.
(3) [1913] 1 K. B. 481 (since affirmed by the House of Lords, ante, p. 102).
(4) (1909) 7 L. G. R. 831.
(5) (1833) 5 B. & Ad. 469, at p. 482.
(6) 56 J. P. 517.

AUTH109

H L (E.) 1914 FOLKESTONE CORPORATION v. BROCKMAN.

they have put the facts before the Court and have submitted to them the question whether they have come to the right conclusion upon them. Or the point may be put as it was put by Buckley L.J. "These facts amount in law to dedication." It was an error of the justices to limit themselves to the facts before 1836. The fact of eighty years' public user as a footpath with no single case of interruption is material to be taken into account in considering whether there has been dedication before 1836. The whole evidence must be taken together to see whether there has been such a continuous and connected user as is sufficient to raise the presumption of dedication; and the presumption then is of a complete dedication coeval with the early user: *Turner* v. *Walsh*. (1) Every specific fact is found in the respondents' favour. It follows then that the conclusion of the justices was wrong. It is said that no one was competent to dedicate until after 1836; but after so long a user, there being power under the private Act of 1825 to dedicate, the maxim omnia præsumuntur rite esse acta applies: *Leigh Urban District Council* v. *King* (2), where the Court held that the justices were right in presuming that the formalities required by s. 23 of the Highway Act, 1835, had been complied with. Dedication ought to be presumed from long and continuous user without interruption in the absence of evidence to the contrary. This is a presumption of law, and if the case had been tried before a judge and jury the judge should have directed the jury to find a verdict in favour of dedication: Taylor on Evidence, 9th ed., vol. i., § 131; *Turner* v. *Walsh* (3); *Rex* v. *Lloyd* (4); *Farquhar* v. *Newbury Rural District Council* (5); *Attorney-General* v. *Esher Linoleum Co.* (6); *Reg.* v. *Petrie*. (7) The justices have failed to give effect to this presumption.

[LORD ATKINSON. Is there any case where upon uncontradicted evidence of long user the judge has directed a verdict in favour of dedication? ]

The respondents know of no such a case. But it has been

(1) 6 App. Cas. 636, at p. 642.
(2) [1901] 1 K. B. 747.
(3) 6 App. Cas. 636, at pp. 639 and 640.
(4) (1808) 1 Camp. 260.
(5) [1909] 1 Ch. 12, at p. 16.
(6) [1901] 2 Ch. 647.
(7) (1855) 4 E. & B. 737.

AUTH110

laid down that in such circumstances the jury ought to find dedication.

[LORD ATKINSON referred to *Blount* v. *Layard.* (1)]

The facts raise a presumption of deliberate dedication before 1836. [They contended further that s. 23 of the Highway Act, 1835, did not apply to highways for foot passengers, and they referred to *Portsmouth Corporation* v. *Smith* (2) as to the meaning of the word "street." They also referred to *McLaughlan* v. *Anderson.* (3)]

*Sir Robert Finlay, K.C.*, in reply. Dedication is a question of fact, and the only point open to the appellate tribunal upon a case where justices have come to a conclusion of fact is, as is shewn by *Rishton* v. *Haslingden Corporation* (4), whether there was any evidence to support their finding. Upon the facts found in the case it is impossible to contend that the justices were bound in law to say that there had been dedication of this foot-path before 1836. If they had come to that conclusion it would have been erroneous. Up to the date of the passing of the private Act of 1825 there was a mere permissive user by the public over the waste land which subsequently formed the site of the road, and Jacob, Earl of Radnor, was tenant for life with no power to dedicate. Lord Radnor in laying out this carriage road was not exercising the powers conferred on him by s. 5 of the Act of 1825. He could lay out a private carriage road without the aid of the Act. After laying out this road he allowed the public to walk along the road as formerly he had allowed them to wander over the waste, and the subsequent user of the road by foot passengers was merely permissive. In the face of the notice boards warning the public that this was a private road it would be extravagant to infer a dedication of this carriage-way for foot passengers. If this were a highway for foot passengers it would be repairable by the inhabitants at large, but the evidence shews that the repairs were always done by Lord Radnor. The negotiations of 1851-52 point to the same conclusion. They are wholly inconsistent with the idea that the commissioners were

(1) [1891] 2 Ch. 681, n.
(2) (1885) 10 App. Cas. 364, at p. 375.
(3) 1911 S. C. 529, at p. 532.
(4) [1898] 1 Q. B. 294, at p. 301.

AUTH111

H. L. (E.) 1914 FOLKESTONE CORPORATION v. BROCKMAN.

under any liability to repair. Further, the nature of the user is such that the presumption in favour of dedication does not arise; but if it does arise there is ample evidence to rebut it. This is not the case of a user from point A to point B; therefore the respondents' case fails in its inception. There can be no presumption of dedication from this permissive user. Looking at the nature of the user and the surrounding circumstances, the notice boards, and the fact that the repairs were done by the owners, the justices were right in their conclusion. Lord Blackburn in *Mann* v. *Brodie* (1) lays it down that long user is not conclusive evidence of an intention to dedicate, and Lord Watson says (at p. 398) that any presumption which a jury might or ought to draw from uncontradicted evidence of user is matter not of law but of fact. In *Greenwich Board of Works* v. *Maudslay* (2) Blackburn J., as he then was, says that to establish a right of way it must be shewn that it has been used openly as of right and for so long a time that it must have come to the knowledge of the owner of the fee that the public were so using it as of right. In such a case, he says, the jury might fairly draw the inference of dedication. But to draw such an inference in the present case would be inconsistent with all the facts. *Leigh Urban District Council* v. *King* (3) was concerned with the formalities to be complied with under s. 23 of the Highway Act, 1835, and has no application. *Farquhar* v. *Newbury Rural District Council* (4) turned upon very special facts. *Turner* v. *Walsh* (5) has no bearing on the question of what is the duty of the Court where power is given to state a case solely on a question of law.

The decision of the justices was a mere finding of fact, and, there being evidence to support it, it cannot be disturbed.

The House took time for consideration.

1914. Feb. 6. LORD KINNEAR. My Lords, the question to be considered in this case is whether a certain road had, before March 20, 1836, been effectually dedicated to the public as a

(1) (1885) 10 App. Cas. 378, at p. 386.
(2) (1870) L. R. 5 Q. B. 397.
(3) [1901] 1 K. B. 747.
(4) [1909] 1 Ch. 12.
(5) 6 App. Cas. 636.

AUTH112

highway for foot passengers. The importance of the date is owing to the Highway Act, 1835, because after that Act came into force roads could not be lawfully dedicated so as to be deemed public highways repairable by the inhabitants at large, except in accordance with statutory requirements, which have not been complied with in this case. It does not follow that use by the public since 1836 may not be so connected with prior user as to be treated as evidence, so far as it goes, to prove an earlier dedication. But the fact to be proved is that the road was dedicated before the Act, at a time when such dedication, if accepted by the public, would have been lawful.

The question arises on a special case stated by the justices of the borough of Folkestone for the opinion of the King's Bench Division. The justices have decided that there has been no dedication in fact; and on matter of fact it is not disputed that their decision is final, the jurisdiction of the Court, and, therefore, of this House on appeal, being confined to the determina- of questions of law. The particular question of law which the justices propose for consideration of the Court is not formulated with precision. But in the special case they state distinctly certain specific facts relating to the history and use of the road, and the question seems to be whether, when the facts so specified had been proved, it was still open to the tribunal to draw a further inference of fact one way or the other, or whether the necessary conclusion was already fixed by a rule of law.

I do not think it necessary to recapitulate the facts in detail. But the main points may be briefly stated in order to see how the question of law arises. The road was made in 1827 by Jacob, Earl of Radnor, over lands of which he was a life tenant. The ground over which it was constructed lies between the base of the cliff and the beach, at some little distance from the highway between Sandgate and Folkestone; and before the road was made it was open and waste, and people were allowed to wander over it at pleasure. Immediately upon completion of the road in 1827, houses of a residential character were erected along its course on building plots leased by Lord Radnor; and the road in question was constructed, and was necessary for the use of the occupiers, their servants and tradespeople. There was no

AUTH113

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Kinnear.

evidence that it was required for any other purpose, although it was in fact used, as the justices say, "to some extent" by the inhabitants of Folkestone and Sandgate other than Lord Radnor's lessees. It was constructed as a horse and carriage way, and was never open to the public in that character. But while the passage of horses and carriages was regulated by the erection of barriers and toll bars, no barrier of any kind was erected to exclude foot passengers. There was no defined footpath, and people who traversed it on foot used the whole width of the road and the adjacent banks at pleasure. The result was that the public, who had been accustomed to stray over the waste ground before the road was made, were allowed to do so after its completion, and nothing was done to prevent their entering upon it at any point in its course, or to prevent their using it as a means of passage between two points on the highway from Sandgate to Folkestone. This public enjoyment of the road had continued, when the present question arose, for more than eighty years. In the meantime, the road was repaired, when necessary, by the owner of the soil, and never by a public authority.

Along with these facts there must be taken into account another of a different description, as throwing light on the probable intention of the landowner. The lands were held by Earl Jacob in strict settlement, and as tenant for life he had no power to dedicate a right of way to the public. His disability was so far removed by a private Act of Parliament in 1825 as to enable him to "allot and set out a competent part of the ground for public squares, roads, streets, ways, avenues, or otherwise for the use and convenience of" such houses as might be built on part of the estate over which he was authorized to grant building leases. But during the short period between 1827 and 1836 he made no actual allotment, and did nothing to set out a competent part of the ground for a footpath, unless his submission to the public user is enough to satisfy these conditions, and after 1836 the Highway Act made dedication impossible.

On consideration of these facts the justices say that they came to the conclusion that it was not the intention of Jacob, Earl of Radnor, in 1827, or later, to make and dedicate the road in question as a public highway; that there was in fact no dedication of such

AUTH114

road as a highway prior to March 20, 1836; and that since that date there has been no dedication as prescribed by s. 23 of the Highway Act, 1835. They "therefore decided that the road in question is not, nor is any part thereof, a highway repairable by the inhabitants at large, and that it is a street within the meaning of the Act of 1892 . . . . ," and the question they propose for the opinion of the Court is whether, upon the above statement of facts, they had come to a correct determination in point of law. It is unnecessary to consider the final decision which is deduced from the findings I have quoted, that the road is a street within the Private Street Works Act, 1892, because that point is not now in controversy; and it is common ground that the special case is so framed as to raise the question really in dispute, namely, whether the conclusion that there has been no dedication can be set aside as erroneous in law.

On this question it appears to me, in the first place, that the three propositions embraced in this conclusion are, all of them, affirmations of fact within the exclusive jurisdiction of the justices. This was evidently the view of the King's Bench Division, because after certain procedure the judgment of the justices was affirmed, although in the course of the procedure it is indicated clearly enough that the learned judges would probably have come to a different conclusion if it had been open to them to determine the question of fact for themselves. They thought it doubtful whether the justices had not meant to decide only that there was no public carriage-way, without having addressed their minds to the question of the existence of a public footway, and accordingly they remitted the matter to the justices who had stated the case in order that they might say whether they had found that there was no dedication of the road in question as a highway for foot passengers before the year 1836; if they had so found, it was ordered that their judgment should be affirmed, and if they had not come to any decision on the said question, it was ordered that they were to determine whether the road was dedicated as a highway for foot passengers before 1836 or not. It is evident that no such remit could have been made if the learned judges had not been satisfied that dedication or no dedication was a question of fact for the justices, and not one of

AUTH115

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Kinnear.

law for the Court, and accordingly, when the justices reported that they had found that there was no dedication of the road as a highway for foot passengers before 1836, their judgment stood affirmed. I think this was perfectly right. Dedication, in my opinion, is matter of fact, and whatever their view of the evidence might have been, the learned judges, as they properly held, had no power to overrule the decision of the justices.

It is said that they should have come to a contrary conclusion in law, because user creates a præsumptio juris in favour of dedication. This proposition is too vague to be helpful in argument, since each of its terms is ambiguous. The nature of user, and consequently the weight to be given to it, varies indefinitely in different cases, and whether it will import a presumption of grant or dedication must depend upon the circumstances of the particular case. The law is stated more exactly by Lord Blackburn in *Mann* v. *Brodie*. (1) He begins by citing the doctrine laid down by Parke B. in *Poole* v. *Huskinson* (2): "'In order to constitute a valid dedication to the public of a highway by the owner of the soil, it is clearly settled that there must be an intention to dedicate—there must be an animus dedicandi, of which the user by the public is evidence and no more.'" And then he adds more particularly with reference to the effect of user, that "where there has been evidence of a user by the public so long and in such a manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on which those who have to find that fact may find that there was a dedication by the owner, whoever he was."

The points to be noted are, first, that the thing to be proved is intention to dedicate, and secondly, that while public user may be evidence tending to instruct dedication, it will be good for that purpose only when it is exercised under such conditions as to imply the assertion of a right, within the knowledge and with the acquiescence of the owner of the fee. The cases in which the law is stated in the same way are numerous, but I refer to one in

(1) 10 App. Cas. 378, at p. 386, (2) (1843) 11 M. & W. 827, at p. 830.

AUTH116

particular in which it was so laid down by Lord Chancellor Halsbury, *Macpherson* v. *Scottish Rights of Way and Recreation Society* (1), because I think his Lordship's observations bring out very sharply the determining fact of which in a case like the present the judges of fact must be satisfied, before they can find room for the application of any presumption of law. The law of Scotland as to rights of way differs from that of England in this respect, that the public right, as Lord Watson more fully explains in *Mann* v. *Brodie* (2), is not rested upon any theory of dedication, but upon acquisitive prescription; but the two laws agree in this, that the public use from which a right of way is to be inferred must be had as of right. With reference to this difference, the Lord Chancellor says: "The question in the mind of an English lawyer is not only whether he can, on proper judicial evidence, determine that there has been an exercise of such a right of way as is here in question, but whether he can reasonably infer that the owner had a real intention of dedicating that way to the use of the public. That, however, is not the law of Scotland; and if it can be established that for the necessary period there has in fact been such a use of the way as negatives a mere licence or permission, then, as I understand the law of Scotland, that establishes absolutely the right of way in question."

He goes on to point out that a question had been asked by a dissentient judge in the Court below, which required an answer if the judgment was to be supported. "A question is put by Lord Young to which, if I were not able to give an answer, I should feel that the respondents ought to be able to furnish it to me. Lord Young, quoting the Lord Ordinary, says 'The question is whether such use as has been proved is to be ascribed to tolerance or right. Why, I venture to ask,' says Lord Young, 'is it not to be ascribed to tolerance? Does anybody think that an ordinary proprietor would have objected to it, or interfered with it by appealing to a Court of law to prevent such use of it, upon any of the occasions which have been referred to? Why, he would have been thought very ill of by his neighbours, and I think deservedly.' Now I say," says the

(1) (1888) 13 App. Cas. 744. (2) 10 App. Cas. 378.

AUTH117

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Kinnear.

Lord Chancellor, "that if no answer could be given to that question, I should take a different view from that which I have been at last compelled to take." I think Lord Young's question is exactly that which would have required an answer in the present case, if we had been concerned with matter of fact. But it was for the justices to answer it; and their answer is final. It appears from the special case that the law laid down by Parke B. had been cited to them, and they followed it correctly, when they put to themselves, as the first question to be decided, whether the facts proved before them justified the inference that Lord Radnor intended to dedicate a highway. They answer that question of fact in the negative, and I see no ground in law upon which it can be held that a Court which is forbidden to interfere with their decisions of fact is nevertheless entitled to declare that conclusion is wrong. No power to disturb it can be drawn from the doctrine that from sufficient user dedication is to be presumed, because the question is whether the facts are sufficient to raise the presumption.

It is admittedly præsumptio juris and not juris et de jure, or, in other words, it is not an absolute and inflexible rule of law which imposes a pre-ordained conclusion upon the judges of fact. There are such presumptions of law, which, in effect, are merely fictitious, so that, as it is said by a high authority, the law may presume a grant when nobody supposes that a grant ever existed. But the presumption of dedication from user is of an entirely different kind. It is a probable inference from facts proved to the fact in issue, and it follows that in a particular case it is for the judges of fact to determine whether, on the evidence adduced, it can reasonably be drawn. It is conceded by the learned Lords Justices in the majority that the presumption may be rebutted; but, with great respect, it seems to me to be so treated in the argument as to give it all the effect of an absolute rule. I think it fallacious to assume dedication on a partial view of the evidence, and only after that has been done to inquire whether conflicting facts are strong enough to dislodge a conclusion already reached. I concede that a presumption of law, once it has been established, throws the onus of proof upon the party who disputes it; and when it rests upon a definite fact which

AUTH118

may be proved with certainty or may be admitted, it may be easy to determine at what stage the onus has been shifted. But in the simplest case, rules for fixing the onus of proof do not determine the value of conflicting evidence when the proof has been completed; and in the present case the presumption rests upon the interpretation, in a particular way, of conflicting and ambiguous facts; and the right interpretation cannot be reached until the whole body of evidence has been considered. It then becomes a question for the judges of fact whether the user which may have been proved is to be accounted for by presuming dedication, or whether some other conjecture may not be the more probable. It seems to me to follow that the presumption cannot be held to be established in law at any intermediate stage of the proof, or until the whole facts and circumstances have been fully considered by the proper tribunal.

I admit that if it is given without evidence, or against evidence, the decision of the justices, like the verdict of a jury, may be set aside, not because it is erroneous, but because it is arbitrary. That is a rule of law which is well settled. But it has no application to the present case. The burden of proof lies in the first place on the respondents, who allege dedication, because he who affirms must prove. They adduce a body of evidence which makes it probable that the owner of the fee should have intended to dedicate. But ex hypothesi it is not conclusive evidence, for if it were, there would be no room for presumption; and the presumption which the law allows may be stronger or weaker. If therefore the tribunal which has to judge of the fact think that in all the circumstances of the particular case it is not strong enough, they may be right or wrong, but they are not chargeable with arbitrary excess of jurisdiction if they decline to draw the inference.

The result is that the respondents have failed to prove their case. But the appellants do not by any means rest their own case upon this negative conclusion. They say, and I think with force, that all the facts connected with the origin and history of the road are in favour of a presumption of tolerance, and against a presumption of dedication. The public, or such of them as chose to go there, were already in enjoyment of the locus over

AUTH119

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Kinnear.

which the road was made; it was constructed and maintained as a private road for horses and carriages, and it never was dedicated as a public highway for these purposes; it made no special provision for the use of foot passengers, and nothing was done by Lord Radnor to suggest that he intended to allot and set aside any part of the ground, as a competent part for a public footway, and so dedicate it in the only way in which, as a limited owner, he could properly create such a burden upon an estate held in strict settlement. It is true that he did not interfere to obstruct the way for foot passengers, but to do so would have been churlish in the highest degree; it would have been exceedingly troublesome to keep them off, and he had no interest to adopt a policy so vexatious and so invidious. They argue that, on the one hand, no reasonable proprietor would have interfered with foot passengers in these circumstances, and that, on the other hand, no one would have dreamed of creating, without necessity, so anomalous a right as a public footway repairable by the inhabitants at large superimposed, without delimitation, upon a private carriage-way repairable by the proprietor. Why, then, must it be assumed that he had a real intention to create a new public right, or that the foot passengers who came upon his road were not there by his tolerance or permission, or why should the public have believed anything so improbable?

I express no opinion as to the weight which should be given to these considerations, because I am not deciding the question of fact. But I do not understand how they can be supposed to be irrelevant to the question whether the public user is to be ascribed to the permission or licence allowed by successive proprietors or to the deliberate intention of Lord Radnor formed and carried into effect before 1836 to dedicate a highway to the public. The question is one of fact, turning upon probabilities of conduct, which cannot be estimated by antecedent rules of law. I think it a very fair test of the argument to inquire how the question would have been treated if it had been tried by a jury. I was impressed by the observation of my noble and learned friend Lord Atkinson during the argument, when he asked whether there was any case in which a jury had been directed that they were bound in law to presume dedication. No such case was cited, and I think

AUTH120

that *Turner* v. *Walsh* (1), in the Privy Council, on which the respondents' counsel relied, is a high authority to the contrary. It was held to be a right direction to a jury that user might be relied on in New South Wales in the same way as in England for the purpose of raising the presumption of a dedication of a road over Crown lands, and that the evidence was sufficient to entitle them to presume dedication by the Crown. This left it for the jury to determine whether the facts raised the presumption. The plain meaning of the words is not that they were bound by law to presume, but that it was within their competence to do so, and that implies that they must judge for themselves whether to make the presumption or not. This is even more clearly brought out by the observations of Sir Montague Smith on the main point on which the appeal appears to have been taken. After a user of twenty-one years, an Act had been passed in 1861 which was said to exclude dedication by the Crown, except by a certain prescribed method. Assuming this to be the effect of the Act, Sir Montague Smith says it is proper to look at the whole evidence together to see whether there had been such a continuous and connected user as was sufficient to raise the presumption of dedication prior to the statute at a time when the Crown had power to dedicate, and he adds "It may be that in this case the evidence of user prior to 1861 was alone sufficient to establish the presumption of dedication; but the strength of that presumption has been increased by the subsequent user, and would certainly have been much diminished if the user had been discontinued after 1861."

But then if the strength of the presumption may be increased or diminished according to circumstances, it is for the jury to determine the weight which should be given to it in the particular case. This is entirely in accordance with the general rule laid down by Sir Montague Smith when he says, "From long continued user of a way by the public . . . . dedication . . . . in the absence of anything to rebut the presumption, may and indeed ought to be presumed." This does not mean that it must be presumed even in the absence of rebutting evidence, but that the sound inference in the case supposed would be in favour

(1) 6 App. Cas. 636.



AUTH121

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Kinnear.

of the presumption. It still remains a question of fact whether the presumption has been established. The phrase "ought to be presumed" has been construed by Lord Chancellor Cranworth in *Young* v. *Cuthbertson* (1), where it had been used by Lord Justice-Clerk Hope in charging a jury; and Lord Cranworth, criticizing what he describes as "looseness" in the mode of directing juries, says: "I however understand the learned judge when he used the expression 'the jury ought to presume,' not to be stating a proposition in law on which the jury were bound to act, but merely to be pointing out what was almost an irresistible inference in point of fact." I take it, therefore, that the application of the presumption in a particular case is a question of fact for the jury, and not a question of law for the Court.

Buckley L.J. says that the justices have decided a question of mixed fact and law. If so, it was within their competence so to decide. But the case cannot be treated in the same way by a Court of law, which has no jurisdiction to decide questions of fact. It became necessary, therefore, for the King's Bench Division to disentangle the law from the fact, so far as necessary to explicate their own limited jurisdiction. I think they did so successfully when they decided, as Hamilton J. puts it, that, as the matter was one of fact and there was some evidence, it must go back to the justices for their determination. It does not appear to me, with great respect, that the issues of fact and law are so clearly distinguished when the learned Lord Justice says that the justices have found facts which amount in law to dedication. He fails to advert to the critical fact with which they introduce their conclusions, namely, that it was not the intention of Lord Radnor to dedicate the road as a public highway, and I assume that, in speaking of the facts they have found, he refers to the detailed facts which are really no more than evidence from which the fact in issue—to wit, dedication—may or may not be inferred. On the question so raised, as I have already said, I am of opinion that the decision of the justices is final and conclusive as a decision of fact, that the Court below had no authority to inquire whether in fact it was right or wrong, and that no ground has been brought forward for setting it aside as contrary to law.

(1) (1854) 1 Macq. 455, at p. 460.

AUTH122

I think, therefore, that the order of the Court of Appeal must be reversed, and that of the King's Bench Division restored.

LORD ATKINSON. My Lords, the question for decision in this case is raised by the justices of the peace of the borough of Folkestone, on a case stated by them under the provisions of the 20 & 21 Vict. c. 43 and 42 & 43 Vict. c. 49, for the opinion of the King's Bench Division of the High Court of Justice. It is admitted that under these statutes such a case can only be stated in reference to their determination on a point of law, and that the Court whose opinion is asked for can only determine the question or questions of law arising on the case. The proceedings in which the determination of the justices took place were brought under the Private Street Works Act, 1892 (55 & 56 Vict. c. 57), which the appellants, the mayor, aldermen, and burgesses of the borough of Folkestone, had adopted. This body, asserting that about 7000 feet in length of a certain road within their borough, called the Lower Sandgate Road, from a point immediately east of St. Paul's School, Sandgate, where it joins the main highway, to a point to the westward of the Folkestone bathing establishment, was a street, or, if not, that the portion of it between two points lettered B and D on the ordnance sheet given in evidence in the case was a street, within the meaning of this statute, proposed, in exercise of the powers conferred upon them by the 6th section of the Act, to execute certain works upon it and to charge the cost thereof upon the premises fronting or abutting upon it.

The expression "street" is defined in s. 5 of the Act to mean (unless the context otherwise requires) "a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large." The respondents, who are frontagers, in exercise of the powers conferred upon them by the statute, served upon the appellants notices setting forth their objections to the proposal of the latter on the following grounds, amongst others: (1.) that the portion of the street upon which the works were proposed to be executed did not form part of a street within the meaning of the Act of 1892, and (2.) that the said part of the same is a "highway repairable by the inhabitants at large."



AUTH123

H. L. (E.) 1914 FOLKESTONE CORPORATION v. BROCKMAN. Lord Atkinson.

During the hearing before the justices a question was evolved upon which the case turned, namely, whether the lord of the soil, Jacob, Earl of Radnor, the owner of the land upon which this street was made, had before the year 1836 effectually dedicated to the public a right of way over it for passengers on foot. It was conceded on both sides that if he was found to have done so, and the dedication had, by user, been accepted by the public, then the street would have been repairable by the inhabitants at large, at least to the extent necessary for the exercise by the public of their limited right of way, and would by the definition clause have been excluded from the operation of s. 6 of the Act.

The justices found that there was no dedication by the said Earl of the said road, or the portion of it already mentioned, to the public as a highway for foot passengers before the year 1836, and in the case stated by them they set forth that the question they referred to the Divisional Court for its opinion was whether their finding on this point was correct in point of law. This was the question of law, and the only question of law, which the Divisional Court had to determine.

After certain proceedings, immaterial for the purposes of this appeal, had been taken, that Court ultimately answered the question put to them in the affirmative. The Court of Appeal by the order now appealed from reversed this decision on the ground, as stated by Vaughan Williams L.J. (Appendix, pp. 64 and 65), that there was nothing in the findings of fact appearing in the special case justifying the conclusion of the justices that it was not the intention of Jacob, Earl of Radnor, in 1827 or later, to make and dedicate the road in question as a public highway, or that there was, in fact, no dedication of such road as a highway prior to March, 1836, and he therefore answered the question put by the justices in the negative. He further stated that, in his opinion, "there was sufficient evidence that this road was so used as a highway or footway prior to 1836 to justify the conclusion that there was a dedication by Lord Radnor, who acquiesced in such user."

Buckley L.J. (p. 74) stated the grounds of his decision thus: "I cannot find that in finding these facts the justices have found any relevant facts to negative the dedication, which in my

AUTH124

judgment is evidenced by the facts to which I have first referred." That appears to be the user. Fletcher Moulton L.J. dissented.

It would appear, I think, from the double negative form in which the alleged error of the justices is thus stated, that the line of reasoning adopted by counsel for the respondents in their argument before your Lordships was in the Court of Appeal only too successful. It was, as I understood it, to this effect: "Proof of open, uninterrupted, and continuous user raises a præsumptio juris in favour of dedication. If evidence be not produced to rebut this presumption, it must prevail. Tribunals which are exclusive judges of fact, whether juries or justices, are bound in law to act upon it, and their finding against it is an error in law. In the present case there was such evidence of user, no rebutting evidence was produced, the justices were therefore bound in law to find that this way was dedicated to the public, and their decision to the contrary was a decision made without any evidence to support it, and consequently invalid in point of law." What the justices have really and in fact done is not to find a negative without any evidence to support it, but they have refused, on the evidence laid before them, to find the affirmative proposition contended for by the respondents that the owner, the Earl of Radnor, had intended to dedicate, and had dedicated, this footway to the public. The existence of this intention, which is crucial in such matters, being an inference of fact, the justices were clearly within their right in so refusing, unless it be the law that in such cases where open, long-continued, and uninterrupted evidence of user is clear, unrebutted, and unexplained, the tribunal whose members are the exclusive judges of issues of fact are bound in law to draw this affirmative inference, and consequently that in every case where the question of the dedication to the public of a highway is tried before a judge and jury, and strong evidence is given of user by the public, while no evidence rebutting the so-called præsumptio juris thereupon arising is produced, the litigant relying upon dedication must necessarily be entitled to have a verdict directed for him. During the argument, in order to test the soundness of this line of reasoning, I asked to be referred to any case where in a trial before a judge and jury a verdict was directed under such circumstances. No such

AUTH125

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Atkinson.

authority was produced. I believe it would have been produced had it existed. I think it does not exist. On the contrary, the invariable well-established practice, followed by many of the most able and distinguished judges for many, many years, has, I think, been, no matter how strong the evidence of user, to leave all the evidence to the jury, to ask them to consider it as a whole, and determine whether the owner of the soil intended to dedicate to the public a highway over it. The justices in cases such as the present are, if anything, more absolute and exclusive judges of fact than is the jury in a trial before them. Their finding cannot, like the finding of a jury, be set aside as against the weight of evidence. Order XL. and such like Orders of the Rules of the Supreme Court, 1883, do not apply to their findings as they do to the verdict of a jury. I am unable, therefore, to discover on what principle their decision can be set aside as contrary to law because they have refused to find in a way in which a jury in a similar case would not have been directed to find or be bound to find. I propose, therefore, to test the soundness of the reasoning upon which the Court of Appeal have apparently acted by reference to the procedure followed on the trial of questions such as this before a judge and jury, and as the point is of general importance, one may be excused for dealing at some length with a few of the best-known authorities. In *Poole* v. *Huskinson* (1) Parke B. thus states the principle of the law: "In order to constitute a valid dedication to the public of a highway by the owner of the soil, it is clearly settled that there must be an intention to dedicate—there must be an animus dedicandi of which the user by the public is evidence and no more; and a single act of interruption by the owner is of much more weight, upon a question of intention, than any acts of enjoyment."

Lord Blackburn, after quoting this passage in *Mann* v. *Brodie* (2), said: "But it has always been held that where there has been evidence of user by the public so long and in such a manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on

(1) 11 M. & W. 827, at p. 830. (2) 10 App. Cas. 378, at p. 386.

AUTH126

which those who have to find the fact may find that there was a dedication by the owner whoever he was." And the remarks of Lord Watson at p. 398 shew that under the Scotch law the inference which a jury may draw from evidence of user is an inference not of law but of fact.

In *Barraclough* v. *Johnson* (1) it was proved that in the year 1814 the representative of the owner of the soil of a laneway entered into an agreement with a certain company, together with the surveyor of highways acting on behalf of the inhabitants of a hamlet, that this laneway should be open to carriages, that the company should pay an acknowledgment of 5*s*. per annum and supply cinders for the repair of the road, which the people of the hamlet should spread. Up to this time there had been a gate across the laneway which was kept locked and carriages stopped, but apparently passengers and horses were allowed to pass. In 1832 disputes arose between the parties when the passage of carriages was prevented by the proprietor, but from the date of the agreement up to this time the lane was open and carriages, horses, and pedestrians allowed to use it. An action was then brought. The judge, Patteson J., left all the evidence to the jury and instructed them "that, although user was evidence of a dedication to the public, yet the question always was what the landowner intended, and, if it appeared that he had not intended absolutely to dedicate, the inference from user failed: and that in the present case, unless the jury thought that the proprietor, in 1814, intended absolutely to dedicate the carriage road to the public, he might resume it if the bargain was broken by the other parties." The jury found that there was no good dedication of the carriage way, but that there was a dedication of the way for foot passengers and horses. No direction was given to the jury that they were bound to find as to the footway where the user had been continuous, or any intimation given that there was a presumption in favour of dedication of either right of way, which, unless rebutted, should prevail. A Court consisting of Lord Denman C.J. and Littledale, Patteson, and Coleridge JJ. upheld the verdict, Patteson J. using these words: "I think that the intention to dedicate or not must be left to the jury. The very term

(1) (1838) 8 Ad. & E. 99.

AUTH127

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Atkinson.

dedication shows that the intent is material. There cannot be such a thing as turning land into a road without intention on the owner's part."

This case was cited with approval by Lord Macnaghten in *Simpson* v. *Attorney-General.* (1) At p. 493 he said: "As regards the second, it is, I think, enough for me to say that a dedication must be made with intention to dedicate, and that the mere acting so as to lead persons into the supposition that a way is dedicated to the public does not of itself amount to dedication: *Barraclough* v. *Johnson.*" (2)

*The Queen* v. *The Inhabitants of the Tithing of East Mark* (3) was the case of an indictment for non-repair of a road which had been formed over part of the waste land of a manor, and had been set out as a private road by an award, dated in January, 1797, of commissioners acting under a private enclosure Act. By this award a certain portion of this waste had, as directed by the Act, been allotted to the lord of the manor in respect of his interest in the soil. Evidence had been given, which was apparently not contradicted, that the road had been used by the public generally ever since it was set out up to the time of trial in the year 1848, a period of over fifty years. It was contended for the defendants that there could be no dedication to the public of this right of way, as there was no one capable of dedicating it, inasmuch as the interest in the soil over which the road had been made had been taken out of the lord of the manor by the award. Williams J., who presided at the trial, instructed the jury in the language of Parke B. in *Poole* v. *Huskinson* (4), already quoted, and proceeded to add, that there could not be land without an owner, that the ownership of it must be in somebody, and that it was for the jury to consider whether the owner, whoever he might be, had consented to the public user in such a manner as to satisfy the jury that he intended to dedicate a highway to the public. This instruction was held to be right by a Court composed of Lord Denman C.J. and Patteson, Wightman, and Erle JJ. The last-named learned judge expressed himself more strongly as to the effect which the jury should give to the

(1) [1904] A. C. 476.
(2) 8 Ad. & E. 99.
(3) (1848) 11 Q. B. 877.
(4) 11 M. & W. 827, at p. 830.

AUTH128

evidence of user than I have been able to find was done by any other learned judge in any of the older authorities. He said: "In this case there was uninterrupted user of the road by the public for about fifty years. I think the learned judge would have been quite justified in telling the jury, that, although there must be an intention on the part of the owner to dedicate, such user was so strong an evidence of his intention that the jury '*ought to find*' in favour of the dedication, unless there was some evidence that he did not consent. The direction was much more favourable to the defendant than that would have been."

It will be observed that the words are "*ought to find*," not "*must find.*"

*The Queen* v. *Petrie* (1) was similar to the last case in this, that there was clear and strong evidence of a continuous and open user by the public of the street called Rope Street, the street in question in the case, from the year 1827, when it was laid out, until the year 1836, when the defendants obstructed it.

It was objected, however, that the estate upon which the street was situate was in strict settlement, that the tenant for life was in possession till 1829, when the estate was under a power contained in the settlement sold by his trustees. The first tenant in tail was still a minor. Crowder J., the presiding judge at the trial, told the jury that there was evidence that the east end of Rope Street had been for several years actually used by the public, from which a dedication *might* be *inferred.* "And he asked the jury to say whether they inferred that there was a dedication, and at what time, and by whom." The jury answered that there was a dedication in 1829 by whosoever was then owner in fee. On that finding a verdict was entered for the Crown. On a motion for a new trial it was held by Coleridge, Wightman, Erle, and Crompton JJ. that the question put to the jury was the proper question. And this same learned judge, Erle J., expressed himself thus: "I think the judge was bound to put the question he did. The counsel for the prosecution claimed to rest their case on a certain inference from *the facts: if there was good evidence from which the inference might be drawn, the judge was bound to ask the jury whether they would*

(1) 4 E. & B. 737.

AUTH129

H. L. (E.) 1914 FOLKESTONE CORPORATION v. BROCKMAN. Lord Atkinson.

*draw it.*" These last are precisely the two authorities relied upon by Sir Montague Smith in *Turner* v. *Walsh.* (1) But the judgment of that very learned judge in that case is no authority whatever for the proposition that if the user by the public be proved to be ever so open, lengthy, and continuous, and the presumption of dedication arising therefrom be not rebutted, the jury is at law bound to infer a dedication, or that the judge presiding at the trial is entitled to direct them so to do. In this latter case strong and clear evidence of user was given. It was not rebutted. The presiding judge ruled that user in the Colony (New South Wales) might be relied upon in like manner as it might be in England for the purpose of establishing dedication of a road over Crown lands, as against the Crown, and that the user proved was sufficient to *entitle* the jury to presume dedication by the Crown of the road in question. This was the instruction to the jury of which Sir Montague Smith expressly approved. At p. 641 of the report he says: "Their Lordships have no difficulty in saying that the judge was right in directing the jury that from the user of twenty-one years before the statute, continued since 1861 down to the time of action without any interruption or interference on the part of the Crown, they *might* presume a dedication prior to the statute, and at a time when the Crown had power to dedicate." Again the words are "*might presume*," not "*must presume.*" The portion of his judgment on p. 642, in which it is contended he laid down that the presumption of dedication from continuous user was a præsumptio juris, which if not rebutted juries were bound at law to act upon, had reference to a passage in the judgment of Sir William Manning in which that learned judge apparently suggested that the user previous to the Crown Lands Act, 1861, was only inchoate and that its effect was defeated by that statute. The case is, in my view, no authority whatever for the proposition in support of which it was cited.

In *Winterbottom* v. *Lord Derby* (2) user of the way in dispute by the public for a period of seventy years before action was proved. The defence was that during the entire of that period the land the way crossed was under lease, and that the defendant as

(1) 6 App. Cas. 636. (2) (1867) L. R. 2 Ex. 316.

AUTH130

reversioner was not bound by the action of the lessee. The presiding judge told the jury that from long user, going back indeed as far as living memory could go, *they were at liberty, if they pleased, to infer a dedication.*

Cases of this kind might be multiplied. Your Lordships have not been referred to any case, and I, though I have searched somewhat diligently, have not been able to find any case, in which there was even a suggestion that, when the evidence of user is of the strongest kind and is not rebutted, the judge is entitled to direct the jury to find a verdict in favour of dedication. The crucial matter being the existence in the mind of the owner of an intention to dedicate, the inference of that fact, if drawn at all, must be drawn by the judges of fact. The respective functions of the judge and jury in such cases are, in my view, this. It is for the judge in each case to determine, as a matter of law, whether there is any evidence from which the inference of an intention to dedicate can reasonably be drawn; it is for the jury to determine whether it shall be drawn. And if, by adopting such a rule or formula as that contended for, a judge takes upon himself to decide upon the question whether the alleged presumption is rebutted or no, and forces this conclusion of his own upon the tribunal which is to determine issues of fact, either by directing them to find in a certain way, or by setting aside their decision if they find in the contrary way, he, in my view, usurps an authority which in no way belongs to him. The rule of law as to the action of justices in such cases as this is, I think, this, that if it does not appear on the face of their proceeding that they have, as it is said, misdirected themselves, and there was evidence before them upon which reasonable men might act to sustain their findings of fact, their decisions cannot be disturbed.

An order made without any evidence to support it is in truth, in my view, made without jurisdiction, and is therefore invalid at law, but a refusal to find an affirmative in favour of the person on whom the burden of proof lies cannot be so treated. It does not come within either the letter or spirit of the above-mentioned rule. If, in the present case, the justices were not satisfied that the Earl intended to dedicate, they were bound

AUTH131

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Atkinson.

to find against dedication. No middle course was open to them.

Mr. Cave referred to par. 131 of Taylor on Evidence, 9th edition. The statement of the law contained in that paragraph is perfectly accurate, and is supported by the six authorities mentioned in the notes. It is to this effect, that the uninterrupted user of a road justifies a presumption in favour of the original animus dedicandi even against the Crown. That is a wholly different thing from saying that this presumption is a præsumptio juris, which, if unrebutted, must be acted upon by exclusive judges of fact. This rule, relied upon by the respondents as to the unrebutted presumption of dedication, is a good working rule for all judges of fact to act upon. It is a rule which juries should be instructed to act upon, and which they ought to act upon, but it is, in my opinion, nothing more than that. An order made by such judges, in effect refusing to act upon it in favour of the person on whom the burden of proving dedication lies, cannot therefore, I think, be treated as a nullity, void at law, and made without jurisdiction. The practice of over a century in trials of such questions before juries establishes this.

I am far from saying that if the present case had been tried before a jury they would not have been justified in finding in favour of dedication on the evidence on which the findings of the justices are presumably based. I think they would have been fully justified in so doing, but I am quite unable to come to the conclusion that a finding against the dedication is a conclusion at which no reasonable men could arrive. I go further. I do not think a finding to this latter effect could properly be set aside on the ground that it was against the weight of evidence.

The intention with which Jacob, Earl of Radnor, and his successors permitted the user relied upon being the crucial matter, it is essential to consider the time at which and the circumstances under which the user commenced and subsequently continued. If an owner of enclosed land permits the public for years to traverse on foot a well-marked footway across it, leading from one public thoroughfare to another, without making any effort to prevent them, or indicating in any way that he objects

AUTH132

to the practice, the user would be very strong evidence indeed of his intention to confer on the public the right to use that footway; but if the owner of a moor, or of some waste land over which the public were in the habit of wandering in all directions, were to make an unfenced road across it with similar termini, and by erecting gates or barriers upon the road prevent the passage of horses or carriages over it but took no measures to prevent the public from wandering over it or walking along it as they had theretofore done over the land upon which it has been made, it would appear to me to be pushing a principle to extremes to hold that this omission was not perfectly consistent with the absence of any intention on the owner's part to do anything more than allow the old practice to continue, so far as the changed nature of the surface would permit, without conferring on the public any new right whatever. Heath J. said in the case of *Steel* v. *Houghton* (1), in reference to a claim by the poor of the right to glean in cornfields: "It is the wise policy of the law not to construe acts of charity, though continued and repeated for never so many years, in such a manner as to make them the foundation of legal obligation." The same thought, substituting the word "kindliness" or "good nature" for the word "charity," is expressed by Bowen L.J., as he then was, in *Blount* v. *Layard* (2) (a case about fishery), in the well-known passage of his judgment quoted with approval by Lord Macnaghten in *Simpson* v. *Attorney-General.* (3) It ran thus: "If the case is retried, the jury ought to be most carefully warned (as they were) not to do injustice under the idea that they are vindicating a public right. I think they ought to be solemnly told (as they no doubt will be) that nothing worse can happen in a free country than to force people to be churlish about their rights for fear that their indulgence may be abused, and to drive them to prevent the enjoyment of things which, although they are matters of private property, naturally give pleasure to many others besides the owners, under the fear that their good nature may be misunderstood." This passage applies forcibly, I think, to the present case. One has only to look at

(1) (1788) 1 H. Bl. 51, at p. 60. (2) [1891] 2 Ch. 681, n., at p. 690.
(3) [1904] A. C. 476, at p. 493.

AUTH133

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Atkinson.

the map after reading the findings in paragraph 5 of the special case to realize how great inconvenience, if not annoyance, would have been caused by the fencing of this road in such a way as to prevent any one rambling on the waste land beside it or from crossing over it to the beach, or gaining access to it, and how difficult, if not impossible, it would have been, while the road remained unfenced, to have prevented those wanderers from walking along it from end to end.

Much reliance was placed upon the fact that while a toll gate and barriers were erected upon this road to prevent the passage of wheeled traffic along it, no barriers were erected to prevent the passage along it of passengers on foot, that, on the contrary, room was left at each side of these obstructions for foot passengers to pass. But no barrier—while the public were permitted to wander over the waste land and the road remained unfenced—could have been effective for that purpose; because any one could by deviating on to the waste land at either side of the road have outflanked the barrier. Exclusion from the waste land would possibly have been an effective protection to the owner's rights, but it would have been a churlish and unkindly act, hurtful, probably, moreover to the development of Folkestone as a seaside resort.

It has been found that there was no evidence of any road or defined footway having been made upon this land before the year 1827, and there is no finding that such a footway existed over it leading from one public thoroughfare to another before that date, or that any precaution was taken to prevent people from wandering where they would over the surface of the waste land. It was, however, found that since 1836 foot passengers used the whole width of the road as a passage, and had traversed the banks at its sides where practicable: that the road was not absolutely necessary for the accommodation of any persons other than those who occupied the houses since erected abutting upon it, their servants, tradespeople, and visitors; that such repairs as were effected upon it down to 1851 were executed at the expense of Lord Radnor and his successors, but that it was never properly repaired till the year 1836; and never formally dedicated as a public highway according to the provisions of the 23rd section

AUTH134

of the Highway Act, 1835. The correctness of this last finding is admitted.

It was not disputed in argument that for all purposes, other than that of the passage of persons on foot, this road was a private road; nor was it disputed that Jacob, Earl of Radnor, was in the year 1827, when this road was made, only tenant for life of his estate, and as such could not at common law have dedicated to the public any right of way over it. Neither was it disputed that for many years from and after that date, 1827, the estate was settled in strict settlement, but the appellants put in evidence before the justices a private Act of Parliament of June, 1825, passed to enable building leases to be granted of part of the settled estates of the Earl. The 1st section empowers him to grant building leases with power to the lessees to appropriate any portion of the demised premises as and for streets, passages, or ways for the more convenient enjoyment of such houses as might be built. And the 5th section, which is the important section, empowers the Earl to "allot and set out" a component part of the pieces or plots of ground described in the schedule annexed to the Act for "public squares, roads, streets, ways, avenues, or otherwise for the use and convenience of the houses and other public buildings to be erected upon the said pieces or plots of ground or any part or parcel thereof as aforesaid." The waste land below the cliff was included in this schedule. If the Earl dedicated this road as a footway to the public he could only do so under the provisions of this section.

A lengthened argument was addressed to your Lordships' House on the construction of the section. It is obvious that its framers considered that a street, road, or way, though public, might yet be for the convenience of the occupiers of the houses to be built; but it was contended that this particular Sandgate Road was "not allotted or set out" for the purpose of a public footpath, but merely as and for a private roadway for horses and carriages to traverse. I think it would, on the authorities I have cited, have been competent for the Earl to have "allotted and set out," under the provisions of this section, a road to serve the double purpose of a public footpath and a private road for the passage of horses and carriages, and that it would have

AUTH135

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Atkinson.

been competent for any jury who might have tried the case, and for the justices who actually tried it, to have presumed from long-continued user that he intended to do this, but I think it would have been equally competent for such a jury, and was competent for the justices, having regard to all the facts, notwithstanding the evidence of user, to have found that the Earl never intended to do anything so improbable. One could, I think, understand his making, for the development of his estates, a road public for all purposes leading from one public thoroughfare to another, or making a private road (for which he did not require statutory powers), leaving the public to wander over it as they had formerly wandered on the ground it covered, and not churlishly depriving them of that enjoyment, without intending to confer any new public right. Both of these courses would have been reasonable enough. I fail to see on what ground it could be held that no reasonable men could find he adopted the latter.

Sir Robert Finlay relied much on the fact set out in paragraph 6 of the case. He urged that if either the then Earl or the corporation believed that any public footway then existed over this road, it would necessarily have been mentioned in this negotiation. No allusion appears to have been made to its existence. I concur with him in thinking that the conduct of the parties in this respect is very significant. On the whole I am of opinion that the appeal should be allowed and the judgment of the King's Bench Division restored, on the ground, in addition to that already mentioned, that it would have been competent for a jury, had the case been tried by a jury, to have, on proof of the facts found, returned a verdict either in favour of dedication or against it, and that neither verdict could have been disturbed. I further think that if the findings in the case stated were treated as a special verdict found by a jury the respondents would not have been entitled to have a judgment entered for them, and I am, therefore, unable to discover any ground on which the conclusion of this Bench of justices should be disturbed where a jury's determination would not have been disturbed. It is hardly necessary to point out that in the case of *The Board of Works for Greenwich* v. *Maudslay* (1) the Court had power to draw inferences of fact.

(1) L. R. 5 Q. B. 397.

AUTH136

LORD DUNEDIN. (1) My Lords, in this case the only question before us is whether there was evidence before the justices which reasonably entitled them to come to the conclusion which they embodied in their finding, "That there was, in fact, no dedication of the road in question as a highway prior to March 10, 1836," as amplified by the further finding "that there was no dedication of the road in question as a highway for foot passengers before the year 1836."

The reason of the findings being in two branches is to be found in this. Upon the first finding coming before the Divisional Court, and on consideration of the case as stated, that Court held that it was not certain whether the justices had considered the whole possibilities of the circumstances, or, in other words, that the first finding as it stood might mean that the road had not been dedicated as a carriage road, leaving undetermined the fact as to whether it had or had not been dedicated as a foot road. So they sent it back to the justices to state precisely whether they had found the latter matter, and if they had found as regards the foot road also against the dedication, their judgment was to stand. Accordingly the justices, on remit, added the finding second quoted, and their judgment stood.

Now, it is true that the actual judgment which was allowed to stand was expressed thus (after making the finding first quoted, and adding "that since 1836 there has been no dedication as prescribed by s. 23 of the Highway Act, 1835"): "We therefore decided that the road in question is not, nor is any part thereof, a highway repairable by the inhabitants at large," and the question was put, "Whether upon the above statement of facts we came to a correct determination in point of law." Nevertheless, however the question is framed, the Divisional Court—and necessarily the Court of Appeal in their turn reviewing the judgment of the Divisional Court—has only a right to review law, and so far as a judgment depends on facts the only question of law arising thereon is, Was the evidence reasonably sufficient to justify the finding?

I find this very clearly expressed by Channell J. in the case of *Rishton* v. *Haslingden Corporation* (2), where he says, "The

(1) Read by Lord Shaw of Dunfermline. (2) [1898] 1 Q. B. at p. 301.



AUTH137

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Dunedin.

magistrates ask, 'Were we justified in finding?' It is contended that as the magistrates can only state a case upon a point of law, and must themselves decide a question of fact, this question means, 'Was there any evidence upon which we could find as we did?' And this we think is so."

Such was also clearly the view of the Divisional Court in this case, for they allowed the decision to stand. That necessarily meant that they considered the question one for the justices to determine, and that whichever way they determined it there was some evidence on which the judgment could be supported. As Hamilton J.—as he then was—puts it at the close of his judgment: "As the matter is of one of fact, and there is some evidence for the justices on it, it must go back for their determination."

When the case came before the Court of Appeal, two of the learned judges took the view that there was no evidence upon which the finding of the justices could be supported; Fletcher Moulton L.J. dissented. My Lords, I am not going to recite the judgments of the majority, but I hope I do them no injustice when I say that they seem to me to be rested on this view. They fasten upon certain of the series of separate conclusions in fact which the justices set out in the case, and which run: "(H) . . . . But there was evidence before us, and we found that from the year 1831 the road was to some extent used by inhabitants of Folkestone and Sandgate other than the said lessees, &c., for business and other purposes." "(J) That spaces are, and have been, since a period antecedent to 1836, left on either side of the toll gate for foot passengers." "(P) That prior to 1836 the road in question was never kept in proper repair, but was open for foot passengers without interruption, and has so continued to the present time." "(Q) That there was no evidence before us of any made footpath on the road before 1836, but we found that foot passengers used the whole width of the road, and the banks by the sides of the road (where practicable) without let or hindrance."

These findings, say they, amount to a finding of user by the public. User by the public raises a presumption of dedication, and in the other facts found by the justices (which exhaust

AUTH138

the letters of the alphabet from A to T, exclusive of the letters above quoted) there is nothing sufficient to rebut the presumption.

With deference to the learned judges, I do not think that is the proper way to approach the question, and its defect, to my mind, consists in regarding "user" as an inflexible term, which, if found to apply, can lead to only one legal result. User is evidence, and can be no more, of dedication. The expression that user raises a presumption of dedication has its origin in this, that in cases where express dedication is out of the question, no one can see into a man's mind, and therefore dedication, which can never come into being without intention, can, if it is to be proved at all, only be inferred or presumed from extraneous facts. But that still leaves as matter for inquiry what was the user, and to what did it point. And this must be considered, not after the method of the Horatii and Curiatii, by taking a set of isolated findings, saying that they presumably lead to a certain result, and then proceeding to see if that presumption can be rebutted, but by considering the whole facts, the surroundings which lead to the user, and from all those facts, including the user, coming to the conclusion whether or not the user did infer dedication.

I can make my meaning clear by illustration. If you know nothing about a road except that you find it is used, then the origin of the road is, so to speak, to be found in the user, and in such cases it is safe to say, whether strictly accurate or not, that the user raises a legal presumption of dedication. That really means no more than this, that the evidence points all one way. Hundreds of highways are in this position. But suppose, on the other hand, you do know the origin of a road. Suppose it is the avenue to a private house, say, from the south. But from that house there leads another avenue to the north which connects with a public road different from that from which the south avenue started. This is not a fancy case. The situation is a common one in many parts of the country. Would the mere fact that people could be found who had gone up the one avenue and down the other—perhaps without actually calling at the house—raise a presumption that the landholder had dedicated



AUTH139

H. L. (E.) 1914

FOLKESTONE CORPORATION v. BROCKMAN.

Lord Dunedin.

his private avenues as highways? The user would be naturally ascribed to good nature and toleration.

Now, what were the surrounding circumstances in this case? The origin of the road was known. It was not a case where the mere user discovered the existence of the road. It was made as an estate work, and it was in its origin and up to the critical date indubitably not only labelled private but kept private, for the greater uses for which its construction was designed, namely, horse and carriage traffic. It was only repaired by the proprietor, never by the parish, and a transaction was entered into at a later date (1852) which shewed on the face of it that in the view of the proprietor and of the Commissioners of Folkestone at that time the road was a private road. Further than that, there was the light to be got from the legal position of the proprietor. He was admittedly a limited owner, and it is conceded that a limited owner cannot dedicate. But before the road was made his disability was removed by an Act of Paliament—provided always that he acted in the way that the Act of Parliament directed. In other words, looking at the terms of s. 5 of the private Act, the Earl of Radnor could only dedicate if he "set out ground for public squares, roads, ways, or otherwise." He admittedly did not set out this as a public carriage-way. Did he set it out as a public way for foot passengers?

I must here pause to say that the strenuous criticism which was directed in the argument against the judgment of Fletcher Moulton L.J. in the Court of Appeal to my mind missed its mark. It was argued that that learned judge insisted that unless it could be shewn that the Earl of Radnor formally "set out" this particular highway as for passengers, the case for dedication must fail, and it was added that, upon the view of omnia præsumuntur rite et solemniter acta, the direct evidence of such formal dedication after such a lapse of time could not be insisted on. I do not think that is at all a fair view of the learned judge's opinion. All I think he meant and said was this: That inasmuch as to be valid at all the dedication must have had its origin in a setting out under s. 5, you were bound to consider, under the whole circumstances of the case, whether such a dedication as is here sought to be shewn was a thing to

AUTH140

be inferred as a likely thing for the estate owner to do. In the long run it all comes to this, which is the more probable alternative? Did the Earl of Radnor lay out this road as private and mean to keep it private as of right, although he did not take any active steps to prevent foot passengers going over it any more than he took active steps to prevent them straying over the waste surrounding ground, or did he when laying out a private carriage road, which he meant to and did keep private, at the same time dedicate to the public a footway on the top of the said private carriage-way? The circumstances which I have detailed may be said to point to the former, those included in the lettered findings above quoted may be said to point to the latter.

My Lords, if I had been one of the justices, I say frankly I should have come to the same conclusion as they did. In that I may be wrong. I cannot be sure I am right, for I see that several learned judges, who are just as competent to weigh evidence as I am, if they had been in that position, would have come to a different conclusion. But the question is not whether I am wrong or right, the question is whether there is any evidence to support such a conclusion. I am willing not to be dogmatic in saying that my conclusion is the right one, but I am not equal to such a height of modesty and altruism as to say that the conclusion which I have reached in common with the justices and Fletcher Moulton L.J. is a conclusion to which, on the evidence, no reasonable man ought to have come. It follows that in my opinion this appeal must prevail.

EARL LOREBURN.(1) My Lords, in this appeal the question of substance is whether upon the facts found by the justices they were justified in coming to the conclusion that there was no dedication of a certain road near Folkestone before 1836. Treating these findings in the special case as the evidence upon which the conclusion of the justices was based, is there any evidence to support that conclusion? If I relied upon my own unaided judgment I should assent to the order of the Court of Appeal, because I have not myself been

(1) Read by Lord Atkinson.

AUTH141

H. L. (E.) 1914 — FOLKESTONE CORPORATION v. BROCKMAN. — Earl Loreburn.

able to see any such evidence. But I know that Fletcher Moulton L.J. and your Lordships think otherwise, and in those circumstances I feel that I cannot insist upon a view which would import that there was no evidence upon which a reasonable man could act. I take it, therefore, that there is such evidence, and if so, then the conclusion of the justices cannot be lawfully disturbed.

I desire to say only a few words upon the law of the case, which was discussed at the Bar. I believe that the doctrine enunciated in the Privy Council in *Turner* v. *Walsh* (1) has been uniformly accepted; that dedication may be and, indeed, ought to be presumed in the absence of anything to rebut the presumption from long-continued user of a way by the public. Two things have to be made good, that the user has been sufficient in its duration and character, and that the presumption then arising has not been rebutted. The two questions are usually, or at all events often, put to the jury in a composite form. For example, they are told that if they think the user is sufficient, dedication ought to be presumed, unless they think it is rebutted by the evidence. In that or in any other case where there is not any evidence to support a verdict, it may be set aside, and the proper judgment may be entered against the party whose case has nothing to support it. As for the presumption, I do not think it makes much difference whether it be called a presumption of law or fact, though I think it is the former.

*Order of the Court of Appeal reversed and order of the King's Bench Division restored. The respondents to pay the costs in the Courts below and also the costs of the appeal to this House.*

*Lords' Journals*, February 6, 1914.

Solicitors for appellants: *Holt Beever & Crowdy, for A. F. Kidson, Folkestone.*

Solicitors for respondents: *White, Borrett & Black, for A. D. & L. J. D. Brockman, Folkestone.*

(1) 6 App. Cas. 636.

AUTH142

in section 57 of the Act of 1861, is the time of the alleged bigamous ceremony of marriage—in the present case March 9, 1973. By that date the defendant's potentially polygamous marriage still subsisted, but it had become monogamous in character by operation of the Ordinance of 1960 and by his acquisition of an English domicile, which has monogamy as part of the personal law.

The trial judge was, in our judgment, correct in his ruling on the question of law put to him. *Reg.* v. *Sarwan Singh* [1962] 3 All E.R. 612 was wrongly decided. The appeal is dismissed.

*Appeal dismissed.*

Solicitors: *Baker, Freeman & Co., Mitcham; Director of Public Prosecutions.*

---

[COURT OF APPEAL]

## REGINA *v.* SECRETARY OF STATE FOR THE ENVIRONMENT, *Ex parte* HOOD

1975 May 6, 7, 8

Lord Denning M.R., Browne L.J. and Sir John Pennycuick

*Highway—Right of way—Re-classification—"Road used as a public path"—Classification on definitive map—Presumption of being bridleway—Re-classified as footpath—Whether correct—National Parks and Access to the Countryside Act* 1949 (12, 13 & 14 *Geo.* 6, *c.* 97), *ss.* 27 (6), 32 (4) (*b*)—*Countryside Act* 1968 (*c.* 41), *Sch.* 3, *Pt. III, paras.* 9 (1), 10

A way of about 400 yards was classified as a "road used as a public path" on a definitive map prepared by a county council pursuant to sections 27 and 32 of the National Parks and Access to the Countryside Act 1949.[1] It was re-classified as a footpath by the county council after a special review under section 33 of the Act of 1949 as amended by section 31 of, and Schedule 3 to, the Countryside Act 1968.[2] The Secretary of State for the Environment confirmed the classification.

An application for an order of certiorari to quash the Secretary of State's decision on the ground that under section 32 (4) (*b*) of the Act of 1949 the classification as a "road used as a public path" raised the conclusive presumption of a road over which the public had rights of footway and bridleway was refused by the Divisional Court.

On appeal by the applicant:—

[1] National Parks and Access to the Countryside Act 1949, s. 27 (1) (2) (6): see post, pp. 897C–D, 904C–E.
S. 32 (4) (*b*): see post, p. 898D.
[2] Countryside Act 1968, Sch. 3, Pt. III, paras. 9 (1) (3), 10: see post, p. 905D–F.

AUTH143

*Held*, allowing the appeal, that the effect of section 32 (4) (*b*) of the Act of 1949 was that the definitive map was conclusive that the path was one over which the public had a right of way on foot or on horse or leading a horse (post, pp. 898C–D, 900B–D, 906F–G); that the test for re-classification in Schedule 3, Part III, paragraph 10, to the Act of 1968 was limited to the criteria for vehicular rights (post, pp. 899E, 903G–H); and that since the Secretary of State was not entitled to make any re-classification other than in accordance with the conclusive presumption of a bridleway created by section 32 (4) (*b*) his decision must be quashed (post, pp. 900A–B, 904A–B).

*Per curiam.* It was the intention of Parliament that the definitive maps drawn up under Part IV of the Act of 1949 should (subject to the exception in section 32 (4) (*b*) and the review provisions) finally decide all questions as to public rights of way without them being reopened (post, pp. 899H, 901G–H, 903A–B).

Decision of the Divisional Court of the Queen's Bench Division [1974] 1 W.L.R. 1479; [1975] 1 All E.R. 102 reversed.

The following cases are referred to in the judgments:

*Morgan* v. *Hertfordshire County Council* (1965) 63 L.G.R. 456, C.A.
*Reg.* v. *Saintiff* (1705) 6 Mod.Rep. 255.

No additional case was cited in argument.

APPEAL from the Divisional Court of the Queen's Bench Division.

On October 22, 1974, the Divisional Court (Lord Widgery C.J. and Milmo J., Ackner J. dissenting) [1974] 1 W.L.R. 1479 dismissed an application by the applicant, Mrs. Margaret Cynthia Hood, a member of the British Horse Society, for an order of certiorari to quash a decision of the Secretary of State for the Environment, made by letter dated August 22, 1973, whereby he confirmed the proposal of the Kent County Council that a highway shown on the definitive map prepared under Part IV of the National Parks and Access to the Countryside Act 1949 as a road used as a public path (CRF 30) in Herne Common, Kent, should be re-classified as a footpath.

The applicant appealed on the grounds that the majority of the Divisional Court erred in law in holding (1) that the Secretary of State in making his aforesaid decision was entitled to have regard to matters other than those specified in section 33 (1) and (2) of the Act of 1949 as amended by the Countryside Act 1968 and in paragraph 10 of Part II of Schedule 3 to the Act of 1968; (2) that in deciding whether a "road used as a public path" should be re-classified as a "bridlepath" or "footpath" the Secretary of State was entitled to approach the matter as if he were compiling the original definitive map and without being confined to the matters allowed to be taken into account in a review under section 33 of the Act of 1949; (3) that the Minister was entitled to pay no regard to the fact that a "road used as a public path" was presumed to have rights of passage for horses; and (4) that the judgment of Ackner J. was right.

The facts are stated in the judgment of Lord Denning M.R.

*Leonard Hoffmann* for the applicant. The way, which had been classi-

AUTH144

fied in 1952 as a "road used as a public path" was re-classified as a "footpath"; but there was a conclusive statutory presumption under section 32 (4) (*b*) of the National Parks and Access to the Countryside Act 1949 that it was a "bridleway." The Secretary of State's confirmation of the proposed re-classification was ultra vires and ought to be quashed. Certiorari is the only remedy.

The principle of this appeal affects thousands of rights of way throughout the country and the appeal is being supported by many associations. Cyclists rank with horses and can use bridleways (see section 30 of the Countryside Act 1968). If the decision of the Divisional Court [1974] 1 W.L.R. 1479 is correct, two to four thousand paths may be demoted.

Section 27 of the Act of 1949 contemplates an existing known right of way. The definitions of "footpath" and "bridleway" in section 27 (6) are restrictive definitions. The Act of 1949 was not concerned with general rights of way. Sections 28–31 deal with the machinery for classification. By section 32 (4) (*b*) there is a conclusive presumption that where "the map shows a bridleway, or a road used as a public path," the public had thereover at the relevant date "a right of way on foot and . . . on horseback or leading a horse." There is also the common law presumption as to highways that "once a highway, always a highway."

Part I of Schedule 3 to the Act of 1968 amends sections 29 and 33 of the Act of 1968 and provides for the reviewing authority to be able to say "we made a mistake last time" as appears from the "discovery . . . of . . . new evidence." There is no "new evidence" here. Part III deals specifically with "roads used as public paths" on a "special review," the "first review" by the authority under section 33 of the Act of 1949 after the coming into force of the Act of 1968. Three matters are to be taken into account: (1) under section 33 (2) of the Act of 1949, matters occurring since the date of the definitive map; (2) under the amendment to section 33 of the Act of 1949 effected by Part I of Schedule 3 to the Act of 1968 with the proviso thereto; (3) the specific considerations in paragraph 10 of Part III which provide the "test for re-classification." None of these three apply. Paragraph 9 (2) (*b*) provides that ". . . any entry . . . describing a way as a 'byway open to all traffic' shall be conclusive evidence . . . of a public right of way for vehicular and all other kinds of traffic."

It is a great burden and expense to establish to an inspector's satisfaction the existence of old rights of way. The contention for the Minister is that on a special review one starts de novo, the inquiry is conducted afresh and the presumption under section 32 (4) has gone.

The background of the Act of 1949 has to be looked at and the mischief at which it was aimed. Since the *Black-Clawson* case [*Black-Clawson International Ltd.* v. *Papierwerke Waldhof-Aschaffenburg A.G.* [1975] 2 W.L.R. 513] the reports of parliamentary committees can be looked at to see the mischief. In 1942 the *Report of the Committee on Land Utilisation in Rural Areas* (Cmd. 6378), whose chairman was Scott L.J., recommended setting up a Footpaths Committee who should also deal with bridlepaths. In 1945 the *National Parks in England and Wales* report by John Dower (Cmd. 6628) spoke (p. 37, para. 54) of the "radically unsatisfactory" provision of footpaths and the "prime issue" as to

AUTH145

whether they were or were not "public rights of way." In 1947 the report of the special committee (chairman, Sir Arthur Hobhouse) *Footpaths and Access to the Countryside* (Cmd. 7207) traced the history and present law of footpaths, the different kinds of rights of way and the need for a complete survey (pp. 2–6). The whole object of the Act of 1949 was to get footpaths and bridlepaths down in writing: so that the map was definitive. The policy of the Act was to find out what rights of way there were and to classify them. Then section 32 (4) of the Act of 1949 provides that the map is "conclusive evidence" of the matters set out in (*a*) (*b*) and (*c*). *Morgan* v. *Hertfordshire County Council* (1965) 63 L.G.R. 456 shows (1) the conclusive nature of the presumption in section 32 (4), and (2) that the remedy of any entry which is challenged may be an application for stopping-up the way. Section 27 (6) of the Act of 1949 defines the relevant expressions.

Sir Edward Coke's threefold classification of ways into footways, bridleways and cartways (Co.Lit. 56a) is the "classical passage" stating "certain presumptions" applicable to public and private rights of way: see *Pratt and Mackenzie's Law of Highways*, 21st ed. (1967), p. 11. There is no right which can be added to a footway which does not include the right to go on a horse. The purpose of Part III of Schedule 3 to the Act of 1968 was to classify "roads used as public paths" according to vehicular rights and requirements.

The decision letter of August 27, 1973, of the Secretary of State for the Environment refers to the "statutory power in Schedule 3" to the Act of 1968 to "re-classify roads used as public paths" and says that "when a way is no longer shown as a road used as a public path, section 32 (4) (*b*) of the Act of 1949, in so far as it provides for the evidential effect of showing a road used as a public path, will no longer apply." So the question is: does the Act of 1968 take away the "conclusive" presumption in section 32 (4)? It would be a very odd result if the Secretary of State were right. Whether or not the presumption is conclusive, it must continue to be strong prima facie evidence. In the absence of strong countervailing evidence it must prevail. At the relevant date (December 1, 1952) by reason of the classification as a "road used as a public path" there was a presumption of a right of way for horses and on foot.

The phrase "road used as a public path" as defined in section 27 (6) of the Act of 1949 was stated in circular No. 91 issued by the Ministry of Town and Country Planning on June 30, 1950, "Public Rights of Way," to be "intended to describe highways such as the Berkshire Ridgeway, and other 'green ways' which are now mainly used as footpaths and bridleways . . ." (see *Encyclopedia of Planning Law and Practice*, vol. 3, p. 4081).

*Harry Woolf* for the Secretary of State. The "special review" under Part III of Schedule 3 to the Act of 1968 is something quite different to the ordinary reviews under section 33 of the Act of 1949, which has nothing to do with the issue here. The Act of 1968 requires on a "special review" a re-classification under one of the three heads in paragraph 9 (1) of Part III, which may involve a downgrading. Although at common law there were the three traditional classifications of ways (Co.Lit. 56a) section 27 (6) of the Act of 1949 introduced a new category unknown to the

AUTH146

common law, a "road used as a public path." It was a curiously unsatisfactory statutory creature which could be a footpath, plus a bridleway, plus something undefined. In the Divisional Court Lord Widgery C.J. said it was "a highway where the rights of the public are not precisely defined" [1974] 1 W.L.R. 1479, 1481.

It was because the classification "road used as a public path" was so unsatisfactory that the expression was dropped by the Act of 1968 (Sch. 3, Part III, para. 9 (1)). The *Report of the Footpaths Committee, 1968* (75–207) (chairman, Sir A. Gosling), stated that the definition had "led to a great deal of confusion" and recommended its abandonment (p. 17, paras. 68–69). The inspector's report of October 2, 1972, shows the typical background facts, such as that "many routes remained 'CRF' and 'CRB' on the definitive maps because no objection was made to those classifications," which the Act of 1968 was meant to deal with.

There are special requirements regarding the procedure for a "special review" (compare the procedure on a review under section 33 in paragraph 4 of Part II of Schedule 3 to the Act of 1968). It is a "special review" (paragraph 8 (2) of Part III) and there can be a "limited special review" (see paragraph 8 (2) (*b*)) having nothing to do with the ordinary section 33 review. Paragraph 11 of Part III shows that a "special review" is something quite different, involving a quite different exercise, from a review under section 33. If the argument for the applicant is right, there would be no need to refer to "footpath" in paragraph 9 (1) (*c*) for a "road used as a public path" could never be re-classified as a footpath. Paragraph 9 gives the authority the power to re-classify every "road used as a public path" and decide into which of the three categories (*a*), (*b*) or (*c*) it shall be put. Effect must be given to the reference to class (*a*), "byway open to all traffic." It is significant that (*c*), "footpath," is expressly retained in paragraph 9 (1). Paragraph 10 cannot under any circumstances bite upon footpaths, it is not exhaustive and is largely dealing with special matters. The conclusion of Lord Widgery C.J. in the Divisional Court [1974] 1 W.L.R. 1479, 1482–1483, was correct. It is agreed that a badly drafted provision in the Act of 1949 was followed by a similar one in the Act of 1968. Up to 4,000 cases are dependent on this appeal which should be dismissed.

*Hoffmann* in reply. Paragraph 9 of Part III of Schedule 3 to the Act of 1968 says "in the special review," the first review after the coming into force of the Act of 1968. A "limited special review" is one in which only part of the work is done, i.e., the re-classification of "roads used as public paths." Fundamentally a "special review" is a section 33 review permitting the way to be put into one of the three categories in paragraph 9 (1). On a section 33 review the Secretary of State is not allowed to have regard to the findings of fact on which he made his re-classification here. If there is to be power to have regard to the matters on which he made his re-classification that power must be found in Schedule 3. No such power is to be found. A section 33 review is very limited as to the evidence to be adduced. The policy of the Act of 1949 was that once a definite decision had been made by inclusion on a definitive map it should not be altered. Ackner J. was right [1974] 1 W.L.R. 1479, 1485–1486.

AUTH147

LORD DENNING M.R.

1. *Introduction.*

This case concerns a way about 400 yards long at Herne Bay. It goes past a hospital for geriatrics. The question is: what rights have the public along that way? Is it only a footpath for people on foot or, is it more? Is it a bridleway for horses and horse-riders?

I will first state the position as it appears on the ground today. For a distance of 200 yards—half of its length—it is a tarred driveway leading up to the hospital. For the next 200 yards it is a grass strip. On one side of the grass strip there is a ditch along its length, and on the other side there is a hedge and a belt of trees. The average width is 20 feet. Although it is grass, when you look at it on the ground, it is a clearly defined way.

Now, going back 100 years, there is an ordnance survey map of 1872 on a large scale of six inches to the mile. On it the whole route is shown by double solid lines. It would appear from that map that it was not a footpath only, but at least a bridleway, if not a cartway; but ordnance maps do not, of course, show whether it was public or private.

The problem arises because of the maps prepared under statute by the Kent County Council. In the definitive map in 1952 it was shown as a "road used as a public path" from which it could be inferred that it was at least a bridleway. But, in the latest revision of the map in 1972, the Kent County Council have downgraded it into a "footpath." If this stands, it means that people will not be allowed to ride horses along it. The British Horse Society have, therefore, taken objection. They say that it ought to be classified as a "bridleway." This objection was heard at an inquiry by an inspector. On receiving his report, the Minister decided that it should be classified as a "footpath" only.

The statute contains no machinery for appeal from the Minister's decision. So the only way of questioning it is by application for certiorari on the ground that the Minister's decision was erroneous in point of law. The British Horse Society applied to the Divisional Court, but the court by a majority refused to quash the Minister's decision [1974] 1 W.L.R. 1479. Ackner J. dissented. The British Horse Society appeal to this court. They ask that it should be shown on the map as a bridleway.

2. *The Act of 1949.*

The object of the statute is this: it is to have all our ancient highways mapped out, put on record and made conclusive, so that people can know what their rights are. Our old highways came into existence before 1835. They were created in the days when people went on foot or on horseback or in carts. They went to the fields to work, or to the village, or to the church. They grew up time out of mind. The law of England was: Once a highway, always a highway. But nowadays, with the bicycle, the motor car and the bus, many of them have fallen into disuse. They have become overgrown and no longer passable. But yet it is important that they should be preserved and known, so that those who love the countryside can enjoy it, and take their walks and rides there. That was the object of the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968. In 1949 the local authorities were required to make inquiries and

AUTH148

map out our countryside. First, a draft map; next a provisional map; and finally a definitive map. There were opportunities both for landowners and the public to make their representations as and when each map passed through each stage. In 1968 there was to be a review and re-classification.

In order to understand the statutes, one must remember the classification of highways at common law. It was threefold. First, it may be a "foot way," appropriated to the sole use of pedestrians; secondly, a "*packe* and *prime way*" (called a bridleway) which is both a horseway and footway; third, a "cartway," which comprehends the other two and is also a cart or carriageway (see *Coke upon Littleton*, vol. I, 56a); but, to whichever of these classes it belongs, it is still a highway, "'highway' is the genus of all public ways, as well cart, horse, and footways": see *Reg.* v. *Saintiff* (1705) 6 Mod.Rep. 255, *per* Sir John Holt C.J. That classification formed the basis of the statutory classification in section 27 (6) of the National Parks and Access to the Countryside Act 1949. It is said:

> ". . . 'footpath' means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road; 'bridleway' means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway; . . . 'public path' means a highway, being either a footpath or a bridleway; . . . 'road used as a public path' means a highway, other than a public path, used by the public mainly for the purpose for which footpaths or bridleways are so used."

3. *"Road used as a public path."*

Much difficulty was caused by that last definition of "road used as a public path." Seeing that it is a *highway*, it must come within the third category of the common law, namely, a cartway over which the public have a right, not only on foot or horse, but also in carts. The word "mainly" is the problem. The object of the draftsman was to include cartways over which there is a *public right of cartway*, but which are used nowadays mainly by people walking or riding horses, like the Berkshire Ridgeway or the ways over the South Downs. The draftsman intended to exclude metalled roads used by motor cars.

When the local authorities came in 1949 to prepare their maps under the statute, they divided the last category "road used as a public path" into two sub-divisions which have no statutory authority. They divided them into "CRF" and "CRB," which denoted "cartroad footpath" and "cartroad bridleway," meaning respectively that there was a public footpath along a cartroad, or a public bridleway along a cartroad. In that division the local authorities did not mean to say whether the cartroad was public or private for carts, because they did not know which it was. They only meant to say by CRF that there was a public footpath along a road: and by CRB a public bridleway along a road. That division was misleading because each of those subdivisions CRF and CRB was shown in the map as a "road used as a public path." That meant that it was shown as a "*highway*, other than a 'public path,'" i.e., other than either a footway

AUTH149

or a bridleway. Being a highway, it meant that it was a *public* cartway. Thus, CRF and CRB designated a *public cartway* used mainly for the purposes for which footpaths and bridleways are used.

4. *Conclusive evidence.*

Now, coming back to the way at Herne Bay. It was shown in the definitive map as a highway CRF 30, and described as: "From Canterbury Road at hospital leads N.W. to join B.R. 29." That meant that in point of law it was classified as a "road used as a public path" i.e., a public cartway but used mainly for the purpose for which a footpath is used.

In preparing that definitive map, the Kent County Council went through all the prescribed procedure. They prepared a draft map and considered objections. They prepared a provisional map and gave everyone an opportunity of being heard. They prepared finally the definitive map which was published in December 1952.

Now, the effect of that definitive map was that it became conclusive as to the particulars contained in it. That is clear from section 32 (4) of the Act of 1949. Subsection (4) (*b*) says:

> "where the map shows a bridleway, *or a road used as a public path*, the map shall be conclusive evidence that there was at the said date *a highway* as shown on the map, and that *the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse*, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid; . . ."

In 1952 the way at Herne Bay was shown on the definitive map as a "road used as a public path." The map was, therefore, conclusive evidence that in 1952 the public had a right of way on foot and on horseback or leading a horse.

The question is whether the local authority can now down-grade the way into a public footpath only. There was certainly no means of doing so under the Act of 1949. That Act provided for periodical reviews every five years. On those periodical reviews the highway authority could up-grade a way, if they had new evidence. So it could be up-graded, say, from a footway to a bridleway: see section 33 (2) (*e*): but there was no machinery by which the owner of land could get it down-graded. This court so held in *Morgan* v. *Hertfordshire County Council* (1965) 63 L.G.R. 456.

5. *The Act of 1968.*

This brings me to the Countryside Act 1968. In that Act Parliament put in a special provision so as to reverse *Morgan's* case. It enabled an owner to come and ask for a way to be down-graded. It is in Schedule 3, described as an amendment to section 33 of the Act of 1949. The owner could come in and get it down-graded if he had got new evidence which he could not reasonably have been expected to produce before.

In addition, in the Act of 1968, Parliament provided that all ways shown as a "road used as a public path" should be re-classified. It appears that

the words "road used as a public path" had given rise to a great deal of trouble. To avoid it, Parliament in the Act of 1968 said there was to be a special review: see Part III of Schedule 3 to the Act of 1968. Paragraph 9 (1) says:

> "In the special review the draft revision, and the definitive map and statement, shall show every road used as a public path by one of the three following descriptions—(*a*) a 'byway open to all traffic', (*b*) a 'bridleway', (*c*) a 'footpath', and shall not employ the expression 'road used as a public path' to describe any way."

So, there Parliament said in future the map had only to show these three: "byway open to all traffic," "bridleway," or a "footpath." The question is: when this re-classification is made, can the local authority go behind the definitive map which they had prepared in 1952 and, if so, to what extent?

Much light is thrown on this question by paragraph 10. It states:

> "The considerations to be taken into account in deciding in which class a road used as a public path is to be put shall be—(*a*) whether any vehicular right of way has been shown to exist, (*b*) whether the way is suitable for vehicular traffic . . . (*c*) where the way has been used by vehicular traffic, whether the extinguishment of vehicular rights of way would cause any undue hardship."

It seems to me that paragraph 10 shows that, on a re-classification, a "road used as a public path" can be down-graded so as to take away the vehicular rights, but not so as to take away any other rights, that is, it cannot take away rights of bridleway or footway. So, on the re-classification of these 400 yards at Herne Bay the local authority could take away any vehicular rights. That is what the inspector recommended, and that is what has been done. But, I do not think they could take away the right to go on horseback or lead a horse on it.

In support of an absolute right to re-classification, the Secretary of State relies on paragraph 9 (1) and (2) (*a*). At first sight it does look as though they could conduct a new inquiry and make a new classification altogether. But, I do not think this is right. The statute has limited the review to the following matters. (i) Under paragraph 10 of Schedule 3, they can consider the "roads used as public paths"; and can consider whether or not vehicles should be allowed on them. That is what they have done here. They have not allowed vehicles on this way at Herne Bay. (ii) Under section 33 of the Act of 1949 (as amended in 1968) there are circumstances in which the local authority can down-grade a way. But these circumstances are only when there is new evidence, or evidence not previously considered by the authority. In the present case it is admitted that there is no such evidence.

Those are the only grounds of review on a re-classification. There is no machinery to enable the local authority to reopen the whole question once more of whether or not the way was shown properly in the 1952 definitive map. I cannot think that Parliament ever contemplated that there should be such a reopening. The definitive map in 1952 was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants

AUTH151

then living. Such evidence might well have been lost or forgotten by 1975. So it would be very unfair to reopen everything in 1975. A

In the present case there is no evidence whatever to justify any change in the original classification. To my mind, the conclusive presumption in section 32 (4) (*b*) of the Act of 1949 remains unimpaired. There is nothing in the Act of 1968 which enables it to be displaced. It shows that at December 1952 there was a right of way on foot and a right of way on horseback or leading a horse. That right remains. It must be shown as B such on the review. The description must be as a "bridleway." It must appear on the new classification as a bridleway, that is, a right for a man on foot and on horse.

I agree with the views expressed by Ackner J. [1974] 1 W.L.R. 1479, 1483–1486, and I would allow the appeal, accordingly.

C

BROWNE L.J. I agree that this appeal should be allowed for the reasons given by Lord Denning M.R. and Ackner J. [1974] 1 W.L.R. 1479, 1483, 1486. But as we are differing from the majority of the Divisional Court and in deference to Mr. Woolf's argument, I feel that I should state my own views at the risk of some repetition.

Mr. Woolf's main argument, as I understand it, was that the "special review" dealt with in Part III of Schedule 3 to the Act of 1968, and in D particular in paragraph 9 of that Schedule, is something quite different from the reviews dealt with in section 33 of the Act of 1969, and should be conducted on quite different principles from what I will call a section 33 review. I gather that he suggests that there might be two reviews, one "special review" and one section 33 review, being carried on simultaneously. He says that the "special review" is not subject to the limitations applicable under section 33 of the Act of 1949 as amended by Part I of Schedule 3 E to the Act of 1968, and that on the "special review" the authority and the Minister are entitled to reopen and reinvestigate the whole question of the nature and extent of any right of way.

I cannot accept that the "special review" is something quite different from an ordinary review under section 33. The "special review" is defined in paragraph 7 of Part III of Schedule 3: F

> "In this Part of this Schedule the 'special review' carried out by any authority means the first review begun by that authority after the coming into force of this Act."

Paragraph 8 (2) (*b*) creates yet another category, a "limited special review," which is confined "to a review of roads used as public paths." Paragraph 13 (2) of the Schedule provides that this Part of this Schedule G shall be construed as one with Part IV of the Act of 1949—Part IV being the part of the Act of 1949 which contains all the provisions with which we are concerned. In my opinion the word "review" in paragraph 7 and in paragraph 8 (2) (*b*) must have the same meaning as in section 33 of the Act of 1949. The review is only "special" within the definition of paragraph 7 because it is the first review begun after the passing of the Act of H 1968. The "special review" is not only dealing with the matter of roads used as public paths, but is dealing with all the matters which would be covered by a section 33 review, with in addition this special matter provided

for in paragraph 9 of Schedule 3. In my judgment, a "limited special review" is simply, as Mr. Hoffman put it, a special review in which only part of the work of a special review is done, that is, the work of the re-classification of roads used as public paths. The suggestion that there should be two simultaneous reviews dealing with the same questions on different principles seems to me quite impossible. The only other thing, besides the fact that it is the first review begun after the Act of 1968, which makes the "special review" special is that it is to deal with a particular problem, the re-classification of roads used as public paths, which had not arisen in previous section 33 reviews and will not arise in future reviews.

Mr. Woolf relied strongly on paragraph 11 of Schedule 3 as showing that the "special review" was something quite different from an ordinary section 33 review. That paragraph provides that "Part II of this Schedule shall apply to a special review subject as follows. . . ." Part II of the Schedule is dealing with various procedural matters arising in connection with reviews, and by paragraph 1 applies to "Any review or further review begun under section 33 of the Act of 1949 after the coming into force of this Act . . ." Part II of the Schedule contains general provisions as to the procedure to be followed at reviews, including any later reviews after the "special review," at which the problem of re-classification of "roads used as public paths" will not arise. As the "special review" was going to deal with this particular problem, it was thought necessary for the purposes of the "special review" to extend Part II of the Schedule to make the specific provisions contained in paragraph 11 (2), (3) and (4) as to notices, objections and representations relating to re-classification. I find paragraph 11 no sufficient foundation for the conclusion that the "special review" is something quite different from a section 33 review and is to be conducted on a completely different basis. Mr. Woolf also says that if the appellant is right, a way shown in the previous map as "road used as a public path" could never be re-classified as a footpath and there would be no need to refer to "footpath" in paragraph 9 of Schedule 3. But, in my judgment, on the "special review" a way previously shown as a "road used as a public path" could be re-classified as a footpath in cases to which section 33 (1) and (2) of the Act of 1949 or Part I of Schedule 3 to the Act of 1968 apply, and it was therefore necessary to include a reference to footpaths in paragraph 9 to cover such cases.

I am entirely satisfied by the arguments in favour of allowing this appeal. It seems to me that the intention of the Act of 1949 was that all questions as to the extent, nature and incidents of footpaths, bridleways and roads used by the public for other purposes should be fully investigated and decided before the definitive maps were drawn up under that Act, and that the definitive maps should finally decide these questions, subject only to the exception at the end of section 32 (4) (*b*) to which Lord Denning M.R. has referred, namely, that although the map should be conclusive evidence of the matters therein specified, this is to be without prejudice to any question whether the public had at the relevant date any right of way other than a footpath or a bridleway. And the decisions made under the Act of 1949 were, of course, all subject to the provisions as to review contained in the

AUTH153

Act of 1949 itself in section 33. Lord Denning M.R. has referred to the procedure under which the definitive maps were drawn up under the Act of 1949 and it is clear that it was intended to be a thorough investigation. It was to be in three stages—the draft, provisional and definitive maps. Under section 27 (1), the authority was required to form an opinion as to the existence of footpaths, bridleways and other highways; they must:

> " carry out a survey of all lands in their area over which a right of way to which this Part of this Act applies is alleged to subsist, and shall, not later than the expiration of three years after that date or of such extended period as the Minister may in any particular case allow, prepare a draft map of their area, showing thereon a footpath or a bridleway, as may appear to the council to be appropriate, wherever in their opinion such a right of way subsisted, or is reasonably alleged to have subsisted, at the relevant date."

Under subsection (2) they were required also to show on the map:

> " any way which, in the opinion of the authority . . ., was at the relevant date, or was at that date reasonably alleged to be, a road used as a public path."

The Act contains provisions plainly intended to give all interested parties—that is the public and the landowners—a chance of objecting and appealing: see sections 29 and 31 of the Act. It seems to me that the view that the Act of 1949 was intended in general to be final is supported by the proviso to the amendment to section 33 (1) contained in Part I of Schedule 3 to the Act of 1968; because, as Lord Denning M.R. has pointed out, the authority is not to take account of new evidence:

> " if satisfied that the person prejudiced by the public right of way, or his predecessor in title, could have produced the evidence before the relevant date mentioned in the said section 33 (1) and had no reasonable excuse for failing to do so."

That is, the date when the original definitive map was drawn up.

The object and effect of paragraph 9 of Part III of Schedule 3 to the Act of 1968 is clearly to abolish the classification " road used as a public path," and in cases where the public had rights going beyond footpath or bridleway or both, to substitute the new description—" byway open to all traffic," which is defined as meaning " a public right of way for vehicular and all other kinds of traffic ": paragraph 9 (2) (*b*). The only test for a re-classification laid down by Schedule 3 is paragraph 10, which, as Lord Denning M.R. has pointed out, is directed only to the distinction between footpaths and bridleways, on the one hand, and rights of vehicular traffic, on the other. That paragraph begins with what seem to me to be very clear words:

> " The considerations to be taken into account in deciding in which class a road used as a public path is to be put shall be—(*a*) . . . (*b*) . . . (*c*). . . ."

There is no provision in Schedule 3 for re-classification under paragraph 9 as between footpaths and bridleways. There is no suggestion in this case

AUTH154

A that there are any grounds for re-classification of this way under section 33 (1) and (2) of the Act of 1949, or any new evidence admissible under Part I of Schedule 3 to the Act of 1968.

It seems to me unlikely that Parliament intended in 1968 that the whole question of the nature and extent of public rights of way which had been settled by the definitive maps under the Act of 1949 should be reopened many years later when the evidence on which the definitive decision was B made might well be no longer available.

Lord Denning M.R. has already referred to the presumption under section 32 (4) (*b*) of the Act of 1949, which provides:

> "(4) A definitive map and statement prepared under subsection (1) of this section shall be conclusive as to the particulars contained therein in accordance with the foregoing provisions of this section to the C following extent, that is to say—. . . (*b*) where the map shows a bridleway, or a road used as a public path, the map shall be conclusive evidence that there was at the said date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the D rights aforesaid; . . ."

That provision is not repealed or amended by the Act of 1968. In this case the relevant date is December 1952. I cannot see why the abolition in 1968 of the category of "road used as a public path" should shut out of consideration on the re-classification under paragraph 9 of E Schedule 3 the presumption that there was in 1952 a right of bridleway and footway over this road; and in my view it did not. I cannot agree with Lord Widgery C.J. [1974] 1 W.L.R. 1479, 1483, that after the category of "roads used as a public path" had been abolished, there was nothing on which the presumption could bite. It seems to me that when the authority or the Minister is approaching the problem of re-classification under the Act of 1968, one starts with the presumption that there was in 1952 a right of F way for horses and on foot. In my judgment this presumption could only be displaced on the re-classification by such subsequent events as are specified in section 33 (1) and (2) of the Act of 1949 or by new evidence admissible under Part I of Schedule 3 to the Act of 1968. In my view, the only powers to alter public rights in re-classifying given by Part III of Schedule 3 are those given by paragraph 10 of that Schedule. In certain G cases, of course, the other powers to alter rights conferred by the Act of 1949 as amended may arise. The only question to be considered under paragraph 10 is whether public rights extend to rights of vehicular traffic; and if they do, whether they ought to be extinguished. If it is decided that the way should not be classified as a "byway open to all traffic," I agree with Ackner J. [1974] 1 W.L.R. 1479, 1485, that there is no power to downgrade H it further, except in cases covered by section 33 (1) and (2) or by Part I of Schedule 3 to the Act of 1968. In my view, section 32 (4) (*b*) requires the way to be shown as a bridleway, which by definition includes a footway, unless it is shown by material admissible under section 33 as amended to

AUTH155

be only a footpath, in which case it can and should be shown as such under paragraph 9 of Schedule 3.

The inspector thought, rightly in my opinion, that section 32 (4) (*b*) applied, but in case he was wrong he went on to reopen and reconsider the whole question of what in fact the public rights in this way were. In my judgment he had no power to do this. In my judgment also the Minister was wrong in law in his interpretation of the statutes.

I would allow the appeal and order certiorari to go.

SIR JOHN PENNYCUICK. I too would allow this appeal. As we are differing from the majority in the Divisional Court, I think it right to set out my own views.

The National Parks and Access to Countryside Act 1949 provides by section 27 (1):

> ". . . the council of every county in England and Wales shall, as soon as may be after the date of the commencement of this Act, carry out a survey of all lands in their area over which a right of way to which this Part of this Act applies is alleged to subsist, and shall, not later than the expiration of three years after that date or of such extended period as the Minister may in any particular case allow, prepare a draft map of their area, showing thereon a footpath or a bridleway, as may appear to the council to be appropriate, . . ."

Then subsection (2) is in the following terms:

> "A map prepared in accordance with the last foregoing subsection shall also show thereon any way which, in the opinion of the authority carrying out the survey (hereinafter referred to as 'the surveying authority') was at the relevant date, or was at that date reasonably alleged to be, a road used as a public path."

Subsection (6) contains definitions of "footpath," "bridleway" and "public path" which call for no comment. Then there is a definition of "road used as a public path" in the following terms:

> "'road used as a public path' means a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used."

I shall refer to that expression "road used as a public path" throughout in inverted commas. The definition is of outstanding obscurity, but it appears to denote a public way which is mainly used as a footpath or bridleway but is not exclusively so used, the implication being apparently that there is also occasional but subsidiary use for carts or other wheeled traffic.

The succeeding sections lead through various procedural stages to section 32 which prescribes the preparation of a definitive map. Finally, section 33 provides for periodical revision of the map having regard to intervening events, and subsection (2) of that section provides that the events so occurring as aforesaid to which the authority shall have regard shall include five specified classes of events.

A It will be observed that under these provisions as they stood unamended once a highway had been shown on the map as a "road used as a public path," the map was conclusive evidence that there was at the relevant date a right of way on foot or with horse, i.e., a bridleway as well as a footpath, and that the map can only be revised in this respect by a reference to a limited range of events intervening between the original preparation of the map and the subsequent revision.

B I turn then to the Countryside Act 1968. Section 31 of that Act provides that "The Acts mentioned in Schedule 3," which include the Act of 1949, "shall be amended in accordance with that Schedule." Part I of Schedule 3 extends in a specified respect the events mentioned in section 33 of the Act of 1949 to which an authority shall have regard in carrying out its periodical revision. Part III is of crucial importance C in the present case. Part III must be looked at as a whole, but I will read certain paragraphs from it. Paragraph 7: "In this Part of this Schedule the 'special review' carried out by any authority means the first review begun by that authority after the coming into force of this Act."

Paragraph 9: "(1) In the special review the draft revision, and the definitive map and statement, shall show every road used as a public path by one of the three following descriptions—(*a*) a 'byway open to D all traffic,' (*b*) a 'bridleway,' (*c*) a 'footpath,' and shall not employ the expression 'road used as a public path' to describe any way. . . . (3) In this paragraph 'road used as a public path' means—(*a*) a way which is shown as a 'road used as a public path' in the last definitive map and statement, or (*b*) a way which is shown as a 'bridleway' or as a 'footpath' in the last definitive map and statement, and which in the opinion of the E authority ought to have been there shown as a road used as a public path . . ."

Paragraph 10: "The considerations to be taken into account in deciding in which class a road used as a public path is to be put shall be—(*a*) whether any vehicular right of way has been shown to exist, (*b*) whether the way is suitable for vehicular traffic having regard to the position and width of the existing right of way, the condition and state F of repair of the way, and the nature of the soil, (*c*) where the way has been used by vehicular traffic, whether the extinguishment of vehicular rights of way would cause any undue hardship."

Then paragraph 11 prescribes certain consequential procedure.

The effect of paragraph 9 is that on the occasion of the special review, i.e., the first review under section 33 of the Act of 1949 begun G after the coming into force of the Act of 1968, every way shown on the definitive map as then existing as a "road used as a public path" must be re-classified under one of three classes, namely, "(*a*) a 'byway open to all traffic,' (*b*) a 'bridleway,' (*c*) a 'footpath.'" This represents, not a separate review from the periodical review, but an additional function to be carried out upon the periodical review. Paragraph 11 H merely introduces consequential machinery upon that review.

No difficulty in giving effect to paragraph 9 arises with regard to class (*a*), since paragraph 10 lays down in precise and strictly confined terms the considerations to be taken into account in deciding whether

AUTH157

or not a way of this character, i.e. a "road used as a public path," is to be classified as a "byway open to all traffic." Neither paragraph 9 nor paragraph 10, however, affords any clue whatever as to how a way of this character which is not placed within class (*a*) shall be dealt with as between class (*b*) and (*c*). On the contrary, paragraph 10, while using the expression "in deciding in which class a road used as a public path is to be put," i.e., into which of the three classes, is so worded as to exclude any consideration other than those specified in the paragraph. This is clear from the opening words "The considerations to be taken into account . . . shall be." None of those considerations have any relevance at all as between class (*b*) and class (*c*). Upon that language of Part III of the Schedule two rival contentions are put forward in the present case.

Mr. Hoffman for the appellant contends that a way which is a "road used as a public path" at the date of the special review and which is not placed in class (*a*) must necessarily be placed in class (*b*). For as the law stood under the Act of 1949 it must conclusively be treated as a bridleway (section 32 (4)) and there is no power under section 33 or under Schedule 3 itself to alter its status as such. This contention found favour with Ackner J. [1974] 1 W.L.R. 1479, 1485.

Mr. Woolf for the Minister contends that paragraph 9 confers on the authority a duty to consider the quality of every "road used as a public path" upon the evidence available at the date of the review, and that the authority must decide upon that evidence whether a road should be placed in class (*a*), class (*b*) or class (*c*). The considerations enumerated in paragraph 10 should not be regarded as exhaustive so as to prevent such a way being put in class (*c*) if the evidence so warrants. And finally section 32 (4) of the Act of 1949 does not bite upon this fresh examination. This contention found favour with Lord Widgery C.J. and Milmo J., at p. 1483.

I accept the basic contention of Mr. Hoffman, though not every one of the points which he made in support of that contention. It seems to me that Part III fails to provide any criterion for deciding whether a way which does not come within class (*a*) shall come within class (*b*) or within class (*c*). Apart from paragraph 10, it might be right to devise a criterion and I think the court should seek to do so; but it seems that this approach is precluded by the restrictive terms of paragraph 10. In the absence of any means of deciding between class (*b*) and class (*c*), it seems to me that a way which under section 32 (4) of the Act of 1949 is conclusively to be treated as a bridleway must retain that status.

I should say that my view is in one respect not perhaps on all fours with those of Lord Denning M.R. and Browne L.J. Part III I think does involve a consideration and examination of every "road used as a public path" and where appropriate the regrading of such a road, and not a mere substitution of intelligible nomenclature for the expression "road used as a public path." My reason for this view is that it would be impossible, without fresh consideration, to decide whether or not a road should be placed in class (*a*). I think that if, contrary to my view, Part III contained any provision for sorting out ways as between class (*b*) and class (*c*), then this provision would by necessary inference override section 32 (4).

AUTH158

Mr. Woolf advanced one argument in which I found great force, namely that one must construe Part III so as to give some effective content to class (*a*). If every "road used as a public path" must be regarded as at least a bridleway, then apparently there is no content at all for class (*c*). Mr. Hoffman submitted that some, admittedly very little, content can be given to class (*c*) by placing in it ways which, even if there were no provision for re-classification, would be downgraded under the current review of footpaths under section 33 (2) of the Act of 1949. I do not find this at all a satisfactory reconciliation. But I find it preferable to rewriting by implication the relevant provisions of Part II, such as is involved in Mr. Woolf's contention. I suspect that there has been some slip up in the drafting of Part III; but one must take these provisions as one finds them and we are not entitled to rewrite them by introducing words which are not here.

I would allow this appeal.

*Appeal allowed with costs in Court of Appeal and Divisional Court.*
*Decision of Minister quashed as being erroneous in law: way to be marked as a bridleway.*
*Leave to appeal on condition that Secretary of State will not seek to disturb order for costs and will pay costs of both sides in House of Lords.*

Solicitors: *Cripps, Harries, Hall & Co., Tunbridge Wells; Treasury Solicitor.*

A. H. B.

---

[COURT OF APPEAL]

## REGINA *v.* HALPIN

1975 March 24, 25, 26 Geoffrey Lane L.J., Wien and Stocker JJ.

*Evidence—Documentary—Public document—Annual returns of limited company—Company's statutory duty to make accurate returns to Registrar of Companies—Official in registry filing record and preserving it for inspection by members of the public—Whether file admissible in evidence—Companies Act* 1948 (11 & 12 *Geo.* 6, *c.* 38), *s.* 124 [1]

[1] Companies Act 1948, s. 124: "(1) Every company having a share capital shall, once at least in every year, make a return containing with respect to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Part I of Schedule 6 to this Act, . . ."

AUTH159

currency other than sterling; and that, as I have indicated in my speech in *The Despina R.* appeal, is correct.

The respondent is a French company which conducts its business basically in French francs. In order to pay the receivers of the onions in cruzeiros the respondent had to dip into its assets to produce the francs required to acquire those cruzeiros. In what foreign currency was the respondent entitled to make its claim here? Should it be in cruzeiros, as the appellant claims? Or should it be in French francs as the respondent claimed and the arbitrators awarded?

My Lords, in this case also the goal of restitutio in integrum is the aim. In cases such as this for damages for breach of contract—subject of course to questions of remoteness—the question is what is truly the claimant's loss resulting from the breach of contract? True, the direct disbursement was in cruzeiros: but in order to make that disbursement the respondent had perforce to expend francs, against which by the time of the award cruzeiros had steeply (and indeed predictably) declined. The arbitrators found:

> " It was reasonable to contemplate that the charterers, being a French corporation and having their place of business in Paris, would have to use French francs to purchase other currencies to settle cargo claims arising under the bills of lading."

In my opinion the award was properly made in French francs, and I would dismiss this appeal.

LORD KEITH OF KINKEL. My Lords, I agree that each of these appeals should be dismissed for the reasons stated by my noble and learned friend Lord Wilberforce.

*Appeals dismissed.*

Solicitors: *Holman, Fenwick & Willan; Hill, Dickinson & Co.; William A. Crump & Son; Holman, Fenwick & Willan.*

---

[HOUSE OF LORDS]

SUFFOLK COUNTY COUNCIL . . . . RESPONDENTS

AND

MASON AND OTHERS . . . . . APPELLANTS

1979 Feb. 19, 20; March 29

Lord Diplock, Lord Morris of Borth-y-Gest, Lord Hailsham of St. Marylebone, Lord Edmund-Davies and Lord Fraser of Tullybelton

*Highway—Right of way—Definitive map—Map showing footpath—Footpath established to be ancient public cartway—Whether map conclusive that right of way on foot only—National Parks and Access to the Countryside Act* 1949 (12, 13 & 14 *Geo.* 6, *c.* 97), *ss.* 27 (6), 32 (4) (*a*)

On a definitive map published by the plaintiff council in



AUTH160

1961 a lane giving access to land later acquired by the defendants was shown as a footpath. Subsequent research having established that the lane had long ago been used as a public cartway, the defendants sought to use the lane for vehicular access to their land. The council, relying on sections 27 (6) and 32 (4) (*a*) of the National Parks and Access to the Countryside Act 1949,[1] claimed a declaration that the lane was a highway over which the public had a right of way on foot only. The judge held that section 32 (4) (*a*) did not preclude the existence of rights of way additional to the right of way on foot shown on the definitive map, and granted the defendants a declaration that the public had a right of way over the land that included the passage of vehicles. The Court of Appeal allowed an appeal by the council.

On appeal by the defendants: —

*Held*, dismissing the appeal (Lord Hailsham of St. Marylebone and Lord Fraser of Tullybelton dissenting) that on a literal reading of section 32 (4) (*a*) of the Act of 1949 together with the definition of "footpath" in section 27 (6) the showing of a right of way as a "footpath" on the definitive map was conclusive that at the relevant date there was a right of way on foot and that there was not any more extensive right; that that literal reading was consistent with a purposive construction of the provisions of the Act in question; and that, accordingly, the council were entitled to the declaration claimed (post, pp. 710D–F, 713E–F, 714H—715G, 716F–G, 718C–D, 726D–E).

*Attorney-General* v. *Honeywill* [1972] 1 W.L.R. 1506 and *Reg.* v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891, C.A. considered.

Decision of the Court of Appeal [1978] 1 W.L.R. 716; [1978] 2 All E.R. 618 affirmed.

The following cases are referred to in their Lordships' opinions:

*Attorney-General* v. *Honeywill* [1972] 1 W.L.R. 1506; [1972] 3 All E.R. 641.

*Reg.* v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891; [1975] 3 W.L.R. 172; [1975] 3 All E.R. 243, C.A.

The following additional case was cited in argument:

*Stock* v. *Frank Jones (Tipton) Ltd.* [1978] 1 W.L.R. 231; [1978] I.C.R. 347; [1978] 1 All E.R. 948, H.L.(E.).

APPEAL from the Court of Appeal.

This was an appeal by the defendants, Edgar Stanley Lorimer Mason and four others, from the judgment of the Court of Appeal (Lord Denning M.R., Ormrod and Geoffrey Lane L.JJ.), given on February 7, 1978, whereby they allowed an appeal by the respondent plaintiffs, the Suffolk County Council, from a judgment of Sir Douglas Frank Q.C., sitting as a deputy judge of the Queen's Bench Division, given on March 10, 1977. By that judgment, Sir Douglas Frank dismissed the council's claim against the defendants, on a summons dated May 11, 1976, for a declaration that on a true construction of the National

[1] National Parks and Access to the Countryside Act 1949, s. 27 (6): see post, p. 711A–C.
S. 32 (4) (*a*): see post, p. 713A–B.

AUTH161

Parks and Access to the Countryside Act 1949 the fact that the first revised definitive map covering Lothingland Rural District showed the way known as Marsh Lane in the Parish of Kessingland as a footpath was conclusive that at the relevant date, January 1, 1961, Marsh Lane was a highway over which the public had a right of way on foot only, and granted to the defendants the declaration sought in their counterclaim, viz. a declaration that Marsh Lane had in 1835 been a public highway over which the public had had a full right of way including a right of way for the passage of vehicles, that no order had been made to determine such public rights thereover and that under the Highways Act 1959 the way remained a public highway over which the public had a full right of way including the passage of vehicles. On the appeal to the House of Lords, the defendants did not seek to restore the judgment of Sir Douglas Frank in so far as it related to the counterclaim.

The facts are stated in their Lordships' opinions.

*Gerald Moriarty Q.C.* and *Stuart Sleeman* for the defendants. The definitions of "footpath" and "bridleway" are both positively exclusive. They are the traditional definitions. Yet, there is said to be a saving with regard to bridleways (and roads used as public paths), but not with regard to footpaths. If this is so, it should be capable of some explanation, and none has been suggested. The reason why "bridleway" is defined as it is is that the Act of 1949 is concerned with access to the countryside, and one would not be driving animals if one were visiting the countryside. The proviso to section 32 (4) (*b*) can be explained in a way other than that in which the Court of Appeal did so, but they do not agree with Sir Douglas Frank Q.C. that it is otiose. The Act of 1949 did not set out, either by its long title or by the definitions, to extinguish any highway. [Reference was made to *Attorney-General* v. *Honeywill* [1972] 1 W.L.R. 1506 and *Reg.* v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891.] The defendants adopt what L. H. Hoffmann says in his article, "Footpaths in a Statutory Maze," (1979) 95 L.Q.R. 21. They do not seek any declaration on their counterclaim.

*Alan Fletcher* for the council. The Court of Appeal are right, for the reasons that they give. Section 32 (4) (*a*) of the Act of 1949, when read with the definition of "footpath" in section 27 (6), states plainly that where the map shows a footpath the map shall be conclusive evidence that there was at the relevant date a highway over which the public had a right of way on foot only. The question is whether the maxim "once a highway, always a highway" is so sacrosanct that Parliament cannot have intended to mean what it said. The whole scheme of the Act of 1949, and in particular the provisos to section 32 (4) (*b*) and (*c*), do show that Parliament intended that designation as a footpath should be conclusive evidence that there was a public right of way limited to a footpath. [Reference was made to L. H. Hoffmann, "Footpaths in a Statutory Maze," 95 L.Q.R. 21; *Reg.* v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891 and the Act of 1949, s. 31.]

[LORD EDMUND-DAVIES. What do the local authority do if they are in doubt as to whether the way is a footpath or a bridleway? Would

AUTH162

they have to put it down as a footpath? That would not mean that it was not a bridleway, simply that they were not satisfied that it was.] A

If they put it down as a bridleway, the owner of the soil would win his appeal to the Minister, or to quarter sessions. [Reference was made to the Act of 1949, s. 27.] Unless throughout Part IV of that Act "footpath" is read strictly according to the definition, one gets a nonsense in section 27 (1): it would mean that the authority would have to include on the map any road where the public had a right to walk on the carriageway. B Parliament was concerned to distinguish clearly between footpaths and bridleways, but was not concerned with vehicular ways. That is why Parliament intended to say that designation as a footpath should be conclusive, but not that designation as a bridleway should be. [Reference was made to *Attorney-General* v. *Honeywill* [1972] 1 W.L.R. 1506.] Browne L.J. was right in what he said in *Reg.* v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891, 901, except that he C stated it too widely with regard to roads. The Act is concerned with *classifying* paths, so that the council are assisted by *Morgan* v. *Hertfordshire County Council* (1965) 63 L.G.R. 456, where it was said that plain words should prevail. [Reference was made to *Stock* v. *Frank Jones (Tipton) Ltd.* [1978] 1 W.L.R. 231.]

*Moriarty Q.C.* in reply. On the definitions, and the precision with D which they are used, see, again, the definition of "road used as a public path." If the authority wished to distinguish between a footpath and a bridleway, there is no statutory authority for them to do so: see *per* Lord Denning M.R. in *Reg.* v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891, 897G, so that the conclusiveness section carries through the indecision in "road used as a public path." The authority E must have the option to do as they did here: to classify the way as a footpath or as a road used as a public path on the ground that it is used mostly as a footway. If they came to the conclusion that it was a carriageway, they *ought to* put it down as a road used as a public path rather than as a footpath, but that is no bar to their discretion to do the latter. They would then get the benefit of the proviso in section 32 (4) (*b*). If they do this, there is no question of extinction. So, even accepting the precise F juxtaposition of sections 27 and 32 contended for by the council, there are nevertheless inconsistencies in their operation. Although "only" appears in the definition of "footpath," see *per* Bristow J. in *Attorney-General* v. *Honeywill* [1972] 1 W.L.R. 1506, 1510. As regards diversion or closure, see Schedule 1 to the Highways Act 1959.

Their Lordships took time for consideration. G

March 29. LORD DIPLOCK. My Lords, on the definitive map and statement prepared by the East Suffolk County Council in 1956 under section 32 of the National Parks and Access to the Countryside Act 1949 there was shown as a "footpath" a right of way in the parish of Kessingland which is commonly known as "Marsh Lane." It runs in H a general southerly direction from the village some little distance inland from what is now the sea-shore. No alteration affecting this "footpath" was made on the first revised definitive map prepared by the

AUTH163

county council under section 33 of the Act, for which the review date was January 1, 1961; and there has not yet been any further review. Since January 1, 1961, however, archaeological researches undertaken by the rector of Somerleyton have incontrovertibly shown that Marsh Lane was originally a public highway leading to an ancient port from which the sea has since receded, and had continued to be used by the public as a cartway until the middle of the 19th century when such use ceased. The question in this appeal is whether the fact that Marsh Lane is still shown as a "footpath" on the definitive map that is now in force is conclusive evidence that the only purpose for which it can be used now by the public is as a right of way on foot only.

The appellants are the owners of a caravan site by the sea-shore to which Marsh Lane would provide convenient vehicular access. They claim that it is available to be used for that purpose by members of the public who are their customers. The respondents, the successors to the East Suffolk County Council, dispute this claim. In order to settle the dispute they commenced proceedings against the appellants in the Queen's Bench Division by way of originating summons claiming a declaration:

> "that on a true construction of the National Parks and Access to the Countryside Act 1949 the fact that the first revised definitive map of the East Suffolk County Council covering Lothingland Rural District shows the way known as Marsh Lane in the parish of Kessingland as a footpath is conclusive evidence that at the relevant date, January 1, 1961, the said Marsh Lane was a highway over which the public had a right of way on foot only."

(The wording of this declaration follows the wording of section 32 (4) (*a*) of the Act with the substitution for the word "footpath" of the definition of that term to be found in section 27 (6).)

The appellants counterclaimed for a declaration that Marsh Lane was in 1835 and still remains a public highway over which the public has a full right of way, including a right of way for the passage of vehicles.

Sir Douglas Frank Q.C. (sitting as a deputy judge of the Queen's Bench Division) followed the decision of Bristow J. in *Attorney-General* v. *Honeywill* [1972] 1 W.L.R. 1506 in preference to a dictum of Browne L.J. in *Reg.* v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891, 901. He refused to make the declaration claimed by the county council and made one in accordance with the appellants' counterclaim. An appeal by the county council from this judgment was allowed by the Court of Appeal. They made a declaration in the terms sought by the county council and dismissed the appellants' counterclaim. In this appeal to your Lordships' House the appellants seek to reverse the judgment of the Court of Appeal only in so far as it made the declaration claimed by the county council. They have abandoned their own counterclaim.

The law of highways forms one of the most ancient parts of the common law. At common law highways are of three kinds according to the degree of restriction of the public rights of passage over them.

AUTH164

A full highway or "cartway" is one over which the public have rights of way (1) on foot, (2) riding on or accompanied by a beast of burden and (3) with vehicles and cattle. A "bridleway" is a highway over which the rights of passage are cut down by the exclusion of the right of passage with vehicles and sometimes, though not invariably, the exclusion of the right of driftway, i.e., driving cattle, while a footpath is one over which the only public right of passage is on foot.

At common law too a public right of way of any of the three kinds has the characteristic that once it has come into existence it can be neither extinguished nor diminished by disuse, however long the period that has elapsed since it was last used by any member of the public—a rule of law that is the origin of the brocard "once a highway, always a highway."

So, like Sir Douglas Frank, I approach the question of construction of the National Parks and Access to the Countryside Act 1949 with the presumption that, unless its terms are so plain and free from ambiguity as to compel a contrary conclusion, Parliament cannot have intended that existing public rights of way should be extinguished or diminished by what is demonstrably a mistake made by an administrative authority responsible for carrying out the provisions of the Act.

My Lords, I agree with my noble and learned friend Lord Morris of Borth-y-Gest that if one applies a literal construction to the words used in those provisions of the Act which state the evidential consequence of the entry of a footpath on the definitive map (viz., section 32 (4) (*a*) and the definition of "footpath" in section 27 (6)), it leads inexorably to the conclusion that the entry on a definitive map of a right of way as a "footpath," even though it be as the result of a mistake, is conclusive evidence that there is no more extensive public right of passage over it than that of passage on foot. Nevertheless, it seemed to me at first that this conclusion, which, like my noble and learned friend, Lord Hailsham of St. Marylebone, I found startling, might be avoided by giving a purposive rather than a literal construction to the Act; but further reflection has convinced me that a purposive construction also leads to the same result though by a route that involves close consideration of the scheme of Part IV of the Act taken as a whole.

The purposes for which the Act was passed are set out in the long title. Those that are relevant to the instant appeal are:

> ". . . to make further provision for the recording, creation, maintenance and improvement of public paths and for securing access to open country, and to amend the law relating to rights of way; . . ."

The provisions which give effect to these purposes are contained in Parts IV and V of the Act; those relating to the recording of public paths by showing them on a definitive map being found in Part IV, sections 27 to 41. The relevant definitions for this Part make it clear that the public paths referred to in the long title are rights of way restricted to, or mainly used by, pedestrians or horse-riders. They are to be found in section 27 which deals with the survey and preparation of a draft map. This is the first step in the procedure leading

AUTH165

to the preparation of the definitive map on which public paths are to be recorded. Subsection (6) provides:

> "In this Part of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say— 'footpath' means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road; 'bridleway' means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway; 'horse' includes pony, ass and mule, and 'horseback' shall be construed accordingly; 'public path' means a highway being either a footpath or a bridleway; 'right of way to which this Part of this Act applies' means a right of way such that the land over which the right subsists is a public path; 'road used as a public path' means a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used."

By section 27 (1) the draft map to be prepared by the county council as the surveying authority must show

> "a footpath or a bridleway, as may appear to the council to be appropriate, wherever in their opinion such a right of way subsisted, or is reasonably alleged to have subsisted, at the relevant date." (Viz. in the instant case January 1, 1952.)

By subsection (2) the map must also show any way which, in the council's opinion, was or was reasonably alleged to be a road used as a public path.

A right of way must be shown under a single description only. It cannot be shown as being both a "footpath" and a "road used as a public path."

The definition of "footpath" and "bridleway" each contain a positive and a negative element, both of which must be satisfied before either may be shown on the draft map. There *must* be a right of way of a particular limited kind; there *must not* be a right of way of a more extensive kind. The definition of a "road used as a public path," on the other hand, contains positive elements only. It must be a full highway, for otherwise it would be a public path, and it must be mainly used for the same purposes as a "footpath" or a "bridleway."

If at this stage of the procedure a surveying authority, before it showed a right of way as a "footpath" on the draft map, had to satisfy itself not only that, at the relevant date, there was a right of way on foot, but also that there was no more extensive right of passage, to give a literal meaning to the words of the definition of "footpath" might have led to a dilemma which Parliament could not have intended. Thus in a case where a surveying authority, although satisfied that there was a right of way on foot, was not convinced that there was no more extensive right of way, it would be compelled to omit the right of way from the draft map altogether. It would not be entitled to show the

AUTH166

right of way as a "footpath," because it did not comply with the negative element in the definition of "footpath," nor as a "bridleway" or "road used as a public path," because it did not comply with the positive element in those definitions. But this potential difficulty arising from the negative element in the definition of "footpath" which might justify the conclusion that for the purpose of entry on the draft map the positive element alone was relevant has, as it seems to me, been overcome by requiring the surveying authority to show a "footpath" or a "bridleway" on the draft map wherever there is reasonably alleged to be one. So if some member of the public or parish council alleged that the negative element in the definition of a "footpath" was not satisfied because there were more extensive rights of way over it, the surveying authority, unless it thought the allegation to be unreasonable, would be required to show the right of way either as a "bridleway" or as a "road used as a public path" whichever might be appropriate to the more extensive rights alleged.

The sections which follow section 27 deal with the further steps which have to be taken before the definitive map is completed and published. They provide an elaborate procedure for enabling representations or objections to be made to the surveying authority (with a right of appeal to the minister) as to anything contained in or omitted from the draft map. Such representations and objections can be made not only by persons interested in the land, but also by members of the public, so that a person who alleges that a right of way as shown on the draft map ought to be upgraded from "footpath" to "bridleway," or from "bridleway" to "road used as a public path," has an opportunity at this stage of adducing evidence to make good his claim.

The next step in the procedure is the preparation by the surveying authority of a provisional map incorporating any modifications to the draft which, as a result of representations, have been accepted by the surveying authority or upheld by the minister on appeal.

The procedure for verifying the accuracy of what is eventually to be shown on the definitive map does not stop here; though the remaining step is not likely to bring to light the existence of more extensive rights of way than are shown on the provisional map. Its presence may, however, supply an explanation of why a reasonable allegation that a right of way of a particular kind exists is treated as sufficient justification for entering it on the draft map. The owner, lessee, or occupier of the soil over which any right of way shown on the provisional map passes has the right under section 31 to apply to quarter sessions (now the Crown Court) for declarations inter alia that a right of way shown on the provisional map either does not exist or is there shown as being more extensive than it really is; and, if he does so, the onus of proving the existence of the disputed right lies on the county council. But failing any proceedings in the Crown Court under this section, an entry of a right of way that originally appeared on the draft map on no firmer basis than that the surveying authority was of opinion that an allegation that it existed was a reasonable one is carried through to the definitive map unaltered.

The final step in the procedure is the publication of the definitive

AUTH167

map. The probative effect of the particulars of rights of way contained in it are dealt with in section 32 (4):

> "A definitive map and statement prepared under subsection (1) of this section shall be conclusive as to the particulars contained therein in accordance with the foregoing provisions of this section to the following extent, that is to say—(*a*) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date specified in the statement a footpath as shown on the map; (*b*) where the map shows a bridleway, or a road used as a public path, the map shall be conclusive evidence that there was at the said date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid; and (*c*) where by virtue of the foregoing paragraphs of this subsection the map is conclusive evidence, as at any date, as to a public path, or road used as a public path, shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at the relevant date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date."

On a literal reading of paragraph (*a*), if one interpolates the whole of the definition of "footpath" from section 27 (6), as the paragraph directs, it seems plain that the showing of a right of way as a "footpath" on the definitive map is conclusive of the negative element in that definition as it is of the positive element: there *was* on the relevant date a right of way on foot, there *was not* then any more extensive public right of passage. In contrast with this, paragraph (*b*) does not direct one to interpolate the definition of "bridleway" from section 27 (6) and so make the entry of a "bridleway" evidence of the negative element in that definition. Such entry and that of a "road used as a public path" are not even conclusive evidence of the whole of the positive element in those definitions. A "bridleway" may include a driftway, a "road used as a public path" must include a cartway; whereas the corresponding entry on the definitive map is not conclusive evidence of any more extensive rights of way than a right of way on foot and a right of way on horseback or leading a horse. Having regard to the precisely defined rights of way of which alone these two entries are made conclusive evidence the inclusion in paragraph (*b*) of what has been referred to as the proviso is at first sight puzzling. One explanation, as it seems to me, is that without it, the entry of a "bridleway" or a "road used as a public path" might, because of the detailed inquiries which precede the making of the map, come to be regarded as some evidence, albeit not conclusive, of the existence of those more

AUTH168

extensive rights of way that are included in the definitions. The proviso would prevent the entry having any such more extensive evidential effect. I do not therefore regard the proviso as entirely otiose nor do I think that the absence from paragraph (*a*) of a similar proviso throws a decisive light upon the meaning of that paragraph. The significant pointer to a rational explanation of why the entry on the definitive map should be conclusive evidence of the negative element in the definition of "footpath" but not of the negative element in the definition of "bridleway" is in my view to be found in the limited nature of rights of passage of which the entry of either a "bridleway" or a "road used as a public path" are made conclusive evidence despite the fact that the definitions of those expressions embrace wider rights. To this I will revert after a brief reference to the provisions for periodical revisions of the definitive map.

The entry on the definitive map does not necessarily remain conclusive evidence for ever. Section 33 makes provision for quinquennial revisions—though these do not appear in practice to have been carried out punctually. On a revision, entries on the definitive map which require modification as a result of events that have occurred since the date of the last revision may be modified accordingly. Among the subsequent events which call for a modification of an entry is the discovery by the county council of new evidence which, if it had been known to them at the time of the last revision, would have resulted in their being required to enter it on the definitive map as a highway of a different description. So an entry made by mistake because of lack of historical knowledge would, if the Act were administered in accordance with its terms, endure for a maximum of five years after the error was discovered. These provisions for revision have since been amended by the Countryside Act 1968; but this cannot affect the construction of the Act of 1949 as it was originally enacted.

My Lords, this lengthy excursus into the provisions of the Act relating to the preparation and legal effect of a definitive map, which provide the context in which section 32 (4) (*a*) falls to be construed, has been undertaken in an endeavour to discover whether some rational explanation can be found of a Parliamentary purpose: (i) to allow the historic common law rule of "once a highway, always a highway" to be overriden as a result of a mistake made by an administrative authority in recording the extent of public rights of passage over an existing right of way; and (ii), more particularly, to differentiate between those cases where the mistake is in showing a "footpath" and those where it is in showing a "bridleway," by providing that the former entry but not the latter is conclusive of the absence of any more extensive rights of passage than those stated in the positive element of the relevant definition.

In the result I do not think that to give to the words of section 32 (4) (*a*) their literal meaning would defeat the purposes disclosed by a consideration of the whole fasciculus of provisions relating to the preparation of definitive maps and the legal effect of the particulars of public rights of way that are shown on them. The conclusions that I have reached are:

AUTH169

1. The only classes of users of highways who are intended to be benefited by the recording of public rights of way are those who may conveniently be referred to as ramblers and riders; they go on foot or horseback. Motorists are not among the intended beneficiaries, nor are cattle drovers.

2. Consequently, the only kinds of highways with which the relevant provisions of the Act are concerned are those which are exclusively, or mainly, used either by ramblers alone or by both riders and ramblers. Footpaths are much commoner than bridleways and a much larger part of the electorate are ramblers than are riders.

3. The way in which ramblers and riders are to be benefited is by providing them with an easy and conclusive way of proving their rights to walk or ride on particular routes.

4. The interests of ramblers and of riders as users of a public path are liable to conflict, not simply in their simultaneous use of a limited width of passage but as a consequence of the poaching of the surface by hoofmarks in wet weather. It is in the interests of ramblers that riders as well as motorists should be excluded from the paths they use.

5. Regard must be had too to the considerations (a) that there are provisions for careful investigation of all claims by members of the public that rights of way of any of the three descriptions existed on the relevant date, (b) that the procedure is biased in favour of the recognition of the more extensive claims unless the owner of the soil carries his opposition as far as quarter sessions, and (c) erroneous entries on a definitive map which fail to recognise fully all existing rights of passage do not have permanent consequences, since they can be corrected after a lapse of time which it was contemplated by the Act should not exceed five years. These, and particularly the last, are in my view sufficient to explain a Parliamentary purpose to ensure, at least for the time that a particular definitive map remains in force, that ramblers should enjoy what is shown on the map as a "footpath" without disturbance by either riders or motorists.

6. I find it regrettable but cannot stigmatise it as irrational that the same Parliamentary tenderness is not extended to riders in their use of "bridleways." The entry of a highway as a "bridleway" is no evidence that there are not more extensive rights of way over it: but here the conflicting interest is that of motorists—and they form a larger part of the electorate than riders.

For these reasons I see no escape from the conclusion that in the instant case the first revised definitive map is conclusive evidence of a fact which it is now conceded has always been untrue, and that the Suffolk County Council are entitled to the declaration claimed. I would dismiss the appeal.

LORD MORRIS OF BORTH-Y-GEST. My Lords, among the various objects of the National Parks and Access to the Countryside Act 1949 as set out in its long title was that of making further provision for the recording, creation, maintenance and improvement of public paths and securing access to open country and to amend the law relating to rights of way. "Public path" by definition meant a highway being either a foot-

AUTH170

path or a bridleway. The Act required county councils (see section 27 (1)) to carry out a survey of all lands in their area over which a right of way was alleged to subsist and within a time limit to prepare a draft map of their area showing thereon a footpath or a bridleway wherever in the opinion of the county council such a right of way subsisted. In terms of section 27 (2) the map had also to show "a road used as a public path."

Elaborate provisions were laid down in the Act as to the procedures to be followed (see sections 27 and 28). Full opportunities were given for the making of representations in regard to the draft map (see section 29). The next stage involved the preparation of a provisional map (see section 30). Certain disputes in regard to it could at the instance of landowners and others be determined by quarter sessions (see section 31). The next stage was the preparation of a definitive map (see section 32).

All the procedures were duly followed. The original draft was in 1952. The definitive map (with its statement) was sealed on October 2, 1956. It showed what has been called "Marsh Lane" as a footpath. Pursuant to statute there was later a review (dated January 1, 1961) of the definitive map. There was no change as regards the showing of what has been called Marsh Lane as a footpath.

At no time within the periods above referred to was any suggestion made by anyone or any evidence advanced to the effect that Marsh Lane was other than a footpath. No one suggested that Marsh Lane was either a bridleway or a road used as a public path. At a later time the learned historical researches of Dr. Brooks enabled the view to be advanced that there had been a period in the past when Marsh Lane had been used as a carriageway. It is common ground that this was never within the range of any contemporary knowledge or belief or even surmise. No one knew; no one guessed. The significance of Dr. Brooks's revelations will have to be taken into account on the next review under the provisions of the Act of 1949 as amended by the Countryside Act 1968 (see Schedule 3 to the Act of 1968).

It would be of assistance to the appellants (who are interested in a nearby caravan park) if the view could be held that what is called Marsh Lane could now be used as a carriageway in spite of its designation on the definitive map as a footpath.

To resolve the matter the respondents (as the successors to the former East Suffolk County Council) brought the present action for a declaration that on the true construction of the Act of 1949 the first revised definitive map was conclusive evidence that at the relevant date of January 1, 1961, Marsh Lane was a highway over which the public had a right of way on foot only.

In my view the language of the Act leads irresistibly to that conclusion. Marsh Lane is shown as a footpath. A footpath (see section 27 (6)) "means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road." The words "a right of way on foot only" are in my view explicit. To suggest that the words merely give a right of way on foot while still enabling others to have a right of way by other means is to ignore the word "only." It was on that basis that what I regard as the erroneous

AUTH171

decision in *Attorney-General* v. *Honeywill* [1972] 1 W.L.R. 1506 was reached. The suggestion also distorts the ordinary and generally held conception of what a footpath is. If a motorist drove along a footpath and in reply to a complaint of a pedestrian said that he was not denying the right of the pedestrain to walk along the path he could surely be answered by the crushing reply that the right of way of the public was "on foot only" and that the motorist was not exercising a right of way "on foot only." Similarly if someone rode along on a horse he would not be exercising "a right of way on foot only."

In my view this point is conclusive of the present case. Reinforcement if needed is contained in the words of section 32 (4) (*a*):

> "where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date specified in the statement a footpath as shown on the map; . . ."

The definition of "footpath" must again be applied. "Conclusive evidence" that there was a "right of way on foot only" must negative or preclude any evidence that there was a right of way on a horse or in a motor car or that Marsh Lane was a road used as a public path. It seems to me that the clear purpose and policy of Parliament in prescribing the elaborate procedures set out in the various sections was that when the stage of having a definitive map was reached (and thereafter until later reviews) the stage of conclusion should be reached and (until later reviews) should be adhered to. If the map showed that Marsh Lane was a footpath it would then be impossible for anyone to assert that it was a bridleway or a carriageway, or was anything other than a footpath.

Section 32 (4) (*a*) having dealt solely with the case "where the map shows a footpath" is followed by subsection (4) (*b*): "where the map shows a bridleway, or a road used as a public path . . ." (For the definition of "road used as a public path" see section 27 (6).) The provisions in (*b*) are somewhat involved but there is nothing in them which modifies the clear provision in (*a*). We are not concerned with (*b*). Nor are we concerned to explain the policy prompting the wording in (*b*). The present case falls within (4) (*a*) and not within (*b*). It is however highly significant that in (*b*) there are the concluding words:

> "so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid; . . .":

no such words are to be found in or are in any way reflected in (*a*).

There is doctrine enshrined in the slogan "once a highway—always a highway." But faith in the slogan does not and cannot override or diminish the power of Parliament. If Parliament had concern for the preservation of footpaths and defined a footpath as being a highway over which the public have a right of way on foot only, it follows, in my opinion, that a footpath cannot also be a carriageway. If research showed that there was a carriageway, it could not be shown as a footpath.

Section 32 (4) provides that once a definitive map and statement

AUTH172

has been prepared, it shall be "conclusive" to the extent that where the map shows a "footpath" it shall be "conclusive evidence" that (at the relevant specified date) there was a "footpath as shown on the map." Where the map shows a bridleway or a road used as a public path, there is a different provision. But where the map shows a footpath, there is no qualification at all as to the conclusiveness that there was a "footpath." In such case there may be a limitation on the conclusiveness of any particulars contained in the definitive statement accompanying the map and there may be questions as to any limitations or conditions affecting the footpath (see the provisions of section 32 (4) (*c*))—but the conclusiveness of the finding of the existence of a "footpath" is not by this in any way affected.

So if the definitive map shows a footpath and if Parliament has decreed that in such event the map must be regarded as "conclusive evidence" it follows in my view that Parliament has said that no one must be heard to attack the truth of that which is "conclusive." It was a necessary and inevitable consequence of what Parliament enacted and in my view it must have been the policy and intention of Parliament that any undiscovered right of way, which, had it existed, might destroy the status of a footpath, should be regarded as being non-existent unless or until some opportunity for revision later arose. In so enacting Parliament with its ample powers was, in my view, adopting a most rational line. To add some further provision would have been superfluous. Finality is reached when something is unreservedly conclusive.

In my view the Court of Appeal came to the correct conclusion and I would dismiss the appeal.

LORD HAILSHAM OF ST. MARYLEBONE. My Lords, the present appeal relates to the status of a narrow and un-made-up track, 20 feet in breadth, situated in the parish of Kessingland in the county of Suffolk. The appellants, defendants in the proceedings, claim that it is a carriageway throughout its length. The respondents assert that the result of the presumption contained in section 32 (4) of the National Parks and Access to the Countryside Act 1949 is that, save for a short stretch of some 50 yards without either vehicular ingress or egress, it is to be presumed conclusively to be a footpath, that is, a highway over which the public have a right of way on foot only.

After a short stretch which joins it to a public carriage road (Church Road), Marsh Lane runs very roughly north and south, and very roughly parallel to the coast of Suffolk where that county adjoins the North Sea. A short distance after it assumes its southerly direction it abuts the property of the appellants on the east of the lane, between the lane and the coast. The appellants now own a holiday camp on this property, and, although access may be obtained to the camp by the ordinary roads at the northern end of their property, the appellants desire that their customers should have additional access for their vehicles by way of the lane. Almost opposite the holiday camp and a little further along the lane is a public sewage disposal plant on the opposite side of the lane, to which, presumably, wheeled vehicles also have access either

AUTH173

by public or private right of way. Beyond the sewage plant, the lane, lined with trees or shrubs, travels through open land, with fields on the west and marsh or waste land on the east. Further on, the lane is met approximately at right angles by another track known as Peddar's (or Pedlar's) Lane which joins public roads elsewhere. From that junction the lane goes on south for a distance until it ends nowhere in particular in a farm road not claimed as the subject of any public right of way which is an extension of the lane and terminates in a clump of trees between fields. The disputed portion of Marsh Lane is that between its beginning at the junction with Church Road and the junction with Peddar's Lane, leaving, so far as the parties are concerned, a stub of about 50 yards in length of admitted public carriageway between the junction with Peddar's Lane and the end of Marsh Lane where it becomes a farm road, a stretch which so far as vehicular traffic is concerned could, if the respondents are correct, only lawfully be reached, if at all, by carriages lowered by helicopter. This somewhat bizarre result follows, so the respondents contend, from the definitive map produced by their predecessors, the East Suffolk County Council, in accordance with the provisions of Part IV of the Act of 1949 (of which more later). The definitive map delineates the disputed portion of Marsh Lane and thereafter Peddar's Lane as a footpath marked as FP 10, and leaves the resulting stub of Marsh Lane undelineated save as a geographical feature of the ground.

By contrast with the respondents, who rely on the map and section 32 (4) of the Act, the appellants rely on the researches of a scholarly member of the local clergy, the Reverend Dr. Edward Charles Brooks, rector of the neighbouring Somerleyton.

In an affidavit filed on behalf of the appellants, Dr. Brooks claims to have proved (and for the purposes of this appeal it is conceded that for the present his claim must be accepted as correct) that, so far from being a mere footpath, Marsh Lane was once an important highway. Before Lowestoft was founded, Kessingland was the most important port of this portion of the Suffolk coast, and, even after Lowestoft came into existence, Kessingland remained prosperous until approximately the Restoration of Charles II. Marsh Lane was the principal road of access to the harbour. Perhaps from the Stone Age onwards, and certainly from Roman times, Marsh Lane also served a settlement on the tongue of land along which it now runs and terminates, and, even after the harbour of Kessingland silted up and fell into disuse, as it did soon after the Restoration, Marsh Lane served as a carriageway or cartway for the humble purposes of the thatchers of the district who harvested reeds and osiers of the marshes and carted them along Marsh Lane for the purposes of their trade. Thus Marsh Lane was, at least from Norman times, and, if the Rector of Somerleyton is to be believed, "probably [from] much earlier," at first the main roadway to the ancient harbour, and thereafter (and at least until 1870) the thoroughfare by which the reed cutters and thatchers carted their raw materials.

Into this idyllic picture modern legislation now thrusts its head. In the first Parliament after the War, the Act of 1949 was passed. According to a learned article in the *Law Quarterly Review* for 1979

AUTH174

[L. H. Hoffmann, "Footpaths in a Statutory Maze" (1979) 95 L.Q.R. 21], which appellants' counsel incorporated without objection into his argument, Part IV of this piece of legislation (the relevant part) had its origin in paragraph 21 of the Hobhouse Committee Report (Footpaths and Access to the Countryside (Cmnd. 7207)) which in 1947 had reported as follows (95 L.Q.R. 21, 22):

> "'In spite of the maxim "once a highway, always a highway" it is a fact that a very large number of rights of way are being lost through disuse . . . Many have already disappeared. Others have become overgrown and are no longer passable . . . Unless steps are taken before many more years elapse, these rights of way will be forgotten and lost for all time. We consider it essential that a complete survey shall be put in hand forthwith so that an authoritative record of rights of way in this country may be prepared before it is too late.'"

It is possible that I must thrust this piece of historical scholarship from my mind in construing the language of the Act, as I certainly must any recollection I may possess of the actual purposes for which the Act was passed in a Parliament of which I was an active member. But much the same result can be obtained from a scrutiny of the long title, which reads as follows:

> "An Act to make provision for national parks and the establishment of a National Parks Commission; to confer on the Nature Conservancy and local authorities powers for the establishment and maintenance of nature reserves; *to make further provision for the recording, creation, maintenance and improvement of public paths and for securing access to open country, and to amend the law relating to rights of way*; to confer further powers for preserving and enhancing natural beauty; and for matters connected with the purposes aforesaid."

The key words in this summary, which I have marked with italics, show that the relevant purpose is connected with the recording, creation, maintenance and improvement of "public paths," and "public path" is a term of art, defined in section 27 (6) of the Act as "either a footpath or a bridleway." I will set out the defined meanings of "footpath," "bridleway" and other matters shortly hereafter. But at this stage it is important to emphasise that the relevant purpose of the Act is to record, create and improve these and these only. It is not concerned with recording carriageways or cartways, and its target is the maintenance of access to the countryside, not primarily in the interest of the local inhabitants (who would not be inclined to leave paths disused or impassable or allow them to be stopped up if they found them of substantial local value), but of the public at large, including particularly perhaps the inhabitants of our towns, who might wish to enjoy access to the amenities of countryside and areas of natural beauty. Still further from the mind of the legislature seems to have been the idea of extinguishing any existing right. On the contrary, its targets appear to have been the inroads of nature, the apathy of local

AUTH175

inhabitants, the proprietary zeal of rural occupiers and the shortness and fallibility of human memory. In Part IV of the Act there is no trace of the modern hostility to motors or caravans. It is with these general considerations in mind that I approach the construction of the relevant sections, which is my next task.

The Act imposed new responsibilities on county councils. These were to conduct a survey resulting first in a draft map based on information derived from consultation, then, after a period for general objections and representations, including access to the minister, a provisional map, and finally, after an opportunity to landowners, etc., to appeal to quarter sessions, a definitive map, which, for the purposes of the present appeal, is the map relied on by the respondents as an insuperable bar to the acceptance at this stage of the results of the researches of the antiquarian Rector of Somerleyton.

All three maps are in fact based on the ordinance survey of the area, but, from the point of view of Part IV of the Act, only three types of paths are or can be delineated as showing rights of way at the relevant date (see section 27 (1) and (2)). These are: (1) footpaths, (2) bridleways and (3) roads used as public paths.

I have already quoted the definition of public paths. I now quote, in addition, from section 27 (6) all the definitions including those of the three types of way to be referred to in the maps.

Section 27 (6) of the Act provides that in Part IV of the Act:

> "'footpath' means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road; 'bridleway' means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway; 'horse' includes pony, ass and mule, and 'horseback' shall be construed accordingly; 'public path' means a highway being either a footpath or a bridleway; 'right of way to which this Part of this Act applies' means a right of way such that the land over which the right subsists is a public path; 'road used as a public path' means a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used."

From this section it will be seen once more that, with one qualification, this Part of the Act is concerned to record on the three types of map, draft, provisional and definitive, not carriageways as such, but only footpaths and bridleways described by the common denominator "public paths." The qualification is that there are some highways which, not being footpaths or bridleways, must be considered as public carriageways but which, being used by the public mainly for the purposes of footpaths or bridleways (i.e., "public paths") are to be given the third designation used in the maps of "road used as a public path." The footpath which often exists at the side of the public road is not to be separately recorded at all (see the first definition), nor is a public road itself, unless, being used by the public mainly for the

AUTH176

purposes for which footpaths or bridleways are so used, it qualifies for designation in the third category as a " road used as a public path." A

The predecessors of the Suffolk County Council, without successful or perhaps any objection, either from the predecessors in title of the present appellants or anyone else, duly designated the relevant section of Marsh Lane on the definitive map as a footpath under the label FP 10 continuing to the right up Peddar's Lane. There it remains to this day and will so remain at least until the map is superseded after B the next periodical review which will now take place under Schedule 3 to the Countryside Act 1968. This is now said to be in hand though (see paragraph 10 of the Schedule) it is by no means certain if the respondents win in these proceedings that any carriageway will be restored. It remains to be considered what is the effect to be given to the designation in the existing definitive map. This effect is described C in section 32 (4) of the Act of 1949 as follows:

> " A definitive map and statement prepared under subsection (1) of this section shall be conclusive as to the particulars contained therein in accordance with the foregoing provisions of this section to the following extent, that is to say—(*a*) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date specified in the statement a footpath as shown on D the map; (*b*) where the map shows a bridleway, or a road used as a public path, the map shall be conclusive evidence that there was at the said date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the E public had at that date any right of way other than the rights aforesaid; and (*c*) where by virtue of the foregoing paragraphs of this subsection the map is conclusive evidence, as at any date, as to a public path, or road used as a public path, shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at the relevant date, and any particulars so contained as to F limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date."

Not surprisingly, the respondents rely strongly on the provisions of G section 32 (4) (*a*) as read with the definition section. Wherever the word " footpath " appears in the Act, it is said, it must be read in the limited sense provided for by section 27 (6) as a " highway over which the public have a right of way on foot *only* " and therefore not a carriageway nor, for that matter, a bridleway or drove. This, the respondents argue, is the only and plain meaning of the words in the H Act. They add that, should reinforcement for this view be required, which they do not concede to be necessary, it is to be found in the provisos of section 32 (4) (*b*) and (*c*), as, for instance, in paragraph (*b*)

AUTH177

which says that the conclusive evidence should be "without prejudice to any question whether the public had at that" (i.e., the relevant) "date any right of way other than the rights aforesaid" (i.e., a bridleway or a road used as a public path), or, as in (*c*), "without prejudice to any question whether the right was subject to any other limitations or conditions at that" (i.e., the relevant) "date."

Since the argument based on these provisos appealed strongly to the Court of Appeal, it would be convenient that I deal with it at once, before I come to the crucial point, which is the construction of section 32 (4) (*a*). Why, it is asked rhetorically, is a proviso inserted into (*b*) and (*c*) if (*a*) is to be read as effectively containing words which have a similar effect without any proviso being present? Sir Douglas Frank, who tried the case at first instance, appears to have thought that the provisos might be otiose. But I agree with the Court of Appeal that this is not likely.

I must say at once that I do not find this particular point of the respondents' case convincing. It must be remembered that section 32 (4) is concerned, and concerned only, with the extent to which the contents of the definitive map are to provide "conclusive evidence." By the proviso to (*c*) it has to be made plain that, though the map is conclusive evidence inter alia of the existence of such limitations and conditions as are specified in the map, it is no evidence at all as to whether there may be terms and conditions to which the right may be subject additionally to those specified. In other words the proviso is necessary to make it clear that it is what is in the map which is conclusively presumed and that anything by way of limitations or conditions which are in dispute but are not in the map must be proved or disproved aliunde and not by reference to their absence from the map.

A similar but perhaps more sophisticated explanation is available to account for the proviso in (*b*). Paragraph (*b*) is concerned both with bridleways and with roads mainly used as public paths (i.e., either as footpaths or bridleways). A bridleway shown on the definitive map is not merely a bridleway as popularly conceived but may include (and generally, I believe, is presumed to include) a driftway or drove as shown in the definition section 27 (6). The proviso to (*b*) is necessary if only to show that the conclusive presumption extends only to riding or leading "horses" (as defined in section 27 (6)) and does not extend to driven animals. If it is alleged (or denied) that a given bridleway includes a drove it must be proved or disproved by evidence other than its absence from the definitive map. The same is true of the road mainly used as a public path. It is by inference a highway or (see section 27 (2)) "reasonably alleged to be" a highway, i.e., a way over which the public have ex hypothesi rights of passage in addition to those for which it is "mainly used," viz., footpath or bridleway. But if there are any such rights or if such rights are denied, the conclusive presumption does not apply to them, and proof or disproof of their existence must be left to evidence other than that of the definitive map. There are, however, two additional footnotes to be added to the construction of the proviso to section 32 (4) (*b*). The first is that, though the "highway" delineated as a "road used as a public path" in the

AUTH178

definitive map must by definition be used "mainly for the purposes for which footpaths or bridleways are so used," the county council is not bound, or indeed authorised, to specify which of the two is the main use, and the two are alternatives, as "bridleway" by definition includes a right of foot passage as well as passage for ridden or led horses, and "footpath" is exclusively a right of way on foot. In practice and without statutory authority, we were told that ways of the third category are by some councils sometimes marked as CRF and CRB. But this is certainly not in the Act. The second footnote is that, on the assumption that the highway in question is shown on the map as a bridleway and not a road used as a public path, the language of the proviso is still wide enough to leave it open to the public to establish a carriageway in addition to the bridleway. This leads one to wonder what principle of policy led the legislature, if the respondents be right, to differentiate in this respect between highways shown on the definitive map as bridleways and highways shown on the definitive map as footways. For the reasons above I do not find the existence of the provisos in section 32 (4) (*b*) and (*c*) aids to construe section 32 (4) (*a*) in a sense favourable to the respondents, or indeed as aids to construe section 32 (4) (*a*) at all.

It is to this ultimate, and effectively decisive, question that I must now address my mind. I say at once that I have not found the task at all easy or the answer at all obvious, and that my mind has wavered several times between the two alternative constructions. I have found the task all the more difficult because in the judgment before us neither Sir Douglas Frank (who found at first instance for the plaintiffs) nor the Court of Appeal (who found for the respondents) seem to have had any hesitation in reaching their opposing conclusions. More, in the two cases cited to us, viz., *Attorney-General* v. *Honeywill* [1972] 1 W.L.R. 1506, necessarily overruled by the Court of Appeal in the instant proceedings, and *Reg.* v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891, the contrasting statements of Bristow J. in the former case and the obiter observations of the Court of Appeal in the latter case, although inconsistent with one another, seem to have been inspired by an equal degree of confidence which in neither instance am I able to share.

It is therefore only with very great hesitation and doubt that, despite the somewhat easier construction contended for by the respondents in conformity with the opinion of the Court of Appeal, I still come down in favour of the appellants. My reasoning is as follows. Section 32 (4) is concerned solely with what is conclusively presumed by the definitive map, which is concerned to record rights and not to extinguish them. In no place in the Act is there any explicit assertion of the respondents' claim that what is to be conclusively presumed includes the extinction of an existing right of passage omitted from the Act by inadvertence or ignorance in addition to the record of a right of passage established to exist at the relevant date and recorded for the perpetuation of testimony. I read section 32 (4) (*a*) as meaning that, if a definitive map shows a footway, that right of passage, limited to passage on foot, is presumed conclusively to have existed at the relevant date,

AUTH179

and not as meaning that at the relevant date a person who is in a position to prove by other evidence a wider right of public passage additional to that shown on the map is conclusively debarred from doing so until the next review now to be held under Schedule 3 to the Act of 1968 and in which the authority—see paragraph 10 of the Schedule —has a limited right of extinguishing the public way.

My distress in finding myself in the opposite camp to a unanimous Court of Appeal, and my doubts about my own fallibility, are increased by the discovery that my opinion (as to which I now entertain no doubt) differs from that of my noble and learned friends Lord Diplock and Lord Morris of Borth-y-Gest, whose speeches I have had the privilege of reading in draft. But with infinite respect to the powerful argument based on the allegedly purposive construction advanced by my noble and learned friend Lord Diplock, my doubts depend on the purely literalist interpretation which was the view advanced by counsel for the respondents and basically the argument which appealed to the Court of Appeal and to my noble and learned friend Lord Morris of Borth-y-Gest. I feel certain that if a purposive construction may be given to the statute my own view would not present the difficulties urged against it by my noble and learned friend Lord Diplock, nor, indeed, any serious difficulties at all.

It is true, of course, that of the three types of public way for the delineation of which alone on the definitive map the Act makes provision each has a negative as well as a positive element, "footpath" excluding anything but a right of passage on foot, "bridleway" excluding anything outside passage on foot, or by led or ridden "horses" and, in some cases only, right of drover, and "road used as a public path" being limited to highways the "main use" of which is that of footpath or bridleway. But I do not regard this as conclusive of the matter. The question raised by section 32 (4) (*a*) is what is conclusively presumed by the delineation as such of a footpath on the definitive map. In the view which I have formed this is capable of two meanings. Either (*a*) it is conclusively presumed that there is a public right of way on foot only, but not conclusively presumed that there is no other right of way attached to the track, or (*b*) it means that it is conclusively presumed that there is a public right of way limited to passage on foot only, and no other public right of way at all. I can see the force of saying that, on a literal interpretation, (*b*) is the only possible meaning. That is the literalist view which appealed to the Court of Appeal. But once it is thought that either meaning is acceptable one looks to the purpose of the statute. This is clearly designed to preserve public rights of passage by footpath or bridlepath which have fallen into disuse or are in danger of becoming forgotten and not to extinguish public rights of passage at all. It is designed not for the benefit of those who have blocked paths up or allowed them to become impassable, or lapsed from human memory, nor for the farmer or landowner whose rights of objection extend to a right of challenge at quarter sessions, but for the public at large, that is, all the inhabitants of this sceptred isle, including the enormous majority who are not avid readers of the *London Gazette* and to whom the local Suffolk or

AUTH180

other local newspapers are not likely to be readily available. In other words, it is designed for the benefit of those who are most likely to be unaware of their right of objection to a distant local authority, or recourse thereafter to the minister. If this be a permissible approach I do not find much difficulty in adopting the more liberal construction if the grammatical sense of the words permits me to do so. In view of paragraph 10 of Schedule 3 I am not so much comforted as was Lord Denning M.R. by the prospect of the pending or other future review, and I do not find it possible to read into the Act of 1949 the hostility to wheeled traffic which undoubtedly exists on the part of some horse riders and ramblers, sometimes with more reason, and sometimes with less. After all, it is often the inhabitants of our cities who may stand most in need of access to the countryside, and there are few of them to get there without four wheels and an internal combustion engine. This means that in my view the appeal should succeed and so much of the judgment of Sir Douglas Frank as refuses the respondents' claim for a declaration be restored. At the hearing before your Lordships, the appellants abandoned their counterclaim, which to my mind was manifestly misconceived. In my view, should my opinion otherwise prevail, the respondents should pay the costs here and below in so far as they may have been materially increased by the existence of the counterclaim.

LORD EDMUND-DAVIES. My Lords, for the reasons set out in the speech of my noble and learned friend Lord Diplock, which I have had the advantage of reading in draft, I concur in holding that the Court of Appeal arrived at a right conclusion and that this appeal should be dismissed.

LORD FRASER OF TULLYBELTON. My Lords, the facts in this appeal have already been fully stated and I need not repeat them at length. It is enough for me to say that in 1965 the former East Suffolk County Council published the first revised definitive map and statement showing footpaths, bridleways and roads used mainly as public paths, as at January 1, 1961, in an area which included the parish of Kessingland near Southwold. The county council was acting in discharge of its duty under Part IV of the National Parks and Access to the Countryside Act 1949. One of the highways shown on the map was a track called Marsh Lane. The whole of Marsh Lane, except for a very short portion at its southern extremity, south of Peddar's or Pedlar's Lane, was shown as a footpath. While the original map and the first revised map were being prepared, the county council was not aware that there was, or might be, a public right of way for vehicles along Marsh Lane. Subsequently, the historical researches of the Reverend Dr. Brooks, Rector of Somerleyton, have produced strong evidence that Marsh Lane was in earlier times used as a highway for vehicles. The respondents, who are the statutory successors of East Suffolk County Council as highway authority for inter alia the parish of Kessingland, now accept that, on the evidence at present available, Marsh Lane would be a highway over which the public has the full right of way for

AUTH181

the passage of vehicles, but for one thing. That one thing is that Marsh Lane is shown in the first revised definitive map as a footpath.

The question is whether the fact of its being so shown is conclusive evidence that it is a footpath and nothing more. If that question is answered in the affirmative, as it was by the Court of Appeal, then the public right to pass along Marsh Lane with vehicles, a right which appears to have existed at least since Norman times, and probably from much earlier, will have been extinguished. The extinguishment will have occurred unintentionally, owing to the information available while the map was being prepared having been incomplete. The mistake may possibly be put right by amendment in a later review of the definitive map and we were told that a review is now beginning. This review will be carried out in accordance with the Countryside Act 1968, Schedule 3 (which has replaced section 34 (1) and (2) of the Act of 1949), but it is clear from the test laid down in paragraph 10 of Part III of Schedule 3 that reclassification of Marsh Lane as something more than a footpath will not be automatic. So it is quite possible that, if the public right of way with vehicles has been extinguished, the extinguishment will be permanent.

Marsh Lane, at its northern end, joins an ordinary road called Church Road. The appellants own a caravan park near the southern end of Marsh Lane, and they wish to use the lane as an additional access for vehicles to their site. They maintain that the public right of way with vehicles still exists notwithstanding that Marsh Lane is shown on the map as a footpath. The respondents maintain that the fact of its having been shown on the revised definitive map as a footpath is conclusive evidence that it is a footpath and nothing more. The present appellants were successful before Sir Douglas Frank Q.C., sitting as a deputy judge of the Queen's Bench Division, but his decision was reversed by the Court of Appeal.

At common law highways are of three kinds. A cartway is a highway over which the public has a right of way on foot and on horseback, or leading a horse, and driving vehicles and (presumptively but not invariably) cattle. A bridleway is a highway over which the public has a right on foot or on horseback or leading a horse and may also have the right to drive cattle. A footpath or footway is a highway over which the public have a right of way only on foot. Thus a bridleway includes a right of footway, and a cartway includes both the lesser rights.

There is a well-established rule of common law that a public right of way is not lost by disuse. It is summed up in the brocard "once a highway always a highway." There seems no doubt that it includes the lesser rule that a right of way with vehicles is not reduced to a right of way on foot or on horseback by lack of use with vehicles; that is to say, "once a highway *with vehicles* always a highway *with vehicles.*"

The threefold classification of highways at common law was evidently in the mind of the draftsman of the Act of 1949 when he framed the definitions in Part IV, section 27 (6), which are as follows:

AUTH182

"In this Part of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say,— 'footpath' means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road; 'bridleway' means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway; 'horse' includes pony, ass and mule, and 'horseback' shall be construed accordingly; 'public path' means a highway being either a footpath or a bridleway; 'right of way to which this Part of this Act applies' means a right of way such that the land over which the right subsists is a public path; 'road used as a public path' means a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used."

These definitions tend to show that Part IV of the Act of 1949 is concerned with footpaths and bridleways but not with cartways, except to the limited extent that they fall within the definitions of "road used as a public path." Ordinary roads used for vehicular traffic are not within its scope. The same indication is given by the long title of the Act which I shall not repeat, but in which the only classes of highway mentioned are "public paths" (defined in section 27 (6) as meaning footpaths and bridleways). As Bristow J. said (rightly in my opinion) in *Attorney-General* v. *Honeywill* [1972] 1 W.L.R. 1506, 1510: "The Act is concerned with the rambler and the pony trekker, not with the motorist."

Having regard to the common law on this matter, to the long title of the Act and to the definitions in section 27 (6), it would be surprising if Part IV had the effect of permitting the downgrading of a highway by extinguishing public rights to use it as a cartway or a bridleway so as to leave only a footpath. There is no express provision for such partial extinguishment or downgrading and the absence of such provision is the more conspicuous by comparison with the careful provision that is made by sections 42 to 45 inclusive for the diversion and closure of "public paths" (but not of a "road mainly used as a public path") and for compensation of any person whose interest in or enjoyment of land is being adversely affected by inter alia an extinguishment order. I would not hold that downgrading of Marsh Lane had occurred in the instant case, unless I am driven to that conclusion by compelling words.

The basis of the argument in favour of the respondents' contention is that it follows necessarily from a literal reading of section 32 (4) (*a*) in the light of the definitions in section 27 (6) that I have already quoted. Section 32 (4) provides:

"A definitive map and statement prepared under subsection (1) of this section shall be conclusive as to the particulars contained therein in accordance with the foregoing provisions of this section to the following extent, that is to say— "

AUTH183

and I now quote paragraph (*a*) including within square brackets the relevant part of the definition from section 27 (6):

> "(*a*) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date specified in the statement a footpath [i.e., a highway over which the public have a right of way on foot only] as shown on the map;"

It is said that because the map is conclusive evidence that there is a right of way on foot *only*, there cannot be a right of way of any other kind. In other words the map is conclusive as to both the positive and the negative elements in the definition of footpath. That may be the most obvious way of reading the paragraph, but in my opinion it can be read equally easily, and certainly without straining the words in any way, as meaning simply that the map is conclusive evidence that there was a highway over which the public has a right of way on foot, but that it is not conclusive evidence whether the public also had any other right of way over the highway. I attach some significance to the fact that the paragraph does not say that the map shall be conclusive evidence "that the highway was a footpath," i.e., a right of way on foot only. What it does say is that the map shall be conclusive evidence "that there was at the relevant date . . . a footpath [i.e., a right of way on foot only] as shown on the map;" That form of words is in my opinion rather less strong in tending to exclude the possibility that there was also at the relevant date a right of way of some other kind. Accordingly I think there is room to construe the paragraph, without doing any violence to its words, in a way which would give effect to the purpose of the Act without incidentally extinguishing rights with which the Act is not concerned.

An argument that carried much weight with the Court of Appeal was based upon the contrast between paragraph (*a*) and paragraph (*b*) of section 32 (4). Paragraph (*b*) contains what was referred to in argument as "the proviso," and paragraph (*a*) does not. Paragraph (*b*) reads as follows (the words in italics being the proviso):

> "where the map shows a bridleway, or a road used as a public path, the map shall be conclusive evidence that there was at the said date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, *so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid*;"

It was argued that the proviso would be unnecessary unless the map would otherwise have been conclusive evidence not only that there was a highway and that the public had thereover the rights stated, but also that it had no other rights. Sir Douglas Frank was prepared to regard the proviso as otiose, but I do not think it necessary to take that view. I think the explanation for the presence of the proviso is that given in an article by Mr. L. H. Hoffmann, 95 L.Q.R. 21, which was incorporated by counsel for the appellants in his argument and which I may

AUTH184

summarise as follows. The purpose of the proviso is not to admit evidence that the public had rights in addition to those of which the map was declared to be conclusive evidence. The proviso would have been quite unnecessary for that purpose, because the fact that the map is made *conclusive* evidence of the existence of some of the rights comprised in the definition of a bridleway would obviously not mean that it was evidence that other rights within the definition of bridleway or road used as a public path did *not* exist. On the contrary the purpose of the proviso is to prevent the showing on the map of a particular highway as a road used as a public path from being used as evidence that the public had other rights over it. In the case of a road used as a public path (to quote from the article in the *Law Quarterly Review*, at p. 24):

> "In the absence of some statutory provision, it could plausibly have been argued that Parliament must have meant the separate classification to have *some* legal effect and that classification as a 'road used as a public path' must therefore be at least *some* evidence that the vehicular rights existed. The purpose of the proviso to section 32 (4) (*b*) is to ensure that the registration cannot be used for this purpose; it is 'without prejudice to any question' of whether vehicular rights exist. It makes it clear that the separate classification of 'roads used as public paths' is 'for information only' and has no legal consequences different from classification as a bridleway."

Accordingly I do not regard the proviso as a pointer against my construction of paragraph (*a*) of section 32 (4).

There is a similar proviso in paragraph (*c*) of section 32 (4) which refers to particulars in the statement accompanying the map, but it does not appear to be relevant to the present question.

The Act provides elaborate procedure for preparing first a draft map, then a provisional map, and finally a definitive map of the public paths, etc., in the area. I do not find that the procedure laid down is of much assistance in determining the present question except in so far as it seems to make it rather unlikely that the Act was intended to benefit ramblers by enabling them to establish conclusively that a highway which had been or might reasonably have been shown on the draft map as a road used as a public path or bridleway was really only a footpath. If that had been intended, I think that express provision would have been made. But the only provision for any person to take steps to have a highway reclassified (either upwards or downwards) is in section 31 (1) where the right is conferred only upon "the owner, lessee or occupier of any land shown on the map to which the notice relates . . ." He is permitted then to apply to quarter sessions for a declaration inter alia:

> "(*b*) that the rights conferred on the public at that date by the public right of way over the land were such rights as may be specified in the application, and not such rights as are indicated in the provisional map and statement; . . ."

AUTH185

No doubt he would generally seek to have the public rights declared to be more limited than those indicated in the provisional map and statement, but the procedure is not available to ramblers.

For all these reasons I have reached the conclusion that there is no sufficient reason for attributing to the definitive map under the Act of 1949 the effect of extinguishing or otherwise affecting public rights of cartway. It was in my opinion simply not concerned with such rights, and I am, with respect, unable to agree with the observation to the contrary by Browne L.J. in *Reg.* v. *Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891, 901. Its whole emphasis is on recording and preserving rights which might otherwise be lost. That is also in my view the reason why the definitive map is not required to show ordinary roads over which of course there must be a public right of way on foot and on horseback. Such roads are entirely outside the scope of the Act. A footpath at the *side* of a public road is expressly excluded from the definition of footpath in section 27 (6) and it may well have been assumed that the right of way on foot *along* a public road was so clearly outside the Act as not to call for express mention.

For these reasons I would allow the appeal and refuse the declaration sought by the respondents.

*Appeal dismissed with costs.*

Solicitors: *Stilgoes, Haslemere; Sharpe, Pritchard & Co. for K. O. Hall, Ipswich.*

M. G.

---

[HOUSE OF LORDS]

ERVEN WARNINK BESLOTEN VENNOOTSCHAP AND ANOTHER . . . . . APPELLANTS

AND

J. TOWNEND & SONS (HULL) LTD. AND ANOTHER . . . . . RESPONDENTS

1979 April 24, 25, 26; June 21

Lord Diplock, Viscount Dilhorne, Lord Salmon, Lord Fraser of Tullybelton and Lord Scarman

*Passing Off—Trade description—Use of name "advocaat"—Dutch liquor — Right to exclusive use of description — Liquor of different constitution made in England — No geographical connotation — Whether advocaat by its ingredients distinct and recognisable liquor—Unfair trading—Right to damages and injunction*

The first plaintiffs and other Dutch traders had for many years manufactured in the Netherlands a liquor called "advocaat," which was exported to Britain and distributed by

**3 DECEMBER 1980** **QUEEN'S BENCH DIVISION**

## OXFORD v AUSTIN

**DONALDSON LJ and KILNER BROWN J**

*'Road' — Car park — Issue as to car park being road — Order of questions for determination — First to be whether definable way for passage of vehicles between two points — Second to be whether public having access — Whether proper — Whether 'road to which the public has access' — Road Traffic Act 1972 s 196(1)*

Section 196(1) of the Road Traffic Act 1972 provides:
'. . . "road" means . . . any . . . road to which the public has access . . .'

The defendant, who left his uninsured motor vehicle which was without a MOT test certificate in a car park with parking spaces marked by white lines, was charged with unlawful use of the vehicle on a road within the definition in section 196(1) of the Road Traffic Act 1972. The justices were of opinion that the area of the car park was privately owned, was primarily intended for the use of shop workers, residents of the flats and shoppers, for the parking of vehicles as indicated by signs at the entrance and white line markings, and that the area was one to which only a restricted class of persons had access by virtue of restrictions on the entrance and exit to the area and was, therefore, not a road within the statutory meaning. They dismissed the information.
On appeal by the prosecutor:
**Held,** allowing the appeal, that on a question arising before justices about a car park being a road within section 196(1) of the Road Traffic Act 1972 they had to determine first whether the car park was a road in that there was a definable way between two points over which vehicles could pass, and they then had to determine whether the public, or a section of the public, had access to the road (pp 418 J-K, 419K); that, if both questions could be answered affirmatively, the car park was a 'road' for the purposes of section 196(1) (p 418L); and that, since the justices had not found as a fact that the car park was a road but had gone on to consider whether the public had access, they had misdirected themselves and, accordingly, the case would be remitted to them for reconsideration.
*Dictum in Reg. v Waterfield (1964) 48 Cr App R 42, 50, CCA applied.*
*Griffin v Squires [1958] 1 WLR 1106; [1958] 3 All ER 468 DC explained.*

*Additional cases cited in argument:*
*Henderson v Bernard [1955] Crim LR 715; 1955 SLT (Sh Ct) 27*
*Purves v Muir, 1948 JC 122; 1948 SLT 529*
*Thomas v Dando [1951] 2 KB 620; [1951] 1 All ER 1010, DC*

**Case stated by Merseyside Justices sitting at Crosby**

On 14 September 1979 informations were preferred by the prosecutor, Kenneth Gordon Oxford, a police officer, against the defendant, James Joseph Paul Austin, that he (a) on 19 May 1979 did use on a road called Stella Precinct a



AUTH187

motor car without a current test certificate, contrary to sections 44 and 205 of the Road Traffic Act 1972 and the Motor Vehicles (Tests) (Extension) Order 1966; and (b) on that date did use a motor car on a road called Stella Precinct without insurance being in force, contrary to sections 93, 101 and 143 of, and Schedule 4 to, the Act of 1972.

The justices heard the informations on 21 November 1979 and found the following facts. On 19 May 1979 at approximately 10.40 a m a police constable saw a motor car, registered number NCP 492J, parked and unattended on the car park in Stella Precinct. The defendant was the owner of the car. The car was in a slightly dilapidated condition and the front off side tyre was flat. The area on which the car was parked was bordered on two sides by roads, namely, Seaforth Road and Elm Road, and a properly constructed drive-in led on to the area known as Stella Precinct from each of those roads. The other two sides of the area on which the car was parked were bordered by shops with flats built above them and fronted by a paved area separated from the parking area by a low wall. The defendant was resident in one of the flats on the date of the alleged offences. White line markings denoting car parking bays were visible on the surface of the area around the outer perimeter thereof. The car was parked within the area so marked. Shop workers, residents of the flats and their relatives, and people shopping, used the area for parking their motor vehicles. In the absence of evidence to the contrary, the land in question was privately owned. The entrance from Seaforth Road was restricted in height and width by the erection of posts at either side of the entrance surmounted by a large metal girder placed across the top of the posts, in the form of an archway. There was no restriction as to height at the exit to Elm Road, but there was a restriction as to width. At the entrance from Seaforth Road and the exit on to Elm Road there were signs indicating a parking area, namely, a white letter 'P' on a blue ground. In addition, two signs indicating 'No Entry' in writing had been erected at the exit on to Elm Road by the owners of the site. There was nothing to prevent a suitable size of vehicle from being driven from Seaforth Road across the car park area and out into Elm Road. That route was used because the original junction of those two roads had been blocked by concrete bollards. The car concerned was still a motor vehicle at the time of the commission of the alleged offences. There was no current test certificate for the car, nor was there any insurance in force to the user of the car.

The justices visited the scene of the alleged offences to assist in determination of the cases.

It was contended by the defendant, through counsel, that the area known as Stella Precinct was not a road within the meaning of [*the definition in section 196(1) of*] the Road Traffic Act 1972; that the area merely provided a space for the parking of vehicles; and that only a certain class of people had access to the area, not the public at large.

The justices were of the opinion that the area known as Stella Precinct was privately owned, was primarily intended for the use of shop workers, residents of the flats and shoppers, for the parking of motor vehicles as indicated by the signs at the entrance and white line markings and that the area was one to which only a restricted class of persons had access by virtue of the restrictions on the entrance and exit to the area, and was therefore not a road within the meaning of the Road Traffic Act 1972. Accordingly the informations were



AUTH188

dismissed.
The prosecutor appealed.
The question for the opinion of the court was whether the area known as Stella Precinct, Seaforth, on which the offence was alleged to have been committed was a road for the purposes of section 196(1) of the Road Traffic Act 1972.

*David Steer for the prosecutor.*
*Miss Anita Scarth for the defendant.*

**Donaldson LJ** I will ask Kilner Brown J to deliver the first judgment.

**Kilner Brown J** This is an appeal by way of case stated by Merseyside Justices sitting at Crosby.
The facts can be shortly stated. On 14 September 1979 informations were preferred by the prosecutor, that is to say, the Chief Constable of the Merseyside Police Force, against the defendant that he had used on a road called Stella Precinct a motor car without a current test certificate and also that he used the motor car on that road without there being in force an appropriate certificate of insurance.
The justices went into this matter with great care. It was an interesting case. They obviously found it interesting and they took the trouble themselves to view the site in question. In view of what I imagine would be the decision of this court, it is unnecessary to recite the findings of fact in detail. It seems to me that unfortunately the justices misdirected themselves both by way of an error of omission and an error of commission. I will explain that in a moment or two.
We have been referred to a number of authorities, and, in my view, the most helpful and authoritative decision is *Griffin v Squires [1958] 1 WLR 1106.* That case is sometimes cited as being an authority for saying that a car park cannot be a road. In point of fact the only observation to that effect, at p 1109, is plainly one which is obiter by Streatfeild J and does not appear anywhere in the leading judgment of Lord Parker CJ. In any event I would respectfully suggest that it is not correct to say that a car park cannot be a road. There must be many cases, and this case probably is such a case, where there is obviously a definable way over which vehicles may pass which in plain common sense qualifies as a road.
That leads me to say that in all these cases there is a well established process which is founded on findings of fact. The first question which has to be asked is whether there is in fact in the ordinary understanding of the word a road, that is to say, whether or not there is a definable way between two points over which vehicles could pass. The second question is whether or not the public, or a section of the public, has access to that which has the appearance of a definable way.
If both questions can be answered affirmatively, then there is a road for the purposes of the various Road Traffic Acts and Regulations, and the usually quoted definition is to be found in section 196(1) of the Road Traffic Act 1972.
The justices, after setting out a number of findings of fact, summarise



AUTH189

those in a conclusion in these words:

'We were of the opinion that the area known as Stella Precinct was privately owned, was primarily intended for the use of shop workers, residents of the flats and shoppers, for the parking of motor vehicles as indicated by the signs at the entrance and white line markings and that the area was one to which only a restricted class of persons had access by virtue of the restrictions on the entrance and exit to the area, and was therefore not a road within the meaning of the Road Traffic Act 1972.'

The difficulty which I find in that expression of opinion is that there is not any express finding, which is necessary in the first place, that the area in question was a road. It seems to me to go on to a consideration of the second question, that is to say, whether or not when applying the term 'a road' it is one to which the public has access.

The authorities are quite plain. I reiterate that it is in the end a question of fact for the justices to decide. This has all the authority of the Court of Criminal Appeal in *Reg. v Waterfield (1964) 48 Cr App* R 42 and in particular a passage at the end of the judgment of the court, on p 50:

'As has been said in a number of cases, this particular issue is essentially one of fact for the jury and they must have been satisfied that the place was a road within the meaning of the Act.'

That succinctly states the first process which has to be performed by justices who have to deal with this type of case. Unhappily they seem to me to have misdirected themselves in forgetting to come to a definite conclusion one way or the other as to whether this was, as the authorities indicate, a way of communication ordinarily to be thought of as a road, and they went on to say that the area was privately owned. That seems to me to be quite irrelevant. All the authorities indicate that. The primary intention of the place is again quite irrelevant; the authorities all say that. It is quite wrong to say that only a restricted class of persons has access when in fact what they were dealing with here was a limited class of vehicles having access. The authorities indicate that as long as only one or two persons — members of the public — demonstrate as a fact that the public has a right of access, these questions never come into it at all. Even a private car park may be one to which the public has access.

At one stage, speaking for myself entirely, I was minded to conclude that the justices' expression of opinion had implicit in it the finding that this particular place was a road. But I am persuaded that that is not so and the matter is left undetermined.

I would simply conclude by saying that in every case where there is a car park it is for the justices to decide as a question of fact along the lines of all the authorities whether it is a road or not, and then they have to go on to consider the second limb, which is whether or not the public has access. By reason of the fact that, in my judgment, unfortunately they are lacking a finding of fact on this first vital question, the matter will have to be remitted to the justices to reconsider this question along the lines and following the various authorities to which reference has been made.

I would accordingly allow the appeal to the extent that it be remitted to



AUTH190

the justices for them to reconsider this question along those lines.

**Donaldson LJ** I agree.

*Appeal allowed. Case remitted to the justices for reconsideration. Order for payment of prosecutor's costs out of central funds*

*Solicitors for the prosecutor: Howlett & Clarke, Cree & Co for R H Nicholson, Liverpool*
*Solicitors for the defendant: Jacobsons for Goldrein & Co, Crosby*
*Reported by L Norman Williams Esq Barrister-at-Law*



AUTH191

**17 MARCH 1986** **QUEEN'S BENCH DIVISION**

## LANG v HINDHAUGH

**CROOM-JOHNSON LJ and McCOWAN J**

*'Road' – Footpath – Public use of footpath 4 to 5 feet wide not designed for motor vehicles and impassable by a motor car – Use by motorcyclist – Whether driving on 'road' – Road Traffic Act 1972 ss 6(1), 99(b), 196(1) – Transport Act 1981 s 25(3), Sch 8*

Section 6(1) of the Road Traffic Act 1972 [*as substituted by section 25(3) of, and Schedule 8 to, the Transport Act 1981*] provides:
'If a person – (*a*) drives . . . a motor vehicle on a road . . . after consuming so much alcohol that the proportion of it in his . . . blood . . . exceeds the prescribed limit he shall be guilty of an offence.'
Section 99 provides:
'If a person disqualified for holding or obtaining a licence . . . (*b*) while he is so disqualified drives on a road a motor vehicle . . . he shall be guilty of an offence.'
Section 196(1) provides:
'. . . "road" means any highway and any other road to which the public has access, and includes bridges over which a road passes;'

The defendant drove his motorcycle on a public footpath which was four to five feet wide, had potholes and was not designed for motor vehicles to drive along and was not passable by a motor car but had no barrier or indication to prevent motorcycles from using it. He was convicted by justices of driving a motor vehicle on a road, contrary to section 6(1) of the Road Traffic Act 1972, as substituted, and of driving a motor vehicle on a road contrary to section 99 of the Act of 1972. The defendant appealed to the Crown Court on the ground that the footpath on which he was driving was not a road within the meaning of section 196(1) of the Act. The Crown Court, who found that the footpath was a highway, were of opinion that, although the footpath was not road within the ordinary meaning of the word, it was within the definition of 'road' provided by section 196(1) and they dismissed the appeal.
On the defendant's appeal:
**Held,** dismissing the appeal, that once it was established that a footpath was a highway, the footpath fell within the definition of road contained in section 196(1) (p 275L); that it was irrelevant whether the footpath was a road within the ordinary meaning of the word (p 275L-276A); and that, accordingly, the Crown Court had properly dismissed the defendant's appeal (p 276A).
**Per curiam** The statement in *Wilkinson's Road Traffic Offences, 12th ed (1985), vol 1, p 41* that 'road' offences are not committed by motor bicycles on footpaths and bridleways which are not roads is wrong, for providing footpaths and bridleways are highways they are unquestionably roads (p 275K).

*No case is referred to in the judgment or was cited in argument.*

**Case stated by Newcastle upon Tyne Crown Court (Recorder John Morris Collins and justices)**

On 26 June 1984 informations were laid by the prosecutor, James Brian Hindhaugh, a police officer, against the defendant, Michael Lang, that he on 22 April 1984 (i) did drive a motor vehicle on a road after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit, contrary to section 6(1) of the Road Traffic Act 1972 as substituted by the Transport Act 1981; (ii) did drive a certain motor vehicle on a certain road then being disqualified for holding or obtaining a licence to drive a motor vehicle, contrary



AUTH192

to section 99 of, and Part I of Schedule 4 to, the Road Traffic Act 1972. Informations were also laid against the defendant in respect of offences of using the motor vehicle where there was not in force in relation to the user of the vehicle a policy of insurance; using the same without a vehicle excise licence and driving the same on a footpath, but those informations were not the subject of the appeal against conviction.

On 20 December 1984 Northumberland Justices sitting at Ashington Magistrates' Court at 109 Station Road, Ashington heard the informations and convicted the defendant of all the offences.

An appeal against the decisions of the justices to convict the defendant of the offences referred to in sub-paragraph (i) and (ii) above was made by the defendant to the Crown Court at Newcastle upon Tyne which appeal was heard by them on 15 January 1985.

The Crown Court found the following facts. The defendant was on 26 January 1984 disqualified from holding or obtaining a licence to drive a motor vehicle for two years, and was accordingly so disqualified on 22 April 1984. At 1.50 a m on 22 April 1984 a police constable on duty at the Woodhorn roundabout on the A189 at Newbiggin saw the defendant riding a Suzuki motor cycle registration number FFT 933Y on a footpath from the direction of Newbiggin-by-the-Sea towards the roundabout. When the defendant came to the end of the footpath he dismounted from the motor cycle and wheeled it across the roadway. He did not ride it on any part of the roadway and was stopped whilst so wheeling the motor cycle. The footpath was a public footpath listed as such on the footpath map kept for the purpose of the National Parks and Access to the Countryside Act 1949 and subsequent legislation. It had originally been used primarily by miners who lived in Newbiggin and worked in the Woodhorn Colliery, which lay on the Ashington side of the roundabout. The footpath was still used by persons wishing to walk from Newbiggin to Ashington. It was some 4 to 5 feet wide, and although the central part of it was or was formerly tarmacadamed, it had deteriorated and there were pot-holes in the way and bushes growing between the fences at either side of the path. The footpath was not a road designed for motor vehicles to drive along, and the Crown Court were satisfied that it was not passable by a motor car. It was unlit by any street lamp but there were no bollards at either end and no indication that motor cyclists were forbidden to use it and no barrier to prevent motor cyclists driving along it. It was not a road within the ordinary meaning of the word, but it was a highway to which the public had access. The defendant was required to take a test of his breath and the normal and correct procedure was carried out. After a proper and lawful test, it was ascertained that the alcohol content of his breath was not less than 61 microgrammes in 100 millilitres of breath.

The sole issue in dispute between the defendant and prosecutor was whether when riding the motor cycle on the footpath the defendant was driving it on a road within the meaning of section 196(1) of the Road Traffic Act 1972.

It was contended by the defendant that, although the footpath was a highway, it was not a road within the meaning of the Act because a road did not include any highway, but only such highway as was also a road within the ordinary meaning of that word.

It was contended by the prosecutor that the word 'road' within the meaning of the Act included any highway and that a highway was not limited to a highway which would also be a road within the ordinary meaning of that word. Alternatively, there was no limitation in the definition of road, and it was not limited to ways to which vehicles could have access. The word 'road' was given an extended definition under the Act in order to afford the protection of the Road Traffic Act to members of the public using any highway, including a public footpath.

The Crown Court were referred to the following cases:

*Reg. v Shaw (Charles) [1974] RTR 225, CA*

*Thomas v Dando [1951] 2 KB 620, DC*

*Oxford v Austin [1981] RTR 416, DC*

They considered section 36 of the Road Traffic Act 1972 and section 27(6) of the National Parks and Access to the Countryside Act 1949.

The Crown Court were of the opinion that the footpath in question, although not a road



AUTH193

within the ordinary meaning of the word, was a highway and that the definition of 'road' in section 196(1) of the Road Traffic Act 1972 was to be construed as meaning that a road within the Act included any road to which the public had access and any highway; accordingly, the defendant having driven the motor cycle on a road, the other elements of the two charges the subject of appeal having been clearly established, was guilty of the offences, and his appeals against conviction were dismissed.

The defendant appealed.

The questions for the opinion of the court were whether: (i) for the purposes of the Road Traffic Act 1972 a highway which was not a road within the ordinary meaning of that word was a 'road' within the meaning of section 196(1) of the Act; (ii) the Crown Court were right to reject the defendant's submissions and dismiss the appeal.

*Geoffrey Lowe for the defendant.*
*Duncan Matheson for the prosecutor.*

**Croom-Johnson LJ** This is an appeal by case stated from a decision of the Crown Court at Newcastle upon Tyne which was itself sitting on appeal from Northumberland Justices sitting at Ashington.

On 26 June 1984 informations were laid by the prosecutor against the defendant. What was alleged was that on 22 April 1984 the defendant had committed a number of offences. First, that he drove a motor vehicle on a road after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit, contrary to section 6 of the Road Traffic Act 1972, as substituted by the Transport Act 1981. Secondly, that he drove a certain motor vehicle on a certain road then being disqualified for holding or obtaining a licence to drive a motor vehicle, contrary to section 99 of, and Part I of Schedule 4 to the Road Traffic Act 1972. He was also charged with offences of using his motor vehicle when there was not in force in relation to its user a policy of insurance and using the same without a vehicle excise licence and driving the same on a footpath. Those last two offences of which he was convicted by the justices were not the subject of appeal to the Crown Court.

The only two offences on which he did appeal were those where his guilt or innocence depended on the answer to the question whether the place where he was riding his motor cycle was a road for the purposes of the Road Traffic Act. Therefore, what this appeal is concerned with is the very short point of whether that was a road and to some extent upon the construction of the Road Traffic Act 1972.

His appeal to the Crown Court was dismissed. The Crown Court stated a case and they found certain facts. First of all, that on the day in question, that is to say, 22 April 1984, the defendant was then disqualified from holding or obtaining a driving licence. Secondly, that on that day a police constable on duty on the A189 at Newbiggin at the Woodhorn roundabout saw the defendant riding a Suzuki motor cycle on a footpath from the direction of Newbiggin-by-the-Sea towards the roundabout. Thirdly, that when he came to the end of the footpath, he dismounted from the motor cycle, wheeled it across the main roadway at the roundabout and did not ride it on any part of that roadway and he was stopped while he was still wheeling the motor cycle. Fourthly, that the footpath was a public footpath listed for that purpose under the National Parks and Access to the Countryside Act 1949. It had originally been used primarily by miners who lived in Newbiggin and worked in the Woodhorn Colliery. The footpath is still used by persons wishing to walk from Newbiggin to Ashington. It was four to five feet wide and although the central part of it was, or was formerly, tarmacadamed, it had



AUTH194

deteriorated and there were pot-holes in the way and bushes growing between the fences at either side of the path. Fifthly;

'The footpath was not a road designed for motor vehicles to drive along, and we were satisfied that it was not passable by a motor car. It was unlit by any street lamp but there were no bollards at either end and no indication that motor cyclists were forbidden to use it and no barrier to prevent motor cyclists driving along it. It was not a road within the ordinary meaning of the word, but it was a highway to which the public had access'.

The sixth finding of fact was that when the defendant was asked to take a test of his breath it was found that the alcohol content of his breath was above the legal limit. The case goes on to state:

'The sole issue in dispute between the defendant and prosecutor was whether when riding the motor cycle on the footpath the defendant was driving it on a road within the meaning of section 196(1) of the Road Traffic Act 1972'.

The reason for their finding that the appeals to the Crown Court should be dismissed was put in this way:

'We were of the opinion that the footpath in question, although not a road within the ordinary meaning of the word, was a highway and that the definition of 'road' in section 196(1) of the Road Traffic Act 1972 was to be construed as meaning that a road within the Act included any road to which the public had access and any highway . . .'

The questions for the opinion of this court are whether:

'(i) for the purposes of the Road Traffic Act 1972 a highway which is not a road within the ordinary meaning of that word is a "road" within the meaning of section 196(1) of the Act; and (ii) we were right to reject the defendant's submissions and dismiss the appeal'.

I think there can be no doubt from the description of the place where the motor cycle was being ridden that the ordinary man in the street looking at it would have done what the Crown Court did and said, 'That is not a road', but it was found to be a highway. It was a highway because it was a public footpath and had been for quite a long time. It is conceded by Mr Lowe who has argued everything that can possibly be said on behalf of the defendant that the finding that it was a highway cannot be challenged.

Therefore, one simply goes to the Road Traffic Act 1972. Section 6, which is the starting point of this investigation, says that if a person drives or attempts to drive a motor vehicle on a road or other public place after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit, he shall be guilty of an offence. The section dealing with driving while disqualified uses 'road' in the same way. One goes to section 196(1) which is the general interpretation section of the Act. Highway is not defined. Highway inevitably means that the public do have a right of access to pass and re-pass along a highway. Road is defined. The definition is:

'. . . "road" means any highway and any other road to which the public has access, and includes bridges over which a road passes. . .'

What Mr Lowe has invited us to say is that there may be highways which come within the definition of a road, because the definition section says so, but it does not mean that every highway is a road. With all respect to Mr Lowe, I think that involves reading the definition the wrong way round. What the statute, after all, is intended to protect is the public from people with too much drink in them. Any highway is inevitably a place to which the public have a right of access. But there are a great many places which in popular language would be called a road which have not been dedicated as highways, are made up and look like roads and are used as roads, but are also places and roads to which the public does have access. Private roads are an example. Roads on housing estates are others. Roads in the forecourts of public houses and public buildings and



AUTH195

places of that sort are roads to which the public has access. They have all the appearances of being roads which this footpath did not, but they are brought within the protection of section 6 of the Act for the purposes of protection of the public.

If one simply reads the definition section and reads

' "road" means any highway',

that is enough for the resolution of this appeal, because this was found to be a highway and it is conceded to be a highway. The rest of the definition,

'any other road to which the public has access'

is conceding that for the purposes of the definition and the protection of the Act highways must be roads. Highways are anywhere that the public has a right to pass and re-pass, either on foot or with animals or in vehicles, as the case may be. If they are only fit for travelling on foot, they are footpaths, but they will still be highways if the public has the right to use them for that purpose. This clearly was a footpath. It also was that kind of a footpath which was a highway.

Attention has been called to section 36 of the Road Traffic Act 1972 which was the section under which the defendant was convicted when he was convicted of using the same without a vehicle excise licence and driving his motor cycle on a footpath. Section 36 has as its marginal description:

'Prohibition of driving motor vehicles elsewhere than on roads'.

Section 36(1) provides:

'Subject to the provisions of this section, if without lawful authority a person drives a motor vehicle on to or upon any common land, moorland or other land of whatsoever description, not being land forming part of a road, or on any road being a footpath or bridleway, he shall be guilty of an offence'.

That subsection clearly contemplates that the footpath or bridleway is to be classed as a road for the purposes of the interpretation of that subsection. What that subsection is devoted to doing is preventing motor vehicles to drive upon open country and places like that and also upon footpaths or bridleways. But it concedes that the footpaths and bridleways, notwithstanding that motor vehicles shall not be driven upon them, are nevertheless roads. There is therefore a special prohibition incorporated in section 36(1) against driving motor vehicles upon those two kinds of road. It does not in any way derogate from the definition in section 196(1).

It should I think be remarked at this point that the court has observed that in *Wilkinson's Road Traffic Offences, 12th ed (1985) vol 1 p 41* this matter is discussed in the last paragraph of the page. Without reading the whole of that paragraph, what it is suggesting is that the definition of a highway in section 196(1) should not include footpaths and bridleways. After considering section 36 the editors say at the end of the page:

'The result is that "road" offences are not committed by vehicles such as motor bicycles on footpaths and bridleways which are not roads'.

This, with respect to the editors, results from a misreading of the definition in section 196, because the fact of the matter is that providing footpaths and bridleways are highways they are unquestionably roads and accordingly what is recorded in that paragraph of *Wilkinson* is wrong.

The result of this is that once it is established that this was a highway, this footpath fell within the definition of road in section 196 and accordingly the Crown Court were entirely correct in dismissing the appeals to them. The answers to their questions are, as to the first one, that whether a road is a road within the ordinary meaning of the word is irrelevant. The



AUTH196

question is whether it is a road within the meaning of section 196(1) and this was. Secondly, they were right to reject the defendant's submissions and dismiss his appeals.
Accordingly, this appeal is dismissed.

**McCowan J** I agree.

*Appeal dismissed. Order for payment of prosecutor's costs out of central funds. Legal aid taxation of defendant's costs*

*Solicitors for the defendant: Lawson & Thompson, Newbiggin-by-the-Sea*
*Solicitors for the prosecutor: Collyer-Bristow for D E Brown, Newcastle-upon-Tyne*
*Reported by Miss Y H Tan Barrister-at-Law*

**12 JUNE 1986 COURT OF APPEAL**

## HUMMINGBIRD MOTORS LTD v HOBBS

**O'CONNOR and KERR LJJ**

*Negligence – Sale of secondhand car – Defendant purchasing from dealer secondhand car apparently in good condition with low mileage recorded on odometer – No warranty given by dealer as to mileage and defendant unaware that odometer reading false – Car resold to plaintiff by defendant with declaration that odometer reading correct to the best of his knowledge and belief – No statement of odometer being incorrect or true mileage unknown – Whether declaration made negligently – Whether defendant liable for breach of warranty or misrepresentation*

The defendant purchased from a dealer a secondhand motor car which appeared to be in immaculate condition. The odometer recorded a mileage of 34,900 miles although the car had in fact travelled 80,000 miles. The dealer did not tell the defendant that the odometer reading was incorrect but merely told him that there was no warranty as to the mileage and issued an invoice stating 'mileage not warranted'. A few days later the defendant sold the car to the plaintiffs and signed a document declaring, inter alia, that 'to the best of [his] knowledge and belief' the odometer reading was correct. The plaintiffs subsequently discovered that the recorded mileage was incorrect and brought against the defendant an action claiming damages for breach of warranty and misrepresentation. The defendant joined the car dealer as a third party to the action. The judge dismissed the claim against the third party and found that the defendant had been misled as to the true mileage and had sold the car in good faith, but that he was negligent in so doing.
On appeal by the defendant:
**Held,** allowing the appeal, that in the absence of any finding that the defendant was aware that the odometer reading was incorrect and in view of the finding that he had acted in good faith, it inevitably followed that that he genuinely believed that the information he gave was true to the best of his knowledge and belief; that therefore the defendant's declaration was correct and the issue of negligence was irrelevant; that, accordingly, there was no misrepresentation or the breach of any contractual term by the defendant and the judge erred in awarding damages against him (pp 279G-J, 280G, 281C, F-G, 282B-E).
*Cases referred to in the judgments:*
*Brown v Raphael [1958] Ch 636; [1958] 2 WLR 647; [1958] 2 All ER 79, CA*
*Smith v Land and House Property Corporation (1884) 28 Ch D 7, CA*



AUTH197

# MASTERS AND MASTERS v. SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT AND THE REGIONS AND SOMERSET COUNTY COUNCIL

QUEEN'S BENCH DIVISION (Hooper J.): October 1, 1999

*Rights of way—Wildlife and Countryside Act 1981—Modification of map to indicate route as byway open to all traffic instead of road used as a public path—Challenge to confirmation of order*

By an order under the Wildlife and Countryside Act 1981 ("the 1981 Act"), s.53(2)(b), the second respondent sought to modify the status of a right of way, shown on the definitive map as a road used as a public path ("RUPP"), to a byway open to all traffic ("BOAT"). The relevant date specified in the order was March 2, 1994. The applicants had already appealed to the first respondent against the decision of the second respondent not to make an order deleting the way from that map. Following a public inquiry into whether the order should be confirmed, the first respondent accepted the recommendations of his inspector and confirmed the order, also dismissing the applicants' appeal. The applicants challenged the decision to confirm the order, contending that on the relevant date the way did not fulfil the definition of a BOAT, since there was no evidence that it was currently used by the public, or that such was predominantly pedestrian or equestrian ("Ground C"); that, secondly, the first respondent erred in law in treating the second respondent's belief, that there were vehicular rights over the way in 1929 when it became responsible for highways maintainable at public expense, as independent evidence supporting the conclusion that such rights did exist for the purposes of modifying the status of the way; and that, thirdly, the first respondent erred in law by treating the shading of the way on an ordnance survey map of 1886 as indicating that the way was a vehicular right of way, when relevant ordnance survey circulars provided for less prominent shading on non-vehicular ways and there was no evidence to show that the 1886 map indicated a particular status of way.

**Held,** dismissing the application, that the intention behind the definition of a BOAT in section 66(1) was to distinguish byways from ordinary roads. Having regard to the duty in section 54 to reclassify a RUPP as a BOAT if a public right of way for vehicular traffic has been shown to exist, to the maxim "once a highway always a highway", to the legislative intention to record and preserve highways by making a definitive map and statement conclulsive, and to the difficulties that would face a highway authority in retaining a BOAT on the definitive map if a current predominance of non-vehicular traffic had to be demonstrated, the definition of a BOAT should be construed in a purposive manner and not be limited to byways currently and actually "used by the public mainly for the purpose for which footpaths and bridleways are so used". Ground C therefore failed. Secondly, the acceptance by the second respondent of the status of the way in 1929 was a relevant consideration and it was not *Wednesbury* unreasonable for the first respondent to treat it as such. Thirdly, the reference of the first respondent in the decision letter to both circulars indicated that he must have had in mind the need to decide which shading was being used. No evidence had been produced by the applicants to persuade the first respondent that the 1886 map was wrong in indicating vehicular right of way. No evidence had been produced to contradict the evidence of the second respondent that other ways similarly shaded on the 1886 map were now maintained by the second respondent as public vehicular routes.

**Cases referred to:**

(1) *R. v. Secretary of State for the Environment, ex parte Hood* [1975] 1 Q.B. 891.
(2) *R. v. Wiltshire County Council, ex parte Nettlecombe* [1998] J.P.L. 707.

(2000) 79 P. & C.R., Part No. 3 © Sweet & Maxwell

AUTH198

(3) *Stevens v. Secretary of State for the Environment* (1998) 76 P. & C.R. 503.
(4) *Suffolk County Council v. Mason and others* [1979] A.C. 705.

**Legislation construed:**
Wildlife and Countryside Act 1981, ss.53, 54, 56, 66. The material provisions are set out in the judgment of Hooper J.

**Application** under the Wildlife and Countryside Act 1981, Sched. 15, para. 12, against the decision of the Secretary of State for the Environment dated August 6, 1997 to confirm the Somerset County Council (Road Used as a Public Path) Wincanton 16/11 (No. 1) Modification Order 1994. The facts are set out in the judgment of Hooper J.

*George Laurence*, Q.C. for the applicants.
*John Hobson* for the first respondent.
*Edwin Simpson* for the second respondent.

**HOOPER J.:** At the conclusion of the hearing, I announced that the appellants had failed and that I would give my reasons later.

1. This is an appeal under paragraph 12 of Schedule 15 to the Wildlife and Countryside Act 1981 ("the 1981 Act") against the decision of the first respondent dated August 6, 1997 to confirm the Somerset County Council (Road Used as a Public Path) Wincanton 16/11 (No. 1) Modification Order 1994 made on June 10, 1994. The route passes from one minor road, which used to be a turnpike road, to another minor road through Lower Clapton Farm which is owned by the appellants and Upper Clapton Farm.

2. By that order (pages 214–216), made under section 53(2)(b) of the 1981 Act, the status of a right of way shown in the County of Somerset Definitive Map as a road used as a public path ("RUPP") was modified to the status of a byway open to all traffic ("byway"). The order described the relevant date for the purposes of section 56(2)(b) as being March 2, 1994. The order being opposed by the appellants could not take effect unless confirmed either by a person appointed by the Secretary of State or by himself (Schedule 15 to the 1981 Act). By letter dated March 24, 1995 (page 106), the Secretary of State announced that he intended to take the decision himself.

3. One of his reasons for so doing was that the appellants in 1993 had applied to the council for an order pursuant to section 53(2), (3)(c)(iii) and (5) of the 1981 Act deleting the RUPP from the definitive map, on which it had been shown since 1972. The council declined to make the order sought by the appellants (page 40) and Mrs Masters appealed to the Secretary of State under Schedule 14 to the 1981 Act.

4. The Secretary of State established a public inquiry to investigate whether the 1994 order should be confirmed. On July 26, 1995, the inspector reported recommending the confirmation of the order (pages 218–241). On August 6, 1997 the first respondent both confirmed the order and dismissed the masters' appeal (pages 242–252). It is the confirmation of the order which is the subject matter of this appeal.

5. The bundle of documents filed for the purposes of the hearing tend to show that the route had fallen into disuse around the turn of the century, had become overgrown and impassable and was then obliterated by the then owner in so far as it passed through Upper Clapton Farm. He was successfully prosecuted for obstruction of a highway in 1991 and that part of the route is now open. Complaints are recorded as having been made as long ago as 1975. At the time of the prosecution the appellants were asked to



AUTH199

remove barbed wire fencing and a tubular framed barrier which were obstructing the route. They did so, but put in gates. In 1991 Mr Masters sent to the rights of way section of the county council an invoice for supplying and fitting two gates on the route (page 35). That invoice received a frosty response from the second respondent, which declined to pay and required the removal of the gates as an unauthorised obstruction of a RUPP (page 33). Riders have been challenged at Lower Clapton Farm and a washing line was, at some point, strung across the route there. The inspector reported: "The route is now ridden infrequently because of the challenges by the Masters family at Lower Clapton Farm (paragraph 5.8 at 228). Particular alleged challenges are recorded at pages 286, 303, 312 and 314. If the witnesses are giving accurate accounts, it would not be surprising that riders have "ridden infrequently". (In addition to the pages cited, see also pages 98, 150, 223 and 227.)

*The law*

6. The was no dispute as to the correctness of the maxim: "once a highway, always a highway".

7. The statutory background is helpfully set out in the appellants' skeleton argument:

> "3. Section 27 of the National Parks and Access to the Countryside Act 1949 ('the 1949 Act') imposed a requirement upon county councils to survey their areas and produce a map showing footpaths, bridleways or roads used as public paths ('RUPPS'). Section 27(6) defined a RUPP as 'a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used'. Section 32(4)(b) of the 1949 Act provided that where the map showed a bridleway or a RUPP, that was to be conclusive evidence that the public had thereover a right of way on foot and a right of way on horseback or leading a horse, without prejudice to the question whether the public had at that date any right of way other than those rights.
> 4. The Countryside Act 1968 ('the 1968 Act') required county councils to review their definitive maps and reclassify every RUPP as either a byway open to all traffic ('BOAT'), a bridleway or a footpath. The expression RUPP was no longer to be used. As part of that review process, consideration was to be given to the suitability of a RUPP for vehicular traffic and to whether extinguishing vehicular rights would cause undue hardship (paragraphs 7 to 10 in Part III of Schedule 3 to the 1968 Act).
> 5. Not all RUPPs were reclassified in consequence of the 1968 Act. The current legislation is the 1981 Act. That Act does not define a RUPP. Section 54(1) of the Act requires county councils to carry out a review of RUPPs [meaning for the purposes of the section 'a way which is shown in a definitive map and statement as a road used as a public path']. Section 54(2) provides that the definitive map and statement shall show a RUPP as either a byway open to all traffic, a bridleway or a footpath. Section 54(3) provides that a RUPP shall be shown:
>
> > '(a) if a public right of way for vehicular traffic has been shown to exist, as a byway open to all traffic;
> > (b) if paragraph (a) does not apply and public bridleway rights have not been shown not to exist, as a bridleway; and



AUTH200

(c) if neither paragraph (a) nor paragraph (b) applies, as a footpath."

6. The various categories of highway which may be shown on the definitive map are defined in section 66(1) of the 1981 Act. A BOAT is defined as:

'a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used.'

7. Section 53(2) of the 1981 Act requires county councils to keep the definitive map and statement under review and make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of certain specified events. Section 53(3)(c) provides that one relevant event is:

'(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist ...

(ii) that a highway shown on the map and statement as a highway of a particular description ought to be there as a highway of a different description; or

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.' "

7. Section 53(5) provides that any person may apply to the authority for an order under section 53(2) making such modifications as appear to the council to be requisite in consequence of an event failing within, *inter alia*, subsection 53(3)(c). The council's obligations on receipt of such an application are provided for in paragraphs 1, 2 and 3 of Schedule 14 to the 1981 Act ..."

8. Section 56 of the 1981 Act provides for the effect of a definitive map and statement:

"(1) A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely:

(a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover a right of way on foot, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than that right;

(b) where the map shows a bridleway, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than those rights;

(c) where the map shows a byway open to all traffic, the map shall



AUTH201

> be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way for vehicular and all other kinds of traffic; (d) where the map shows a road used as a public path, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than those rights."

9. During the course of argument, Mr Laurence, Q.C. for the appellants spoke of the use by "4×4s" of byways. Highway authorities have the power to make traffic regulation orders preventing the use of motorised vehicles (see letter to the appellants from *Somerset C.C.* dated March 7, 1994, page 41).

*Ground C—"predominant use on foot and horseback, as required to fulfil byway definition not established"*

10. Ground C was not a matter which the Secretary of State had considered or was asked to consider. Mr Laurence relies upon the decision of Dyson J. in *R. v. Wiltshire County Council, ex parte Nettlecombe* [1998] J.P.L. 707. In that case he successfully argued that a highway could not properly be described on the definitive map as a byway in the absence of evidence of current user. He relied on the definition of byway in section 66(1) (see above paragraph 7) and, particularly, the words: "which is used by the public mainly for the purpose for which footpaths and bridleways are so used". He argues that there must be evidence of "current use by vehicles *and* equestrians *and* pedestrians" at the relevant date. He further argues that there must be "more such current use by pedestrians and equestrians (combined) than by vehicles." As Mr Laurence himself wrote in an article (1998) Rights of Way Law Review 87:

> "In my experience, there was prior to *Nettlecombe* a more or less universal assumption that a public vehicular carriage-way could properly be shown on the map as such as long it was not mainly or exclusively used with vehicles. In other words, the definition was treated as being directed to preventing ordinary tarred roads, on which the motor car dominated, from being shown on the map. All other public vehicular carriageways have been thought to qualify for inclusion on the maps as BOATs".

11. During the course of argument I made it clear that I had doubts about the correctness of *Nettlecombe* and Mr Laurence rightly reminded me that I should follow it unless I thought it was plainly wrong. I also made it clear that, if Mr Laurence was right, then the matter would have to go back to be reconsidered by the first respondent, in the light of the fact that the point had not been taken before. Although Mrs Smith, the second respondent's rights of way officer, has summarised the evidence before the enquiry of user (pages 286–287), I take the view that it would not be right for me to apply what Mr Laurence says is the right test, to that evidence.

12. Before looking at the law, it is helpful to look at the practical consequences if Mr Laurence's interpretation is right.



AUTH202

(i) If under section 53 of the 1981 Act, the authority has decided that a RUPP shown on the definitive map is a highway with a public right of way for vehicular traffic then, although under subsection (3)(a), it has a duty to show it as a byway on the map, it will not be able to do so unless there is evidence that it *is* actually used by the public *mainly* for the purpose for which footpaths and bridleways are so used, a matter to which I return shortly.

(ii) In the absence of such evidence, it could not be shown as a byway or, indeed, as a RUPP, because section 54(2) provides that a definitive map and statement "shall not employ the expression" RUPP.

(iii) Nor could it be shown as a bridleway or footpath becuse, by virtue of section 66(1), to a bridleway or footpath it must be a highway over which the public have only the limited rights associated with bridleways and footpaths. This would be inconsistent with the finding that there is public right of way for vehicular traffic.

(iv) Albeit that the public would continue to have full vehicular, equestrian and pedestrian rights over the highway, the definitive map and statement could not show this and, presumably, the signs saying "byway" would have to be taken down.

(v) Given that section 56 of the 1981 Act (which makes the definitive map and statement conclusive evidence of the existence of a highway) would no longer apply, the authority would have to prove to the criminal standard that the route was a highway if it prosecuted a person for obstructing the route.

(vi) Not only would a prosecution be expensive but, as anyone knows who has been involved with highway cases of this kind, it can often be difficult to prove the existence of a highway and will become increasingly more difficult as potential witnesses die.

(vii) Assuming that the highway had been removed from the definitive map and statement, the authority, on its own motion or an application under section 53, would have to restore it if there was evidence that it was now actually being used by the public *mainly* for the purposes for which footpaths and bridleways are so used.

(viii) Assuming that the definitive map and statement showed the highway as a byway but for one reason or another, including unlawful stopping-up, obstruction or harrassment by the landowner over whose land the highway passes, the highway was not now actually being used by the public *mainly* for the purpose for which footpaths and bridleways are so used, then the authority, on its own motion or on application under section 53, would have to remove the highway from the map and statement altogether.

13. I now turn to the evidence which, according to Mr Laurence, would have to be produced to show or to continue to show a byway on a definitive map. Helpfully he has set it out in a schedule to the article (page 344) from which I have already cited a passage.

14. One can see from the schedule that there is only one set of circumstances—no. 9—in which a byway survives. No. 8 fails because of no current public vehicular use. Thus if motorised vehicles are barred from the byway by order, only use by horse drawn vehicles will enable it to stay as a byway. Given the declining interest in driving horses many byways could disappear. If the landowner over which a highway passes seeks an order



AUTH203

| Category | Current public vehicular use? | Current public pedestrian use? | Current public equestrian use? | Balance of use | BOAT? |
|---|---|---|---|---|---|
| 1. | Yes | No | No | Only current public vehicular use | No |
| 2. | Yes | Yes | No | More current public vehicular use than current public pedestrian use | No |
| 3. | Yes | No | Yes | More current public vehicular use than current public equestrian use | No |
| 4. | Yes | Yes | Yes | More current public vehicular use than current public pedestrian and current public equestrian use combined | No |
| 5. | No | No | No | Balancing impossible | No |
| 6. | No | Yes | No | Only current public pedestrian use: balancing impossible | No |
| 7. | No | No | Yes | Only current public equestrian use: balancing impossible | No |
| 8. | No | Yes | Yes | Only current public pedestrian use and current public equestrian use; no current public vehicular use: balancing impossible | No |
| 9. | Yes | Yes | Yes | Less current public vehicular use than current public pedestrian and current public equestrian use combined | Yes |
| 10. | Yes | Yes | No | Less current public vehicular use than current public pedestrian use, but no current public equestrian use | No |
| 11. | Yes | No | Yes | Less current public vehicular use than current equestrian pedestrian use, but no current public pedestrian use | No |

under section 53 removing the byway from the definitive map, how does an authority show that no. 9 applies? Persons using byways do not sign in! As I put it to Mr Laurence during the course of argument, in order to retain a byway, ramblers, horse riders and those who drive horses would have to get together to make sure that they used the byway in the right proportions. Even then their best efforts may be thwarted by others who destroy the



AUTH204

balance which they had hoped to achieve. If the byways was open to "4×4s" a group of them could tilt the balance from no. 9 to no. 4.

15. I hope that I have shown the extraordinary consequences which would follow if Mr Laurence is right. Hard pressed authorities could be deluged with applications and would have to spend an inordinate amount of time and money preserving what many see as one of the great heritages of this country, namely our system of byways, bridleways and footpaths criss-crossing rural England and Wales and enshrined in a definitive map.

16. In the light of this and given what Mr Laurence described as a "more or less universal assumption" (paragraph 10 above), I would be very reluctant to accept his submissions unless constrained to do so. He relies on the wording of the definition of byways and draws support from the slightly different wording by which the 1949 Act defined a RUPP (paragraph 7 above). He points, in that definition, to the use of the plural "purposes" rather than the singular "purpose" and the use of "or" rather than "and" between the words "footpaths" and "bridleways". It is the use of the word "and" in the 1981 Act which underpins, for example, nos 10 and 11 in his schedule.

17. The background to the 1949 Act was fully explored by the House of Lords in *Suffolk County Council v. Mason and others* [1979] A.C. 705. As Lord Hailsham said (720G–721A):

> "... its target is the maintenance of access to the countryside, not primarily in the interest of the local inhabitants (who would not be inclined to leave paths disused or impassable or allow them to be stopped up if they found them of substantial local value), but of the public at large, including particularly perhaps the inhabitants of our towns, who might wish to enjoy access to the amenities of countryside and areas of natural beauty. Still further from the mind of the legislature seems to have been the idea of extinguishing any existing right. On the contrary, its targets appear to have been the inroads of nature, the apathy of local inhabitants, the proprietary zeal of rural occupiers and the fallibility of human memory."

The last sentence could certainly apply to the route in question, assuming that it is a highway. In *R. v. Secretary of State for the Environment, ex parte Hood* [1975] 1 Q.B. 891, CA, all three members of the court were of the view, as the headnote states, that it was the intention of Parliament that the definitive maps should, subject to section 32(4)(b) of the 1949 Act (now, albeit in a slightly different form, section 56(1)(d) of the 1981 Act) and the review section (now section 53) finally decide all questions as to public rights of way without them being re-opened (899H, 901G–H and 903A–B) "when the evidence on which the definitive decision was made might no longer be available" (903B).

18. In *Mason* Lord Fraser said (731B–C), as to the 1949 Act:

> "Its whole emphasis is on recording and preserving rights which might otherwise be lost. That is also why the definitive map is not required to show ordinary roads over which there must be a public right of way on foot and on horseback. Such roads are entirely outside the scope of the Act."

In *Hood*, Lord Denning M.R. said (897E–F):

> "Much difficulty was caused by [the] definition of 'road used as a public



AUTH205

path.' Seeing that it is a *highway* it must come within the third category of the common law, namely, a cartway over which the public have a right, not only on foot or horse, but also in carts. The word 'mainly' is the problem. The object of the draftsman was to include cartways over which there is a *public right of cartway* but which are used nowadays mainly by people walking or riding horses, like the Berkshire Ridgeway or the ways over the South Downs. The draftsman intended to exclude metalled roads used by motor cars."

The definition of RUPP in the 1949 Act was designed to exclude such roads. In my judgment, that was also the purpose of the definition of byway in the 1981 Act.

19. I now turn to *Nettlecombe*. Mr Laurence submitted that (711):

"(1) the definition in section 66(1) of the 1981 Act shows that for a particular way to come within Part III of the Act as a byway open to all traffic, it must be currently used by the public, and such public use must be predominantly pedestrian and/or equestrian; (2) the council has no authority to make an order unless it discovers evidence which (when considered with all other relevant evidence available to it) shows that the land over which a right of way subsists or is reasonably alleged to subsist is currently used by the public; (3) no evidence was discovered by the council which satisfied it, or could have satisfied any reasonable authority tha the condition in (2) was made out."

20. Mr Gordon, Q.C. submitted on behalf of the council that the words "but which is used . . ." obliged the authority to determine the potential use by the public of the highway.

Dyson J. said:

"I reject Mr Gordon's arguments: First, the language of the definition is clear and unambiguous. It is expressed in the present tense, and refers to current use, not past or future or potential use. Secondly, I cannot think of any policy reason why Parliament should have intended an authority to carry out the difficult exercise of speculating into the future as to the possible use of highways. Finally, I find nothing odd in the notion that in relation to byways open to all traffic, Parliament was concerned not with rights of way, but with actual use. The aim and object of Part III of the 1981 Act is to protect the interests of walkers and riders in the countryside. It is entirely sensible and rational to say that the benefit of the definitive map and statement should be accorded to pedestrian and equestrian users of bridleways and footpaths, *i.e.*, highways over which such users have rights of way, and to say in relation to highways over which the public have a right for vehicular and other kinds of traffic, that the protection of the definitive map and statement is accorded only if they are actually used by the public mainly for the purpose for which footpaths and bridleways are used.

In my view, it is open to an authority to have regard to recent use when it decides whether a highway is currently being used by the public within the meaning of the definition of byway open to all traffic in section 66(1). There will be borderline cases in which it is difficult to decide how far back in time an authority can properly go in order to determine the present use of a highway. . . .

I should add that the interpretation contended for by Mr Laurence is



AUTH206

consistent with the meaning of 'road used as a public path' in section 27(6) of the National Parks and Access to the Countryside Act 1949. The 'road used a a public path' was the predecessor of the 'byway open to all traffic' under the 1981 Act. It was defined as 'a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used'. Dicta in *R. v. Secretary of State for the Environment, ex parte Hood* [1975] 1 Q.B. 891 at 897E–F 'but which are used nowadays by people walking or riding horses', at 904G, 'a public way which is mainly used as a footpath or bridleway', and *Suffolk County Council v. Mason* [1979] A.C. 705 at 710H, 715A and B 'those which are exclusively, or mainly, used either by ramblers alone or by both riders and ramblers', show that, in relation to a road used as public path, there had to be actual current use. I am fortified in my conclusion by these dicta since the definition of a byway open to all traffic points even more clearly to actual current use than its predecessor."

21. I have already said that, in my judgment, the purpose of giving a definition to byways was to distinguish byways from ordinary roads. Mr Gordon did not apparently submit that the purpose of the definition is to exclude ordinary roads. Nor apparently did he argue that giving the word "byway" a restrictive meaning would have the serious consequences which I have outlined. Dyson J. says, in this passage, that: "The aim and object of Part III of the 1981 Act is to protect the interests of walkers and riders in the countryside." Although on the authority of *Mason* that is true of the 1949 Act, I am not sure that that is true of the 1981 Act if by that passage Dyson J. meant that the rights of those (for example) who drive horses are not being protected. In any event, as I hope I have shown, the consequence of interpreting the definition in this way is that, although walkers and riders may continue to use byways, they lose the very valuable protection of the definitive map. I accept that the dicta cited by Dyson J. and other passages set out by Mr Laurence in his article offer support for the proposition that the definition introduces a requirement of current use. However, I take the view that they cannot be decisive of the issue.

22. In conclusion, the intention behind defining the word "byway" in section 66(1) of the 1981 Act in the way that it is defined was to distinguish byways from ordinary roads. Having regard to the duty in section 54 to reclassify a RUPP as a byway if "a public right of way for vehicular traffic has been shown to exist", to the maxim "once a highway, always a highway", to the legislative intention to record and preserve highways by making a definitive map and statement conclusive and having regard to the serious consequences which would follow from the literal interpretation which Mr Laurence seeks to give to the definition, the definition should be construed in a purposive manner. The definition is referring to a type of highway and not seeking to limit byways to those which are currently and actually "used by the public mainly for the purpose for which footpaths and bridleways are so used". Ground C fails.

*Ground B—the 1929 handover map*

23. The appellants submit that the Secretary of State erred in law in treating the council's belief that in 1929 at the time of the handover that there were vehicular rights as independent evidence supporting the con-



AUTH207

clusion that such rights did indeed exist. The relevant paragraphs are paragraphs 12–13 (pages 248–249).

24. Under section 29 of the Local Government Act 1929 the responsibility for all highways maintainable at public expense was transferred to county councils and they became county roads. The list prepared by Wincanton RDC and accepted by the county included this route. The Secretary of State concluded that the omission of footpaths and bridleways from the route "suggested that [Wincanton] intended to show only vehicular routes which they believed they had an obligation to maintain . . ." The Secretary of State lists the reservations about any such list but "He . . . agrees with the inspector's view that the Handover List and Map were a positive statement of what was then believed to be the status of the roads listed." As Mr Hobson pointed out: "That belief was evidence of the reputation of the road at the time and the basis upon which the county council accepted the responsibility to carry out repairs."

25. Mr Laurence submits that this conclusion was one that the first respondent could not lawfully reach in the light of *Stevens v. Secretary of State for the Environment* (1998) 76 P. & C.R. 503 (Sullivan J.). In that case it was held that on a reclassification of a RUPP, the mere fact that it was a RUPP could not in itself establish the existence of vehicular rights. This is not relevant to this case. Here there is not only belief in the status of the road but also acceptance by the county council of that status with the consequences that could follow from that. The Secretary of State's decision to treat this as a relevant consideration is not *Wednesbury* unreasonable. I see no merit in Ground B.

*Ground A—The 1886 O.S. Map*

26. This argument is developed in the appellants' skeleton argument:

> "12. The order route is shown on the 1886 OS map with the southern line thickened over most of its length. In paragraph 8.8 of his report (bundle p. 236) the inspector concluded that:
>
> > 'If the cartographer was following the instructions in the OS circulars of 1884 and 1885 then he clearly intended to convey the opinion that the through route, including the order length was a metalled public road for wheeled vehicles repairable by the highway authority . . .'
>
> 13. The Secretary of State in his decision letter (paragraph 10 bundle p. 246) stated that:
>
> > 'The Secretary of State agrees with the council that the OS Circular of 1884 cannot be ignored—this clearly states that all metalled public roads for wheeled traffic kept in good repair by the Highway Authority will be shaded . . . if the cartographer was carrying out the instructions contained in the OS circulars of 1884 and 1885, he was indicating that the route was a metalled public road for wheeled vehicles and repairable at public expense. No evidence has been produced to persuade the Secretary of State that the 1886 OS map was wrong in this respect.'
>
> 14. The OS circular of 1884 (bundle p. 259) provided that 'All metalled Public Roads for wheeled traffic kept in good repair by Highway Authority will in future be shaded.' In 1885 OS circular (bundle p. 262) provided that 'All Metalled Carriage Drives will in future be shaded as



AUTH208

2nd Class Roads, but the shading not quite so prominent as on Public Roads.' There was no evidence before either the inspector or the Secretary of State to indicate whether the shading of the order route on the 1886 OS map was of the more or less prominent variety. Accordingly the conclusion drawn by the inspector and the Secretary of State, that a cartographer following the 1884 and 1885 circulars must have been intending to indicate that the order route was a public vehicular highway was clearly wrong. The shading on the order route could have indicated either a metalled public vehicular highway kept in good repair (1884 Circular), or a metalled carriage drive (1885 circular). It is not possible to determine from the OS map which was intended, and so the OS map was neutral on the question of status."

27. In paragraph 15 of the skeleton it was submitted that, at the inquiry, it had been accepted by the second respondent that the 1886 map indicated only metalling and not status. This appears to have been a misunderstanding on the part of the appellants as the following paragraphs from the affidavit of Mrs Smith, the second respondent's right of way officer, show (pages 284–285). In giving evidence at the inquiry, she said that, in her opinion, the surveyor who prepared the 1886 road believed the land to be a public road (her statement is at pages 288–289 and the summary of the case being presented by the second respondent is in paragraph 4.16 of the report, page 225).

"4. I was aware of the distinction to be drawn between shading that was 'not so prominent' (metalled carriage drives) and more prominent (public roads) and can recall that this issue was considered during the Public Inquiry.
5. I have previously carried out a comparative exercise in respect of three local parishes (Maperton, Holton and Corton Denham) where ways shown on the 1886 O.S. Map with thickened boundaries were compared to the roads shown on the 1929 handover map and the subsequent road maintenance records dated 1930, 1950 and the present day.
6. I had also compared the thickened line of the Order Route to the thickened line of the Class III County Road which runs from the A371 to the A303, and which adjoins the Order Route in the vicinity of Lower Clapton Farm (this route was turnpiked in 1753). This road is also shown with a similar thickened line.
7. My conclusion was that there was a consistent pattern shown of roads that were shaded on the 1st Edition O.S. Map being now maintained by the Highway Authority as public vehicular routes. That pattern could be traced from the 1886 O.S. Map down through the various road maintenance maps (showing roads maintained by the county council as vehicular routes) to the present day.
8. All the ways which had thickened boundaries within the three Parishes that I investigaged later appeared as publicly maintainable vehicular roads.
9. I presented the comparison maps in respect of the three Parishes to the inspector at the Public Inquiry and he retained a copy of these maps [a copy was provided to me during the course of argument].
10. In the course of my investigation, I was not able to find any way known now to be of the status of private carriage road within the three



AUTH209

Parishes concerned and to check how it might have been depicted on the O.S. Map in 1886.
11. During the course of the enquiry I was cross-examined on my evidence over a period of two days. I cannot recall indicating a change in my view as to the significance that might be attached to the 'thickened' line in the 1886 O.S. Map."

28. In a letter dated August 18, 1998 (page 271), the second respondent wrote in reply to a letter (page 269) which put forward the proposition that Mrs Smith had altered her position:

"The Rights of Way Officer ... does not believe that she would have moved from the position set out in her statement.
She notes that the Inspector's report sets out the County Council's position with regard to the significance of the O.S. map and would have expected the Inspector to reflect any significant change of position on the part of the County Council in his report."

29. In the light of this affidavit the appellants are wrong in submitting:

"There was no evidence before either the Inspector or the Secretary of State to indicate whether the shading of the order route on the 1886 OS map was of the more or less prominent variety."

30. During the course of argument some time was spent analysing paragraph 8.8 of the inspector's report. In paragraph 8.5 he had written: "... I believe it is significant that the road was always a through route, connecting into the highway network of the area. It is more than a route between two farms." Paragraph 8.8 reads (pages 235–236).

"The 1886 OS 1st Edition opened the issue of status again by showing the Eastern and Southern boundaries of the through route more heavily shaded, possibly indicating that it was then a metalled public road for wheeled vehicles, and not a footpath. [4.16] Although the view was subsequently expressed by the Ordnance Survey Office [6.19] that their maps do not indicate status, the letter of the 11th March 1994 from the Office to Mrs Masters does not in my view clarify the situation as at 1886 or their intentions in shading the road boundaries. There was no evidence that at any time the Order route section was in fact metalled. However the shading on the map is clear, and the marking of what is now FP WN 16/1 as a footpath is also clear. [4.16] If the cartographer was following the instructions in the OS Circulars of 1884 and 1885 then he clearly intended to convey the opinion that the through route, including the Order length was a metalled public road for wheeled vehicles and repairable by the highway authority. This shading could not have been done in error and even though by 1903 the OS map 2nd Edition did not show shading, [4.16] it is in my view more than a possibility that the intention was to show that the through route was a public vehicular highway in 1886."

31. Paragraph 4.16, the reference to which follows the words which I have underlined, and paragraph 6.19 contain a summary of, respectively, the case for the second respondent and for the appellants.
32. Given the evidence put before the inspector by the second respondent and the reference to "more heavily shaded", it seems clear that the inspector did understand the relevance of the type of shading. Mr Laurence submits



AUTH210

that the next few words: "possibly indicating that it was then a metalled public road for wheeled vehicles, and not a footpath" indicate that either the inspector had some doubts about the value of relying on the survey or that he was unable to determine whether the route was heavily shaded or not. In my view the second of those cannot be right for the reasons I have given. Given the inspector's conclusion at the end of paragraph 8.8, these words, whatever they mean, do not affect the validity of his conclusions.

33. Mr Laurence submitted that even if the inspector had understood the relevance of the shading, the first respondent had not done so. In paragraph 8 (page 245), the Secretary of State writes:

> "... it is generally accepted that where a route is portrayed on a number of maps in a similar manner to other routes which are known today to be public roads then it is reasonable to conclude, on the balance of probability, that the route in question was also public and possibly vehicular, in the absence of evidence to the contrary." (See also paragraph 18 at page 251.)

It seems safe to assume that the Secretary of State had in mind the exercise which Ms Smith had done for the inspector (see paragraph 2, page 242). Although the Secretary of State does not himself use words such as "more heavily shaded", his reference to both O.S. Circulars indicates that he must have had in mind the need to decide which shading was being used. His concluding words were: "No evidence has been produced to persuade the Secretary of State that the 1886 O.S. Map was wrong in this respect". Although the appellants complain about the conclusion reached by the inspector and by the first respondent, they have not produced any evidence to contradict the evidence produced by the second respondent as to shading. Ground A also has no merit.

34. I therefore dismiss the appeal.

*Appeal dismissed. Applicants to pay the costs of the first respondent. Permission to appeal granted on Ground C only.*

*Solicitors*—Thrings & Long, Bath: Treasury Solicitor; Solicitor to Somerset County Council.

*Reporter*—Scott Lyness.



AUTH211

Court of Appeal

# *Trevelyan v Secretary of State for the Environment, Transport and the Regions

[2001] EWCA Civ 266

2001 Jan 30; Feb 23

Lord Phillips of Worth Matravers MR, Simon Brown and Longmore LJJ

*Highway—Right of way—Definitive map—Map showing bridleway—Landowner claiming right of way never existed and seeking deletion of bridleway from map—Power of inspector to confirm order for deletion—Whether evidence to justify inclusion of bridleway on map to be presumed—Standard of proof required to establish way marked on map by mistake—Wildlife and Countryside Act 1981 (c 69), s 53, Sch 15*

Landowners across whose land a bridleway was shown on the definitive map applied to the county council under section 53(5) of the Wildlife and Countryside Act 1981[1] for deletion of part of the bridleway from the map on the ground that it had never been a right of way. The council considered that there was insufficient evidence of use by horse riders to justify its designation as a bridleway but sufficient evidence of use on foot for it to be included on the definitive map as a footpath and refused to make an order for deletion. The Secretary of State allowed an appeal by the landowners and directed the council to make an order deleting the relevant part of the bridleway from the map. The order was duly made but could not take effect until confirmed by the Secretary of State, who had to consider any objections or representations made. Objections having been made, the Secretary of State appointed an inspector to hold a local inquiry and decide whether the order should be confirmed with or without modifications. The inspector concluded that no right of way existed over the relevant part of the bridleway, and accordingly ordered its deletion with a minor modification. Further objections caused the holding of a further inquiry after which the inspector upheld his original decision. The judge dismissed an application by the applicant under paragraph 12 of Schedule 15 to the 1981 Act for the order to be quashed.

On appeal by the applicant—

*Held*, dismissing the appeal, (1) that, where, in the course of an inquiry to consider objections or representations concerning a proposed order to modify the definitive map under section 53 of the 1981 Act, facts came to light which persuaded the inspector that the definitive map should depart from the proposed order, it was open to him under Schedule 15 to the Act to make an order modifying the proposed order accordingly, subject to any consequent representations and objections; and that the inspector had therefore had power to confirm the order deleting part of a bridleway subject to a modification substituting a footpath (post, pp 1273B–C, 1278D).

(2) That, in considering whether a right of way marked on a definitive map did in fact exist, there was an initial presumption that it did and, in the absence of evidence to the contrary, it should be assumed that the proper procedures had been followed in compiling the map and thus that such evidence existed; that the standard of proof required to justify a finding that no right of way existed was no more than the balance of probabilities, but there had to be evidence of some substance to outweigh the initial presumption that the right of way existed; that the more time that elapsed the more difficult it would be to adduce positive evidence establishing that a right of way had been marked by mistake on the definitive map; and that, accordingly, since the

[1] Wildlife and Countryside Act 1981, s 53: see post, p 1268D–H.
Sch 15: see post, pp 1271H–1272C.

AUTH212

A inspector had correctly directed himself on the evidential effect of the definitive map and made a finding of fact which manifestly satisfied the test required to justify a finding that the bridleway in question had been marked on the map in error, he had been entitled to reach the decision that he did (post, pp 1276B–D, 1277D–E, 1278D).

Decision of Latham J affirmed.

The following cases are referred to in the judgment of Lord Phillips of Worth
B Matravers MR:

*R v National Assembly for Wales, Ex p Robinson* (2000) 80 P & CR 348
*R v Secretary of State for the Environment, Ex p Burrows* [1991] 2 QB 354; [1990] 3 WLR 1070; [1990] 3 All ER 490, CA
*R v Secretary of State for the Environment, Ex p Hood* [1975] QB 891; [1975] 3 WLR 172; [1975] 3 All ER 243, CA
*Rubinstein v Secretary of State for the Environment* (1987) 57 P & CR 111

C

The following additional cases were cited in argument:

*Morgan v Hertfordshire County Council* (1965) 63 LGR 456, CA
*Parry v Secretary of State for the Environment* (unreported) 8 June 1998, Sedley J
*R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374; [1998] 3 WLR 1240; [1998] 2 All ER 587
*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759; [1995]
D 2 All ER 636, HL(E)

**APPEAL** from Latham J

By a notice of appeal dated 12 April 2000 the applicant, John Trevelyan, suing on behalf of himself and all other members of the Ramblers Association, appealed with the leave of Laws LJ from the order of Latham J made on 24 January 2000 dismissing with costs his application
E dated 3 June 1999 for an order quashing the decision of the respondent, the Secretary of State for the Environment, Transport and the Regions, given by the inspector appointed by him for the purpose by letter dated 1 April 1999, whereby the Lancashire County Council (Definitive Map and Statement of Public Rights of Way) (Definitive Map Modification) (No 7) Order 1996 deleting part of bridleway no 8, Sawley, was confirmed. The grounds of
F appeal were: (1) in determining whether to make (or confirm) a definitive map modification order deleting a way from the definitive map pursuant to section 53(2)(b) and (3)(c)(iii) of the Wildlife and Countryside Act 1981 a surveying authority (or the Secretary of State or an inspector appointed by the Secretary of State) had to carry out an exercise in evaluating "relevant evidence". That evidence included the evidence for the existence of the way
G afforded by its original inclusion on the definitive map. The judge erred in law in his approach to the manner in which the Secretary of State's inspector carried out that exercise; (2) the approach which the judge ought to have adopted was (a) that the original inclusion of a way on the definitive map pursuant to section 27 of the National Parks and Access to the Countryside Act 1949 (the predecessor legislation to the 1981 Act) meant that the relevant surveying authority had to have been satisfied that a right of way as
H so shown subsisted, or at least was "reasonably alleged" to subsist, at the relevant date, and that accordingly there had to have been evidential material to support that allegation and to so satisfy the authority; (b) the onus was on the applicant for a definitive map modification order under section 53(2) and (3)(c)(iii) of the 1981 Act deleting the way to prove (if he

AUTH213

could) that there was not or could not have been such evidential material available at the time, and there was no onus on the objector to prove that there was such evidential material available at the time or what it was; (c) the mere absence at the time when the application to delete came to be considered of positive evidence of what evidential material was available at the time to support the allegation that the right of way subsisted at the relevant date did not rebut the inferences in (a) or warrant an inference that there was no or insufficient such material; (3) had the judge adopted that approach, he would have held that the decision under challenge could not stand because the inspector (a) failed to attach any weight at all to the fact of the original inclusion of the part of bridleway no 8 the subject of the modification order on the definitive map, the evidential significance of which inclusion was strengthened by the actions of Mr and Mrs Hindley and Mr Fernie (successively owners of the affected land during the definitive map preparation process) from which it was to be inferred (in the absence of evidence to the contrary, of which there was none before the inspector) that they too accepted the existence of a public right of way over it and had to have had evidential grounds for so doing, (b) did not ask himself whether the applicants for the order had discharged the onus of proving that there was or could have been no or no sufficient evidential material available at the time to support the allegation that at the relevant date bridleway rights (or rights on foot) subsisted over the part of bridleway no 8 or to entitle the surveying authority to conclude that allegation to be reasonably made, (c) did not find, and could not on the evidence before him have found, that the applicants for the order had discharged that onus, (d) none the less failed to consider the evidence against the background that there had been (albeit no longer available) additional evidential material for the existence of bridleway rights (or rights on foot) over the part of bridleway no 8 sufficient to satisfy the surveying authority that the allegation of their existence was reasonable, (e) wrongly left altogether out of account in evaluating the evidence for and against the existence of a public right of way over that part of bridleway no 8 (whether on foot and on horseback or on foot alone) the evidence for its existence afforded by its original inclusion on the definitive map and the inferences to be drawn from that coupled with the part played by the landowners in the definitive map preparation process; (4) the judge erred in law in adopting the approach that (a) no weight was to be given to the original inclusion of a way on the definitive map as evidence of its existence unless positive evidence was adduced of what evidential material was available at the time to support its inclusion and there was shown to have been significant probative material for that purpose, (b) there being no such positive evidence adduced before the inspector, the inspector was therefore entitled to give no weight to the inclusion of that part of bridleway no 8 on the definitive map (either of itself or coupled with the participation of the then owners of the affected land in the definitive map preparation process) as evidence of its status as a public highway, (c) the judge, like the inspector, thus mistakenly reversed the onus of proof; (5) the inspector's decision failed to explain or justify how the deletion claimed could stand with the retention of (i) the remainder of bridleway no 8 and/or (ii) footpaths 28 and 29; and the judge erred in law in failing to quash the decision on that additional basis.

AUTH214

A The facts are stated in the judgment of Lord Phillips of Worth Matravers MR.

*George Laurence QC* and *Rhodri Price Lewis* for the applicant.
*John Hobson QC* for the Secretary of State.

*Cur adv vult*

B

23 February. The following judgments were handed down.

LORD PHILLIPS OF WORTH MATRAVERS MR

1 This is an appeal from the Queen's Bench Division, Crown Office List against the judgment of Latham J.

2 Some 20 years ago, for the benefit of those who enjoy walking in the C countryside, the Lancashire County Council designated as a long distance footpath the Ribble Way, which follows the course of the river of that name. In so doing they followed rights of way depicted as such on the relevant definitive map. So long as a right of way is shown on that map, its existence is conclusively demonstrated. Legislation provides, however, a procedure that can lead to the deletion from a definitive map of rights of way that have D been marked on it in error. Mr and Mrs Lord live in Sawley Lodge in the parish of Sawley and own the land around it. They bought their home in 1976. The Ribble Way passes through their land along bridleway 8. This proved unwelcome, for some who walked along this bridleway trespassed from it and committed acts of vandalism. Mr and Mrs Lord then discovered evidence which led them to conclude that bridleway 8 had been marked on the definitive map in error where there was, in fact, no right of way. In 1985 E they began the appropriate procedure to get deleted from the definitive map that part of bridleway 8 which crossed their land. I shall describe this part from now on simply as "bridleway 8", although in due course I shall have to address the fact that it did not include the easternmost section of bridleway 8. The procedure that Mr and Mrs Lord put in train followed a course more tortuous and lengthy than the Ribble Way, but culminated in an order made F by the respondent on 1 April 1999 deleting a large part of bridleway 8 from the definitive map. Mr Trevelyan, the appellant, was until recently the deputy director of the Ramblers Association. He appealed to Latham J to have the respondent's order quashed. That appeal failed. He now appeals to us with the permission of Laws LJ, who rightly took the view that the case raises a point of principle as to the correct approach to be adopted when G considering whether a right of way should be deleted from the definitive map.

*The facts*

3 I shall adapt the clear statement of the relevant facts and statutory provisions set out by Latham J in his judgment, for these are not contentious.

4 The definitive map in question was published on 10 August 1973. It H was prepared pursuant to the provisions of the National Parks and Access to Countryside Act 1949. Section 27 required the relevant authority, in this case Lancashire County Council, to survey land over which a right of way was alleged to subsist and to prepare a map showing such a right of way whenever in its opinion such a right of way subsisted, or was reasonably

AUTH215

alleged to have subsisted, at the relevant date. For the purposes of the present case, the relevant date was 22 September 1952. In order to carry out this duty, section 28 required the county council to consult with rural district councils. Section 29 then required a draft map to be prepared and advertised, and made provision for objections and determination by the county council of such objections. In the light of such objections, the county council was empowered to modify the map. A right was then given by section 29(5) for objections to any such modification to be dealt with by way of appeal to the Secretary of State, who was, in turn, empowered to hold a local inquiry under section 29(6). At the completion of that process, section 30 provided for the preparation of a provisional map; and section 31 entitled any person aggrieved to appeal to quarter sessions. By section 32, the county council was then obliged to prepare the definitive map. By section 32(4), designation of a right of way on such a map was deemed to be conclusive evidence that there was at the relevant date the right of way so designated. Section 33 required the county council to keep the definitive map under review, and provided for amendment by way of addition or modification but not deletion.

5 The relevant authorities were first given power to delete a right of way in limited circumstances by Schedule 3 to the Countryside Act 1968. The power to delete with which this appeal is concerned was however given by section 53 of the Wildlife and Countryside Act 1981, which provides:

> "(2) As regards every definitive map and statement, the surveying authority shall—(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.
>
> "(3) The events referred to in subsection (2) are as follows . . . (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies; (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification . . .
>
> "(5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of application under this subsection."

AUTH216

A 6 Schedules 14 and 15 to the 1981 Act make complicated provision for the procedures to be adopted in the event of any issues arising under section 53. By Schedule 14, an authority to whom any application is made for an order under section 53 is to investigate the matter and come to a determination. If the authority decides not to make an order, the applicant may appeal to the Secretary of State, who is to give such directions as appear
B to him necessary in the light of his decision on the appeal. By Schedule 15, where an authority has made an order, but there are objections, the order is to be submitted to the Secretary of State, who may appoint an inspector to hold an inquiry and to determine whether or not to confirm the order. In circumstances which I shall consider in greater detail in due course, it is open to the inspector to confirm an order with modifications. If the order is confirmed, but with modifications, and there are objections to the
C modifications, the Secretary of State is again required to hold a local inquiry or give the objectors an opportunity to be heard by an inspector before coming to a final decision. Paragraph 12 of the Schedule entitles any person aggrieved by the confirmation of an order on the grounds that it is outside the powers of section 53 or 54 to appeal to the High Court. This is the jurisdiction invoked in the present proceedings.

D 7 The right of way in question was not delineated on any maps before the coming into force of the 1949 Act. The survey of the relevant area for the purposes of that Act was carried out by Mr W Proctor, who was the Sawley parish representative on the Bowland Rural District Council, which was responsible for the survey on behalf of the Lancashire County Council. This was done between December 1950 and February 1951. Information
E supplied by Mr Proctor led the Bowland Rural District Council to record a right of way for those on foot or horseback running from the public highway in Sawley, along the drive leading to Sawley Lodge, and then across open fields, generally following the line of the River Ribble, through woods, eventually returning to the public highway. Its length was approximately three miles. It was identified on the definitive map as bridleway 8. The survey form delineating the route of the right of way did not include any
F explanation as to the nature of the evidence supporting the claim.

8 The land over which it ran had originally formed part of the Sawley Estate, which had, until 1949, been owned by Mr Fattorini. After his death it was split up. The land over which the western half of the claimed bridleway passed was purchased in August 1950 by Mr and Mrs Hindley. When, as a result of the survey, the county council produced the draft
G definitive map in 1953, including bridleway 8, Mr and Mrs Hindley objected to the map on two grounds. First they objected to the alignment of bridleway 8, on the grounds that it should have been shown running closer to the river; second, they objected to the inclusion of part of another bridleway, bridleway 20. These objections were accepted by the county council; and, eventually, the requisite amendments were duly recorded in 1965 in the notice given by the county council of proposed modifications to
H the draft definitive map.

9 In 1967 Mrs Fernie bought Sawley Lodge; and in 1970 Mr Fernie bought the remainder of the land which had been owned by Mr and Mrs Hindley across which part of the claimed bridleway ran. In July 1970 the provisional map was published, retaining the modification to

AUTH217

bridleway 8 to which I have already referred. Mr Fernie applied to quarter sessions under section 31(1) of the 1949 Act on the grounds that there was no public right of way along part of bridleway 8, and another bridleway, no 16. He also applied on the same grounds in relation to parts of two footpaths, numbered 11 and 17. He withdrew his objection in relation to bridleways 8 and 16; and the county council accepted that there was no right of way over the relevant parts of the two footpaths, which were deleted. The definitive map was accordingly published on 10 August 1973, including bridleway 8.

10 In 1976 Mr and Mrs Fernie sold the land to Mr and Mrs Lord. The latter became concerned about the bridleway when it was included on the first Ordnance Survey map published after the definitive map, in 1979. The use of the bridleway increased, with instances of trespass and vandalism. They complained to the county council in 1980. The county council, however, had in mind their plan for the Ribble Way, which, it was proposed, should include bridleway 8. It was concerned that walkers would be put at risk by the use of the bridleway by horse riders, and suggested that the right of way be downgraded to a footpath. Mr and Mrs Lord were not prepared to agree. None the less, they reluctantly accepted the positioning of Ribble Way signs along bridleway 8, on the understanding that that would be entirely without prejudice to their contention that no public right of way of any description existed along the route.

11 In 1985 Mr and Mrs Lord applied to the Lancashire County Council under section 53(5) of the 1981 Act for an order deleting bridleway 8 from the definitive map on the grounds that it had never been a right of way. The county council considered that there was insufficient evidence of use by horse riders to justify its designation as a bridleway, but that there was sufficient evidence of use on foot to justify it being included on the definitive map as a footpath. The applicants appealed to the Secretary of State for the Environment. Before the appeal was considered, Taylor J in *Rubinstein v Secretary of State for the Environment* (1987) 57 P & CR 111 held that, because of the conclusive nature of inclusion of a right of way on the definitive map as at the relevant date, section 53(3)(c)(iii) could only involve consideration of evidence relating to matters after the relevant date, for example the physical destruction of the land over which the right of way was said to exist. The Secretary of State accordingly dismissed Mr and Mrs Lord's appeal.

12 However, *Rubinstein's* case was overruled by the Court of Appeal in *R v Secretary of State for the Environment, Ex p Burrows* [1991] 2 QB 354. The court held, in effect, that, if evidence came to light to show that a mistake had been made in drawing up the definitive map, then such a mistake could be corrected in either of the three ways envisaged in section 53(3)(c) of the 1981 Act. The objective of these provisions was to ensure that the definitive map provided as accurate a picture as possible of the relevant rights of way.

13 Mr and Mrs Lord were advised that they could submit a new application to delete bridleway 8, which they did. The county council, on considering the evidence, again concluded that a right of way existed, but that it was a right of way on foot and not on horseback. Mr and Mrs Lord exercised their right of appeal under Schedule 14 to the Secretary of State,

AUTH218

A who allowed the appeal on 21 December 1994 and directed the county council to make an order to delete bridleway 8 from the definitive map.

14 At this point complications ensued which it is unnecessary to recount. Suffice it to say that an order was made in due course by the county council which complied with the Secretary of State's direction. Under the relevant procedure, this order could not take effect until confirmed by the
B Secretary of State. Before confirmation, the Secretary of State had to consider any representations or objections duly made in relation to it. Objections were made and the Secretary of State exercised his statutory power to appoint an inspector to hold a local inquiry into the matter. This had the effect of delegating to the inspector the task of deciding whether or not the order should be confirmed, with or without modifications.

15 Despite the decision of the Secretary of State, the county council
C remained of the view that, while no bridleway existed, the evidence demonstrated that there was a right of way in the form of a footpath. Accordingly at the inquiry they urged the inspector to confirm the Secretary of State's order, subject to a modification that would replace the deleted bridleway with a footpath. The Ramblers Association objected to the order, contending that the bridleway was properly marked on the map and should
D not be deleted or modified. Alternatively, they supported the modification proposed by the county council. The South Pennine Packhorse Trails Trust also objected to the order on the ground that it could not be demonstrated that there had been any error in depicting bridleway 8 on the definitive map.

16 The inspector, after a seven-day inquiry, gave his first decision on 18 December 1997. In this he concluded that there was no right of way of
E any description along bridleway 8, save for a stretch from the public highway along Sawley Lodge Drive to the junction with another bridleway, bridleway 16. He therefore proposed to make the order with a modification so as to leave this short stretch of bridleway 8 on the map. This triggered the right to make further objections, which were considered at a further public inquiry, as a result of which the inspector upheld his original decision in a letter of 1 April 1999. Although the latter was the final order, against which
F the appellant applied to Latham J, the relevant reasoning was contained in the original decision letter of 18 December 1997.

*The options open to the inspector and the decision that he reached*

17 The order challenged before the inspector directed that bridleway 8 should be deleted from the definitive map. It was undoubtedly open to the
G inspector to confirm the order, or alternatively to decide that the order should not be confirmed. He was in doubt, however, as to whether it was open to him to accede to the submission of the county council that he should modify the order by substituting a footpath for bridleway 8.

18 The powers of the inspector were derived from Schedule 15 to the 1981 Act, which provides, in so far as relevant:

H

"*Opposed orders*

"7(1) If any representation or objection duly made is not withdrawn the authority shall submit the order to the Secretary of State for confirmation by him.

AUTH219

"(2) Where an order is submitted to the Secretary of State under sub-paragraph (1), the Secretary of State shall either—(a) cause a local inquiry to be held; or . . .

"(3) On considering any representations or objections duly made and the report of the person appointed to hold the inquiry or hear representations or objections, the Secretary of State may confirm the order with or without modifications.

"*Restriction on power to confirm orders with modifications*

"8(1) The Secretary of State shall not confirm an order with modifications so as—(a) to affect land not affected by the order; (b) not to show any way shown in the order or to show any way not so shown; or (c) to show as a highway of one description a way which is shown in the order as a highway of another description, except after complying with the requirements of sub-paragraph (2)."

19 Sub-paragraph (2) makes provision for representations and objections to the proposed modification and a further public inquiry to consider these.

20 The inspector, acting on behalf of the Secretary of State, was rightly satisfied that he could and should act pursuant to paragraph 8(1)(b) in confirming the order subject to a modification which left on the definitive map the portion of bridleway 8 which followed the course of Sawley Lodge Drive. His doubts as to his power to make the modification proposed by the county council were expressed in the following passage of his decision letter:

"The county council were, nevertheless, seeking to modify the order to show the order path as a footpath to the north of the junction with bridleway 16. Their justification for this was that the Secretary of State's decision requiring the order to be made, with which they disagreed, was only part of the procedural process of Schedules 14 and 15 to the 1981 Act leading to the testing of all the available evidence both written and oral at a public inquiry. However, it does not seem to me that an order which, as written, quotes section 53(3)(c)(iii) and states 'that there is no public right of way over land shown in the map and statement as a highway of any description' and does not proceed with the alternative wording of the subsection can be modified to show a public right of way, other than for the retention of parts of bridleway 8. I regard this as fundamental in this case."

21 On behalf of Mr Trevelyan, Mr Laurence submitted that the inspector had erred in concluding that it was not open to him to confirm the order subject to a modification which substituted for bridleway 8 a footpath. He accepted that this could not be done under paragraph 8(1)(c) because there was no "way which is shown in the order" for which a footpath could be substituted. He argued, however, that the proposed modification fell within paragraph 8(1)(b) in that it showed a way not shown in the order.

22 For the Secretary of State, Mr Hobson supported the conclusion of the inspector. He argued that to depict a footpath in place of bridleway 8, when the order directed that the bridleway should be deleted, could not be

AUTH220

A described as *confirming* the order subject to modification. It was making a fundamentally different order.

23 If Mr Hobson's submission is correct, the consequence, as he accepted, was that, if the inspector had been satisfied that there was a right of way on foot along the course of bridleway 8, but that this was the limit of the right of way, he would have been bound to decide that the original order B should not be confirmed, leaving on the definitive map a bridleway that should not be there. This would be a manifestly unsatisfactory state of affairs. In my judgment, the scheme of the procedure under Schedule 15 is that if, in the course of the inquiry, facts come to light which persuade the inspector that the definitive map should depart from the proposed order he should modify it accordingly, subject to any consequent representations and objections leading to a further inquiry. To fetter his power to do this by a C test which requires evaluation of the modification to see whether the inspector can truly be said to be *confirming* the original order would be undesirable in principle and difficult in practice. Accordingly I consider that Mr Laurence was correct to challenge the decision of the inspector as to the ambit of his powers.

24 This might have been of some moment, for the inspector stated that D he regarded his conclusion as "fundamental in this case". It does not, however, appear to me that his conclusion had any effect on his decision. The inspector decided that the evidence was clearly inconsistent with the right of way depicted as bridleway 8 ever having existed as such. His decision letter then continued:

> "The question remains as to whether an error in recording a path as a E public bridleway, which, by definition, includes public footpath rights of way, reads across to those rights. I take the view that the error was in the recording of a right of way of whatever rights and consequently find myself persuaded that the provisions of section 53(3)(c)(iii) have been satisfied in relation to the order path apart from the very southernmost part between point A and the junction with bridleway 16."

F 25 It seems to me, and Mr Laurence did not gainsay this, that the inspector found in terms that it would be erroneous for the definitive map to portray a right of way of any kind along the course of what had been depicted as bridleway 8.

*The reasons for the inspector's decision*

G 26 The inspector received a substantial body of evidence as to the nature and extent of the user made of the path depicted as bridleway 8, both before and after 1952. There was no positive evidence that it had ever been used by horses, nor any clear evidence that such user would even have been a physical possibility. There was considerable evidence of its use as a footpath, but the evidence conflicted as to whether this was under license or in assertion of a public right of way. Latham J summarised this and other H evidence in his judgment. I do not find it necessary to repeat that exercise for this reason. Mr Laurence conceded that he could not contend that the inspector's decision was perverse. He accepted that there was evidence which might have supported the decision reached by the inspector even had he applied himself correctly to its consideration. Mr Laurence submitted,



AUTH221

however, that there were two errors of principle in the inspector's approach. A
But for those errors he might have reached a different decision. It followed
that his decision should be quashed.

27 I propose now to consider in turn each of the alleged errors.

*The effect of the definitive map*

28 Under the scheme set out in the 1949 Act the depiction of a right of B
way on the definitive map was intended to establish conclusively, once and
for all, the existence of that right of way. The Court of Appeal in *R v
Secretary of State for the Environment, Ex p Burrows* [1991] 2 QB 354
decided, however, that Parliament had had second thoughts. Mr Laurence
has reserved the right to challenge that decision should he have the
opportunity in the House of Lords. In this court he accepts, as he must, that
the 1981 Act provides for the removal of rights of way from the definitive C
map if it is shown that they were depicted on it by mistake.

29 Mr Laurence submits that, although the definitive map is *to that
extent* no longer conclusive as to the existence of a right of way, it is cogent
evidence of the existence of any right of way shown on it. His primary
challenge to the inspector's decision is that the inspector attached no weight
at all to the fact that bridleway 8 had been entered on the definitive map D
when he should have treated this as highly material evidence of the existence
of a right of way.

30 The inspector found that there was no reason to doubt that the
proper statutory procedures were carried out in relation to the depiction of
bridleway 8 on the definitive map. Mr Laurence showed us what those
procedures must have involved.

31 They involved a parish survey of the relevant area by Councillor E
Proctor, a meeting of Sawley Parish Council, and the provision by Councillor
Proctor of details of rights of way, including bridleway 8, to the clerk to
Bowland Rural District Council. The clerk signed a form on which the
details of bridleway 8 that had been provided by Councillor Proctor were set
out. That form had a space for insertion of the reasons for believing that the
bridleway was public, but nothing was entered in this space. The rural F
district council in its turn passed the information on to the West Riding
County Council, which was then the surveying authority. The entry by the
county council of bridleway 8 on the definitive map showed that they were
satisfied, if not that it subsisted, at least that it was reasonably alleged to
subsist. Thereafter, there were opportunities to challenge the draft map, but
in so far as bridleway 8 was concerned such challenges as were made were G
subsequently compromised or abandoned. When the definitive map was
finally published in August 1973, all involved anticipated that it would
conclusively and permanently establish the existence as a right of way of
bridleway 8. It was in the light of this history that Mr Laurence submitted
that the very fact of the depiction of bridleway 8 on the definitive map
should have carried very significant evidential weight with the inspector.

32 Latham J, at paragraph 23 of his judgment, accepted that the fact of H
the inclusion of the right of way on the definitive map was "obviously some
evidence of its existence" but continued:

> "The fact of the inclusion of the right of way on the definitive map is obviously some evidence of its existence. But the weight to be given to

AUTH222

A that evidence will depend upon an assessment of the extent to which there is material to show that its inclusion was the result of inquiry, consultation, or the mere ipse dixit of the person drawing up the relevant part of the map. In the present case, there was nothing to suggest that any significant probative material existed at the time to support Mr Proctor's survey . . ."

B 33 Mr Laurence submitted that the judge's approach to the definitive map erred in principle. It was wrong to discount it simply because there was no evidence of the basis upon which bridleway 8 had been entered on it. It was of the nature of things that such evidence might be lost with the passage of time, in which event an assumption should be made that such evidence had none the less existed. Mr Laurence invoked a statement by Lord C Denning MR in *R v Secretary of State for the Environment, Ex p Hood* [1975] QB 891, 899–900: "The definitive map in 1952 was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants then living. Such evidence might well have been lost or forgotten by 1975."

34 Latham J's decision in the present case was recently followed by Richards J in *R v National Assembly for Wales, Ex p Robinson* (2000) D 80 P & CR 348. He said, at p 356:

"The factual position in *Trevelyan* was materially identical to that in the present case. Mr Proctor's survey form delineating the route of the right of way did not include any explanation as to the nature of the evidence supporting the claim. That is equally true here. I have already E referred to the fact that the relevant section on the survey record card is blank. A passage at the end of paragraph 39 of the decision letter suggests that the National Assembly took the view that there could have been more evidence of public use at the time of inclusion of the footpath on the definitive map than exists now. Any such view would be pure speculation. There is nothing to show that reliance was placed at the time on anything beyond the mere existence of the footpath. That being so, no F weight could properly be attached to the mere fact that the footpath was included on the definitive map. By attaching weight to the fact of inclusion, the National Assembly fell into error."

35 Mr Laurence submitted that this passage compounded the error of approach of Latham J.

36 I consider that the approach of Latham and Richards JJ to the weight G to be given to the definitive map was, as Mr Laurence has submitted, wrong in principle. In the course of argument the court drew the attention of counsel to section 32 of the Highways Act 1980, which does not appear to have featured in discussion below. This provides:

"A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such H dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for

AUTH223

which it was made or compiled, and the custody in which it has been kept and from which it is produced." A

37 Both counsel agreed that this provision was applicable by analogy to the weight to be attached to the definitive map in the context of the inspector's task of considering whether, having regard to all the available evidence, he was satisfied that the right of way depicted as bridleway 8 did not exist. B

38 Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake. C D

39 These considerations are reflected in guidance published by the Secretary of State for the Environment (Circular 18/90) and the Secretary of State for Wales (Circular 45/90) after the decision of the Court of Appeal in *R v Secretary of State for the Environment, Ex p Burrows* [1991] 2 QB 354: E

> "in making an application for an order to delete or downgrade a right of way, it will be for those who contend that there is no right of way or that a right of way is of a lower status than that shown, to prove that the map is in error by the discovery of evidence, which when considered with all other relevant evidence clearly shows that a mistake was made when the right of way was first recorded . . . Authorities will be aware of the need, as emphasised by the Court of Appeal, to maintain an authoritative map and statement of the highest attainable accuracy. The evidence needed to remove a public right from such an authoritative record, will need to be cogent. The procedures for identifying and recording public rights of way have, in successive legislation, been comprehensive and thorough. Whilst they do not preclude errors, particularly where recent research has uncovered previously unknown evidence, or where the review procedures have never been implemented, they would tend to suggest that it is unlikely that a large number of errors would have been perpetuated for up to 40 years, without being questioned earlier." F G

*The inspector's approach*

40 The approach of the inspector to the standard of proof appears from the following passages of his decision letter, which followed a detailed assessment of all the evidence: H

> "Looked at in the context of the evidence of the persons working on or for the estate or those holding exclusive rights such as the Yorkshire Fly

AUTH224

A Fishers' Club, a clear impression builds up of a situation in which it seems to me to be beyond the bounds of credibility to accept that a public right of way existed over the Sawley Estate to the north of the junction with the Dockber Road in the first half of the century. I agree that the evidence needed to remove a public right of way from the definitive map and statement needs to be clear and cogent and demonstrate that a mistake had been made in the original claim and recording. I have noted all the B representations and objections on the matter but I am not persuaded, on the balance of the evidence, that a public bridleway existed from the junction with bridleway 16, northwards to point N and the junction with footpath 18, on the line of the order route, or the route originally claimed, prior to 1952. I am, consequently, persuaded that a mistake was made during the Sawley parish survey and that the order path was recorded in C error as a public bridleway."

41 I would make the following comments in relation to these passages.

42 The statement "I am not persuaded, on the balance of the evidence, that a public bridleway existed" is unhappily worded. Taken in isolation, those words suggest that the inspector considered that he should confirm the order unless satisfied on balance of probabilities that there was a bridleway. D But it is not right to take those words in isolation. The inspector directed himself that clear and cogent evidence was necessary to remove a public right of way from the definitive map and that it had to be demonstrated that a mistake had been made. This was necessarily, albeit implicitly, a recognition of the evidential effect of the definitive map. The finding by the inspector that it was, on the evidence, "beyond the bounds of credibility to E accept that a public right of way existed" over the material portion of bridleway 8 was a finding of fact that, unless demonstrated to be perverse, manifestly satisfied the test required to justify a finding that the bridleway had been marked on the definitive map as a right of way in error. For these reasons, I would reject the first ground of challenge made by Mr Laurence to the decision letter.

F *Anomalies*

43 As an independent ground of challenge to the inspector's decision, Mr Laurence contended that he failed to take into account the fact that the order deleting bridleway 8 resulted in a number of anomalies on the definitive map. Two footpaths, numbers 28 and 29 linked with bridleway 8. The removal of the bridleway had the result that these ended in culs-de-sac. G Furthermore bridleway 8 continued for half a mile or so to the east of the land affected by the order. The result of the order was, so Mr Laurence contended, to end this section in a cul-de-sac.

44 The inspector referred to the fact that confirmation of the order would produce anomalies in relation to the two footpaths, but Mr Laurence submitted that this reference failed to accord to them their proper significance. The inspector should have given more detailed consideration to H whether the order could be reconciled with these anomalies. I do not agree. The inspector's reference demonstrates that he did apply his mind to the significance of the two footpaths. He clearly considered that they did not outweigh the import of the other evidence. It was open to him so to conclude.

AUTH225

45 Mr Laurence also complained that the inspector made no reference to the anomaly created by the isolated eastern section of bridleway 8. It is true that the inspector did not refer to this when dealing with anomalies. He had, however, given consideration to this section of the bridleway earlier in his decision letter. In the course of considering the significance of an early map, OS 1908/09, he commented that he found it particularly significant that the map showed a bridlepath on the line of the eastern section of bridleway 8 that crossed by a ford to the north side of the Ribble rather than continuing along the course of the disputed part of the bridleway. This was a matter that the inspector could properly weigh against any suggestion that there was no explanation for the eastern section of bridleway 8.

46 Latham J was not impressed by the argument based on anomalies. He pointed out that the eastern section of bridleway 8 did not fall within the area of the map that the inspector was required to consider. Had he considered the evidence in relation to it, he might have concluded that the eastern section of the bridleway had also been depicted in error. I share his conclusion that the fact that the order produced the anomalies identified by Mr Laurence does not invalidate the inspector's decision. I would dismiss this appeal.

**SIMON BROWN LJ**

47 I agree.

**LONGMORE LJ**

48 I also agree.

*Appeal dismissed.*
*No order as to costs. Costs order below to stand.*
*Permission to appeal refused.*

*Solicitors: Brooke North, Leeds; Treasury Solicitor.*

SLD

AUTH226

# ROBINSON WEBSTER (HOLDINGS) LTD v. AGOMBAR

CHANCERY DIVISION (Etherton J.): April 9, 2001[1]

[2002] 1 P. & C.R. 20

H1 *Real property—Highways—1875 Tithe Award showed lane as being in the occupation of parish officers—Records made pursuant to Finance (1909–1910) Act 1910 showed lane as an untaxed public road—Council records, including definitive map, failed to record lane as subject to public rights—Landowners had dealt with lane as if private property—Dispute as to status of lane—Whether lane was a public highway—Whether rights of access extinguished—Whether estoppel by convention*

H2 The claimant purchased a property, Thickwood Farm, in 1990. In the contract of sale, the vendor agreed to sell "such right title and interest" as he had in a certain lane. The subsequent transfer of the land to the claimant also required the vendor to erect a wall across the lane to extinguish a right of way over the lane to a property known as Thickwood House. In an 1875 Tithe Award, the lane was shown as being in the occupation of "parish officers". A map and schedule made pursuant to the Finance (1909–1910) Act 1910 (which provided for the levy of a duty on the incremental value of land) showed the lane as an untaxed public road. However, council records from 1924 onwards, including the Definitive Map maintained by Wiltshire County Council initially under the National Parks and Access to the Countryside Act 1949 and then under the Wildlife and Countryside Act 1981, had never shown the lane as subject to public rights. The claimant's predecessors had, from the 1950s onwards, granted certain rights of way over the lane and one such predecessor in 1979 had even purported to convey the land itself. The defendants purchased a nearby property called Thickwood House in 1994 and asserted the right to use the lane. The claimant sought a declaration that the defendants were not entitled to use the lane as claimed. The defendants claimed that the lane was a public highway or, alternatively, that the benefit of a general private right of way over it by vehicle or foot.

H3 **Held,** dismissing the application, that the lane was a public highway maintainable at public expense. It was dedicated to and accepted by the public as a public highway. The fact that the claimant and its predecessors in title might, from time to time since the 1950s have treated the lane as private property which is no subject to public rights could not have removed that legal status. It had not been stopped up or diverted pursuant to any statute and the rule was "once a highway, always a highway". The defendants were entitled to use the lane in their capacity as members of the public and to use the lane for access to and from Thickwood House. Further, the effect of certain provisions in the 1990 transfer was not extinguish any right of access between Thickwood House and the lane and the defendants were not estopped by convention from asserting that the lane was a public highway.

H4 **Cases referred to:**

(1) *Attorney-General v. Antrobus* [1905] 2 Ch. 188.
(2) *Attorney-General v. Chandos Land and Building Society* (1910) 74 J.P. 401.
(3) *Dawes v. Hawkins* 141 E.R. 1399; (1860) 8 C.B. N.S. 848.
(4) *Eyre v. New Forest Highway Board* (1892) 56 J.P. 517.
(5) *Folkstone Corp. v. Brockman:* [1914] A.C. 338, HL.
(6) *Hansford v. Jago* [1921] 1 Ch. 322.
(7) *Kent CC v. Loughlin* 234 E.G. 681; [1975] J.P.L. 348; (1975) 119 S.J. 528, CA.

[1] Paragraph numbers in this judgment are as assigned by the court.



AUTH227

(8) *Payne v. Inwood* (1997) 74 P. & C.R. 42, CA.
(9) *Somvots Ltd v. Secretary of State for the Environment* [1979] A.C. 144, HL.
(10) *Todrick V. Western National Omnibus Co. Ltd* [1934] Ch. 561, CA; affirming [1934] Ch. 190.
(11) *Wheeldon v. Burrows* (1879) L.R. 12 Ch.D. 31; [1874–90] All E.R. Rep. 669; (1879) 48 L.J.Ch. 853; (1879) 41 L.T. 327, CA.

H5 **Legislation referred to:**
Finance (1909–1910) Act 1910; Highways Act 1835; Highways Act 1930, ss.31 and 32; Law of Property Act 1925, s.62; Local Government Act 1929; National Parks and Access to the Countryside Act 1949; Wildlife and Countryside Act 1981.

H6 **Application** by Robinson Webster (Holdings) Ltd, registered proprieter of a lane in the hamlet of Thickwood, Colerne, Wiltshire and of a property known as Thickwood Farm for a declaration that the defendants, Colin Edward Agombar and Sandra Catherine Agombar, owners of a property known as Thickwood House, had no right to use said lane, save for one specified purpose. The facts are stated in the judgment.

H7 *David Hodge, Q.C.* and *Ian Partridge* for the claimant.
*Katharine Holland* for the defendants.

**ETHERTON J.:**

**The Proceedings**

1 These proceedings concern a lane in the hamlet of Thickwood, Colerne, Wiltshire. The claimant is registered at H.M. Land Registry under Title No. WT 134929 as proprietor of the lane and other land known as Thickwood Farm. The defendants own and occupy a property nearby called Thickwood House, which is registered at H.M. Land Registry under Title No. WT 99791. The claimant seeks declaratory relief to the effect that the defendants have no right to use the land in question, save for one specific limited purpose. The defendants claim that the lane is a public highway or, alternatively, that they have the benefit of a general private right of way over it by vehicle or on foot.

**The configuration to the relevant areas of land**

2 The defendant's property Thickwood House is a large country house dating from at least the seventeenth century. Within the grounds are farm buildings. Some of these have been converted and are in use as a school for dyslexic children. Two of the outbuildings have also been converted to holiday cottages. The grounds include an area of land to the north-west of the house, which appears as No. 5980 on the Ordnance Survey map and which has been referred to as the meadow ("the Meadow"). The claimant's property consists of about 212 acres of farm land and a building now known as The Old Farmhouse. That building was formally known as Thickwood Farmhouse. The building and land are now known as Thickwood Farm. Lying between Thickwood House and Thickwood Farm is a property known as Honeysuckle House. This is a Victorian property, which formerly comprised two individual cottages. It is surrounded by a garden and, to the north-east of the house, is a paddock. Honeysuckle House is owned by a Mr and Mrs Hunt, who are registered as proprietors at H.M. Land Registry under Title No. WT 121168.

3 The lane, which I have mentioned above, has been referred to throughout these proceedings as the Blue Land ("the Blue Land"). It runs between



AUTH228

Thickwood House and Honeysuckle House, at its western extremity, and Thickwood Lane, which is the main public highway to Colerne, at its eastern extremity. At the Thickwood Lane end, the Blue Land splits into two branches and surrounds a small triangular area of land adjacent to Thickwood Lane. In that triangular space, on a small green mound, is a public telephone box. As one passes from Thickwood Lane up the Blue Land towards its western end, there is a property on the left now called Stone Crop. This property was formerly called Belvedere and then Wayside. It was referred to as Wayside in the trial, and this is the name which I will use in this judgment. Beyond Wayside, proceeding westwards along the Blue Land, lies Thickwood House. Thickwood House abuts the end of the Blue Land. To the north-east of Thickwood House, and also abutting the end of the Blue Land, is Honeysuckle House. Passing in an easterly direction along Blue Land towards Thickwood Lane, the Old Farmhouse and Thickwood Farm are the next property adjoining the Blue Land. Thickwood House, Honeysuckle House and The Old Farmhouse thus form a cul-de-sac at the extreme western end of the Blue Land. To the east of The Old Farmhouse, and adjoining Thickwood Lane, lies Sarum House. The land on which Sarum House is built was formerly the garden of Wayside, even though they are on opposite sides of the Blue Land.

4 In the wall of Wayside, fronting the triangular area adjoining Thickwood Lane, is a post box. This is the local post box for the hamlet of Thickwood.

**Some key dates and historical background**

5 An Index Map of the manor of Colerne of 1767 shows Thickwood House as "Madam Fishers Manor House". It also shows The Old Farmhouse. The colouring on the map indicates that both those properties were then in separate ownership from what is now Honeysuckle House and the Meadow.

6 The division of the land surrounding the Blue Land between different owners appears also from a number of historic documents: the Colerne Enclosure Award plan of 1787, a copy of New College's Estate map for Colerne, said by the Defendants to have been made in about the middle of the nineteenth century, and a plan and tithe apportionment schedule accompanying the 1875 Colerne Tithe Award. These 1875 documents record that the Blue Land was then in the occupation of Parish Officers.

7 A plan and record of valuations prepared between 1910 and 1920 pursuant to the Finance (1909–1910) Act 1910 show the Blue Land as an untaxed public road. By this date the various hereditaments abutting the Blue Land, while in the occupation of different persons, were all owned by John Walmesley of Lucknam They formed part of Lucknam Park Estate.

8 In 1919, John Walmesley conveyed the Lucknam Park Estate to Alfred Henry Read. In 1924, Alfred Read conveyed Thickwood House, Honeysuckle House and Thickwood Farm to George Brown Ewing.

9 The records held by Wiltshire County Council, dating back to 1924, for the purposes of replying to requests for local authority searches, do not record the Blue Land as a highway.

10 By the Local Government Act 1929, the County Council became the highway authority in place of the District Council as from January 1, 1930. Highways maintainable at the public expense vested in the County Council and became "County Roads". The highways records of the District Council were transferred to the County Council which prepared a "Highway



AUTH229

Record". The Blue Land is no shown, and apparently has never been shown, on the Highway Record for Thickwood as a publicly maintained highway.

11 The National Parks and Access to the Countryside Act 1949 required County Councils to produce a Definitive Map showing all ways which were the subject of public rights. The Wiltshire County Council's Definitive Map, which is now maintained under the Wildlife and Countryside Act 1981, has never shown the Blue Land as subject to public rights.

12 By a conveyance of August 20, 1952, Miss Georgina Daniels and Mrs Marian Worthy conveyed Thickwood Farm to George Stephens Gifford ("Mr Gifford senior"). That conveyance does not appear to have included the Blue Land.

13 By a written agreement dated June 9, 1958, Mr Gifford senior granted Major Walter Norman Culverwell of Wayside a right of way over the Blue Land Between the garage at Wayside and Thickwood Lane for the yearly sum of £1, terminable on 12 months' written notice.

14 By a conveyance dated July 24, 1959, Miss Daniels and Mrs Worthy conveyed Thickwood House to Mr Gifford Senior. This conveyance did not include the Blue Land.

15 By a deed of gift dated August 4, 1967, Mr Gifford senior transferred Honeysuckle House and The Old Farmhouse to his son George Alexander Gifford ("Mr Gifford junior"). There was included in the conveyance a grant of a right of way over the Blue Land.

16 By a conveyance dated April 11, 1969, Mr Gifford senior conveyed Thickwood House to Mr Gifford junior. Thickwood House was subsequently transferred by Mr Gifford junior into the joint names of himself and his wife.

17 By a conveyance dated May 23, 1979, Mr Gifford senior conveyed Thickwood Farm to Mr Gifford junior.

18 By a conveyance dated October 10, 1979, the Blue Land was purportedly conveyed by Mr Gifford senior to Mr Gifford junior; and a memorandum to that effect was endorsed on the 1952 conveyance of Thickwood Farm to Mr Gifford senior.

19 By a written agreement dated February 1, 1980, Mr Gifford junior granted Mr and Mrs Baldwin, then owners of Wayside, a right of way over the Blue Land between the garage at Wayside and Thickwood Lane for the yearly sum of £30, terminable on 6 months' written notice.

20 By a deed of grant dated November 6, 1990, Mr Gifford junior granted to Mr and Mrs Swettenham, the then owners and occupiers of Wayside, for £6,000 a right of way over the Blue Land with or without vehicles "in fee simple or for such right title and interest as the grantor has in [the Blue Land]".

21 In October 1990, Mr Gifford junior decided to sell his properties at Thickwood and move to Australia. The various properties were put on the market in three lots. As these sales progressed, the area comprised in each of the lots changed. The first area in respect of which a sale was negotiated and agreed was what in now known as Thickwood Farm, which comprised Lot 3 and part of Lot 1. The purchaser was the claimant. For the purpose of that sale, Mr Gifford junior made a statutory declaration dated November 19, 1990 in relation to the ownership of the Blue Land. In the contract of sale between Mr Gifford junior and the claimant of the November 26, 1990, Mr Gifford junior agreed to sell "such right title and interest as the Seller has in respect of the Blue Land". The covenants for title given by Mr Gifford junior



AUTH230

in respect of the Blue Land were expressed to be such as would have been implied if the vendor had transferred and been expressed to transfer as "trustee", and not as "beneficial owner". The contract for sale was completed by transfer dated December 10, 1990 ("the 1990 Transfer") The following provisions of the 1990 Transfer are material to these proceedings:

> "5. The Blue Land is transferred together with the benefit of the covenants on the part of and subject to the rights of the grantee contained in a Deed of Grant dated 26th November 1990 made between the Vendor (1) and David Charles William Swettenham and Sandra Mary Swettenham (2) ('the Deed of Grant') except and reserving the rights set out in the Fourth Schedule."
> 7. The Vendor and Mrs Gifford to the intent and so as to benefit and protect the Red Land and the Blue Land and each and every part thereof hereby jointly and severally covenant with the Purchaser that the Vendor and Mrs Gifford will perform the stipulations and obligations set out in the Sixth Schedule.
>
> **The Fourth Schedule**
> (Right Excepted and Reserved out of the Blue Land)
> 1. The right for the Vendor and his successors in title the owners and occupiers for the time being of that part of the Green Land which is hatched black only to pass and re-pass with or without vehicles over and along the Blue Land at all times and for all purposes connected with the use and occupation of the before-mentioned parts of the Green Land upon payment to the Purchaser of one half of all sums reasonably expended by the Purchaser in repairing and maintaining the surface of the Blue Land as a roadway.
> 2. The right for the Vendor and his successors in title the owners and occupiers for the time being of that part of the Green Land which is cross hatched black only to pass and re-pass with or without vehicles over and along the Blue Land at all times and for the sole purpose of delivering and accepting delivery of supplies of oil to such property.
> 3. . . .
>
> **The Sixth Schedule**
> (Positive Covenants by the Vendor and Mrs Gifford)
> 1. . . .
> 2. By the 31st January 1991 to erect a dry stone wall between the points marked R and S on the plan to the reasonable satisfaction of the Purchaser to the effect that the right of way over the Blue Land from Thickwood Lane to Thickwood House shall be extinguished."

22 By two transfers dated January 9, 1991 (one being by Mr Gifford junior alone, and the other being by Mr Gifford and his wife), Thickwood House and the rest of the land now included in Title No. WT 99791 were transferred to Peter and Susan Leatherlands. There was included in the land transfer part of the land edged green and hatched black ("the Green Land") in respect of which rights had been reserved in favour of Mr Gifford junior by the 1990 Transfer. The part of the Green Land transferred to Mr and Mrs Leatherlands comprised the Meadow and a narrow strip within the garden of Thickwood House and adjacent to the boundary with Honeysuckle House, but not contiguous with the Blue land. The transfers to Mr and Mrs



AUTH231

Leatherlands were with the benefit of the exceptions and reservations contained in the 1990 Transfer and were subject thereto. Bother transfers contained, in clause 3, covenants by the purchasers to perform the vendor's covenants in the 1990 Transfer.

23 On June 5, 1991, the claimant granted Mr and Mrs Leatherlands permission to install a gate in the wall which was to be erected on the boundary of the Blue Land with their land, and a personal licence, terminable by one week's notice, to pass over the Blue Land on foot at a nominal fee.

24 On April 8, 1993, Mr Gifford junior transferred Honeysuckle House to Mr and Mrs Hunt.

25 In 1994, the defendants became interested in acquiring Thickwood House. Their solicitors, W. Bache & Sons, wrote to Wiltshire County Council on August 5, 1994 enquiring about the status of the Blue Land. On September 23, 1994, the Council replied to the solicitors indicating that the Blue Land was highway.

26 On November 11, 1994 Mr and Mrs Leatherlands agreed to sell Thickwood House, land and farm buildings to the defendant. That sale was completed on December 19, 1994

27 In response to a request of the defendants' solicitors, H.M. Land Registry indicated on April 7, 1994 that the register would be rectified to include a note of rights over the Blue Land in favour of the Green Land.

28 On May 24, 1995, the defendants wrote to the claimant introducing themselves as neighbours, explaining that they understood there was right of access along the Blue Land and indicating that they were going to unlock and use the gate on the boundary of their land and the Blue Land. The claimant's solicitors replied on June 1, 1995 refuting the defendants' claims and terminating the personal licence granted by the claimant to Mr and Mrs Leatherlands.

29 On March 3, 2000, the claimant commenced the present proceedings. By its Amended Particulars of Claim, the claimant claims:

> "1. A declaration that the easement or quasi-easement of way existing prior to 10th December 1990 over the land shown shaded blue on the plan annexed hereto in favour of the property known as Thickwood House has been abandoned and extinguished.
> 2.1. A declaration that the right of way over the land shaded blue on the plan annexed hereto, reserved by clause 5 and the first paragraph of Schedule 4 to the Transfer of 10th December 1990 made between George Alexander Gifford and the Claimant, in so far as it purports to benefit that portion of land within the Defendants' title number WT99791 shown on the plan annexed hereto shaded brown: (a) has been abandoned and extinguished, alternatively (b) is exercisable only via the land shown edged green on the plan annexed hereto and is in abeyance and incapable of exercise until such time as the Defendants may acquire right or permission to pass over the said land edged green.
> 2.2. Alternatively, a declaration that the Defendants are not entitled to use the right of way referred to in paragraph 2.1 of the prayer herein otherwise than for the primary purpose of obtaining access to and egress from the land shown edged green and hatched black on the plan to the Transfer dated 10th December 1990.
> 3. A declaration that the Defendants and their invitees have no right to pass and re-pass over the boundary between the lands within the title



AUTH232

number WT99791 and T134929 between the points marked R and S of the plan annexed hereto.
4. An order that the Property Register of title number WT99791 be rectified insofar as may be necessary to reflect the declarations claimed as aforesaid.
5. . . ."

**Highway**

30 At common law a highway may be created by dedication, express or presumed, by the owner of the land of a right of passage over it to the public at large and the acceptance of that right by the public. Long user by the public as of right is evidence of proof of dedication by the owner and acceptance by the public.

31 Apart from proof of dedication at common law, section 31 of the Highways Act 1980 provides that user for 20 years by the public as of right and without interruption, calculated retrospectively from the date when the right of the public to use the way was brought into question, will be sufficient to establish that the way was dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate. Mr Hodge, Q.C., leading counsel for the claimant, pointed out that the defendants have not expressly pleaded reliance on section 31 of the Highways Act 1980 in their defence. The relevant facts upon which the defendants rely are, however, pleaded. I see no reason why the defendants should not be entitled to invoke section 31

32 Miss Holland, counsel for the defendants, submitted that the 20-year period under section 31 of the 1980 Act should be calculated retropesctively from the date the present proceedings were commenced. This was not challenged by Mr Hodge, Q.C.; and so, in effect, the point was conceded. I must confess, however, that, at least in relation to the part of the Blue Land lying to the west of the triangular section adjoining Thickwood Lane, I would have though that the right of the public was brought into question much earlier. In the event, in view of my decision on dedication at common law, nothing turns on this point.

33 It is convenient to consider, in the first place, the position of the triangular section of the Blue Land at its eastern end. The evidence in relation to this area overwhelmingly supports the inference of dedication to and acceptance by the public as a highway.

34 Mr Peter Plank, who is 65 years of age and has lived at Thickwood for all his life, gave evidence that the telephone box at the eastern end of the Blue Land was installed in about 1950. Documentary evidence confirms that it has certainly been there since before 1958. It is served by a step from the Blue Land. Members of the public using the telephone box park either on Thickwood Lane or the Blue Land in the triangular area.

35 Mr Plank also gave evidence that the post box in the wall of Wayside has been there since 1935. Again, documentary evidence confirms that a post box has been there since before 1958. The present post box bears the inscription indicating that it was placed there during the reign of the present Queen. Mr Plank though this might have been changed from a previous post box. This is the only post box in the hamlet of Thickwood.

36 The parish notice board is also on land adjoining this part of the Blue Land. Mr Plank remembers it always being there.



AUTH233

37 There is no evidence that the general public have at any stage been prevented from coming onto the triangular section at the eastern end of the Blue Land. Nor is there any evidence that at any time the claimant or its predecessors in title have erected any notice advising the public that access to the telephone box, the post box, or the parish notice board by means of the Blue Land was by permission and not as of right. Accordingly, the evidence in favour of dedication of the triangular section of the Blue Land adjoining Thickwood Lane, whether at common law or under section 31 Highways Act 1980, is overwhelming. I find that the triangular section is public highway.

38 The direct evidence within living memory of the use of the balance of the Blue Land is more equivocal. Mr Conrad Brigden, the owner of Sarum House since 1970, and Mr Peter Lewis, the owner since 1970 of Well Close Cottage on Thickwood Lane, gave evidence that they have attended public functions at Thickwood House such as carol services, and believed and still believe they had and have the right to do. Mr Plank also gave evidence that he believed he was entitled to use and has used the Blue Land as a member of the public as of right. It is also clear that post is delivered to the properties abutting the Blue Land by a vehicle driven along the Blue Land.

39 This evidence as to the use of the Blue Land to the west of the triangular section within living memory has to be balanced against evidence of ownership and control by the claimant and its predecessors in title. The agreement made from time to time in and after 1958 by Mr Gifford senior and then by his son, by which rights of way were granted for financial consideration in favour of Wayside over the Blue Land, described in some of the agreements as a "private accommodation road", are, on the face of it, inconsistent with the Blue Land being a public highway. So also are the terms of the 1990 Transfer to the claimant, the 1991 transfers to Mr and Mrs Leatherlands, and the personal licence granted to Mr and Mrs Leatherlands in 1991 to pass over the Blue Land. I do not accept Miss Holland's submission that Mr Gifford junior was well aware in 1990 of possible public rights over the Blue Land. The documentary evidence, as well as the oral evidence of Nicholas Brent, the solicitor who acted for the claimant in its purchase of Thickwood Farm in 1990, make clear that the various parties to the 1990 and 1991 conveyancing transactions were of the view that there were only private rights of way enjoyed over the Blue Land.

40 Mr Hodge, Q.C. also relied upon a way leave agreement on May 26, 1951 between Miss Daniels and Mrs Worthy, the then owners of Thickwood Farm and Thickwood House and other adjoining properties, by which a wayleave was granted to the Southern Electricity Board to erect and maintain electricity wires of the Blue Land. He submitted that this agreement showed that Miss Daniels and Mrs Worthy regarded the Blue Land at that date as private property, in respect of which there were no public rights of way. I do not consider, however, that this agreement is evidence or, at all events, clear evidence to that effect. I prefer the analysis of Miss Holland that, on the proper construction of the way leave agreement, the payment under that agreement was in respect of two electricity poles each of which were situated in private properties adjoining the Blue Land.

41 Bearing in mind these matter and also that the Blue Land is not shown as a road maintainable at the public expense in the records of the Council, and that it is not shown as subject to public rights of way the Definitive Map maintained under the Wildlife and Countryside Act 1981, and that there is no evidence within living memory that the Blue Land has been maintained



AUTH234

by the council I would not be satisfied that the Blue Land to the west of the triangular section adjoining Thickwood Lane is public highway on the basis of evidence of actual user within living memory.

42 The defendants rely, however, on a variety of historical material dating back to the eighteenth century which, they submit, shows that the Blue Land has been public highway since at least that time.

43 The earliest document on which the defendants rely is an Index map of the Manor of Colerne of 1767. This shows the Blue Land in the same colour as Thickwood Lane. An Enclosure Award plan for Colerne of 1787 also shows the Blue Land as the same colour as Thickwood Lane and the other principal roads in the area. Miss Holland submitted that the proper inference to be drawn from the colouring on those plans is that the Blue Land was then a highway. In my judgment, it is unsafe to draw any such inference from those plans. I agree with the submission of Mr Hodge, Q.C. that there is no reason to suppose that the cartographers were concerned to distinguish public from private roads on those plans.

44 A linen tithe map of 1875 for Colerne shows the Blue Land coloured the same as all the other principal roads in the area, including Thickwood Lane. The Blue Land and those other roads are shown numbered 1158 on the map. In the tithe apportionment schedule accompanying the 1875 Colerne Tithe Award, the roads designated no. 1158 are shown as being in the occupation of "Parish Officers". This is important evidence. On the face of it, this is evidence that in 1875 the Blue Land was a public highway within the responsibility of the parish officers. This could only be on the basis that the Blue Land was dedicated and adopted following the Highways Act 1835 or, alternatively, had been the responsibility of the parish officers since before the coming into force of that Act. In the latter case, the parish officers would only have assumed responsibility if there had been evidence of dedication and acceptance of the road by the public.

45 Tithe maps are admissible in evidence to prove the existence of a highway: *Kent County Council v. Loughlin* [1975] 234 E.G. 681. Roads generally, whether public or private, were not titheable, and so tithe maps are generally relevant only to prove the existence of a road at a particular time rather than its status. Mr Hodge, Q.C. also sought to undermine the evidential value of the 1875 tithe map and schedule by pointing out that none of the properties surrounding the Blue Land were shown as titheable, so there would have been no need on the part of anyone to concentrate on the true status of the Blue Land. In my judgment, the fact that the Blue Land was not titheable and the further fact that the land surrounding the Blue Land was not titheable do not undermine the importance of the 1875 map and schedule to the issue I have to decide. The map and schedule clearly show the Blue Land was then in the occupation of the parish officers. It is that fact, rather than the issue of whether the Blue Land or the surrounding land were titheable, that is significant. In this connection, it must be borne in mind that tithe maps are public documents and that the Commissioners, under whose authority and control the tithe map was prepared, had power to examine witnesses on oath.

46 The next documents on which the Defendants rely are a map and schedule prepared pursuant to the Finance (1909–10) Act 1910. The 1910 Act provided for the levying of a duty on the incremental value of land, called increment value duty. The Board of Inland Revenue was to ascertain the site value of all land in the United Kingdom as at April 30, 1909. Commissioners



AUTH235

were to undertake a provisional evaluation of the land, which they were to serve on the owner of the land. The 1910 Act provided for the owner to give notice of objection to the provisional valuation. Valuation offices were set up throughout the country, and a land valuation office was appointed to each income tax parish. Between 1910 and the repeal of the Act in 1920 the whole country was surveyed in this way. Mr Alan Harbour, the rights of way officer of Wiltshire County Council for the northern half of the County and who was formerly the Land Charges officer of the Council, gave evidence of the painstaking detail with which the land was valued pursuant to the 1910 Act. Although Mr Harbour is not qualified as a lawyer or surveyor, he has considerable practical expertise on issues relating to public rights of way and the proof of their existence. I found his evidence helpful. He emphasised that the effect of the arrangements made under the Act was that local people with local knowledge undertook the valuation and conducted the detailed consultation with the owner the land. He described how the valuation involved the most comprehensive record of land ever undertaken and became known as "the Second Doomsday". The 1910 Act contains specific provision for reducing the gross value of land to take account of any public rights of way or public rights of user, as well as easements. Importantly, the Act contained criminal sanctions for falsification of evidence. The 1910 Finance Act map and schedule shows the Blue Land, as also Thickwood Lane and other principal roads in the area, as untaxed public roads.

47 The 1910 Finance Act map and schedule are, in my judgment, most material evidence in relation to the status of the Blue Land at that time. It would have been in the interest of the owner of the Blue Land to acknowledge that the Blue Land was a public highway and so not taxable. On the other hand, it would have been the concern of those acting for the Commissioners to establish that the Blue Land was private land and not subject to public rights. The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time though to be in public ownership and vested in and maintainable by the District Council, which was the highway authority. In the circumstances, whether or not the Commissioners consulted with officers of the Rural District Council about the status of the Blue Land, I see no reason to infer, as I was urged to do by Mr Hodge, Q.C. that the designation of the Blue Land on the 1910 Finance Act plan and schedule was simply a mistake.

48 The claimant seems to rely upon a number of factors to counter the strong inference, to be drawn from the 1875 documents and the 1910 Finance Act documents, that the Blue Land was then a public highway maintainable at the public expense. The claimant points to the fact that a roadway off Thickwood Lane and to the east of the Blue Land, which Mr Hodge, Q.C. called the "eastern branch", was also shown not subject to tithe in 1875 and as an untaxed public road in the 1910 Finance Act documents. That eastern branch was subsequently built upon and has disappeared. I do not consider that safe conclusions can be drawn from history of the eastern branch, which has no obvious connection with the Blue Land whatsoever, and whose history has not been analysed before me to the same extent as the Blue Land.



AUTH236

49 The claimant also relied upon the fact that, when the County Council became the highway authority, in place of the District Council, pursuant to the Local Government Act 1929, the records that were handed over the to the County Council apparently did not show the Blue Land as public maintained highway; and, accordingly, the County Council did not include the Blue Land in its list of publicly maintained highways in its Highway Record. Indeed, the evidence is that the Blue Land has not within living memory ever been maintained at the public expense. Such maintenance as has been carried out in recent years has been by Mr Gifford junior and other private persons. Mr Harbour pointed out, however, that many inaccuracies were made at the time of the transfer to the County Councils of responsibility of publicly maintainable highways. He emphasised that the process of verification was far less rigorous than for the purposes of the 1910 Act. There was, for example, no process of consultation or for public verification, nor were there criminal sanctions for false evidence. Mr Harbour speculated that the reason that the Blue Land may have been overlooked when the Highway Record was prepared by the Council in 1930 was that the issue on which the Council then concentrated was whether any particular road had in fact been maintained at the public expense, and the Blue Land may have been so small and insignificant that it had not in fact been so maintained for some time.

50 The claimant also relies upon the fact that the Blue Land has never been depicted as subject to public rights in the Definitive Map maintained by Wiltshire County Council initially under the National Parks and Access to the Countryside Act 1949 and now under the Wildlife and Countryside Act 1981. The 1949 Act, and now the 1981, however, do not operate to exclude other methods of establishing whether a public right of way exists, nor do they provide that the absence of any path on the Definitive Map is to be conclusive evidence that such a path does not exist as a highway.

51 Finally, the claimant relies upon the fact that records held by the Searches Section of Wiltshire County Council, which date back to 1924, do not record the Blue Land as a highway.

52 Notwithstanding the various matters upon which the claimant relies to undermine the clear inference to be drawn from the 1875 Tithe Award plan and apportionment schedule and the plan and record of valuations prepared pursuant to the 1910 Finance Act, I see no reason why I should no take those documents at face value as very powerful evidence that the Blue Land was by 1875 a public highway maintainable at public expense. Section 32 of the Highways Act 1980 specifically provides that a court, in determining whether a way has or has not been dedicated as a highway, should take into consideration any map, plan or history of the locality. It provides as follows:

> "32. **Evidence of dedication of way as highway**
> A court of other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other such relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced."



AUTH237

53 Mr Hodge, Q.C. submitted that the absence of a public terminus at each end of the Blue Land does not support its status as a public highway. It is no doubt true that, generally speaking, it may be more difficulty, especially in the countryside, to establish public rights of way in relation to a cul-de-sac as distinct from a stretch of roadway which leads to and from some other public roadway or public place: *Eyre v. New Forest Highway Board* (1892) 56 J.P. 517, 518, 519; *Attorney-General v. Chandos Land and Building Society* (1910) 74 J.P. 401, 402; *Attorney-General v. Antrobus* [1905] 2 Ch. 188; and Sauvin on Highway Law (2nd Ed.) paras 1–17, 2–75. It is clear, however, that public rights may be established over a cul-de-sac by actual use as of right by members of the public.

54 Mr Hodge, Q.C. also submitted that the evidence, taken as whole, is consistent with use of the Blue Land pursuant to private rights of access and egress attaching to the surrounding properties and granted by the owner of the Blue Land from time to time, or alternatively to such owner's "good nature and toleration" (*per* Lord Dunedin in *Folkestone Corporation v. Brockman* [1914] A.C. 338, 376). He also pointed to the fact that the surrounding properties were in the same ownership, as part of the Lucknam Park Estate, by the beginning of the 20th century. On the other hand, Mr Harbour pertinently observed that in 1875 about half the inhabitants of the hamlet of Thickwood were living in the properties adjoining the Blue Land. It is clear that, at that date, as in earlier times, the properties were in different ownerships. Those facts seem to me to be a compelling reason why the Blue Land may indeed have been a public highway at the time.

55 Finally, Miss Holland submitted that it is relevant that the claimant cannot point to a clear root in history of paper title to establish that the Blue Land has been in private ownership since before 1875. Although the point is not of great weight, I agree that this is of some significance.

56 I conclude, taking the facts as a whole, that the entire stretch of the Blue Land from its western to its eastern extremities was dedicated to and accepted by the public as public highway. The fact that the claimant and its predecessors in title may, from time to time since the 1950s, have treated the Blue Land as private property which was not subject to public rights, cannot have removed the legal status of the Blue Land as public highway. The Blue Land has not been stopped up or diverted pursuant to any statute. The rule is "once a highway always a highway": *Dawes Hawkins* (1860) 29 L.J.C.P. 343, 347; *Eyre v. New Forest Highway Board* [1892] 56 J.P. 517. Accordingly, I find that the Blue Land was and is a public highway maintainable at the public expense.

57 Mr Hodge, Q.C. submitted that even if the Blue Land is public highway, there are two grounds effectively precluding the defendants from exercising their rights over the Blue Land as members of the public. The first ground is that the effect of clause 7 of, and paragraph 2 of the Sixth Schedule to, the 1990 Transfer was to extinguish any right of access between Thickwood House and the Blue Land. The second ground is that the defendants are estopped by convention from asserting that the Blue Land is public highway.

58 Mr Hodge, Q.C. submits that the substance and effect of the 1990 Transfer was that the claimant concluded a binding agreement with Mr Gifford junior, by which Mr Gifford junior abandoned for all time rights of access between Thickwood House and the Blue Land. In my judgment, this submission faces obvious and insuperable difficulties. At that time neither the claimant nor Mr Gifford was aware that the Blue Land was a public



AUTH238

highway. Indeed, that lack of knowledge and belief is the very cornerstone of Mr Hodge, Q.C.'s argument on estoppel, which I shall consider in due course. In this connection, I reject Miss Holland's submission that I should not conclude that the claimant was unaware that the Blue Land was or might be a public highway in view of the statutory declaration made by Mr Gifford junior in 1990 concerning the Blue Land prior to the 1990 sale to the claimant. The statutory declaration was concerned with ownership of the Blue Land and not its status as a highway or private road. The fact that Mr Brent did not visit the Blue Land and the fact that Mr Brent did not inspect the Blue Land prior to the 1990 sale to the claimant. The statutory declaration was concerned with ownership of the Blue Land and not its status as a highway or private road. The fact that Mr Brent did not visit the Blue Land seems to me to give greater credence rather than less to the fact that neither he nor the claimant had any inkling or suspicion that the Blue Land might be highway, particularly in the light of the local authority's search replies which did not disclose the Blue Land as public highway. I see no reason, in the circumstances, why the court should construe the 1990 Transfer or imply into it any term that Mr Gifford junior and his successors in title would not exercise their ordinary rights over the Blue Land as members of the public and, for that purpose, obtain access between Thickwood House and the Blue Land.

59 Furthermore, in order that any agreement not to gain access between Thickwood House and the Blue Land might be binding upon Mr Gifford's successors in title, Mr Hodge, Q.C. agreed that the restriction of access would have to subsist as a restrictive covenant. No such restrictive covenant has been pleaded by the claimant. Furthermore, it would be necessary to construe the positive covenant to erect a wall upon the boundary as imposing a restrictive covenant binding upon the land itself. It seems to me that the court should be very slow indeed to construe the 1990 Transfer in this way. Bearing in mind that the 1990 Transfer clearly distinguishes between positive covenants, including the covenant to erect the wall, which are set out in the Sixth Schedule, and restrictive covenants, which are set out in the Seventh Schedule, it would not be right to attribute to the parties any intention that the positive covenant to build the wall should be interpreted and have effect as a restrictive covenant binding upon successive owners of Thickwood House

60 Mr Hodge, Q.C. submitted, in the alternative, that Mr and Mrs Gifford having agreed expressly to abandon the pre-existing right of way over the Blue Land in favour of Thickwood House, and having covenanted to erect a permanent obstruction upon the boundary, it would have been unconscionable for them subsequently to assert a public right of access over the Blue Land and the private right of the owner of land adjoining the highway to gain access thereto from adjoining land. He submitted that an estoppel by convention thereby arose between Mr and Mrs Gifford and the claimant and that the defendants, as privies in title to Mr and Mrs Gifford, are bound by the same estoppel. As I have already indicated, I find that both the claimant and Mr and Mrs Gifford acted on a common mistaken assumption that the Blue Land was not subject to public rights of way. Accordingly, one of the essential ingredients of estoppel by convention, namely a common but mistaken assumption of fact, does exist.

61 It was accepted by Mr Hodge, Q.C. that the onus is on the claimant to satisfy another requirement of estoppel by convention, namely that it would



AUTH239

now be unjust or unconscionable for the true facts to asserted and relied upon. As to this element of unconscionability, the matters relied upon by the claimant are set out in Further Particulars of paragraph 4A of the Amended Reply, as follows:

> "1. Having expressly provided in the Transfer for the Vendor to contribute to the cost of repair and maintenance to the Blue Land and to create a wall between the points R and S on the plan it would be unconscionable to allow the Vendor and the Defendants as successors in title to deny the truth of the common assumption.
> 2. Given the common assumption of the parties to the Transfer that the Blue Land was not part of the highway, the second paragraph of the sixth schedule clearly reflects the intention of the parties that the owners of Thickwood House should have no right to pass over the Blue Land and across the boundary between that land and Thickwood House. It would be against conscience for the covenantors to negate that assumption by the assertion of a private right of access to the highway.
> 3. If the Blue Land were part of the public highway, the right of the Defendants as owners of Thickwood House to pass therefrom onto the highway and vice versa would be a private right appurtenant to Thickwood House, acquired by the Defendants as successors in title to the covenantors. As such the Defendants are privies in title of the covenantors and bound by the estoppel which bound them in."

62 In view of my finding that the Blue Land is a public highway maintainable at public expense, the fact that Mr and Mrs Gifford junior covenanted to contribute towards the costs of repair and maintenance of the Blue Land cannot be a legitimate basis for claiming that it would be unconscionable for the defendants to rely upon their rights as members of the public to use the Blue Land. Furthermore, the defendants made clear, both in their evidence, and by Miss Holland's submissions that if, for any reason, the Blue Land is not maintainable at public expense, they would be willing to make an appropriate contribution towards the cost of its repair and maintenance.

63 The second matter relied upon in support of the requirement of unconscionability is that the 1990 Transfer reflects the intention of the parties that the owners of Thickwood House should have no right to pass over the Blue Land and across the boundary between that land and Thickwood House. This, however, merely restates the first requirement for an estoppel by convention, namely that the parties acted under a common mistake. It does not meet the need to show unconscionability in permitting the defendants to assert the true facts. Furthermore, as I have already said, it foes not seem to me appropriate to infer that any of the parties to the 1990 Transfer contemplated that Mr Gifford junior was giving up any rights of public access that he might be entitled to enjoy over the Blue Land as a member of the public. They simply did not think about the point.

64 The third aspect of unconscionability on which the claimant relies in its Further Particulars does not in truth relate to the question of unconscionability. It relates to the legal principle of privity, by which a third party may become bound by an estoppel between other persons.

65 In the course of his submissions, Mr Hodge, Q.C. relied upon two further matters in support of the allegation that it would be unconscionable for the defendants now to assert and rely upon their rights to pass along the Blue



AUTH240

Land as members of the public. He submitted that it is inconceivable that the claimant would have been willing to pay £10,000 for the Blue Land which was stated as the consideration for the Blue Land in paragraph 2.2 of the 1990 Transfer. No evidence, however, to that effect was given before me. Indeed, on the contrary, the evidence of Mr Brent, who acted for the claimant on the purchase of the Blue Land from Mr Gifford junior, was that if there was some specific reason for a split in the purchase price between the Blue Land and the rest of the land it would have been to accommodate the wishes of the vendor rather than the claimant, as purchase.

66 Mr Hodge, Q.C. also submitted that, if it had been appreciated that the Blue Land was a public highway, then either the 1990 transaction would not have proceeded at all or it would have proceeded on terms that ensured, by means of a restrictive covenant or otherwise, that all rights of access to and from Thickwood House over the Blue Land, save for the right to deliver oil which was specially permitted under the Transfer, was given up. Neither Mr Robinson, the principal behind the claimant, nor any other employee of the claimant gave evidence before me. Nor did Mr Gifford junior give evidence.

*Continued existence of pre-1990 right of way*

70 Access to and from Thickwood House was obtained over the Blue Land prior to and at the date of the 1990 Transfer. The defendants submit that after the 1990 Transfer a right of way to use Blue Land for such access continued to subsist notwithstanding the express terms of paragraph 2 of the Sixth Schedule to that Transfer by which Mr Gifford junior and Mrs Gifford covenanted by January 31, 1991 to erect a wall between the points marked R and S on the plan "to the effect that the right of way over the Blue Land from Thickwood Lane to Thickwood House shall be extinguished".

71 Miss Holland advanced a number of reasons in support of that submission. First, she submitted that the covenant by Mr Gifford junior and Mrs Gifford to build the wall was a positive covenant, and hence the burden of the covenant would not run at common law or in equity. Secondly, it was submitted that it is difficult to construe the covenant in itself as intended immediately to extinguish the easement as a legal interest. Thirdly, it was submitted that the wording of the covenant indicates a clear intention that the right of way be extinguished at a future date when the wall was actually erected, and the covenant did not purport to effect an immediate extinction by deed. In fact, the wall was not erected by January 31, 1991, and was never erected pursuant to the covenant. A wall and gate were eventually erected between points R and S by Mr and Mrs Leatherlands pursuant to the agreement with Mr Gifford junior dated June 5, 1991. It is said that, accordingly, there was never any later extinguishment, as contemplated by the covenant. Fourthly, it is said that the right of way was not extinguished or abandoned when Mr and Mrs Leatherlands erected the wall and gate between the points R and S. In support of that conclusion, it is said that Mr and Mrs Leatherlands were in ignorance of the true position to the Blue Land, and cannot be taken to have intended to abandon the right of way. It is said that Mr and Mrs Leatherlands would have been under the mistaken impression that the root of title to the Blue Land was contained in the 1952 Conveyance to Mr Gifford senior, which was not, in fact, the case. It was also submitted, in support of the conclusion that the right of way was not extinguished or abandoned when the wall and gate were constructed by Mr



AUTH241

and Mrs Leatherlands, that an agreement to pay for the use of an easement on a temporary basis does not necessarily amount to abandonment of an easement.

72 The arguments advanced by the defendants on this aspect of the case are technical ones which, in my judgment, run counter to the plain intention of the parties to the 1990 Transfer. It is perfectly clear from paragraph 2 of the Sixth Schedule to the 1990 Transfer, that it was the intention of the parties to that Transfer that the Blue Land should no longer be used to obtain access to and from Thickwood House between points R and S on the plan to the Transfer. In so far as any such access constituted a quasi-easment before the 1990 Transfer, the terms of the Transfer negatived the existence of any corresponding legal easement after the date of the Transfer. In so far as such access was enjoyed before the 1990 Transfer as a legal easement, the provisions of the 1990 Transfer, in my judgment, either amounted to an immediate release by deed of that pre-existing right of way or they constituted an agreement to release it. If the latter, then on and after January 31, 1991 that release was effective in equity, and is binding upon Mr and Mrs Gifford's successors in title. In the further alternative, Mr and Mrs Leatherlands abandoned any existing right of way when, with knowledge actual or imputed of the relevant provisions of the 1990 Transfer, they obtained permission in June 1991 to install a gate in the wall to be erected on the boundary of the Blue Land with Thickwood House and took a personal licence, terminable by one week's notice, to pass over the Blue Land on foot, and at a nominal fee. In this connection, it is to be noted that Mr and Mrs Leatherlands covenanted jointly and severally with Mr and Mrs Gifford in clause 3 of the 1991 Transfers of Thickwood House to observe and to perform the covenants and conditions contained in the 1990 Transfer.

*The right of way attached to the Green Land*

73 The 1990 Transfer excepted and reserved out the Blue Land in favour of Mr Gifford junior and his successors in title to the Green Land a right of way with or without vehicles along the Blue Land. I have set out the text of paragraph 1 of the Fourth Schedule to the 1990 Transfer earlier in this judgment. The defendants submit that, when Thickwood House was transferred to Mr and Mrs Leatherlands in 1991, there arose in favour of Mr and Mrs Leatherlands and their successors in title a right of way from the Blue Land across Honeysuckle House to that part the Green Land forming part of Thickwood House: *i.e.* the Meadow and a small part of the garden of Thickwood House adjacent to the boundary with Honeysuckle House but not abutting the Blue Land. Accordingly, it was submitted, the defendants, as successors in title to Mr and Mrs Leatherlands, can continue to use the Blue Land in exercise of the rights of way created by paragraph 1 of the Fourth Schedule to the 1990 Transfer for the benefit of the Green Land.

74 It is said that the right of way from the Blue Land to that part of the Green Land transferred as part of Thickwood House in 1991 arose pursuant to section 62 of the Law of Property Act 1925 or, alternatively, under the rule in *Wheeldon v. Burrows* [1879] 12 Ch. 31. Subsection 62(2) and (4) of the Law of Property Act 1925 are as follows:

> "(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses,



AUTH242

> erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or, at the time of the conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, other buildings conveyed, or any of them, or any part thereof.
> (3) ...
> (4) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained."

75 The essence of the rule in *Wheeldon v. Burrows* appears from the following passages in the judgment of Thesiger L.J. in that case at pp. 49 and 58–59 of that case:

> "We have had a considerable number of cases cited to us, and out of them I think that two propositions may be stated as what I may call the general rules governing cases of this kind. The first of these rules is, that on the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which, of course, I mean *quasi* easements), or, in other words, all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted. The second proposition is that, if the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant ...
> ...
> These cases in no way support the proposition for which the Appellant in this case contends; but, on the contrary, support the propositions that in the case of a grant you may imply of such continuous and apparent easements or such easements as are necessary to the reasonable enjoyment of the property conveyed, and have in fact been enjoyed during the unity of ownership ..."

The rule is essentially a branch of the general rule against derogation form grant: Gale on Easements (16th ed.) paras 3–31 and 3–39. As Lord Wilberforce said in *Somvots Ltd v. Secretary of State for the Environment* [1979] A.C. 144, at p. 168H:

> "The rule is a rule of intention, based on the proposition that a man may not derogate from his grant. He cannot grant or agree to grant land and at the same time deny to his grantee what is at the time of the grant obviously necessary for its reasonable enjoyment."

76 The factual basis for claiming an easement from the Blue Land across Honeysuckle House to the Green Land comprised within Thickwood House is that the date of the 1991 transfers to Mr and Mrs Leatherlands there was a gap in the boundary between the Meadow and the paddock behind Honeysuckle House ("the Paddock"), and that gap was used for animals and tractors to pass between the two. It is said that the existence of that gap satisfied the requirement of a "continuous and apparent" way from Honeysuckle House to the Meadow. Miss Holland submitted that the



AUTH243

existence of two end points of the way, one being at the place where access is obtained to Honeysuckle House from the Blue Land, and the other being the gap in the boundary between the Meadow and the Paddock, was sufficient, and it is immaterial to establish the right of way that its precise route between those end points was not apparent on the ground and has not been established in fact. She pointed out that, as it happens, a convenient route would lie along the made up driveway on the east side of Honeysuckle House and then across the Paddock to the gap in the boundary between the Paddock and the Meadow. She submitted that it is clear that this way was and is reasonably necessary for the enjoyment of the Green Land within Thickwood House, since the gaps between the buildings in Thickwood House as well as difficulties associated with the access to Thickwood House directly off Thickwood Lane would make it difficult to access the Meadow with farm and other vehicles through the grounds of Thickwood House itself. There is certainly authority that the fact a way is not itself made up or identifiable on the ground may not be fatal to the establishment of an easement under rule in *Wheeldon v. Burrows* or section 62 of the 1925 Act, if the ends of the way are apparent and it is clear that is was the intention of the parties to the conveyance that there was to be a way between the two ends: *Hansford v. Jago* [1921] 1 Ch. 322, 337–338, 339, 340, 342. The absence of a made-up way or clearly defined route may, however, bring into question whether for the enjoyment of, and was intended to endure for the benefit of, the transferred land.

77 Mr Hodge, Q.C. relied upon a number of matters as indicating that it was the plain intention of the parties to the 1991 transfers that no right of access should continue to be contained from the Blue Land across Honeysuckle House to that part of the Green Land sold with Thickwood House. First, no express right of way was in fact granted in 1991 to Mr and Mrs Leatherlands and their successors in title to pass across Honeysuckle House to the Blue Land. On the contrary, Mr and Mrs Leatherlands covenanted to remove the gate at point F on the plan attached to maintain the boundary between Thickwood House and Honeysuckle House in a good and stockproof condition: see clause 2 of that transfer. Secondly, if the parties had intended a right of way to subsist across Honeysuckle House to the Green Land with Thickwood House, they would have defined the precise route to be taken across Honeysuckle House. This would have been particularly in the mind of Mr Gifford junior, since it was his intention to sell Honeysuckle House prior or his departure for Australia. Thirdly, if it had been the intention of the parties to grant a right of way across Honeysuckle House to the Green Land within Thickwood House, the parties would have provided for an apportionment of the obligation to contribute to the course of maintaining and repairing the surface of the Blue Land which had been imposed on Mr Gifford junior and his successors in title by paragraph 1 of the Fourth Schedule to the 1990 Transfer. Fourthly, there was no "continuous and apparent" route for any right of way across Honeysuckle House to the Green Land within Thickwood House. No route was apparent on the ground between the gate to Honeysuckle House from the Blue Land and the gap in the boundary between the Paddock and the Meadow. Nor was any evidence given that vehicles were driven directly from the Blue Land to the gap in the boundary. Fifthly, access from the Blue Land across Honeysuckle House to the Meadow, through the gap, was not reasonably necessary for enjoyment of the Green Land comprised within Thickwood House. Mr Hodge, Q.C.



AUTH244

relied upon the fact that access could be obtained from the entrance drive to Thickwood House from Thickwood Lane, and the fact that the defendants have themselves sealed up the gap in the boundary between the Paddock and the Meadow. Sixthly, replies of behalf of Mr Gifford junior in 1990 to Additional Enquiries which accompanied standard form requisitions on title show that it was the intention of Mr Gifford junior that the right of way across the Blue Land to the Green Land was intended to be for the benefit of Honeysuckle House only. Seventhly, so far as concerns section 62 Law of Property Act 1925, Mr Hodge, Q.C. submitted that is established law, binding upon me, that no easement can arise form a pre-existing quasi-easement if there was no diversity of occupation or ownership at the time of the quasi-easement if there was no diversity of occupation or ownership at the at the time of the quasi-easement: *Payne v. Inwood* (1996) 74 P. & C.R. 42, CA.

78 The objections of Mr Hodge, Q.C. to the alleged easement to and from the Blue Land across Honeysuckle House to the Meadow pursuant to section 62 of the Law of Property Act 1925 or the rule *Wheeldon v. Burrows* are, in my judgment, well founded. The parties to the 1991 transfer of Thickwood House clearly did not contemplate or intend that any such way would exist. They, and their legal advisers, would have been well aware of the rights granted in favour of the Green Land by the 1990 Transfer. If they had contemplated or intended that the benefit of access along and from the Blue Land should continue to subsist in favour of that part of the Green Land sold with Thickwood House in 1991, they would have provided for the route which the owners of Thickwood House could take across Honeysuckle House, which was retained by Mr Gifford junior.

79 Miss Holland argued attractively that the fact that the gate was expressly covenanted by Mr and Mrs Leatherlands to be blocked up at point F pursuant to clause 2(a) of the 1991 transfer from Mr Gifford junior, but by contrast there was no obligation to block up the gap to remain. In my judgment, in the light of all the evidence, including the evidence of Mr Plank that there was no sturdy, permanent and attached gate at the gap, the better inference is that the parties did not intend the gap to remain as an access point, but intended that it would be closed as part of the process of maintaining in a good and stockproof condition the boundary between Thickwood House and Honeysuckle House pursuant to clause 2(b) of the 1991 transfer from Mr Gifford junior. Against the factual context in which Thickwood House was sold and Honeysuckle House retained by Mr Gifford junior, and in the light of absence of any defined route from and to the Blue Land across Honeysuckle House in favour of the Meadow, and in the absence of any express reference to maintaining an access through the gap, and of any express apportionment of the financial obligation to contribute to the repair and maintenance of the Blue Land which was attached to the easement in favour of the Green Land conferred by the 1990 Transfer, clause 2(b) of the 1991 Transfer by Mr Gifford junior, properly construed, required Mr and Mrs Leatherlands to close up the gap between the Paddock and the Meadow.

80 Furthermore, as a matter of law, it is not possible for a right of way to have arisen under the 1991 transfer from Mr Gifford junior in favour of the Green Land sold as part of Thickwood House since there is no evidence of diversity of occupation of the Paddock at Honeysuckle House and the Meadow immediately prior to that transfer: *Payne v. Inwood* (1996) 74 P. & C.R. 42.



AUTH245

81 Further, at the time of the 1991 transfers there was not, in my judgment, for the purpose of the rule in *Wheeldon v. Burrows*, a "continuous and apparent" way from the Blue Land to the Green Land sold with Thickwood House. There was no evidence of any visible track or route between the gate at the entrance to Honeysuckle House, where it abuts the Blue Land, and the gap in the boundary between the Paddock the Meadow. Nor was there evidence of any person passing directly from the Blue Land into and through that gap.

82 Finally, for the purpose of the rule *Wheeldon v. Burrows* a right of way was not, in my judgment, reasonably necessary for the enjoyment of the Green Land within Thickwood House, after that land was sold in 1991. Access could be obtained from other routes within the grounds of Thickwood House. There is no evidence that the parties to the 1991 transfers had in mind any particular use of the Green Land within Thickwood House which would make a continued right of way across Honeysuckle House a reasonable necessity for the proper enjoyment of that Green Land. Indeed, as I have already said, it seems quite clear that the parties contemplated and intended that no such way would continue to exist. The fact that the defendants have themselves closed up the gap in the boundary between the Paddock and the Meadow supports this conclusion on the issue of "reasonable necessity".

83 For these reasons, I conclude that the defendants have no right to gain access to the Green Land within Thickwood House from the Blue Land arose Honeysuckle House. The right of way conferred in favour of that Green Land by the 1990 Transfer was extinguished when Thickwood House and its surrounding land were sold by Mr Gifford junior in 1991.

*Right of way along and from the Blue Land across Thickwood House to the Green Land*

84 The defendants maintain that the are at liberty to pass along the Blue Land to and from the Green Land within Thickwood House across the rest of their own intervening land at Thickwood House. In support of this contention, Miss Holland relied upon the principle that a right of way may exist in favour of land which is separated from the way itself by intervening land: *Todrick v. Western National Omnibus Company Ltd* [1934] 1 Ch. 561. The legal principle, which is uncontentious, is that a valid easement may subsist whether or not the dominant and servient tenements are continuous, provided that the servient tenement is in fact accommodated by the use of the right.

85 The 1990 Transfer makes clear that there was to be no future vehicular or pedestrian access from the Blue Land to any of the land then retained by Mr Gifford junior save though Honeysuckle House for Thickwood House benefit of the Green Land. In particular, the provisions of the 1990 Transfer were designed to ensure that no vehicular or pedestrian access would continue to be enjoyed from the Blue Land to Thickwood House where it abuts the Blue Land. The right of way granted by paragraph 1 of the Fourth Schedule to the 1990 Transfer is to be construed as limited to an easement solely through the gate to Honeysuckle House where it abuts the Blue Land. Miss Holland sought to argue against that conclusion on the ground that part of the Green Land was included in the garden of Thickwood House when it was sold to Mr and Mrs Leatherlands in 1991. She submitted that it could not



AUTH246

have been the intention that access to that part of the Green Land should only be obtained through Honeysuckle House. I reject that argument. As I have already said, it is quite plain that parties to the 1990 Transfer intended that no further access should be obtained to Thickwood House by means of the Blue Land. Apart from the terms of the 1990 Transfer itself, this is also apparent from the answer to Additional Enquiry 12 which was given on behalf of Mr Gifford junior as part of the 1990 conveyancing arrangements.

86 Furthermore, in the course of closing submissions, Miss Holland stated that the right to gain access to the Green Land from the Blue Land across intervening land at Thickwood House arose in 1991. Miss Holland was unable to point me to any reported authority in which a right of way has been held, in effect, to have sprung into existence automatically in this way when, as I have found, a former easement of quasi-easement along the same route had been deliberately extinguished by the parties' predecessors in title and the new route was required for the continued enjoyment of a easement which had been expressly granted along a different specified route.

**Conclusions**

87 For the reasons contained in this judgment, I hold that the defendants are entitled to use the Blue Land as a public highway in their capacity as members of the public and to use the Blue Land for access to and from Thickwood House. Accordingly, I dismiss the claim.

*Application dismissed.*

H8 *Solicitors*—Manches & Co.; Clarks.

H9 *Reporter*—David Stott.



AUTH247

[COURT OF APPEAL]

# *CUTTER v. EAGLE STAR INSURANCE CO. LTD.

1996 Nov. 11, 12; 22 Beldam and Morritt L.JJ. and Sir John Balcombe

*Road Traffic—Road—Car park—Multi-storey car park—Passenger injured in car parked in bay—Way through car park used for driving to and from parking spaces and not as route from one road to another—Whether parking spaces integral with roadway—Whether injury arising out of use of motor vehicle on "road"—Road Traffic Act 1988 (c. 52), s. 192*

The plaintiff, a passenger in a motor car parked in a bay of a multi-storey public car park, was injured when lighter fuel leaking from a can in the car exploded. In an action against the driver's insurers to satisfy a judgment obtained against the driver, the insurers conceded that the plaintiff's injuries arose out of the use of the vehicle within section 145(3)(*a*) of the Road Traffic Act 1988[1] but denied liability on the ground that it was not being used on a road as defined in section 192 of the Act. The judge dismissed the action, holding that the car park, considered as a whole, was not a road.

On appeal by the plaintiff:—

*Held*, allowing the appeal, that in determining whether a car in a car park was being used on a road within section 192 of the Road Traffic Act 1988 the question was whether there was within the car park a roadway; that the way marked out for the passage of vehicles controlled by conventional traffic signs and markings and regularly used by members of the public seeking a car parking space was a roadway, and the fact that a car was being driven to or from a parking space as opposed to using the way through the car park as a route from one road to another was not determinative; that where vehicles drove regularly over and into parking spaces from a roadway the area of the parking space was to be regarded as an integral part of the roadway; and that, accordingly, the injury sustained by the plaintiff arose out of the use of a motor vehicle on a road and the insurers were bound under section 151 of the Act of 1988 to meet the judgment (post, pp. 1090A–B, C–D, 1091D–F).

*Harrison v. Hill*, 1932 J.C. 13; *Bugge v. Taylor* [1941] 1 K.B. 198, D.C.; *Griffin v. Squires* [1958] 1 W.L.R. 1106, D.C. and *Oxford v. Austin* [1981] R.T.R. 416, D.C. considered.

The following cases are referred to in the judgment of Beldam L.J.:

*Bugge v. Taylor* [1941] 1 K.B. 198, D.C.
*Cox v. White (Note)* [1976] R.T.R. 248, D.C.
*Griffin v. Squires* [1958] 1 W.L.R. 1106; [1958] 3 All E.R. 468, D.C.
*Harrison v. Hill*, 1932 J.C. 13
*Oxford v. Austin* [1981] R.T.R. 416, D.C.
*Reg. v. Waterfield* [1964] 1 Q.B. 164; [1963] 3 W.L.R. 946; [1963] 3 All E.R. 659; 48 Cr.App.R. 42, C.C.A.

The following additional cases were cited in argument:

*Houghton v. Scholfield* [1973] R.T.R. 239, D.C.
*Thomas v. Dando* [1951 2 K.B. 620; [1951] 1 All E.R. 1010, D.C.

[1] Road Traffic Act 1988, s. 145(3)(*a*): see post, pp. 1084H–1085A.
S. 192: see post, p. 1085B.

AUTH248

A APPEAL from Mr. William Kee sitting as a deputy circuit judge at Tunbridge Wells County Court.

On 21 July 1991 the plaintiff, Stuart Richard Cutter, was injured by an explosion in a parked car in which he was a passenger in the Great Hall car park, Tunbridge Wells. He brought an action against the driver, Kristian Pennial, for negligence and on 29 October 1992 he obtained judgment in the Tunbridge Wells County Court for personal injury, loss
B and damage for £8,547·33, together with costs of £4,105·86. He later took proceedings to make the plaintiff bankrupt at a cost of £1,139·05. By particulars of claim dated 12 December 1994 the plaintiff claimed against the defendants, Eagle Star Insurance Co. Ltd., as the insurers of Kristian Pennial, pursuant to section 151 of the Road Traffic Act 1988, the sum of £15,575·54. The defendants denied that the car was being used on a road
C at the time of the incident.

On 21 September 1995 Mr. William Kee, sitting as a deputy circuit judge in the Tunbridge Wells County Court, dismissed the action holding that the accident had not occurred on a road as defined in section 192 of the Act of 1988.

By a notice of appeal dated 19 October 1995 the plaintiff appealed on the grounds, inter alia, that the judge was wrong to hold that the multi-
D storey car park was not a road since (1) there was a definable way from the entrance to the exit and throughout the entire car park; (2) it was necessary for those who used a private car park on the top floor to drive over the public areas; (3) there were road markings, road signs and pavements; (4) none of the authorities referred to dealt with multi-storey car parks; and (5) if the multi-storey car park was not a road then the
E road traffic legislation (save for the offence of driving or being in charge of a motor vehicle with excess alcohol in the blood) would not apply; which would have wide ranging and very serious consequences for the protection of the public.

By a respondent's notice dated 29 October 1996 the defendants contended that, if the judge was wrong in finding that the car park as a whole was not a road, then (1) any such finding should have been confined
F to that part of the car park which constituted a way through it; and (2) therefore he was wrong to reject the defendants' alternative argument that the individual parking bay in which the car was parked was not part of a road, in particular because (a) the parking bay could not be described, in the ordinary understanding of the word, as a road, (b) the parking bay was no part of a definable way between two points over which vehicles
G could pass and had no feature which enabled traffic to use it as a way of communication or a through road; and (c) when standing and looking at a parking bay and asking whether one was looking at a road (or part of a road) one would clearly say, "No."

The facts are stated in the judgment of Beldam L.J.

*Richard Barraclough* for the plaintiff.

H *Charles Cory-Wright* for the defendants.

*Cur. adv. vult.*

22 November. The following judgments were handed down.

BELDAM L.J. The question for the court in this appeal is whether an injury sustained by the passenger in a car in a multi-storey public car park was caused by or arose out of the use of the vehicle on a road.

AUTH249

On 21 July 1991 the plaintiff was injured whilst sitting in the front passenger seat of a Volvo motor car parked in a car parking space in the Great Hall multi-storey car park, Mount Pleasant Road, Tunbridge Wells. The car was owned by the plaintiff's friend, Mr. Pennial, who had left an aerosol can of lighter fuel in the rear of the car behind the front seats. The can had leaked creating an inflammable gas in the car. After returning to the car and before driving off, Mr. Pennial lit a cigarette and as he did so he ignited the gas causing a fire. The plaintiff was burnt and claimed damages from Mr. Pennial, who was entitled to the benefit of a motor insurance policy issued by the defendants, Eagle Star Insurance Co. Ltd. If Mr. Pennial had reported the accident and complied with the terms of the policy, the defendants would have indemnified him and would no doubt have taken over conduct of the plaintiff's claim. But Mr. Pennial did not do so and on 28 April 1992 the plaintiff's solicitor gave the defendants notice under section 149 of the Road Traffic Act 1988 that he was about to issue proceedings against their insured, Mr. Pennial.

On 5 May 1992 the plaintiff issued proceedings claiming damages for the injuries he had received alleging they were due to the negligence of Mr. Pennial in leaving the lighter fuel container in the motor car in circumstances in which it could be caused to give off inflammable gas. Judgment in default was obtained by the plaintiff on 10 December 1992 and on 29 October Judge Hargrove Q.C. assessed the plaintiff's damages at £8,547·33, including interest. He gave judgment for that sum and for costs which were subsequently taxed in the sum of £4,105·86. The plaintiff took proceedings to make Mr. Pennial bankrupt at an additional cost of £1,139·05. He claimed a total of £15,575·54 from the defendant insurers.

The defendants conceded that the accident and the plaintiff's consequent injury arose out of the use of Mr. Pennial's car but contended that the car was not at the time of the accident being used on a road as defined in section 192 of the Road Traffic Act 1988.

The action was tried by Mr. William Kee sitting as a deputy circuit judge in the Tunbridge Wells County Court on 21 September 1995. He dismissed the plaintiff's claim, holding that the accident had not occurred on a road. He rejected a submission by the defendants that, even if some part of the car park over which cars travelled could be regarded as a road, the parking bays could not. They were analogous to a lay-by which was to be considered as part of a road. He thought that the car park had to be looked at as a whole and held "this multi-storey car park is not a road." He relied principally on "the criterion laid down by Kilner Brown J. in *Oxford v. Austin* [1981] R.T.R. 416."

The plaintiff contends that the judge ought to have found that the car park was a road; the defendants, by a respondent's notice, contended that, even if some part of the car park was held to be a road, the car parking space ought not to be regarded as part of the road.

The plaintiff's right to recover the amount of his judgment directly from the defendants results from the duty of an insurer under section 151 of the Act of 1988 to satisfy a judgment obtained against a person insured for third party risks in respect of a liability required to be covered by a policy of insurance under section 145 of the Act.

Section 145(3)(*a*) of the Act of 1988 requires that such a policy:

> "must insure such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any

AUTH250

A person or damage to property caused by, or arising out of, the use of the vehicle on a road in Great Britain . . ."

Thus the defendants argue that, unless the insured was using his vehicle on a "road," it is not bound to meet the judgment. If the parking place where the vehicle was stationed at the time of the accident was not within the definition of "road" in section 192 of the Act of 1988, the insured's B liability was not a liability required to be insured under section 145(3)(*a*) of the Act.

Section 192 of the Act of 1988 provides: " 'road,' in relation to England and Wales, means any highway and any other road to which the public has access . . ."

As might be expected in a Road Traffic Act, the word "road" occurs many times. It appears in sections creating offences, sections imposing C duties on drivers and sections providing for traffic regulation in general. The definition provided in section 192 has thus to do duty in many different circumstances. It is not surprising therefore to find decisions, particularly on cases stated for the opinion of the Divisional Court, in which that court refers in particular instances to the decision being one of fact for the justices and thus whether there was evidence upon which the D justices could reach the decision called in question. When however the facts are determined or are not in dispute, the question whether they support the conclusion that the place in question is or is not a "road" within the definition in the Act of 1988 is a question of law.

The definition is clearly intended to include roads which are not highways but to exclude roads to which the public do not have access. There are therefore two separate questions: (i) is the place in question a E road? (ii) if it is a road, do the public have access to it?

Many of the reported cases concern the second question and in particular what type of access by the public is necessary. In deciding that question, Lord Widgery C.J. in *Cox v. White (Note)* [1976] R.T.R. 248, 251 gave this advice:

> "I would invite the justices next time, and other justices charged with F this same question, to look at the very brief statement of Lord Sands in *Harrison v. Hill*, 1932 J.C. 13, 17 . . . : 'In my view, any road may be regarded as a road to which the public have access upon which members of the public are to be found who have not obtained access either by overcoming a physical obstruction or in defiance of prohibition express or implied.' I think that in 99 cases out of 100 that direction is all the justices need to decide whether a road is a G 'road' for current purposes."

The present case requires the court to focus on the first question, whether the car park or any part of it can be considered a road having regard to its layout, its physical characteristics and the type of use made of it. In some of the cases it appears to have been assumed that a car park is capable of being a road if members of the public have access to it for the H purpose of passing across it or if it is possible to use it as a means of access from one road to another but, unless the evidence shows those characteristics, it is not a road within the definition. In my view these are relevant but not determinative attributes.

The public have access to the Great Hall multi-storey car park for the purpose of leaving their cars on payment of a parking fee and it is conceded that, if the car park or any part of it can be considered "a road," it is a road to which the public have access.

AUTH251

The physical characteristics of the car park are clearly shown in photographs and plans put before us. Briefly described, it is a conventional multi-storey car park of the kind provided for off-street parking in many towns. It is laid out on six floors, though only four are used by the public for parking. Access is gained to the car park by an entrance leading from Mount Pleasant Avenue. On entering the car park, traffic is directed by a standard road sign to give way to traffic emerging. A carriageway three metres wide is provided for a distance of some 30 metres between rows of parking spaces, leading to ramps which give access to the floor above or the floor beneath. There is an exit on each side of the car park and pedestrians can cross from one side of the car park to the other to visit an arcade of shops and offices fronting on Mount Pleasant Road. Road signs and carriageway markings direct cars entering and driving within the car park. Drivers follow the carriageway until an empty space is available. A complete circuit of one level of the car park is about 80 metres so that the total distance marked off for and used by cars driving from the entrance to the fourth floor is approximately 320 metres. As the photographs show, carriageway markings, including white direction arrows, give way lines and "slow" signs are painted on the surface to regulate the behaviour of traffic. On a typical floor there are 36 car parking spaces between the areas marked out for the passage of vehicles and a further 20 on each side of the areas.

Because of the vast increase in the use by the public of motor vehicles, the size of car parks generally has greatly increased. Many superstores and shopping centres provide very large areas for car parking which are laid out on a similar plan. When in the open air they are frequently landscaped and the areas on which drivers are expected to drive are often bounded by kerbs giving the access ways an appearance more readily recognised as a conventional road. On entering from the public highway, a driver may not even pause to take a ticket, but drive directly to an unoccupied space.

The origin of the definition of "road" in section 192 of the Act of 1988 can be traced to the Motor Car Act 1903, an Act introduced for the protection of the public. Section 1 of the Act of 1903 created the offences of driving a motor car on a public highway recklessly, negligently or at a speed or in a manner which was dangerous to the public. It further required a person driving a motor car to stop and give his name and address if an accident occurred to any person owing to the presence of a motor car on the road. Section 20(1) of the Act of 1903 provided:

> "The provisions of this Act and of the principal Act shall apply in the case of a roadway to which the public are granted access, in the same manner as they apply in the case of a public highway."

A more comprehensive Act for the protection of the public was the Road Traffic Act 1930, which, as its long title proclaims, was:

> "An Act to make provision for the regulation of traffic on roads and of motor vehicles and otherwise with respect to roads and vehicles thereon, to make provision for the protection of third parties against risks arising out of the use of motor vehicles. . . ."

It is to be noticed that section 14 of the Act of 1930 created an offence of driving a motor vehicle on common land, moor land or other land of whatsoever description (not being land forming part of a road) or on any road being a bridleway or footway, though it was not an offence to drive

AUTH252

A a vehicle on land within 15 yards of a road provided it could lawfully be driven on the road and was driven on the land only for the purpose of parking the vehicle.

I should also refer to section 15 of the Act of 1930 which, in creating the offence of driving or attempting to drive or being in charge of a motor vehicle under the influence of drink or drugs, did not confine the offence to a road. The offence could be committed on a road or other public B place.

Part II of the Act of 1930 made provision for compulsory third party insurance. Section 36(1)(*b*) was the precursor of section 145(3)(*a*) of the Act of 1988. Section 121 of the Act of 1930 defined "road" to mean "any highway and any other road to which the public has access, and includes bridges over which a road passes," a definition which has been carried C down in successive Road Traffic Acts and into section 192 of the Act of 1988. The draftsman, by adopting this definition, obviously intended to combine in one definition the highway in section 1, the road in section 6 and the roadway in section 20 of the Act of 1903. In my view "roadway" denotes any way used for the passage of vehicles and I would so interpret the word "road" in section 192 of the Act of 1988.

The terms of the other sections referred to make it clear that the D draftsman regarded bridleways and roadways as "roads" but also that cars might be driven or left on other places used by the public which were not roads.

The origin of the provision in section 151 of the Act of 1988 requiring an insurer to meet a judgment obtained in respect of a compulsorily insurable risk was section 10 of the Road Traffic Act 1934, passed when it E had become clear that such a measure was necessary in certain circumstances to secure that the victims of accidents actually received the compensation awarded to them. Taken in the context of the legislation as a whole, I consider that the definition in section 192 of the Act of 1988 should be given a meaning consistent with the intention to protect the public and to secure compensation for third parties injured or caused damage by the use of motor vehicles. I would give the definition a broad F rather than a confined meaning to achieve the declared aim of the statute.

We were referred to a number of cases bearing on the question whether a vehicle used in a car park was being used on a road; I need only refer briefly to four.

In *Harrison v. Hill*, 1932 J.C. 13 the appellant had been convicted of driving while disqualified. He had been driving a motor vehicle on a road G leading from a public highway to an adjoining farm in Scotland. The question for the court was whether that road came within the definition of "road" in section 121 of the Act of 1930. Lord Clyde said, at p. 16:

> "It is plain, from the terms of the definition, that the class of road intended is wider than the class of public roads to which the public has access in virtue of a positive right belonging to the public, and flowing either from statute or from prescriptive user. A road may H therefore be within the definition (1) although it belongs to the class of private roads, and (2) although all that can be said with regard to its availability to the public is that the public 'has access' to it."

After considering what was meant by "access" to the road, Lord Clyde said:

> "There must be, as matter of fact, walking or driving by the public on the road, and such walking or driving must be lawfully performed

AUTH253

> . . . In arriving at these conclusions I am partly influenced by the broad consideration that, as the statute is intended for the protection of the public, it is natural to suppose that the statutory traffic regulation should apply to any road on which the public may be expected to be found. Hence the inclusion of such private roads as the public (generally) is, as matter of fact, allowed to use, and the exclusion of those which the public (generally) cannot lawfully use at all."

In *Bugge v. Taylor* [1941] 1 K.B. 198, 200 Lord Caldecote C.J., quoting from Lord Clyde's judgment, said that there was plenty of material on which justices could come to the conclusion that the forecourt of a hotel, the private property of the owners but which was open to the highway at each end and which the public used, was a road to which the public had access.

In *Griffin v. Squires* [1958] 1 W.L.R. 1106 Lord Parker C.J. reached a different conclusion in relation to a car park used by members of a bowling club and allotment holders as part of a footpath and as a means of access because the public generally did not habitually use the car park for that purpose. But additionally, in considering whether the car park to which the public generally had access and which they habitually used was a road, he said that something else must as a matter of common sense and ordinary meaning be proved for the car park to be a road. He said, at p. 1109:

> "I think it was a matter for the magistrates to decide as a matter of fact whether this car park in the ordinary sense could be treated as a road. It seems to me that there must be a limitation of that sort, otherwise any place to which the general public have access could be said to be a road within the definition. I think there was evidence on which the magistrates could come to that conclusion."

Streatfeild J., in his judgment, sought for the "something else" as a matter of common sense and ordinary meaning. He said, at p. 1109:

> "If the definition of the word 'road' was in line with that in the Oxford Dictionary and described as a line of communication, I should have no doubt at all, because whatever may be the position with regard to the private footpath leading from this public car park towards the bowling green and allotments, as to which I think the magistrates were quite right, I have no doubt whatever that a public car park adjoining a public highway, there being two entrances from the highway on to the car park, is in fact a line of communication from either entrance to and from any point in that car park. If that was the sole test I should undoubtedly come to the conclusion myself that the magistrates were wrong; . . ."

Referring to the words in section 121 of the Act of 1930, he said:

> "Although a car park is, in my opinion, a line of communication, I do not think anybody in the ordinary acceptance of the word 'road' would think of a car park as a road, and if we were to hold that this was a road it would also be a road if it was a piece of waste land by the side of the road to which the public could resort for picnics, and nobody would call that a road either."

Finally he drew attention, at p. 1110, to the distinction drawn in section 15 of the Act of 1930 by the addition of the words: "or other public place."

AUTH254

A In *Oxford v. Austin* [1981] R.T.R. 416 the Divisional Court again had to consider whether a car park was capable of being a road. The accused had left his uninsured motor vehicle which had no M.O.T. test certificate in a car park with car parking spaces marked by white lines and was charged with unlawful use of the vehicle on a road. The justices dismissed the information and the prosecutor appealed. Kilner Brown J. delivered a judgment with which Donaldson L.J. agreed. In the course of his B judgment, at p. 418, he said of the decision in *Griffin v. Squires* [1958] 1 W.L.R. 1106:

> "That case is sometimes cited as being an authority for saying that a car park cannot be a road. In point of fact the only observation to that effect, at p. 1109, is plainly one which is obiter by Streatfeild J. and does not appear anywhere in the leading judgment of Lord C Parker C.J. In any event I would respectfully suggest that it is not correct to say that a car park cannot be a road. There must be many cases, and this case probably is such a case, where there is obviously a definable way over which vehicles may pass which in plain common sense qualifies as a road. That leads me to say that in all these cases there is a well established process which is founded on findings of fact. The first question which has to be asked is whether there is in D fact in the ordinary understanding of the word a road, that is to say, whether or not there is a definable way between two points over which vehicles could pass. The second question is whether or not the public, or a section of the public, has access to that which has the appearance of a definable way. If both questions can be answered affirmatively, then there is a road for the purposes of the various E Road Traffic Acts and Regulations . . ."

Later he said, at p. 419:

> "I would simply conclude by saying that in every case where there is a car park it is for the justices to decide as a question of fact along the lines of all the authorities whether it is a road or not, and then they have to go on to consider the second limb, which is whether or F not the public has access."

As the justices had apparently misdirected themselves, the case was remitted to them for reconsideration.

These observations were stated by the judge in the present case to provide the criterion on which he principally relied. He considered that the crucial question whether the car park was a road depended on whether G or not there was a definable way between two points over which vehicles could pass.

He also referred to two cases decided in the county courts, *Evans v. Lawson,* 28 May 1993, decided by Judge John Morgan, and *Cragg v. McGuire,* 21 July 1992, decided by Judge Chalkley. In the former case, Judge Morgan considered that for a car park to be a road there must be some H feature about it which enabled traffic to use it as a way of communication or a through road. He drew a distinction between the facts in *Oxford v. Austin* [1981] R.T.R. 416 and the car park which figured in *Reg. v. Waterfield* (1963) 48 Cr.App.R. 42, in which parking places were marked out in the market place at King's Lynn and which the Court of Criminal Appeal held a jury were entitled to find was a road. In the second case Judge Chalkley also considered that a road needed some sort of defined way from one defined point to another defined point. Because there was



AUTH255

no evidence that vehicles traversed the car park by any defined route to go anywhere except to get into the car park or out of it, and there was only one entrance/exit, he said it would be stretching the English language beyond measure to say that the car park was a road: it was a car park.

It seems to me that in those judgments, and the judgment in the present case, too great an emphasis was placed on seeking to answer the question: "Is the car park a road?" I consider the question would more correctly be posed by asking: "Is there within the car park a roadway?" In the present case, I think that there is within the Great Hall car park a roadway, that is, a way marked out for the passage of vehicles controlled by conventional traffic signs and markings and regularly used by members of the public seeking a car parking space. The risk of accidents causing injury arising out of the use of cars on this roadway is scarcely less than on any other road. Members of the public, whether driving vehicles or leaving and returning on foot to them, or merely walking through the car park could as easily be injured as in many of the open air car parks I have mentioned. There are moreover many other situations in which cars may be driven on defined routes over open spaces or land when attending sporting events or other entertainment.

The fact that the car is being driven to or from a parking space, as opposed to using the way through the field or area in question as a route from one road to another, ought not in my opinion to decide whether or not an injured person is paid the compensation for which he has obtained judgment. Nor, for example, ought it to decide whether, if an accident occurs, a driver is under a duty to produce his insurance details and to give his name and address.

Finally I would refer to two additional matters discussed in argument. Amendments were introduced into the Road Traffic Act 1988 by the Road Traffic Act 1991. Since it was created by section 15 of the Act of 1930, the offence of driving or being in charge of a motor vehicle under the influence of drink or drugs can be committed not only on a road but "in any other public place." It was argued that this provision was necessary to promote the safety of persons in public places other than roads of which a clear example would be a car park attached to a public house or hotel.

The Act of 1991 amended the Act of 1988 so that the offences contained in sections 1, 2, 3 and 3A of the Act can similarly be committed on a road or other public place. These extensions, introduced as a result of widespread concern about the scope of Road Traffic Act offences, were part of the recommendations of the Road Traffic Law Review set up on 31 January 1985 under the chairmanship of Dr. Peter North. In chapter 8 of its report (Cm. 576) the review body considered whether bad driving offences should be limited to conduct on a road. In paragraph 8.2 they pointed out that there was a difference in the definition of "road" between England and Wales on the one hand and Scotland on the other:

> "In England and Wales it does not include, for example, driving in a car park, on a garage forecourt or on a private square. In other words, there is a range of public places, to which drivers may have access with their vehicles, which fall outside the scope of these bad driving offences."

In paragraph 8.6 the review body recorded the opinion of the Director of Public Prosecutions that the definition of "road" (then in section 196 of the Road Traffic Act 1972) was both unclear and too narrow and that it was essential that the definition of "road" should be repealed and replaced

AUTH256

by words which included unmade-up roads, private roads, car parks and parks adjacent to public houses.

These statements from so distinguished a review panel might lend support to a suggestion that the definition of "road" in section 192 of the Act of 1988 could not include a car park of any kind. But, as I have attempted to show, that is not the construction hitherto put upon the definition in section 192.

A further argument against construing the words of section 192 to include a roadway within a car park was noticed in section 32 of the Road Traffic Regulation Act 1984, which makes provision for off-street parking and parking on roads without payment. By this section local authorities are given power to provide off-street parking places and to authorise the use as a parking place of any part of a road within their area. By section 142 of the Act of 1984 "road" in England and Wales is defined to mean "any length of highway or of any other road to which the public has access" and "street parking place" and "off-street parking place" refer respectively to parking places on land which does, and on land which does not, form part of a road.

Where the local authority lays out an area as an off-street parking place and makes provision for roadways within the area defined, I can see no basis for regarding them differently from any other roadway created on land, for example by a developer, to which the public are subsequently granted access. There is no reason why such roadways cannot become roads for the purposes of the Road Traffic Act 1988.

Where vehicles drive regularly over and into parking spaces from a roadway, the area of the parking space is in my view to be regarded an integral part of the roadway. The spaces are provided to be driven into; I do not regard it as significant that vehicles are only "driven" in such spaces for a short distance as they are coming to rest or reversing from them.

For these reasons I would hold that the areas in the Great Hall car park in Tunbridge Wells marked out for the passage and parking of vehicles were within the definition of "road" in section 192 of the Act of 1988. The injury sustained by the plaintiff was one which arose out of the use of a motor vehicle on a road and the defendants are bound under section 151 of the Act of 1988 to meet the judgment. I would allow the appeal and dismiss the cross-appeal.

MORRITT L.J. I agree.

SIR JOHN BALCOMBE. I also agree.

*Appeal allowed with costs in Court of Appeal and below.*
*Judgment for plaintiff for £16,714·59 together with interest of £1,566·48, totalling £18,281·07.*
*Leave to appeal refused.*

11 June. The Appeal Committee of the House of Lords (Lord Goff of Chieveley, Lord Lloyd of Berwick and Lord Hutton) allowed a petition by the defendants for leave to appeal.

*Solicitors: Max Barford & Co., Tunbridge Wells; C. M. Sinclair-Jenkins.*

J. K.

AUTH257

A Queen's Bench Division

# Regina (Kind) *v* Secretary of State for the Environment, Food and Rural Affairs

[2005] EWHC 1324 (Admin)

B 2005 May 23, 24; June 27 Lightman J

*Highway — Right of way — Definitive map — Right of way originally shown on map as road used as public path — Reclassification as bridleway — Council subsequently making modification order to show right of way as byway open to all traffic — Defendant refusing to confirm modification order — Whether earlier*
C *reclassification as bridleway extinguishing any public vehicular rights — National Parks and Access to the Countryside Act 1949 (12, 13 & 14 Geo 6, c 97), s 32(4)(b) — Countryside Act 1968 (c 41), Sch 3, Pt III, paras 9, 10*

The original definitive map and statement prepared for Wiltshire, under the National Parks and Access to the Countryside Act 1949, had shown a right of way (Preshute 12) as a road used as a public path ("RUPP"). By paragraph 9(1) of Schedule 3 to the Countryside Act 1968[1], each surveying authority was required to
D carry out a review and to reclassify each RUPP as a footpath, bridleway or byway open to all traffic. Paragraph 10 of Schedule 3 of the 1968 Act provided three considerations to be taken into account in the reclassification process, namely (a) whether any vehicular right of way had been shown to exist; if so (b) whether the way was suitable for vehicular traffic and (c) whether the extinguishment of vehicular rights of way would cause any undue hardship. Under the review process, Preshute 12 was reclassified by the council as a bridleway. By virtue of section 32(4)(b) of the
E 1949 Act[2], entry of a bridleway on the definitive map was conclusive evidence that there was a public right of way on foot or horseback, but, under the terms of a proviso in that subsection, entry on the map did not exclude the possible existence of a public right of way for vehicular purposes. In February 2003, the council, having discovered relevant evidence and in reliance upon section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, made an order modifying the definitive map to show the way as a byway open to all traffic. The defendant's inspector refused to confirm the
F modification order on the basis that any public vehicular rights which existed over the way had been extinguished by its earlier reclassification as a bridleway under the 1968 Act. The claimant sought judicial review of the inspector's decision.

On the claim for judicial review—

*Held*, allowing the claim, that there was no express statutory provision for the extinguishment of any existing public rights over the way; that the proviso in section 32(4)(b) of the 1949 Act remained unaltered by the subsequent legislation and could not be construed as having been impliedly amended so as to render it
G inapplicable to a reclassified bridleway, nor could it be implied into paragraphs 9 and 10 of Schedule 3 to the 1968 Act that any vehicular rights which might have existed over the way at the time of its reclassification as a bridleway had been extinguished by virtue of that reclassification; and that, accordingly, the inspector's decision would be quashed and a declaration granted to the claimant ( post, paras 35, 40, 42).

*R v Secretary of State for the Environment, Ex p Hood* [1975] 1 QB 891, CA considered.

H

[1] Countryside Act 1968, Sch 3, Pt III, para 9(1): "In the special review the draft revision, and the definitive map and statement, shall show every road used as a public path by one of the three following descriptions—(a) a 'byway open to all traffic', (b) a 'bridleway', (c) a 'footpath', and shall not employ the expression 'road used as a public path' to describe any way."
Para 10: see post, para 15.

[2] National Parks and Access to the Countryside Act 1949, s 32(4): see post, para 9.



AUTH258

The following cases are referred to in the judgment:

*Masters v Secretary of State for the Environment, Transport and the Regions* [2001] QB 151; [2000] 3 WLR 1894; [2000] 4 All ER 458, CA

*R v Secretary of State for the Environment, Ex p Hood* [1975] 1 QB 891; [1975] 3 WLR 172; [1975] 3 All ER 243, CA

*R v Secretary of State for the Environment, Ex p Riley* (1989) 59 P & CR 1

No additional cases were cited in argument.

The following additional cases, although not cited, were referred to in the skeleton arguments:

*R v Devon County Council, Ex p Fowler* [1991] JPL 520

*R v Secretary of State for the Environment, Ex p Burrows* [1991] 2 QB 354; [1990] 3 WLR 1070; [1990] 3 All ER 490, CA

*Suffolk County Council v Mason* [1979] AC 705; [1979] 2 WLR 571; [1979] 2 All ER 369, HL(E)

**CLAIM** for judicial review

The claimant, Alan Douglas Kind, as a member of the Trail Riders Fellowship, sought judicial review of a decision of the defendant, the Secretary of State for the Environment, Food and Rural Affairs, by her inspector, on 17 August 2004, to refuse to confirm the Wiltshire County Council (Sheet SU1 7SE) (Preshute 12) Rights of Way Modification Order No 14 (2003). The claimant sought an order quashing the defendant's decision and that the order be confirmed pursuant to CPR 54.19(3), alternatively that the court make a mandatory order, requiring the defendant to confirm the modification order, inter alia, on the ground that the inspector had erred in law in that on a true construction of the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968, the reclassification of a road used as a public path as a bridleway pursuant to Part III of Schedule 3 to the 1968 Act did not have the effect of extinguishing any existing public vehicular rights over it. Permission to proceed was granted by Davis J on 19 January 2005.

The facts are stated in the judgment.

*George Laurence QC* and *Ross Crail* for the claimant.
*Jonathan Karas* for the Secretary of State.

The submissions of counsel are sufficiently set out in the judgment.

*Cur adv vult*

27 June. **LIGHTMAN J** handed down the following judgment.

*Introduction*

1 By this application for judicial review made with the permission of Davis J granted on the 19 January 2005, the claimant Mr Kind ("the claimant"), suing on behalf of himself and fellow members of the Trail Riders Fellowship, seeks an order quashing the decision of the defendant (by her inspector) ("the decision") in a decision letter dated the 17 August 2004 ("the decision letter") not to confirm the Wiltshire County Council (Sheet SU1 6NE and SU1 7SE) (Preshute 12) Rights of Way Modification Order

A No 14, 2003 ("the order"). The order modifies the Wiltshire Definitive Map and Statement to show Preshute 12 as a byway open to all traffic instead of as a bridleway. The sole reason for the refusal of the inspector to confirm the order was that the public vehicular rights over Preshute 12 had been extinguished by the earlier reclassification pursuant to paragraphs 9 and 10 of Schedule 3 of the Countryside Act 1968 as a bridleway of Preshute 12, B which had previously been shown in the definitive map and statement as a "road used as a public path". The issue of law raised is whether upon the true construction of the 1968 Act the reclassification effected such an extinguishment. The defendant is sued because currently she has responsibility for modifications to definitive maps and statements.

*Statutory background*

C

*(a) The 1949 Act*

**2** The Report of the Hobhouse Committee (Footpaths and Access to the Countryside (Cmd 7207)) (1947) at para 21 expressed the view that, in order to prevent rights of way being forgotten and lost for all time, it was essential that a complete survey should be put in hand forthwith so that an D authoritative record of rights of way in this country might be prepared before it was too late. This report led to the enactment of the National Parks and Access to the Countryside Act 1949. Part IV of the 1949 Act had the heading "Public rights of way" and the subheading "Ascertainment of footpaths, bridleways and certain other highways". Section 27 of the 1949 Act as the first stage in the statutory process of ascertainment of public rights of way required every county council in England and Wales (referred to in E Part IV of the 1949 Act as "surveying authorities") to carry out a survey of all lands in its area over which certain kinds of public rights of way were alleged to subsist, and to prepare a draft map of its area showing such rights of way to which this Part of the 1949 Act applied wherever in its opinion they subsisted or were reasonably alleged to have subsisted "at the relevant date". The Part applied to three types of right of way which were defined in F section 27(6). Section 27(6) was to the following effect: (1) a "footpath" means a highway over which the public has a right of way on foot only; (2) a "bridleway" means a highway over which the public has a right of way on foot and on horseback and no other right of way; (3) a "public path" means a highway being a footpath or a bridleway; and (4) a road used as a public path means a highway other than a public path used by the public G mainly for the purposes for which footpaths and bridleways are used.

**3** "The relevant date" was defined in section 27(3) as such date, not earlier than six months before the date on which notice of the preparation of the draft map was published pursuant to section 29, as the authority might determine. Section 27(4) provided for the annexation to the draft map of a statement specifying the relevant date and containing in respect of any way shown on the draft map such particulars appearing to the authority to be H reasonably alleged as to its position and width or any limitations or conditions affecting the public right of way over it as the authority thought expedient to record in the statement.

**4** Section 29 of the 1949 Act required notice of preparation of the draft map and statement to be advertised, and provided for objections as to

anything contained in (or omitted from) them and determination by the authority of such objections, with a right of appeal to the minister.

5 The second stage in the process of ascertainment of public rights of way was the preparation of a provisional map and statement under section 30. This was the draft map and statement modified to reflect the outcome of the objection procedures (if any) which had taken place pursuant to section 29.

6 Section 31 entitled an owner, lessee or occupier of land over which there was according to the provisional map and statement a public right of way to apply to quarter sessions for a declaration that at the relevant date (a) there was no public right of way over the land or (b) there were rights of a different kind from those shown over the land or (c) the position or width of the land over which the right of way subsisted was not as indicated in the provisional map and statement or (d) the right of way was subject to limitations or conditions not shown in the provisional map and statement.

7 The third and final stage was the preparation under section 32 of the definitive map and statement, being the provisional map and statement adjusted as necessary to reflect any declarations made under section 31.

8 Paragraph 9 of Schedule 1 to the 1949 Act allowed a six week period from the publication of notice of its preparation for the validity of the definitive map and statement to be challenged in the High Court on the ground that they were not within the powers of the Act or that any requirement of the legislation had not been complied with at any stage of the above process. Paragraph 10 provided that (subject to any such challenge) the map and statement were not to be questioned in any legal proceedings whatsoever.

9 Section 32(4) provided that a definitive map and statement were to be conclusive as to the particulars contained therein to the extent specified in that subsection, and that:

> "(a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date specified in the statement a footpath as shown on the map; (b) where the map shows a bridleway, or a road used as a public path, the map shall be conclusive evidence that there was at the said date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid."

I shall refer to the provision commencing "so however" as "the proviso".

10 Section 33(1) of the 1949 Act required each surveying authority to review and revise its definitive map and statement at periodic intervals having regard to any events of the kinds specified in section 33(2) which had occurred since the relevant date (or the last preceding review date). These events included

> "(e) the discovery by the authority of new evidence such that, if the authority were then preparing a draft map under the foregoing provisions . . . they would be required . . . to show on the map, as a highway of a particular description, a way not so shown"

A at the time of the review. The new evidence alone had to be sufficient for this purpose.

**11** Section 34 provided that the revised map and statement were to be prepared in three stages corresponding to the stages of preparation of the original definitive map and statement, i e in draft, provisional and definitive forms, and the provisions of sections 28 to 32 inclusive were to apply.

B

*(b) The 1968 Act*

**12** Section 31 of the Countryside Act 1968 made the amendments to Part IV of the 1949 Act set out in Schedule 3 to the 1968 Act. The sidenote to section 31 reads: "Public paths; amendments as respects procedural and minor matters." These amendments included the addition of a circumscribed power to revise the map and statement in the event of C discovering new evidence, or evidence not previously considered by the authority, showing that there was no public right of way over land shown as a highway on the map. There was no such power under the 1949 Act.

**13** Part II of Schedule 3 simplified the procedure applicable to reviews begun under section 33 of the 1949 Act after commencement of the 1968 Act. Instead of three stages there were to be only two. The revised map and D statement were to be prepared in draft form and objections to the revisions were to be invited by advertisement. Following a local inquiry the minister was to take a decision on any duly made objections and representations and to give the authority such directions to modify the draft as appeared to him necessary to give effect to his decisions. The authority had then to prepare the revised map and statement by making such modifications to the draft as E the minister had directed.

**14** Paragraph 9 of Part III of Schedule 3 to the 1968 Act required each surveying authority in the course of the first review begun by it after the coming into force of the 1968 Act (to be known as "the special review") to reclassify each road used as a public path (whether or not shown as such in the last definitive map and statement) as a footpath, a bridleway, or a "byway open to all traffic" and not to use the expression road used as a F public path to describe any way. The provision for reclassification was only introduced into the Bill in the House of Commons at the last moment and there was no debate on it. Paragraph 9(2)(b) provided that an entry describing a way as a "byway open to all traffic" should be conclusive evidence of the existence on the date of publication of a public right of way for vehicular and all other kinds of traffic. Paragraph 11 provided that G objections to any such reclassification were to be dealt with by the minister in the manner laid down in Part II of Schedule 3 (as summarised above).

**15** Paragraph 10 (which is the critical statutory provision for the purposes of this application and which I shall refer to as paragraph 10) reads as follows:

> H "The considerations to be taken into account in deciding in which class a road used as a public path is to be put shall be—(a) whether any vehicular right of way has been shown to exist, (b) whether the way is suitable for vehicular traffic having regard to the position and width of the existing right of way, the condition and state of repair of the way, and the nature of the soil, (c) where the way has been used by vehicular traffic,

whether the extinguishment of vehicular rights of way would cause any undue hardship." A

**16** Paragraph 10 provides that in the reclassification process the three considerations stated are to be the only considerations to be taken into account. The first consideration, namely whether any vehicular right of way has been shown to exist, sets a precondition to the classification as a byway: only if a vehicular right of way has been shown to exist can the road used as a public path be reclassified as a byway. The second and third considerations only come into play if a vehicular right of way has been shown to exist; if this is shown, the second and third considerations of suitability and undue hardship of extinguishment may require reclassification as a bridleway. (Reclassification as a footpath under the second and third considerations is not possible where vehicular rights have been shown to exist: see *R v Secretary of State for the Environment, Ex p Hood* [1975] 1 QB 891.) B C

*(c) The 1981 Act*

**17** Part III of the Wildlife and Countryside Act 1981 has the heading "Public rights of way" and the subheading "Ascertainment of public rights of way" and includes sections 53 to 66. The provisions in Part III of the 1981 Act repealed Part IV of the 1949 Act and Schedule 3 to the 1968 Act and replaced them with the provisions of sections 53–58 of and Schedules 14 and 15 to that Act as from the 28 February 1983. The system of periodic reviews of the definitive map and statement was abolished and a rolling review system was introduced in its place. D

**18** Section 53(2) of the 1981 Act required each surveying authority on its own initiative or on application by any person to make by order such modifications to the map and statement as appeared to it requisite in consequence of the occurrence of any of the events specified in section 53(3) as soon as reasonably practicable (a) after the commencement date (in the case of events which had occurred before commencement) and (b) after they had occurred (in all other cases). The events specified in section 53(3) include (in paragraph (c)) the discovery by the authority of evidence which (when considered with all other relevant available evidence) shows that: (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in its area, being a right of way to which Part III of the 1981 Act applies; or (ii) a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or (iii) there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification. E F G

**19** Section 54 of the 1981 Act required surveying authorities, as soon as reasonably practicable after the commencement date, to review roads used as a public paths remaining on their definitive maps (and accordingly in respect of which no reclassification had taken place pursuant to the 1968 Act) and make modification orders reclassifying them as follows: (i) if a public right of way for vehicular traffic had been shown to exist, as a byway open to all traffic. The criteria of suitability for vehicular use and undue hardship present in paragraph 10 of Part III of Schedule 3 of the 1968 Act were abandoned; (ii) if (i) did not apply and public bridleway rights had not H

A been shown not to exist, as a bridleway; (iii) if neither (i) nor (ii) applied, as a footpath.

**20** The provisions of Schedule 15 to the 1981 Act apply to orders made under sections 53 and 54 of the 1981 Act. Schedule 15 provides (in paragraph 2) that a modification order shall not take effect until confirmed by the authority or the Secretary of State. It lays down the procedure for an opposed order to be submitted to the Secretary of State for confirmation and
B the holding of a public local inquiry or hearing (paragraphs 7–10). The decision whether or not to confirm the order (with or without modifications) is to be made by an inspector appointed by the Secretary of State for the purpose and is to be treated as the Secretary of State's decision (paragraph 10). The validity of an order which has taken effect may be challenged in the High Court under paragraph 12 of Schedule 15 on the
C ground that it is not within the powers of section 53 or section 54 or that any of the requirements of Schedule 15 have not been complied with in relation to it. There is no statutorily prescribed procedure for challenging a decision to refuse to confirm a modification order and accordingly a claim for judicial review is the only procedure available for that purpose.

**21** Section 56(1) of the 1981 Act provided that a definitive map and statement shall be conclusive evidence as to the particulars contained therein
D to the extent specified in that subsection. Where the map shows a footpath, that is conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had a right of way on foot over it, but without prejudice to the existence of higher rights. Where the map shows a bridleway or a road used as a public path, that is conclusive evidence

> E "that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than those rights."

Where the map shows a byway open to all traffic, that is conclusive evidence
F that at the relevant date there was a highway as shown on the map over which the public had a right of way for vehicular and all other kinds of traffic.

**22** The relevant date is defined in section 56(2). If the way was shown on the map otherwise than in pursuance of a modification order made under Part III of the 1981 Act, it is the date specified in the statement as the relevant date for the purposes of the map. If it is shown on the map in pursuance of
G such an order, it is the date (not earlier than six months before the making of the order) which is specified in the order as the relevant date.

**23** Section 55 of the 1981 Act made provision for surveys and reviews under the 1949 Act which were ongoing at the date of commencement of the 1981 Act. By section 55(1) the Secretary of State was empowered to direct the relevant authority to complete, or to abandon, the survey or review. Section 55(5) provided that, where a review was abandoned after the
H preparation of a draft revised map and statement and the expiry of the period allowed for representations or objections thereto, the authority should by order modify the map and statement under review so as: (i) to give effect to any decision of the Secretary of State under paragraph 4(4) of Part II of Schedule 3 to the 1968 Act; and (ii) to show any particulars shown in the

draft map and statement but not in the map and statement under review, and to omit any particulars shown in the map and statement under review but not in the draft map and statement, in respect of which depiction or omission no representation or objection had been duly made, or any such representations and objections had been withdrawn.

*Facts*

**24** Wiltshire County Council is and has always been the surveying authority for the purposes of the definitive map legislation for the county of Wiltshire. The original definitive map and statement for the county of Wiltshire prepared by the council under the 1949 Act (relevant date 16 November 1952) included in the parish of Preshute a road used as a public path (referred to as Preshute 12) commencing on the London to Bath A4 road at Elm Tree Cottage (now known as Coach Inn Cottage) and leading north then north-east for 1186 yards to unclassified road 5060.

**25** The second review carried out by the council under the 1949 Act (being the first review begun by it after the coming into force of the 1968 Act and, accordingly, the special review within the meaning of Part III of Schedule 3 to that Act), was begun but not completed as at the date of commencement of the 1981 Act. In the draft revised map and statement prepared by the council prior to that date of which the relevant date was the 31 May 1972, Preshute 12 was shown as a bridleway. This was pursuant to the proposal of Preshute Parish Meeting in a questionnaire completed on the 29 October 1968 that it should be so reclassified on the basis that it was not used by vehicular traffic and its surface was not suitable for such use. No objections were made to that reclassification, and so when the Wiltshire Definitive Map and Statement were modified pursuant to section 55(5) of the 1981 Act by (among other orders) the Wiltshire County Council (Sheets SU 16 NW, SU 16 NE, SU 16 SW and SU 16 SE) Rights of Way Modification Order No 3 (1991) (the relevant date of which was the 27 August 1991), Preshute 12 was reclassified as a bridleway.

**26** On the 6 February 2003, the council made the order modifying the Wiltshire Definitive Map and Statement to show Preshute 12 as a byway open to all traffic instead of a bridleway. The order (which was made on the council's own initiative) was made in reliance on section 53(3)(c)(ii) of the 1981 Act, i e on the basis that the council had discovered evidence which (when considered with all other relevant available evidence) showed that Preshute 12 ought to be shown as a byway open to all traffic rather than a bridleway.

**27** Nineteen objections to the order were received, including from Mr A Hawkins (who at that time owned Coach Inn Cottage) and Mr D McCormick (who owns part of the land crossed by Preshute 12). The order was accordingly submitted for confirmation to the defendant, who appointed an inspector pursuant to paragraph 10 of Schedule 15 to the 1981 Act to decide on her behalf whether or not to confirm the order. The inspector held a public local inquiry on the 22 June 2004. On the 17 August 2004 he issued the decision letter, by which he refused to confirm the order. The inspector found that the historical documentary evidence presented at the inquiry in support of the order (which he described in paragraph 7 of the decision letter as "generally accepted or not challenged by the objectors") "overwhelmingly suggests that by the time of the preparation of the definitive

map for the area, the order route had been established as a public vehicular route for a long time": para 15 of the decision letter. The inspector's sole reason for refusing to confirm the order was his acceptance (having had regard to, among other things, the circular letter issued in March 2004 by the Department for Environment Food and Rural Affairs to the chief executives of all local authorities in England ("the letter") and brought to the attention of the defendant's inspectors by means of the Planning Inspectorate Rights of Way Section Advice Note No 18 (April 2004) ("Advice Note 18")) of the submission advanced by the objectors that the public vehicular rights over Preshute 12 had been extinguished by the reclassification procedure carried out under the 1968 Act. Paragraph 30 of the decision letter reads:

> "although I accept that the historical evidence proves that the order route carried public vehicular rights for a long period, these ceased to exist in 1972 and the order should not therefore be confirmed."

*Issues*

**28** The questions of statutory construction raised on this application are: (i) whether, on the true construction of the 1949 and 1968 Acts, the effect of a way shown as a road used as a public path on the definitive map being reclassified pursuant to the provisions of Part III of Schedule 3 to the 1968 Act as a bridleway was to extinguish any public vehicular rights which in fact and in law existed over it at the date of the reclassification; (ii) whether, on the true construction of the 1981 Act, a way which has been so reclassified can be shown instead as a byway open to all traffic in the exercise of the powers conferred by section 53 of and Schedule 15 to the 1981 Act, on the basis that there has been a discovery of evidence which (when considered with all other relevant available evidence) shows that public vehicular rights existed over it prior to the reclassification.

**29** The claimant contends that on the true construction of the legislation: (i) reclassification of a road used as a public path as a bridleway pursuant to the provisions of Part III of Schedule 3 to the 1968 Act did not have an extinctive effect on any public vehicular rights existing over the way at the date of the reclassification; such rights continued to exist despite not being reflected on the definitive map; and (ii) a way which has been so reclassified can accordingly today be shown on the definitive map as a byway open to all traffic upon proof of the existence of public vehicular rights over it predating the reclassification.

**30** The defendant, by contrast, contends that on the true construction of the legislation: (i) reclassification of a road used as a public path as a bridleway pursuant to the provisions of Part III of Schedule 3 to the 1968 Act did have the effect of extinguishing any public vehicular rights then existing thereover; and (ii) such public vehicular rights cannot be revived or restored by the operation of the 1981 Act.

**31** The defendant's stance in these proceedings, though a departure from previous understanding and practice, is consistent with the view of the law expressed by her department in the letter and brought to the attention of the defendant's inspectors by means of Advice Note No 18, in which it was said that:

> "There is uncertainty about whether the reclassification of a road used as a public path as a bridleway under Part III of Schedule 3 to the 1968



AUTH266

Act has the effect of extinguishing any vehicular rights that may have been shown to exist over the road used as a public path. The courts do not appear to have looked specifically at this point. While the effect of the 1968 Act has not been tested, there is support for the view that the intention was to extinguish vehicular rights. DEFRA has concluded that claims for byways open to all traffic where the ways concerned were roads used as public paths before reclassification as bridleways under the 1968 Act should be rejected."

**32** This application is of the nature of a "test case", with a view not just to overturning the particular decision under challenge, but also to resolving, in the public interest, the wide-reaching questions of statutory construction raised on this application. The defendant accepted in her summary of grounds for contesting the claim that the underlying questions raised a properly arguable point of some importance in the law of highways, and did not oppose the grant of permission to proceed.

*Statutory construction*

**33** There are two issues of construction of paragraphs 9 and 10 of Schedule 3 to the 1968 Act. The first is whether reclassification of a road used as a public path as a bridleway effects any form of extinguishment of public vehicular rights. The second is whether, if it does, the extinguishment is immediate and permanent or whether the extinguishment is temporary only and in this case whether the rights can be revived on a subsequent review. It is common ground that, if the reclassification effects a permanent extinguishment, there can be no subsequent revival of the rights under the provisions of the 1968 or 1981 Acts.

*(1) Extinguishment or no extinguishment*

**34** Under the 1949 Act and the 1968 Act (both now repealed), by reason of section 32(4) of the 1949 Act (which remained unaltered by the 1968 Act) when the definitive map and statement showed a bridleway, the entry was conclusive evidence that there was a public right of way on foot and by horseback, but by reason of the proviso the entry did not exclude the possible existence of a public right of way for vehicular purposes. In a word the entry did not extinguish the existence of public rights of way for vehicular purposes. (The position is the same under section 56 of the 1981 Act.) Paragraphs 9 and 10 must be viewed against this background. The issue raised is whether a road used as a public path reclassified pursuant to paragraphs 9 and 10 as a bridleway does not have the ordinary incidents of that status and in particular whether the vehicular rights are extinguished and the proviso had no application.

**35** There are three substantial obstacles in the path of roads used as a public paths reclassified as bridleways lacking these incidents. The first is the general principle of statutory construction that a provision should not be construed as extinguishing existing public rights unless it expressly so provides or an intention to do so is so clear that it must necessarily be implied. There is no such express provision: all that is present is a reference to extinguishment in paragraph 10(c). The second is the sidenote. The language of the sidenote speaking of "procedural and minor matters" scarcely fits the extinguishment of substantive rights. The third is the

A extraordinary distinction which the construction would have required to be drawn between entries of bridleways not the result of reclassification (to which the proviso would have applied) and entries of reclassified bridleways (to which the proviso would have had no application).

**36** The question before me is accordingly whether notwithstanding these obstacles paragraph 10 clearly and unambiguously made clear the intention that upon reclassification of a road used as a public path as a B bridleway all existing public vehicular rights were to be extinguished.

**37** This issue has been the subject of observations in a number of cases but has not previously been the subject of decision. The view was expressed obiter by Lord Denning MR and Browne LJ in *R v Secretary of State for the Environment, Ex p Hood* [1975] 1 QB 891, 899D and 903G that on reclassification of a road used as a public path as a bridleway public vehicular C rights could be extinguished. The issue did not arise in that case and there does not appear to have been argument on the issue. The question did arise and was argued in *R v Secretary of State for the Environment, Ex p Riley* (1989) 59 P & CR 1. Macpherson of Cluny J held, at p 7, that he did not have to decide the question, but after argument he expressed the inclination to the view that the dicta in the *Hood* case were incorrect and that reclassification as a bridleway left open the possible existence of public vehicular rights since D the 1968 Act continued unaltered the definition of bridleway (by which, in the context, it is plain he meant that the 1968 Act had left the effect of the proviso in section 32(4)(b) unaltered) and contained no positive word about extinguishment save for the one reference in paragraph 10(c). Beyond those dicta there is a passage to which I should refer in the judgment of Roch LJ in *Masters v Secretary of State for the Environment, Transport and the Regions* E [2001] QB 151, 163, para 32 which reads as follows:

> "[The] provisions [of paragraph 10] were not re-enacted in the 1981 Act because, as Mr Laurence conceded, it was thought by Parliament that those provisions conflicted with the common law rule that once the public had a right of way of a certain type over land then in order to extinguish or even vary such a right, intervention by statute either directly or F indirectly should be necessary."

**38** Neither Lord Denning MR nor Browne LJ in *R v Secretary of State for the Environment, Ex p Hood* [1975] 1 QB 891 nor Roch LJ in *Masters v Secretary of State for the Environment, Transport and the Regions* [2001] QB 151 referred to or (as it appears to me) had in mind the considerations referred to by Macpherson of Cluny J and in particular the fact that the G proviso remained unaltered by the 1968 Act.

**39** The thrust of the argument in favour of holding that reclassification of a road used as a public path as a bridleway effects an extinguishment of vehicular rights is that, unless such reclassification has this effect, it has no substantive legal effect at all and that Parliament cannot have so intended and that the key unlocking Parliament's intention is to be found in the reference to extinguishment in paragraph 10(c). It is argued that, unless H reclassification effects extinguishment, all it does is to entitle the surveying authority to show the road used as a public path in the definitive map and statement as a bridleway instead of (as really it is) a byway open to all traffic.

**40** The likely explanation, as it seems to me, for the problem of construction now facing the court is that at the late stage in the legislative

process when the provisions for reclassification were introduced Parliament (like the three Court of Appeal judges to whose judgments I have referred) did not have in mind that the proviso had remained unaltered. In my judgment the legislation cannot and should not be construed as a sidewind repealing or amending the effect of the proviso. Like Macpherson J I do not think that the necessary implication can be read into the 1968 Act that vehicular rights should be extinguished and the provisions of section 32(4)(b) can be construed as amended so as to render the proviso inapplicable to a reclassified bridleway. I find some support for this view in the sidenote which indicates that the statutory provisions are not intended to have any such substantive effect. I should add that reclassification as a bridleway may have had the practical effect of discouraging the public from using the highway for vehicular purposes and indeed of encouraging applications under other legislation to stop up or extinguish those rights.

*(2) Temporary or permanent extinguishment*

**41** Since I do not think that there was any extinguishment, it is unnecessary to consider whether, if the reclassification did effect an extinguishment, the extinguishment was temporary only until the next revision of the definitive map and statement. I shall only say that I incline to the view that extinguishment would have been only temporary if the reclassification had been made on the ground that no vehicular right of way had been shown, leaving open the possibility that new evidence of the existence of the vehicular rights might become available and be adduced on a subsequent review. I have however difficulty in seeing how the extinguishment would only be temporary if (as in this case) the reclassification was made on grounds of unsuitability or lack of undue hardship. The scheme of the three Acts provides for reconsideration in the light of new evidence as to whether vehicular rights are shown to exist, but not as to whether the vehicular rights should be extinguished on the other two grounds.

*Conclusion*

**42** I accordingly quash the decision. The appropriate relief is the grant of a declaration and the grant to the claimant of liberty to apply.

**43** I should record in this judgment two matters. The first is that I received invaluable assistance (oral and written) from all counsel Mr Laurence, his junior Miss Crail and Mr Karas. The second is that after I had reserved judgment a Mr Burroughs sent me a letter and a number of documents to assist me. I sent copies to both counsel and invited any comments on the contents. Mr Laurence and Miss Crail made limited comments. Whilst I appreciate the concern and efforts of Mr Burroughs, his contribution has had no impact on the substantive content of this judgment.

*Claim allowed.*

*Solicitors: Brain Chase Coles, Basingstoke; Solicitor, Department for Environment, Food and Rural Affairs.*

Reported by Sarah Addenbrooke, Barrister

House of Lords

# Regina (Godmanchester Town Council) *v* Secretary of State for the Environment, Food and Rural Affairs

# Regina (Drain) *v* Same

[2007] UKHL 28

2007 May 8, 9, 10; June 20

Lord Hoffmann, Lord Hope of Craighead, Lord Scott of Foscote, Baroness Hale of Richmond and Lord Neuberger of Abbotsbury

*Highway — Right of way — Dedication — Application for modification order adding footpath to definitive map and statement — Whether overt acts required as sufficient evidence of intention not to dedicate footpath — Whether necessary for evidence of intention not to dedicate to have been brought to users' notice throughout whole of relevant period — Highways Act 1980 (c 66), s 31(1)*

In each of two cases, an application by the claimant to the surveying authority for a modification order under section 53 of the Wildlife and Countryside Act 1981 adding a public footpath to the definitive map and statement of the local area was refused but, following a successful appeal, the Secretary of State for the Environment, Food and Rural Affairs directed the making of the order. The landowner objected, the order was submitted for confirmation to the Secretary of State and a public local inquiry was held. The inspector concluded that there was sufficient evidence, within section 31(1) of the Highways Act 1980[1], of a lack of intention on the part of the landowner to dedicate a footpath during the relevant 20-year period and that the order should not be confirmed. The claimants sought judicial review of the inspector's decisions. The Divisional Court of the Queen's Bench Division dismissed the claims, and its decision was affirmed by the Court of Appeal.

On the claimants' appeals—

*Held*, allowing the appeals, that on the true construction of section 31(1) of the 1980 Act a landowner's intention not to dedicate a way as a highway had to be objectively established and "intention" meant what users of the way would reasonably have understood his intention to be; that "sufficient evidence" that there had been no intention to dedicate required evidence of some overt acts on the part of the landowner such as to come to the attention of the public who used the way and demonstrate to them that he had no such intention, and it was not sufficient for him simply to give evidence that he had not so intended; that although the landowner's intention did not have to be continuously manifested "during" the whole of the 20-year period, but merely at some point during that period, the inspector had been wrong in principle to take into account in the first case a letter written by the landowner to the local planning authority complaining of pedestrian trespass and in the second case a clause in a tenancy agreement by which the tenant had agreed not to allow any footpaths to be created; and that the decisions should be quashed and the cases remitted to the Secretary of State for decision (post, paras 20, 32, 39, 42, 47, 57, 59, 68–71, 72, 77–78, 87).

Dicta of Denning LJ in *Fairey v Southampton County Council* [1956] 2 QB 439, 458, CA applied.

*R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374 and *R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396 disapproved.

[1] Highways Act 1980, s 31(1): see post, para 1.

Decision of the Court of Appeal [2005] EWCA Civ 1597; [2006] QB 727; [2006] 2 WLR 1179; [2006] 2 All ER 960 reversed.

The following cases are referred to in the opinions:

*Barraclough v Johnson* (1838) 8 A & E 99
*British Museum (Trustees of the) v Finnis* (1833) 5 C & P 460
*Bryant v Foot* (1867) LR 2 QB 161
*Fairey v Southampton County Council* [1956] 2 QB 439; [1956] 2 WLR 517; [1956] 1 All ER 419, DC; [1956] 2 QB 439; [1956] 3 WLR 354; [1956] 2 All ER 843, CA
*Folkestone Corpn v Brockman* [1914] AC 338, HL(E)
*Jaques v Secretary of State for the Environment* [1995] JPL 1031
*Jones v Bates* [1938] 2 All ER 237, CA
*Lewis v Thomas* [1950] 1 KB 438; [1950] 1 All ER 116, CA
*Mann v Brodie* (1885) 10 App Cas 378, HL(Sc)
*Merstham Manor Ltd v Coulsdon and Purley Urban District Council* [1937] 2 KB 77; [1936] 2 All ER 422
*O'Keefe v Secretary of State for the Environment* [1996] JPL 42
*Poole v Huskinson* (1843) 11 M & W 827
*Powell v McFarlane* (1977) 38 P & CR 452
*Pye (J A) (Oxford) Ltd v Graham* [2002] UKHL 30; [2003] 1 AC 419; [2002] 3 WLR 221; [2002] 3 All ER 865, HL(E)
*R v Broke* (1859) 1 F & F 514
*R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335; [1999] 3 WLR 160; [1999] 3 All ER 385, HL(E)
*R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374; [1998] 3 WLR 1240; [1998] 2 All ER 587
*R v Secretary of State for the Environment, Ex p Blake* [1984] JPL 101
*R v Secretary of State for the Environment, Ex p Cowell* [1993] JPL 851, CA
*R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396
*Secretary of State for the Environment v Beresford Trustees* (unreported) 31 July 1996; Court of Appeal (Civil Division) Transcript No 1031 of 1996, CA

The following additional cases were cited in argument:

*Applegarth v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 487; [2001] EGCS 134
*Associated Provencial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223; [1947] 2 All ER 680, CA
*Attorney General ex rel Yorkshire Derwent Trust Ltd v Brotherton* [1992] 1 AC 425; [1991] 3 WLR 1126; [1992] 1 All ER 230, HL(E)
*Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd* 1992 SC 357; 1992 SLT 1035
*Gloucestershire County Council v Farrow* [1985] 1 WLR 741; [1985] 1 All ER 878, CA
*Leckhampton Quarries Co Ltd v Ballinger* (1904) 20 TLR 559
*Mills v Silver* [1991] Ch 271; [1991] 2 WLR 324; [1991] 1 All ER 449, CA
*Newnham v Willison* (1987) 56 P & CR 8, CA
*Norman v Secretary of State for the Environment, Food and Rural Affairs* [2006] EWHC 1881 (Admin); [2007] EWCA Civ 334, CA
*R v Lloyd* (1808) 1 Camp 260
*R (Beresford) v Sunderland City Council* [2003] UKHL 60; [2004] 1 AC 889; [2003] 3 WLR 1306; [2004] 1 All ER 160, HL(E)
*Shearburn v Chertsey Rural District Council* (1914) 78 JP 289
*Turner v Walsh* (1881) 6 App Cas 636, PC
*Ward v Durham County Council* (1994) 70 P & CR 585, CA

A **APPEALS** from the Court of Appeal

*R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs*

This was an appeal by the claimant, Godmanchester Town Council, by leave of the House of Lords (Lord Hoffmann, Lord Scott of Foscote and
B Lord Rodger of Earlsferry) given on 14 March 2006 from the decision of the Court of Appeal (Auld and Arden LJJ and Bennett J) on 19 December 2005 dismissing the claimant's appeal from the Divisional Court of the Queen's Bench Division (Maurice Kay LJ and Richards J) [2005] 1 WLR 926 on 22 July 2004. The Divisional Court had dismissed the claimant's claim for judicial review of a decision contained in a letter dated 21 March 2003 of
C Helen Slade, an inspector appointed by the Secretary of State for the Environment, Food and Rural Affairs, by which she had refused to confirm the Cambridgeshire County Council (Public Footpath No 15 Godmanchester) Definitive Map Modification Order 2002 made on 20 March 2002.

*R (Drain) v Secretary of State for the Environment, Food and Rural Affairs*

D This was an appeal by the claimant, Leslie Ernest Drain, acting on behalf of the Ramblers' Association, by leave of the House of Lords granted on 14 March 2006 from the decision of the Court of Appeal on 19 December 2005 dismissing his appeal from the decision of the Divisional Court on 22 July 2004. The Divisional Court had dismissed his claim for judicial review of a decision contained in a letter of the inspector, Helen Slade, dated
E 9 June 2003 refusing to confirm the West Berkshire District Council Definitive Map and Statement Footpath 25, 25a and 25b Aldworth/17 Streatley Modification Order 2000 made on 4 September 2000.

The appeals were consolidated. The facts are stated in the opinions.

*George Laurence QC* and *Ross Crail* for the claimants. The questions (a)
F of what counts as "sufficient evidence" and (b) of what "during" means cannot be considered or answered independently of one another. The proviso has to be construed as a whole, and the interplay between the answers is part of that process. The combined effect of the Court of Appeal's rulings on both questions is to render the section ineffective. If the claimants' submissions on question (a) are rejected, the argument for their proposed answer to question (b) is all the stronger, and vice versa.

G The approach to the interpretation and application of the proviso to section 31(1) of the Highways Act 1980 endorsed by the Court of Appeal has only been adopted by the courts relatively recently and represents a significant departure in favour of landowners from what had previously been understood to be, and acted on as being, the law. That interpretation does not strike the balance between the interests of landowners and the public interest in the preservation of rights of way that have been in de facto
H use for many years where Parliament in enacting the Rights of Way Act 1932 and its successor provisions in the Highways Act 1959 and the 1980 Act intended it to be struck but tilts it overwhelmingly too far in favour of landowners. [Reference was made to *Fairey v Southampton County Council* [1956] 2 QB 439; *R v Secretary of State for the Environment, Ex p Blake*

[1984] JPL 101; *R v Secretary of State for the Environment, Ex p Cowell* [1993] JPL 851; *Ward v Durham County Council* (1994) 70 P & CR 585; *O'Keefe v Secretary of State for the Environment* [1996] JPL 42 and *Jaques v Secretary of State for the Environment* [1995] JPL 1031.]

The decision of the Court of Appeal as to the meaning of the proviso in *Secretary of State for the Environment v Beresford Trustees* (unreported) 31 July 1996; Court of Appeal (Civil Division) Transcript No 1031 of 1996 was clearly part of the ratio, because to evaluate the inspector's treatment of the evidence going to the satisfaction of the proviso and decide whether or not it had been irrational it was necessary first to decide what the test for the application of the proviso was. The court did not simply assume the correctness of the test in *Fairey v Southampton County Council* [1956] 2 QB 439, 458. That could be seen from the novelty of the "subjective"/"objective" terminology, which did not derive from *Fairey's* case, and Hobhouse LJ's reference to section 31(3)(5), which shows that the court gave thought to the interplay between those provisions and the proviso and concluded that the section as a whole was supportive of Denning LJ's construction of it.

As to the observations of Sullivan J, obiter, in *R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374, 394–396, first, the *Beresford Trustees* case was not drawn to his attention; secondly, he wrongly interpreted the authorities as doing no more than establishing the proposition that evidence of the landowner's intention had to be overt, in the sense of not being locked in his own mind, and contemporaneous, as opposed to a retrospective assertion. [Reference was made to *Norman v Secretary of State for the Environment, Food and Rural Affairs* [2006] EWHC 1881 (Admin) at [16] and [26]; [2007] EWCA Civ 334.]

Adopting the "pure" construction of the proviso and rejecting the existence of any "overt acts rule" (as Dyson J, going further than Sullivan J, had done in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396, 404–408) leads inexorably to the position that all that a landowner need do to defeat a section 31 claim is to lead oral evidence, which the court or tribunal hearing it accepts as truthful, that he (and/or his predecessors in title) did not intend to dedicate the way in question. There is no warrant for saying, as the Divisional Court said [2005] 1 WLR 926, para 29(3), that "in the absence of something overt and contemporaneous, a landowner will generally find it difficult to point to 'sufficient evidence' of a negative—a lack of intention to dedicate". If the only issue is as to his subjective state of mind, he is in the best position to say what it was. In the nature of things, the public will be unable to lead any directly contrary evidence. One cannot have it both ways and reject the existence of any rule of law or evidence that there should have been overt and contemporaneous acts while at the same time positively encouraging the fact-finder to look for them in most if not all cases. That approach is unworkable: see *Norman's* case [2006] EWHC 1881 at [26]. The judicial instinct that bare retrospective assertions of no intention to dedicate should not be enough to satisfy the proviso is correct, is in tune with the legislative intention and can and should be given effect in interpreting the statute. However, as soon as the pure construction is abandoned, the proviso must, guided by what must ultimately be policy considerations, be construed by drawing a line, and the question is where it is to be drawn.

Considerations of the legislative policy and purpose point towards drawing it not where Sullivan J in *Ex p Billson* was inclined to draw it but more where the judges in earlier cases were inclined to draw it. At the very least, it should be construed so as to exclude from satisfying the proviso purely private acts or statements that the public have no reasonable chance of discovering. In the Divisional Court and the Court of Appeal the claimants contended that there had to be evidence of acts that were overt in the sense that they came or were likely to come to the attention of users. The proviso should be interpreted no more favourably to landowners than that.

As to the position at common law prior to 1932, see the principles stated in *Mann v Brodie* (1885) 10 App Cas 378, 386, per Lord Blackburn; *Folkestone Corpn v Brockman* [1914] AC 338, especially per Lord Kinnear, at pp 352–358, Lord Atkinson, at pp 361–367, and Lord Dunedin, at p 375; *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335, per Lord Hoffmann, at pp 349 (referring to the distinction between Scottish and English law), 351H–353E (referring to *Mann v Brodie*) and 358F–G; *Jones v Bates* [1938] 2 All ER 237, 244A–245A, 247C–G; *Attorney General ex rel Yorkshire Derwent Trust Ltd v Brotherton* [1992] 1 AC 425, 432B, 438A, 447A–B and *Trustees of the British Museum v Finnis* (1833) 5 C & P 460. Long-standing public user did not give rise to any presumption of dedication at common law. An inference of dedication could be drawn, but did not have to be; the landowner's inaction could be attributed to toleration instead. The Court of Appeal's interpretation of the proviso fails to recognise and give effect to the legislative policy and intent underlying section 31 and its statutory predecessors beginning with the 1932 Act and is incompatible with Parliament's objectives of facilitating the establishment of public rights of way, simplifying the law relating to the proof of their acquisition and making the outcome of disputes less unpredictable. It cannot have been the intention of Parliament in enacting the 1932 Act or its successor provisions to create an alternative statutory method of establishing public rights of way that was so easily circumvented, throwing the public back on to the common law with all the inherent difficulties of which it was, according to previous decisions of the House of Lords, an object of the legislation to relieve them.

The Court of Appeal's rejection of the "overt acts rule" means that a section 31 claim, based on however long a period of uninterrupted as of right user, can be defeated by the landowner or a predecessor in title coming forward and saying that he did not intend to dedicate the way but was merely tolerating its use by the public. Its interpretation of "during" means that such evidence need only pertain to a small proportion of the 20-year period preceding the "bringing into question". Parliament would not have replaced the situation postulated by Lord Blackburn in *Mann v Brodie* 10 App Cas 378, 386, with one no less unsatisfactory. The legislative intention would have been that, once the public had used a way as of right and uninterruptedly for 20 years or more (without any manifestation of an intention that they should not acquire a right by so doing, sufficient to disabuse them of the belief that that was what would happen), they should be entitled to assume that they had acquired that right, not have to proceed on the uncertain basis that the fruits of their user might at any time be snatched from them. The landowner should have to show his hand openly at the time of the user, just as the users show their hand openly by using the

route. The evidence of no intention to dedicate should be sufficient for that purpose, not just sufficient to satisfy a tribunal after the event. Moreover, Parliament cannot have intended the reference to evidence in the proviso to be a reference to evidence that was not reasonably discoverable by members of the public at a time when they were deciding whether or not to apply for a definitive map modification order or otherwise assert the existence of a right but was in the sole knowledge of the landowner or a predecessor in title and might be brought out as a trump card only at a late stage of the relevant proceedings. That is unfair to the public. Arden LJ's suggestion [2006] QB 727, para 95 (see also per Auld LJ, para 63) that the fact-finder should weigh the landowner's evidence about his intentions against his omission to take steps to publicise them, taking into account other factors such as the location and features of the way and the extent of user, sounds very well (and is not something that the inspector did in either of the instant cases) but calls for a complex analysis of the subjective state(s) of mind over a period of at least 20 years of at least one landowner, perhaps a series of successive landowners. That is hardly a simplification of the law. Moreover, the exercise of inferring the landowner's true state of mind from his actions (or, rather, inaction) in all the circumstances would be virtually indistinguishable from the exercise at common law of deciding whether or not to infer the existence of an intention to dedicate. [Reference was made to J G Riddall, "'Umm . . .', Said the Solicitor" [2006] Conv 285 and the *Sunningwell* case [2000] 1 AC 335, 356.]

Honestly and openly challenging the public's right to use a way (by, e g, erecting a gate or notice) would bring it into question, crystallise it and enable the public to establish and enforce it by an application for a definitive map modification order or appropriate legal proceedings. If the Court of Appeal is right, the landowner can avoid that result and defeat the public's inchoate claim by doing some (perfectly genuine) private act, such as writing and sending a letter declaring that he has no intention of allowing the way to become a highway, waiting for a few days or weeks and then openly challenging the public's right to use it by, e g, barring the entrance. The writing and sending of an appropriately worded letter would satisfy the fact-finder of the presence of a genuine intention, albeit one only just conceived, not to dedicate at a point in the relevant 20-year period. Parliament cannot have intended the section to be so easily circumvented, and one or other, if not both, of the Court of Appeal's rulings must be flawed. The Divisional Court's only answer to this point [2005] 1 WLR 926, para 43 was that even if a claim under the statute could be defeated by such a device it might well still be possible to infer a dedication at common law. But that is cold comfort for the public, since whether the decision-maker would actually do so is a very different matter. The alternative inference of toleration could just as easily be drawn.

The adoption of criteria for assessing what is "sufficient evidence" is not inconsistent with its being a question of fact in each individual case whether those criteria are satisfied (per Rose LJ in *R v Secretary of State for the Environment, Ex p Cowell* [1993] JPL 851, 855). Although there are in section 31(1) no words that expressly require proof of overt acts on the part of the landowner (in any sense of the word "overt") to satisfy the proviso, neither are there any that would prevent it being given a purposive construction that achieves the objects of the section by imposing a

A requirement for overt acts that come or are likely to come to the attention of users.

Subsections (3), (5) and (6), which all entail acts of a public nature, are clear positive indicators of a legislative intention that acts satisfying the proviso have to be in the public domain and involve an element of continuity throughout the 20-year period. Deposit of a declaration under subsection (6) is statutorily deemed to be sufficient evidence. One would B expect such a deeming provision to offer the landowner an alternative course of action less, not more, onerous than he would otherwise have to take to satisfy the proviso. If the Court of Appeal is right, however, he need not go to the trouble of drawing up a formal document and depositing it with the local authority and renewing it at intervals thereafter; he can just write a letter to friends, or do nothing. If that is the case, Parliament need not have C enacted these subsections. Likewise, in the 1932 Act (and its successors) Parliament gave landlords specific means of rebutting the presumption of dedication that could otherwise have arisen from user that their tenants did nothing to prevent. Those means involved directly and openly intervening so that everyone might know their position: see section 31(4) as well as subsections (5) and (6), and compare sections 1(5) and 4 of the 1932 Act. That is another pointer to the legislative intention, and Parliament did not D contemplate the same result being achieved by the insertion of a covenant in the lease that the tenant proceeded with impunity to breach and the landlord made no attempt to enforce, while users remained in ignorance, as in Dr Drain's case (a fortiori where, as in that case, the covenant had been inserted 22 years before the 20-year user period began and there had been a change of landlord in the interim). It would be paradoxical if a landowner E who went to the trouble of erecting a notice or making a deposit should have to comply with strict conditions as to form and content, positioning, legibility and maintenance (in the case of notices) and renewal (in the case of deposits), whereas another landowner could achieve the same effect by doing something much less formal, or nothing.

Further or alternatively, the "throughout" construction of "during" (see F the *Concise Oxford Dictionary*) is implicit in section 31(3) and (6). The erection of a notice complying with subsection (3)(a) is not given retrospective effect, neither will it have any prospective effect unless it is "maintained". It is effective to satisfy the proviso only if and for so long as it is maintained in position. Similarly, the initial subsection (6) deposit is given no retrospective effect and, once made, its efficacy depends on continuity achieved by regular renewals. It would be anomalous if a one-off, temporary G episode of intention not to dedicate were to stand on an equal footing with the fulfillment of these strict requirements. The structure of section 31(1), in particular the positioning within the proviso of the words "during that period", is more consistent with "during" meaning "throughout" than its meaning "at some or other point in". The words "at any time", which appear in section 1(1) of the 1932 Act but not in section 31(1) of the 1980 Act, are also significant.

H The Court of Appeal overestimated the difficulties that adopting the claimants' construction of the proviso in either or both respects would pose for landowners. First, if there is not much public use of a way, so that the landowner could not reasonably become aware of it, there will not be enough use to count for the purposes of section 31: see the passages from

*Mills v Silver* [1991] Ch 271 and *Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd* 1992 SLT 1035 quoted in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, paras 6, 67, 77 and 78. Secondly, a landowner who neither troubles to inform himself of what is going on on his land nor takes precautionary measures to protect himself in case it is being used in an adverse manner has only himself to blame. Any purchaser of land takes the risk that it is subject to adverse rights, claims or usage of which the vendor (deliberately or otherwise) fails to warn him. Tracks that are or may be being used in the manner of a highway should be detectable on inspection, and appropriate inquiries can be made of the vendor as to what use has been made of them and what the vendor has done by way of evincing no intention to dedicate them. Thirdly, a landowner does not have to worry about erecting notices, fences or gates. All that he needs to do is to take advantage of the mechanism in section 31(6), which has been available since 1932. That does not involve seeking "officiously to exclude" members of the public, who can be left to carry on using the route without any confrontation but will acquire no right by doing so. The "notice" route in section 31(3) also allows the public to enjoy the route while retaining for the landowner or his successors the right to bring such use to an end at some time in the future should he or they wish to do so. Fourthly, the statutory means of negativing the intention to dedicate are proactive, not reactive. The owner of a large estate can cover the whole of it for ten years by using the subsection (6) procedure. He does not have to wait until the use of the way has started; he can act pre-emptively. Fifthly, the acts relied on as evidencing no intention to dedicate (other than the statutorily prescribed methods) would not have to be repeated every day in order to have the continuing effect that the "throughout" construction of "during" requires. Recurrent but discontinuous acts such as the annual charging of a toll (*R v Secretary of State for the Environment, Ex p Cowell* [1993] JPL 851), or turning users back (*Fairey v Southampton County Council* [1956] 2 QB 439) might manifest a continuous intention not to dedicate. The "throughout" construction requires only that, taking such acts together, the effect properly to be attributed to them covers the whole period.

As to the concern expressed by the Court of Appeal and the Divisional Court that interpreting "sufficient evidence" as requiring acts or declarations in the public domain would leave no scope for the proviso to operate because such acts or declarations would amount to a "bringing into question" or render use not "as of right" or constitute an "interruption" to use so as to prevent the presumption of dedication arising in the first place, user can be "as of right" and "without interruption" even if and while the landowner is manifesting no intention to dedicate. The concept "as of right" does not entail a subjective belief on the part of the public in their right to use the way: *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335. The Divisional Court's reasoning in dismissing *Sunningwell* as irrelevant and adopting Dyson J's reasoning in its entirety stemmed in part from the passage of Laws J's judgment in *Jaques v Secretary of State for the Environment* [1995] JPL 1031, 1037 that was based on the misapprehension corrected in the *Sunningwell* case and to that extent can no longer hold good in the light of the *Sunningwell* case. The relationship between the two parts of section 31(1) does not demand that in disproving an intention to dedicate the owner must not indicate to the users that there is no right to use the way.

A What troubled Laws J in *Jaques's* case as being "not a very satisfactory state of affairs" does not exist. As to "interruption", see *Merstham Manor Ltd v Coulsdon and Purley Urban District Council* [1937] 2 KB 77. It is possible for a landowner publicly to manifest an intention not to dedicate, eg, by erecting a notice, without physically interfering with the use of the way. Not all acts manifesting an intention not to dedicate that come or are likely to come to users' attention would suffice to bring it home to the public that B their right to use the way is being challenged so as to satisfy section 31(2). A landowner's turning back some users, putting an advertisement in the local newspaper or posting a notice on the Internet might all satisfy the proviso (so construed) without becoming so widely known as to stop time running. In any event, if there is, as Auld LJ acknowledged, an inevitable overlap between the notions of interruption, evidence of intention not to C dedicate and bringing into question, an interpretation of the section that leaves little scope for the operation of the proviso would be less unsatisfactory than one that leaves little scope for the operation of the section. Requiring an act or acts likely to have come to the attention of users would not deprive the proviso of its function.

The Court of Appeal's interpretation fails to take account of what kinds of evidence were regarded at common law as "sufficient to negative" (or D rebut) "any intention to dedicate" (*Leckhampton Quarries Co Ltd v Ballinger* (1904) 20 TLR 559, 560) and the way in which those expressions were used and understood at common law. When the 1932 Act was drafted, the choice and meaning of the expressions "sufficient evidence that there was no intention . . . to dedicate" (section 1(1)(2)) and "sufficient evidence to negative the intention of the owner of the land to dedicate" (section 1(3)) E would have been conditioned by the way in which those expressions were used and understood at common law. That was as meaning (and meaning only) overt acts directed at users, such as the erection of gates or notices or turning people back. The Court of Appeal was referred to a number of authorities and textbooks antedating, and contemporaneous with, the 1932 Act to support that proposition. Two of the cases are alluded to in F Arden LJ's judgment, at para 95: *Trustees of the British Museum v Finnis* 5 C & P 460 and *Barraclough v Johnson* (1838) 8 A & E 99. However, others are not referred to or dealt with in the Court of Appeal's judgments, notably *R v Broke* (1859) 1 F & F 514 and *Leckhampton Quarries Co Ltd v Ballinger* 20 TLR 559. The latter is significant because it contains an exposition by Swinfen Eady J, at p 560, of what acts were at common law "sufficient to negative any intention to dedicate". There is no suggestion that G a private act or statement would be so regarded. In *R v Broke*, Pollock CB rejected evidence that the landowner's predecessor in title had given instructions to his servants to turn back certain classes of persons, on the basis that such evidence, taken alone (ie in the absence of evidence of communication to users of the path), would not be relevant, by which he presumably meant that it would be insufficient in law to defeat the claim. No case is cited in the books, and the claimants have found none, in which H acts or statements by a landowner that were not directed at users were held sufficient to rebut an inference of dedication at common law. (Of course, at common law, in contrast to under the statute, a landowner's failure to rebut the inference by such evidence was not the end of the matter because the fact-finder then had a choice between inferring an intention to dedicate

(dedication) and inferring mere tolerance (no dedication): see *Mann v Brodie* 10 App Cas 378, 386.) The emphasis was entirely on acts directed at the public: see *Trustees of the British Museum v Finnis* 5 C & P 460, 465 and *R v Lloyd* (1808) 1 Camp 260, 262. Leaving aside *R v Broke*, the claimants have not even been able to find a case in which an attempt was made by the landowner to bolster, let alone establish, a lack of intention to dedicate by evidence of private acts and statements. It would appear to have been taken for granted that only evidence of acts directed at users would suffice to rebut (negative) the inference (or, as it is often called in the older case reports, presumption) of dedication. Nor have the claimants been able to find a case in which a landowner's evidence that he did not intend to dedicate a way has been held, or even been relied on, to rebut an inference of dedication at common law. That is not because such evidence was technically inadmissible before 1932. The evidence of parties has been admissible since the Evidence Act 1851 (14 & 15 Vict c 99) (amending the Evidence Act 1843 (6 & 7 Vict c 45), which rendered admissible the evidence of persons with an interest). It was accepted that intention could be proved by the direct testimony of the party whose intention was in question, as well as by proof of his declarations made out of court at the time such intention was material: see *Halsbury's Laws of England*, 2nd ed, vol XIII (1934) ("Evidence"), p 566. The reason must, therefore, have been that such evidence would not have been regarded as relevant for the purpose. The only judicial discussion that the claimants have found on the subject of the admissibility of weight to be given to a landowner's own declarations as to intention to dedicate in the common law context is in *Barraclough v Johnson* 8 A & E 99, 104–105, per Littledale J (obiter). There is some ambiguity in the passage, in that the judge might have been saying that no regard at all should be had to the landowner's declaration, or that regard could be had to it but it would not suffice to rebut the inference of dedication; he would have to have done something at the time to evince his lack of intention to dedicate to users. The Court of Appeal was referred to the editions of *Halsbury's Laws of England* on "Highways" and of *Pratt & Mackenzie's Law of Highways* that respectively preceded and post-dated the 1932 Act. There is nothing in the 1st edition of *Halsbury's Laws of England*, vol XVI (1911), paras 51–57 or the 18th edition (1932) of *Pratt & Mackenzie's Law of Highways*, pp 37–38, to suggest that at common law private acts or statements, or the landowner's retrospective assertions that he had no intention to dedicate, would suffice as evidence rebutting an inference of dedication. Nor is there anything in *Halsbury's Laws of England*, 2nd ed, vol XVI (1935), para 269, or the of *Pratt & Mackenzie's Law of Highways*, 19th ed (1935), pp 610–612, 630), or *Halsbury's Statutes of England*, vol 25 (1932), pp 191–193, to indicate a contemporaneous perception on the part of the editors or authors that (the statutorily prescribed methods apart), anything less than acts or statements directed at users would do for the purpose of satisfying the first proviso to section 1(1) or the proviso to section 1(2) of the 1932 Act. Both commentaries on the 1932 Act refer back to the passages on rebutting the inference of dedication at common law.

It has hitherto been universally assumed that the methods prescribed by Parliament for negativing the intention to dedicate now embodied in section 31(3), (5) and (6) of the 1980 Act were not intended by Parliament to be exhaustive. Rather, it has been taken for granted that those methods were

A intended to qualify as "sufficient evidence that there was no intention during that period to dedicate it" along with an unlimited range of unspecified other methods. The claimants have not until now sought to disturb that common assumption. They seek now to do so. The contrary has never been argued, and there is no reasoned authority for the proposition at any level. The House of Lords is invited to approach the question de novo. There is nothing in section 31, as there was nothing in section 1 of the 1932 Act, to preclude these subsections from being read as exhaustive and giving the complete answer to the question of what is sufficient evidence. Section 31(1) (compare section 1(1) and (2) of the 1932 Act) does not close with the words

> "unless there is sufficient evidence that there was no intention during that period to dedicate it, whether in the form of a notice such as is mentioned in subsection (3) below or a notice such as is mentioned in subsection (5) below or a statutory declaration such as is mentioned in subsection (6) below or otherwise";

contrast the closing words of subsection (2), or of section 1(6) of the 1932 Act. Subsections (3), (5), and (6) state clearly what "is [are] sufficient evidence to negative the intention to dedicate the way as a highway", as did subsections (3) and (4)(b) of section 1 of the 1932 Act, except that they used the expression "shall be" rather than "is" or "are". All the difficulties that have been experienced in trying to interpret "sufficient evidence" in the proviso may be resolved by reading those subsections instead of looking outside the section for some alternative answer. The simple solution of treating section 31 as a comprehensive, self-contained code would enable everyone (users and landowners alike) to know exactly where they stand, both during and after the relevant 20-year period. It would make the outcome of claims more predictable and simplify and facilitate them. It would be equally fair to users and landowners and eliminate the need to make findings or draw inferences as to the subjective state of mind of the landowner: a clear distinction from the common law. It could not be objected to on the ground that it would run counter to the operation of section 31 read as a whole or leave no scope for the operation of the proviso. The circumstances in which the proviso would operate, on this construction, are those in which the section itself says in terms that it does. More traditional methods of evincing an intention not to dedicate would still serve a purpose. The landowner who closed a gate across the way one day a year would establish that the use was permissive (precario), and so not as of right: see the analysis in *R v Secretary of State for the Environment, Ex p Cowell* [1993] JPL 851, especially per Balcombe LJ, at p 858 (and see per Rose LJ, at p 856), and *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, per Lord Bingham of Cornhill, para 5, and Lord Walker of Gestingthorpe, para 83; cf *Trustees of the British Museum v Finnis* 5 C & P 460, 465. The landowner who challenges or turns back users can claim that he thereby rendered use contentious and so vi and not as of right: see, eg, *Newnham v Willison* (1987) 56 P & CR 8, 19. It is appropriate that such conduct should not come under the umbrella of the proviso, because the proviso only comes into play when the presumption of dedication has been raised by proof of 20 years' use that was, inter alia, as of right.

As to "bringing into question", see *Fairey v Southampton County Council* [1956] 2 QB 439, 456–458; *R v Secretary of State for the Environment,*

*Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396, 401–403; David Braham QC, "Section 31(2): 'bringing into question' ", Rights of Way Law Review, February 2002, section 6.3, p 75, referring to *Gloucestershire County Council v Farrow* [1985] 1 WLR 741 and *Applegarth v Secretary of State for the Environment, Transport and the Regions* [2001] EGCS 134. If a challenge is sufficiently clear and unambiguous to stop time running, a fortiori it will be sufficient evidence of absence of intention to dedicate.

*Crail* following. As to the subsidiary issue in Dr Drain's appeal, on a proper reading of the Aldworth decision letter, the inspector's finding that the proviso was satisfied by the existence of clause 17 in the 1950 tenancy agreement between 1972 and 1986 involved an error of law and/or a conclusion that could not reasonably be reached.

The only fair reading of the inspector's finding in relation to clause 17 is as a bare finding on the legal consequences of succession and continued existence of the tenancy agreement. So read, her finding is unsustainable in law. It is clear from the context that she treated the evidential effect of the 1950 tenancy agreement, in particular clause 17, as a new, separate and self-contained topic. She was looking at whether the agreement in isolation satisfied the proviso. Clearly, too, she was turning to it as a last resort, having found nothing else that in her view was capable of constituting sufficient evidence of no intention to dedicate by itself or in combination with other factors. She did not make a positive finding that the company "took over" the agreement, including the covenant, with the same intention as Lord Iliffe had had in entering into the agreement. It does not follow, as she thought, merely from the intervener having inherited from Lord Iliffe the benefit of all rights and the burden of all obligations in the 1950 tenancy agreement as a package that it could point to clause 17 as an expression of its intentions with regard to the Aldworth footpath. No evidence was given that the intervener had applied its corporate mind in any way to the provisions of clause 17 at the time of "taking it over" in 1955 or at any other time, and the inspector made no finding that it had. The intervener was not an original party to the 1950 tenancy agreement and was not even formed until 1955. Accordingly, the original inclusion in the 1950 tenancy agreement of clause 17 could not have been evidence of any intention on the part of the intervener, only of Lord Iliffe as the then freeholder. The intervener's not determining the 1950 tenancy agreement during the period 1955 to 1986 cannot be taken as evidence of an intention not to dedicate the Aldworth footpath. It could not in any event have done so save on the restricted grounds permitted by sections 23–25 of the Agricultural Holdings Act 1948. Nor can its not varying the tenancy agreement so as to exempt the Aldworth footpath from clause 17 be taken as evidence for the purposes of the proviso. Such an omission is equivocal. On the inspector's findings, the intervener took no steps to enforce clause 17 during the period 1972–1986, notwithstanding the considerable volume of public use that the tenant did nothing to prevent.

As a matter of construction of section 31 of the 1980 Act, the intentions of a landowner cannot be attributed to his successor(s) in title save in the case of the limited exception expressly provided for by subsection (6), and in that instance for a maximum of only six (or, now, ten) years. What the section is

A concerned with is the intentions of the person(s) who owned the land during the 20-year period in question; they cannot pray in aid the intentions of others who owned it before that period began, and it would be an error of law for the fact-finding tribunal to attribute such intentions to them.

As to remedy, the inspector's decisions should be quashed. There is no purpose to be served by remitting either matter to the Secretary of State for reconsideration. The inspector considered all the evidence, oral and written, B which the parties wished to present, and made all necessary findings. The only decision that could properly be reached in each case on her findings is to confirm the modification order in question. The Secretary of State should be directed to confirm the orders (subject, in the case of the Aldworth order, to the modifications proposed by the inspector); alternatively, it should be declared that they should be confirmed.

C *Timothy Mould QC* and *David Blundell* for the Secretary of State. The conclusions of the Court of Appeal on both issues are correct and should be upheld. Far from rendering the section ineffectual, its approach is firmly rooted in the statutory language, gives effect to the policy of section 31 and enables a sensible and balanced decision to be made by the tribunal on the facts of the case.

D (1) The proviso to section 31, both on its terms and in the context of the section as a whole, is concerned with intention and its proof, not with communication of intention to users of the way. (2) To construe section 31(1) as requiring such communication in every case to give effect to the proviso would be to read words into it that would have been expressed if that had been the legislative intention and would be inconsistent with E section 31 read as a whole. (3) The jurisprudence on the meaning and operation of the proviso supports the approach of the Court of Appeal that, subject to *Wednesbury* principles (see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223), it is for the fact-finding tribunal to determine whether the act or acts relied on by the landowner are sufficient evidence of his lack of intention to dedicate the way as a highway. (4) That approach, free from any gloss on the plain words of the proviso and the F section, gives effect to the legislative policy, which is that the landowner should be able to rebut the statutory presumption of his dedication of the way as a highway by bringing before the fact-finding tribunal evidence that is, in that tribunal's judgment, sufficient to demonstrate that he lacked any intention to dedicate the way. (5) Such evidence must demonstrate that he lacked the intention to dedicate the way as a highway during the relevant G 20-year period of its use by the public but need not, as a matter of law, establish that lack of intention to have been continuous throughout that period.

As to section 31(1), Dyson J's analysis of the statutory language and its import in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396, 406 is correct. The language of the proviso is to be given its straightforward meaning within H the context of section 31(1). Neither section 31(1) nor section 31 read as a whole give any guidance as to what will be taken to be "sufficient", or as to what will amount to "evidence".

As to the proviso, (i) it relates to *intention to dedicate*. (ii) No express mention is made of the communication of that intention. (iii) The state of

mind of the users of the way is not in issue. (iv) What is in issue is the *sufficiency* of the evidence relied on by the landowner to demonstrate that he lacked the *intention to dedicate*. Had Parliament intended to circumscribe the fact-finding tribunal's consideration of and judgment on those matters in the way that the claimants contend, it plainly could have done so by express words, but it did not. On the contrary, the simplicity of the language strongly supports the conclusion that it intended the fact-finding tribunal to be the sole judge of the sufficiency of the evidence relied on by the landowner, subject to *Wednesbury* considerations and supervision by the court applying public law principles. That, rather than the judicial gloss on the statutory language for which the claimants contend, is the appropriate limit of judicial control over the operation of section 31(1). The decision-maker will have regard to all the available evidence and the surrounding circumstances.

The claimants' argument effectively equates communication with intention to dedicate. That cannot be correct. The intention to dedicate or lack of it is logically formed independently of its communication. Communication may, and in many cases will, enable the landowner to prove that he lacked the intention to dedicate, but it is a logically distinct, evidentiary consideration. The fact that it will serve to strengthen the landowner's case for the operation of the proviso does not lead to the proposition that it is a necessary legal prerequisite for its operation in every case. Moreover, the claimants' contention that the act or acts relied on by the landowner must at least be shown to have come or have been likely to have come to the attention of users of the way entails the fact-finding tribunal examining the question of intention and its demonstration only from the perspective of users of the way, rather than that of the landowner whose intention is under scrutiny.

In most cases, for the reasons given by Auld LJ [2006] QB 727, paras 63 and 64, the fact-finding tribunal will look for proof by the landowner of some overt and contemporaneous act or acts. That requirement is not, however, necessarily inherent in section 31. The clear implication of section 31(1) and section 31 as a whole is that Parliament acknowledged that there might be cases, albeit rare, where a landowner might not have demonstrated his lack of intention overtly but none the less is able to produce sufficient evidence that he never intended that a way should be dedicated to the public at large: see the reasoning of Sir Donald Nicholls V-C in *Ward v Durham County Council* 70 P & CR 585, 590 and of Dyson J in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396, 406. The more exiguous the landowner's evidence is, the less likely it is that the fact-finding tribunal will be in a position rationally to conclude that it suffices to rebut the statutory presumption. Thus a bare, retrospective assertion by a landowner that he never intended to dedicate will be wholly insufficient as evidence of that fact when considered against a background of clear, consistent public user of the way, of which he was fully aware, over the 20-year period. The landowner's "device" suggested by the claimants (see ante, p 226E–G) would thus be defeated. "No intention to dedicate" means the same as "intention not to dedicate".

A private expression of intention is unlikely to be sufficient unless the landowner can point to an overt act: for example, a lease making it clear that

A the landowner and the leaseholder would take action to turn away members of the public. Declarations of intention carry such weight as the fact-finding tribunal considers appropriate.

The claimants' proposed interpretation of the proviso does not accord with the meaning of section 31 read as a whole. It would remove any meaningful distinction between the operation of the proviso and section 31(2): see per Auld LJ [2006] QB 727, para 62. It would deprive the B proviso of any practical significance in the operation of section 31. Hilbery J's observations in *Merstham Manor Ltd v Coulsdon and Purley Urban District Council* [1937] 2 KB 77 were not intended to provide an exhaustive list of the means whereby a landowner may effectively interrupt public enjoyment of a way over his land: see per Denning LJ in *Fairey v Southampton County Council* [1956] 2 QB 439, 456–457. Section 31(2) C expressly identifies the erection of a notice under subsection (3) as one means whereby the right of the public to use the way may be brought into question. [Reference was also made to Paul Baker, "Beating the Bounds at Lincoln's Inn" (1970) 86 LQR 158.]

The claimants' fundamental contentions are inconsistent with subsections (3) to (6), which identify specific acts stated by the Act to be sufficient evidence in their own right of a landowner's lack of intention. D They do not purport to be an exhaustive list of the actions that may suffice for that purpose on the facts of any given case: see per Rose LJ in *R v Secretary of State for the Environment, Ex p Cowell* [1993] JPL 851, 855 and Walton J in *R v Secretary of State for the Environment, Ex p Blake* [1984] JPL 101. As the claimants acknowledge, it has long been established that a landowner may rebut any inference that he intends to dedicate a way E across his land as a highway by closing the way to the public for one day a year: see, e g, *Trustees of the British Museum v Finnis* 5 C & P 460, 465. Likewise, it is well established that the levying of a toll may suffice: per Rose LJ in *Ex p Cowell* [1993] JPL 851, 856. Neither of these established means of demonstrating the lack of an intention to dedicate is expressly acknowledged in section 31 of the 1980 Act, neither were they expressly acknowledged in its statutory predecessors, the 1932 and 1959 Acts, yet it F cannot have been the purpose or effect of the 1932 Act to have so changed the established position at common law that such acts are no longer capable of being sufficient evidence of such lack of intention.

The alternative methods in subsections (3) to (6) of section 31 do not assist the claimants' principal contentions. A notice erected by the landowner following the procedure in subsection (3) may have been "torn G down or defaced" very soon afterwards, and very few users of the way may have had any knowledge of its existence before that, yet a notice thereafter given by the landowner to the appropriate council under subsection (5) will suffice in itself to negative his intention to dedicate. Similarly, documents deposited under the procedure in subsection (6) are required to be kept available for public inspection under section 228 of the Local Government Act 1972. They are not, however, required to be drawn to the attention of H users of the way, nor does it follow from the fact that they are kept available for public inspection that they are likely to come to their attention.

Auld LJ's analysis of the jurisprudence in paras 19–28 of his judgment [2006] QB 727 is correct. Denning LJ's comments in *Fairey v Southampton County Council* [1956] 2 QB 439, 458 were obiter. He neither needed nor

purported to analyse in any detail the particular question raised by the claimants in the present cases, i e the need for communication (or the likelihood of communication) of the landowner's lack of intention. There is no reason to read his dictum as having been intended to provide a comprehensive judicial account of the various means whereby a landowner may, in the particular circumstances of any case, give sufficient evidence of such lack of intention. The question whether communication or its likelihood is necessary did not arise for Walton J's consideration in *R v Secretary of State for the Environment, Ex p Blake* [1984] JPL 101, and his observations, at p 102, must be read with that point in mind. Sir Donald Nicholls V-C's description in *Ward v Durham County Council* 70 P & CR 585, 590 (see also at p 591) of the correct approach of a decision-maker to the proviso is accurate and completely consistent with the approach of the Court of Appeal in the present case. It would establish the following propositions. (i) The best evidence of intention not to dedicate will be overt acts. (ii) In the absence of such evidence, the decision-maker will rarely be persuaded that there is sufficient evidence of an intention not to dedicate based on an unexpressed intention. (iii) There is, however, no legal bar to a finding of sufficient evidence in such circumstances. Sir Donald Nicholls V-C's fact-sensitive approach to the construction and application of the proviso is correct and fully reflected in the approach of the Court of Appeal in the present case. The observations of Laws J in *Jaques v Secretary of State for the Environment* [1995] JPL 1031, 1037 in relation to the interrelationship between the proviso and section 31(2) bear out the problems identified by the Court of Appeal in the practical operation of section 31 on the claimants' approach. Laws J clearly acknowledged that something less than communication of the landowner's lack of intention to dedicate to the public using the way would suffice as evidence for the purpose of the proviso. Taken as a whole, the approach of Pill J in *O'Keefe v Secretary of State for the Environment* [1996] JPL 42, 59 is consistent with that of Sir Donald Nicholls V-C in *Ward's* case and with that taken by the Court of Appeal in the present appeals. The question whether, to satisfy the proviso in any case, it is necessary at least to provide evidence that the landowner's lack of intention to dedicate did or was likely to have come to the notice of the public using the way did not arise for consideration in *Secretary of State for the Environment v Beresford Trustees* (unreported) 31 July 1996. The fact-finding tribunal must reach its own judgment as to the sufficiency of the evidence relied on to establish the landowner's lack of intention to dedicate. The reasoning of Dyson J in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396, 406–408 is correct and should be accepted. It is properly founded on the words of section 31(1) when considered in the context of section 31 as a whole and based on a correct analysis of the principles that can be derived from the previous cases and properly reflects the policy of the legislation. [Reference was also made to *R v Secretary of State for the Environment, Ex p Cowell* [1993] JPL 851, 855–857 and *R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374, 395.]

At common law, the creation of a highway has always depended on the landowner being shown to have had the necessary intention to dedicate the way as a highway: see *Poole v Huskinson* (1843) 11 M & W 827, 830, per Parke B, cited with approval in *Folkestone Corpn v Brockman* [1914]

AC 338, 352, and *Turner v Walsh* (1881) 6 App Cas 636, 642. His intention might be inferred from evidence of uninterrupted public user as of right of the way in question. This gave rise to unpredictable results: see *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335, 352–353, 358; see also *Jones v Bates* [1938] 2 All ER 237, 244–245 and *Fairey v Southampton County Council* [1956] 2 QB 439, 449, 459, 460. Rejection of the claimants' contention that, to give effect to the proviso, the landowner must in every case produce evidence of an act or acts likely to have come to the notice of users of the way does not result in the risk of a return to the evidential difficulties that the 1932 Act was enacted to avoid. The legislative purpose, of relieving those asserting the existence of a public right of way based on long user of the need to prove actual dedication of the way to the public by the landowner, is unaffected by the Court of Appeal's approach to the construction and operation of the proviso. Unless the landowner places evidence before the fact-finding tribunal sufficient to demonstrate his lack of intention to dedicate, the tribunal will have no proper basis in law to do other than give effect to the statutory presumption of dedication. The decisions in *R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374 and *R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396 do not represent a "significant departure" (in favour of landowners) (see ante, p 223G) "from what had previously been understood to be, and acted upon as being, the law": claimants' written case. At common law, it was always open to the landowner to adduce evidence to rebut any inference that might otherwise be drawn from the fact of the public's use of a way across his land that he intended to dedicate the way as a highway: see *Barraclough v Johnson* 8 A & E 99, 104–105. The Secretary of State has found no case in which the court has been called on to consider whether an act or acts relied on by the landowner but not communicated to users of the alleged way were nevertheless sufficient to rebut the inference of intention to dedicate. The claimants cite a number of old cases in which reference is made to well established means of rebutting any inference of dedication drawn from proof of actual use by the public. Those references are of no significant assistance in relation to the fundamental questions raised by the claimants. The correctness of *R v Broke* 1 F & F 514, from which the claimants seek to derive some support, was doubted in the first edition of *Halsbury's Laws of England*, vol XVI (1911), p 41, para 55. That commentary indicates the author's opinion that there was no reason in principle at common law why a landowner should not rely successfully on his private act to rebut the inference of dedication from public use of the way, albeit that users of the way lacked any actual notice of that act. At least, the author appears not to have "taken it for granted", as the claimants suggest, that only evidence of acts directed at users would suffice to rebut the inference of dedication. The observations of Littledale J in *Barraclough v Johnson* are the closest that the old cases come to providing any judicial consideration of the issues raised in these appeals. It is to be noted that, in the passage cited by the claimants, at pp 104–105 (ante, p 230D), Littledale J was apparently considering the weight to be attached to the landowner's declaration alone as evidence to rebut the inference to be drawn from very substantial evidence of public user. Moreover, he emphasised that the question was one for the jury to decide in the light of all the evidence, rather than simply giving effect to the

landowner's declaration. There is a need for caution in approaching the old cases at common law. They are an uncertain guide to the principles on which section 31 operates. [Reference was made to *Ward v Durham County Council* 70 P & CR 585 and Sir Lawrence Chubb, "The Rights of Way Act 1932. Its History and Meaning", Journal of the Commons, Open Spaces and Footpaths Preservation Society, vol II, no 8 (October 1932), pp 256–257.]

Whether there was sufficient evidence to rebut the statutory presumption of intention to dedicate (i e whether the proviso applied) did not arise for consideration in *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335. The Court of Appeal's approach is consistent with the *Sunningwell* case; indeed, it is arguable that the position is a fortiori in the light of that case. The actual state of mind or belief of the actual users of the claimed public right of way during the relevant period is immaterial in itself to the question whether the right has come into existence by virtue of long use by the public: the *Sunningwell* case, at p 356. That being the law, there appears to be no logic in the claimants' contention that, to bring the proviso into operation, the policy of the legislation requires the landowner necessarily to prove that the act or acts on which he relies as evidence of his lack of intention to dedicate came, or were likely to have come, to the notice of the public using the way.

The Court of Appeal [2006] QB 727 was correct in its approach to the meaning and effect of the phrase "during that period" in section 31(1). A single act during the relevant period of 20 years demonstrating that the landowner lacked intention to dedicate may suffice. The reasoning of Auld LJ, at paras 74–78, and Arden LJ, at paras 96–97 is adopted. Moreover, the proviso must be construed as a whole and the two main issues raised by the claimants cannot be considered or answered independently of one another. If the Secretary of State's submissions as to the correct approach to the consideration of whether there is sufficient evidence of the landowner's lack of intention to dedicate are accepted, it would follow that the words "during that period" should not be read as necessarily requiring that lack of intention to have been demonstrated throughout the full period of 20 years, though the extent to which the landowner's lack of intention was evident during the course of that period will be a relevant factor for the fact-finding body to consider in reaching its decision as to whether he has adduced sufficient evidence of such lack and so satisfied the proviso. The more exiguous that evidence, or the more limited its duration, the less likely it is that it will be capable of founding a finding of lack of intention to dedicate. There is support for the Secretary of State's approach in the second proviso to section 1(1) of the 1932 Act as originally enacted, now repealed (by section 58(1) of the National Parks and Access to the Countryside Act 1949). The use of the words "at any time" contrasts sharply with the absence of such words in the first proviso. They were clearly intended to indicate that, for the purposes of the second proviso, "during" meant "throughout" the 20-year period.

The claimants' alternative approach, construing section 31 of the 1980 Act as a self-contained code and reading the means of negativing intention to dedicate stated in subsections (3), (5) and (6) as exhaustive, is unsustainable. As the claimants themselves point out, at common law there were in Victorian times a number of well established, practical methods, such as turning back users, charging a toll or erecting a gate across the way, whereby

A a landowner could avoid any inference being drawn, from the fact of public use of a way over his land, that he intended to dedicate the way as a highway. By no means all those long-established methods are prescribed in section 31 of the 1980 Act as being sufficient evidence to negative the statutory presumption of dedication. There is no substantial difference between the 1980 Act and the 1932 Act on this point. In the result, if the claimants were correct, the effect of the 1932 Act, maintained by the 1980 Act, would have been very significantly to circumscribe the landowner's opportunity to rebut the presumption of dedication by comparison with the position previously established at common law. It would be surprising if such a major legislative change had gone without any judicial notice hitherto in any of the many cases that have considered the operation of section 31 of the 1980 Act and its statutory predecessors. The claimants' contention that such acts go to the question of whether the public's use of the way has been shown to be uninterrupted or as of right is no answer to the Secretary of State's submission. In practice, there will be many cases where the fact-finder reasonably concludes that the evidence shows that the public has enjoyed uninterrupted use of the way as of right for 20 years notwithstanding that there is also evidence that, on occasions, users were turned back, or a gate was in place, or certain persons used the way by permission. In such a case, the question then arises whether those acts were nevertheless sufficient evidence of the landowner's lack of intention to dedicate the way: see per Denning LJ in *Fairey v Southampton County Council* [1956] 2 QB 439 and Rose LJ in *R v Secretary of State for the Environment, Ex p Cowell* [1993] JPL 851. [Reference was also made to *Leckhampton Quarries Co Ltd v Ballinger* 20 TLR 559, 560.]

On the subsidiary issue in Dr Drain's case, the evidence on which the inspector based her conclusion that she should give effect to the proviso was, in all the circumstances, capable of constituting sufficient evidence of the landowner's lack of any intention to dedicate. It was primarily for her to consider the particular significance of the 1950 tenancy agreement and of the fact that it subsisted, following the conveyance of the freehold reversion to the intervener, until well into the 20-year period. Contrary to the claimants' contention, she did find that the tenancy agreement continued to be the expression of the intervener's wishes in relation to its tenant's management of the property until 1986. That was a finding that she was entitled to make having heard and considered the evidence. If the Secretary of State is right that there is no need for intention to be communicated, any objection on the basis that the users of the way were not aware of the terms of the tenancy agreement could not be upheld. It is difficult to see what objection can realistically be maintained on the ground that the intervener in Dr Drain's case obtained the benefit of clause 17 of the tenancy agreement by operation of law. The law (sections 141 and 142 of the Law of Property Act 1925) makes specific provision for the passing of the benefit and burden of the covenants in the event of the disposition of the freehold estate. There is no reason why a landowner, who for all other purposes is entitled to rely on the benefit of those covenants, should not be taken positively to rely on that benefit for the purpose of controlling or regulating the public's access to the land subject to those covenants.

In Dr Drain's case, the intervener in its skeleton argument in the High Court expressed particular concerns about the fairness of the approach to

relief argued for by the claimants. In the circumstances, if the claimants' appeals were to be allowed, the correct course would be to quash each decision and remit each case to the Secretary of State for redetermination in accordance with your Lordships' opinions.

*Edwin Simpson* for Yattendon Estates Ltd, intervener in the second appeal. The intervener adopts the written submissions of the Secretary of State on the issues concerning the operation of the proviso. On the subsidiary issue, the inspector's conclusion in the second decision letter that the proviso was satisfied by the existence of clause 17 of the tenancy agreement, either alone or interpreted in conjunction with the evidence of Mr Petter (the intervener's land agent) and the evidence of challenges and notices, was a matter of fact for her and in any event correct in law.

The claimant seeks to persuade the House of Lords (i) of a particular construction of the inspector's decision letter, viz that "the bare fact of succession" was all that was relied on in holding that the intervener had satisfied the proviso (ante, p 232C), and (ii) that such a conclusion is unsustainable in law.

As to (i), paras 48–51 of the decision letter, read fairly as a whole, show that in fact her approach was to consider the effect of clause 17 in the context of the evidence given by Mr Petter that "the estate [i e the intervener] never had any intention of dedicating this track as a public path" and in the context of the evidence reviewed by her of challenges and notices. Although the overt steps taken on behalf of the intervener were found by her not *alone* to have been sufficient evidence of a lack of intention to dedicate, she clearly concluded that, in conjunction with the existence of clause 17 and the evidence of Mr Petter, there was sufficient evidence to satisfy the proviso. In this case, the landowner's intention not to dedicate *was* likely to come to the attention of the public.

As to (ii), it was, alternatively, properly open to the inspector to conclude that the proviso was satisfied solely on the basis of the existence of clause 17. The claimant's argument here is, essentially, that there was no evidence before the inspector of a lack of intention to dedicate that could properly be attributed to the intervener. There is nothing in the point that the intervener did not exist at the time when the original 1950 tenancy agreement was entered into. The position of a successor in title would be no different if the successor were an individual who was unborn at the time of the original tenancy. Such non-existence at the earlier date has no effect on the passing of the benefit of covenants at the time of the transfer of the freehold title; neither should it on the extent to which the passing of the benefit of such a covenant can be relied on as an expression of continuing intention by the successor in title concerned. The claimant accepts that the intervener was entitled to the benefit of the covenant contained in clause 17 from 1955 to 1986, including the 14 years from 1972 to 1986 within the relevant 20-year period for the purposes of section 31. Even if, which is not admitted, no steps were taken during that period to enforce the covenant, or to bring to the attention of the public the continuing lack of intention to dedicate, or to confirm the continuing lack of any such intention without bringing such to the attention of the public, the lack of any such steps could not affect the enforceability of the covenant. It is equally the case that the continuing existence of an enforceable covenant must be taken as a continuing

A expression of the intentions (or lack of intentions) reflected in its terms. Accordingly, the intervener can rely on the continuing force of clause 17 as an expression of its lack of intention to dedicate precisely because it can rely on its continuing right to enforce the covenant without any further steps on its behalf and without any element of legal fiction. There is no suggestion that clause 17 was a sham in 1950, nor that it became a sham in 1955. Accordingly, an element of legal fiction would only exist if the covenant remained enforceable but could not be regarded as evidence of the intervener's intention. The inspector was therefore correct to regard this piece of evidence, contained in a "legal document" and so creative of legal rights and obligations, as a fortiori a sufficient expression of the intervener's intention.

On the wider issue, the intervener relies on the simple words of the proviso, which mean precisely what they say. Otherwise, one has either to read words in or to have regard to the pre-1932 position. It was not the case pre-1932 that the landowner's action had to be overt. It was sufficient that it was nec vi, etc, and that there had been no interruption, unless it could be said to have been the result of tolerance. As to the reason for the words "sufficient evidence that", see *R v Broke* 1 F & F 514. There is no authority for any overt requirement prior to 1932: *Barraclough v Johnson* 8 A & E 99. Although there are many examples given in *Pratt & Mackenzie's Law of Highways*, 21st ed (1967) (see at pp 34–35) of rebutting evidence, there is no case that says that a bare assertion is insufficient, although it may be unlikely that the landowner would be believed. There being no overt act is far from the usual position. It is a matter of the landowner's subjective, rather than objective, intention.

As to "brought into question" (section 31(2)), three views have been put forward as to what is needed: (i) an act done that brings home to the public the landowner's lack of intention to dedicate (the Secretary of State's contention); (ii) anything capable of satisfying the proviso should also be regarded as bringing the right of the public to use the way into question; (iii) a suggestion put forward by Lord Hoffmann in the course of argument that it might require a causal connection of some kind between the acts done and the subsequent litigation. The intervener opposes (ii), which restricts the operation of the proviso. As to (iii), a composite act, e g, writing a letter followed six months later by locking the gate, would be sufficient.

Should the claimant succeed on either the main or the subsidiary issues, relief going further than quashing the inspector's decision letter would be inappropriate. This is not a case where it can properly be said, on the basis of the other findings of the (second) inspector, that the only decision that could properly have been reached would have been to confirm the order. On the contrary, each fact-finding tribunal that has considered the matter has resolved those facts against the existence of the right of way claimed by Dr Drain. It cannot be maintained, on the facts of this case, that, had the inspector not reached the view that she did of clause 17, she would have had no alternative but to deny the intervener the benefit of having satisfied the proviso. Both inspectors who have heard evidence on this matter have held that the intervener did so, the first without reliance on the terms of clause 17. Although his decision was quashed for error of law, it was for an error that cast no doubt on his conclusions of fact.

Further, it would be wrong to do other than quash the second inspector's decision given the approach adopted by her to the record of the first inquiry contained in the first decision letter, in particular, her conclusion that she "would not be taking into account the previous order decision" (i e the decision of the first inspector) "in terms of the views expressed in it with regard to the evidence, as a record of the previous inquiry or for any reason". As she correctly records, the intervener was concerned (i) that she should not risk falling into the same trap as the first had done; (ii) that she should be aware of evidence presented at the first inquiry that, for whatever reason (most obviously the quite understandable non-availability of particular witnesses), was not available to the second inquiry and (iii) that she should be astute to observe for herself where testimony had changed from the first inquiry to the second. Accordingly, it ought to have been permissible at the second inquiry for the inspector to have had regard to the first decision letter as a record of the evidence as recorded by the first inspector, given that his record of that evidence was not affected by the ground of the quashing by consent of his decision. The fact that the intervener's submissions on this point were rejected necessarily removed from the process of the second inquiry the primary record of what had been given in evidence at the first inquiry and of the view taken of that evidence by the first inspector. The second inspector was free to reach her own evaluation of the evidence available to the Secretary of State as a whole, but she ought not artificially to have restricted that evaluation by "not . . . taking into account the previous order decision". This mistaken approach is a further reason why this is not an appropriate case for the House of Lords to conclude that there is no purpose to be served by remitting the matter to the Secretary of State for reconsideration.

Further, were the claimant to succeed on the main, rather than the subsidiary, issues (that is on the proper interpretation of the proviso), then it is even more apparent that the matter would need to be reconsidered at a further public inquiry, rather than finally resolved by the House of Lords. If the law were to develop in the way argued for by the claimant, the intervener's consistent view of the evidence in this case (that is, that there has never been a period of sufficient user "as of right" for any "bringing into question" to have been possible) will demand more careful consideration than it has yet received. On this hypothesis, the House of Lords will have concluded that landowners can only rely on actions directed towards, or coming or likely to come to the attention, of users, or some such, to satisfy the proviso. It will be very much more likely than under the existing law that such facts will also have operated to bring a 20-year period to an end. The distinction proposed by the claimant between "bringing home to users" (as bringing into question for the purposes of section 31(2)) and "coming or likely to come to the attention of users" (for the operation of the proviso) will be a very fine one. Inspectors in such circumstances will then (as the first inspector ought, it appears, to have done) be required to consider an earlier 20-year period ending with the events satisfying the "bringing home to users" test; but then, in cases where challenges and notices are alleged, the very same fine distinction would simply arise once, and possibly many times, more. The better analysis of such facts may be, as the intervener has consistently argued, that, in cases of regular challenge by one means or another, a sufficient period of "as of right" user simply never begins, so that

A there can be no question of any relevant "bringing into question" and so no question of the application of section 31(1).

Given all these circumstances, it would not be safe for the House of Lords to conclude that there is only one decision that can be reached on the facts of this case. The only appropriate remedy will be for the decision of the second inspector to be quashed and for the House of Lords to give guidance as to how the (on this hypothesis) two quashed decision letters should be treated by an inspector at any consequent inquiry. [Reference was made to Schedule 15 to the Wildlife and Countryside Act 1981 and *R v Secretary of State for the Environment, Ex p Blake* [1984] JPL 101.]

B

*Laurence QC* in reply. As to "contrary intention", see The Commons, Open Spaces and Footpaths Preservation Society, "The Rights of Way Act 1932: An Explanation of the Act as affecting the Proof of Dedication of Highways with special reference to the Powers and Duties of Local Authorities", pp 4–5. [Reference was also made to *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, para 77 and section 31A of the 1980 Act.]

C

*Crail*, following, referred to *Shearburn v Chertsey Rural District Council* (1914) 78 JP 289, 290; *Barraclough v Johnson* 8 A & E 99 and *Leckhampton Quarries Co Ltd v Ballinger* 20 TLR 559, 560 (regarding negativing "intention to dedicate").

D

On the subsidiary issue, the Secretary of State conceded in argument that a provision in a lease would not be sufficient to satisfy the proviso if for 20 or more years no action was taken to turn away members of the public. That was the case here, where no act was done by the landowner between 1972 and 1992.

E

The inspector's conclusion that the proviso was satified was based on clause 17 of the tenancy agreement in isolation, and not in conjunction with Mr Petter's statement or the evidence of notices and challenges. She had found there to be no notices or challenges evidencing lack of intention to dedicate during the 20-year period in question.

F

The inspector's treatment of the first inspector's decision was correct in law. As indicated by the inspector in para 14 of the Aldworth decision letter, where a party's witness gave evidence to her that was inconsistent with the record of the evidence that he or she had given to the first inspector embodied in the first decision letter, the relevant passage of the first decision letter could be, and was, put to that witness in cross-examination. Where the evidence presented to her was consistent with the evidence given at the first inquiry, it was neither necessary nor appropriate for such reference to be made, and the intervener was not disadvantaged by its not being made. As for the intervener's suggestion that the inspector ought to have taken account of the first inspector's views of the evidence, for her to have done so would have been wrong in principle and potentially prejudicial to both parties. It was for the inspector to form her own impressions of the witnesses whom she saw and heard, to make her own assessment of their credibility and to make her own findings of fact, uncoloured by the first inspector's impressions and views.

G

H

The minimum relief to which the claimants are entitled, if successful, is an order quashing the inspector's decision to refuse to confirm the modification orders. There is a precedent for the House of Lords to go further and

direct that they be confirmed. In *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335, 359G–360A, after holding that its sole reason for rejecting the application for registration of the glebe as a town or village green had been wrong in law, the House of Lords directed the registration authority to register the land. These appeals are directly comparable. But for the inspector's legal error in applying a wrong interpretation of the proviso, she would have confirmed the Godmanchester and Aldworth orders.

The Committee took time for consideration.

20 June. **LORD HOFFMANN**

**1** My Lords, these two appeals are test cases brought before the House for a ruling on the effect of the presumption in section 31(1) of the Highways Act 1980:

> "Where a way over any land . . . has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

**2** The main issue in both appeals is over the nature of the evidence which will be sufficient to demonstrate that there was no intention to dedicate. Although the point can be put in a variety of ways, it seems to me to turn in the end on the meaning of the word "intention". The respondent landowners say that intention is a state of mind, with all the subjectivity which that implies. In principle, the owner himself is the person best qualified to give evidence about his own state of mind. Such evidence could be confirmed by acts done during the relevant period, such as putting up notices or barriers or recording his intentions in letters or memoranda. In evaluating such acts, no distinction can be drawn between those which would have come to the attention of users of the way and those which would not. What matters is the owner's state of mind and not what users of the way would have thought about it.

**3** The contrary view is that the term intention is being used in an objective sense. It means what users of the way would reasonably have thought to be the owner's state of mind, which may or may not coincide with his actual state of mind. Similarly when one speaks of the intention of the parties to a contract, one means what a reasonable person, possessed of the background knowledge available to the parties, would have understood what they meant by using the language in which they expressed their agreement. Likewise, adverse possession by a squatter is said to require an animus possidendi, an intention to possess. But, as Slade J said in the leading case of *Powell v McFarlane* (1977) 38 P & CR 452, 472 (approved as a "remarkable judgment" by the House of Lords in *J A Pye (Oxford) Ltd v Graham* [2003] 1 AC 419, 432, per Lord Browne-Wilkinson):

> "In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world."

A 4 Before I say anything about the facts of this appeal, I must put section 31(1) into its wider setting. It is derived from section 1(1) of the Rights of Way Act 1932, which in turn built upon foundations laid by the common law. As has often been explained, English law differs from civilian systems such as the law of Scotland by having no doctrine of acquisition of rights, public or private, by long user: see *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335, 349. Instead, it treats
B user since time immemorial, that is to say, since 1189, as raising an irrebuttable presumption that the right had a lawful origin in grant to a predecessor in title or dedication to the public at large. As the reign of Richard I slipped further into the remote past, that presumption had to be supplemented by the judicial invention of others. In the case of claims to private easements such as rights of way, juries were told that user since time
C immemorial could be inferred from evidence of user for a long time, but that this could be rebutted by evidence that the easement could not have existed in 1189. As that was often quite easy to prove, the presumption had to be further supplemented by directions that the jury could in such a case infer the existence of a more recent grant which had been lost. This remained the law until it was reformed by the Prescription Act 1832 (2 & 3 Will 4, c 71), to which I shall return later.

D 5 In the case of a public right of way, a lawful origin had to be found in dedication by the landowner at some unknown date in the past. Such dedication was analogous to the lost modern grant of a private easement. Juries were told that they could find such a dedication on evidence of user openly and as of right by members of the public and were often encouraged to do so. The reason for juries and judges being willing to make and accept
E findings that there had been a dedication or a lost modern grant was of course the unfairness of disturbing rights which had been exercised without objection for a long time. In Scottish law, this policy was given effect by the more logical method of allowing such user to create the right. But in England the policy of the law was not openly acknowledged. Instead, juries were told that in order to uphold the public right, they had to find as a fact
F that there had been an act of dedication accompanied by the necessary animus dedicandi on the part of the landowner: see *Poole v Huskinson* (1843) 11 M & W 827.

6 As a matter of experience and common sense, however, dedication is not usually the most likely explanation for long user by the public, any more than a lost modern grant is the most likely explanation for long user of a private right of way. People do dedicate land as public highways,
G particularly in laying out building schemes. It is however hard to believe that many of the cartways, bridle paths and footpaths in rural areas owe their origin to a conscious act of dedication. Tolerance, good nature, ignorance or inertia on the part of landowners over many years are more likely explanations. In *Jones v Bates* [1938] 2 All ER 237, 244 Scott LJ said that actual dedication was "often a pure legal fiction [which] put on the
H affirmant of the public right an artificial onus which was often fatal to his success". In *Jaques v Secretary of State for the Environment* [1995] JPL 1031, 1037 Laws J called it an "Alice in Wonderland requirement".

7 Nevertheless, juries and other tribunals of fact did frequently find that such acts of dedication had taken place, no doubt for the reason I have suggested. So much so that in *Folkestone Corpn v Brockman* [1914] AC 338

it was argued that, in the absence of evidence of facts inconsistent with such a dedication, they were obliged to make such a finding. But this submission was rejected by the House of Lords and it became settled that user was no more than evidence from which dedication could be inferred. It was open to the jury to ascribe the user to toleration or some other cause. Since, as I have said, some other cause was in real life more likely, it became difficult to predict when or for what reason a jury would have sufficient sympathy with the users of the highway to find that there had been a dedication.

8 English judges were embarrassed by the fictions of lost modern grant, animus dedicandi and the like ("a bad and mischievous law, and one which is discreditable to us as a civilized and enlightened people", said Cockburn CJ in *Bryant v Foot* (1867) LR 2 QB 161, 179) and looked enviously north of the border: see per Lord Blackburn in *Mann v Brodie* (1885) 10 App Cas 378, 386. The law of private rights of way and certain other easements was reformed by the 1832 Act and since this provided a model for the 1932 Act, it is helpful to see how it worked. Starting from the common law, namely that user since 1189 would establish the easement, it provided in section 2 that a claim to such an easement which had been "actually enjoyed by any person claiming right thereto without interruption for the full period of 20 years" should not be defeated by evidence which showed that it had arisen at some earlier date. This meant that it could no longer be defeated by showing that it had arisen after 1189.

9 Section 4 provided that the "full period of 20 years" should be taken to be the period next before the proceedings in which the claim shall have been "brought into question". If the statute had said no more, it would have been possible for a landowner to defeat a claim under the Act by the simple expedient of interrupting the enjoyment of the easement. The time which had necessarily to elapse between the interruption and the commencement of proceedings by the dominant owner to vindicate his right would automatically have prevented the latter from proving enjoyment without interruption for the 20 years "next before" the proceedings. Section 4 therefore went on to provide that "no act or other matter shall be deemed to be an interruption" unless it had been submitted to or acquiesced in for one year after the party interrupted had had notice thereof. That meant that if the servient owner barred the way, the dominant owner had a year within which to commence proceedings and claim the benefit of the statute.

10 The 1932 Act followed the same pattern, but with two important variations. First, section 1(1) contained the proviso which allowed the presumption of dedication to be rebutted by "sufficient evidence that there was no intention during that period to dedicate such way". There was no such proviso in the 1832 Act. Other subsections in section 1 of the 1932 Act provided that specific acts would be treated as sufficient evidence to negative the intention to dedicate. By section 1(3) (now section 31(3)(5) of the 1980 Act), a notice inconsistent with dedication, placed and maintained "in such a manner as to be visible to those using the way" will be sufficient. If the notice is torn down, notice in writing to the county, metropolitan district or London borough council that the way is not dedicated to the public will be sufficient. By section 1(4) (now section 31(6) of the 1980 Act) a landowner may deposit with the county council, metropolitan district or London borough councils a map of his land and a statement indicating which ways he admits to have been dedicated as highways. He may then at any time

within the next 10 years make a statutory declaration that he has not dedicated any additional ways and that will be sufficient evidence to negative his intention to have dedicated any such ways. The process may be repeated by further statutory declarations at intervals of not more than ten years.

**11** The other difference was that the 20-year retrospective period did not, as in the 1832 Act, run from the commencement of the proceedings contesting the highway, with a year's grace period which did not count as an interruption. Instead, it ran from when the right to the way was "brought into question", without any grace period. That suggests that the draftsman, with the example of section 4 of the 1832 Act before him, thought that if he ran the period back from the date when the right was brought into question, no grace period would be needed.

**12** That, my Lords, is the common law and statutory background against which the dispute over the meaning of the term "sufficient evidence that there was no intention . . . to dedicate" in section 31(1) must be resolved. The help which may be obtained from the pre-1932 cases is limited. As the onus was on the claimant to prove dedication and there was no need for the landowner to prove facts inconsistent with dedication, the courts were not concerned to pin down very precisely what would be sufficient to show inconsistency. There are, however, some indications that the judges were looking at how the matter would have appeared to users of the way.

**13** In *Trustees of the British Museum v Finnis* (1833) 5 C & P 460, 465, Patteson J told a jury:

> "If a man opens his land, so that the public pass over it continually, the public, after a user of very few years, would be entitled to pass over it, and use it as a way; and if the party does not mean to dedicate it as a way, but only to give a licence, he should do some act to show that he gives a licence only. The common course is, to shut it up one day in every year, which I believe is the case at Lincoln's Inn."

**14** This suggests that what matters is the impression given to members of the public. Likewise in *Barraclough v Johnson* (1838) 8 A & E 99, 105, Littledale J said:

> "A man may say that he does not mean to dedicate a way to the public, and yet, if he had allowed them to pass every day for a length of time, his declaration alone would not be regarded, but it would be for a jury to say whether he had intended to dedicate it or not. The facts may warrant them in believing that the way was dedicated, though he has said that he did not so intend: and, if his intention be insisted upon, it may be answered that he should have shown it by putting up a gate, or by some other act."

**15** In *R v Broke* (1859) 1 F & F 514, 515, a trial on indictment for stopping up a highway, the landowner claimed to have instructed his servants to allow only seafaring men and pilots to use the path and to turn back anyone else. Pollock CB said:

> "Even supposing these instructions to have been given and acted on, yet, unless it can be proved that they were communicated to the persons

who used the path, and that they did so by virtue thereof, and not of right, their user was a user by the public, and the right of way has been gained, if the user has been continued long enough."

**16** It is true that there is no express statement that intention had to be negatived by overt and notorious acts. But then, as I have said, intention did not have to be negatived at all. And there is no case in which a jury was directed to have regard to an act which one might call private, in the sense of something which would not have come to the attention of users of the way.

**17** The first consideration of the matter after 1932 was the decision of the Court of Appeal in *Fairey v Southampton County Council* [1956] 2 QB 439. This was an application to quarter sessions (under section 31 of the National Parks and Access to the Countryside Act 1949) by the owner of Bossington House in Hampshire for a declaration that a footpath over his land was not a public highway. The evidence was that it had been used uninterruptedly from 1885 to 1931 by inhabitants of the nearby villages of Bossington, Houghton and Horsebridge. As from that date, a new owner of the estate had challenged users who were not near neighbours and turned them back. Quarter sessions found that the challenges had brought the public right to use the path into question and that the relevant 20-year period for the purposes of the Act was therefore 1911 to 1931. As there had been qualifying user during this period, the public right of way was established.

**18** The landowner appealed by case stated to the Divisional Court. One ground of appeal, which is not relevant to this case, was that if quarter sessions were right about the relevant 20-year period, the Act could not apply because it was not retrospective. The other ground was that the challenges did not bring the right to use the path into question. The landowner said that it was not brought into question until he objected in 1953 to the inclusion of the path in the definitive map. But he relied on the challenges as evidence to negative an intention to dedicate during the 20 years ending in 1953.

**19** The Divisional Court rejected both arguments and the landowner appealed to the Court of Appeal. The leading judgment was given by Denning LJ. He dealt first with what amounted to bringing the right into question. Although the passage, at pp 456–458, is a long one, I think that it should (with one or two excisions) be quoted in full:

". . . I think that in order for the right of the public to have been 'brought into question', the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it. The landowner can challenge their right, for instance, by putting a barrier across the path or putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. Some village Hampden may push down the barrier or tear down the notice: the local council may bring an action in the name of the Attorney General against the landowner in the courts claiming that there is a public right of way: or no one may do anything, in which case the acquiescence of the public tends to show that they have no right of way. But whatever the public do, whether they oppose the landowner's action or not, their right is 'brought into question' as soon

A as the landowner puts up a notice or in some other way makes it clear to the public that he is challenging their right to use the way. Applying this test, I ask myself: when did the landowner here make it clear to the public that he was challenging their right to use the way? Quarter sessions held that he did so in 1931, when he objected to the use of the path by persons who were not local residents. We do not know what evidence was before them on that point. If the landowner merely turned B back one stranger on an isolated occasion, that would not, I think, be sufficient to make it clear to 'the public' that they had no right to use it. He ought at least to make it clear to the villagers of Bossington, Houghton and Horsebridge. They were the members of the public most concerned to assert the right, because they were the persons who used the path. They knew—better than the landowner himself—how long C they had used it. They were the persons to tell. It was no good the landowner speaking to a stranger who would know nothing of the public right and would not be concerned to assert it . . . I think we ought to assume that quarter sessions had sufficient evidence before them to support their finding. We ought to assume that in 1931 when the landowner turned back strangers, he did it in so open and notorious a D fashion that it was made clear, not only to strangers, that they had no right to use the path, but also to local residents, that they only used it by tolerance of the owner."

20 That was sufficient to dispose of the case, since there was no dispute that there had been qualifying user in the 20 years before 1931. As a statement of what amounts to bringing the right into question, it has always E been treated as authoritative and was applied by the inspectors and the Court of Appeal in these cases. But Denning LJ then went on to consider the finding of quarter sessions that the landowner's conduct in 1931 and thereafter had demonstrated an intention not to dedicate the path as a highway:

"In this connection I would also mention the finding of quarter sessions F that in and from 1931 the landowner, by turning off strangers, showed an intention not to dedicate the path as a highway for the use of members of the public at large. This raises the same point. In my opinion a landowner cannot escape the effect of 20 years' prescription by saying that, locked in his own mind, he had no intention to dedicate . . . In order for there to be 'sufficient evidence that there was no intention' to dedicate G the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large—the public who used the path, in this case the villagers—that he had no intention to dedicate. He must, in Lord Blackburn's words, take steps to disabuse those persons of any belief that there was a public right: see *Mann v Brodie* 10 App Cas 378, 386. Such evidence may consist, as in the leading case of *Poole v Huskinson* 11 M & W 827, of notices or a barrier: or the common H method of closing the way one day a year. That was not done here; but we must assume that the landowner turned off strangers in so open and notorious a fashion that it was clear to everyone that he was asserting that the public had no right to use it. On that footing there was sufficient evidence to show that there was no intention to dedicate."



AUTH298

**21** These observations on the meaning of "evidence that there was no intention to dedicate" were obiter dicta. They were not necessary for the decision and the other two members of the court (Birkett and Parker LJJ) did not mention the point. But there are obiter dicta and obiter dicta. These were no throw-away lines. This was a learned and carefully prepared reserved judgment (including reference to authorities which had not been cited by counsel) by one of the greatest English judges on a matter close to his heart: a village dispute in his own county of Hampshire.

**22** For over 40 years, Denning LJ's statement of the law remained unchallenged. It was cited in text books and applied in judgments of lower courts (see, for example, per Walton J in *R v Secretary of State for the Environment, Ex p Blake* [1984] JPL 101, 102, Pill J in *O'Keefe v Secretary of State for the Environment* [1996] JPL 42, 58–59 and Laws J in *Jaques v Secretary of State for the Environment* [1995] JPL 1031, 1035–1037). This last case, although following the *Fairey* case, contains some puzzling dicta. Laws J said that the effect of the proviso was that "*even if* use of the required quality was proved, the status of right of way would not be established if the landowner demonstrated an intention not to dedicate".

**23** That is plainly true. But the judge then went on:

> "The logical relationship between the two parts of the subsection entailed that proof of an intention not to dedicate could be constituted by something less than proof of facts which had to have made it clear to the public that they had *no* right to use the way: otherwise, once the interested public had established their case under the first part of the subsection, there would be no room for the operation of the second part."

**24** This, I am afraid, I do not follow at all. The evidence which will satisfy the proviso is not something less than enjoyment as of right but something different. For example, there may be a notice which says "No right of way. Trespassers will be prosecuted". Nevertheless, for upwards of 20 years members of the public may have ignored the notice and used the way, openly and apparently in the assertion of a right to do so. Their user will satisfy section 31(1) but the landowner, even on the most objective test, will have satisfied the proviso. (It may be that putting up the notice also brought the right to use the way into question, in which case, as in the *Fairey* case, the public would succeed if they could prove another 20 years' user before the notice went up. But that is another matter.) The potential contradiction imagined by Laws J may be due to the view held, at the time of his judgment, that enjoyment as of right required a subjective belief by the users that they had the relevant right—a view which was rejected in *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335. Even so, there need not be any contradiction. The users and the landowner may simply differ in their opinions as to whether the right exists or not.

**25** In *R v Secretary of State for the Environment, Ex p Cowell* [1993] JPL 851, 857 Staughton LJ, after noting that Denning LJ's requirements of overt and notorious acts were dicta, went on to say that although "that was not said in the section itself", it "seemed a sensible rule". If that might seem less than wholehearted assent, Staughton LJ's view had become firmer three years later when he presided in the Court of Appeal in *Secretary of State for the Environment v Beresford Trustees* (unreported) 31 July 1996; Court of

A Appeal (Civil Division) Transcript No 1031 of 1996 and concurred in the judgment of Hobhouse LJ. With characteristic precision, Hobhouse LJ said of the phrase "sufficient evidence that there was no intention during that period to dedicate it": "This is not a subjective test. The absence of intention must be objectively established by overt acts of the landowner."

**26** He went on to cite the passage in the *Fairey* case as authority. This time, the application of the objective test was undoubtedly ratio decidendi.
B The issue was whether the proviso had been satisfied and the inspector who conducted the inquiry had found that there was not "sufficient evidence of overt acts by the owners to show the public at large that there was no intention to dedicate". This finding had been set aside by the judge but was restored by the Court of Appeal. The case was not reported, presumably because the law reporters thought that it laid down no new principle.

C **27** The first sign of dissent was in *R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374, 395, where Sullivan J said that the dicta of Denning LJ went too far. In his opinion, all that was required was that evidence of the owner's intention be "overt and contemporaneous". But he was not required to "publicise his intention to users of the way". A purely private act would do. Writing a letter to oneself and putting it in a locked drawer was described as a "far-fetched hypothetical example" but
D there is no suggestion that it would not in principle be sufficient. The judge was not referred to the *Beresford* case, no doubt because it had not been reported.

**28** In *R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396, Dyson J took the new doctrine to its logical conclusion. After examining the authorities (again,
E without citation of the unreported *Beresford* case) he said, at p 406:

> "On the face of it, the language of the proviso is straightforward. All that is required is that there be sufficient evidence of lack of intention to dedicate. Coming to the matter untutored by previous authority, one may be forgiven for thinking that what Parliament intended was that the tribunal of fact simply decide as a matter of fact whether there is or is not
F sufficient evidence of intention to dedicate . . . I accept that as a matter of fact the tribunal of fact will rarely, if ever, find that there is sufficient evidence of lack of intention to dedicate in the absence of overt and contemporaneous acts on the part of the owner. I do not, however, think that such a requirement can be spelled out of section 31(1) as a matter of construction."

G **29** I do not understand why, if Dyson J is right in saying that "intention" in section 31(1) refers to the landowner's actual state of mind, it would be rare for a tribunal of fact to find evidence of lack of intention unless there was proof of overt and contemporaneous acts. Who better to give evidence of the owner's state of mind than the owner himself? It is true that if he was asserting some improbable state of mind, one might look for corroboration.
H But there is nothing improbable in not having an intention to dedicate. It is the conclusion that the owner did intend to dedicate which is improbable: a "pure legal fiction", an "Alice in Wonderland requirement".

**30** In these appeals, the Divisional Court and Court of Appeal followed the construction given to section 31(1) by Dyson J in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County*

*Council* [2000] JPL 396 and disapproved of Denning LJ's statement of the law in the *Fairey* case. This time, the unreported *Beresford* case was cited, but Auld LJ [2006] QB 727, 740, para 26, said that it was "not a reasoned decision as to the meaning of the proviso so as to bind this court". Like Dyson J, Auld LJ, at p 753, para 64 thought that in practice overt and contemporaneous acts evidencing lack of intention to dedicate would be required:

> "In most cases, no doubt, the fact-finder will look for overt, in the sense of objectively identifiable, contemporaneous acts or declarations, if only to guard against any risk of abuse by landowners who might seek to rely on retrospective acts or declarations after the expiration of the relevant 20-year period."

**31** Again, I cannot see why it should be an abuse for a landowner to say, after the expiry of the 20-year period, that although he did nothing to stop the public from using the way, this was due to tolerance, ignorance or inertia and without any intention to dedicate it as a highway. Such evidence would be an inherently plausible account of his state of mind. The only objection is that allowing the presumption to be defeated by such evidence would make nonsense of the Act.

**32** My Lords, in my opinion the law as stated by Denning LJ in the *Fairey* case and by Hobhouse LJ in the *Beresford* case was correct and the Court of Appeal was wrong. I think that upon the true construction of section 31(1), "intention" means what the relevant audience, namely the users of the way, would reasonably have understood the landowner's intention to be. The test is, as Hobhouse LJ said, objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in *Mann v Brodie* 10 App Cas 378, 386, to "disabuse [him]" of the notion that the way was a public highway. The Court of Appeal said that this would involve reading words into the Act; placing a gloss on the statute. But, outside the criminal law and parts of the law of torts, it is common to use the word intention in an objective sense, as in the intention of Parliament, the intention of the parties to a contract and, even in Latin, the animus possidendi which a squatter must have to acquire a title by limitation.

**33** It should first be noted that section 31(1) does not require the tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be any difficulty in satisfying such a requirement without any evidence at all. It requires "sufficient evidence" that there was no such intention. In other words, the evidence must be inconsistent with an intention to dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible outside the landowner's consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J in *R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374) it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience.

**34** Such a construction is in my view supported by reading section 31 as a whole. The primary example of an act which would negative an intention to dedicate is the erection and maintenance of a notice inconsistent with

A dedication "in such manner as to be visible to persons using the way": section 31(3). If the notice is torn down or defaced, notice to "the appropriate council" will have the same effect: section 31(5). If any overt act would do, why should the notice have to be given to "the appropriate council"? A notice to an inappropriate council, or to the landowner's solicitor or friend, would be just as good. In the Court of Appeal, Auld LJ said that a notice to the appropriate council would be unlikely to B come to the attention of the public using the way and this was an indication that, in general, the landowner's intention did not have to be communicated to users of the way. I disagree. A notice to the council under section 31(5) is plainly regarded as second best and is only allowed when the original notice has been torn down or defaced, just as substituted service is allowed only when there is good reason to dispense with personal service. It is true that C users of the way are not very likely to call at the county council offices to ask whether any notices under section 31(5) have been lodged, but a well-advised defender of rights of way, such as the Ramblers' Association, will know where to look and be able to draw such notices to the attention of users. The fact that in certain defined circumstances one can resort to a method less likely to come to the attention of users of the way is no basis for D concluding that in general it does not matter whether the landowner's intention can come to their attention or not.

**35** The same point may be made about the elaborate provision for maps, statements and statutory declarations in section 31(6). What would be the point of all this if Parliament was using the word "intention" in a subjective sense which could be proved by any relevant evidence? And why did Parliament, by section 57 of and Schedule 6, Part I, paragraph 4 to the E Countryside and Rights of Way Act 2000, insert a new section 31A (not yet in force in England) into the 1980 Act to establish a register of the maps and statements deposited under section 31(6) and require that it should be available for inspection free of charge? Surely to make such alternative methods of rebutting the presumption available to the public, so as to approximate as far as possible to the primary method of rebuttal.

F **36** Then there is the problem of the interruption of continuous user before the commencement of proceedings which, as we saw, the 1832 Act for private rights of way solved by providing a year's grace in which to bring the proceedings. The 1932 Act dispensed with a grace period by calculating the 20 years back from the date on which the right was called into question. The scheme contemplated by Parliament was that once users of the way were made aware that their right to use the way was challenged, they should not G be able to gain an advantage from subsequent use of the way and the landowner should not be able to gain an advantage by subsequent prevention of use. What happened after the way was called into question was irrelevant to the operation of the Act. On the Court of Appeal's construction, however, the well-advised landowner, facing the possibility of a claim to a right of way based on many years' enjoyment, will make a private declaration that he has no intention to dedicate and will lodge it in a H safe place. Only afterwards will he close the way or otherwise call the right into question. The effect will be to make it impossible for the claimants to prove the full 20 years' user ending when the way was closed, because the owner will be able to satisfy the proviso in respect of the final period after he made his declaration.

**37** My Lords, I think it is most unlikely that Parliament intended that the 1932 Act could be capable of being defeated by so simple a device, leaving the claimants to the arbitrary and illogical rules of common law, preserved by section 31(9). In the *Fairey* case [1956] 2 QB 439, 458 Denning LJ, turning to the proviso after his discussion of bringing the right into question, said that it raised the same point. In general, that seems to me to be right. I do not say that all acts which count as negativing an intention to dedicate will also inevitably bring the right into question. For example, I would leave open the question of whether notices or declarations under section 31(5) or (6) will always have this effect. I should think that they probably would, because their purpose is to give notice to the public that no right of way is acknowledged. But we need not decide the point. I do not even say that acts which would indicate to reasonable users of the way that the owner did not intend to dedicate will inevitably bring the right into question, because one cannot foresee all cases. But the Act clearly contemplates that there will ordinarily be symmetry between the two concepts. Thus section 31(3) provides that an appropriate notice will be sufficient evidence to negative the intention to dedicate and section 31(2) provides that the right may be brought into question "by a notice such as is mentioned in subsection (3) below or otherwise". The notice will therefore both negative intention to dedicate and bring the right into question, while the words "or otherwise" contemplate other ways of bringing the right into question (like barring the way, permanently or once a year) which would also in my view be sufficient to negative an intention to dedicate.

**38** I am not particularly troubled by the thought that this would leave little scope for the operation of the proviso. It is true that acts negativing an intention to dedicate would also, by calling the right into question, throw the inquiry back into an earlier period. If there was no rebutting evidence during that period, the right would be established (as in the *Fairey* case) and the proviso would not apply. But the 1932 Act began as a private member's bill in the House of Commons which underwent considerable amendment in the House of Lords, including the insertion of the provision for calculating time backwards. I would not expect such an Act to be particularly elegant in the way its parts meshed together, but the general purpose seems to me clear enough and was given effect by the construction adopted by Denning LJ in the *Fairey* case.

**39** My Lords, that leaves two alternative submissions put forward by Mr Laurence for the appellant claimants, with which I can deal very shortly. The first was that "during that period" in the proviso meant during the whole of that period. The intention not to dedicate had to be continuously manifested. There is authority against this construction (see, for example, per Walton J in *R v Secretary of State for the Environment, Ex p Blake* [1984] JPL 101, 104, saying that proof of lack of intention to dedicate for 17 of the 20 years would be "fatal to the applicant's case") and I do not think that it can possibly be right. The proviso negatives the effect of the enjoyment of the right for the period during which there was no intention to dedicate. If that leaves less than 20 years of unrebutted enjoyment, the claim fails.

**40** The other submission was that notices under section 31(3)(5)(6) are an exhaustive statement of the way in which an intention to dedicate may be rebutted. But section 31(2) speaks of the right being called into

A question by a notice "or otherwise" and it is hard to imagine an act which called the right into question and did not also evidence an intention not to dedicate.

**41** That brings me to the facts of the two appeals. Both arise out of applications to the surveying authority under section 53 of the Wildlife and Countryside Act 1981 to modify the definitive map and statement by adding a right of way not shown on the map. One application was by Godmanchester Town Council to add a public footpath around three sides of the perimeter of Monk's Pit, Godmanchester. This was a former gravel pit, rectangular in form, which had become a small lake. The map already showed a footpath along one of its sides and the application was to add a path which completed a circuit round the lake. The other was to add a footpath across land belonging to the Yattendon estate at Aldworth in Berkshire. In both cases an inspector appointed under Schedule 15 to the 1981 Act found that there had been qualifying user for upwards of 20 years before the right had been called into question. The chief issue in each case was whether the proviso had been satisfied.

**42** In the Godmanchester case, the Church Commissioners, as landowners, relied upon the erection of a sign and works done on the footpath as evidence of lack of intention to dedicate. The inspector rejected these as ambiguous or insufficient. But the owners also produced a letter to the local planning authority, written during the 20-year period, in which they complained of pedestrian trespass "around those parts of the pit which are not designated as a public footpath". Such a letter would not have come to the attention of users of the path or satisfied any of the alternative methods of negativing intention to dedicate in section 31. The inspector, following Dyson J in *R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374 and Sullivan J in *R v Secretary of State for the Environment, Transport and the Regions v Dorset County Council* [2000] JPL 396, nevertheless held that the letter was sufficient and her decision was upheld by the Court of Appeal. For the reasons I have given, I think that this was wrong and the decision must be quashed.

**43** In the Yattendon case there were two inquiries. The first inspector found that the right of way was brought into question by the erection of signs in 1992. The estate owner relied upon three kinds of evidence as negativing an intention to dedicate before that date. They were, first, an earlier sign nailed to a beech tree, secondly, challenges by estate employees to people using the way and thirdly, a clause in an agreement granting an agricultural tenancy of the relevant land, by which the tenant covenanted to warn and keep off unauthorised persons from trespassing, to give notice to the owner of any continued acts or trespass and not to allow any footpaths to be created. The inspector accepted the first two categories as sufficient evidence of lack of intention to dedicate and said nothing about the effect of the tenancy agreement. He therefore refused to confirm the county council's order adding the footpath to the map.

**44** The claimant then applied for judicial review to quash the inspector's decision on the ground that he did not address his mind to the question of whether the notices and challenges, which he had treated as evidence of lack of intention to dedicate, had also brought the right into question, requiring an investigation of an earlier 20-year period. The

Secretary of State conceded that the decision could not stand and by consent it was quashed and a new inquiry ordered.

**45** At the second inquiry, another inspector also found that the right of way was brought into question by the erection of signs in 1992. The earlier notice or notices had been insufficient for this purpose. The same was true of the challenges.

**46** When she came to consider whether there was lack of intention to dedicate, she rejected the signs as insufficient and said nothing about the challenges. This may be because she took the view that if they were insufficient to bring the right into question, they would also be insufficient to be sufficient evidence of lack of an intention to dedicate. That would, in my opinion, be a consistent view to take. But, again following the *Billson* and *Dorset* cases, she said that the clause in the tenancy agreement was sufficient.

**47** I rather doubt whether, even on the principle applied by the Court of Appeal, the clause could be regarded as sufficient. The fact that landlord and tenant have signed a common form agreement containing such a clause says very little about their actual states of mind. But I think that it was wrong in principle to take the tenancy agreement into account, because it would not have been available to users of the right of way. The Yattendon decision must therefore also be quashed.

**48** The claimants ask that both cases be remitted to the Secretary of State with a direction to confirm the orders adding the footpaths. In each case, the only ground upon which the inspector held the presumption under section 31(1) to be rebutted was inadmissible. But I do not think that this would be fair. In the Yattendon case the first inspector held the presumption rebutted on other, admissible grounds and both landowners may have conducted their cases on the assumption that little other rebutting evidence was needed because, on the law stated by Dyson J and Sullivan J, their private declarations were sufficient. The Secretary of State, or an inspector appointed by him, is the statutory decision-making authority and I do not think that the House should substitute its own decision.

**49** Nevertheless, the landowners may consider, in the light of the opinions of your Lordships and the evidence which they have adduced at the earlier inquiries, that it would serve no purpose to demand a further inquiry and I draw attention to the power of the inspector under section 250(5) of the Local Government Act 1972 (as applied by section 53 of the 1981 Act and paragraph 10A of Schedule 15 inserted by section 51 of and Schedule 5, Part I, paragraph 11(1)(8) to the 2000 Act) to award costs.

**50** In the result, I would quash both decisions and remit the cases to the Secretary of State to decide in accordance with the opinions of the House. Since writing this opinion, I have had the opportunity of reading in draft the opinion to be delivered by my noble and learned friend, Lord Hope of Craighead, and I entirely agree with his observations on the public dialogue by which users and landowners may respectively assert and deny the existence of a right of way.

## LORD HOPE OF CRAIGHEAD

**51** My Lords, commenting on the history and meaning of the Rights of Way Act 1932, Sir Lawrence Chubb, who was an environmental campaigner all his life and was knighted for his services to the English countryside, observed that in legal theory all highways, including public footpaths and

A bridleways, must have originated by one of two methods. They must either have been created under some statutory authority or have been dedicated by some owner. He conceded however that relatively few footpaths or bridleways have ever been deliberately or expressly granted by any definite act or deed on the part of a landowner: "The Rights of Way Act 1932. Its History and Meaning", Journal of the Commons, Open Spaces and
B Footpaths Preservation Society, vol II, no 8 (October 1932), p 244, 247. Such altruistic acts are not unknown. But, almost without exception, English landowners are jealous of their right to exclude the public from their private property. Given the numbers a public way may attract, and the tendency of some members of the public to drop litter wherever they go, who can blame them? For completeness, it should be added that a public way may be acquired by prescription. But in *Mann v Brodie* 10 App Cas 378,
C 386, Lord Blackburn said that in England it is in practice never necessary to rely on prescription since time immemorial. Deemed dedication is all that is needed to achieve this.

**52** Deemed dedication may be relied upon at common law where there has been evidence of a user by the public for so long and in such a manner that the owner of the fee, whoever he is, must have been aware that the public were acting under the belief that the way has been dedicated, and the
D owner has taken no steps to disabuse them of that belief. The 1932 Act, which the Highways Act 1980 replaced, was enacted to clarify the law. No definite time was required at common law for a dedication to be inferred. In *Mann v Brodie*, at p 386, Lord Blackburn observed that a very short period of public user would often satisfy a jury. For the statutory presumption to apply, however, a full period of 20 years is required: section 31(1). Unlike
E the period which is needed for prescription, which can be measured between any dates however long ago for which evidence is available, this period must be calculated retrospectively from the date when the right of the public is brought into question: section 31(2).

**53** The common law has not laid down fixed rules as to what the owner may do to disabuse the public of the belief that the way has been dedicated
F for use by the public. The statute clarifies the law in this respect too. The erection and maintenance of a notice which is inconsistent with the dedication of the way as a highway which is visible to persons using it will, in the absence of proof of a contrary intention, be sufficient evidence: section 31(3). If it is torn down or defaced, a notice to the appropriate council that the way is not dedicated as a highway will have the same effect: section 31(5). So too will the deposit with the council by the owner of a map
G and a statement indicating which ways, if any, he admits to have been dedicated as highways, so long as this is backed up every 10 years by a declaration that no additional way has been dedicated in the meantime: section 31(6). The appropriate council is, in effect, the guardian of the public interest in these matters. In country areas, it is the council of the county in which the way or the land is situated: section 31(7).

**54** Thus a balance is struck between the interests of the public and
H those of the landowner. The landowner knows that he can resist claims that a way across his land is a public way so long as he takes the steps that are mentioned in these subsections. But erecting a notice or lodging the relevant documents with the council may come too late if there is sufficient evidence of inaction on the landowner's part for a period of 20 years,

calculated retrospectively from the date when he takes this step, to bring about the public right by presumed dedication. This is because the date as from which the calculation is to be made is the date when the right of the public is brought into question. If no one seeks to assert that the way is a public way, cadit quaestio. But if there is a challenge, the right of the public to use the way will be taken to have been brought into question as soon as the landowner seeks in the ways the statute mentions to negative the intention to dedicate. The same will be true of other acts, or of some other course of conduct, by which the landowner seeks to exclude the public. The steps which the statute mentions are not to be taken as exhaustive of those that may be taken for this purpose: see the words "or otherwise" at the end of section 31(2). Whatever he does, time will have begun to run against the landowner from the beginning of the period of 20 years calculated backwards from the first such act or from the start of that course of conduct.

**55** On the other hand, for so long as the landowner takes his first step to exclude the public within the 20-year period and keeps doing this in a way that continues to negative his intention to do so, he will be protected from presumed dedication under the statute. There will, in terms of the proviso to section 31(1), be "sufficient evidence that there was no intention during that period to dedicate it". It will be sufficient for this purpose that the situation which the proviso contemplates has arisen at any time within the 20-year period. Time ceases to run against the landowner as from that point. Irrespective of when this occurs, the period that the statutory presumption requires will have been interrupted. If it starts running again, a full 20 years will be needed thereafter before the requirement will be satisfied. So all the landowner need do is ensure that no 20-year period goes by without his taking overt acts to challenge the use of the way by the public.

**56** The central question in these appeals is how that intention is to be demonstrated. Mr Simpson said that the words of the statute should be taken literally. An absence of intention was enough. So it was not necessary for the landowner to reveal his intention to anybody. In other words, contrary to what Denning LJ said in *Fairey v Southampton County Council* [1956] 2 QB 439, 458, he could keep his intention locked up in his own mind. I do not think that this extreme view finds any support in the authorities. But in *R v Secretary of State for the Environment, Ex p Billson* [1999] QB 374, 395, Sullivan J said that the proviso did not require the landowner to publicise his intention *to users* of the way (my emphasis). In *R v Secretary of State for the Environment, Transport and the Regions, Ex p Dorset County Council* [2000] JPL 396, 407, Dyson J went further. He said that he would not place any gloss on the proviso at all and that, in disproving an intention to dedicate, the owner need not bring home to the users that there was no right to use the way. Their approach was adopted in this case by both the Divisional Court and the Court of Appeal. In the Court of Appeal [2006] QB 727, 752, para 63, Auld LJ said that the proviso is concerned with intention and its proof, not with communication of that intention to members of the public. He added this explanation:

> "To construe it as requiring the latter or even proof of overt and contemporaneous acts falling short of such communication would be to

read words into it which would have been clearly included if that had been intended, and which would run counter to the operation of section 31 read as a whole."

In paragraph 64 he said that there was no statutory threshold as to sufficiency of evidence for the purpose of the proviso.

**57** In my opinion this is to take too narrow a view of the purpose and effect of the proviso. Like the whole of the subsection of which it forms part, it was drafted against the background of the common law. The express exclusion of a way "of such a character that use of it by the public could not give rise at common law to any presumption of dedication" demonstrates this point. So too does the use of the phrase "actually enjoyed by the public as of right and without interruption", which can only be understood by referring to what is required for this purpose by the common law. As for the proviso, the essential point is that the presumption of dedication at common law involves a dialogue between the landowner and the public. It is conducted by acts on the part of the public which indicate an assertion of its right to use the way and, if he wishes to deny the public that right, by acts on the part of the landowner to indicate the contrary. As Lord Blackburn said in *Mann v Brodie* 10 App Cas 378, 386, he must take steps to disabuse the public of the belief that the way has been dedicated to public use. Whether the steps that he has taken to communicate this fact to the public are sufficient for that purpose is, of course, a question of fact for the inspector. But the landowner must communicate his intention to the public in some way if he is to satisfy the requirements of the proviso. That was the position prior to the 1932 Act, and I can find nothing in that Act or in the 1980 Act to indicate that it was Parliament's intention that such a fundamental rule should be departed from.

**58** Scott LJ in *Jones v Bates* [1938] 2 All ER 237, 247, saw this point, as did Denning LJ in *Fairey v Southampton County Council* [1956] 2 QB 439, 457. Scott LJ said that the main object of the 1932 Act was to get rid of the onerous fiction of proving an actual dedication. There is no indication in his opinion that he thought that it was its intention to alter the nature of the evidence that would be relevant to show whether there was an intention to dedicate or not to dedicate, as the case may be. Denning LJ said that the landowner must make his position clear to the members of the public most concerned to assert the right: "They were the persons to tell. It was no good the landowner speaking to a stranger who would know nothing of the public right and would not be concerned to assert it." There are indications elsewhere in section 31 that support this view. The notice referred to in section 31(3) must be "visible to persons using the way": paragraph (a). A notice which is put up somewhere else, or which remains in the landowner's workshop, will not do. This is because it will not be effective to communicate the landowner's intention to those who wish to assert the right to use the way unless they can see it. The elaborate process of depositing a map and other documents with the appropriate authority that section 31(6) describes would be a pointless exercise if all that was needed was for the landowner to send a letter which gave expression to his intention to his estate agent or his solicitor.

**59** For these reasons, as well as those given by my noble and learned friend, Lord Hoffmann, whose speech I have had the advantage of reading in

draft and with which I am in full agreement, I would allow the appeals and make the orders that he proposes.

**LORD SCOTT OF FOSCOTE**

**60** My Lords, the issue in these two appeals, as my noble and learned friend, Lord Hoffmann, has said, is whether the respective landowners, respondents in the two appeals, have shown "sufficient evidence" (section 31(1) of the Highways Act 1980) that they had no intention during the relevant 20-year period to dedicate as public footpaths the paths over their land claimed by the appellants to have achieved that status by 20 years' public user. Section 31(1) speaks of a "deemed" dedication brought about by the requisite 20 years' user unless there is "sufficient evidence" that there was "no intention during that period to dedicate." The emphasis in section 31(1), regarding the means whereby a path may achieve the status of a public path, is on dedication. Dedication by the landowner was the common law means whereby a public right of way could be created. Scott LJ in *Jones v Bates* [1938] 2 All ER 237, 244–245, was very scornful about common law dedication. He described dedication as "usually quite imaginary", "often a pure legal fiction", and expressed a clear preference for prescription on the Scottish model where public user of the requisite quality for the requisite period would impel the legal conclusion that the path was public whatever the landowner might say or prove about his intention. He was not, however, joined in these strictures by his Court of Appeal colleagues and, for good or ill, dedication by the landowner remains the basis on which paths used by the public can attain the status of public paths. What section 1(1) of the Rights of Way Act 1932, now section 31(1) of the 1980 Act, did was to provide a means whereby the insufficiency of positive evidence of the intention of the landowner to dedicate a path as a public way could be sidestepped. If the path had been used by the public as of right and without interruption for 20 years before the right of the public to use the path had been "brought into question", it was to be "deemed" to have been dedicated unless the landowner could show "sufficient evidence that there was no intention" to dedicate. The onus was shifted to the landowner. But the basis of the public status bestowed on a path by public user remained after 1932, and remains, dedication. Prescriptive user alone is not necessarily enough.

**61** The particular issue in each of these appeals, where there has been the requisite quality of public user of the path in question for the requisite period, concerns the nature of the evidence about his intentions that the landowner must show in order to displace the deemed dedication brought about by the 20 years' user. Section 31(1) simply speaks of "sufficient evidence" and the Act contains no guide as to what might be sufficient. There are two questions. First, can an intention held in pectore by the landowner and disclosed to no one ever constitute "sufficient evidence" for section 31(1) purposes? If the answer is "no", must "sufficient evidence" (other than evidence made sufficient by subsections (3), (5) or (6) of section 31) consist of acts which, objectively viewed from the standpoint of the users of the path, demonstrate the intention of the landowner that they should not use the path?

**62** To answer these questions one must, in my opinion, start with the law about dedication of highways as it stood immediately before the

A enactment of the 1932 Act. It is said that the Prescription Act 1832 provided a model for the 1932 Act. This is no doubt correct but analogies drawn from the rules about prescription of private easements can, if applied to dedication of paths as public rights of way, go astray. For example, private easements, under common law, are private rights in rem and can only be created by grant. Hence the need, until statutory intervention came to assist, for the fiction of a lost modern grant to be invented. The creation of a public B right of way, by contrast, is brought about by dedication of the way as a public way by the landowner. The dedication need not be formal. Sufficiently unequivocal conduct by the landowner evincing his intention to dedicate will suffice. There must also be acceptance of the dedication by the public, evidenced by their use of the path. So long user of the path by the public with the owner standing by and acquiescing in the user is consistent C with there having been a dedication and its acceptance by the public. It can be taken, in the absence of evidence to the contrary, to justify the inference of the requisite dedication.

**63** These very different approaches to the creation of private rights of way on the one hand and public rights of way on the other hand lead, post the advent of the 1832 Act enabling private easements to be acquired by D 20 years' use as of right, to two important differences between them. First, user for the acquisition by prescription of private rights of way has to be, among other things, nec precario, i e as of right, not by permission of the landowner. User to justify the inference of dedication of a public right of way, on the other hand, has to be user of such a character and in such circumstances as to justify the inference that the landowner *had* given permission, not merely temporarily but on a permanent basis, for the user. E Second, the inference of dedication brought about by long public user is not conclusive. Where private rights are concerned, however, sufficiently long user of a sufficient quality creates, by prescription, the right. Where public rights are concerned, the user is no more than evidence from which the dedication can be, but does not always have to be, inferred.

**64** The merely evidential character of long public use was emphatically F confirmed by this House in *Folkestone Corpn v Brockman* [1914] AC 338. The issue was whether a particular roadway had been dedicated as a public highway. The evidence was that from 1827 or thereabouts the roadway had been used by members of the public on foot without interruption, openly and to the knowledge of the landowner or his agents. But the justices, dealing with objections by local householders to being required to meet the expenses of certain street works—objections based on their contention that G a dedication of the roadway should be inferred, in which case the costs would fall on the inhabitants at large—had held that there had been no dedication. The decision had been upheld by the Divisional Court but reversed in the Court of Appeal. Lord Kinnear, giving the first speech in the House, cited, at p 352, a passage from Lord Blackburn's speech in *Mann v Brodie* 10 App Cas 378, 386:

H

> "where there has been evidence of a user by the public so long and in such manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on which those who have to

find that fact may find that there was a dedication by the owner, whoever he was." A

Lord Kinnear then continued:

"The points to be noted are, first, that the thing to be proved is intention to dedicate, and secondly, that while public user may be evidence tending to instruct dedication, it will be good for that purpose only when it is exercised under such conditions as to imply the assertion of a right, within the knowledge and with the acquiescence of the owner of the fee." B

After emphasising that "the question is whether the facts are sufficient to raise the presumption", he said, at p 354:

"I think it fallacious to assume dedication on a partial view of the evidence, and only after that has been done to inquire whether conflicting facts are strong enough to dislodge a conclusion already reached." C

And, at p 355: "the presumption cannot be held to be established in law at any intermediate stage of the proof, or until the whole facts and circumstances have been fully considered." And, at p 356: "The question is one of fact, turning upon probabilities of conduct." D

**65** Lord Atkinson, at p 361, summed up the argument for a dedication that had been put forward by counsel for the respondent owners and occupiers thus:

"Proof of open, uninterrupted, and continuous user raises a praesumptio juris in favour of dedication. If evidence be not produced to rebut this presumption, it must prevail . . . In the present case there was such evidence of user, no rebutting evidence was produced, the justices were therefore bound in law to find that this way was dedicated to the public, and their decision to the contrary was a decision made without any evidence to support it, and consequently invalid in point of law." E

This argument was rejected. The House held that the inference of intention to dedicate drawn from long and uninterrupted user as of right was an inference of fact and that the justices were not bound to draw the affirmative inference. The House allowed the appeal. F

**66** My Lords, the state of the law as explained by the House in *Folkestone Corpn v Brockman* was the law addressed by the 1932 Act and I do not believe that the remedial provisions introduced by that Act can be properly understood otherwise than against the background of the pre-Act state of the law. G

**67** Section 1(1) of the 1932 Act seems to me to have set itself firmly to reverse *Folkestone Corpn v Brockman*. The Act, in effect, accepted the arguments of counsel for the owners and occupiers, as recorded by Lord Atkinson, that the House had rejected. Under section 1(1), and now its successor, section 31(1) of the 1980 Act, there are two questions of fact, not, as the House held in 1914, only one. The first question is whether the way has been "actually enjoyed by the public as of right and without interruption for a full period of 20 years". The language was plainly borrowed from section 2 of the 1832 Act but the meaning of "as of right" must be interpreted in the context of dedication, not prescription. If the first H

question can be given the answer "yes", there will be a "deemed" dedication, something more, in my opinion, than the pre-1932 evidentiary presumption of an intention to dedicate referred to by Lord Kinnear and Lord Atkinson in the *Folkestone Corpn* case. The statutory conclusion, the "deemed" dedication, stands unless the specified statutory condition of escape, "sufficient evidence that there was no intention to dedicate", is satisfied. That is the second question of fact.

**68** Evidence merely that the landowner lacked any intention to dedicate, e g that he had never given dedication a moment's thought, will not suffice. Counsel on both sides accepted that that was so and that the statutory requirement was not simply for evidence of the absence of an intention to dedicate but was for evidence of a positive intention not to dedicate. I think that must be right. Evidence "sufficient" to displace the statutory deemed conclusion of dedication should at least establish a positive intention. Lord Kinnear in the *Folkestone Corpn* case had referred, at p 356, to "the probabilities of conduct" on which the question would turn. If that was so in the pre-1932 Act days—and counsel accepted that there was no pre-1932 case that suggested the contrary—a fortiori it must have remained a requirement under the Act.

**69** The issue on which these appeals turn, therefore, is whether evidence of an intention not to dedicate can ever (unless it be evidence made sufficient under subsections (3), (5) or (6) of section 31) be sufficient unless it demonstrates the intention to the public at large or, at least, to the users of the path in question. Acts blocking passage along the path by, for example, the padlocking of gates would be likely to be sufficient. Regular challenges to users of the path might suffice. But expressions of intention never disclosed or circulated privately would not, in my opinion, be "sufficient". The reason they would not is that they would do nothing to curb the public user of the path, or to disabuse users of the path of any belief that they had a right to use it, or to make clear to those users who did not care or give a thought to whether or not they had a right to use the path that they were trespassers. In *Fairey v Southampton County Council* [1956] 2 QB 439 Lord Goddard CJ in the Divisional Court and Denning LJ in the Court of Appeal referred to various ways in which a landowner might demonstrate his opposition to the use by the public of the path over his land. Denning LJ referred, at p 458, to "evidence of some overt acts on the part of the landowner such as to show the public at large—the public who used the path, in this case the villagers—that he had no intention to dedicate". This requirement of overt acts such as to demonstrate to the public that the landowner had no intention to dedicate seems to me consistent with the nature and quality of the "sufficient evidence" required by the Act to rebut a deemed dedication brought about by 20 years' uninterrupted public user.

**70** Lord Hoffmann has discussed in his opinion what, for section 31(2) purposes, would constitute bringing the right of the public into question. I am in respectful agreement with what he has said and would only add that the bringing of the public right into question could, in my opinion, be done not only by the landowner but also by a member of the public or by the local authority. A member of the public might apply to the court for relief of some sort that would bring the right into question, or a prosecution brought by a local authority against the landowner for, e g allowing a stile to fall into

disrepair, might, if the landowner disputed that there was any public right of way, be similarly regarded. There is, in my opinion, no necessary symmetry between acts that bring the public right into question and acts of the landowner to demonstrate that he does not intend dedication.

71 For these reasons, supplemental to those of Lord Hoffmann with which I am in full agreement, I would allow these appeals and make the orders that he proposes. Having had the advantage of reading the opinions of my noble and learned friends, Lord Hope of Craighead and Lord Neuberger of Abbotsbury, I want to express also my agreement with the reasons they have given for coming to the same conclusions.

**BARONESS HALE OF RICHMOND**

72 My Lords, I have had the advantage of reading in draft the opinion prepared by Lord Hoffmann. I agree with it so completely that it is a work of supererogation for me to add anything more. On the main issue, two points have weighed most heavily with me.

73 One is the wording of the so-called proviso itself: "unless there is sufficient evidence that there was no intention during that period to dedicate it". If the private thoughts of the landowner were enough, the section need only have read "unless there was no intention". The section is calling for sufficient manifestation of the landowner's intention during the relevant time.

74 The other point is that the section tells us what the landowner's intention is deemed to have been unless he shows us to the contrary. There are many contexts in which references to the intentions of the parties are to their intentions as objectively understood by an informed but impartial outsider. If the public enjoy the way as of right and without interruption for 20 years, the statute tells us what an objective outsider is to assume—that the landowner intends to dedicate it as a highway. To rebut that, the landowner has to do something which the objective outsider would understand to mean that he had no such intention. I agree that (leaving aside the specific means provided for in the section) the objective outsider would not so understand unless the landowner did something to bring his intention to the notice of the public who might use the way. But I also agree that it is what the public should reasonably understand from the landowner's actions which count, rather than their subjective wishful thinking or belief.

75 In agreeing that both these cases should be remitted to the Secretary of State to decide, I am remembering only too well that the reasons given when one is reaching one result on the facts may be quite different from the reasons given when one is reaching another. Points which have been discarded in the former case may assume more importance in the latter and vice versa. Facts which were not considered in one context, because they did not have to be, may deserve further and better consideration in the light of the law as it has now been explained. Much of the evidence in these cases is relevant to more than one point—to whether the user is "as of right", to whether it was "without interruption", to whether the right has been "brought into question" and to whether there is "sufficient evidence that there was no intention". All the relevant evidence should be considered as a whole, rather than allocated to one issue or another. I would not myself feel confident that there can be only one answer in either of these cases.

A **76** I agree, therefore, that these appeals should be allowed, the decisions quashed and the cases remitted to the Secretary of State for him to decide. This will, of course, include deciding in accordance with the statutory procedures as well as with the opinions of the House.

**LORD NEUBERGER OF ABBOTSBURY**

**77** My Lords, I have had the benefit of reading in draft the opinions of
B Lord Hoffmann and Lord Hope of Craighead. For the reasons they give, I too would allow these appeals and remit the cases to the Secretary of State. The issues raised are of some significance, and I will therefore briefly explain my reasons.

*The main issue: the meaning of "intention"*

C **78** The main issue in these appeals is whether, as the claimants contend, the intention referred to in what I will call the proviso to section 31(1) of the Highways Act 1980 has to be communicated contemporaneously (i e during the 20 years referred to in the section) to members of the public using the way. For a combination of reasons, I am clearly of the view that the answer is yes.

D **79** First, the whole tenor of section 31, whether it is dealing with establishing presumed dedication (enjoyment "as of right"), or rebutting presumed dedication ("without interruption" and the provisions of subsections (3) to (6)) is directed towards observable actions from which presumptions may be made or rebutted. It is true that communications with the local authority under sections 31(5) and (6) are not with members of the public, but a local authority would be obliged to retain the documents there
E referred to, and to permit members of the public to inspect them.

**80** Secondly, one of the purposes of section 1 of the Rights of Way Act 1932 (the original ancestor of section 31 of the 1980 Act) was to get rid of a landowner's ability to rely on the argument that he treated the users of the way as "tolerated trespassers" to defeat a claim of presumed dedication based on long user: see *R v Oxfordshire County Council, Ex p Sunningwell*
F *Parish Council* [2000] 1 AC 335, 353B–E. In my opinion, if a landowner can say, after 20 years' public use of a way as of right, that he had no subjective intention to dedicate, although there was no contemporaneous communication of that intention, this purpose would be effectively neutralised.

**81** Thirdly, as Lord Hoffmann's analysis of the cases prior to the 1932 Act shows, the common law appears to have required some form of act or
G statement communicated to users of the way, so that evidence of the subjective uncommunicated intention of the landowner would not have been enough (or even admissible) to rebut a presumption of dedication. It would be surprising if section 31(1) of the 1980 Act, which uses the language and concepts of the common law relating to highways, changed the law radically, and in a direction inconsistent with its purpose, so as to enable a landowner to rely on an intention of which the users of the way were not
H merely unaware, but could have no means of becoming aware.

**82** Fourthly, the notion that a subjective intention is enough to defeat a presumed dedication under section 31(1) leads to difficulties. Despite the submission of Mr Simpson, for the interveners, Yattendon Estates Ltd, to the contrary, it would be unattractive and surprising, as Mr Mould, for

the Secretary of State, accepted, if a landowner could simply rely, after the expiry of the 20 years, on his statement (e g at an inquiry such as those held in the present cases) that he had no intention to dedicate. To meet that point, the courts have developed a theory which appears to me to be unjustified, whether it is a principle of law or a practical rule. That theory is that, in the absence of some contemporary overt act or statement, a fact-finding tribunal cannot, or is unlikely to, find a sufficient intention not to dedicate merely on the basis of the landowner's subsequent statement to that effect: see e g , per Auld LJ in this case in the Court of Appeal [2006] QB 727, para 64. Why should that be so? It would not be justified by the statutory wording, even if it had the meaning that the Secretary of State alleges. In many, I suspect most, cases it would be easy to believe that a landowner would not want to have a highway, even it is only a public footpath, over his land. Further, in the light of the way the proviso to section 31(1) is expressed ("sufficient evidence that there was no intention"), it appears to me that, on the Secretary of State's case, a landowner could defeat a claim simply on the basis that he was unaware of the effect of the main part of section 31(1).

**83** Fifthly, the cogent and clear analysis of Denning LJ in *Fairey v Southampton County Council* [1956] 2 QB 439, 458, quoted by Lord Hoffmann, clearly indicates that the intention referred to in the proviso to section 1(1) of the 1932 Act was intended to be a communicated intention. That analysis was accepted and recorded in textbooks, and it was followed and applied in cases identified by Lord Hoffmann by High Court judges and by the Court of Appeal for the subsequent 40 years. Further, it appears to have been an analysis which was acceptable to the legislature, given that section 1(1) of the 1932 Act was re-enacted in section 34(1) of the Highways Act 1959 and again in section 31(1) of the 1980 Act.

**84** Sixthly, I turn to the crucial question of the effect of the words of the proviso to section 31(1). I do not agree with the Court of Appeal that construing the word "intention" in the section as carrying with it the notion of communication involves placing an unjustifiable gloss on the statutory wording. At least outside the criminal law, the word is often used by lawyers in a way which carries with it a requirement to communicate, as well as to possess, the relevant intention. Indeed, sometimes, an uncommunicated intention is irrelevant, as when one speaks of the intention of the parties when construing a contract. Further, the proviso does not require "no intention" but "sufficient evidence that there was no intention". If the Secretary of State were correct, there would have been no need for that longer phrase. The notion that the "evidence" referred to in the proviso must be contemporaneous and communicated is further supported by the fact that a very similar phrase (including both "evidence" and "intention") is used at the end of section 31(3) to describe the effect of a notice erected on the way.

**85** Seventhly, the provisions of section 31(3) to 31(6) seem pretty extraordinary if an uncommunicated intention suffices to satisfy the proviso. Why bother with such potentially time-consuming and expensive procedures if, for instance, a simple and clear letter from the landowner to his solicitor, confirming that he has no intention to dedicate, will do?

**86** Eighthly, Mr Laurence, for the claimants, raised the spectre of a landowner being able to defeat a claim under section 31(1), if the Secretary of State is correct, by sending such a letter, and only some time thereafter

A calling the right into question by challenging its use. If such a device worked, it would be another reason for allowing this appeal. It may be that the point can be answered by the letter being treated as an act calling the right into question under section 31(2). However, to treat such a private declaration as having that effect seems to me to fly in the face of the natural meaning of the expression "brought into question".

B *Other issues: the meaning of "during", and manifesting the intention*

87 The second question is whether the phrase "during that period" in the proviso to section 31(1) means "during the whole of that period", as the claimants argued, or "at some point during that period", as was contended by the Secretary of State. As a matter of ordinary language, it is clear that the phrase could easily bear either meaning. In the present context, it C appears to me clear that it has the latter meaning.

88 First, the former interpretation would lead to wholly unrealistic results. It would mean that signs referred to in section 31(3) (combined, where appropriate, with the documents referred to in section 31(5)), and the documents referred to in section 31(6), would be ineffective unless they were in place for the whole of the 20-year period. Mr Laurence was forced to concede that it would therefore be necessary to imply some sort of period of D grace, based on reasonableness, but that is not warranted by the wording of the section, and it would be a recipe for uncertainty and dispute.

89 Secondly, it is clear that an interruption of the user at some point during the relevant 20-year period, such as the landowner locking a gate and preventing access, will defeat an argument based on user "as of right" under section 31(1) during that period. Traditionally, one day a year is the norm: E see for instance *Merstham Manor Ltd v Coulsdon and Purley Urban District Council* [1937] 2 KB 77, 85. However, it may depend on the facts of the particular case whether this is enough to amount to a sufficient interruption; that was the view taken by the Court of Appeal in *Lewis v Thomas* [1950] 1 KB 438. Whatever the position, it is clear that, to be effective, the interruption need not last long in the context of 20 years in order to defeat F user as of right. It would be inconsistent if the sign contemplated by section 31(3), or any other action or communication invoked as evidence of lack of intention, had to be in place for the whole of the 20 years.

90 This is not the occasion to discuss how long a sign would have to be present, or when the documents referred to in sections 31(5) and (6) would have to be lodged, during the 20 years relied on in any particular case. It is conceivable that one day in 20 years would be enough in a particular case, G and it even may be the case, I suppose, that it would be enough as a matter of principle, but it may well be that what constitutes a sufficient period will depend on the facts of the particular case: see the discussion in *Lewis v Thomas*.

91 It is fair to add that this conclusion can, at any rate at first sight, be said to sit a little uneasily with the procedures set out in sections 31(5) and (6). They appear to contain somewhat elaborate requirements if all that is H needed is, for instance, the erection of a notice for a relatively short period under section 31(3). The answer, I think, is this. A landowner who wishes to protect his position over many decades may be concerned that he or his successors will forget to keep checking that a section 31(3) notice remains intact, and that, following a defacing of a notice, he may let 20 years'

uninterrupted use occur. Such a landowner may be glad to be able to protect his position by taking advantage of section 31(5). As to section 31(6), it appears to be aimed primarily at large estates, and enables a landowner to protect himself, inter alia, in relation to potential rights of way which he may not even know are in the process of being acquired under section 31(1).

**92** Finally, there is the claimants' argument that the only means by which a landowner can bring himself within the proviso are those contained in section 31(3) to (6). That is simply not what section 31 provides as a matter of language, it is inconsistent with the words "or otherwise" in section 31(2), and it does not seem to me to lead to a sensible result. I can see no reason why a landowner who has made his objections sufficiently clear orally to those using the way should be debarred from contending that he has thereby sufficiently manifested his lack of intention to dedicate to bring himself within the proviso. Again, this is not the occasion to consider how often or to how many people or with what words the objection would have to be made to bring the case within the proviso.

*Appeals allowed.*
*Question of costs adjourned for written submissions within 14 days.*

*Solicitors: Winckworth Sherwood for Zermansky & Partners, Leeds; Treasury Solicitor; Blandy & Blandy, Reading.*

M G

**IN THE HIGH COURT OF JUSTICE**
**CHANCERY DIVISION**
**BRISTOL DISTRICT REGISTRY**

**CLAIM NO: 6BS30497**

**B E T W E E N:**

**(1) VERA MARY ANN FORTUNE**
**(2) ROSEMARY PHOEBE AYRES**
**(3) JOHN STEWART HESELDEN**

**Claimants**

**-and-**

**WILTSHIRE COUNCIL**

**First Defendant**

**-and-**

**TAYLOR WIMPEY**

**Second Defendant**

---

**APPROVED JUDGMENT**

---

**Counsel for the First Claimant: Mr George Laurence QC and Ms Julia Clark, instructed by Nicholsons, Lowestoft, Suffolk.**

**Counsel for the Second and Third Defendants: Ms Julia Clark, instructed by Hatch Brenner, Norwich.**

**Counsel for the First Defendant: Mr Timothy Mould QC (written submissions only), Mr Jeremy Burns and Mr Naveen Agnihotri, instructed by the Solicitor to the Council, Wiltshire Council Legal Department, Trowbridge.**

**IN THE HIGH COURT OF JUSTICE** **CLAIM NO: 6BS30497**

**CHANCERY DIVISON**

**BRISTOL DISTRICT REGISTRY**

**B E T W E E N:**

**(1) VERA MARY ANN FORTUNE**
**(2) ROSEMARY PHOEBE AYRES**
**(3) JOHN STEWART HESELDEN**

**Claimants**

**and**

**WILTSHIRE COUNCIL**

**First Defendant**

**TAYLOR WIMPEY**

**Second Defendant**

---

**APPROVED JUDGMENT**

---

His Honour Judge McCahill QC:

This judgment contains the following chapters.


| INDEX | PARAGRAPH |
|---|---|
| | |
| **Chapter 1: Introduction and background** | |
| | |
| The parties | 1 |
| The issues | 5 |
| Location and description of Rowden Lane | 6 |
| Relevant dates for proof of vehicular status at common law and by statute | 17 |
| Structure of the judgment | 21 |
| Properties on the north side of Rowden Lane | 32 |
| Properties on the south side of Rowden Lane | 33 |
| | |
| **Chapter 2 : Procedural history** | 34 |
| | |
| **Chapter 3: Evidence** | |
| | |




AUTH319

| | |
|---|---|
| Documentary and oral evidence | 41 |
| Site View | 47 |
| Written Submissions | 53 |
| | |
| **Chapter 4: Surveying evidence** | |
| | |
| Topographical survey | 56 |
| Aerial photographs of 1973, 1964, 1950 and 1946 | 69 |
| Configuration of the highway | 81 |
| Position within the road hierarchy | 82 |
| The Definitive Map | 85 |
| Conveyances and plans | 88 |
| Wayleaves and foul sewer | 94 |
| Conclusions of Mr Vaughan | 97 |
| | |
| **Chapter 5: Undisputed evidence of Area Highways Engineer** | 101 |
| | |
| Removal of objects in August 2006 | 102 |
| Passing vehicles | 103 |
| Utilities | 106 |
| Correspondence | 107 |
| Modern maintenance of Rowden Lane | 108 |
| | |
| **Chapter 6: Elm Tree Farm: The family of Richard Francis ("Dick") Jennings** | 114 |
| | |
| Planning history of Elm Tree Farm | 117 |
| Mary Puntis | 118 |
| Assessment of Dick Jennings | 126 |
| Challenges to non-residents | 128 |
| Mrs Jennings | 131 |
| Dick Jennings' view of the status of Rowden Lane | 133 |
| Martin Jennings | 143 |
| Little Dick Jennings | 153 |
| Signs | 164 |
| | |
| **Chapter 7: W H Jennings, his land (including, until 1970, Swallow Falls) and family** | 171 |
| | |
| New street? | 181 |
| Statutory declaration | 187 |
| | |
| **Chapter 8: Swallow Falls and the Fortune family** | 190 |
| | |
| Change of case | 191 |
| Sign | 194 |
| Change in status of Rowden Lane | 195 |
| Verges | 196 |
| Absence of challenge to "highway verges" | 203 |
| Dangerous manhole cover in the verge | 206 |
| Construction on the verge | 210 |
| The passing bay | 211 |
| Planning history: Workshop | 219 |
| Planning history: Residential development | 222 |

| | |
|---|---|
| Objections from Swallow Falls to change of use at Elm Tree Farm | 227 |
| Changes in the recording of Rowden Lane | 233 |
| Summary of Kevin Fortune's objection | 238 |
| Assessment of Kevin Fortune | 242 |
| Vera Fortune | 244 |
| | |
| **Chapter 9: Brookfields** | 256 |
| | |
| Planning history of Brookfields | 260 |
| Second Claimant as owner of Brookfields | 271 |
| The new driveway | 272 |
| The Third Claimant: John Heselden | 277 |
| The Second Claimant | 317 |
| | |
| **Chapter 10: The Gibbons family, The Bungalow and the Old Piggery** | 355 |
| | |
| Family business | 358 |
| Partnership with Mr Gooden | 360 |
| The option agreement | 365 |
| Planning Appeal | 368 |
| The Gibbons family knowledge of the area | 371 |
| Summary of the Gibbons evidence on the 11 topics | 380 |
| Family helping out | 384 |
| Rowden Lane in and after the 1950s | 387 |
| Wall and raised verges | 392 |
| Users of Rowden Lane | 400 |
| Parking | 404 |
| Signs | 406 |
| Warning off non residents | 407 |
| Staddle stones | 409 |
| Stones and obstructions on other verges | 410 |
| Reputation | 414 |
| Passing bay | 415 |
| Assessment of the Gibbons evidence | 417 |
| The alleged assault on Emil Raubenheimer | 421 |
| | |
| **Chapter 11: Other conflicting factual evidence on modern user of Rowden Lane** | |
| | |
| First Defendant's other witnesses on modern user | 438 |
| | |
| Gillian Harding | 441 |
| Claire Harding | 444 |
| Stephen Pollard | 451 |
| | |
| Claimants' other witnesses on modern user | |
| | |
| John Boulding | 462 |
| Brian Jennings | 471 |
| | |
| Residents of Burleaze: Mr Soady and Mr Parley | |
| | |
| Mr Soady | 480 |
| Mr Parley | 486 |

| | |
|---|---|
| | |
| Witnesses from near Gypsy Lane: Councillor MacGregor and Mrs Menzies | |
| | |
| Councillor MacGregor | 491 |
| Mrs Menzies | 499 |
| | |
| Other local knowledge: Councillor Maureen Lloyd and Donald Rogers | |
| | |
| Councillor Maureen Lloyd | 505 |
| Donald Rogers | 508 |
| | |
| **Chapter 12: Civil Evidence Act 1995** | 517 |
| | |
| Gordon Hudson | 519 |
| Gladys Ayres | 523 |
| | |
| **Chapter 13: Section 31 Highways Act 1980** | |
| | |
| The statute | 543 |
| The elements of statutory dedication | 544 |
| Vires and nuisance | 566 |
| Conclusions on s 31 Highways Act 1980 | 573 |
| | |
| **Chapter 14: Historical evidence relating to dedication and acceptance as a PVH at common law** | |
| | |
| The First Defendant's expert | 575 |
| The Claimants' expert | 588 |
| The experts' conclusions | 596 |
| Documentary evidence relied on by Mr Harbour in his report | 601 |
| History of Rowden | 603 |
| The 1669 Inclosure map | 616 |
| Culver Hays and part of Rowden Down map 1742 | 637 |
| Andrews and Dury's Map of Wiltshire 1773 | 644 |
| Back Avon Bridge | 653 |
| Topographical map of the Town and Borough of Chippenham 1784 | 664 |
| Topographical survey of the Great Road from London to Bath 1792 | 679 |
| Plan of the Great Down - A Field The Property of Mr J Heath 1796 | 682 |
| Ordnance Survey one inch to one mile, published at the Tower of London 1828 | 688 |
| Greenwoods Map of Wiltshire 1819 – 1829 and published 1829 | 691 |
| Report on the Borough of Chippenham 1831 | 695 |
| The Chippenham and Allington Tithe Award 1848 | 701 |
| Map entitled 'Wiltshire' by Edward Weller FRGS 1862 | 717 |
| Map produced by surveyors relating to a proposed change to the Borough boundary 30.9.1867 | 718 |
| Beacons map of Wiltshire c 1876 | 720 |
| Thoroughfares | 721 |
| 1st Edition 1:2500 Ordnance Survey map 1886 | 729 |
| Phillips cycle map of Wiltshire c1890 | 733 |
| 2nd Edition 1:2500 Ordnance Survey map 1900 | 738 |
| The Finance (1909-10) Act 1910 map | 747 |
| Urban area highway record 1930 | 772 |

| | |
|---|---|
| Map prepared under the National Parks and Access to the Countryside Act 1949 | 773 |
| Original survey form for public right of way 5, prepared in 1950 | 776 |
| Original Definitive map prepared under the 1949 Act, relevant date 1 May 1953 | 778 |
| Original Definitive map statement, 1 May 1953 | 782 |
| Chippenham highway record 1974 | 786 |
| Amended highways record 1983 | 790 |
| | |
| **Chapter 15: Rowden Lane as a new street** | 797 |
| | |
| **Chapter 16: The Definitive Map and Statement** | 825 |
| | |
| Barbara Burke | 876 |
| | |
| **Chapter 17: Conveyancing history of Rowden Lane** | 886 |
| | |
| **Chapter 18: Maintenance of Rowden Lane** | 910 |
| | |
| **Chapter 19: Reputation** | 929 |
| | |
| **Chapter 20: Creation of a highway at common law** | |
| | |
| S 32 Highways Act 1980 | 933 |
| Conclusions on dedication and acceptance at common law | 950 |
| | |
| **Chapter 21: Width of the highway** | |
| | |
| Introduction | 955 |
| Ownership of the subsoil in Rowden Lane | 961 |
| Does the public vehicular highway extend over the verges? | 970 |
| | |
| **Chapter 22: Have public vehicular rights been extinguished by NERC 2006?** | |
| | |
| Legislative background to NERC 2006 | 989 |
| Section 66 and 67 NERC 2006 | 993 |
| Burden of proof | 995 |
| Section 36 Highways Act 1980 | 998 |
| The 1974 Highways Map for Chippenham | 1006 |
| Correspondence concerning the status of Section B of Rowden Lane | 1015 |
| How were the Highways recorded? | 1028 |
| Candidates for a Section 36(6) list | 1041 |
| The pleaded issues on the Section 36(6) list | 1045 |
| The written submissions on the issues | 1049 |
| The scheme of Part 6 (Rights of Way) NERC 2006 | 1053 |
| Winchester College case | 1077 |
| Observations on the Winchester College case | 1090 |
| The Claimants' submissions on Section 67(2)(b) NERC in summary | 1103 |
| Minor highways | 1104 |
| Written list | 1126 |
| Must a qualifying Section 36(6) list or a self contained list which identified itself as a Section 36(6) without the need for further enquiry? | 1135 |
| Maintainable not maintained | 1138 |

| | |
|---|---|
| Can there be more than one Section 36(6) list | 1148 |
| Other candidates for the Section 36(6) list | 1152 |
| Conclusion on NERC 2006 | 1158 |
| | |
| **Chapter 23: Summary of findings of fact and decision** | 1160 |
| | |
| **Chapter 24: Conclusion** | 1161 |
| | |

## Chapter 1: Introducton and Background

### The parties

1. This is a dispute over the nature and extent of the public's right of way over Rowden Lane, Rowden Hill, Chippenham, Wiltshire, of which the First Defendant is the Highway Authority.

2. Rowden Lane has existed, in one form or another, since at least 1669.

3. The Claimants live at 'Swallow Falls' (First Claimant) and 'Brookfields' (Second and Third Claimants). Both properties front Rowden Lane. The Second Defendant, a property developer with an interest in land adjacent to Rowden Lane, has reached a compromise with the Claimants. The Second Defendant has agreed to be bound by the outcome of this case. Accordingly, it has played no part in the trial before me.

4. Despite the objections of the Claimants, planning permission for residential development comprising 138 houses adjacent to Rowden Lane was granted on appeal in 2002. However, implementation of this planning permission would be thwarted or rendered more difficult, if Rowden Lane were not a public vehicular highway ("PVH").

### The Issues

5. The issues which I have to decide in this case include:

   (1) Is Rowden Lane a full public highway, including a public vehicular highway, or is the public only entitled to use Rowden Lane on foot or on horseback ("bridleway")?

   (2) If Rowden Lane is or was a PVH, how did it become a PVH? Rowden Lane has never been formally adopted as a highway maintainable at public expense

under any statutory procedure. If Rowden Lane became a PVH, was it as a result of (i) dedication and acceptance at common law at any time (pre-1835 highways are maintainable at public expense, even in the absence of formal adoption) or (ii) presumed dedication as a highway after public use for 20 years, under s 31 Highways Act 1980. The First Defendant has claimed it has maintained Rowden Lane, since 1983, and probably before 1881.

(3) In any event, is the highway in Rowden Lane – and it is acknowledged by all to be *some* form of public highway - confined to the width of the current metalled road, or does the highway extend 'hedge to hedge', to include both verges bordering the carriageway?

(4) If Rowden Lane was a PVH on or before 2 May 2006 (the commencement date of Section 67 of the Natural Environment and Rural Communities Act 2006 ["NERC"]), did it cease to be a PVH for mechanically propelled vehicles, by reason of Section 67 of NERC, because the First Defendant cannot prove that it was shown in a list required to be kept under Section 36(6) of the Highways Act 1980 ("list of highways maintainable at public expense")?

It is common ground that Rowden Lane was, in fact, shown on a list. The First Defendant alleged this was a compliant Section 36(6) list. However, the Claimants contend that the list on which Rowden Lane undoubtedly appeared was not one which met the requirements of Section 67 NERC or Section 36(6) of the Highways Act 1980 and, as a result, the public lost any vehicular rights over Rowden Lane which it previously enjoyed up to 1 May 2006.

Location and description of Rowden Lane

6. Rowden Lane lies to the south west of Chippenham. The part in dispute is shown coloured yellow, between points M-H-CG, on the plan "GL1" annexed to this judgment as Appendix 1. It runs roughly west-east from the Bath Road (A4), at Rowden Hill.

7. From its western end, close to the A4, it extends along a metalled road to a cattle grid ("CG" on the plan) at its eastern end, where today the metalled road ends. Between these two points, Rowden Lane is approximately 471 metres long. Beyond the cattle grid, a new concrete roadway continues eastwards to a housing development, constructed in the grounds of Rowden Manor in the late 1980s.

8. The first 70 metres of Rowden Lane, ("Section A") between points M and H, run from the A4 to a point just beyond the car park of a public house (built about 1965, and extended in 2000) called the 'Rowden Arms', also known as the 'Hungry Horse'. Until the formal admission in the pleadings was withdrawn by the Claimants shortly before the start of the trial in November 2008, the Claimants had accepted that Section A of Rowden Lane was a PVH. By an amendment to their pleadings, which I allowed, the Claimants now allege that Section A is only a bridleway.

9. Section A was described by the Claimants' expert, Professor Williamson, as:

> [a section which] *is, and has it seems for some time been, maintained as a public road by the local authority. It has the appearance of a suburban street, with pavement, kerbing and street lights.*

10. Having conducted a site view, I agree with, and adopt, that assessment of Section A.

11. The remaining part of Rowden Lane relevant to the dispute ("Section B"), between points H-CG, is about 400 metres long. It runs from just beyond the eastern end of the

car park of the Rowden Arms - namely after a road on the nearside leading to the back entrances of No. 83,85 and 87 Rowden Hill - to the cattle grid.

12. Lying either side of the metalled road, within Section B, are grass verges which abut the boundary hedges or stone walls of the properties fronting or backing on to Rowden Lane.

13. Beyond the cattle grid, between CG to point K on plan GL1, and coloured pink thereon, is Section C of Rowden Lane. Finally, Section D, between points K and L, is shown on the same plan as blue coloured dots.

14. For parts of the Lane, a ditch lies between the boundary wall or hedge and the grass verge. Measured from hedge to hedge, Rowden Lane is between 11 and 13 metres wide. Section B of Rowden Lane is shown topographically in Drawing 4077/A, dated 14 September 2007, also annexed to this judgment as Appendix 2. An aerial view of some of the properties referred to in the judgment is at page 70 in volume 14 of the trial bundle. It forms Appendix 3 to the judgment. Unless otherwise stated, references to Rowden Lane in this judgment are to Sections A and B of the Lane.

15. It is common ground between the parties that Rowden Lane includes a public highway. The dispute between the parties is over the nature of the rights which the public can exercise over the Lane, and the width of the highway over which those rights can be exercised.

16. The highway surface in Rowden Lane is vested in the First Defendant, as Highway Authority, although there are issues over who owns the subsoil under Rowden Lane and whether the verges are wholly private.

Relevant dates for proof of vehicular highway status at common law and under section 31 of the Highways Act 1980.

17. The First Defendant's case is that Sections A and B of Rowden Lane became a public vehicular highway by common law dedication and acceptance many years, if not centuries, before the commencement of these proceedings. The First Defendant relies upon the substantial body of documentary evidence which it submits should be accorded significant weight under section 32 of the Highways Act 1980 in support of its claim for common law dedication and acceptance, which requires no minimum period of public use.

18. However, the First Defendant also relies upon statutory dedication under section 31 of the Highways Act 1980 in relation to section B of Rowden Lane, alleging that the relevant statutory period of 20 years ended in August 2002.

19. Up to November 2008, the Claimants had accepted that section A of Rowden Lane was a public vehicular highway. However, I allowed them to amend their Particulars of Claim to withdraw this admission. The combined effect of section 66 (1) of the Natural Environment and Rural Communities Act 2006 and section 31 (1A) of the Highways Act 1980 means that section A of Rowden Lane cannot have been created a public vehicular highway by virtue of statutory dedication under section 31 of the Highways Act 1980 on the basis of public user occurring after 2 May 2006. Accordingly, the First Defendant's case for a public vehicular highway over section A of Rowden Lane is founded upon dedication and acceptance at common law before 2002.

20. In addition to the mass of historical material which has been placed before me, I have also received oral evidence of modern vehicular user of Rowden Lane. The First Defendant relies upon all the evidence, documentary and of modern user, in support of its case for common law dedication of sections A and B of Rowden Lane as a public

vehicular highway but, in addition, the modern user is relied upon, for the period 1982 to August 2002, in support of the argument that section B of Rowden Lane has been dedicated as a public vehicular highway under section 31 of the Highways Act 1980.

Structure of the Judgment

21. Given the mass of documentary and oral evidence ranging over so many issues and sub-issues in this case, it has been necessary for me to devise a meaningful structure for this judgment. Issues over the width of the highway in Rowden Lane (issue 3, chapter 21) and the impact of the Natural Environment and Rural Communities Act 2006 (issue 4, chapter 22) are relatively self-contained, although chapter 22 contains important correspondence relevant to the reputation and status of Rowden Lane, as well as references to the processes involved in the preparation and revision of the Definitive Map and Statement, more comprehensively analysed in chapter 16.

22. The voluminous historical evidence relied on for common law dedication and acceptance and its analysis (chapters 14 - 20) cover the period from before 1669 to the 1960s.There is, inevitably, an overlap between the evidence of historical and modern user of Rowden Lane. This is most obvious in 1937 (declaration of Rowden Lane as a ‘new street’ under the Public Health Act 1925), in the 1950s (the preparation of the Definitive Map and Statement of minor highways under the National Parks and Access to the Countryside Act 1949 and its special review under the Countryside Act 1968) and reputation.

23. The history of the modern user of section B of Rowden Lane effectively starts in 1937 when Mr Gibbons submitted plans to construct, and subsequently build The Bungalow, the first house to be built on section B of the Lane. The narrative of modern user ends in August or September 2002, when the word 'Private' was painted on the carriageway at the junction of sections A and B of Rowden Lane. This is alleged by the First

Defendant to be the moment when the right of the public to use the way with vehicles was first 'brought into question', within the meaning of section 31 of the Highways Act 1980 which reads:

***Dedication of way as highway presumed after public use for 20 years***

*(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

*(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

*(3) Where the owner of the land over which any such way as aforesaid passes –*

*(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and*

*(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,*

*the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*

24. Much of the Claimants' evidence on modern user was directed to matters relied on as establishing an earlier date than 2002 for bringing 'into question' Rowden Lane as a

PVH and/or to negative any intention to dedicate Rowden Lane as a PVH. This evidence created a number of issues, including the following:

(a) whether there had been at some stage, and if so when, a 'private' sign at the junction of the A4 and Section A of Rowden Lane, or between Sections A and B;

(b) whether there had been challenges, and if so when, by Dick Jennings of Elm Tree farm and/or Mr and Mrs Burridge (the owners of Rowden Farm) and/or their farm manager to non-residents (ie the public) using Rowden Lane with or without vehicles;

(c) whether there had been stones or other encroachments or obstructions placed on the verges and, if so, when and for what purpose;

(d) the effect of the construction, in 1978, of a new driveway to Brookfields with kerbstones and railway sleepers lining it continuing to the asphalt of the Lane;

(e) the effect of correspondence in 1983,1988, 1989 and 2001;

(f) the effect of the publication by the First Defendant, in 1972, of its draft revised Definitive Map proposing that section C and D of Rowden Lane, then shown as a Road Used as a Public Path, be reclassified as a footpath, under the special review required by the Countryside Act 1968;

(g) whether it was outwith the power of the First Defendant as the Highway Authority to dedicate higher rights as a PVH over sections A and B, if they had been only previously bridleways, and/or whether it was an actionable nuisance so to do;

(h) the nature and frequency of the use by the public of Rowden Lane in vehicles;

(i) the purpose or purposes for which the public used Rowden Lane;

(j) whether parking was possible on the verges or on the Lane,

(k) the installation and the subsequent covering up of a passing bay in the verge outside the paddock owned by Swallow Falls.

25. Given the multiplicity of issues, the number of witnesses who have given oral evidence on some or all of them, and the four principal properties and families (Swallow Falls/First Claimant; Brookfields/Second and Third Claimants; Elm Tree Farm/Jennings family; and The Bungalow/Gibbons family) involved with modern user, I have had to devise a method for dealing with all this material.

26. I begin my analysis of modern user, albeit against a background of earlier Ordnance Survey maps, by dealing with the undisputed evidence of Mr Vaughan, a surveyor, and Mr Price, the Area Highways Engineer.

27. I then analyse the evidence and issues concerning modern user on a property by property basis, starting with Dick Jennings and Elm Tree farm, since Dick Jennings had allegedly challenged unauthorised users of the Lane, removed a ‘Private’ sign, claimed the road was wholly private and privately maintained and had been aggressive and violent in upholding the Lane's private status.

28. Thereafter, I deal with the brother of Dick Jennings, Will Jennings, who was the previous owner both of Brookfields and Swallow Falls. Then I move on to consider in detail Swallow Falls and Brookfields, currently owned by the Claimants. I end my review of the principal properties with the evidence of the Gibbons family, the first family to occupy a home in Section B of Rowden Lane.

29. Having dealt with the four principal properties and the occupying families, I then review the other, often conflicting, evidence on modern user called by the Claimants and the First Defendant.

30. After dealing with my conclusions on section 31 of the Highways Act 1980 (in chapter 13), I discuss dedication and acceptance of Rowden Lane as a highway at common law (chapters 14 - 20), the width of the highway (chapter 21) and the effect of the Natural Environment and Rural Communities Act 2006 (chapter 22).

31. Chapters 23 and 24 contain my summary findings of fact and my overall conclusion.

Properties on the north side of Rowden Lane

32. Walking from the A4 Bath Road towards the cattle grid, one passes, on the north (nearside) of Rowden Lane:

(i) the public house (Rowden Arms/Hungry Horse);

(ii) its car park;

(iii) a road leading to numbers 83, 85 and 87 Rowden Hill (end of Section A);

(iv) The Bungalow and its adjacent land;

(v) fenced rear gardens of properties on the Burleaze estate;

(vi) a footpath running from Burleaze (adjacent to No. 22) across Rowden Lane;

(vii) more fenced rear gardens of the Burleaze estate; and

(viii) the cattle grid (end of Section B).

Properties on the south side of Rowden Lane

33. Walking from the Bath Road towards the cattle grid, one passes, on the south (offside) of Rowden Lane:

(i) the boundary wall (with built in Royal Mail letterbox) and back garden of Alma Villa, located at the corner of Rowden Lane and Bath Road;

(ii) a bridge under which flows a brook;

(iii) Coppice Close, a roadway leading to a small estate, built, at least in part, on land once forming part of Brookfields; (end of Section A);

(iv) a round metalled post embedded in the carriageway adjacent to a boundary wall; next to cottages at Rowden Place;

(v) a group of cottages fronting the Lane, called Rowden Place;

(vi) the old driveway into Brookfields (now leading to further residential development within what had once been the part of the original holding of Brookfields);

(vii) the new driveway and hardstanding (built in 1978) leading to the current and reduced site of Brookfields;

(viii) the paddock (belonging to Swallow Falls);

(ix) Swallow Falls;

(x) a driveway leading, on the left, to the entrance to the caravan storage park at Elm Tree Farm, on the right, to a derelict workshop for assembling double glazing, and, straight on, to open fields;

(xi) Elm Tree farm (now caravan storage);

(xii) Elm Tree Farmhouse;

(xiii) a bridleway leading from the Lane to the south;

(xiv) the Old Piggery; and

(xv) The cattle grid (endof Section B)

**Chapter 2: Procedural history**

34. The Claim Form in this case was issued on 22 August 2006 in London, two weeks after the First Defendant removed obstructions from the verges outside the Claimants' homes at Swallow Falls and Brookfield in Rowden Lane. However, the seeds of this dispute were sown over 50 years ago, although its most recent history begins in the second half of 2001, with the Claimants' opposition to planning proposals for residential development in or near Rowden Lane.

35. The Claimants applied for an interim injunction on 31 August 2006 before Mr Justice Etherton. That application was adjourned to the trial, and the case was transferred to Bristol. The trial was due to take place in Bristol in October 2007. Unfortunately, no suitably qualified judge was then available in Bristol, and, despite a judge and court being made available at the Royal Courts of Justice to hear the case on the trial dates, there was an objection to that transfer, and the case was adjourned for trial before me. The original time estimate for the trial was four to five days.

36. Following the adjournment of the trial, Taylor Wimpey UK approached the First Defendant to enter into an agreement pursuant to section 278 of the Highways Act 1980 to enable it kto do sufficient work to preserve the planning permission which it had obtained in 2002. On 12 November 2007, the Claimants applied for an injunction restraining the First defendant from entering into the agreement. This was resolved by consent at a hearing before me on 27 November 2007 by Taylor Wimpey UK giving undertakings limiting the scope of work to be done by them and being joined to the action.

37. However, after the trial had been adjourned, extensive amendments were made to the parties' pleadings, numerous additional witness statements were prepared and, quite late in the day Mr Laurence QC was instructed to lead on behalf of the First Claimant. This resulted in a fairly radical overhaul of the Claimants' case.

38. The trial took place before me on 7, 10, 11, 13, 14, 17, 18, 19 and 20 November 2008, and on 15, 16 and 17 April 2009. There was a subsequent interlocutory hearing on 24 April 2009, a site view on 13 August 2009. Two days, 28 and 29 October 2009, were allocated for final oral submissions. These last two days were not required in the end because all closing submissions were made in writing and because, shortly before 28 October the parties agreed an order dealing with a previously contested application to amend the First Defendant's pleadings.

39. The trial was characterised by numerous applications to amend pleadings, new oral and written evidence and almost daily requests for rulings. Understandably, Mr Laurence QC, who came into the case late in the day, was obliged to consider the case afresh and to bring his own legal analysis to bear on the voluminous and expanding documentation in the case. Frequently, this required Mr Burns to deal with requests for further disclosure, new arguments and materials, often at very short notice, whilst having to present his case largely unassisted. At the very least, this background helps to explain the plethora of pleadings in the case.

40. The Claimants' closing written submissions were dated 19 June 2009, 1 September 2009 and 18 September 2009. The First Defendant's closing submissions were dated 21 July 2009 and 11 September 2009.

## Chapter 3: Evidence

Documentary and oral evidence

41. In addition to hearing oral evidence from some twenty five witnesses, two of whom were experts in the interpretation of historical documents, I also received written evidence from a number of witnesses which was either undisputed or admitted under the Civil Evidence Act 1995, amongst whom were the First Defendant's Area Highway Engineer and an expert surveyor instructed by the First Defendant. A transcript of the proceedings at trial was prepared each day, and made available to me on the following day.

42. I have also had to consider a mass of historical documentation set out in greater detail in this judgment. It included over 15 maps and plans dated, between 1669 and 1910, as well as more modern maps and plans dated after 1910.

43. Two of the fourteen volumes comprising the trial bundle were dedicated to private conveyancing documentation concerning a number of properties in the vicinity of Rowden Lane, covering the period between 1820 and the 1990s. A further volume contained details of planning applications and the planning history of properties on Rowden Lane from the 1960s onwards.

44. Moreover, I had the advantage of reading Council Minutes, learned publications, extensive correspondence, Council files, as well as decisions by Inspectors and road maintenance records.

45. My understanding of the locality has been greatly assisted by the large number of photographs, aerial and otherwise, and by the DVD of the Lane made during a drive along it by Kevin Fortune, the son of the First Claimant.

46. However, as is so often the case, I derived great benefit from the site view on the afternoon of Thursday, 13 August 2009, which I conducted in the presence of Mr Burns, Ms Clark and a member of the Court staff. Unfortunately, extensive roadworks were being carried out on and in the vicinity of the Bath Road at the time, and, as a result, the A4 was closed to virtually all traffic. Accordingly, only minimal vehicular use of Rowden Lane was observed, although we did observe a number of people walking dogs along sections A and B to the fields beyond and back again. We were granted vehicular access by special arrangements made by the Highway Engineer.

Site view

47. First, we walked the full length of sections A and B, starting from Alma Villa at the corner of the Bath Road and Rowden Lane, up to the cattle grid.

48. During the site view, counsel pointed out to me, at various times, the features of the Lane, its surface, verges (raised and otherwise), walls, hedges, fences, drains, ditches, telegraph poles, electricity cables, gates (opening inwards and outwards), a metal pole next to Rowden Place Cottages, kerbstones, stones and blocks on the verges and driveways (Brookfields), the gate giving access to Brookfields where an alleged assault occurred, road signs, inspection covers, driveways (old and new), hardstanding, old (now derelict) workshop at Swallow Falls, the bridge opposite the public house, the bridge over the A4 at Rowden Hill, new development, the Rowden Cottages and their proximity to the Lane, the old field gate between Swallow Falls and Brookfields, the passing bay (covered up), the spur roads, The Old Piggery, the width of the verges in general and by the cattle grid in particular, as well as other matters, on which each placed reliance. This was a walk between points M-H-CG on plan GL1.

49. Passing the cattle grid, we walked along sections C and D, between points CG-K-L on plan GL 1. My attention was drawn to one verge higher than the other at point K,

limiting or preventing reversing, and to the stile on the nearside leading to a public footpath at point L. We went as far as the new development at Rowden Farm and then retraced our steps to approximately point K, where we walked up the fields (Home Down and the Cunniger) to join the southern end of the Gypsy Lane in the area around point T. There is new development in this area, including Charter Road. Gypsy Lane is now a single track, narrow and overgrown lane which emerges onto the A4, at point P, opposite Ivy Park House where Mrs Burridge lived.

50. We then retraced our steps down Cunniger and then crossed the field diagonally and joined the footpath leading to the hospital at approximately point U on GL1. We emerged from the hospital grounds on to Rowden Road, and we looked at the cul-de-sacs where Burleaze met the field Home Down. It was plain to me that there was parking available in Charter Road and on Burleaze for those who wished to access the fields beyond on foot.

51. Finally, we walked along the footpath adjacent to number 22 Burleaze and into Rowden Lane, where we retraced our steps back down to the bridge in Section A.

52. This is not meant to be an exhaustive recital of everything that was pointed out to me, but it suffices to show the extent of the view which was conducted over a period of approximately two hours.

Written Submissions

53. I have had the advantage of detailed written opening, closing and supplemental submissions. They were necessarily lengthy, complex and wide-ranging. I have considered all these submissions, as I have all the evidence. My decisions are based on all this material, even if it is not specifically mentioned in this judgment.

## Chapter 4: Surveying evidence

54. As I indicated above, I begin my consideration of the modern user of Rowden Lane by considering the evidence of Mr Vaughan, a surveyor, and Mr Price, the Area Highway Engineer, neither of whom gave oral evidence before me.

55. Garry Vaughan is a Member of the Institute of Civil Engineering Surveyors. He was instructed by the First Defendant to consider the extent, spatial organisation and relationship of the various features depicted or referred to in various maps, photographs and documents.

Topographical Survey

56. On 7 September 2006, he carried out a site investigation of Section B of Rowden Lane (then, the only Section in dispute) which, according to current highway records held by the First Defendant, is an unclassified county road. He observed:-

1. A wall built of brick and stone which projected into the lane at the commencement of the northern verge outside The Bungalow. The wall gave the impression of private ownership. The width of the carriageway at that point is 5.5m.

2. The southern verge commenced a short distance beyond the projecting brick and stone wall.

3. There appeared to be a drain or sewer laid beneath the southern verge. Three inspection covers were observed.

4. Along sections of the southern verge there were located utility company poles and stay wires.

5. The width of the lane (with verge) was reasonably consistent. Widths measured varied from 11.3m to 13.25m.

6. The oldest feature visible on site was believed to be the hedge and bank with mature trees which bounded the lane on the north side for most of the section in dispute, namely Section B.

7. With the exception of one or two areas which had been allowed to run wild, Rowden Lane was found to be bounded by clear and strong boundary features on both the north and south sides of the Lane.

8. In places, there was evidence of a change of surfacing within the access points to the properties fronting Rowden Lane. At one place, this change occurred part way across the verge. At two other places, this change took place at the back of the verge, namely after the full extent of the highway.

57. On 9 November 2006, Mr Vaughan returned to Rowden Lane to undertake a detailed measured survey. He used very modern and sophisticated equipment which produced a map of great accuracy. Distances were measured to plus or minus 1mm and the collected data was transferred electronically to a computer which produced a digital survey drawing. The accuracy of the survey drawing prepared by Mr Vaughan was orders of magnitude greater than any other form of mapping already available.

58. The next most accurate form of mapping is that produced by the current Ordnance Survey ("OS") map, at accuracies of around 1m (urban), 2.3m (rural). The accuracy of the detail surveyed by him was better than 50mm (2 inches).

59. Having prepared his own digital survey drawing (4077), he then mapped on to it a series of OS maps, starting with the most recent OS map currently available followed by the 1924, 1900 and 1886 editions. As a result, he produced a number of survey

drawings, each combining his own survey drawing with each of those four OS maps, attempting to obtain a best fit. They form Appendices E1, E2, E3 and E4 to his report.

60. The correlation of data between his map and the most recent OS map is excellent, as illustrated by the correlation of hard features at either end of the disputed length of the track.

61. Comparing his digital survey drawing with the most recent digital OS map, he concluded that Rowden Lane had changed very little over the last 10 years. He then looked back at the earlier maps, starting with 1924, through 1900 and ending with the 1886 map. He found excellent correlation between his own digital survey and the 1924, 1900 and 1886 OS maps too.

62. His conclusion, therefore, was that with respect to the agricultural features, there was a high probability of continuity, suggesting that the current configuration of Rowden Lane has broadly remained the same over the last 120 years.

63. In all three maps, Rowden Lane was shown as a numbered parcel of land of similar area (1.498 acres). Brace marks within the parcel of Rowden Lane for each of the three maps implied that the north and south verges were considered to be part of one and the same parcel of land as the carriageway.

64. In none of those three plans was there any sign of a gate or impediment to public access between Sections A and B.

65. In each of the three OS maps:

(i) the depiction of Rowden Lane was consistent with the current layout of Rowden Lane, namely a carriageway with a verge on either side bounded by fence, hedge or wall at the back of the verge;

(ii) the land south of Rowden Lane was divided into three parcels, the first of which is the equivalent of Brookfield plus Swallow Falls, the second is the modern equivalent of Elmtree Farm and the Old Piggery, and the third is the pathway or driveway which currently separates Swallow Falls from Elmtree Farm on the south side of Rowden Lane;

(iii) the cottages at Rowden Place are present;

(iv) Rowden Lane passes beyond where the cattle grid now stands and continues towards Rowden Farm, where it meets a track projecting up to connect with Gypsy Lane;

(v) Rowden Farm is shown as having entrenchments to the west of the farm and a moat enclosing a section of the farmyard. The farm itself is identified as a site of antiquity.

66. In the 1900 OS map, Rowden Lane is shown as 'shaded' (thicker lines) on both sides as far as the cattle grid. This shading was also found on major roads such as the A4 Bath Road, but was not found on other roads, implying that Rowden Lane shared certain characteristics of the A4 Bath Road. This shading is missing from Rowden Lane in the 1886 OS map. Other roads in the area in 1886, including the A4 Bath Road, showed shading along only part of its length, whereas one (the modern A350) was shaded along its entirety.

67. In the 1886 OS map, the verges on either side of the carriageway of Rowden Lane were depicted as rough pasture. Solid line features to either side of Rowden Lane were depicted with mature trees interspersed along the length of the features. This was typically indicative of a classical agricultural hedge bank with mature trees here and there.

68. His conclusion, which I accept, was that, with regard to the agricultural boundary features, there is a high probability of continuity. This suggests that the current configuration of Rowden Lane has remained broadly as it was over the last 120 years.

Aerial photographs

69. Mr Vaughan studied aerial photographs dated 27 July 1973, 16 May 1964, 10 June 1950 and 14 April 1946 in that order. With the exception of the 1973 aerial photograph, which was a laser printed copy, he was able to form a 3D image of the photographs, which he was then able to examine. The purpose of this exercise was to see what utilities or other items or obstructions were shown on the verges of Rowden Lane in those photographs.

70. The 1973 photograph revealed a configuration of carriageway, verge and hedge similar to that he found at the time of his site visit in 2006. Utility poles were visible and cast shadows across Rowden Lane. He could not see any posts or stones obstructing the verge of Rowden Lane, although he saw two vehicles parked on the southern verge, one a white car and the second a lorry or large horse box. The Second Claimant alleged that the horse box referred to in the 1973 photograph was on the verge outside Brookfields. This is a matter of inference only, because she said they owned a horse box that looked like a lorry from above at that time, rather than a statement made from examining the photograph herself.

71. The evidence of Mr Vaughan was not the subject of any cross examination. Instead, the Claimants chose to deal with Mr Vaughan's evidence in their submissions. Indeed he was not called as a witness. In addition to his report, the following admission was made on behalf of the Claimants, namely that it was Mr Vaughan's honest belief that:-

"*Any stones on the verges sufficiently visible to provide warning would be visible on the aerial photographs.*"

72. The laser printed copy of the 1973 photograph was not quite as clear as a normal photo quality print. The limitations of this photograph were exposed by the fact that it is common ground that staddle stones were on the verge outside The Bungalow in 1973, yet Mr Vaughan could not detect them in the photograph. Moreover, this aerial photograph did not reveal moulded concrete pots which were then on the southern verge outside Elm Tree farmhouse. Accordingly, the limitations of this photograph must be accepted, at least at the level of seeing posts or stones.

73. An aerial photograph of Swallow Falls, taken in about 1976 but not comprised within Mr Vaughan's report, is in the trial bundle. That photograph, taken at a much lower height, does not show (as a later one taken in the 1990s does), any stones on the verges outside Swallow Falls or the paddock. However, I do emphasise that the 1976 photograph, although contained in the trial bundle, was not examined by Mr Vaughan and does not feature in his report.

74. I turn now to the aerial photographs taken on 16 May 1964. At this time, the current public house and its car park did not exist. Instead, a large detached dwelling house stood within a well clipped hedge.

75. In the 1964 photograph (with references to the comparable item in the other photographs):

(i) There was no verge to Rowden Lane opposite Rowden Place;

(ii) No gate or obstacle to public access to Rowden Lane was shown, and there was free and unimpeded vehicular access along Sections A and B of Rowden Lane. The position was the same in 1950.

(iii) Telegraph poles were clearly spaced out along the length of the southern verge of Rowden Lane, although in 1950 the only telegraph pole was that

adjacent to the garden of Rowden Place. In 1946, even that telegraph pole was not visible;

(iv) The grass verge on the northern side of Rowden Lane was very much as it appears today. I accept that, in 1964, there were six white stones on the verge outside The Bungalow, five of which were west of the access drive near to the edge of the carriageway in what seemed to be an attempt to protect the verge.

(v) By the old (pre 1978) access to Brookfield, he could identify an area of wet gravel, where someone appeared to have left a hosepipe running, and he could see one clearly visible white stone set about 3m from the gable end of the westerly shed on Brookfield. Other than that single stone, the southern verge of Rowden Lane outside Brookfields was unobstructed in 1964. Two small white stones were set on the grass rectangle near to the carriage of Rowden Lane outside Swallow Falls in 1964. In 1950, both the northern and southern verge of Rowden Lane were unobstructed and, except for one or two small trees or bushes within the verges, the position was the same in 1946.

(iv) The carriageway of Rowden Lane appeared to have a gravel surface which ran seamlessly all the way from the A4 to the area where the cattle grid now is. There was, however, a marked change of character of the surface beyond the current position of the cattle grid (Section C), with grass growing in the middle of the track, indicative of less frequent vehicular use or infrequent maintenance. In 1950, the carriageway of Rowden Lane also appeared to have a gravel surface, again running seamlessly all the way from the A4 to where the cattle grid now is. There was no cattle grid there in 1950, nor any marked change in character in the surface on Section C,

nor any grass growing on the running surface. In 1946 too, the carriageway of Rowden Lane appeared to have a gravel surface seamlessly running from the A4 to the end of the disputed section namely where the cattle grid now is.

(v) He was unable to see a cattle grid in the 1964 photographs, though he accepted that the area might have been affected by shade.

(vi) The southern verge of Rowden Lane appeared to be rough pasture in 1964, not the neat clipped lawn that it was in 2006 and still is today. In 1964, the boundaries of Rowden Lane were neat, well maintained hedges with several mature trees spaced along the line of the hedge. In 1950, both the north and south verges of Rowden Lane appeared to have been rough pasture and, although the boundaries of Rowden Lane in 1950 were also shown by mature hedges, only one mature tree was visible in the northern boundary. The hedges in 1950 were not as neat and clipped as they had been in 1964. In 1946, the hedges bounding Rowden Lane appear to have been quite well defined and neat, certainly neater than was visible in 1950.

(vii) The first field east of Brookfields was slightly different in 1964 from today. Whilst the hedge fronting Rowden Lane appeared to be consistent with that which exists today, the field was divided in two in 1964 by a fence which ran south south west from the eastern gate post found 65m from the Brookfield boundary. This gate is still in place today.

(viii) There was a small lay-by or passing place directly in front of the gate 65m from the Brookfield boundary in 1964. That gate was also clearly visible in the 1950 photographs but, by this time, there was no longer a passing place in front of that gate in 1950.

(ix) There was a service cover in front of the gate and tight against the edge of that passing bay in 1964. The service cover was in the same location as the modern service cover 'IC' shown on drawing 4077. In 1950, there was no sign of a service cover in the verge outside the gate 65m east of Brookfield.

(x) By 1964, all the properties relevant to this dispute had been built on Section B of Rowden Lane.

76. Swallow Falls in 1964 had two points of access onto Rowden Lane, divided by a small rectangular area of grass, virtually identical to the current day arrangement. Two small white stones were set on the grass rectangle near to the carriage of Rowden Lane in 1964. This was when Will Jennings, not the Fortune family lived there. Swallow Falls did not exist in the 1950 or 1946 photographs, although, in June 1950, the land was still used as an agricultural field and was bounded by a hedge. That hedge appeared to be consistent with that visible in 1964 and today.

77. In 1964, the first section of Elm Tree Farm, east of Swallow Falls, mostly comprised agricultural buildings and sheds, and the farmyard was bounded by a concrete block wall very similar that which exists today. A lorry or large trailer was parked on the verge next to that concrete block wall in 1964. In 1964, the hedge dividing Rowden Lane from Swallow Falls appeared to be the same hedge that in part remains on site today. In 1950, Elmtree Farm existed only as a series of farm sheds and buildings at the eastern end of the site, and the buildings were only 20-25% of those buildings which existed in 1964. This is indicative of substantial development over the period 1950-1964. In 1946, there were no buildings at Elmtree Farm.

78. The Burleaze estate was under construction in 1964. Even numbers 2-12 appear occupied, and numbers 30 and 32 were just about to have the roof constructed. The

land east of No 32 Burleaze was still farmland in May 1964. Burleaze was not built in 1950 in any form. It was merely open farm land.

79. At the eastern end of Rowden Lane and on the southern verge, farm buildings were located in 1964. This corresponded with the Old Piggery site. There was a number of large sheds packed very closely together where animals, probably pigs, were visible in the pens. The entrance to those farm buildings appeared to have been well used in 1964, as did the entire length of Rowden Lane to that point.In 1950, the eastern end (Old Piggery) comprised a small development of one or two farm buildings which were accessed at a different point to that visible in 1964. However the buildings in 1950 appeared to have received regular vehicular traffic.

80. I accept Mr Vaughan's evidence and analysis of the photographs.

Configuration of the highway

81. Rowden Lane is a carriageway on either side of which is a verge, within which are positioned public utilities. However there is very little, beyond Section A, in the way of street furniture, road sign, lamp posts and the like.

Position within the road hierarchy

82. In modern estate terms, roads serving less than five residential properties can be designated as private drives. Roads which serve as through routes or distributors to other roads are usually in public maintenance, as are roads which serve more than five properties.

83. Currently, Rowden Lane is classified as an unclassified county road which, in Mr Vaughan's opinion, was consistent with the level and nature of the traffic using Rowden Lane. Including the properties at Rowden Farm, Section B of Rowden Lane

serves 12 postal addresses. Mr Vaughan's opinion was that that number of properties should be or deserved to be served by a public adopted highway. He considered it would be inappropriate for such a number of properties to be accessed only by a private road, given the inevitable problems in maintenance to which it would give rise. Lack of maintenance in turn raised issues of safety, public health and the need for police, fire, ambulance and refuse services to have proper access along the Lane. He considered that planning permission has been granted to a number of properties which would have been refused had the status of Rowden Lane been private.

84. None of this evidence was challenged, although it was the Claimants' case that much of Mr Vaughan's evidence, including that dealing with Rowden Lane's position within the road hierarchy, lay outside his professional competence. Nevertheless, I regarded Mr Vaughan's evidence as helpful background information, but of course it is for me, and not Mr Vaughan, to decide the status of Rowden Lane on the totality of the evidence.

The Definitive Map

85. In Appendix E5 to his report, Mr Vaughan reproduced the areas identified upon the 1953 Definitive Map onto a reduced copy of his base plan. He also extracted the dimensions identified on the Definitive Map Statement of 1 May 1953. There is, however, an anomaly with the 182 metre dimension, referred to on the Definitive Statement, running from the cattle grid in the direction of Footpath 1 shown on the Definitive Map. This anomaly highlights the potential unreliability of local authority records, such as the 1974 records (discussed later) held by Chippenham Borough Council before the First Defendant became the Highway Authority.

86. Mr Vaughan made the point that tasks such as the colouring or measuring of plans were left to junior clerks unaware of the legal significance that one day might be placed on a particular scaled dimension or on a particular block of colour.

87. However, what is of significance is that the Definitive Map of 1 May 1953 shows the entire length of Rowden Lane, Sections A and B, to be a full public highway.

Conveyances and plans

88. Having considered the conveyance, and the plan attached thereto, of Swallow Falls to the Fortune family on 24 July 1970, Mr Vaughan concluded that the property conveyed, as described in the conveyance and plan, did not include any part of Rowden Lane or its verges. Having carried out a similar exercise in relation to the conveyance dated 30 September 1963 of Brookfields to Mr Ayres, he also concluded that the conveyance of Brookfields did not include any part of Rowden Lane. He examined the agreement dated 27 October 1977 with Langcote (referred to elsewhere in this judgment) and to the plan attached to it. Again, it was quite clear from that document that Brookfields did not include any part of Rowden Lane.

89. He also considered the conveyance, dated 3 October 1946, of Rowden Farm to Mr and Mrs Burridge, which transferred to the purchaser:

*…so far as the Vendor has power to grant the same… full right and liberty for the purchaser… over and along the lane or roadway known as Gypsy Lane… and …on the said Ordnance Survey map and leading from Field 171 on the said map… to the main Bath Road…*

90. The second part of this quotation relates to Rowden Lane. Again, he concluded from that conveyance that the land conveyed did not include ownership of any part of Rowden Lane.

91. The last conveyance which Mr Vaughan considered was dated 4 December 1919. It related to a conveyance of what was then known as Rowden Estate, coloured pink on the plan attached to the conveyance. The land south of Rowden Lane - including Brookfields, Swallow Falls, Elm Tree Farm, and the Old Piggery and beyond the cattle grid to include Rowden Farm, as well as land on the northern side of Rowden Lane (excluding The Bungalow) – once formed part of this estate. That plan indicated that part of Rowden Lane fronting Brookfields and Swallow Falls fell outside the Rowden Estate, and so could not have derived rights from it.

92. Elm Tree Farm and the Old Piggery, together with Rowden Farm were part of the Rowden Estate, as were those parts of Rowden Lane abutting them.

93. I accept Mr Vaughan's evidence on these documents, although their interpretation is a matter of legal argument. I consider the conveyancing history of the area in chapter 17 of the judgment.

Wayleaves and Foul Sewer

94. Mr Vaughan examined Wayleave Agreements for electricity supply, dated June and November 1954, to which W H Jennings was a party. The first concerned Alma Villa and the second concerned Swallow Falls. A third agreement, dated October 1954, involved F H Gibbons, and again dealt with electricity power supply. These agreements gave the electricity company the right to go over private land owned by W H Jennings and F H Gibbons. However, these did not relate to the disputed Section B of Rowden Lane, in respect of which no Wayleave Agreements had been made. On the contrary, utilities in the verges and running along Rowden Lane appear to have been installed under statutory provisions, on the basis that Rowden Lane was a public highway.

95. As far as the foul sewer was concerned, the records of Wessex Water show a public adopted foul sewer running along Rowden Lane from Elm Tree Farm to Rowden Place. Some of the service covers for that system have been shown on drawn 4077. Wessex Water holds no private easement documentation in respect of the sewer laid in Rowden Lane.

96. I accept this evidence.

Conclusions of Mr Vaughan

97. The conclusions of Mr Vaughan, which I accept, are:

1. The width of Rowden Lane west of Elm Tree Farm has remained constant since 1886. Individual trees and hedge shrubs may have come and gone but there was no mapping evidence to suggest that the hedge bank which exists today has been moved.

2. Brace marks on 0S maps suggest that Rowden Lane has historically been considered as one parcel.

3. There is no indication since 1886 of any gate or obstruction to public access along Section B.

4. The aerial photographic evidence illustrated four main points:

   (a) lack of obstruction on the verges;

   (b) the apparent growth and development of Brookfields Farm;

   (c) the existence of public utilities since 1964;

(d) the seamless nature of the surfacing of Sections A and B of Rowden Lane between 1946 and 1973.

5. The logical conclusion was that whoever was responsible for the servicing of the most westerly section of Rowden Lane (Section A) was probably responsible for the surfacing of the disputed section.

6. Between 1946 and 1973, the evidence would tend to suggest that stones or other obstacles on the verges were minimal in nature. Moreover, apart from the single stone reported outside Brookfields, there is no support to the Claimants' contention that they had substantially obstructed the verge in front of Brookfields during the period 1963 to 1973. Nor is there any photographic evidence that, since 1963, the Ayres family fenced off the verge with wire fencing. Indeed, the 1964 photograph was of sufficient clarity to reveal such features had they existed.

7. A review of all the conveyancing documentation suggests Brookfields and Swallow Falls did not own any part of Section B of Rowden Lane or its verges.

8. The existence of a large number of services and utilities within Rowden Lane itself is consistent with it having public status, as is the history of development of properties accessed from it.

98. Mr Vaughan referred to his experience over the last 15 years with land disputes, where he had noticed a tendency for members of the conveyancing profession to adopt a "belt and braces" approach towards issues that are not documented perfectly. For example, where the public status of particular streets has been in doubt, statutory declarations have sometimes been taken from longstanding 'vendors' asserting their established rights once and for all, even if history indicated that the way had been a public highway all the time. In other words, the description of private rights over a

particular street does not mean that public rights do not exist. This reflected no more than caution by those responsible for preparing conveyances.

99. Twentieth century conveyances both of Brookfields and Swallow Falls show that, when conveyed, they did not expressly include any part of Rowden Lane, its carriageway or verges.

100. Although I have set out at considerable length the detailed and complex evidence of Mr Vaughan, it should be noted that the Claimants' case is that there would be no need to set out in detail all the private rights enjoyed by these properties over the verges and carriageway of Rowden Lane in modern conveyances, since they would be deemed to be transferred in any event, without the need for complex wording, under Section 62 of the Law of Property Act 1925.

## Chapter 5: The undisputed evidence of the Area Highways Engineer

101. Kristian Price has been the Area Highways Engineer responsible for Rowden Lane since February 2006.

### Removal of objects in August 2006

102. He was responsible for overseeing the removal of items from the verges outside Swallow Falls and Brookfields, for the second time, on 8 August 2006. On this occasion, they removed three formed concrete bollards, two half kerb stones, six white wooden posts, one white metal post and fourteen white plastic posts with metal bases. The position of these stones and posts was shown in the plan 'KP1', at page 694, and in the photographs at page 698, in Volume 2.

Passing vehicles

103. When these items were being removed, Mr Price photographed cars trying to pass on Rowden Lane, some 25 metres east of Brookfields. At this location, the metal carriageway was 3.5 metres wide and the width of the 2 passing vehicles was 4.06 metres. As a result, one vehicle had to use the verge to pass.

104. He measured the varying widths of the carriageway on Rowden Lane, which ranged between 2.76 metres and 4.6 metres wide. On his plan KP5, at page 700, he marked the position of foul sewer manhole covers, telegraph poles and manholes.

105. Given the varying width of Rowden Lane, modest at the best of times, passing vehicles would have to use the adjacent verges to pass and re-pass. This was all the more the case when caravans used Rowden Lane to gain access to Elm Tree Farm Caravan storage area, and when ordinary cars encountered tractors, agricultural and refuse vehicles.

Utilities

106. Mr Price made some enquiries into other wayleave agreements. He discovered a wayleave agreement with BT for Brookfields, but none for Swallow Falls. This accords with the First Defendant's view that the telegraph pole, currently positioned well within the boundary hedge or fence of Brookfields, did require a wayleave agreement to permit its installation, whereas the pole adjacent to Swallow Falls did not require a wayleave agreement as it was within the public highway.

Correspondence

107. Mr Price reviewed some correspondence, all of which is dealt with elsewhere in this judgment, emanating from the Fortune family which, on its face, is broadly inconsistent

with that family's contention that the verges outside their property belonged to Swallow Fall and were private.

Modern maintenance

108. Finally, he carried out some investigation in to maintenance records for Rowden Lane.

109. Different recording systems had been used over the 20 year period preceding his witness statement in August 2007. Highway maintenance records are now kept for only 5 years. However, Mr Price has been able to recover some records within that period for Rowden Lane. The whole length of Rowden Lane, Sections A and B, were inspected, and no defects were found on:

(a) 17 October 2003;

(b) 19 April 2004;

(c) 18 October 2004;

(d) 28 April 2006;

(e) 23 October 2006; and

(f) 25 April 2007.

110. The record sheets for those inspections are set out at pages 729-733 inclusive in Volume 2.

111. On 28 October 2005, an unknown enquirer telephoned to complain about stones on the verge and a home made 'No Parking' sign on the southern verges of Rowden

Lane. This prompted a visit by a Council employee to Rowden Lane on 31 October 2005 to look at these items.

112. Accordingly, although the record is incomplete, there is a record of safety inspections of the entire length of Rowden Lane on those dates and an inspection of Section B on 31 October 2005.

113. Mr Price also produced memorandum, dated 29 March 1983 which indicated that the First Defendant was giving consideration to resurfacing Rowden Lane in 1983/1984, should funds be available. Although I deal with the matter in greater detail elsewhere in this judgment, there is also correspondence from the First Defendant indicating that it had carried out surfacing work on Rowden Lane in 1988 and 1989.

## Chapter 6: Elm Tree Farm and the family of Richard Francis ("Dick") Jennings

114. Dick Jennings was born in or about 1918, and died in 1999. His widow, Phyllis Mary Jennings, celebrated her 95th birthday on 17 April 2009. After they married, they lived at 2 Rowden Road, an adjacent road running parallel with Rowden Lane. Their eldest child, Mary (Mary Puntis), was born on 26 November 1943. They have 3 other children Richard ("Little Dick") born in 1946, Carol and the youngest, Martin, born in 1957.

115. On 31 March 1945, Dick Jennings purchased the land on which he subsequently built Elm Tree Farmhouse and Elm Tree Pig Farm. In 1953, the construction of Elm Tree Farmhouse was completed, and the family moved in.

116. In 1993, the pig farm closed completely, and the farm area is now used by Martin to run his caravan storage business.

### Planning History of Elm Tree Farm

117. The planning history for Elmtree Farm includes the following:

(i) 2 November 1981: planning permission granted for the use of agricultural land fronting Rowden Lane to be used for storage of up to 25 touring caravans;

(ii) 7 September 1987: planning permission granted for change of use of part of the farm to caravan storage. It was a condition of permission that this use should cease on 7 September 1990;

(iii) 25 April 1988: planning permission granted to change of use of a redundant farm workers mess room to light industrial use – This may have been connected with the packaging business run by Martin Jennings;

(iv) 30 October 1989: planning permission granted extending the area of the caravan storage park. This contained the condition:

*Prior to the commencement of the use of the site for the storing of caravans the approved passing bay shall be constructed in accordance with the details hereby permitted.*

This permission allowed an additional 14 vans to be stored.

(v) 1990: planning permission for an extra 25 caravans.

(vi) 19 August 1993: permission for a further 64 vans, permitting a total of 128 caravans. This permission required the passing bay to be extended.

<u>Mary Puntis</u>

118. Mary, a retired School Teacher, was at Teacher Training College between 1962 and 1965. However she returned home during holiday times, and often at weekends. Elm

Tree Farm was her home until she married in December 1967. Between 1968 and 1970, she and her husband lived in Southampton, but they returned to Chippenham in 1970. Between 1972 and 1979, she and her husband lived in Burleaze, the new estate built in the late 1960s which backed on to Rowden Lane. In 1979, she and her husband moved to Saltersford Lane, one mile from Elm Tree Farm, and she still lives there.

119. She worked part time at the farm between 1970 and 1980 and taught two nights per week. She then taught full time between 1980 until she retired in 2003.

120. She has enjoyed a very warm, close, loyal and supportive relationship with her parents throughout her life. Not only did she work for her father on the farm, but also she wrote letters for him. She cut her mother and father's hair and, latterly, she used to play skittles with her father every week.

121. I am perfectly satisfied that she had a well balanced view of her father's character and personality. She was realistic about him, and was fully aware of his strengths, weaknesses and propensities. As the eldest in the family, a professional, and the writer of her father's correspondence, I am satisfied that she had the most detailed knowledge, amongst her siblings, of her father and of his views and opinions.

122. I regarded her as a reliable and accurate witness of transparent honesty, in whose evidence I could find no taint of bias or quest for financial gain.

123. Following Dick's death, her brother Martin (who used to run his packaging business at the farm, but now runs it elsewhere) inherited the caravan site. Under his mother's will, he is due to inherit Elm Tree Farmhouse too. I cannot therefore see how Mary stands to gain materially from the outcome of this case. Moreover, her brother Martin has no plans to sell Elm Tree Farm. He has already turned down a very significant offer from developers to purchase it. His intention, if and when he acquires the farmhouse, is to

demolish it, and to build his new home there. He will rely on the caravan storage business to provide his pension income.

124. Martin currently lives at 1 Rowden Place, the cottage nearest the A4. It is opposite the public house, and close the end of section A. He moved there in 1980, when he married.

125. Mary's sister, Carol, has not been a witness in this case. She was mentioned by Mary only to inform the court that she did have a sister. She had worked on the farm for seven years before she left in 1970, when she married.

Assessment of Dick Jennings

126. I unhesitatingly accept Mary's assessment of her father. He was never violent in the home. He never smacked her, although he would give her 'the rough end of his tongue'. She said that he could be cantankerous, but never violent. She rejected, and I find rightly so, some of the allegations which were made against her father. In particular, I reject the suggestion that he drove at any one with his tractor, or went for Mr Pullin with a pitch fork.

127. I am perfectly satisfied that had either of these events occurred, they would have been so notorious in the locality that she would have heard about them. Nor is it a case of these incidents being known to her mother, but concealed from Mary. I accept Mary's evidence that her mother had never heard of any such suggestion either.

Challenges to non-residents

128. I find that Dick Jennings did not challenge users of the lane, or chase people off from using it, because Rowden Lane was *private*. I accept, however, that there was a period of time, around 1965, when he got cross with lorry drivers who drove down Rowden

Lane, having been led by a poorly located road sign to believe that they had turned into the B4528, the road to Lacock. One of these lorries damaged his wall when trying to turn round and go back. I shall deal with this period more fully when dealing with road signs.

129. I also accept that he objected to people parking in the passing bay which he installed in the verge in front of the paddock shortly after 1989, and which he was required to extend in 1993, as a letter written by his planning consultant to the Chief Planning Officer, on 23 March 1983, indicated:

*My client has agreed to extend the passing pay by 3 metres. Drawing enclosed. My client has found that this passing bay has been used for short and long term parking and its efforts to stop it happening has ended in his being personally threatened with physical damage.*

130. Of course, at the time those comments were made, neither Dick Jennings nor the planning consultant could have known that, years later, there would be an issue in this litigation over whether the general public drove cars over, and parked on, Section B of Rowden Lane.

Mrs Jennings

131. Mrs Jennings has not given evidence. She could not deal therefore with an alleged conversation which Ms Ayres said she had with her in 2002, in which Mrs Jennings is supposed to have accepted that the lane was private. Ms Ayres produced a note of that conversation (14/41).

132. I am not satisfied that Mrs Jennings went beyond making the point that the Lane had been *maintained* by the residents. I am not satisfied that she was saying there were no public vehicular rights over the carriageway or the verges. It is so wholly inconsistent

with what I find was the well known and long held view by Dick and Phyllis Jennings, namely that Rowden Lane was a full public highway, 'privately kept'. I consider it to be improbable, given the views expressed by her husband, both orally and in writing, that the Lane was public, that she would ever have said that the Lane or verges were wholly private.

Dick Jennings's view of the status of Rowden Lane

133. I give two examples of Dick Jennings's view of the status of Rowden Lane.

134. The first is contained in a letter, probably dated about March 1983, which Dick Jennings wrote to JP Davies, the County Surveyor, at the Highways Department, Wiltshire County Council. It read:

*Dear Sir,*

*With reference to the last paragraph of your letter, I would like to point out that I have contacted your office on 3 separate occasions regarding the condition of Rowden Lane.*

*On the third occasion, some 18 months ago, I received a visit from an engineer at Wooton Bassett. His inspection of the lane supported my view that repairs were urgently needed but that the council did not have the funds to carry out the work.*

*I remember that many years ago, perhaps 40 years ago, the council posted a notice in the lane which stated that they were taking over responsibility for the upkeep. Since that time, little or no upkeep has been undertaken, and surely now some funds should be made available after all this time.*

*There are places in the lane, where it can be clearly seen that vehicle sumps and axles have been striking the surface, causing damage to the vehicles and further*

*deteriorating the surface. The surface is further deteriorating with every thunder storm and frost.*

*In addition, some 3 weeks ago 2 vehicles were involved in a collision which was caused in part by trying to negotiate the best course in the lane.*

*Since my efforts over the years, to improve the condition of the lane, have fallen on deaf ears, I have decided never again to have any private interest in the matter.*

*Furthermore, should any of my vehicles suffer any damage as a result of the condition of the lane, I shall present the council with the repair bill.*

135. That letter was passed by the County Surveyor to the Area Highway Engineer who, in a memorandum dated 29 March 1983, wrote:

*"With reference to your memo dated 10 March 1983, I consider that it will be prudent to place the road on my list of roads requiring surfacing during the year 1983/84 should funds be available and to give it reasonably high priority although I would not consider the surface to be a problem to vehicles at the present time, having regard to the unclassified nature of the road".*

136. The second example of Dick Jennings view is set out below in his letter, dated 1 July 1983, to the Department of the Environment in support of his appeal against a refusal to permit a further 25 caravans to be stored at Elm Tree Farm, in addition to the 25 permitted in 1981. There had been an objection to this application in 1983 by the Second Claimant, Ms Ayres. Addressing her specific objection, he wrote this:

*<u>Reference letter from Ms R P Ayres</u>*

*Ms Ayres lives in a bungalow which is set well back from the lane and is screened from the lane by mature trees. Her view of the lane is therefore very restricted. She*

*does not drive a car and therefore her practical interest in the lane must be minimal. She is incorrect when she says that the lane is not a council road. It is a council road and has been for 30 years or more. You may obtain confirmation from this from the Highway Department. Her entrance to Rowden Lane is at the lower end where it widens into Rowden Place which is 5.5M wide with a footpath. In view of this, and the fact that she has submitted 2 letters, I consider that the information she has presented to you to be unreliable.*

137. In the same letter, he made another comment which is said to be inconsistent with this view. He said this of the Council's submission:

*"Ref para 5.1*

*I find this statement very interesting. Are the council trying to imply that this is a well used public footpath? I have lived in Rowden Lane for over 30 years. Very few people use it as a footpath due, I suspect, to the fact that it does not lead to any where except farms and that not many people enjoy the smell of a pig farm".*

138. It has been suggested on behalf of the Claimants that this comment militates against the argument that Rowden Lane was much used by the public. It is difficult to comment on this, since the document to which the letter was replying is not in the trial bundle.

139. On balance, I think his comment related to Rowden Lane as a whole, rather than the small driveway or path between the entrance to the caravan storage park at Elm Tree Farm and Mr Fortune's workshop at Swallow Falls. This driveway or path does not really lead to farms but to open fields.

140. In my judgment, Dick Jennings was merely indicating that he did not think many people walked along Rowden Lane, presumably in answer to a suggestion that more caravans on the Lane might impede pedestrian access. Whatever it relates to, it does

not negative his view, clearly expressed in precisely the same letter, that the Lane was a full public highway which the Council was willing to maintain.

141. Given these views, and his frustration at previous failures on the part of the Council to maintain Rowden Lane, one can understand how he regarded Rowden Lane as a 'public Lane, privately kept'.

142. Accordingly, I reject the evidence of Kevin Fortune and Mr Soady that Dick Jennings alleged that the Lane was private. It may well be that there was some misunderstanding of his phrase "public Lane, privately kept" where the listener has allowed the reference "to privately kept" to colour recollection. Moreover, the fact that the Lane was privately kept for some periods of time, and not always maintain**ed** in fact by the Highway Authority, does not mean that it was not a highway maintain**able** at public expense. The Highway Authority may simply have had insufficient funds to maintain it, or did not regard it as a priority.

Martin Jennings

143. Regrettably, however, the Jennings family has not spoken with one voice on the issue of whether the Lane was private. In particular, Richard Jennings junior ("Little Dick", born 1946) and Martin (born 1957) have from time to time expressed contrary views.

144. In 2002, the Highway Authority became concerned about stones, posts and other obstructions appearing, or already present, on the verges in Rowden Lane. On 29 April 2002, the Area Highway Officer, Mr Raubenheimer, wrote a letter to the residents of Elm Tree Farm, Swallow Falls and Brookfields, complaining about obstructions on the verges, namely stones in the case of Elm Tree Farm, and posts in the case of Swallow Falls and Brookfields. The letter was in the following terms:

*I am in receipt of a number of complaints about the presence of stones on the highway verge at the above location. In response to these complaints an inspection has taken place and it is noted that there are stones on the verge in front of your property.*

*The road side verge forms part of the highway. Therefore any object placed on the highway verge effectively constitutes an obstruction of the highway. These stones placed on the highway verge are a hazard to users on the highway and could contribute to or cause an accident or injury to users of the highway.*

*I therefore ask that you make arrangements to remove these from the highway verge within 14 days of the date of this letter. In the event that you are unable to do this I will instruct my Highway Maintenance Contractor to remove the objects from the verge and take to tip. You should be aware that the Highways Act 1980 not only empowers me to take this action but to recover the costs so incurred from you.*

*Should you have any difficulty in this matter please contact me at the above address.*

*Yours faithfully*

*Emil Raubenheimer*

*Area Highway Officer*

145. That letter was delivered to Elm Tree Farm, Swallow Falls and Brookfields by Mr Raubenheimer on 30 April 2002.

146. Martin Jennings telephoned Mr IR Gibbons of Wiltshire County Solicitor's Department on 26 July 2002 to discuss, inter alia, this letter. Mr Gibbons made a manuscript note of that telephone conversation, which was subsequently typed. I find it was an accurate record of the telephone conversation. It read:

*I received a telephone call from Mr Jennings of Elm Tree Farm, Rowden Lane, Chippenham at about 1.30pm today. He said he wished to talk to me at some length about the situation at Rowden Lane. (He advised me some way through the conversation that our conversation was being recorded). He referred to the letter which was sent to him dated 29 April 2002 from the Area Highway Officer, Mr Raubenheimer, requesting removal of stones from the verge. He explained that his father had put the stones there some 30 years ago. At that time Rowden Lane was a private lane servicing the farms. He said that at the time the letter came through his neighbours, including Mr Ayres, decided to put posts up.*

*Mr Jennings responded to Mr Raubenheimer by saying that if he could prove the verge was highway then he would not remove the stones. Mr Jennings consulted a solicitor to ascertain the legal ownership of the grass verge. He was advised and accepted that the land is not on his deeds and he does not own it. He still cuts the [grass] to keep it tidy. He said he does not care what his neighbours wish to do about the issue, it is not a problem so far as he is concerned.*

*He mentioned that he had been approached by a developer and had told them that his land was not for sale.*

*He referred to a second letter which he received (which I understood to be a copy of the letter of 21 June 2002) which was sent to the Chairman of the Rowden Residents Association. He said it should not have been sent to him as he had already by this time removed the stones. I apologise that we had bothered him if this was the case.*

*It would appear that the main purpose of his call was to draw the council's attention to a problem between his neighbour Mr Fortune and his neighbour Mr Ayres. He told me that Mr Ayres has threatened to issue a writ against Mr Fortune if by Monday 28 July Mr Fortune has not removed a made up lay-by in front of his property which Mr Ayres claims is illegal. Mr Jennings said that the lay-by was put there by his father (now*

*dead) as a condition of planning permission for his business involving the storage of caravans. The lay-by was constructed to council specifications (I understood this to mean specifications of the planning authority of North Wilts District Council). The purpose was to facilitate the passage of vehicles down that part of the lane. Mr Jennings also operates a packaging business. The farm ceased operations some while ago.*

*The lay-by had been there for 15 years or so. He understands that Mr Fortune wishes to avoid Mr Ayres taking civil action in respect of the lay-by and has engaged a contractor to dig it up tomorrow. Mr Jennings says it is up to Mr Fortune to do what he likes, but he is concerned that if the lay-by is removed it may put his caravan business and the planning permission in jeopardy. He wanted to draw this to the urgent attention of the council and wished to know what the council intended to do about the situation.*

*I confirmed the council's view that the verges formed part of the highway. He did ask me what evidence I was relying on for that statement. I informed him that evidence had been produced to the residents but clearly there was a disagreement which might ultimately have to be tested in the courts.*

*I advised him that I would consult the Director of Environmental Services about the information which he had provided to me and the council would consider the position.*

147. The reference in that note to Mr Ayres is probably a reference to the Third Claimant, Mr Heselden. I find, on the balance of probabilities, that Kevin Fortune did remove the passing bay but only after, and as a result of, improper and unjustified pressure applied by Mr Heselden on Kevin Fortune, including the threat of legal action.

148. In August/September 2002, someone had painted overnight the word "Private" on the carriageway of Rowden Lane, just beyond the end of the public house car park, at the

junctions of Section A and B of Rowden Lane. This is shown at page 87 in volume 14 of the trial bundle. I find, on the balance of probabilities, that this was done by, or on the instructions of, the Second and/or Third Claimants.

149. Martin Jennings was not called as a witness by either party in this case. Nevertheless, the Claimants rely upon his assertion in that telephone conversation that, in the early 1970s, Rowden Lane and/or its verges were considered to be private. This contradicts Mary Puntis's description of her father's belief. The suggestion was made that Martin must have got this information from his father, and that this showed inconsistency in his views on the status of the Lane.

150. I accept Mary Puntis's evidence that Martin's knowledge of the relevant history was extremely limited. He was born in 1957, some 14 years after Mary.

151. The fact of the matter is that, having taken legal advice, Martin removed the stones. He must have accepted the Council's position. Indeed, I find that Martin Jennings fully anticipated that Rowden Lane would one day be widened, and absorb some or all of the verges, because he planted a hedge to preserve the visual amenity of Elmtree Farm House against such a contingency. The hedge which he planted, with its trimmed and castellated tops, is shown in photographs 39 and 40 on page 34 in Volume 8. In my judgment, Martin accepted that Rowden Lane and its verges constituted a public highway.

152. In so far as there remains a conflict between the views of Mary and Martin, I prefer Mary's more detailed and intimate knowledge both of the area and of her father's views. I find that Dick's views were truly represented in the letters he sent to the Highway Authority and to the Planning Inspectorate.

Little Dick Jennings

153. The real conflict of oral and written evidence in this branch of the Jennings family was between Mary and her brother Richard junior ("Little Dick"). His written evidence was to the effect that:

1. Rowden Lane was always a private lane, privately maintained. Although requests were made to the Council to assist with the maintenance of the Lane this was always refused.

2. In the 1960's, because of a misplaced road sign, lorries turned left into Rowden Lane, mistakenly thinking it was the Lacock Road.

3. At the bottom of the lane (ie near the A4) there was a "No Through Road" board. After complaints, a proper sign was put up by Wiltshire County Council stating "Private lane – no through road", although he thought this was removed when the public house was built/refurbished in the 1960s.

154. One of the sad features of this case is the rift which has existed for decades between Little Dick, his parents and his sisters. He ceased to have anything to do with his family in about 1968, on leaving the farm. Martin was then only 11. However some 7 or 8 years ago, Martin contacted Little Dick and they have since tried to restore a fraternal relationship.

155. In his oral evidence, he expanded on the "Private" signs, and alleged that his father told him that Rowden Lane was private. He said that his father had been violent to him on a few occasions.

156. Little Dick married in 1968, and around that time purchased Number 16 Burleaze. He now lives in Chippenham. He had not spoken to his father since 1970/1971. The rift

started when he overheard a discussion between his parents and his siblings about how much he was going to be paid on the farm. Mary Puntis did not even recognise Little Dick, when they were both in the same court room. He had to be pointed out to her.

157. In cross-examination, he acknowledged that he was no longer sure about whether the word “Private” appeared on any sign close to the A4, as he indicated in his first written witness statement. However he then talked about another sign - not the one by Alma Villa to which he was referring in his witness statement - further up which said “Private Lane”.

158. The conveyance of Elmtree Farm to Dick Jennings in 1945 did not expressly convey to him any part of Rowden Lane to him. Nor was any private right of way over Rowden Lane expressly granted.

159. Little Dick’s recollection of Rowden Lane in the 1950s was of a track which began at the junction of Sections A and B. It was really impassable except by tractors because of a grass camber. However this is not consistent with the evidence of Mr Vaughan, whose scrutiny of the aerial photographs discloses no such camber. Contrary to Little Dick’s evidence, the aerial photographs showed a hedge existed in the 1950s on the boundary of Elmtree Farm.

160. I never doubted Richard Jennings’ honesty. He gave his evidence in a forthright and straightforward way. I do believe, however, that he is confused in his mind about what signs were placed where. Nevertheless, I accept his evidence that there were some strong words and physical interaction between himself and his late father at the time they fell out.

161. I have considered whether, given the concession that Dick Jennings senior might have said anything to get planning permission, he was saying different things to different people at different times, depending on his purpose.

162. I am satisfied, on the balance of probabilities, that his genuine view always was that the Lane was public but, somewhat sarcastically, added that it was “privately kept”. In this regard, I also reject the evidence of Kevin Fortune to the effect that Dick Jennings told him that he believed the lane was private, when discussing the lay-by which, in 1989, was being built into the verge in front of the paddock next to Swallow Falls.

163. The fact remains that the lay-by, once it was constructed, was never challenged or removed by Mr Fortune, until he removed it as a result of what I find was improper pressure from Mr Heselden.

Signs

164. Despite evidence to the contrary given by Little Dick and other witnesses, I unhesitatingly accept the evidence of Mary Puntis, supported by a number of witnesses, that there were only two signs in existence at the Bath Road end of Rowden Lane.

165. The first was a black and white metal council sign stating “No Through Road”. This was on the wall outside Alma Villa. It was more or less parallel with the A4 and meant to be visible to those turning into Rowden Lane from Chippenham. This sign was there as long as Mary Puntis could remember. She was born in 1946. The sign however disappeared when the public house was rebuilt in 1965. There was no explanation for why these two events were linked, but it may have been to remove any discouragement to people using the public house, the car park to which was accessed from Rowden Lane.

166. Many years later, the ‘No Through Road’ sign was replaced with its modern coloured equivalent installed on a pole on the near side of Rowden Lane. This sign is still there. It is a modern coloured sign depicting a cul-de-sac.

167. The second sign was a wooden board painted, erected and removed by Mary Puntis, again around 1965, which was temporarily fixed to a telegraph pole near the post box at the mouth of Rowden Lane. It read ”Lane to Farms only”. This sign was erected to address the temporary problem caused the erroneous siting on the A4 of the turning for the Lacock Road, the B4528. This had been positioned in such a way as to suggest to those travelling out of Chippenham that the road to Lacock was left down Rowden Lane, whereas it was the next turning on the left after Rowden Lane. Once the Council located correctly the sign for Lacock, the problem of lorries and vehicles coming down Rowden Lane abated. Therefore, as she told me, the sign was removed by Mary Puntis.

168. In summary, I find that there never was a sign on or on the approach to Rowden Lane containing the word “Private”.

169. As I have already indicated, I also reject the suggestion that Dick Jennings drove his tractor at vehicles driving down Rowden Lane. His sole concern was that lorries were been driven down Rowden Lane by drivers, thinking they were on the road to Lacock. This then created significant problems, when they tried to turn around. One such lorry, whilst executing a three point turn to go back to the A4, damaged the wall outside Elm Tree Farm.

170. Dick Jennings’ activity in remonstrating with drivers was purely concerned with problems of their being on the wrong road. It was never to do with the suggestion that people were unlawfully using a private lane or road. Where the evidence of Mary

conflicts with that of Richard and others on this issue, I prefer the evidence of Mary Puntis.

**Chapter 7: W H Jennings, his land (including, until 1970, Swallow Falls) and family**

171. W H ("Will") Jennings was the brother of Dick Jennings. Before he bought any land in Rowden Lane, he lived in Alma Villa, at the corner of Rowden Lane and the A4. His son, Brian Jennings, gave evidence before me.

172. Until his death on 16 February 1938, David Townsend owned, inter alia, land on the south side of Rowden Lane between the brook, on the west, right up to the cattle grid. This land was subsequently sold off in different portions and became, as one walks from the bridge over the brook in Rowden Lane towards the cattle grid on the offside, Brookfield, Swallow Falls, Elmtree Farm and the old piggeries in that order.

173. On 31 December 1944, the personal representatives of David Townsend sold to Will Jennings the land which became Brookfields (although originally much larger in size than its current area, as the result of sales of land) and Swallow Falls. The conveyance to WH Jennings is not in the trial bundle, but the plan showing the land which he acquired on 31 December 1994 is shown attached to his statutory declaration at Volume 5, page 208.

174. Not long after Will Jennings acquired that large area of land, he sold off, on 22 January 1945, the land known as Brookfields to Lewis William Hunt. Part of that land was sold off or developed by the Ayres family. I shall return to deal with Brookfields later in this judgment.

175. It would appear that the real purpose behind Will Jennings's purchase of the land was to build himself a new home, Swallow Falls. He lived there between 1955 and 24 July 1970, when he sold Swallow Falls to Leslie and Vera Fortune, the parents of Kevin

Fortune. Vera Fortune is the First Claimant. It therefore follows that Will Jennings and his family, at Swallow Falls, were next door neighbours of Dick Jennings and family at Elm Tree Farm.

176. In 1945, RF "Dick" Jennings had also purchased the land which was to become Elm Tree Farm from the personal representatives of David Townsend. The personal representatives of David Townsend also sold the Old Piggery, immediately adjacent to the cattle grid, to Frederick Gibbons (of The Bungalow) on 30 March 1945.

177. None of those conveyances of land on the south of Rowden Lane, by the personal representatives of David Townsend, contained any express grant of a right of way over Rowden Lane.

178. When the Fortune family purchased Swallow Falls in July 1970, searches of the Register of Local Land Charges and written enquiries of the local authority revealed that an order had been made under the Public Health Act 1925 declaring Rowden Lane to be a "new street", but that Rowden Lane itself was not a highway maintained at public expense.

179. However, when Will Jennings later sold Swallow Falls to the Fortune family in 1970, he conveyed a right of way, at all times and for all purposes, over Rowden Lane for the purpose of gaining access to Swallow Falls from the Bath Road.

180. How could Will Jennings convey a right of way which no-one had granted to him?

<u>New street?</u>

181. It seems that some effort was made on Will Jennings' behalf to obtain confirmation that Rowden Lane was a publicly maintainable highway. I infer this from a letter written by

solicitors for Will Jennings to the Town Clerk at Chippenham. That letter has not been produced in evidence, but the reply from the Town Clerk, dated 25 June 1970, reads

*WH Jennings*

*Swallow Falls Rowden Lane*

*I have fully considered the matter of Rowden Lane and a reference to the Order declaring part of the Lane a new Street, raised in your letter of the 23rd June. I find that although there was a Council resolution on the subject it appears that no Order under Section 30 Public Health Act 1925 (since repealed) was made. Any entry in the land charges register is therefore really not binding and I shall take steps to delete the same.*

*In the circumstances the road must be considered to be a private street with a liability to repair reposing in the frontagers in some agreed proportion. I hope these observations will answer your point.*

182. I believe that the solicitors who wrote to the Town Clark had been retained by WH Jennings. This is because a different firm of solicitors had conducted the local authority searches on 4 and 5 June 1970.

183. It seems to me that the solicitors acting for the Fortune family raised the question of how the purchasers would be able to access the Swallow Falls if, as the searches had earlier revealed, Rowden Lane was not a highway maintainable at public expense, and no private right of way had been granted to Will Jennings.

184. I believe this is why an enquiry was made about Rowden Lane as a ‘new street’. Because no comfort was found in this reply, the next stage was to rely upon a right of way which Will Jennings had acquired by prescription. This is probably the source of

the right of way conveyed to the Fortune family. Nevertheless, some supporting evidence of this prescriptive right was required, and this, I believe, is why Will Jennings made the Statutory Declaration to which I now turn.

185. It may well have been that, up until this point, Will Jennings had been led to believe that Rowden Lane was a 'new street' and a public highway. No one seems to have addressed the possibility that the whole of Rowden Lane was a public highway, albeit not entirely maintainable at public expense.

186. This case has been bedevilled by understandable concern over who was responsible for maintenance of the Lane, without first enquiring whether the Lane was a highway, albeit a highway not maintained or maintainable at public expense.

Statutory Declaration

187. Will Jennings explained the right of way in a Statutory Declaration, which he made on 23 July 1970, the day before the conveyance to Mr and Mrs Fortune:

*I WILLIAM HENRY JENNINGS of Swallow Falls, Rowden Lane, Chippenham in the County of Wilts, Company Director DO SOLEMNLY AND SINCERELY DECLARE:-*

*1. On the Thirtieth day of December One thousand nine hundred and forty four I purchased a plot of land adjoining Rowden Lane in the Borough of Chippenham in the County of Wilts which said plot of land is coloured pink on the plan attached hereto (hereinafter called "the said property").*

*2. In or about One thousand nine hundred and fifty-three a dwelling house was built on part of the said property and is known as Swallow Falls, Rowden Lane, aforesaid.*

*3. Ever since December One thousand nine hundred and forty four I have been in occupation of the said property and throughout the period since the dwelling house was constructed I have lived there.*

*4. The property adjoins a lane known as Rowden Lane which leads from the main Chippenham/Bath Road to a farm known as Rowden Farm. Throughout the whole of the period since December One thousand nine hundred and forty four there has been a right of way used by myself and all persons authorised by me jointly with other persons at all times and for all purposes over Rowden Lane for the benefit of the said property and other property and no adverse claim has ever been made in connection with the said right.*

*5. That part of Rowden Lane which is marked green on the said plan [approximately Section A] is maintainable by the Chippenham Borough Council as the highway authority. The remainder of the said lane is repairable by users having property abutting Rowden Lane and was last completely repaired about 6 years ago when a tarmac surface was laid. At the time of that repair I made a contribution to the cost of one-twelfth share. The remainder of the cost was born by the then owner of Rowden Farm, my brother Richard Francis Jennings of Elmtree Farm, Rowden Lane aforesaid, and the firm of Gibbons and Gooden who carry on a pig farm at the bungalow Rowden Lane aforesaid …*

188. It is interesting to read that, although he suggested that Section A of Rowden Lane was maintainable by the local authority, the local authority's answer to the pre-contract enquiry did not appear to draw a distinction between Section A and Section B of Rowden Lane, although it may well be that the local authority was only concerned with that part of Rowden Lane immediately in front of Swallow Falls on the plan attached to the pre-contract enquiries. Moreover, he did not say that Rowden Lane at this point was not a public highway.

189. On 25 November 1971, Will Jennings who, following the sale of Swallow Falls had moved to “Windrush”, The Butts, Chippenham, sold the paddock between Brookfield and Swallow Falls to Leslie and Vera Fortune. In that conveyance too, Will Jennings also conveyed an express right of way over Rowden Lane, and the local authority’s answers to searches again confirmed that Rowden Lane was not a publicly maintainable highway.

## Chapter 8: Swallow Falls and the Fortune Family

190. Kevin Fortune's first witness statement, dated 18 August 2006 stated:

*The Claimants accept (and have throughout this matter accepted) that section A is a full vehicular public highway.*

Change of Case

191. The Claimants’ case significantly altered in two respects:

(a) the admission that section A was a full vehicular highway was withdrawn; and

(b) from 15 April 2009, it was no longer disputed that the public did have rights over Rowden Lane, but those rights were limited to rights of way on foot and on horseback.

192. Up until this time, Kevin Fortune had described the Claimants’ position, in relation to Section B, as follows:

*(1) The Lane is not a public highway, but is a private road over which only residents of the Lane have rights of way;*

(2) *If it is a public highway, the public rights over it are footpath or at most bridleway rights -there is no public vehicular right of way over the Lane;*

(3) *Even if, which is denied, the Lane is a full vehicular public highway, it does not include the verges.*

193. Whilst it is clear from this summary that the Claimants always had an alternative case based upon limited public rights, it struck me that the case had been prepared for trial to establish, and the witnesses evidence was directed to, the wholly private nature of section B of Rowden Lane. The withdrawal of the concession that section A was a full vehicular highway was a surprising one, given the weight of the claimants' own evidence that section A had been a full vehicular highway maintainable at public expense.

Sign

194. In his first witness statement, Kevin Fortune described some of the topographic features of Rowden Lane, including the fact that the front walls of the Rowden Place cottages not only formed the boundary of the Lane but were exactly level or in line with the boundary of the verges allegedly owned by the Claimants. The "Private" sign was described by others to be just by the first cottage. Significantly, however, he made no reference in this witness statement, or in any of his four witness statements, to the existence of the "Private" sign which, for the first time, he mentioned in his oral evidence. Moreover, he never mentioned it in any of his letters to the Highway Authority.

Change in status of Rowden Lane

195. Until a disciplinary hearing of some Council workmen took place in 1983, Kevin Fortune considered that everybody regarded the Lane as a private. He supplemented

this by saying that, at no time, did the Council carry out any repair or maintenance work on the carriageway or verges. The last resurfacing of the Lane in 1989 was, he thought, paid for by Dick Jennings himself, despite a letter indicating that the Defendant had maintained the surface in 1988 /99.

Verges

196. He confirmed that concrete moulds had been placed outside the upper verge in front of Elm Tree farmhouse, because they were there in 1970, when his family moved in. I agree with this. Dick Jennings had placed them there probably around the time that Burleaze estate was being built.

197. However, I do not accept his evidence that, since 1974, his mother had put posts and stones on the verge between Swallow Falls and the Lane, whether to stop damage to the grass verges or otherwise. The aerial photograph, taken in 1976, does not disclose any such items.

198. In my judgment, any stones that were placed outside Swallow Falls or the paddock, shown in the photograph 2/418A, had been placed there after planning permission was granted in 1993 to store 128 caravans at Elm Tree Farm.

199. The photograph at 2/418A is undated. Kevin Fortune thought it was taken in 1991 or 1992. Mary Puntis thought the photograph was taken in the middle of the 1990s, because there was no indication of Martin Jennings' packaging business. Kevin Fortune dated the photograph by a white BMW motorcar parked in front of the house which had been purchased new in February 1989 and sold on 20 November 1994. The renovation works at Swallow Falls, shown in that photograph, had been substantially finished in 1992.

200. On 16 March 1993, the Area Highway Engineer wrote to Mrs Fortune to complain about:

*a considerable quantity of building materials which have been placed on the roadside verge, and that interference with the grass verge has occurred.*

201. Complaint was also made that:

*builders' rubble and materials and plastic coverings have been allowed to litter the roadside and ditches.*

202. These facts incline me to believe that the photograph was taken between 1993 (March) and 1994 (November), and the stones were probably connected with protecting the verges from the increased numbers of caravans which were being towed along the Lane, past Swallow Falls and into Elm Tree Farm. The builders' rubble, not shown in that photograph, had been removed at some time after March 1993. It was probably left over from the building works at Swallow Falls.

Absence of challenge to 'highway verges'

203. That letter of 16 March 1993 is of further interest because of its complaint of:

*the abuse of the highway verges outside the above addressed property, by the placing of building materials and excavations on and in the grass verge.*

204. It will be noted that the letter was asserting that the verges formed part of the highway. There is no indication that this assertion was ever challenged by a member of the Fortune family, despite their willingness to engage in correspondence with the Highway Authority.

205. The absence of such a challenge may not be too surprising, because, in the previous year, a letter had been written on behalf of Mrs Fortune to the highway authority complaining about the dangerous condition of a manhole cover in the verge outside Swallow Falls.

Dangerous manhole cover in the verge

206. On 8 May 1992, Kevin Fortune's mother wrote to North Wiltshire District Council complaining about the condition of a dangerous manhole cover in Rowden Lane. Although the letter was signed by Mr Fortune's daughter, it purported to be a letter written on her behalf. It was the First Claimant's name and address which appeared in the top right hand corner of the letter. The letter continued:

*The manhole is situated on the left hand side of the lane in the verge. The cover is very loose and is causing a hazard. I would be grateful if somebody could inspect this manhole and rectify the problem.*

207. The Area Highway Manager replied to Mrs Fortune on 2 June 1992, stating:

*Your comments regarding the condition of ironwork in the verge at Rowden Lane are noted. I am pleased to inform you that my Area Supervisor has been asked to inspect the site on Wednesday 20 May and to take action as appropriate. Thank you for your interest and bringing this matter to my attention when it is to be hoped that remedial works will be affected without undue delay.*

208. This was a reference to the manhole cover in the verge outside Swallow Falls.

209. If the verges were not part of the highway, why was the complaint made to the local authority?

Construction on the verge

210. In 2005, Kevin Fortune had built a double skinned wall or structure to house or shield their gas tank. This protrudes on to the grass verge immediately adjacent to the boundary wall. It is shown, in purple on the plan 4077/A at Appendix 2 to this judgment, in the verge between Swallow Falls and Elm Tree Farm.

The passing bay

211. A passing bay, constructed for Dick Jennings, was installed in the grass verge outside the paddock, not far from its boundary with Brookfields. This was removed in 2002. It should, however, be noted that the passing bay, built in 1990, had not been the subject of complaint to the Highway Authority, once it had been installed, until Kevin Fortune removed it in 2002. Moreover, despite his solicitors being asked to confirm whether he had been responsible for the removal of the passing bay in 2002, there is no correspondence before me admitting that he had been responsible for it. However he did admit this in his evidence before me.

212. One of the reasons which he gave not making an issue of the passing bay in 12 years was because of Dick Jennings' unpredictable temperament and because he was a neighbour. However, this does not account for his failure to do something about it in the years after Dick Jennings' death in 1999.

213. Kevin Fortune accepted that people did park in the passing bay before it was removed. There was at least one member of the public, John Friend, who used it to park when he walked his dog. Mr Friend was not a resident of Rowden Lane.

214. On 12 August 2002, he wrote (giving his full name, address, telephone number and e-mail address) to the First Defendant to complain about the covering up of the 'layby'. He wrote:

*I frequently parked in this layby before it was obstructed to walk my dog. Now the only sensible turning spaces near the cattle grid are at the very end of the lane, using private property.*

215. Here was an example of a member of the public who frequently used a motor car to drive along and park in Rowden Lane in order to exercise his dog. Kevin Fortune also produced photographs showing cars parking on the verges in Rowden Lane, albeit after the First Defendant had removed stones and posts from the verges in 2002 and/or 2006.

216. However Kevin Fortune's evidence on whether many cars used or parked in Rowden Lane was somewhat inconsistent. His general evidence was that there was little public vehicular use of Rowden Lane, that there was very limited parking near the Old Piggery, and that he had never seen vehicles parked on verges on the back of Burleaze, nor or on the southern verge next to the Old Piggery. He only saw parking at the western end of Rowden Lane near to the public house, especially after 2000, when the car park was reduced in size and customers of the public house parked on the verges.

217. However the photographic evidence showed that it was perfectly possible for vehicles to park opposite the entry to the Old Piggery, and he accepted that, if the verges were clear, one could park on them, including on the southern verge next to the Old Piggery.

218. I am of the view that Kevin Fortune was minimising the volume of public vehicular traffic using Sections A and B, and parking on section B of Rowden Lane. Moreover, he seems to have been unaware of or underestimated the recreational use of the fields beyond the cattle grid.

Planning History: Workshop

219. In October 1980, a planning application was lodged by Mr and Mrs L Fortune to use a shed forming part of the curtilage of the Swallow Falls for the assembly of pre-manufactured aluminium frames and glass materials to form double glazed windows or sliding door units. The intention was to have the business run by members of the family. Indeed Kevin Fortune is still engaged in that business, albeit is now run from elsewhere. However, between 1979 and 1985/6, the business was carried on from Swallow Falls by Kevin and his father, who died in 1982. Although there was no showroom at Swallow Falls, I am satisfied that members of the public, not resident in Rowden Lane, drove along Rowden Lane to the workshop to see samples of windows, or to check on the progress of their work, even if they were redirected elsewhere to see examples of their completed work.

220. Goughs, solicitors, were retained by the Fortune family for that planning application and, in their letter of 9 October 1980 to the Chief Technical Officer at North Wiltshire District Council, they wrote:-

*…Workshop at Swallow Falls, Rowden Lane, Chippenham.*

*Mr and Mrs L. W. Fortune*

*…*

*6. Minimal use of highway is involved. A delivery lorry brings aluminium to the premises approximately once a fortnight and deliveries of glass are made by van. There is no pressure on traffic in Rowden Lane.*

7. *There is safe access to the premises either by existing farm track to Rowden Lane where it adjoins Elm Tree Farm or in the case of need via Swallow Falls itself…"*

221. From this, it can be seen, at least in 1980, the solicitors for the Fortune family, presumably on instructions, were suggesting that Rowden Lane was a public vehicular highway. I reject Kevin Fortune's evidence that the reference to the 'highway' was a reference only to Section A, and not to Section B. It is plain from internal documentation (1/129C) that this was not how the highway authority viewed the application.

Planning Permission: Residential Development

222. In May 1988, Kevin Fortune applied for planning permission for the erection of six detached houses and garages on the paddock, which his parents had purchased from Will Jennings. That application was refused. Mr Ayres, in a letter dated 7 June 1988, wrote the Chief Planning Officer to object to that development stating:

*The lane consists of a stretch of road which is from the Bath Road to the rear of the Rowden Arms car park council road. However, at this point to the proposed development and beyond it is totally private. I am the owner and maintainer of the lane from the area of the rear of Rowden Arms for a distance of 50 yards approximately and would not permit the travelling of further traffic over my stretch of lane.*

223. In his application, Kevin Fortune indicated that his proposal involved the "construction of a new access to a highway". When Kevin Fortune's application was considered by the Development Control Committee on 27 June 1988, Rowden Lane was referred to by a council officer as "a single track unclassified lane which connects with the A4 at Rowden Hill (next to the Rowden Arms) and terminates at Rowden Farm".

224. I regard it as improbable that this application was made by Kevin Fortune in the belief that Rowden Lane was a private road. In evidence, he said that he assumed that the Highway Authority would adopt the road, once it was constructed to an appropriate standard. However before the road could be adopted it would have to be a highway, and presumably any adoption would not be confined to the frontage of Swallow Falls and the paddock, but would have to extend over the whole Lane.

225. The plan attached to the planning application did not show the verge in front of the paddock forming part of the planning site, the implication being that it was not in the ownership of the Fortune family. Moreover, in a letter to the planning department, dated 4 October 1989, he referred to the 'verge fronting my property', which carried the same implication.

226. No reference was made by any Council employee to stones or any obstructions on the verge outside the Swallow Falls all the paddock, with an on-site inspection took place in 1988 in connection with this application

<u>Objections from Swallow Falls to change of use at Elm Tree Farm</u>

227. When the 1989 application for planning permission for storage of an extra 14 caravans was being considered, Kevin Fortune wrote to the Planning Department, on 4 October 1989, as follows:

*Dear Sir,*

*Regarding our telephone conversation on 2 October 1989, with reference to a Planning Application made by Mr R Jennings, Elmtree Farm, Rowden Lane, Chippenham (Ref N891877F) for additional storage of caravans.*

*I have been prompted to act on this matter following an approach by Mr Jennings on 30 September 1989 to discuss my views. Since your consideration is being determined by the installation of a passing layby, I wish to point out that this will encroach the verge fronting my property. As I explained to Mr Jennings that I would investigate the matter and report back to him, your help would be appreciated.*

*My points of view are as follows:*

1. *If the lane is city council owned, should it not have been adopted at a suitable made up level, incorporating footpaths etc.*

2. *If the adoption was made some 45 years since, as believed by Mr Jennings, why have we been led to believe (by Mr Jennings) that this was a private road within the past 18 years. At least once having paid partial costs of resurfacing.*

3. *The layby was situated on top of the sewer, which presently runs under the verge, this would need to be reinforced to ensure that heavy vehicles would not cause same to collapse.*

*Perhaps your Council Surveyor could give us his views on this?*

*Following our telephone call on 3 October 1989, I was pleased to learn that a Planning Application would be required from Mr Jennings, prior to the installation of a layby, and further that all interested parties ie Highway, Water Boards, etc should be notified accordingly.*

*In view of the foregoing may I suggest that you inform Mr Jennings as to the uncertainty of ownership, as it is my understanding that he is under the impression that Planning Applications are not required and none have been sought.*

*He further seems to think that providing my permission is given, that he can proceed with the layby immediately.*

*I am further informed that Mr Jennings thinks that provided he installs the layby, his application, Re Caravans, is automatically approved, and to this end I have seen Mr Prangle of Prangle and Cary Roadwork Contractors surveying the site, perhaps with a view to commencing excavations?*

*I await your comments, with hopefully proof of ownership in order that I may assess the situation.*

228. I observe that in that letter, Kevin Fortune referred to the 'verge fronting my property', implying that he was drawing a distinction between the verge, of which he did not claim ownership, and 'my property'.

229. Mr Samuel, Chief Assistant (Development Control), replied to that letter on 28 December 1989 as follows:

*With reference to your letter of 4.10.1989 to Mr D Evans, Planning Department, North Wiltshire District Council, I have now received the following answers to the three questions you raise regarding Rowden Lane and the proposed passing bay.*

1. *When originally adopted Rowden Lane would have been at a suitable standard for the traffic using it at the time. Over the years traffic has generally increased on almost all roads, but at the present time it is not considered that there are justifiable reasons for giving priority to Rowden Lane for improvements.*

2. *Mr Jennings' interpretation of events as described in your letter does not alter the fact that Rowden Lane has been a road adopted and maintained by the County Council as Highway Authority, for many years.*

3. *Mr Jennings' contractors for constructing the passing bay will need to consult the District Council as regards the sewer in the verge.*

230. Two years later, on 30 October 1991, Kevin Fortune wrote to the Council opposing another planning application for extra storage of caravans at Elm Tree Farm, and asking for details of the date when "the private road was adopted" as follows:

*I am writing with reference to the above application regarding extra storage for caravans.*

*As a resident of Rowden Lane, I am concerned as to the effects the additional usage will have on a single track lane.*

*I would be useful therefore if you could provide answers to the following:*

1. *The date the private road was adopted. My understanding is that before the Council adopt roads they should be made up to certain standards. With 84 caravans and numerous other vehicles passing this road I feel it should be made up to a width allowing vehicles to pass.*

2. *The date of planning acceptance for installation of a passing layby in Rowden Lane.*

3. *For my records, I would be obliged if your Highway Department could send a schedule showing maintenance work carried out on Rowden Lane over the years.*

*Your help would be most appreciated in this matter.*

231. The Planning Officer replied to that letter, on 1 November 1991, in the following terms:

*Thank you for your letter dated 30 October, 1991, to which I refer. I presume your letter should be treated as an objection to the current planning application and I will therefore summarise the points made and report them to the Planning Committee on 4 November, 1991, when the current planning application will be considered.*

*With regard to your other questions, the passing bay was installed pursuant to Condition 2 from Application Reference N.89.1877.F and the decision notice and approved plans are available for public inspection at the Planning Department during normal office hours. With regard to your questions over the adoption and maintenance of this highway I have copied your letter to the Wiltshire County Council who are the Highway Authority and have asked them to reply direct to you.*

*PS: The current application has now been withdrawn."*

232. Although that application was withdrawn, a new application for the extra 64 caravans was made on 23 July 1992.

Changes in the recording of Rowden Lane

233. Kevin Fortune received two further letters in reply to his question about Rowden Lane, in his letter of 30 October 1991.

234. Mr Harbour (the same Mr Harbour who is the First Defendant's expert) wrote to him on 20 November 1991, stating:

*I refer to your letter dated 30, October, 1991 addressed to Mr D Evans, Planning Department, North Wiltshire District Council which has been forwarded to me for my attention. A letter was sent to Mrs M J Fortune of your address on 3 November 1989 which covered the Highways' enquiries contained in your current communication. However, I will again reiterate the content of my previous letter and state the following:*

*The Highway records handed over in 1974, by the former Chippenham Urban District Council, showed Rowden Lane as a full highway maintainable at the public expense from its junction with Rowden Hill, south eastward for approximately 70 metres. The remaining length of Rowden Lane was shown as a road used as a public path, R.U.P.P.5, Chippenham. However it would appear that the County Council's legal highway records were revised to show this section of Rowden Lane, up to the cattle grid at the boundary of the [Burleaze] Estate, as a full highway maintainable at the public expense, after investigations by the Director of Planning and Highways, some time around 1983. These revised records now accord with other records held by the Director of Planning and Highways and the Chief Executive and works have been done to it as an unclassified road prior to 1983.*

*With regard to your enquiry concerning the maintenance of Rowden Lane, I have passed a copy of the letter to the Director of Planning and Highways for him to reply direct to you, in due course, on this point. ...*

235. On 3 December 1991, Mr Brown, the Area Highway Engineer, wrote to Mr Fortune stating:

*I refer to your letter regarding the above dated 20 November 1991 [this was the date not of Mr Fortune's letter, but the date of Mr Harbour's letter to him previously quoted] and passed to me for my attention with reference to item number 3 of your enquiries.*

*According to my records general maintenance in the form of surfacing, for strengthening was carried out during the course of 1998, followed by surface dressing maintenance in 1989.*

236. On 20 August 1992, Kevin Fortune, again dealing with the July 1992 application by Dick Jennings to increase the number of caravans to be stored at Elm Tree Farm, wrote to the Chief Planning Officer at North Wiltshire District Council saying:

*The main consideration would be the effect on a Single Track Lane from the increased volume of traffic. The lane at this present time would not be suitable for the amount of traffic that this application would create and the passing layby, installed previously, is not adequate.*

*A bottleneck is also created with cars parked in the road further down the lane opposite the Rowden Arms car park, which is adjacent to the access of 3 No houses in Rowden Hill.*

*Making up the road to present standards, ie with footpaths and a revised access into the public house car park, could [alleviate] any future problems.*

237. On 19 August 1993, the planning application was successful, and permission was given to store a total of 128 caravans on the land. Furthermore, a condition was imposed requiring the passing bay to be extended.

Summary of Kevin Fortune's objection

238. It would therefore appear that Kevin Fortune's objection was not so much based upon the Lane and verges being private, but rather that he wanted Rowden Lane to be brought up to modern standards appropriate for a public vehicular highway. Moreover, he did not seem to be suggesting forcefully that Rowden Lane or its verges were private. His only reason for thinking the Lane might have been private was because it had been repaired and maintained by the residents, and this is not necessarily the determining factor.

239. He also suggested that non residents using Rowden Lane by car would be challenged by Dick Jennings or, before 1985 when she died, by Mrs Burridge or her farmhand. I have already rejected the suggestion that Dick Jennings challenged members of the public driving in Rowden Lane, except in the very limited circumstances of the

misplaced sign to Lacock which caused lorry drivers to take their vehicles down Rowden Lane by mistake. I accept that Dick Jennings was a difficult man, but I do not accept that he acted violently towards Mr Pullin as Kevin Fortune implied.

240. As far as the evidence of challenges by Mrs Burridge or her farmhand is concerned, I prefer the evidence of the Gibbons family and of Mary Puntis on this issue.

241. I do not accept that agricultural vehicles and motorcars were unable to pass each other in Rowden Lane. Any difficulty would have been resolved by using the verges. Nor do I accept Kevin Fortune's evidence that it was mainly farm vehicles which used the lane.

Assessment of Kevin Fortune

242. I have some sympathy for the position in which Kevin Fortune has found himself in this case. However, I am perfectly satisfied that he is seeking to rewrite history. His evidence on the existence of the “Private” sign is a classic example of this, as are the inconsistent ways in which he has regarded the status of the Lane and its verges, depending on his purpose. I find that he has come under the influence of the Second and Third Claimants and, as a result, this has significantly undermined the accuracy and reliability of his evidence.

243. Except where I have stated otherwise, where the evidence of Kevin Fortune conflicts with that of the witnesses called by the First Defendant, I prefer the accuracy and reliability of the latter.

Vera Fortune – The First Claimant

244. Vera Fortune was born on 9 October 1932. She is now the sole owner of Swallow Falls. She said that when she and her husband purchased Swallow Falls, both Will

Jennings (a customer of Mr Fortune) and their own solicitors told them that the property was situated within a privately owned Lane, and that it was not maintainable at public expense. She understood that she also owned the verges - even though the walls had never enclosed them - as well as the land and house known as Swallow Falls.

245. However, I have seen no letter of advice from the solicitors to Mr and Mrs Fortune at this time. I have seen the conveyance and the pre-contract searches and enquiries, from which it is obvious that Mr and Mrs Jennings would have been told that Rowden Lane was not maintainable at public expense, but rather had to be maintained by the frontagers. However, Will Jennings' Statutory Declaration did not say that Rowden Lane was a wholly private road untainted by any public rights. Although the searches revealed that Rowden Lane was not a publicly maintained highway, they said nothing about its public or private status.

246. Vera Fortune described how the Lane was about 8 feet wide when they moved in. I presume this is a reference to the gravel track, and excluded the verges. She said that in 1974, stones and posts were put on the verges outside Swallow Falls to prevent damage from tractors. The aerial photographs taken in 1973 and 1976 do not support this assertion. Interestingly, she stated that cars parked on the verges in front of Swallow Falls before the posts were put up there. I find that this was a reference to the period immediately before 2002, when Kevin Fortune placed the posts in the verge in front of Swallow Falls and the paddock.

247. She referred to two signs containing the word "Private" in Rowden Lane. The first was visible on turning into the Lane and said 'Private lane to farms only', whereas the second was positioned by the cottages and read 'No through road Private'. These signs were present from the time they moved there in 1970 until the early 1980s. I do not accept this evidence. On the balance of probabilities, I have found that no sign in

Rowden Lane contained the word ‘Private’, except that painted on the carriageway in August or September 2002. She was in error in thinking that the ‘Private’ sign on the carriageway was obliterated on 12 November 2002. In fact, this had been done in September 2002. 12 November 2002 was the occasion when the Council removed items from the verges for the first time, and Mr Raubenheimer was assaulted.

248. She too thought that the staddle stones outside The Bungalow remained on the verge until about 2002, when Laing showed interest in developing the land. In fact, I find that they had been removed in or shortly after 1991, as a result of theft of some parts of the stone. This was before the option agreement was made in 1995.

249. The items removed from outside Swallow Falls in 2002 comprised 20 steel reinforced plastic posts, with replacement cost of £1138.34 including VAT. Later, they were replaced by the Fortune Family. In 2006, they were removed again by the First Defendant. To replace those items now would cost £2276.68 inclusive of VAT, but their current value is half that, namely £1138.34 including VAT.

250. Vera Fortune said that the verges outside Swallow Falls were maintained by the Fortune family. In the 1970s, tarmac was laid for the first time over the dirt track and that was resurfaced in the early 1980s. She said that the resurfacing had been carried out at the expense of local residents, and not by the First Defendant.

251. In my judgment, this is inconsistent with the evidence, which I prefer, from the *First* Defendant to the effect that in 1983 work was done on Section B, which gave rise to the disciplinary hearing. Further, the First Defendant carried out further work there in 1988 and 1989.

252. She admitted that she wrote the letter to the Council in May 1992 about the dangerous manhole cover, although subsequently she said, probably correctly, that it had been signed by her daughter Maria who had typed it. In any event, I am satisfied that she

knew of, and agreed with, the contents of the letter. To the extent that the letter was typed and signed by Maria, it demonstrated, in my judgment, the family's true view that the verge was public not private. Moreover, she could not remember challenging the letter sent by the Highway Authority in March 1993, asking her to remove the builders' rubble from the "highway verges". The Fortune family simply got the rubble removed. However, on her case, the verges belonged to her, and she would have had no obligation to remove it.

253. I have already referred to the pressure that Mr Heselden was applying to Kevin Fortune. On 18 March 2002, solicitors acting for Vera Fortune wrote to the First Defendant asking them to confirm the status of Rowden Lane on the map supplied. This map highlighted the whole of Sections A and B of Rowden Lane. The solicitors also asked whether any part of the Lane had been adopted and, if so, the width of any adopted road.

254. On 27 March 2002, Mr Gale replied to that letter, saying that he was surprised that the letter had been written because he had believed that the Chairman of the Residents' Association would have informed him of the position. However, he repeated the position, namely that the full length and width of Rowden Lane was recorded on the highway record as an unclassified road maintainable at the public expense. This was shown on a coloured plan which he sent to the solicitors. He concluded his letter by stating:

*As with many ancient highways, there is no formal record of adoption. The County Council's view, supported by historical evidence, is that, on the balance of probabilities, the recorded status is correct. No evidence has been provided to challenge this view.*

255. As with Kevin Fortune's evidence, I believe that Vera Fortune's evidence is highly selective. She has assumed, because the road was at times maintained privately, that it had no public status. I regarded her evidence as inconsistent and unreliable on the private nature of the lane and verges. In my judgment, her evidence added little to that of Kevin Fortune.

**Chapter 9: Brookfields**

256. The land originally described as Brookfields was much more extensive than that currently owned by the Second Claimant. It formed part of the land purchased by Will Jennings from the personal representatives of David Townsend on 30 December 1944.

257. On 22 January 1945, he sold Brookfields to Lewis William Hunt, who built a bungalow at Brookfields in 1946. In 1959, Mr Hunt's widow sold Brookfields to Stanley Coleman, who died on 10 June 1961. His personal representatives, including his daughter, sold Brookfields to Albert George Ayres, the father of the Second Claimant, on 30 September 1963. Albert Ayres has since died.

258. What is left of Brookfields, after sales of various parts of the land, is owned by the Second and Third Claimants, with registered title number WT153310. The registered plan is in Volume 5, at page 222. This title, according to the registered plan, seems to comprise a dwelling house and two outbuildings.

259. No express right of way was granted in the conveyance, dated 30 September 1963, by Cyril Clark to Albert Ayres, to gain access to Brookfields, nor did Brookfields enjoy any express right away over the rest of sections B or A of Rowden Lane. The verges were not conveyed expressly to Mr Ayres, and the land sold was described as 'land adjoining Rowden Lane'.

Planning History of Brookfields

260. The fragmentation of the greater part of the original Brookfields is not entirely easy to chart. From 1972 onwards, a number of planning applications were made by Mr Ayres for residential development of a large area of the original Brookfields.

261. It would appear that Mr Ayres's application for planning permission was heavily driven by the fact that he was in acute financial difficulty, bordering on bankruptcy. The 1972 application was opposed by a number of statutory consultees. The County Surveyor, on 30 May 1972, wrote:

*I am not in favour of this application as Rowden Lane is only 10 feet to 12 feet wide along the frontage of this site, adequate sight lines could not be provided for the access to this site without affecting other parcels of land at the junction of Rowden Lane and the trunk road is substandard. … the application does not indicate the number of units or means of access.*

262. The Borough Surveyor, on 15 May 1972, wrote:

*Road frontage is on to Lowden Lane which in this section is a private road.*

263. I assume this is a reference to Rowden Lane. The application site covered about 2¾ acres and appeared to encompass virtually all the original holding of Brookfields. Eventually planning permission was refused, on grounds that (i) the site was not included for development in the appropriate Chippenham town map and (ii) because Rowden Lane, given its narrow width and its junction with the trunk road, was considered unsuitable to accommodate the traffic which would have been generated by the development of the site.

264. Mr Ayres appealed against that refusal on 24 August 1972, stating:

*Rowden Lane is quite capable of being made suitable for the small increase in traffic following development as has been done in other cases in the county.*

265. Mr Ayres was not there suggesting that Rowden Lane was private. By January 1973, this appeal was withdrawn.

266. However, by June 1972, Blossom Properties Ltd of Kent was making an application for the development of six detached dwellings in approximately 0.6 acres. This too was refused on 20 September 1972 for similar reasons. A further application was made by Blossom Properties Ltd for three detached houses and for outline planning permission on two adjacent areas. This was dismissed on 13 September 1975 and, on appeal, in 1977. Eventually, on 17 December 1979, outline planning permission was granted to Blossom Properties Ltd for one house and garage. The agent for Blossom Properties Ltd was Mr K A Boswell of Surrey. It is impossible to know, because there are no plans attached to the documentation in the planning bundle, whether those applications related to any part of the old Brookfields site.

267. However, the same agent, Mr Boswell, also acted for Langcote Property Company Limited ("Langcote") of Kent, in relation to planning applications between 1981 and 1983. These applications did relate to the substantial part of Brookfields, in fact to the entirety of Brookfields, less the title currently held by the Second and Third Claimants.

268. In summary, it appears that successful applications were made in 1976 and 1979 for the erection of single dwellings within the original Brookfields site facing Rowden Lane. At page 230 in the planning bundle is a plan prepared by Mr Boswell on behalf of Langcote showing the proposed development for which Langcote was seeking permission in 1981 and 1982. That shows the location of the two proposed dwellings for which permission had been granted, although the intention of the application was to develop the rest of the Brookfields site apart from that retained for the dwelling house.

269. Planning applications were consistently refused, and upheld on appeal, as late as 1983, with the appeal site being shown at page 255 in the planning bundle. The appeal site covered the whole of the original Brookfields site, including the areas in respect to which permission had already been granted, but excluded the reduced Brookfields area currently occupied by the Second and Third Claimants.

270. After 1983, permission must have been granted because it was apparent on the site view that development had taken place, and was still taking place within the area sold by Mr Ayres to Langcote.

Second Claimant as owner of Brookfields

271. On 24 October 1977, Mr Ayres sold and conveyed the entirety of the original site of Brookfields to Langcote. On the same day, 24 October 1977, Langcote conveyed to the Second Claimant and Robert Henry James a part of Brookfields, namely a dwelling house and two outbuildings corresponding to the area within title WT153310, currently owned by the Second and Third Claimants. What was retained by the Second Claimant corresponds approximately to about one-tenth of the original area of Brookfields.

The new driveway

272. Owing to the partitioning of the former area of Brookfields, it was no longer possible for the Second Claimant to use the then existing driveway into Brookfields, since this formed part of the land acquired by Langcote. As a result, on 24 October 1977, Langcote granted to the Second Claimant and Robert James a licence to use the existing driveway for a minimum period of 6 months, while they built the new and current entrance into the much reduced area of Brookfields. The relevant part of the agreement read:

*The grantor hereby grants licence to the grantees to use and enjoy the existing access way for the purpose of gaining access from the highway known as Rowden Lane to "Brookfield" along the route coloured blue on the plan annexed hereto …. by day or by night with or without vehicles or animals for all purposes connected with the use and enjoyment of Brookfield.*

273. Those same words are shown on the property register of the Second and Third Claimants' title WT153310, recording the fact that Brookfield had the benefit of those rights made in that agreement on 27 October 1977.

274. What is noteworthy is the fact that the agreement, to which the Second Claimant was a party, referred to Rowden Lane as a *highway*, and one over which vehicles or animals could have been taken before using the driveway the subject matter of the agreement. In cross-examination, Ms Ayres said that this was just an assumption by the lawyers.

275. The old and new driveway entrances to the original and the reduced Brookfields site are shown on page 448 of Volume 2 of the trial bundle. The new driveway is in the foreground with concrete blocks at the junction with the carriageway of Rowden Lane, and the old driveway is further away from the photographer.

276. On 14 April 1998, Blossom Properties Ltd became the registered proprietor of title WT169884, comprising the then undeveloped land on the former main Brookfields site. It therefore seems that the old Brookfields site is now the subject of at least two separate titles namely:

(a) Title No: WT169884 in the name of Blossom Properties Ltd, representing the whole of the land initially purchased by Mr Ayres in 1963, except the part currently owned by the Second and Third Claimants. I do not know whether Langcote and Blossom Properties Ltd are associated companies, but it seems

that the land which Langcote acquired on 27 October 1977 was, as at 1998, owned by Blossom Properties Ltd.

(b) Title No: WT153310 of which the Second and Third Claimants are registered proprietors. This comprises their current home and out buildings.

The Third Claimant – John Heselden

277. Mr Heselden is a former police officer who holds, or has held, a firearms certificate. He served in the Metropolitan Police until 1980, and then worked in an international position, which he told me he could only discuss *in camera*. He became ill in 1990, and eventually retired from that post on medical grounds in 1994.

278. Since 1996, he has lived with the Second Claimant at Brookfields, although his connection with the area began in September 1980, following his departure from the Metropolitan Police. His first contact with Brookfields was around September 1980, when he was looking for a farm near his then home in Lowden.He needed some help in connection with his family's livestock.

279. He confirmed the presence in 1980 of a sign stating "Private lane to farms only" positioned outside the cottages in Rowden Place. At this stage, he also noticed that the staddle stones were still outside the verge in front of Brookfields. On accessing the new, "upper" drive to Brookfields, he said he observed the hard standing next to the Lane, which was a continuation of, but adjacent to, the new drive on which railway sleepers and single kerb stones had been placed. He also observed that, on the verge outside Brookfields, were electrical fencing stakes and electrical fencing netting.

280. He continued to visit Brookfields between 1980 and 1983, and, at the end of this period, he had observed that the "Private" sign had disappeared. He said that he had assisted the Second Claimant in cutting grass from the verge during the summer of

1984, and that Mrs Gibbons opposite gave her “consent” for Miss Ayres to cut her private verge in front of The Bungalow. In conversation with him, Mrs Gibbons is alleged to have confirmed that the road was private.

281. When he moved into Brookfields in 1996, he said that the railway sleepers and stones were still outside the property on the hard standing. His arrival at, and co-ownership of, Brookfields in1996 corresponds approximately with the earliest date on which some of the Gibbons witnesses described the advent of materials on the verge and driveways outside Brookfields. He went on to state that he had seen Shirley Collins telling members of the public that the lane and verge was private, and not for their convenience or that of their dogs.

282. Not only did Mr Heselden see the removal of the “Private” sign as associated with the Jennings’ planning applications, but he also considered the removal of the staddle stones from the verge outside The Bungalow to be connected with either the 1990 Gibbons planning application or proposed development contemplated by the option agreement. Both views are wrong. I am satisfied that the stones were removed to the back of the house for security reasons, because some of the tops of the stones had been stolen. Mr Heselden thought that they had been removed to the back of the house towards the end of the 1990s, whereas they were in fact removed in or around 1991, around the time that Shirley and Tony Collins moved into the Bungalow.

283. His witness statement too was silent on who had painted the “Private” sign on the carriageway of Rowden Lane in August/September 2002. Council workers attended in September 2002 to obliterate that painting on the carriageway and, as I have already indicated, returned on 13 November 2002 to remove obstructions on the verges.

284. Mr Heselden gave his account of that incident involving Mr Raubenheimer. He said:

*Miss Ayres tried to see what was going on, the highway officer, who looked angry, then blocked her view with his body. Miss Ayres climbed up the gate a little in order to see over the highway officer's head and the highway officer then used his clipboard which he moved from side to side to block Miss Ayres view. He then struck Miss Ayres across the face with his clipboard knocking her to the ground. I went to Miss Ayres aid, and when I opened our locked gate and went outside, I saw that a JCB was forcefully moving stones that had previously been concreted in place in the verges, and placing these into the back of a lorry, breaking some beyond reuse. The sleepers and stones and the hard standing and lower drive had already been placed in the lorry.*

285. He said Mr Raubenheimer 'struck Miss Ayres across the face with his clipbooard'. He did not there suggest any contact between the two except Mr Raubenheimer's clipboard knocking her to the ground. He also described how, on 8 August 2006, council employees again removed new stones and posts which had been placed by the Claimants upon the verges which they regarded as their property.

286. He concluded his witness statement by stating that the Highway Authority never carried out any formal maintenance in the Lane or on the verges, and that there was no logical reason for any member of the public to pass over the Lane, since it simply led to the properties bordering Rowden Lane. He did not mention any recreational use of the fields at the end of Rowden Lane, nor of cars parking on the lane.

287. In my view, Mr Heselden is a secretive and cunning man with an assertive personality. If I may borrow a phrase used by Mr Burns when cross examining him, he was someone who would "throw his weight around". When the campaign against development began in 2001/2002, he challenged people who used Rowden Lane, including those going to the caravan storage depot at Elm Tree Farm.

288. Most significantly, I did not regard Mr Heselden as a truthful witness.

289. In a letter to the local authority, dated 13 March 1989, Mr Heselden used a name which was not his own full name, and an address (Brookfields) at which he did not then live. This was seven years before he moved into Brookfields, and just under nine years after his arrival in Chippenham. In that letter, in which he referred to himself as 'J Stewart', he asked the Highways Department a question about the minimum size of piping for taking water away from some agricultural land. Not only did he make no reference to the surname Heselden, but also he gave his address as Brookfields Farm. It was when the Highways Department tried to make contact with Brookfields Farm, to discuss the letter,that they were told that the address was merely used for correspondence but that the author did not live there. Even though Mr Heselden had a separate home of his own, he did not want to use his own name and address because he wanted "an impartial response."

290. His query related to his previous home at Foxham which was subject to flooding because somebody had interfered with a ditch. He said that:

*each time I turn to other organisations for assistance, people reported back to me that they had been warned off and told not to assist me.*

291. He believed that people had been warned off because some other people, who had caused the flooding by filling in a ditch with a view to building property, did not want any public scrutiny. Therefore, he felt it necessary to obtain this "impartial response."

292. Whatever his reason for writing this letter, it reveals him to be secretive and not straightforward in his dealings.

293. According to his witness statement, it became public knowledge that Laing Homes was interested in developing the land next to the Bungalow. He said this occurred, towards the end of the 1990s possibly a little later. The option agreement was made on 11 July 1996. This was one day before Mr Heselden was registered as joint proprietor of

Brookfields, along with the Second Claimant. The earliest correspondence, which I have seen, from The Claimants to the developers about the private nature of the Lane was in the second half of 2001.

294. I now turn to two letters written, I find, by Mr Heselden, on his own behalf and on behalf of the Second Claimant, to Kevin Fortune. The first letter was dated 8 February 2002 and is in the following terms:

*Dear Kevin and Marie,*

*Please find enclosed a copy of the exact wording of the stated case law which I have already mentioned to you.*

*In Hale -v- Norfolk County Council, the court decided that the local authority could not always rely on the "hedge-2-hedge" presumption. If the owner of the land adjoining the highway had not done anything to show that his land was to be part of the highway, then it did not become part of the highway. The presumption applies in the same way where the highway is not owned by the highway authority i.e. where the road is a private road but is subject to public rights of way.*

*THAT IS NOW LAW ON THE POINT OF HIGHWAYS AND VERGES.*

*As you can see the most important part is,* ***if the owner of land adjoining the highway had not done anything to show that his land was to be part of the highway, then it did not become part of the highway.***

*While the post you put in shows that the verge is yours and claimed, and a good job, if this lay-by is not covered with soil and grass seeded, the County council could take the view, that the lay-by could now make the verge become a part of the highway. If left, there is a very real danger that the lay-by could torpedo all our efforts and we could all*

*lose our verges, which will always stop development, to the developers. It is the only danger point now that the verges are posted off.*

*Anyway, we have found out that DMH, [solicitors] acting for developers have now approached the council so, please find attached a copy of our recent reply to the County Council which is self explanatory. I expect that once they get that, they might make a site visit!*

*Many thanks*

*John & Phoebe*

295. Because Kevin Fortune did not then cover up the passing bay, Mr Heselden wrote again on 27 April 2002 as follows:-

*Dear Kevin,*

*Since our latest of many meetings of Saturday 20 April concerning the illegal lay-by in your verge and the potential risks to the loss of our land and property that your lay-by could cause, if not removed, and of course as explained, it will allow the developers to take control of the lane and go ahead with their planning, which they cannot do by virtue of the stated High Court case if it was removed.*

*I have not heard anything at all from you even though we agreed that you would place a note in my letter box by Friday last to let me know what the situation was, and naturally I wonder what the responses from Mr Orchard of Pardoes was and if he was helpful, and the situation with regard to the lay-by.*

*I would be pleased if you would kindly let me know the situation as it stands ASAP, because as explained to you fully, without confirmation of some positive progress, I really do not have any option if I am to protect our interests, other than to make*

*representations to my insurance company in the next couple of days and the matter as you know will be entirely in their hands, which as you know because of the potential implications to your family at facing a possible claim for any losses I have been trying very hard to avoid. I can only delay or put off that action if you can assure me in writing, that you will definitely insure or have arranged the removal of the lay-by.*

*I look forward to hearing from you.*

*All the best.*

*John*

296. When cross examined about this letter, Mr Heselden said that his insurance company had been concerned about the status of the lane. He denied ever pressurising Mr Fortune. I have not seen the correspondence passing between Mr Heselden and his insurance company. However, it is not obvious to me how his insurance company would be concerned with a passing bay in front of a neighbour's property. Moreover, as the tenor of the letters themselves plainly indicates, this letter represented a worrying escalation of the pressure which Mr Heselden was applying to Mr Fortune.

297. I also regard this correspondence as demonstrating that Mr Fortune had only recently put up the posts outside Swallow Falls. I deduce this from the reference "It *is the only danger point* now that the verges are posted off" (my emphasis). I regard this as a reference to something which had happened not long before the letter was written. I find that before those posts were erected outside Swallow Falls and Brookfields in 2002, no such posts had been installed.

298. Mr Heselden was also somewhat terse with Kevin Gale, of Wiltshire County Council's legal department in his letter dated 11 January 2002, where he wrote:

*I refer to your letter of 30 December 2002 to Mr K Fortune, of Swallow Falls. I note that you purport that you sent my solicitor a letter dated 28 October 2002. No such letter was ever received by my solicitor, and I do not accept that your claim of doing so, is in any way genuine. If there was such a letter, then there should be no reason why you should not send me a copy of that letter, and while it should not be necessary, as the client of that solicitor, for the record the request is also made under Freedom of Information Act 2000 and Data Protection Act 1998.*

*I trust that you will ensure that a copy of this questionable letter is supplied to me without delay.*

*Also, if my solicitor has never received such a letter, then now having that knowledge, <u>if</u> this letter exists, there should also be no reason why you should not fax it directly to him immediately, Mr J Orchard of Pardoes, Solicitors, on 01278-429249.*

*Thank you.*

*Yours faithfully*

*Mr J Hesseldon.*

299. It is part of the style of Mr Heselden's correspondence that he finishes it off with the phrase "Thank you." He has also, in those letters to Mr Fortune, and in other correspondence, referred to a "stated case" and to the case of *Hale v Norfolk County Council*.

300. On the same day that Mr Heselden wrote that letter to Kevin Gale, he also wrote, I find, another letter on the letter heading of 'Rowden Residents' Association' to Mr Gale. He denied full authorship of that correspondence which, in my judgment, he

plainly wrote. The reference to “Thank you” at the end, and its reference to “a High Court ruling” are typical of his style.

301. When asked about the Rowden Residents’ Association he denied that he was the Chairman. Whether or not somebody else held the nominal title, Mr Heselden was the power behind it.

302. He said that no correspondence was sent out from Rowden Residents’ Association unless it had been “vetted.” He wanted to make sure that nothing said by the residents undermined the case of the Ayres family. It was precisely for this reason that he was writing the letters. I reject his evidence that his solicitor had any involvement in drafting this letter. The style of the letter is simply not professional enough for that to have been its source. Moreover, the letter was written in the first person and in an assertive and somewhat bombastic style, which I do not find to be consistent with its having been written by a solicitor.

303. It is difficult to know what substance there was to the Rowden Residents’ Association. Certainly very few other residents of Rowden Lane, if any, seem to have been asked to join it. It was, in my view, not much more than a different manifestation of the Second and Third Claimants. If such an organisation existed outside Brookfields, I reject Mr Heselden’s evidence that he was neither a member nor chairman of it.

304. On 6 April 2002, another letter was written by the Chairman of Rowden Residents Association to Wiltshire County Council. Unlike the earlier letter of 11 January 2002 which had been sent by email (but had no address on the letter), the letter of 6 April 2002 invited a reply to Brookfields. This was a substantial letter, comprising two pages at 265 and 266 in Volume 1. Again that letter ended with “Thank you”, had some of its text in bold print and underlined and made reference to the “stated case” of *Hale -v- Norfolk County Council* twice. I have no hesitation in including that this letter too was

written by Mr Heselden. It was written in the first person which Mr Heselden told me may have been the solicitor.

305. It is not so much the content of these letters, save for one matter to which I shall turn, which is of importance. What is of interest is Mr Heselden's reluctance to be associated with them. I regard this as relevant to his credibility. He is very anxious to be seen as distant from the main action in this case. In my view, he was at the heart of the action and directing it.

306. The first reference Mr Heselden made to the existence of a "Private" sign on Rowden Lane was in his first witness statement dated 24 January 2007. I have summarised his witness statement above. In the letter of 6 April 2002, Mr Heselden, I find, wrote:

*"If you fail to provide us with legislation that empowers your Director of Highways to do the above, then we will take this as acceptance by your council that your Director has no such legal rights to do so and the status of our section of Rowden Lane, remains as historically shown on records, a Private lane in which there is a footpath RUPP5. And nothing more than that. We trust that if you cannot show us this proof that you will have no objection to a sign in our lane, showing that it is Private with a footpath. After all it is our privately owned lane, not yours.*

*It beggars belief how you can claim that the information given to DMH was correct, when neither you nor your junior had considered the most relevant stated case of Hale -v- Norfolk County Council, before making your claims to them, which proves the advise given by you was seriously lacking and in error…"*

307. This reference to a private sign in that letter is somewhat prophetic since in August/September 2002 overnight the word "Private" was painted on the carriageway at the junction of Section A and B of Rowden Lane. I find this was done at the instigation of Mr Heselden.

308. Significantly, although Mr Heselden was discussing a sign with the word “Private” on it in that letter, he never once made reference to the existence of the “Private” sign at the entrance to Rowden Lane between 1980 and 1983, to which he first made reference in his first witness statement some 5 years later. I cannot imagine Mr Heselden, who deployed everything he could to advance his case that the lane was private, not making reference to the existence to this piece of evidence, if it existed.

309. His reply to this suggestion was that he had, in fact, told his solicitor about the existence of the sign. I reject that evidence. If he knew of that sign at the time he was writing these letters to the Council to support the case that the lane was private, he would have undoubtedly have deployed that piece of evidence long before his first witness statement.

310. Mr Burns put it bluntly to Mr Heselden that he had lied about the sign in 1980 and that he had lied about not being the chairman of Rowden Lane Association. I agree. In my judgment, Mr Heselden was not truthful about those and many other matters in his evidence, to which I have made reference.

311. He was keen to be in the background, in the shadows, and not to be seen as involved. Yet, the reality was exactly the opposite. I find that, from the time Mr Heselden knew there was a risk of development that could adversely affect his property in Rowden Lane, he orchestrated a campaign to highlight the private status of the Lane and its verges. It was under his influence that the obstructions, sleepers, stones or bollards on the verges and hard standing escalated.

312. If, on the Claimants’ case, the lane was private and not much used by the public in vehicles, why would the Second Claimant go to the bother of placing sleepers and other obstructions on the hard standing which would have to be removed for delivery vehicles? Moreover, the problem of cars, associated with the public house, parking in

the Lane by Brookfields seems to have been particularly associated with the reduction in the size of the car park when the public house was extended in 2000.

313. I find that these items were not present before Mr Heselden arrived in 1996. They began to intensify for the first time after it was realised that there was a risk of development of the land opposite Brookfields, probably in 2002 .However, the items placed outside Brookfields on the verges and hard standing were not considered by him to be enough. Hence his pressure on Mr Kevin Fortune, not only to put posts outside Swallow Falls but also to obliterate the passing bay which he saw as the weak spot of their claim.

314. In my judgment, any stones or other items placed on the verge outside Brookfields, Elmtree Farm House, Elm Tree Farm and Swallow Falls and its paddock, up to and including 2001, had been placed there for purely decorative purposes or to prevent damage to the grass verge. They were never placed to counter any dedication of Rowden Lane as a public vehicular highway across its entire width.

315. I expressly find that there were no posts of any significance outside Brookfield or Swallow Falls before 2001.

316. I did not regard Mr Heselden as an honest, accurate or reliable witness. In my judgment, he has lied to the court.

The Second Claimant

317. Rosemary Phoebe Ayres was 11 years old when Brookfields was purchased.

318. Her evidence was that both her parents' solicitors and the vendors of Brookfields had assured her parents that the Lane and its verges were privately owned. However, the 1963 conveyance to Mr Ayres made no reference to the verges and the land conveyed

was described as ‘land adjoining Rowden Lane’. No easement had been granted in favour of Brookfields to get to it or to pass over any other part of Rowden Lane.

319. It seems to me likely that the solicitors acting for Mr Ayres would have conducted a local land charge search and discovered, as had others, the existence of the 1937 resolution declaring Rowden Lane to be a ‘new street’. Searches conducted in 1958 (Brookfields) and 1970 (Swallow Falls) had disclosed this entry. None of the 1963 conveyancing file, apart from the conveyance, has been produced, nor has any letter, if any existed, from the solicitors then acting for Mr Ayres, explaining to him the rights he was acquiring and the obligations he was undertaking under the conveyance.

320. It seems to me that, in 1963, the emphasis was also on whether the Lane was being maintained publicly or privately, rather than whether it was a public highway. Certainly, in the 1977 agreement with Langcote, and on registration of the title in 1996, Rowden Lane at this point was described as a highway. I reject her explanation that lawyers either wrongly assumed it was a highway or, knowing that it was not a highway, still allowed it to be described as a highway.

321. Ms Ayres said she remembered the cattle grid being there in 1963, although, owing to the shade on the 1964 photographs, this cannot be confirmed by the aerial photographs, as interpreted by Mr Vaughan.

322. When they moved to Brookfields in 1963, she said that Mr Ayres put tarmac over the clinker from the edge of the roadway, over the verge area, and into the old driveway and also placed posts and stones on the verge outside Brookfields. The posts were placed on the high verges by the old driveway and stones placed on the remaining area of verge. Moreover, she alleged that the verge outside Brookfields was fenced from time to time until the 1990s with electric stakes and wires to enable animals to be

grazed there. She added that the family's lorry, trailer and horsebox were parked regularly on the verge.

323. The impression she was seeking to convey was that the verges were constantly occupied or used in a way indicative of private ownership.

324. She also described how, for some 30 years until 2002, concrete moulds had been positioned on the verge outside Elm Tree farmhouse, and also how Dick Jennings used to park trailers on the verge outside Elm Tree Farm, where stones were subsequently placed. Mary Puntis denied the suggestion that her father, who was meticulously tidy, kept trailers or vehicles regularly on the verge outside the farm, although she accepted that the moulds made by Ron Wheeler had been placed outside Elm Tree farmhouse in the late 1960s or early 1970s.

325. Opposite Brookfields, on the verge outside The Bungalow, Ms Ayres said there were staddle stones since, as she understood it, the 1950s until the late 1990s or even 2000, when she believed they were removed because Laing was showing interest in buying the land adjacent to The Bungalow. Of course, the option agreement was made in 1995, much earlier than Ms Ayres said the staddle stones were removed to smooth the way for a successful planning application which might have involved a widening of Rowden Lane. I find that the staddle stones were moved shortly after 1991.

326. She described the “Private Lane to Farms only” sign which she said was there in 1963 and remained until it disappeared in 1983. However, this sign was never mentioned in the Brookfields correspondence to the developers in 2001 and 2002, where she and Mr Heselden sought to persuade them that they could not implement any planning permission they obtained, because Rowden Lane and its verges were private. In cross examination, she accepted that it was “possibly” the case that she had never written about the sign, until her second witness statement in January 2007.

327. None of her witness statements suggested who had painted ‘Private’ on the carriageway in August 2002.

328. In 1978, the new driveway was put in, together with the hardstanding, without, she alleged, any planning consent. She said that this was because the Lane was private, and the fee sent for the planning consent had been returned. I have seen no documentation in relation to this, and so I simply do not know whether, given the classification of Rowden Lane at the time, it would have required planning consent as a matter of law.

329. Nevertheless, the point which Miss Ayres wanted to make was that this new driveway was bordered with kerbstones which continued in a curve into the Lane, forming a wide splay. Moreover the hardstanding was adjacent to the driveway, and was constructed over what had been a section of the grass verge. She maintained that once this new driveway had been built, railway sleepers were placed over the hardstanding and individual kerbstones placed along the edge of it.

330. I find this surprising. If, as she described, the lane was so infrequently used, and then only by residents, why was there any need to block off the hardstanding? On her evidence, vehicular traffic increased only after 2000, when the public house car park was reduced in size. I find that the railway sleepers and stones were placed there, on a permanent basis, no earlier than 2002. I make this finding, even if the photographic evidence (supplied by the Claimants after delivery of my draft judgment) showed five sleepers on the hardstanding in 1988, because I do not accept the evidence of the Claimants’ witnesses that that they were permanently situated there since 1978.

331. She claimed that Rowden Lane and its verges had always been maintained by the residents, and never by the Council. Indeed, she said that in 1989 it had been resurfaced by Mr Prangle, and paid for solely by Dick Jennings in order to improve the

prospect of success of his planning application. However, the highway authority had carried out the works in 1988 and 1989 in Rowden Lane. No documentary evidence was produced to support the proposition that Dick Jennings paid for this work, nor was it the evidence of Mary Puntis that he had.

332. Ms Ayres made three allegations of violence against Dick Jennings.

333. The first was that he drove his tractor at Mr Gibbons and Mr Gooden. She said that they were terrified of him. This was not confirmed by any of the Gibbons witnesses.

334. She also described an incident when Dick Jennings was supposed to have gone for Mr Pullin with a pitchfork, because he had accidentally dislodged a stone on Mr Jennings' verge when he was cutting the grass with a tractor. Kevin Fortune said that he was present when Mr Pullin described this incident to his father. However, Miss Ayres never saw the incident herself and Kevin did not describe the incident himself. Mrs Jennings knew nothing about it, nor did Mary Puntis. I am sure that, had such a thing happened in this small community, it would have been notorious.

335. Finally, Miss Ayres suggested that Dick Jennings gestured to her, as if he was going to shoot her, over her letter of objection to his planning application in 1983. The first time she made this allegation was in her fourth witness statement, made in April 2009.

336. I am not satisfied that any of these incidents occurred.

337. She said that she had never known members of the public to use Rowden Lane for recreational and, indeed, there was no logical reason for the public to pass over the Lane at all. As far as she was concerned, the users of the lane were the occasional walkers, residents, visitors to residents and farm vehicles. She added that there were fewer cars in and around Chippenham in the 1940s, because it was situated within

poor farming country and, even in 1963, no or few motorcars used the Lane, just farm vehicles. However, Mr Gibbons had a motorcar as indeed did Mr Jennings.

338. I am not persuaded that cars in the 1950s and 1960s were as rare as she suggested. I prefer the Gibbons witnesses on this point.

339. She also alleged that Mrs Burridge would challenge anyone using the Lane, who was not a resident of Rowden Lane. However, this was not the view of the Gibbons witnesses. Moreover, she disagreed with them about the extent of parking on the lane. She suggested that cars could not park outside the Old Piggery, nor indeed anywhere beyond Swallow Falls because it was the last available turning point. She thought it was only after 2000, when the public house was extended and the car park correspondingly reduced, that there was an increase in cars and dog walkers on Section B of the Lane.

340. I reject this. It seems to me that, ignoring the grass verges outside Brookfields and Swallow Falls, there is, and has always been, ample car parking space (i) on the verges at the back of Burleaze (ii) by the entrance to the Old Piggery (iii) on the verge adjacent to the Old Piggery (iv) in front of Elm Tree farm house and, until it was removed, (v) in the passing bay. That is all within section B.

341. She maintained that she had no input into the letters written on behalf of Rowden Residents' Association, even though her home was used as the address for correspondence. She did, however, confirm that Rowden Residents' Association was not a true association, merely an action group. It held no meetings and had no membership forms. Its purpose seems to have been largely to redress what she regarded as the 'loose cannons' of the River Valley Protection Group which, no doubt to her annoyance, had held meetings with the developers.

342. Finally, she gave evidence about a number of specific events. The first was the telephone conversation which she said she had with Mrs Jennings in April or May 2002, in which Mrs Jennings is alleged to have said that the Lane was private. I have dealt this above.

343. On 22 June 2002, she alleged that Tony Collins got very angry with her because of her claim that the Lane was private and because she was putting posts on the verges. She said that he was trying to get her to stop her claims, because it was interfering with his planning application and that he had hoped to have his 'dosh' by Christmas. That conversation was denied by Tony Collins. It was alleged by her, for the first time, in her fourth witness statement in April 2009. I prefer the evidence of Tony Collins on that issue. He denied any such conversation, saying that, in any event, ‘dosh’ was not a word he would have used.

344. She described an occasion in September 2002 when Council workmen came to obliterate the word ‘Private’, which had been painted on the carriageway, and had tried to remove some of the obstructions on the verge. The police had been called and they advised the Council workman to leave the scene, which they did.

345. However, on 13 November 2002, the Council had sought the assistance of the police to remove these obstructions. This was the occasion on which the alleged assault took place.

346. In her witness statement, describing this incident, she said:

*He then struck me on the face with the clipboard knocking me to the ground.*

347. This account is more suggestive of a deliberate assault than the account which she subsequently gave. As I have indicated elsewhere in this judgment, it was very surprising that no reference was made to this assault when Mr Hesleden wrote to Mr

Gray MP on 14 November 2002, the following day. In the end, Miss Ayres said that the account of the incident given to me by Mrs Collins was ‘fabricated’, and that she had been set up by the police and Mr Clark, one of the workmen employed by the Council to remove the obstructions.

348. She described how the CCTV installed at the front of the Brookfields had been ‘invaluable’ in capturing a number of incidents and, on at least one occasion, the tapes had been given to the police for analysis. I am not aware of any tape for 13 November 2002 being produced to anybody for consideration.

349. The final event occurred on 8 August 2006 when, again, the Council came to remove posts and stones which had been replaced on the verges by the Claimants. She valued the metal reinforced cone shaped stones, 2 feet high and concreted into the verges, which had been removed on this occasion at £850. Those items are currently retained by the First Defendant. However, the items which were removed in November 2002 were disposed of by the First Defendant, which has subsequently compensated the Claimants in respect of them.

350. I do not underestimate the importance of the issues in this case for Miss Ayres. I make full allowance for the illnesses from which she has suffered, and the effect which any medication she had taken may have had upon her words and deeds.

351. Nevertheless, I still regard her as a very determined and manipulative person, who was resolved to do whatever she could to prevent planning permission being implemented. That is understandable. However, in my judgment, the picture which she has sought to paint - of a lane rarely frequented by the public, being challenged whenever they did, with no parking space and with a sign indicating that the Lane was private - is far removed from reality.

352. In my judgment, she not only minimised the true extent of the public user of Rowden Lane, but she also exaggerated the nature, extent and duration of obstacles on the verges and the hardstanding.

353. I did not find her to be an honest, accurate or reliable witness. She was the one who introduced the allegation against Mr Raubenheimer in her second witness statement made in January 2007. She accused him of assault. In my judgment, that was a false allegation. The reality was that she slapped him, because she had lost her temper and was not getting her own way.

354. It suffices for me to say that, where the evidence conflicts, I prefer the evidence called by the First Defendant to that of Miss Ayres, except where the contrary is stated.

**Chapter 10: The Gibbons family, The Bungalow and the Old Piggery**

355. By a conveyance, made 6 February 1937, Arthur Joseph Colborne sold and conveyed to Frederick Harold Gibbons an area of land on the north side of Rowden Lane running between the start of Section B and the beginning of the modern Burleaze site.

356. Frederick Gibbons and his wife Nita had 4 daughters, Shirley (Collins), Susan (Fitzsimons), Jean (Ward) and Barbara (Waldron). Frederick Gibbons died on 10 November 1968, and Nita died on 6 June 1998.

357. It was on this area of land that Mr Gibbons built The Bungalow in 1937. Shirley Collins and her husband, Tony, moved into The Bungalow in 1991.

Family Business

358. The rest of the land is a field on which the Gibbons family ran a nursery and vegetable business. They also grew flowers and sold turkeys at Christmas. They used to sell vegetables, flowers and turkeys to the public there.

359. Subsequently, on 30 March 1945, the personal representatives of David Townsend sold to Frederick Gibbons an area of land, forming part of a larger close of land formerly known as Rushy Ground. It became known as the Old Piggery.

Partnership with Mr Gooden

360. In the 1940s, Frederick Gibbons and Percy Gooden went into business together running the piggery. Following Mr Gibbons' death, the land and buildings, known as the Old Piggery, were conveyed into the name of Nita Gibbons and Mr Gooden.

361. By a Deed of Gift and Appointment, dated 31 August 1994, Nita Gibbons transferred her beneficial one half share into the names of herself and her four daughters. The area of land involved was about 4.345 acres.

362. The Gibbons family is and was a very close one and, although the daughters moved away from home when they married, they kept in regular and close contact with their parents at The Bungalow. This was the first building to be constructed on Section B of Rowden Lane.

363. Jean (Ward) was born in 1941, Shirley (Collins) in 1945, Barbara (Waldron) in 1947 and Susan (Fitzsimons) in or about 1950. Susan died at some time unknown to me but after 2006. I heard evidence from Jean, Shirley and Barbara. I was impressed by their evidence. They were witnesses of transparent honesty, accuracy and reliability.

364. In reaching that conclusion, I have not overlooked the financial advantage which may accrue to them if Rowden Lane were to be declared a public vehicular highway. I also regarded Tony Collins as a witness of honesty, accuracy and reliability.

Option Agreement

365. The potential financial advantage stems from an option agreement, dated 11 July 1996, between Laing Homes Limited, Nita Gibbons, her four daughters and the Gooden family, whereby Laing bought an option to purchase both the bungalow, the adjacent land as well as the Old Piggery. Clearly Laing wishes to develop that land if it can.

366. Moreover, the Gibbons family has entered into another agreement, dated 14 November 2002, with Blossom Properties Limited, Laing Homes Limited, Redcliffe Homes Limited (and some other adjacent property owners), with a view to maximising their prospects of planning success. If all the various areas covered by the agreement were developed, the whole of the south side of Rowden Lane, excluding Swallow Falls, Brookfields and Elm Tree Farm, would be developed, together with the northern section of Rowden Lane between the start of Section B and the commencement of the Burleaze Estate.

367. Despite the financial incentive which those agreements may represent, and after subjecting their evidence to close scrutiny, I unhesitatingly accept the evidence of those three witnesses. They were all impressive witnesses of honesty, accuracy and reliability.

Planning Appeal

368. The Claimants place reliance on material supplied by Mrs Gibbons in support of her appeal against a refusal to grant outline planning permission for residential

development on the land adjacent to The Bungalow in or about 1990. The relevant document is contained on page 157 of volume 1. It is not entirely plain to me whose document this is. The top quarter of the page recites the planning history of Rowden Lane, largely concerned with Elmtree Farm. Only one page of the document has been produced, and I am not at all clear whether this is the Council Officer's report prepared for the appeal or whether it is a submission made on behalf of Mrs Gibbons. However, even assuming for the moment that it is part of a submission made on behalf of Mrs Gibbons, it seems to me that the relevant passage is somewhat ambiguous. It states:

*The highway improvements to the junction of the A4/A320 requested by Wiltshire County Council have now been carried out. A roundabout exists at this junction and the County Council has no objection in principle to this application subject to the road frontage, which is in the applicant's ownership accommodating a 4.8m width road with a 1.8m wide footpath along one side".* (my underlining for emphasis).

369. This passage seems to refer to the highway recommendations made by Wiltshire County Council in a letter, probably dated in August 1990. That letter said:

*Highway Recommendations*

*Residential development; adjacent to "The Bungalow" Rowden Lane*

*No objection subject to:-*

1. *A Grampian condition requiring Rowden Lane to be widened to 4.8m between the access to Rowden Arms and the site access prior to any works commencing on site.*

2. *A Grampian condition requiring the provision of a 1.8m wide footway between the Rowden Arms access and the site access prior to occupation of any dwelling.*

370. I do not therefore read the words, I emphasised above, as an indication that the Gibbons family owned the verge. Rather, if the road had to be widened, it could have been taken out of their front garden which was immediately adjacent to the grass verge.

The Gibbons family's knowledge of the area

371. Shirley Collins and Susan Fitzsimons were originally approached to be witnesses by the First Defendant. They saw Mr Gale of Wiltshire County Council in April 2006, and they provided their own witness statements in or about September 2006. Fuller witness statements were taken from them and from Tony Collins by solicitors acting on behalf of the Second Defendant in June 2008.

372. The documentation originally supplied by Shirley Collins and Susan Fitzsimons to the First Defendant is found at Volume 2/781 and 1/385-6 (Shirley Collins) and 1/384 (Susan Fitzsimons). The brief statement by Susan Fitzsimons, at 1/384, was never signed by her, nor did it contain any declaration of truth. Susan died at some time between 2006 and 2008.

373. It is convenient to summarise the knowledge which Jean Ward, Shirley Collins, Tony Collins and Barbara Waldron of Rowden Lane before turning to the detail of their evidence.

374. Jean Ward, the eldest, was born in 1941. She lived in The Bungalow between 1941 and 1963. In 1963, she moved to South Wales but, in 1968, moved to her present address in Woking, Surrey where she has lived since. However, from 1963, she regularly visited her parents at The Bungalow and, when her mother died, she continued to visit her sister Shirley Collins and her brother-in-law, Tony Collins, who have lived at The Bungalow since 1991. Jean Ward's husband often worked abroad,

and so she would often come with her children and stay at weekends and during the summer holidays.

375. Shirley Collins was the second oldest child. She was born in 1945. She married her husband, Tony, in 1966. She worked on her father's pig farm until it closed in the middle of the 1970s. She lived at The Bungalow between 1945 and 1966. On her marriage, she and Tony lived in the New Forest until 1968, the year her father died. In 1968, she and Tony moved back to Chippenham to be close to her mother. From 1968 onwards, she visited her mother daily and, in 1991, she and Tony moved into the bungalow where they still live.

376. Tony Collins moved to Chippenham in 1964 where, for a very short period, he worked in the Wiltshire Police. Not long after 1964, he met Shirley Gibbons, now his wife. His acquaintance with The Bungalow, therefore, began in 1964. Over the period 1964 to 1966, he was a regular visitor to The Bungalow and to Rowden Lane. In 1968, Tony Collins was working as a postman, and had his afternoons free. Accordingly, he would regularly help out at the Old Piggery during the afternoons and on Saturday mornings.

377. Barbara Waldron was born in 1947. Until recently, she worked as a NHS receptionist. She has a strong and independent personality. Born in 1947, she lived in The Bungalow until 1967, when she moved to Swindon. In 1979, she moved to her current address, also in Woking, Surrey. However, from 1967 onwards, she would regularly return to Rowden Lane to visit her family. In addition, she would telephone her mother several times a week.

378. They were all very supportive of their parents. They were all regular visitors to The Bungalow, even after marriage. When they were not visiting, they were in regular contact by telephone.

379. I am satisfied that, individually and collectively, they have a detailed and reliable knowledge of the history of Rowden Lane and the properties on it. They have all impressed me as honest, accurate and reliable witnesses.

Summary of the Gibbons evidence on the 11 topics

380. Their evidence is substantially to the same effect. It deals with the following 11 topics, except where the contrary is stated.

381. However, Shirley Collins alone gave evidence about an alleged assault she witnessed on 13 November 2002, when she said that the Second Claimant, whilst standing on the gate inside her property, slapped a council employee, Emil Raubenheimer, "pretty hard" and then ran off into her house. This incident is alleged to have happened when council workmen were trying to remove objects that had been placed on the grass verge in front of Brookfields and elsewhere on Rowden Lane.

382. The 11 topics, about which all the sisters gave evidence, with a few exceptions, were as follows:

(1) Familiarity with Rowden Lane and the adjoining properties;

(2) The Gibbons' farm, vegetable and piggery businesses between 1947 and the middle 1970s;

(3) The maintenance of the surface of Rowden Lane and the verges;

(4) Use of the lane by the public in vehicles;

(5) Parking on the lane;

(6) Signs on the lane;

(7) Staddle stones placed on the verge outside the bungalow between 1963 and the 1990s;

(8) Stones, bollards and other obstructions on verges in Rowden Lane placed by others;

(9) Family belief as to the status of Rowden Lane;

(10) Challenges by owner/occupiers of properties adjacent to Rowden Lane to members of the public using Rowden Lane;

(11) The passing bay in the verge outside Swallow Falls.

383. Jean Ward did not give evidence on points (10) and (11) above, and Barbara Waldron did not give evidence on point (11).

Family helping out

384. The essence of their evidence was that their father had been in partnership with Mr Gooden, since about 1945-47, in the piggery business. This continued until the middle 1970s. In addition to this, Mr Gibbons grew vegetables and flowers next to the Bungalow. He sold these not only to wholesale purchasers but also to the public from The Bungalow. At Christmas time, he also sold turkeys to the public.

385. After the cessation of business at the Old Piggery, some of the buildings were knocked down, but a derelict barn still remains there. This barn is used by Robert ("Nobby") Harding to store his circular saw and cut wood. The probability is that this wood is kept not for resale, but for his own use. He is divorced from his wife, Gillian Harding. They have a daughter, Claire Harding. Gillian and Claire gave evidence before me.

386. All the girls in the Gibbons family seem to have helped out both in the pig business and in the nursery/vegetable business run next door to The Bungalow.

Rowden Lane in and after the 1950s

387. In the 1950s, Rowden Lane had a hard surface of compacted gravel. Barbara Waldron could recall roller skating on the lane with her sisters. Jean Ward's earliest memory of vehicles using Rowden Lane was, at the end of the Second World War, when a column of Army tanks mistakenly turned up Rowden Lane. They drove up the length of Rowden Lane, and then turned around in the fields at the eastern end. She could remember standing with her mother outside The Bungalow, waving at the tanks as they drove back onto the A4 Bath road. At this stage, there was no evidence of the Council or of any Highway Authority taking responsibility for the maintenance of the Lane. Potholes appear to have been filled in on an 'ad hoc' basis by adjacent property owners.

388. However, in the 1960s, the Lane was resurfaced, as WH Jennings indicated in his Statutory Declaration, and this was paid for effectively by the farms and businesses on Rowden Lane.

389. In the early 1980s, Rowden Lane was again resurfaced. No contribution towards the cost of this resurfacing was demanded from Mrs Gibbons. In my judgment, this resurfacing was done, at no cost to the residents, by the Highway Authority in or about 1983. It was probably the work, which gave rise to the disciplinary hearing of the workers who carried out resurfacing in Rowden Lane in 1983. This disciplinary hearing revealed that Section B of Rowden Lane was incorrectly shown on the map only as RUPP 5.

390. In any event, it would seem that this work, done in 1983, represents the first recorded maintenance of Section B of Rowden Lane at public expense for some considerable

time. The failure to do so earlier, according to Mr Dick Jennings' correspondence, was because the Council simply did not have the necessary funds and did not regard Rowden Lane as a priority.

391. As far as the verges outside The Bungalow are concerned, their evidence was that their father was meticulously tidy. He kept the hedges and the verge trimmed, not because he regarded himself as owner of the verge, but because he wished to keep the front of his house attractive and tidy.

Wall and raised verges

392. At the commencement of the raised verge outside The Bungalow, the remnants of a wall built of brick and stone projects towards the carriageway. No explanation has been given for the presence of this remnant of wall.

393. However, a scrutiny of some of the old Ordnance Survey plans and photographs may explain this remnant of wall drawn to my attention during the site view. Appendix 14 to Mr Harbour's report contains a copy of the first edition Ordnance Survey map for 1886. This shows the location of the earlier Rowden Arms Public House. This may well have been demolished when the current public house was built in the 1960s. However, from the 1886 map, it can be seen that the Rowden Arms public house lies in the middle of a plot, the eastern boundary of which protrudes into Rowden Lane itself. Rowden Lane was not of uniform width, and the effect of this projection would have been slightly to narrow it at that point.

394. The matter is shown more graphically in an aerial photograph at page 419 in Volume 2, which shows the original extent of the public house car park before it was altered to allow for the construction of the road leading to numbers 83, 85 and 87 Rowden Hill. In that photograph, a boundary wall can be seen separating the car park from The

Bungalow. It seems to be a continuation of that boundary wall which has projected onto the verge.

395. Accordingly, I do not regard this wall as inconsistent with the verge forming part of the highway. The explanation may be that the public house car park originally extended further into Rowden Lane before the commencement of the verge outside the Bungalow.

396. The gate which Mr Hudson spoke of in his witness statement may have been in connection with the car park. None of the other witnesses mentioned it, nor was it observed by Mr Vaughan in his topographical survey or in the old maps and photographs which he analysed. In the conveyance of the land (to become The Bungalow) to Frederick Harold Gibbons in 1937, there is a drawn plan of the area. There is no indication on that plan of any gateway across Rowden Lane, merely a narrowing of Rowden Lane between what was to become the car park and Rowden Place opposite.

397. However, the existence of a gate, which I do not accept, even if it were capable of opening and closing across Rowden Lane, would not inevitably prevent Rowden Lane becoming or being a public vehicular highway. Mr Hudson did not suggest this gate was padlocked.

398. The raised verges outside The Bungalow and Brookfields, together with the remnants of the wall, pointed out to me on the site view, are relied upon by the Claimants as some evidence that the verges were or are privately owned, and not subject to any public vehicular rights. The origins of the raised verges and the wall have not been explored in the evidence. However, raised verges may have been the result of accumulated vegetation or debris left, over time, on the verges on which grass has grown.

399. However, in my judgment, neither the remains of this wall, nor the height of the verges outside The Bungalow and Brookfields, are conclusive against, or necessarily inconsistent with, the existence of a public vehicular highway across the entire width, hedge to hedge, of Rowden Lane.

Users of Rowden Lane

400. The Gibbons' identified a wide-range of people and vehicles using Rowden Lane from their recollection. They included:

(1) Until the late 1960s, lorries and members of the public visiting the Gibbons nursery and vegetable business to purchase vegetables, flowers and, at Christmas time, turkeys;

(2) Until the 1970s, agricultural vehicles, lorries and workmen visiting the Gibbons and Gooden pig farm and the Jennings family pig farm;

(3) From the early 1970s, individuals using the sheds at Rushy Ground (the Old Piggery);

(4) Until the 1980s, agricultural vehicles, lorries and women going to Rowden Farm;

(5) Individuals walking, cycling and riding horses (at least until the cattle grid was installed some time between 1964 and 1970).

(6) Residents of Rowden Lane accessing their properties;

(7) Members of the public walking, cycling and driving up Rowden Lane to access the fields around Rowden Farm, and the river behind Rowden Farm to go fishing and swimming;

(8) Post vans, bin lorries, milk vans and bakery vans;

(9) From the 1980s, caravans going to and from Elmtree Farm;

(10) By the 1980s, vehicles accessing Kevin Fortune's window business at Swallow Falls;

(11) From the 1990s, the various families in the converted homes at Rowden Farm;

(12) Individuals driving up Rowden Lane by walk their dogs on the field past the cattle grid;

(13) During the 1980s, lorries and workmen accessing Martin Jennings packaging/cling film business;

(14) Individuals accessing Gypsy Lane to cycle and ride horses. Mrs Burridge, who died in 1985, the former owner of Rowden Farm would regularly drive up Gypsy Lane.

401. I accept that some of this use is by owners, or licensees of owner/occupiers of properties, on Rowden Lane.

402. However, I find that significant use of the Lane is, and since at least the 1950s has been, made by the public in mechanically propelled vehicles in order to gain access to the wide fields and amenities, including fishing swimming and walking along public paths, at the end of Rowden Lane, beyond the cattle grid.

403. Whilst there may have been other ways of accessing these fields, for example (i) via Gypsy Lane or (ii) driving to and parking in the hospital car park and then accessing the fields from the footpath from the car park or (iii) cutting through from Burleaze to Rowden Lane via the footpath adjacent to 22 Burleaze, I am satisfied that Rowden

Lane was a very convenient way of gaining direct access to this open and attractive land, over parts of which the public also enjoyed rights of way.

Parking

404. Moreover, an advantage of using and parking on Rowden Lane was not having to park in front of people's houses up by the cattle grid. Once vehicles had driven past Elm Tree Farm, there were no other houses fronting the Lane. The public parked their cars by the cattle grid, in my judgment, because they were driving to the end of Rowden Lane for recreational purposes.

405. The Gibbons witnesses stated that vehicles were parked on Sections A and B of Rowden Lane, especially when the public house car park was full, and also up by the cattle grid. They even parked in front of The Bungalow. The Gibbons family never complained about this, or warned people off, because they always knew the Lane was public. Parking areas used included those outside Elm Tree farmhouse, by the Old Piggery, on the verges by the Old Piggery, and on the verges at the back of Burleaze where owners have put gates to gain access to the back of their property from Rowden Lane. Some residents of Burleaze even park on the verges in Rowden Lane, having driven along Rowden Lane to get there.

Signs

406. The Gibbons witnesses denied the existence of any sign at any stage on Rowden Lane which contained the word "Private". There were two exceptions to this. The first was the painting of the word "Private" overnight on the carriageway at the junction of sections A and B in 2002. The second was the very recent sign which has been placed at the cattle grid describing the road to Rowden Farm as private. However this is after the end of Rowden Lane relevant to this case.

Warning off non residents

407. The suggestion has been made by or on behalf of the Claimants that the Collins/Gibbons family themselves warned off people who used the lane or parked on the verges outside the bungalow. It is also suggested that the Gibbons family themselves had stones on the verge, indicative of their assertion of ownership over the verges, rather than the verges forming part of the highway.

408. I accept the evidence of the Gibbons witnesses that there never was any challenge by any of them, including Shirley Collins, to members of the public, for using, whether on foot or by vehicles, the Rowden Lane carriageway or verges. I also accept that they had never been challenged by Dick Jennings, or by Mr and/or Mrs Burridge, nor had they seen anyone being challenged by Mr Jennings, Mr or Mrs Burridge or their parents for using the Lane or the verges, or for parking there.

Staddle stones

409. It is accepted by them that staddle stones (rather like a mushroom, with a cap at the top and a vertical stone at the bottom) were placed on the verge outside The Bungalow in about 1963. Robert ("Nobby") Harding had sold them to Mr Gibbons for £30. They remained there, not as an assertion of ownership of the verge on which they were placed, but for decorative purposes only. Following the theft of the tops of one or more of the straddle stones, they were taken off the verge in the early 1990s, and kept at the back of the bungalow. They are still there. They were not moved for any reason connected with the option agreement.

Stones and obstructions on other verges

410. The Gibbons witnesses also gave evidence about other stones and obstructions on verges outside other properties on Rowden Lane.

411. Their evidence was to the effect that stones on the driveway (preventing entry, turning or parking) – but not on the verges - had been placed outside Brookfields no earlier than 1996. However, they noticed a distinct escalation of obstructions and stones on the verges in and after 2002.

412. Nevertheless, they had to accept, especially when shown a photograph taken in the early 1990s showing stones on verges outside Elmtree Farmhouse, by the entrance to the caravan storage park and outside Swallow Falls and paddock, that some items had been placed there before 1996. Nevertheless, I am satisfied that there was a change in attititude and very significant escalation in 2002.

413. I find that before 2002, any thing placed outside Elm Tree Farm and Swallow Falls was for decorative purposes or to protect the edges of the verge, which had been kept so neatly, from caravan wheels.

Reputation

414. They said that the views of their late mother and father, were that Rowden Lane had always been a public highway, despite the document in relation to the planning appeal concerning The Bungalow, to which I have referred above. As I have already indicated, I am not satisfied that this document was referring to the verges. I am satisfied that their parents always believed Rowden Lane to be a public but unadopted vehicular highway.

Passing bay

415. They confirmed that the passing bay had originally been installed in or around 1989 but that it was removed in 2002. The passing bay was removed by Kevin Fortune, as I have already indicated, as a result of improper pressure applied to him by the Third Claimant. I am satisfied that this pressure formed part of the campaign which the

Second and Third Claimants wished to run as part of their objection to the planning application. The petition which they raised, and the other correspondence from 'Rowden Residents Association', formed part of the same campaign. I shall deal with these matters more fully, when dealing with my assessment of Mr Heselden.

416. I have dealt with the Gibbons evidence as one narrative. There were I accept, minor differences in recollection between those four witnesses, but they did not undermine my confidence in the honesty, accuracy and reliability of each of them.

Assessment of Gibbons evidence

417. I accept their evidence. In particular, I accept their evidence (i) as to the significant public vehicular user of Rowden Lane since the 1950s; (ii) that there was no "Private" sign; (iii) there was no challenge to members of the public using the carriageway and/or verges of Rowden Lane, whether by car or on foot; (iv) that the staddle stones were not assertions of ownership, but were mere items of decoration, and (v) that, in 2002, there was a considerable escalation in new obstructions on the verges outside Brookfields and Swallow Falls.

418. I am satisfied that, before 2002, stones or other items, placed on the verges, driveway and hardstanding in Rowden Lane, had been put there mainly for decorative or protective purposes, and not to negative any dedication of the carriageway or verges as public highway.

419. In my judgment, the Gibbons family has a reliable, accurate and intimate knowledge of the lane. They were the first family to live on Section B. Their father built The Bungalow in 1937.

420. Where their evidence conflicts with that of the Claimants or the Claimants' witnesses, I prefer the evidence of the 'Gibbons' witnesses, except where the contrary is stated.

The alleged assault by the Second Claimant on Emil Raubenheimer

421. I turn now to the conflict of evidence over the alleged assault by the Second Claimant on Mr Raubenheimer on 13 November 2002.

422. I have reminded myself of the gravity of this allegation, and the need to scrutinise the evidence most carefully before being satisfied that Ms Ayres unlawfully assaulted Mr Raubenheimer.

423. In the trial bundle, attached to the witness statement of Shirley Collins, are the police witness statements of Mr Raubenheimer, Christopher Clark (an employee of the company involved in the removal of the obstructions), Police Constable Caroline Vost, Police Constable Gardner, Police Sergeant Glasgow and Police Constable Mazurk. None of those has been called to give evidence before me, and their witness statements, although attached to the witness statement of Shirley Collins, are not evidence in the case before me. Indeed, the whole issue of whether or not there was an unlawful assault is irrelevant to the primary issues which I have to decide. Nevertheless, it was originally raised by the Second Claimant in her witness statement and, to a limited degree, is relied upon by the First Defendant as relevant to the credibility of the Second Claimant. If the allegation that the Second Claimant unlawfully assaulted Mr Raubenheimer is proved, it shows the intensity of her feelings over the issues in this case. It would also establish that she has not, at least on this issue, been a truthful witness.

424. In analysing this issue, I have not relied upon any of those police witness statements. I have, however, had the advantage of reading the interview under caution of the Second Claimant. In that interview, she denied any gratuitous assault upon Mr Raubenheimer. She denied slapping him deliberately. She suggested that he was trying to frustrate her attempts to see what was being removed from the verges by

Brookfields, by holding up a clipboard to her face. She maintained that the clipboard held by Mr Raubenheimer came into contact with the side of her face causing some injuries. She produced photographs of facial marks which she said had been caused by Mr Raubenheimer, as a result of whose actions she instinctively put out her hand, which innocently may have come into contact with Mr Raubenheimer. However that was never a deliberate assault, but rather an involuntary reaction to losing her balance as a result of being hit with the clipboard. This was the account she repeated in her oral evidence

425. Shirley Collins described the incident both in her witness statement and in her oral evidence. She said that she was at home looking after her grandson who had just come out of hospital. She described how she became aware of a commotion going on opposite The Bungalow at Brookefields and went out to see what was happening. She saw the Second Claimant standing on the inside of the gate at the entrance to Brookfields. She saw Mr Raubenheimer standing in front of her with his back to Shirley Collins. She recalled another council worker standing some distance back and police officers further down the lane. The Second Claimant, she said, was shouting at the council worker and then slapped him pretty hard, after which she says ran off into her house.

426. This account is, I find, inconsistent with the Second Claimant's account both to the police and repeated in her evidence.

427. Shirley Collins was cross-examined on the basis that she never saw the incident, and that she had derived the information from the police witness statements. The implication was that she was making up the allegation against the Second Claimant. This was pursued on the basis that she had not made a witness statement to the police which, it was suggested, she would have done had she been a genuine witness of the incident.

428. Her answer was that she had never been asked by the police to give a witness statement. She was adamant that she had seen the episode, that Miss Ayres did slap the council worker, and that she had not seen the police witness statements at the time that she had made and signed her witness statement.

429. There are two other aspects of this incident which are worthy of note.

430. The first is that no CCTV footage of the event was produced by the Second or Third Claimants, even though they had installed a CCTV system to record events in the Lane outside Brookfields. This is to be contrasted with another episode when Mr Heselden produced CCTV footage from the camera to the police.

431. The second is a letter written, I find, by the Third Claimant, the day after the incident. The Claimants' complaint was that the objects were being removed from the verges two days before a Planning Inspector visited the Lane. That unsigned letter to the local MP, inviting a reply to Brookfields, purported to come from 'Rowden Residents' Association'. It complained of a 'serious incident' on 12 November 2002. However, no allegation of improper behaviour by Mr Raubenheimer, or of his hitting Ms Ayres with a clipboard causing injuries, was made.

432. I have no hesitation in accepting the evidence of Shirley Collins on this issue. I find that the Second Claimant did unlawfully and unjustifiably slap Mr Raubenheimer on the face because she was very agitated and cross with him. The event took place at an important time in the planning process. She was highly emotional at that time. She said she went back into the house immediately, and made no complaint at the time to the police.

433. In her evidence to me, she tried to explain how her own disability, attributable to a medical condition, would have precluded her from being involved in the event as

described by Shirley Collins. I regard those explanations as contrived after the event to seek to minimise her involvement, and to explain away what she had done.

434. I utterly reject the suggestion that Shirley Collins pretended to be a witness to something which she had never seen, and made up an account derived from police witness statements.

435. I accordingly find that the Second Claimant did deliberately slap Mr Raubenheimer, and has not been truthful to the Court about it. My conclusion is in no way altered by correspondence that she received from the police/victim support, where she was described as the victim and not the aggressor, following her own complaint.

436. Mr Raubenheimer had first made a complaint of assault on him by Ms Ayres to the police. In the end, there were no criminal proceedings.

437. Moreover, in putting forward a version of facts, which attempted to provide an innocent explanation for the events of that day, I find that she has been influenced or assisted by Mr Heselden, who had, before his retirement, been a police officer.

## Chapter 11: Other conflicting factual evidence on modern user of Rowden Lane

### First Defendant's witnesses on modern user

438. I have set out above my assessment of the evidence of the children of Dick and Phyllis Jennings (Elm Tree Farm), and of Mr and Mrs Gibbons (The Bungalow) on Rowden Lane since the 1940s.

439. I move now to three other witnesses called by the First Defendant. They all have some association with the Gibbons family. They are Gillian Harding, Claire Harding and Stephen Pollard. It is convenient to deal with their evidence at this stage because:

(a) They all deal with modern user of Rowden Lane; and

(b) They are or have been friends or acquaintances with one or more members of the Gibbons family.

440. In my judgment, their association with the Gibbons family is not substantial, and it has not caused me to doubt their honesty, accuracy or reliability as witnesses. Indeed, I regard them all as witnesses of honesty, accuracy and truth. I accept their evidence.

Gillian Harding

441. Gillian Harding was born in Chippenham in 1953. In 1970, she married Robert ("Nobby") Harding, from whom she was divorced in 1997. Throughout her married life, she lived at 34 Lowden, not far from Rowden Lane. Her daughter is the witness Claire Harding.

442. Both Gillian and Claire were keen walkers. Between 1970 to 1997 (in the case of Gillian), and between 1983 to date (in the case of Claire, born in 1973, her child attends a local school), they walked their dogs along Rowden Lane to the large area of fields beyond the cattle grid. Both Gillian and Claire now live in Trowbridge where they run a public house.

443. Her ex-husband used to work for the Gibbons family. Although Gillian knows the Gibbons family, she has had little contact with them or the Collins family over the last 11 years. Gillian also used to ride along Rowden Lane on horseback. She, like Claire, described cars frequently parked at the eastern end of Rowden Lane by the cattle grid and the Old Piggery. Dog owners used to park there and take their dogs for walks in the fields too. Indeed, she made the point that cars parked up by the cattle grid had gone beyond the last residential properties on Rowden Lane, and were some way away from the new development by Rowden Farm. It is, therefore, likely that a

number of those vehicles had been driven there by people, who were not owners or occupiers of Rowden Lane properties, but who were exercising their dogs or had gone there for other recreational purposes.

Claire Harding

444. Gillian and Claire had always understood Rowden Lane to be public, and had never been challenged by Mr Jennings or Mrs Burridge in their use of the lane. They had no recollection of any sign with the word “Private” apart from a recent sign beyond the cattle grid governing the roadway to the new development at Rowden Farm. Gillian’s evidence was that she had frequently seen cars in the lane between 1970 and 1997 parked up by the cattle grid by the Old Piggery. She also described how cars were not infrequently parked on the verges by the cattle grid.

445. Although she usually walked along Rowden Lane from her home at 34 Lowden along Rowden Lane to exercise her dogs in the fields, between 1993 and 1995 she also used to drive her car to the end of Rowden Lane to exercise her dogs. Gillian pointed out that there was a parking bay on a spur (now overgrown) just after the Old Piggery, between the Old Piggery and Hulberts Hold. This is shown on some of the maps. Gillian described how agricultural vehicles used Gypsy Lane between 1970 and the 1980s. She acknowledged that Dick Jennings could be aggressive, but she had never been challenged. The only stones or items on the verges, which she could recollect, were the mushroom shaped stones outside The Bungalow.

446. Claire’s recollection was that there were always cars parked at the cattle grid, left there by dog owners exercising their dogs in the field. She too always believed the lane to have been public, and said there had been no relevant “Private” signs. She remembered no stones outside Swallow Falls, but did remember the stones outside the Jennings’ farmhouse.

447. Even though Gillian did not live on Rowden Lane, she was never challenged by Dick Jennings or any of the other property owners on Rowden Lane as to her use of the lane.

448. Claire considered that there was adequate room for vehicles to pass each other on the lane and, in the week before she gave evidence in November 2008, a lorry had parked by the cattle grid and another vehicle was able to pass.

449. Although Claire Harding knew Martin Collins, one of Shirley and Tony's children, she struck me as an open, honest and reliable witness who was giving her evidence in a straightforward way.

450. These two witnesses, I am satisfied, are free from any taint of bias or favouritism. They described a fairly consistent picture of Rowden Lane being used by vehicles which were parked on verges up by the cattle grid beyond the Elmtree Farm, with dog owners exercising their dogs in the fields beyond, without challenge. This evidence covers the period between 1970 right up to date.

Stephen Pollard

451. Finally, on this question of modern user, the First Defendant relied upon the evidence of Stephen Pollard. Since 1993, he has lived nearby Rowden Lane at 29 St Margaret's Gardens. He is an aircraft maintenance engineer who works shifts, 4 days on and 4 days off. He has been a regular dog walker along Rowden Lane and in the fields beyond, between 1993 to date. He did not take his dog for a walk at the same time every day and, on his walks, he met different dog owners who had parked their car at the cattle grid end and were exercising their dogs in the field.

452. Apart from a twelve month period between January 2007(when his dog 'Moss' died) and December 2007 (when he got his new dog, 'Teddy') he walked his dogs along

Rowden Lane before getting to the fields. He marked on a plan the routes he would take on his walks.Even in the year when he had no dog, he still walked along the Lane and in the fields.

453. He was so struck by the level of vehicular traffic in Rowden Lane, that he always put his dog on a lead when walking along the Lane.

454. He described too how cars were regularly parked at the eastern end by the cattle grid. These cars had been parked by people who had driven up there with their dogs, parked, and then gone for a walk in the fields. He had never been challenged when he drove up or used Rowden Lane, nor had he ever seen anybody else being challenged. He thought that the Lane was public, and never saw any sign suggesting that it was private, apart from the new sign on the Rowden Farm side of the cattle grid.

455. He was only an acquaintance of Shirley Collins, Tony Collins and Gillian Harding.

456. He summed it up by saying that he saw cars parked up by the cattle grid about half the times he went walking there. Despite his acquaintance of Shirley and Tony Collins, and of Gillian Harding, I regard him as untainted by bias. Indeed, he personally was opposed to any development in Rowden Lane. He had signed a petition to this effect in 2002. The narrative, below which he and others signed in support of the petition, contained a statement that “Rowden Lane is a private road”. He said that he signed the petition, without reading it in detail, because:

(a) he opposed development; and

(b) he wanted to get rid of those who had the petition from his front door as soon as possible.

457. I reject the Claimants' suggestion that, in signing the petition, he was endorsing the view that the Lane was private. As far as he was concerned, the Lane was always public and, by his signature, he was joining the opposition to development and not admitting that the Lane was private.

458. It seems to me that if he were partisan, he would be against development and supportive of the Claimants' case that the Lane was private. His evidence was to the contrary.

459. Having seen him give evidence, my confidence in his honesty, accuracy and reliability as a witness is in no way dented by the fact that he signed that petition containing that reference to Rowden Lane as a private road.

460. Accordingly, he too provides cogent and compelling evidence of modern vehicular use of Rowden Lane, including verges, between 1993 to date. He also contradicted the Claimants' suggestion that the road was not wide enough to accommodate a private vehicle and agricultural vehicles moving in opposite directions.

Claimants' witnesses on modern user

461. I turn now, in the rest of this chapter, to the Claimants' additional evidence on modern user, stones and other obstructions on the verges, signs and challenges to the public using Rowden Lane. I have grouped them geographically where possible.

John Boulding

462. I regarded Mr Boulding as an honest, accurate and reliable witness.

463. He lives at 87 Rowden Hill. The main access to this property is off Rowden Lane, turning left just after the public house. He has lived at that property since 1970, apart

from one year when he was away. He always believed that Rowden Lane, from the entrance of their driveway to Rowden Manor Farm had been a private lane. He had never seen Wiltshire County Council do any work towards the keeping of the lane tidy or in good repair, and observed that the owners had kept their verges in order. Before he purchased this property, the local authority, on 26 January 1970, answered an enquiry about:

[a] *Plot of land with new dwelling house in course of erection thereon having frontage to Bath Road, Chippenham and being plot 3 (development by Mr T J Copland) as shown edged in red on the enclosed plan*.

464. The enquiry and the response were as follows:

*Enquiry*

*Are the highways (including footpaths) known as Rowden Hill and Rowden Lane abutting on the property maintained at the public expense?*

*Reply:*

*Rowden Hill – yes.*

*Rowden Lane – a new street, but Rowden Lane to the access to the new plots is a highway maintained at the public expense.*

465. Mr Boulding concluded that, since the lane was maintained at the public expense up to the access to his house, it was logical to assume that the rest of the lane beyond that side road, namely the section between the entrance to his property and the cattle grid, was not. This view has been supported by the absence of public maintenance, at least before 1983, on section B of the Lane, in contrast with section A.

466. It seems to me that the answer given by the local authority was very specifically tailored to the question of highway maintenance, which was directed to the plot shown on the plan attached to the enquiries. That area was entirely in section A. I do not, therefore, see the answer as necessarily stating that Section B was not a vehicular highway. In any event, at this time it is likely that the Chippenham Borough Council records would not have shown section B to be a full vehicular highway maintained at public expense, because of the records erroneously showing section B as part of RUPP 5.

467. Mr Boulding used to see cars parked on section A, and further up on Section B, when the car park in the public house was full.

468. Importantly, however, he went on to say that he had never noticed any sign with the word “Private” on it until he saw “Private” painted on the road in 2002. Examples of parking on sections A and section B are shown in the photographs at pages 599 and 600 in volume 2.

469. The evidence of Mr Boulding on this topic is supportive of the First Defendant's case, and inconsistent the case of the Claimants.

470. Mr Bould also observed that, ever since the highway authority removed posts from the verges, he had seen tyre marks on those verges.

Brian Jennings

471. Brian Jennings is the son of WH (’”Will “) Jennings.

472. He was born on 4 June 1939. He lived at Swallow Falls with his parents between 1955 and 1966, when he married and left home. He first moved to 2 Burleaze, and later, in 1974, he moved 8 miles away, to Melksham, where he still lives. Whilst living at

Swallow Falls, he recollected his father's concern over the upkeep of Rowden Lane, together with the maintenance of the verges head, hedges and ditches.

473. Will Jennings used to complain about the rates levied on Swallow Falls, because, apart from refuse collection, nothing was provided by the County Council. He was aware that Will had paid a contribution towards the upkeep and maintenance of the Lane, its verges, hedges and ditches and that the total cost of this was divided between the residents who live in Rowden Lane. This was confirmed by Will Jennings in his Statutory Declaration in 1970, when he sold Swallow Falls to the Fortune Family and left Rowden Lane.

474. Brian stated that he had learned from his father that the Council did not own the Lane or the verges and, therefore, was not responsible for their upkeep. Of course it will be recalled in June 1970, solicitors on behalf of Will were making enquires about Rowden Lane as a ‘new street’, and were told that the road was to be maintained by the frontagers and not the Council, because no Order had been made under the relevant legislation.

475. Of course, that letter was concerned with responsibility for *maintenance* of Rowden Lane. It was not determinative of the Lane’s status as a public vehicular highway, even if he believed that the Lane was to be maintained privately. Again, no distinction appears to have been made between sections A way and B of Rowden Lane.

476. He continued to use Rowden Lane about three times a year since 1974 to visit his aunt, Phyllis Jennings, at Elm Tree Farm. Both before and after 1974, he had no recollection of seeing any “Private” sign on Rowden Lane.

477. Brian's view was that most people visiting Rowden Lane were either visiting Rowden Farm or Elm Tree Farm. He had no recollection of seeing cars parked up at the eastern end of Rowden Lane by the cattle grid. When he lived in Burleaze, he used to

take the footpath into Rowden Lane, with his dog. His recollection was that all cars parked there belonged to residents of Rowden Lane

478. Whilst I accept that Brian Jennings is an honest witness, I regard the recollection of those, such as the Gibbons witnesses, who have had more consistent and recent experience of Rowden Lane as more accurate and reliable.

479. Like Mr Boulding, Brian Jennings does not support the Claimants' case on the presence of any "Private" sign on Rowden Lane

Residents of Burleaze: Mr Soady and Mr Parley

Mr Soady

480. Mr Soady has lived at 22 Burleaze since purchasing the property in October 1961. At that time, Rowden Lane was a dirt track. Alongside his bungalow runs the footpath which run which leads from Burleaze to Rowden Lane. He had been advised orally by his solicitors, at the time of the purchase, that Rowden Lane was private not public, and that this applied not only to vehicular but also to pedestrian use. The Claimants now concede that the Lane does carry public rights of way on foot and horseback.

481. His bungalow backed on to Rowden Lane opposite Elm Tree Farm. He said that Dick Jennings made it clear to him that he owned the entire section of Lane behind the rear of 22 Burleaze.

482. He was aware that Rowden Lane had been resurfaced on two occasions. He alleged that each time the cost had been met by the frontagers, according to what Dick Jennings told him. He said that he had seen the resurfacing work being carried out.

483. Since 1998, he had noticed parking in Rowden Lane, and occasionally he saw cars parked by the cattle grid. He confirmed that quite a lot of people walked dogs along the Lane and that possibly people who parked their cars in the Lane for that purpose. Before 1998, his recollection was that there were not that many cars which used Rowden Lane.

484. He alone suggested that Dick Jennings claimed that he owned the entire width of Rowden Lane. Other witnesses talked about owning their side of the road up to the midpoint. Moreover, this evidence is inconsistent with the account given by Mary Puntis, which I prefer, that Dick Jennings had told her that she would need Council permission to put a gate in the back of her garden in Burleaze to gain direct access onto Rowden Lane.

485. It may well be that Mr Soady has allowed the fact that the Lane had been maintained privately on occasions to cloud his recollection of what Dick Jennings said.

Mr Parley

486. Mr Parley has lived at 40 Burleaze since November 1970. His solicitor had advised him that his property enjoyed no access, vehicular or otherwise, to Rowden Lane because it was in private ownership. He had assumed that the maintenance of the Lane surface and verges had been carried out by the frontagers. During his period of occupation, he had never been aware of any local authority involvement in the maintenance of the Lane or its verges.

487. Although not mentioned in his witness statement made in 2007, his oral evidence was that he had never seen cars parked on the verges near the cattle grid. However, he accepted that there was a high wall in his garden with bushes on top (shown in the lower photograph on page 35 in volume 8) and, in cross examination, he conceded that he could only see the tops of any cars, if they were parked there. I do not regard

this as reliable evidence. However, he accepted that occasionally people parked in the entrance to the Old Piggery, possibly to walk in the fields.

488. In his oral evidence, he also mentioned the existence of two signs. One was a ‘No through road’ sign, which was present in the late 1950s and the 1960s. The second sign was a “Private Road” or “Private Lane” sign, positioned where the car park ended, on the right-hand side facing the cattle grid. He thought the latter sign was in position between 1958 and 1966, but he could give no reason why he did not mention it in his witness statement. Any such sign, had it existed, would have been relevant to his contention that Rowden Lane was private.

489. Mr Parley was born in about 1945 and, therefore, in describing the sign which he said was there between 1958 and 1966, he is recollecting events when he was aged between 13 and 21. He was 63 when he gave evidence. Moreover, his dates for the existence of a “Private” sign do not correspond with the evidence of anybody else. He described no “Private” sign in position between 1963 and 1983 when, according to the Second Claimant, such a sign was in the same position as he described. I do not accept his evidence on this point.

490. Finally, despite the advice which he said he had been given when he purchased his property, he enjoys pedestrian access to Rowden Lane via a gateway which was there when he moved in. Other owners of property backing onto Rowden Lane have done the same and, I am satisfied, some use Rowden Lane for vehicular access to the rear of their property, parking cars on the verges.

Witnesses from near Gypsy Lane: Councillor MacGregor and Mrs Menzies

Councillor MacGregor

491. Councillor MacGregor opposed the development of Rowden Lane at the planning appeal, even though the Council was in favour of it. He said he now accepted that the development would take place, but he still did not like the idea of it.

492. He has lived at 39 Rowden Hill (A4) since 1981. Gypsy Lane lies some distance to the rear of his property. At this point the A4 and Gypsy Lane form two sides of a triangle, the apex which is where the A4 and Gypsy Lane join.

493. He said that he had never seen any vehicle trying to drive along Gypsy Lane with a view to joining up with Rowden Lane. Indeed, such a course would now have been impossible, because it would have involved driving through two fields which are separated by a locked five bar field gate. In his view, Gypsy Lane and Rowden Lane had never been joined up.

494. He described how Gypsy Lane had been sparsely gravelled from Rowden Hill. He could only remember Water Board vehicles using Gypsy Lane to access a pumping station via a slip lane, rather than using the full length of Gypsy Lane, in which a cattle grid had also been installed, . Eventually the slip lane was surfaced, and became the new access to the pumping station.

495. Although not dealt with in his witness statement, he confirmed that he went walking with his dogs along a route which he highlighted on the plan JC1. This walk took him from Rowden Hill, through the Chippenham Community Hospital, across Rowden Road, into Burleaze, via the footpath adjacent to 22 Burleaze into Rowden Lane, past the cattle grid, and back up towards Gypsy Lane where he joined a footpath that led to a garden gate into the back of his property.

496. On that walk, he had not seen cars parked in Rowden Lane, nor at any time when he was walking around there. When he used to drive along Rowden Lane to Rowden Farm, again he said that he had never seen cars parked there. The only parked cars he ever saw were down by the cottages and by the public house.

497. In cross-examination, he confirmed that he had not seen any cars parked between the cottages and the cattle grid on Rowden Lane at any time since 1981, despite being shown letters dated August 2002 (from Mr Friend) and March 1993 (from Dick Jennings' planning consultant) evidencing regular parking on the Lane. Despite this, he still maintained he had never seen a car parked in the parking bay. This evidence is at odds with what I regard as the general trend of the reliable evidence on this topic. I regard his evidence as inaccurate on this issue, and do not accept it. Either he has chosen not to tell me about cars parked on the Lane or he has not frequented the Lane as often as he has suggested.

498. No one has suggested that, in recent times, anyone has driven from the end of Gypsy Lane across fields to join up with Rowden Lane at the cattle grid. Any such connecting route has long since fallen into disuse and been lost. The First Defendant's primary case is that, historically, Gypsy Lane was connected to Rowden Lane by a public cart track, forming a thoroughfare, both ends of which joined up with the A4 Bath Road.

Mrs Menzies

499. Mrs Menzies has lived at 25 Rowden Hill since November 1982. She lives closer to the junction of the A4 and Gypsy Lane than Councillor MacGregor.

500. She marked on the plan JC2 the route she followed when she walked her dogs. Her first route was along the length of Gypsy Lane, across the fields (the Cunniger and Home Down), joining up with section C then towards Rowden Manor, across fields alongside the River and back up to Gypsy Lane, rejoining Gypsy Lane to the west of

the waterworks. At other times, she would walk from Gypsy Lane across the two fields down to Section C, then to the cattle grid walking back home via the Chippenham Community Hospital. Her third walk, over a period of ten to fifteen years, was along the length of Rowden Lane and back home, after leaving her car at the home of a mechanic, who lived at the corner of Rowden Lane and the A4.

501. While walking the fields, she met many dog walkers. Her impression was that they had parked either on the spur road joining Gypsy Lane and Charter Road, to the east of Gypsy Lane or in the car park at the back of the hospital.

502. She said that she had never seen anyone parked at the eastern end of Rowden Lane by the cattle grid. Moreover, she added that she had not seen cars belonging to dog walkers when she had been walking along Rowden Lane. I do not accept this evidence, as it runs counter to the weight of the evidence on this issue.

503. When she first moved into 25 Rowden Hill, Gypsy Lane was used most days by vehicles belonging to Wessex Water Authority to gain access to the water station, and also by pedestrians and horse riders. However, since 1984, when the spur road from Charter Road was connected to Gypsy Lane in 1984, the Water Authority traffic has used that spur road. She confirmed the evidence of Councillor McGregor that cars could not now drive over the fields from Gypsy Lane to Rowden Lane, because of a stile, a narrow plank footbridge over a deep ditch and a metal gate between Cunniger and Home Down fields.

504. She also referred to correspondence with the Local Authority which revealed some confusion about the status of Gypsy Lane. It was variously described as a private street and then as public highway. In this regard, it mirrors somewhat the confusion which has existed around Rowden Lane.

Other local knowledge: Councillor Maureen Lloyd and Donald Rogers

505. Councillor Lloyd lived near Rowden Lane between 1951 in 1953. As far as she was concerned Rowden Lane had never been adopted, although some work had taken place at the approach of the Lane where she said this joined the public highway. It is not plain whether she was describing the junction of Sections A and B or the junction of section A with the A4.

506. In 1953, she moved away from the Bath Road area, but not very far – between one and two miles. Between 1953 and 1962 she infrequently visited a friend in Rowden Lane. Since the 1980s, she has visited Rowden Lane only once a year, but never up as far as the cattle grid. She only drove beyond the cottages to turn the coach which she driving and, on one occasion, to deliver a parcel. She had never seen cars parked on the verge beyond public house.

507. I consider that her opportunity to observe traffic and parked vehicles in Section B is and was very limited. However, she had never noticed any signposts up along Rowden Lane.

Donald Rogers

508. Donald Rogers, who now lives in Corsham, has had a more detailed and extensive involvement with the area.

509. He was born in August 1931 in Rowden Down Cottage in Rowden Down, the area which historically bordered Rowden Lane. He had always known the Lane to be private.

510. He had worked both at Rowden Farm, before and after leaving school, and also for Will Jennings.

511. He could not remember any ”Private” sign by the Rowden Arms public house, and he described no gate at the junction of Sections A and B, although, before the cattle grid was installed at the end of Section B, there had been a gate separating Sections B and C.

512. He said that Rowden Lane had been little more than a grass lane, without ditches with a dirt track along the centre. When it rained, water flowed down the centre of the Lane making it very muddy and difficult to use. He confirmed that there had never been, to his knowledge, any through vehicular route joining the end of Rowden Lane and Gypsy Lane.

513. He was unaware of the local authority carrying out any maintenance work on Rowden Lane.

514. Between 1952 and the early 1960s, he was in the Territorial Army, the local premises of which were on the A4 near to its junction with Gypsy Lane. Military exercises were carried out in the fields nearby and, at that time, Gypsy Lane was a narrow path leading from the A4 for a short distance, before turning sharply and terminating the waterworks. Before that turn to the waterworks was another area of open fields at the entrance to which he described seeing a sign, on a locked gate, which read ‘Private to Rowden farm only’.

515. He described an incident when working for Will Jennings, who at that time lived at Alma Villa. Mr Jennings had asked him to drive one of the farm vehicles up Rowden Lane. He explained that, since he was under the age to drive legally on a public road, someone else had to drive the vehicle across the A4 Bath Road, and he was then allowed to drive the vehicle along Rowden Lane because it was totally private. This would imply that even Section A of Rowden Lane was then regarded by Will Jennings

as private. However, we know from his Statutory Declaration, made in 1970, this cannot have been the case.

516. I accept that, by the 1950s, any vehicular connection between Gypsy Lane and Rowden Lane had been obliterated. As far as his evidence of Rowden Lane is concerned, it provides useful background information, but it cannot be determinative of the status of Rowden Lane.

## Chapter 12: Civil Evidence Act 1995

517. Although not called as witnesses, I have read and considered the witness statements of Mrs D Baxter (whose evidence was undisputed), Mr A Hooke and Mr D Love. They were not called as witnesses, nor were their witness statements the subject of notices under the Civil Evidence Act 1995. Other witnesses covered the same points made in their statements.

518. Two witness statements which were admitted under the 1995 Act were statements by Mrs Gladys Ayres, the mother of the second Claimant and Gordon Hudson. Mrs Ayres was in hospital during the trial, and Mr Hudson had died. Plainly this evidence carries less weight than oral evidence which has been the subject of cross examination.

### Gordon Hudson

519. Mr Hudson was born on 26 March 1929. He lived in the Chippenham area all his life. It was his family's building company, Bush and Hudson Ltd (started by his father and grandfather), which had acquired the land on which the Burleaze estate was built.

520. As a child, he remembered riding on a horse and cart around Rowden Lane making deliveries to Rowden Farm. At that time, the lane was a narrow gravel track. His

grandfather had an allotment in Gypsy Lane, which also was a gravelled bridleway path which ended at the allotments.

521. He described a gate at the western end of Rowden Lane, near to where it met the A4. The gate seems to have been more or less at the end of the original car park attached to the public house. He remembered a tarmac surface between the main road (A4) and the gate. After the gate, there was simply a gravel track giving access to Rowden Farm, then owned by Mr and Mrs Burridge, who maintained the gravel track. From time to time, he delivered and spread gravel along the track at Mr Burridge's request and expense.

522. In 1948, Bush and Hudson Ltd purchased the land on which Burleaze was built. In or about 1950, this company ran a new sewer across and down Rowden Lane to the Bath Road, with the permission of Mr Burridge. In the process, they slightly widened the track on Rowden Lane. Between 1955 and 1960, Mr Burridge requested his company to contribute to the cost of resurfacing the lane, but, since his company had no access to it, he declined. In summary, his evidence was that Rowden Lane was privately owned and privately maintained, without assistance from the Highway Authority.

Gladys Ayres

523. Gladys Ayres is the mother of the second Claimant. She stated that she and her husband purchased Brookfields believing it to be situated within a privately owned lane, and not forming part of a publicly maintained road. She understood that her family owned one half of Rowden Lane, along the Brookfields frontage, up to the midway point of the Lane.

524. There is nothing in the conveyance to confirm this, or authorising any private right of way to get from the A4 to Brookfields, or from Brookfields up to the eastern end of

Rowden Lane. Indeed the abstract of title for Brookfields revealed a search in 1958 which showed that, by an order made in April 1937, Rowden Lane was a ‘new street’.

525. Gladys Ayres also stated in her witness statement that, outside the cottages to the west of Brookfields, at Rowden Place, was a sign stating “Private lane to farms only”.

526. On the site view, my attention was drawn to a round metal pole adjacent to a hydrant sign next to 1 Rowden Place. This is, I believe, shown in the photograph at page 431 in volume 2. This is the pole to which the Second Claimant said that the “Private” sign had been affixed and to which, I assume, her mother was referring to in her witness statement.

527. Had there been such a sign in that location, as the Claimants suggested, between at least 1963 and 1982/83, one might have expected it to have been noticed by more people. The existence of such a sign was not only denied by the First Defendant’s witnesses, but also not accepted or recollected by some of the Claimants’ witnesses.

528. In her witness statement, Gladys Ayres also stated that Mr and Mrs Gibbons had told her that the verges were privately owned, as was the Lane, with each property owning up to the centre point of the Lane. Mr and Mrs Gibbons also explained, she alleged, that the cost of maintenance of the Lane was to be apportioned between the residents. She also believed that the Gibbons had placed the staddle stones outside the verge in the 1950’s. The Gibbons family evidence was that it was in 1963, having been sold to Mr Gibbons by Robert (“Nobby”) Harding for £30.00.

529. She then went on to state that, from 1963, the verge outside Brookfields was fenced off with electrical stakes and wire fencing to allow live stock to graze. This was not accepted by the Defendant’s witnesses, who made the point that the family only had a few goats, a cow and a small holding.

530. Gladys Ayres confirmed the picture of Rowden Lane as a track of hard core with grass verges on each side, improved in the early 1970s when tarmac was laid over the hard core. She further recollected the lane being resurfaced with tarmac in the early 1980s, again at the cost of the residents. Kevin Fortune also thought that Dick Jennings paid for the Lane to be resurfaced in 1989. This was not confirmed by Mary Puntis. However, a letter from the First Defendant to Kevin Fortune in December 1991 stated that it had carried out highway maintenance in 1988 and 1989. This coincided with the recollection of the Gibbons family that resurfacing was done around this time (they thought the early 1980s) by the Council, and certainly not at any cost to Mrs Gibbons.

531. She went on to state that once the second drive and hard standing were completed, in or about 1978, railway sleepers and individual kerb stones were placed along the outer line of the hard standing. The Defendant's evidence was to the effect that stones on the verges and the sleeper on the hardstanding did not appear before 1996 at the earliest.

532. Gladys Ayres was of the view that the "Private" sign disappeared in or about 1983, coincidently at the time that Mr Jennings was seeking planning consent to store caravans. She tied this in with a letter from the Second Claimant asserting that the lane was private, and that the storage of caravans should not be allowed. However, Dick Jennings had been given his first planning permission in 1981 for the storage of 25 caravans.

533. The implication appears to be that Mr Jennings was somehow responsible for the removal of the sign, since he regarded the Lane's private status as an obstacle to the grant of further planning permission. As I have already indicated, I find that there never was any sign with the word "Private" on it.

534. Moreover, Gladys Ayres saw the possible sale by the Gibbons family of land to developers under the option as the beginning of a change in their attitude towards the status of the Lane, namely from private to public. It is true that the Gibbons family had made an application before 1990 for residential development on their land adjacent to the Bungalow, but the option agreement between them and Laing Homes Limited, (now Wimpey) was entered into in July 1996.

535. Gladys also saw the removal of the staddle stones as indicative of this trend. In fact, I find that the staddle stones were removed because of the theft (reported to the police) of some of the tops of those stones. As a result, they were removed to the rear of the property in 1991, not long after Shirley and Tony Collins moved into The Bungalow.

536. The witness confirmed that the purpose of the hard standing adjacent to the new driveway was to facilitate loading from deliveries to their smallholding. Notwithstanding this purpose, she stated that they placed railway sleepers and individual kerb stones along the outer line of the hard standing.

537. I do not accept that was done as early as 1978. Nor do I accept the evidence of any regular use of the verge by grazing animals, nor or the regular or persistent use of an electric fence along the verge.

538. At no point in her statement does Mrs Ayres talk about any stones or posts being placed along the verges outside Brookfields, even although she did describe the stones outside The Bungalow. Her evidence seems to be confined simply to obstructions placed on the hard standing area adjacent to the new driveway to Brookfield installed in 1978.

539. Her statement is silent as to who painted the word “Private” on the surface of the Lane in the summer of 2002. She was unaware of any formal maintenance by the Highway Authority between 1963 and the time of her witness statement in January 2007, yet

according to the area Highway Engineer, writing in December 1991, general maintenance in the form of surfacing, in order to strengthen the lane, was carried out during 1988, followed by surface dressing and maintenance in 1989.

540. Finally, Mrs Ayres, dealing with the period between 1963 and January 2007, stated that the Lane had been used, in the earlier period of occupation, only by the occasional walker and by residents' vehicles and farm vehicles using the fields at the end. She made the point that there was no logical reason for any member of the public to use the Lane, as it lead only to residents' homes, and that there had never been any consent from residents for any member of the public to do so.

541. Given the concession that Rowden Lane is, at the very least, a bridleway to which the public has access as of right, this view seems misplaced. Moreover, I find that she has significantly understated the use of Section B of the lane, not only by vehicular traffic associated with the public house but also by those accessing the fields at the eastern end of the Lane by car for recreational purposes.

542. I do not regard the evidence of Mrs Ayres as adding significantly to the evidence of her daughter, the Second Claimant, or to that of Mr Heselden, the Third Claimant.

## Chapter 13: S 31 Highways Act 1980

543. This section reads, so far as material:

***Dedication of way as highway presumed after public use for 20 years***

*(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period*

*of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

*(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

*(3) Where the owner of the land over which any such way as aforesaid passes –*

*(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way is a highway, and*

*(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,*

*the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*

The elements of statutory dedication

544. In my judgment, the correct period of 20 years for the purposes of applying section 31 of the Highways Act 1980 to Section B is 12 August 1982 to 12 August 2002, namely 20 years retrospectively from the painting of the 'Private' sign at the junction of Sections A and B. This when the public's right to use the way was brought into question. In my judgment, anything put, or done, on the verges before this time did not obstruct any part of the carriageway and was ambiguous in meaning.

545. Many of the witnesses who have given evidence on modern user have described public vehicular use during this period as of right. I accept the evidence of the First Defendant's witnesses on this public (ie beyond residents of Rowden Lane and their

visitors) vehicular user of Rowden Lane for well over twenty years before 2002, as indicated above, especially Mary Puntis, Gillian and Claire Harding, Stephen Pollard and the four 'Gibbons' witnesses. Indeed, even some of the Claimants' own witnesses - eg Kevin Fortune (who also described a lady, who after 1985 drove along along the whole of Sections A and B to park just beyond the cattle grid to walk her dogs), Mr Soady, Mr Parley, Ms Menzies - have demonstrated the public's vehicular use of the Lane over the relevant period and beyond.

546. Moreover, the increased, intensified and commercial use of Rowden Lane since the 1950s/1960s by The Bungalow, Brookfields, Swallows Falls and its paddock, Elm Tree Farm and Rowden Farm seems difficult to explain by any assumed private prescriptive easement of way acquired in their favour permitting this expanded use. If one assumes a right of way acquired by prescription in favour of these properties, this would have been originally for agricultural land. There does not appear to have been sufficient time yet (ie 20 years) for any enlarged or expanded prescriptive easement to have been acquired in their favour. One might have expected some legal action to restrain this excessive user by those whose rights were being infringed by this excessive or unpermitted user. There was none. It seems much more likely to me that this expanded use was enjoyed as a matter of public, rather than private rights.

547. In my judgment, there can be no suggestion that those making vehicular use of Rowden Lane were doing so with licence or permission from or tolerance by the landowner of the Lane. Ms Ayres accepted this herself in her second witness statement, dated 24 January 2007, where she said:

*To the best of my knowledge there has never been any consent from the Claimants or any other residents of the lane, either express or implied, for members of the public to use the lane.*

548. The public's vehicular use of the Lane over the relevant period was trespassory against the landowners of the subsoil of the Lane. They were using it as of right - nec vi, nec clam, nec precario and as trespassers.

549. The Claimants rely on a number of arguments on the issues of when alleged public vehicular rights over Section B were brought into question, whether they were enjoyed as of right and without interruption for the full period of 20 years and whether there is sufficient evidence that there was no intention to dedicate it as a public vehicular highway during that 20 year period. They are summarised in paragraphs 5 and 5A of the Amended Reply and Defence to Counterclaim.

550. I have already found that there was no "Private" sign in Rowden Lane at any time before 2002.

551. I have also found that there was no 'turning back' ordered by, or challenges made by, Mr or Mrs Burridge, Dick Jennings or any other relevant person alleged by the Claimants.

552. The letters written by Ms Ayres and Dick Jennings to the Department of Environment in 1983, and by Mr G. Ayres on 7 June 1988, were insufficient to bring the right into question. In my judgment, the same applies to the letter written by Kevin Fortune/Mrs Fortune to North Wiltshire District Council on 4 October 1989, and to the correspondence from Brookfields in and after August 2001.

553. What is necessary to bring the right of the public to use the way into question?

554. In Fairey v Southampton County Council [1956] 2 QB 439, at 456-457 Denning LJ, as he then was, said:

*Applying those observations to this case, I think that in order for the right of the public to have been "brought into question", the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their rights to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it. The landowner can challenge their right, for instance, by putting a barrier across the path or putting up a notice forbidding the public to use the path. When he does so, the public may meet the challenge. ... But whatever the public do, whether they oppose the landowner's action or not, their right is "brought into question" as soon as the landowner put up a notice or in some other way makes it clear to the public that he is challenging their right to use the way.*

555. In my judgment, these letters all fall into the same category as the letter written to the Local Planning Authority which was held not to bring the right into question, as explained by Lord Hoffmann in paragraphs 32-38 and 42 of his speech in Godmanchester Town Council v. Environment Secretary [2007] 3 WLR 85. In that case, the House of Lords approved the observations of Denning LJ in Fairey. Lord Hoffman effectively equated the degree of openness required for 'bringing into question' with that required of evidence to show lack of intention to dedicate in the proviso to section 31. In Godmanchester, merely sending a letter to the Local Planning Authority or putting a clause in a private tenancy agreement were held to be insufficient. Lord Scott, at paragraph 70, said that the public's right might be brought into question not only by the landowner but also by a third party. However, the examples which he gave of how the public's right may be effectively called into question are open acts, such as formal court proceedings, not private acts such as letters.

556. The letters relied on by the Claimants, and set out in this judgment, did not bring home to the public using the way that the public's right to use the way was being brought into

question. They were not open acts, just private correspondence, and did not bring the public's right to use the way for vehicles into question.

557. Finally, the Claimants rely upon the proposal by the First Defendant in 1972, that Sections C of Rowden Lane (ie from the cattle grid to the commencement of the purely private track to Rowden Farm) be downgraded from a RUPP to a footpath, brought the public's right to use Section B as a PVH into question and/or was sufficient evidence of a lack of intention to dedicate Section B as a public vehicular highway within the meaning of the proviso to section 31 (1) of the Highways Act 1980.

558. The Claimants' argument here is that the proposal in 1972 to reclassify RUPP 5 (ie Section C) as a footpath was sufficient evidence to prove that there was no intention during the 20 year period to dedicate Section B as public vehicular highway.

559. It can immediately be seen that arguments over downgrading Section C does not call into question the right of the public to use Section B with vehicles at all. It relates to Section C.

560. The fact that there may have been a challenge in 1972 to Section C having a public vehicular status does not bring into question or provide sufficient evidence that there was no intention to dedicate Section B as a PVH. Vehicular use of Sections A and B were not dependent upon the public's right to use Sections C and D with vehicles.

561. I reject the suggestion that the 1972 proposal either brought into question the public's right over Sections A and/or B or provided sufficient evidence that there was no intention during that period to dedicate it as a PVH. The 1972 draft proposal did not raise the issue at all of the public's right over Section A and B and, therefore, it could not have brought home to the public the question that the Council was challenging their right to use those sections.

562. A similar argument was considered and rejected by the High Court by Pill J, as he then was, in O'Keefe v. Secretary of State for the Environment and Isle of Wight County Council [1996] J.P.L. 42, at pages 55 – 57. I see no justifiable basis for distinguishing this case from the case before me on the grounds that in O' Keefe the route in dispute had not been shown on the relevant Definitive Map. Putting details of the current state of affairs, even on a finalised published Definitive Map, did not stop time running in favour of higher rights from then on. In O'Keefe, Pill J explained the principle, at page 56, thus:

*.. section 32 (4)* [1949 Act] *did not provide that time might not run after the date of the map or the date of a subsequent review ...*

563. Pill J then considered the decision of Purchas LJ in R. v. Secretary of State for the Environment, ex parte Burrows [1991] 2 QB 354 in which Purchas LJ considered the purpose of the legislation dealing with Definitive Maps and their revision. Pill J continued, at 56:

*[Purchas LJ's] view of the definitive map was inconsistent with the submission that each review brought into question the previous user and that it prevented subsequent user being of right ... It would be curious drafting if, nevertheless, the bringing into question mentioned in section 31 (2)* [Highways Act 1980] *was conversely and as a matter of law achieved by a review of the definitive map. … Parliament … contemplated the two regimes operating together.*

564. Section 32 (4) of the 1949 Act was conclusive only in respect of rights already established at the date of the Definitive Map, and did not prevent time running in respect of rights not then in existence, but being created by the process of common law or statutory dedication.The process of continuous review under the 1981 Act expressly contemplated this possibility:

*It is not disputed and I take it to be clear law that if a right of way is originally dedicated on foot it can subsequently be dedicated for use with vehicles as well. See* Attorney General v. Honeywill [1972] 1 WLR 1506, at 1510 per Bristow J.

565. Moreover, the designation of a way as a footpath does not make prescriptive user with a horse or a vehicle not 'as of right'. In order for prescription or dedication to take place the user must not be in accordance with existing rights.

Vires and nuisance

566. The Claimants contend that **if** Sections A and B of Rowden Lane were only a public bridleway in the period of twenty years before the right was called into question, the First Defendant had no power to dedicate the surface as public vehicular highway since, if it did so, it would be acting in conflict with its statutory duties under s 130 Highways Act 1980 to protect the public right of way on foot and on horseback and/or it would amount to an actionable wrong against those entitled to use the public rights of bridleway or passage on foot.

567. Of course, this argument is constructed on the premise, which I reject, that Sections A and B were only public bridleway. As explained later in this judgment, I find that Sections A and B were a full (vehicular) public highway, at common law for many centuries before 2002.

568. The suggestion that Sections A and B are only a bridleway comes from the concession to this effect by the Claimants in April 2009. The Claimants have not proved that sections A and B were only a public bridleway. The Claimants' case that Sections A and B are merely a bridleway is derived from their analysis of Section C which, under section 32 of the 1949 Act, was only conclusive as to bridleway rights even as a RUPP. I deal with the Claimants' argument on this point in greater detail in chapter 16 (Definitive Map).

569. Given my findings below that Sections A and B have, for centuries, been a public vehicular highway as a result of dedication at common law, this issue does not arise. However, even if I had held that Sections A and B were merely a bridleway, it does not follow that the First Defendant, in allowing dedication of higher rights, acted unlawfully or committed actionable nuisance.

570. In Bakewell Management Limited v Brandwood [2004] 2 AC 519, Lord Scott made clear that a prescriptive right can be obtained where the prescriptive user could have been authorised by the landowner. I see no reason in principle why this should not also extend to the case of public rights of way.

571. Finally, it by no means follows that the First Defendant, in permitting dedication of public vehicular rights to occur, was guilty of any unreasonable interference with the rights of the public to pass and repass on foot or on horseback. The question whether an unreasonable interference with the rights of the public took place at all must be fact sensitive. I would find it very difficult to regard the use of by the public with vehicles of Rowden Lane as an unreasonable interference of the rights of way on foot or on horseback because:

(i) Some existing easements allow vehicular use of Rowden Lane by landowners and their invitees. Vehicular users include the visitors to the public house and caravan owners;

(ii) Sections A and B have already been used by commercial vehicles, agricultural vehicles, cars and caravans to such an extent that a passing bay was necessary;

(iii) the width and other characteristics of Sections A and B which had as their very purpose facilitating vehicular traffic rather than horses;

(iv) The existence of a cattle grid at the end of Section B severely limiting or preventing equestrian use. Moreover, there is no evidence that horse riders have ever used the route recently.

572. Accordingly, any consideration of whether there was ever an alleged nuisance along the hypothetical bridleway, by its dedication as a public vehicular highway, would have to recognise the existence of private vehicular rights which must exist if it is not public. There are pedestrian footpaths along Section A and wide verges along Section B for walkers. For these reasons, I am not persuaded that it would have amounted to a public nuisance by First Defendant if, as statutory owner of the surface in Rowden Lane, it dedicated Sections A and B as public vehicular highways in1949 or thereafter.

Conclusions on s 31 Highways Act 1980

573. The evidence of modern vehicular user from the 1960s onwards, which I have accepted, has satisfied me, on the balance of probabilities, that Section B of Rowden Lane has been actually enjoyed by the public as of right with vehicles and without interruption for a full period of 20 years and more calculated retrospectively from August 2002, the date when the right of the public to use that way with vehicles was first brought into question. This has included use by dog walkers and those using the fields for recreation, who have driven up and down Sections A and B and parked in Section B, without any permission of any owner of the soil of Rowden Lane.

574. Accordingly, Section B is a full (vehicular) highway under s 31 Highways Act 1980.

## Chapter 14 : Historical evidence relating to dedication and acceptance of Rowden Lane as a PVH at common law

The First Defendant's expert

575. The First Defendant's expert on the historical materials is Alan Harbour.

576. Between September 1970 and June 2006, he was employed by the First Defendant in various positions including managing the land charges section up to 1997 and, from that date to 2006, as a Rights of Way Officer in the rights of way section. During his time as manager of the land charges section, he was responsible for keeping, updating and interpreting the highway records and researching the status of public highways when required. One of his duties as the Rights of Way Officer for the First Defendant was to research and investigate the status and extent of public rights of way.

577. I am satisfied that he has a long experience of dealing with highways of all categories and researching their extent and status. He has given evidence in many public enquiries and hearings regarding Modification Orders to effect changes to the Definitive Map of public rights of way, and given evidence at magistrates and county court cases regarding civil actions against the First Defendant. He is not a qualified lawyer, nor does he hold any academic qualification, although he is a Provisional Member of the Institute of Public Rights of Way Management. He also sits on the legal subgroup of The County Surveyors Society.

578. His knowledge and expertise, therefore, is derived from decades of working with historical documents, dealing with public and private rights of ways and drawing conclusions from them.

579. One of the cases in which he gave evidence was Robinson Webster (Holdings) Ltd -v- Agombar, [2002] 1 P. & C.R. 20, a case which took place before Etherton J (as he

then was) sitting in the Chancery Division. Mr Harbour's opinion in that case was that the way in question was, as the judge found, a full public highway. Like the case with which I am concerned, one of the documents there referred to was a map prepared pursuant to the Finance Act (1909-10) Act 1910. At paragraph 46 of his judgment, Etherton J said:

*Mr Alan Harbour, the rights of way officer of Wiltshire County Council for the northern half of the County, and who was formerly the Land Charges officer of the Council, gave evidence of the painstaking detail with which the land was valued pursuant to 1910 Act. Although Mr Harbour is not qualified as a lawyer or a surveyor, he has considerable practical expertise on issues relating to public rights of way and the proof of their existence. I found his evidence helpful.*

580. I would echo that assessment of Mr Harbour. Whilst he did not bring to his evidence the urbanity and eloquence of Professor Williamson, the Claimants' expert, I felt that he built up, using strong foundations, a compelling case for Rowden Lane being an ancient public vehicular highway. His conclusion that Rowden Lane was an ancient PVH across its entire width, from hedge to hedge, was not based solely upon one document or map - although he contended that a number of documents individually established the point. Rather, he contended that it was the broad picture which emerged largely consistently over time.

581. From time to time, Mr Harbour made concessions in cross-examination, and rightly so, but these did not dent my confidence in his overall accuracy and reliability. The Claimants alleged that in developing his hypothesis, which I explain below, on the Back Avon Bridge, he exhibited his willingness to espouse any point, however speculative, in support of his thesis.

582. I do not share that view. Mr Harbour was wrong, as he ultimately conceded, in suggesting that there had been two substantial bridges over the Avon accessed from Gypsy Lane, but his decision to do so in the first place did not undermine my confidence in his honesty, accuracy and reliability. Whilst he was hasty in jumping to that initial conclusion, he showed himself ready to acknowledge his error and to carry out further research into the matter. His revised conclusion is, in my judgment, is a reasonable one. The eighteenth century maps and later photographs suggest that both pedestrians and livestock could cross the river from the track off Gypsy Lane.

583. His first involvement in the case was as an employee of the First Defendant charged with the responsibility of investigating the status of Rowden Lane, long before these proceedings started. He had prepared a paper, incorporating many of the features of his expert evidence before me, in support of the proposition that Rowden Lane was a full public highway. It was, therefore, understandable that having spent that amount of time and effort in researching the point, that he was retained by the First Defendant as their expert for this case.

584. At the time of the preparation of his main report, 1 May 2008, he was employed by Bath and North East Somerset Council as the Definitive Map Officer in the rights of way section, a post which he had held since June 2006.

585. He was a reluctant expert witness, not because he felt that he was not a truly independent expert witness, but because he found giving evidence in High Court cases to be very stressful.

586. Nor was my confidence in Mr Harbour diminished by the way in which he dealt with Mr Laurence's cross examination on the question of the field books and the valuation books concerning the 1910 map. His contention, derived from that map, was that Sections A and B were shown as a public vehicular highway, and that Section C was

shown as a lesser way. The tax deduction of £125 in favour of the hereditament through which Section C ran must surely be at least consistent with the Claimants' concession that Section C was a public bridleway. Mr Harbour's main reason for believing Section C was at the time a public vehicular highway was the football field shown in the hereditament, not the £125 deduction.

587. However, I was impressed by the way in which Mr Harbour built up the case for a public vehicular highway along Rowden Lane, relying upon the historical maps and records. By contrast, Professor Williamson produced very little original material himself but rather sought to undermine Mr Harbour's opinions on each of the documents. I was impressed by the way in which Mr Harbour was able to take so much information from all this material and put it together in a coherent, logical and persuasive form.

The Claimants' expert

588. Professor Tom Williamson MA PHD has been employed as a landscape historian at the University of East Anglia for more than 20 years. He has written, co-written and edited more than 20 books and numerous articles on landscape archaeology and landscape history. He has considerable experience in interpreting documentary and cartographic evidence relating to the history of boundaries and rights of way. Like Mr Harbour, he is not a lawyer, although the nature of his work required him to have a reasonable knowledge of legal issues relating to land property and rights of way. Professor Williamson was a confident and articulate witness.

589. He was asked to give his opinion on the following issues:

(a) The accuracy, reliability and significance of the various historical and other maps, plans and other documents relied upon by the parties; and

(b) The extent to which those maps show (or fail to show) whether Rowden Lane, Chippenham, Wiltshire is or is not a public vehicular highway.

590. I did find it surprising that Professor Williamson expressed himself in a way which indicated that Section A of Rowden Lane was a public vehicular highway, yet the Claimaints' current case is that it was not a public vehicular highway but only a bridleway. On my reading of Professor Williamson's reports, I do not see there any strongly argued positive case that Sections A and B of Rowden Lane were a public highway but only on foot or on horseback, although I accept that he conceded that there *might* be a bridleway. Nor do I see in his report an analysis of how, when or under what circumstances those public rights came into existence, although he does make reference, in relation to an eighteenth century map, to a point where Rowden Lane joined the footpath from Lacock.

591. He made the point several times that Rowden Lane was no more than a private access road to Rowden Farm. This assertion has been significantly undermined by the Claimants' own case that it was a public highway, but on foot or on horseback only. Moreover it is difficult to see how his assertion about Rowden Lane being a track serving Rowden Farm survived the conveyancing documentation, which not only showed the absence of private easements over the whole of Rowden Lane in favour of Rowden Farm but also showed that, save for a brief period between 1919 and 1946 at the latest, that no part of Rowden Lane was in common ownership with Rowden Farm.

592. I must confess that I also share the First Defendant's reservations about the way in which he approached the preparation of his report. I did not regard his approach as an independent and original attempt to research available historical information and to form his own view on it first of all. Rather his approach consisted of undermining the material produced by Mr Harbour. He also seems to have taken what the Claimants

and their witnesses said at face value and then examined the material with a view to confirming that conclusion.

593. On a number of issues, I found his approach to lack proper balance. He seemed willing to adhere to his view, when new evidence suggested he should have changed it, and he also changed his opinion, when new evidence should have inclined him to confirm it.

594. For example, he relied upon Will Jennings' Statutory Declaration made 1970, which tended to suggest that Rowden Lane was private, whereas he did not rely on the 1983 letter which Dick Jennings wrote and in which he recorded the conversations with the Highway Authority, suggesting it was public. Professor Williamson admitted that he did this. However, having reached what I find is a partisan view in favour of the Claimants at the outset, he then looked at the historical evidence to support this earlier view. Again, Professor Williamson admitted that this was his approach.

595. Before delving into the detail of their evidence and the documents they discussed, it is, I think, helpful to identify their conclusions.

The experts' conclusions

596. In Mr Harbour's opinion, Rowden Lane is an ancient public vehicular highway, in existence before 1669. The vehicles involved in such use would have included carts, wagons, sledges and more latterly carriages. The main purpose of the historical public use would have included access to the open common land surrounding Rowden Lane prior to the inclosure of these lands. In addition, it was also quite probable that Rowden Lane was used as access to the place known as Rowden and also as an alternative route to the Great (London) road so as to avoid its poor condition and possibly later to avoid the paying of tolls on the section of the main road it bypassed.

597. As to the width of the public vehicular highway, he concluded that, certainly by 1784, the physical boundaries of the section of Rowden Lane in dispute were both well established by the planting of hedges and have remained remarkably consistent ever since over the centuries, as shown in detail on later large scale Ordinance Survey mapping. The width of the vehicular highway included, in his opinion, the verges on either side of the surfaced carriageway of Rowden Lane.

598. Professor Williamson's conclusion was that all the evidence advanced by Mr Harbour, and other materials introduced by Professor Williamson, persuaded him that Section B of Rowden Lane was formally created around 1669 as a private access road for the use of a small number of private land owners, and that it continued to be so used and regarded well into the twentieth century.

599. In summary, his conclusion was that Section B of Rowden Lane has never been a public vehicular highway.

600. Where the evidence of Mr Harbour and Professor Williamson conflicts, I prefer the evidence of Mr Harbour, except where the contrary is stated.

Documentary evidence relied upon by Mr Harbour in his report and statements

601. In order to give an overview of the range of the historical material relied upon by Mr Harbour and Professor Williamson, I set out below a list of the more salient documents.

1. The Mappe of Rowden Downe in the Parish of Chippenham as it is now devided for Inclosure, February 18th Anno Domi 1669;

2. A Mapp of Culver Hays and Part of Rowden Downe with the Cliffs Roads and Closes adjoyning in ye Parish of Chippenham and County of Wilts 1742;

3. Andrews and Dury's Map of Wiltshire 1773;

4. A Topographical Map of the Town and Borough of Chippenham and its Vicinity by John Powell, Land Surveyor 1784;

5. A Topographical Survey of the Great Road from London to Bath and Bristol. To which is added a correct map of the County three miles on each side of the road, planned from a scale of one inch to one mile, 1792 by Archibald Robinson;

6. A Plan of the Great Down - A Field the property of Mr J Heath 1796;

7. Ordnance Survey of one inch to one mile scale plan published at the Tower of London 12 August 1828;

8. Greenwoods Map of Wiltshire, made in the years 1819 -1829 and published 4 July1829;

9. Report on the Borough of Chippenham 1831;

10. The Chippenham and Allington Tithe Award 1848;

11. A map entitled Wiltshire by Edward Weller F.R.G.S. 1862;

12. A map produced by surveyors relating to proposed changes to the Borough boundary 30 September 1867;

13. Bacons map of Wiltshire c. 1876;

14. 1st Edition 1:2500 Ordnance Survey 1886;

15. Phillips Cycle map of Wiltshire c.1890;

16. 2nd Edition 1:2500 Ordnance Survey 1900;

17. The Finance (1909-10) Act, 1910 Plan(s), field and valuation books for Rowden Lane;

18. The Finance (1909-10) Act, 1910 Plan(s), field and valuation books for Gypsy Lane;

19. Claim map for public rights of way;

20. Urban Area Highway Record 1930;

21. Definitive Map of public rights of way 1 May 1953;

22. Chippenham Highway Record 1974;

23. Amended Highway Record 1983;

24. Original claim form or survey sheet for public rights of way No. 5, 1950;

25. Original Definitive Map Statement 1 May 1953;

26. Minutes of Chippenham Borough Council declaring Rowden Lane to be a New Street. This is not dealt with by Mr Harbour in his report, but it is a piece of historical evidence which is convenient to deal with in this series;

27. Conveyancing documentation;

28. Council Minutes in 1881 and 1896 and in the twentieth century relating to the maintenance and status of Rowden Lane;

602. Mr Harbour relies upon all the above items in support his opinion that Rowden Lane always was a public vehicular highway across its entire width. Professor Williamson examined each of those items and concluded that, neither individually nor cumulatively, do they support Mr Harbour's contention. On the contrary, he argued that they supported his conclusion that Rowden Lane had never been a public vehicular highway. It is, therefore, necessary to consider each one of these items but, in so doing, I have not overlooked Professor Williamson's comment that:

*The various pieces of evidence must be considered together, and the status of the lane deduced on the balance of probabilities, rather than by considering one or more pieces as indisputably reliable in character.*

History of Rowden

603. Studies by local historians in 1889 (Goldney), 1905 (Perkins) and 1984 (Baines) respectively have dealt with the history of Rowden and the Borough lands. Rowden lies on what was formerly a down. Its old name was Rughdon, probably meaning rough down. It was already a place in occupation in 1190. The principal residence of the area was a mansion house or manor, now Rowden Farm, close to the River Avon. In 1434, it passed to the Hungerford family who, 10 years before, had purchased Sheldon and the Manor and Hundred of Chippenham.

604. In 1554, Queen Mary granted a Charter to the Borough of Chippenham. She also gave it certain lands which she had confiscated from Walter Lord Hungerford, who had called King Henry VIII an heretic. Lord Hungerford was executed at Tower Hill. His manors of Chippenham, Sheldon and Lowden, together with a very considerable number of other Wiltshire manors elsewhere, were forfeited and remained in the Crown until the next heir, then a minor, reached the age of 21. Some 23 days before

the heir of Lord Hungerford came of age, Queen Mary gave about 66 acres of Lord Hungerford's land to the Borough.

605. The Borough lands so given included:-

(a) The Great Coppice;

(b) Little Ground;

(c) Little Hanging Ground;

(d) Hither Down;

(e) Hulberts Hold;

(f) Tyning;

(g) Little Down;

(h) Little Coppice

606. The location of these grounds is shown in a plan prepared by John Perkins in 1905, at page 27 in Volume 11 of the Trial Bundle. In his 1905 publication, John Perkins wrote:-

*Both the paper and the accompanying plans had been prepared at first hand from the original official records at the Borough ... and from the other local maps and plans already mentioned."*

607. That 1905 sketch plan is interesting for two other reasons. The first is that it shows a "cart track" coming from the direction of Gypsy Lane (not shown on the plan) along the field Home Down. This "cart track" is alleged by Mr Harbour to represent the

unenclosed section of the thoroughfare leading to and from the A4, of which Gypsy Lane and Rowden Lane are also part. The second feature is that it showed a spur road running southwards from Rowden Lane between Little Hanging Down (today Swallow Falls) and Hither Down (today Elm Tree Farm).

608. I agree with Mr Harbour that it is fair to assume that, as far back as 1190, the access to the area of Rowden Manor House was via Gypsy or Rowden Lane.

609. The Borough lands were privately owned and were not common land. They were a source of revenue to the Borough which could let them out. The Borough lands were bounded on the north side by Rowden Lane and on the south side by a brook.

610. Interestingly, although the Borough lands were privately owned and not common ground under the gift by Queen Mary in 1554, by 1669 Hither Down, Little Hanging Down and Little Ground, lying between Rowden Lane and the Great Coppice, were treated as the equivalent of, or became, common land. These three pieces of former Borough land are plainly included in the inclosure map of 1669. The Great Coppice (which was not covered by the inclosure agreement) lay over an area of 17 acres of woodland. There was a general right for the inhabitant householders of Chippenham to coppice wood from it. It was harvested every seven years for quantities of poles needed to make sheep hurdles (fencing).

611. Almost inevitably, access to the Great Coppice was down Rowden Lane and, albeit maybe after 1669, along the spur road between Little Hanging Down (Swallow Falls) and Hither Down (Elmtree Farm). In argument, this was referred to as spur 2.

612. The inhabitant householders of Chippenham would have required access to the Borough lands to the south of Rowden Lane, and those with rights to the common would also need access to common land to the north of Rowden Lane. However, as

Mr Goldney's 'Records of Chippenham' show, the right to take wood from the Great Coppice was abused:-

*That diverse unrulye and disorderlie people not onelie of this Town and pishe but alsoe of other pishes adjoyneing hereunto have of late tyme as it were made havock by cuttinge downe and carryeing awaye of the underwood of the same Copice to the Grete destruction of the increse and growth of the same and to the Grete prediudice at the tyme of the ffelling of the same to the psons alotted thereunto.*

613. That was written in 1649. It clearly illustrates the general public coming from near and far over the Rowden Lane/Gypsy Lane thoroughfare to gain access to the wood available from the Great Coppice. The removal of so much wood would undoubtedly have required a horse and cart. It seems likely to me that access to the coppice would have been either from Gypsy Lane to Rowden Lane or from the Lane itself and then across the fields to the coppice or later via the spur road. The first representation of spur 2 on the maps is in the 18th Century, and was probably necessary once the south side of Rowden Lane was hedged off after the 1669 Inclosure Agreement.

614. Moreover the complaint about the unruly people did not speak of trespass by the unruly members of the public on Rowden Lane itself, even though their visit was felonious. The inference from this was that, although they were not entitled to take the wood, they were entitled to use Rowden Lane because it was not only a public highway at the time but also one on which carts and waggons were used by the public as of right.

615. Rowden Manor was of historical interest. It was a large property with a quadrangle inside and a moat around it. Unfortunately, the Hungerfords were Parliamentarians and the Royalists seized and sacked it. It was also the site of an ancient fort. It seems likely that the thoroughfare comprising Gypsy Lane at one end, Rowden Lane at the

other end, and the cart track between the two, were all used by soldiers (ie the public) in wagons and carts for military purposes.

The 1669 Inclosure Map

616. Rowden Down had been common land before inclosure. By an agreement between the Lord of the Manor and the principal commoners in 1669, the common land was divided up into parcels and allotted to the new landowner/tenants.

617. After 1750, it was more usual to apply for individual Acts of Parliament properly to regulate each inclosure, rather than to do so by an agreement. The common lands which are the subject of this particular agreement, have been divided up into 14 separate plots and the whole lands amounted to over 60 acres.

618. Within the inclosure was (i) land immediately south and north of what became Rowden Lane (ii) land lying between the north of Rowden Lane and the modern A4 and beyond and (iii) land between the A4 and Gypsy Lane. The land between the eastern end of Rowden Lane, where the cattle grid now stands, and the end of Gypsy Lane shown on the inclosure map (roughly corresponding to the fields known as the Cunniger and Home Down) were not subject to inclosure because they were not common land. They were land in private ownership, presumably belonging to what is now known as Rowden Farm. However, in 1669, what we now know as Rowden Farm was then known as Mounton Farm.

619. In 1669, there were gates at both ends of what became Rowden Lane, a gate at the end of Gypsy Lane where it adjoined the fields and a gate at the end of Lowden Lane. The presence of such gates was not uncommon on public highways then, especially where the highway adjoined common land.

620. Mr Harbour regarded this map as establishing, on its own, that by 1669 Rowden Lane was a public vehicular highway.

621. First, he relied on the fact that the common land was crossed or served by four routes, which he regarded as existing highways then, namely:

1. The main road from London to Bath, now the A4, shown as “the highway leading from Corsham to Chippenham”;

2. Part of the road, now known as Lowden a class 3 County road, shown as “a way to the old Inclosures and to Chippenham”;

3. Part of Gypsy Lane, then described as “a way to Rowden and some other grounds”;

4. Rowden Lane (Sections A and B), then called as “Rowden Way”.

622. Mr Harbour contended that these were all existing highways before inclosure, because they all were shown as leading to somewhere. Two led to Chippenham, and two to Rowden. All four roads were gated where they joined the common lands, including the roads Lowden, now the C366, and the A4 at its southern most point on the plan.

623. Secondly, Rowden Lane had a pre-existing name on the map, “Rowden Way”. I am persuaded that, at this time, Rowden was a distinct place, and not just a farm as it now is today. Although it became later known as Rowden Farm it was, at this time, known as “Mounton Farme”.

624. Thirdly, whilst the detailed extent of any settlement at Rowden was not known, it was a place of some historical interest because there was there (i) an old manor house, which had been burnt down in the civil war, and (ii) Rowden Fort, an ancient

monument. It was likely that both were places of public interest and business. He summarised his argument on this point by saying that Rowden Fort, the place known as Rowden and the common lands all pre-existed the Inclosure of 1669 and, therefore, so also must the accesses thereto, namely the modern day Rowden Lane and Gypsy Lane.

625. The southern side of Rowden Way on the 1669 Plan was depicted by a dotted line, not a solid line. The implication was that, in 1669, the southern side was not yet hedged. Mr Harbour did not regard this as inconsistent with it being a highway because he considered that most highways across open common land in the period would not have been hedged at all and would have consisted of nothing more than worn, rutted and often muddy tracks in open fields. He felt that the most that could be said in respect of the broken southern boundary was that it was not then fenced or hedged, and there was no requirement to enclose it in the agreement on that side.

626. Finally, Mr Harbour felt that these roads were ways which passed across the common land, by inference, available for all, ie the public, and not just commoners.

627. Professor Williamson felt that Rowden Way was created by the 1669 inclosure agreement. He assumed it replaced an earlier track or tracks across the common. He felt there was no reason to believe that Rowden Way perpetuated an existing track. He presumed that one or more of those earlier tracks connected with Section C, which he suggested was only a private way to Rowden Manor, a medieval high status private residence with a moat.

628. I see no reason to presume that the 1669 map created a new way, Rowden Way, to replace an earlier track or tracks. The fact that it had a name in 1669, Rowden Way, seems to me to be important in supporting its existence as a pre-existing established way leading to the place called Rowden. Moreover, it is likely to have existed by 1579,

the date of a survey of the Borough lands next to it, referred to in the survey as '*the gate that is the way forth off the Down to Chippenham'.*

629. Professor Williamson referred to Hulberts Hold, a piece of land immediately to the east of the Old Piggery (Rushy Ground). Hulberts Hold had been given by Queen Mary in 1554 to the Borough of Chippenham. It was, therefore, not common land but owned by the Borough, and leased to individuals. These were private freeholds producing income for the Borough. Later maps, but not the 1669 one, show that Hulberts Hold was reached by a short spur off the end of Section B. Again, Professor Williamson thought that this spur was likely to have been created in 1669, otherwise independent access to the parcel could not have been provided. However, I see no reason to assume that such a spur was first created in 1669. After all, the property had been granted to the Borough of Chippenham over 140 years before inclosure.

630. Professor Williamson concluded that Rowden Way merely constituted a private access road from Mounton Farm, Hulberts Hold and the land allotted to Mr Scott on both sides of Rowden Way to the Bath Road. Nevertheless, he accepted that inclosure agreements could create or confirm public highways, as well as merely private roads for the benefit of a small number of owners.

631. He also felt that there was at this time an incentive to keep public highways to a minimum, since the Parish had to maintain them. In addition, he did not accept Mr Harbour's view that the public had general access to the commons and lands over them. He considered that, in almost all circumstances, it was a defined group of commoners, rather than the public at large, who were entitled to use the commons and any tracks or ways over them. He regarded the fact that Rowden Way was hedged on one side only as supportive of its private status, although he accepted that early inclosures did not always follow the rule that public highways were hedged on both sides. He also felt that Gypsy Lane was unlikely to be public highway because it was

narrow. It was, of course, not then known as Gypsy Lane but was shown on the map as “a way to Rowden and some other grounds”.

632. In summary, he concluded that Sections A and B of Rowden Lane began life as a private way with limited users, and was not created as a public highway maintainable at public expense. He felt that Rowden Way could not have had the same status as the fully inclosed and unequivocally public roads shown on the 1669 map.

633. I am persuaded, on the balance of probabilities, that both Rowden Way (now Rowden Lane) and the modern Gypsy Lane both led to a place called Rowden, which was not common land. In my judgment, Rowden Way existed well before 1669, because it already had its own name, and it led to a named destination. Rowden was a place of interest, and therefore the public had a reason to, and did, visit it.

634. I am satisfied that Rowden Lane and Gypsy Lane were used not only by commoners, but also by the public at large as if of right. Even before 1669, there were public vehicular highways running across common lands. They were not merely ways to be used by a limited class, namely commoners, as one of their rights as commoners.

635. Rowden Way served the same destination as Gypsy Lane. Gateways at the end of Rowden Way and Gypsy Lane were wide enough to accommodate horse and carts. It seems to me likely that where two ways (Rowden Lane and Gypsy Lane) lead to a defined place (and not just a house), and each way came off an unambiguously public vehicular highway (the modern A4), it is a justifiable inference, which I draw on the balance of probabilities, that both formed part of a thoroughfare. The fact that only one side was hedged is not conclusive, as Professor Williamson accepted. No distinction was made in the 1669 map between what was to become Sections A and B of Rowden Lane. Moreover, Hulberts Hold was probably accessible off Rowden Way for some 140 years before inclosure. By what right did the tenants of Hulberts Hold use

Rowden Way before 1669? They were not merely commoners, and the Borough did not own Rowden Lane. In my judgment, they were probably entitled to use it because it was a public vehicular highway.

636. I consider that the 1669 Inclosure Map is more supportive of Mr Harbour's opinion than Professor Williamson's.

Culver Hays and part of Rowden Down Map 1742

637. This map does not show Rowden Lane at all. It shows the northern section of what is today Gypsy Lane, although it was not called that then. The only notation on the map at that point is "to Rowden House".

638. Mr Harbour relies on this map to establish the following propositions:

1. Rowden Lane formed part of a through route or thoroughfare via the place Rowden, and then to Gypsy Lane.

2. The western boundary of what is now the A4, at its junction with Gypsy Lane, had no hedge pre-inclosure, as the 1742 map states "the hedge planted at ye time of inclosing". The A4 road at this point was stated to be "to Lacock and Corsham, formerly part of Rowden Down". Mr Harbour uses this as an example of an undoubted public highway which was not boundaried pre-inclosure and ran over open common ground. He said this undermined Professor Williamson's suggestion that lack of hedging implied a private, not public, way.

3. On this 1742 plan, the poor quality of a road as significant as the Bath Road was apparent. The map, at the section northward from its junction with Gypsy Lane, reads "hollow way 9 foot in breadth" with banks described as "ye Cliff of the Hill". Because this section of a main route between London and Bath was down to 9

feet in width only at that time, alternative routes, such as the thoroughfare formed by Gypsy Lane and Rowden Lane would be important, especially if they provided some form of access (particularly for livestock) to an important market town centre like Chippenham. Mr Harbour, looking forward to later maps which used the word "lane" in Rowden Lane and Gypsy Lane, pointed out that a "lane" has been judicially defined as meaning 'a minor road leading between one main road and another main road': See: Words and phrases legally defined, 2nd edition. He felt that Gypsy Lane almost certainly got its name from gypsies using their carts, wagons and caravans there.

4. By 1754, the London to Bath road was still in an awful condition, as noted in the "Gentleman's Magazine" for August 1754. Therefore, the Rowden Lane thoroughfare may well have provided an attractive alternative to "the worst public road in Europe", despite its being turnpiked for some time before 1754.

639. Professor Williamson argued that this 1742 map did not advance Mr Harbour's view at all, since it did not even show Rowden Lane. Moreover, he relied upon the fact that what became Gypsy Lane was no longer referring to a place but to a property, Rowden House. He suggested that the absence of any hedging on what became the A4 before inclosure was of little significance, since roads were almost invariably unhedged when they ran through open commons. He dismissed Mr Harbour's views about Rowden Lane providing an attractive alternative route as unsupported by any evidence. However, that part of Gypsy Lane shown on the 1742 plan was wider than the section of the Bath road described as "hollow way 9 foot in breadth" with banks described as "ye Cliff of the Hill".

640. I have not derived great assistance from this map, beyond the fact that Gypsy Lane branches out from a wide section of what became the A4 and, although by

comparison, plainly a minor road, its appearance on the map suggests that it was a road of some importance, albeit labelled “to Rowden House”.

641. I am not persuaded that this map advances the case of either party greatly although, on balance, the drawn portion of what became Gypsy Lane seems to be a route of some significance given its width as shown on that drawing.

642. Furthermore, the fact that the word “lane” did later appear in both names, Rowden Lane and Gypsy Lane, does provide some support for Mr Harbour’s contention that they formed a thoroughfare from the A4, along Gypsy Lane, across the fields to Rowden Lane and back on to the A4. I accept that the variable condition of the Bath Road at this time may well have rendered such thoroughfares an attractive alternative route.

643. Given Professor Williamson’s acceptance that the early inclosures did not always result in public roads having a hedge on both sides, I derive little assistance from the fact that only part of the Bath Road was hedged at the time of the inclosure. That hedging appears to me to be more connected with blocking off the remains of the ancient hollow way, where it joined the Bath Road on that plan. In any event, it would not have been uncommon for undoubted public highways across common lands to be unhedged on both sides pre-inclosure.

<u>Andrews and Dury’s Map of Wiltshire 1773</u>

644. I regard this map, despite its limitations, as supportive of Mr Harbour’s opinion. There is no key for this map, but I accept Mr Harbour’s evidence that the Andrews and Dury’s Map of Hertfordshire 1766 does have a key in which boundaried roads are defined by double solid lines. Open roads, without hedges or fences on one side or both, are shown in the key by broken lines. Lesser highways, including footpaths and bridleways, are not shown or indicated in the key.

645. The 1773 Map of Wiltshire does show Rowden Lane and Gypsy Lane as a complete through road or thoroughfare. On this map, both sides of Rowden Lane are hedged as are both sides of Gypsy Lane shown on the 1669 Map. A way is shown connecting these two lanes across the two fields, now known as Cunniger and Home Down. This stretch across the fields is hedged or has a boundary feature on the Chippenham side, but is unhedged on the Rowden Down side.

646. I find that the plan shows a thoroughfare from the Bath Road, down Gypsy Lane, across the fields and joining up eventually with Rowden Lane. A private cul-de-sac track is shown leading east from the intersection of Rowden Lane and Gypsy Lane to the farm which is referred to on the 1773 map as “Rowden Mounton”.

647. Mr Harbour pointed out roadways without boundaries on this map which were undoubtedly public highways. No doubt Professor Williamson’s reply would be that these were unhedged public highways traversing common land.

648. This 1773 plan showed no sign of turnpiking yet on the section of the Bath Road, running from the west of Chippenham past Gypsy and Rowden Lanes. This gave rise to the implication, as argued by Mr Harbour, that the Bath Road at this point had not yet been improved and that, therefore, the Rowden Lane/Gypsy Lane thoroughfare would provide a good alternative route if the main road were impassable.

649. Professor Williamson dismissed this map as a small scale commercial map which displayed the topography of the County. It did not provide the purchasers of the map with a guide to which lanes and tracks were private or public. Indeed, the professor made the point that this map even showed the private track through the “Rowden Mounton” farm.

650. I fully accept that this was a topographical map of Wiltshire. However, I am satisfied that it was the first map of the County to be based on a meticulous original survey, and

that it is considered by experts to be of very fine quality. It was described, in a catalogue of Wiltshire maps, as one of "the finest maps of Wiltshire before the Ordnance Survey". The map shows Rowden Lane, Gypsy Lane and the intervening track across the field to be of a fairly uniform width. In my judgment, this map demonstrated that it is more likely than not that in 1773 there was a clearly visible and established thoroughfare between the Bath Road, Gypsy Lane, across the fields to connect with Rowden Lane and back on to the Bath Road.

651. I regard this map as providing support for Mr Harbour's view of the existence of a thoroughfare involving two "lanes" which were once joined. Of course, as Professor Williamson observed, the fact that the thoroughfare existed does not prove the public status of the way, since it could merely have been seen as two alternative private access roads to what became Rowden Farm. This map, in my judgment, shows them to be ways of some local significance, and more than just private tracks.

652. This map also shows, some form of track or path leading from the upper part of Gypsy Lane, generally eastwards, crossing the Avon and entering Chippenham by a back route. This is the Back Avon Bridge which was the subject of some disagreement between the experts, to which I have already referred in my assessment of the experts. For the moment, it merely suffices to note that not only did Gypsy Lane and Rowden Lane form a thoroughfare but also that, on this map, there was leading off Gypsy Lane a way which crossed the Avon and led into Chippenham.

Back Avon Bridge

653. Shortly before the trial began, Mr Harbour prepared an addendum to his witness statements. He did so based upon the inferences he drew from the 1773 map which showed a way in pecked lines between the upper end of Gypsy Lane, over the River Avon and into the back of Chipenham. This caused him to speculate that there must

have been substantial bridges where that road or track shown twice went over the River Avon before entering the Chippenham market square.

654. At that stage, he was unaware of photographs indicating that there had been only a pedestrian footbridge in place over the River Avon at that point in 1889. He had speculated that there might have been a more substantial bridge there in 1773 at the time of the map. However his own research has now unearthed Council Minutes which conclusively establish that the bridge there in 1638 was also a public pedestrian bridge, rather than a vehicular one.

655. The Andrews and Dury map of 1773 did not show footpaths, only vehicular routes. The suggestion is that the track in 1773 was a cart way shown outside the private lands and curtilage of Ivy House.

656. By 1784, what is shown is a footpath within the grounds of Ivy House, and no cart way outside Ivy House and land. There are two possibilities here. The first is that the 1773 map was wrong in showing what was, in fact, a footpath as a cartway, and also in showing it outside public grounds when, in fact, it was inside private grounds. The alternative is that the former cart way had been enclosed and downgraded to a footpath between 1773 and 1784.

657. Mr Harbour altered his opinion, having seen a Minute in 1895 referring to an "accumulation of sand, mud and obstructions from the bed of the river below the Back Avon". His revised opinion was that there were no substantial bridges which would have taken vehicular traffic, but the likelihood was that there was a shallow ford crossable by livestock and carts next to a pedestrian footbridge in this location.

658. Whilst I accept this is different from Mr Harbour's first thoughts in the matter, I reject the suggestion that the 1773 map was in error. It seems to me that there was a track there going to the back of Chippenham over the river. This plainly was so because of the footbridge. However, I am also of the view that there is credible evidence that

livestock were taken along this path and then used the ford to get into the market place. This certainly seems to be consistent with the photograph shown at page 318C in Volume 7.

659. I agree with the First Defendant's submission that this is the best fit of the evidence, but it is probably unsafe to reach any definite conclusion as to its purpose. Nevertheless, the existence of a track outside private grounds exists in 1773, going to the back of Chippenham market place, does seems to me to be probable.

660. However, Mr Harbour's change of view does not detract from my confidence in him as an independent and reliable witness. He succumbed to speculation but, when he had the advantage of seeing the photographs of the pedestrian bridge, he modified his opinion and carried on researching the matter further. He himself then unearthed the documentary evidence relating to the existence of a pedestrian bridge in 1638.

661. Gypsy Lane ceased to be used by vehicles probably by 1910 when the route was officially classified as the bridleway 2A in the 1950s Definitive Map process. Moreover, although the Chippenham Council argued that the unenclosed cart track connecting Rowden Lane and Gypsy Lane should also appear as a minor highway, path 2B, this was rejected by the Inspector at the Inquiry in 1955 into the Draft Definitive Map. Thus it was that the unenclosed track joining Rowden Lane and the end of Gypsy Lane was not classified even as a minor highway, and the last vestiges of the inter-connecting thoroughfare were lost.

662. It does not strike me, from a consideration of the 1773 map, that the purpose of the thoroughfare along Gypsy Lane and Rowden Lane was solely to provide private access to a cul-de-sac leading to the farm house.

663. None of the roads or lanes on the 1773 map is named.

A Topographical Map of the Town and Borough of Chippenham by John Powell, Land Surveyor 1784

664. In this map, Rowden Lane is called “Rowden Down Lane” and Gypsy Lane was at the time known as “Rowden Lane”.

665. Mr Harbour made a number of comments about this map:

1. By 1784, the southern boundary of Rowden Lane was hedged, and the lane had a wide central section which plainly had a worn or surface part of the road with verges of equal width either side.

2. The unenclosed section across the fields is again shown as having a worn or surfaced way across “Home Down” until its junction with the way leading to Rowden Farm which is shown as “Rowden Farm Lane”. At that junction, the road turns north unenclosed up to its connection in to the inclosed section of Gypsy Lane which is known at that time as “Rowden Lane".

3. The two enclosed sections (namely modern day Rowden Lane and Gypsy Lane) both contain the words “Rowden” and “Lane” in 1784. This indicated to Mr Harbour that the whole lane, including the unenclosed middle section connecting the two, was known as Rowden Lane at the time, forming a complete thoroughfare known as Rowden Lane.

4. The non public cul-de-sac section, Rowden Farm Lane, from the point where today the cattle grid is located, to the farm is named separately and includes the word “farm” in its name.

5. Although gates were shown at both ends of Rowden Lane, to use its modern name, these were also shown on the modern day A4 and the C366 (Lowden) in

1669. Gates were very common indeed on all classes of highways right up to the early 20th century. Section 81 of the Highways Act 1835, for the first time, stipulated a minimum width for a gate on a public cart way which was not to be less than 10 feet. In the accompanying manual, "Duties and Powers of Surveyors", it stated:

*The gate must of course have been there time out of mind; a gate newly erected is a nuisance.*

He argued that the gates on the highways were of great benefit to farmers and livestock drovers who could corral animals overnight on the highways, or on journeys to markets, where animals could feed on the highway verges instead of on private land. I agree with his assessment that it is easy to see how Rowden Lane would fit this purpose.

6. There was consistency of width on the used (worn) or surface part of the road on both the inclosed and unenclosed sections (the fields). They are far wider than the footpaths shown on the plan.

666. There were reasons why the unenclosed sections (ie the fields) of what Mr Harbour regarded as the thoroughfare of Rowden Lane were never inclosed. The provision of hedges and fences over long distances was expensive, and only undertaken when absolutely necessary. These fields, the Cunniger and Home Down, were never the subject of any inclosure agreement or award.

667. A public footpath from Lacock is shown joining the southern boundary of what is today Rowden Lane. This footpath is shown stopping and starting at the boundaries of modern day Rowden Lane but not crossing it. This suggests that, in 1784, what we today call Rowden Lane, must have been a public highway of some kind, otherwise the paths would be cul-de-sacs.

668. Professor Williamson stated that this was the first map to show Rowden Lane in any detail after 1669. By this time, the spur to Hulberts Hold is clearly shown and, as Mr Harbour too had pointed out, Sections A and B were gated at each end. Whilst accepting that a gate across the road is not of itself conclusive evidence that the road is private, he was of the view that, in relation to Rowden Lane, these gates were indicative of Rowden Lane's private status. They separated the private Lane from the Bath Road at one end and the private Lane from the entrance to the farm at the other end. He concluded that these gates on Rowden Lane had not been arbitrarily positioned, but marked points of discontinuity of legal status. I disagree.

669. He did not accept Mr Harbour's view that there was a demonstrable thoroughfare from Gypsy Lane, across the fields, to Rowden Lane. Indeed, he argued that there was no evidence to support it. This was in addition to his point that Sections A and B of Rowden Lane had only been created in 1669 as a private road for properties frontaging Rowden Lane. He addressed Mr Harbour's point about the thoroughfare, by stating that the simple fact that two unhedged tracks (Section C and the southern continuation of Gypsy Lane) met and joined, did not give them the status of a through road. Moreover, he pointed out that the two tracks met at a sharp "V" in such a way as to make it clear that both were leading to or from the farm. He concluded that it would have been very difficult for heavily laden carts or wagons to negotiate such a curious junction from its through route.

670. He also disputed Mr Harbour's contention that gates were common in all classes of highway up to early 20th century, making the point that on this map there were only six other examples of roads gated at their entrance or mid way along their length, and none of them was a major through route, but largely led to fields or farms.

671. In the end, he said that any argument that Rowden Lane must have been a public road open to wheeled traffic because it would have been *possible* to reach Chippenham by

making this rather awkward diversion, seemed to him to stretch the definition of a "through road". He argued that, if Mr Harbour were right in stating that two private tracks connecting with each other and other public roads must automatically become public highways, it would mean that the owner of a large country estate could only have one drive leading from an entrance lodge through park land to the mansion. If such an owner had two separate drives, leading in from different public roads, it would have made both drives public. Therefore, he emphasised that the two tracks, namely Section C and the southern continuation of Gypsy Lane across the fields, began at the boundaries of Rowden Farm and led, unhedged across its private fields, to the residence itself in a precisely analogous manner.

672. He addressed Mr Harbour's point about the cul-de-sac, which would have been formed by the footpath from Lacock, if Rowden Lane were not a public highway, by saying that it was perfectly possible that the Lane, or some section of it, could have had or acquired pedestrian rights of use, but not vehicular ones. However, he does not express any view on how those rights arose, or why they should have been confined to pedestrian rights.

673. On the contrary, if the whole of Rowden Lane were subject to public rights (as the Claimants now accept) this would remove any anomaly. Yet, it seems odd to me that Rowden Lane should have acquired public rights of way, on foot and on horseback only, at some time in the distant past, without also acquiring a public right of way for carts or wagons. Given the length, width and location of Rowden Lane, one wonders how and why any dedication and acceptance of the lane as a highway for use on foot and horseback took place, without a similar dedication for use by horse drawn carts and wagons.

674. Finally, Professor Williamson asked for the lens of commonsense to be applied to this map. He said that it just looked as if two unhedged private access tracks, approaching

the farm from different directions across its own private grounds, met and became one private track before their destination was reached.

675. My own impression from looking at this map is that Rowden Lane and Gypsy Lane (as we now know them) were roads of some importance. They were hedged on both sides, had worn or used surfaces and seemed to be important parts of the local public road network.

676. I am not persuaded that the junction of the two tracks, Section C and the southernmost continuation of Gypsy Lane, form the impractical 'v' junction described by Professor Williamson, nor that they are simply different private access tracks to Rowden Farm. Rowden Farm Lane is narrower than either Rowden Lane or Gypsy Lane, and there is no visible obstruction on the plan to stop the corner being cut at the 'V' junction.

677. On this plan, even if Mr Harbour's argument about the thoroughfare were not made out, I would still have regarded Rowden Lane as an integral part of the local public road network, and not just a private track giving access to property fronting the lane. Rowden Lane is shown much wider than footpaths on the plan and the central section of Rowden Lane, indicated by pecked lines, reveals the used (worn) or surfaced part of the road with verges of equal width on either side.

678. In any event, I am persuaded by Mr Harbour's evidence that there was indeed a thoroughfare running from the Bath Road (A4) along Gypsy Lane, over the uninclosed fields and onto Rowden Lane, and that there were sound reasons why the track running over the two fields was not hedged on both sides. The fact that it was only hedged on one side does not undermine my confidence in the correctness of Mr Harbour's conclusion that they formed part of a public thoroughfare connecting up with Gypsy Lane and Rowden Lane.

A Topographical Survey of the Great Road from London to Bath and Bristol, 1792, by Archibald Robinson

679. This is another independently surveyed plan, like Andrews and Drury, of lands three miles each side of the Great Road (A4). It shows the whole of Rowden Lane surveyed as a through route. It is not known whether this section of the Great Road, passing Rowden Lane, was improved at that stage.

680. Professor Williamson rightly indicated that the map was not intended to show anything other than topographic detail in the area around the road. It also showed the final approach to Rowden Farm, which was never suggested to be a public vehicular highway.

681. To me, the importance of the plan lies in a clearly demonstrated through route from the Bath Road (A4), along Gypsy Lane, across fields and back along Rowden Lane to the A4. This through route was of sufficient importance to be recorded on this topographical survey.

A Plan of the Great Down - A Field the property of Mr J Heath 1796

682. The significance of this plan to Mr Harbour was that it had brown colouring on it to denote the extent of the used surface (not the verges) of the public carriageways. The Bath Road (A4), Rowden Lane and a new road from Lowden were coloured brown. However an “Old Road” from Lowden bore no colouring.

683. Plainly this area of the A4 had been improved, in particular the junction of the A4 with Lowden. An old sharp dog leg had been improved by a new section of gently curving road. Mr Harbour contended that the reason why the redundant “Old Road” from Lowden was not coloured was because it was no longer a public highway. The

implication was that what was coloured brown was public highway, including Rowden Lane.

684. Mr Harbour met Professor Williamson's point that no gates are shown on Lowden (but were shown at the junction of Rowden Lane and the A4) by saying that no gates would have been expected on Lowden, because that section was newly constructed as part of the improvement. Professor Williamson argued that this plan added little information beyond showing that Rowden Lane was gated where it met the Bath Road, in contrast to Lowden Lane a short distance away. I have dealt with Mr Harbour's answers to that point. He went on to point out that the map did not have a key indicating what the brown colouring represented. He argued that it may have merely marked the extent of the roads which were actually used as carriageway, but that there was no indication that any carriageway was a public vehicular one. It was a map of a field which happened to show adjacent carriageways.

685. Professor Williamson summarised the 19th Century cartographic evidence as indicating that Sections A and B of Rowden Lane were created, at the inclosure of Rowden Down in 1669, as a private road. This provided access to the allotment of Jonathan Scott. At that time, or slightly later, and via a short spur road, it provided access to the Borough of Chippenham's property called Hulbert's Hold and, by connecting with a pre-existing and apparently private track (C), ultimately to Rowden Farm. By 1784, and very probably already in 1669, the latter was also accessed by another unhedged track, the southern extension of Gypsy Lane. The two tracks met before they reached the farm, but the sharp angle of the junction indicated to Professor Williamson that they did not together constitute an ancient "through road" for vehicles. Both were shown on other small scale 18th century maps, but there was no evidence that any of these was intended to define public rights of way or was created after systematic enquiries into such matters. Rather, they were simply included as visible features of the landscape, together with much other topographical detail.

686. In my judgment, Rowden Lane, whatever its status at this time, was shown on this map as a road of some significance with a central carriageway and land or verges on either side of it. It also bore the same colouring as the Bath Road. It seemes to me to be much more than a private drive.

687. I regard this map as supportive of Mr Harbour's opinon that Rowden Lane was then a PVH.

Ordnance Survey one inch to one mile scale plan published at the Tower of London 12.08.1828

688. The original requirement for making the one inch maps was the Government's urgent desire for a very accurate map of the country's road system which troops could use because of the threat of invasion in the Napoleonic Wars. Although on a small scale, as Mr Harbour concedes, it clearly shows that Rowden Lane formed part of a through route from and back on to the Bath Road (A4) via Gypsy Lane across both fields.

689. Whilst reminding myself of Professor's Williamson's view, that these are merely private tracks leading to private property, the map demonstrates, to my satisfaction, a through route leading from and rejoining the A4. Moreover, at this stage, the intersection of the track running southwards from Gypsy Lane with Section C does not give the impression to me that its role was to provide solely a private access to Rowden Farm.

690. Although Professor Williamson considered that this map, with its relatively small scale, did not make any attempt to distinguish public roads from private - and this is exemplified by the fact that it does show the final section comprising the private track leading to Rowden Farm - nevertheless, I am left with the impression that this thoroughfare represented more that mere private access roads to farms. To me, it seems more consistent with being part of the overall public road network.

Greenwood's Map of Wiltshire, published 4 July 1829

691. This map was again published by an independent commercial map maker. It has a very small scale of approximately three miles to one inch. Again, a complete thoroughfare is shown, although the road does not share the same colouring as what is today the A4. Nevertheless, there are many other roads on this plan which are shown similar to Rowden Lane. According to the key to this plan, the thoroughfare comprising Gypsy Lane, the track across the field and Rowden Lane is called a "cross road".

692. I shall deal with this term later but, for the moment, it is important to remember that in 1829 "cross road" did not have its modern meaning of a point at which two roads crossed. In old maps and documents, a "cross road" included a highway running between, and joining other, regional centres.

693. Professor Williamson felt that this map too made no attempt to distinguish between public roads and private roads and, like the 1828 OS Plan, both showed roads which were certainly no more than access roads to farms.

694. Notwithstanding the small scale of the map, it supports the emerging picture of an established thoroughfare leading from the A4 at Gypsy Lane and rejoining it at the junction of Rowden Lane and the Bath Road.

Report on the Borough of Chippenham 1831

695. Rowden Lane is not shown on this plan although Gypsy Lane, from its junction with the A4 is depicted on it. However, it peters out before reaching anywhere. As Professor Williamson pointed out, the key to the map did not make any reference to roads. He contended that the map simply showed enough topographic detail to allow the old and proposed boundaries of the Borough to be depicted clearly.

696. Mr Harbour stated that Gypsy Lane was shown as wide as most other roads on the plan although, somewhat inexplicably, unfenced or unhedged on its western side for the entire length connecting into the A4. However, the point that he made was that there are footpaths shown elsewhere on the plan along much narrower access tracks. Indeed one such track leads to Harden Farm and it appears to be the only form of access to it. Accordingly, whether viewed as a mere footpath to that farm, or a cart road to that farm, it was shown in pecked lines leading off a road.

697. This is a different representation from Gypsy Lane on that plan. I agree with Mr Harbour that this suggests that Rowden Lane/Gypsy Lane was regarded as being of much greater significance than a mere private farm track.

698. It is convenient to stop at this year, namely 1831, because it is the last map produced in evidence by Mr Harbour before 1835. Public highways in existence before 1835 were maintainable at public expense.

699. If it were necessary for me to express a view on the status of Rowden Lane (namely Sections A and B), before 1835, I would have said that I was satisfied, on the balance of probabilities, that Sections A and B of Rowden Lane were then public highways, not just subject to rights of way on foot or on horseback, but also with carts and wagons. In other words, it was a full public highway by 1835.

700. However, the historical evidence does not end there and my final decision must reflect the totality of the evidence put before me, and I must consider whether it contradicts or undermines my provisional conclusion on the pre 1835 documentation or, whether it confirms it. My ultimate decision will be based on all the evidence but, in case it is material to do so, I have stated what my view would have been on the basis of the pre 1835 evidence.

The Chippenham and Allington Tithe Award 1848

701. A road was not generally subject to rent charge or tithes unless an income could be raised from herbage, or grazing along its extent. Roads were usually shown on tithe maps because they often formed the boundaries of parcels or hereditaments of titheable lands. Sometimes the roads are coloured sienna or variations on yellow/light brown shades. This colouring was not confined to the carriageway itself, but usually included adjacent verges or highway waste.

702. Mr Harbour examined a copy of the tithe map which itself had been compiled from older maps and other secondary sources, and not the result of a new survey.

703. He observed that the outlines of roads were mostly drawn with solid lines representing enclosing features such as fences, walls and hedges. All the public roads on the Award Plan were shown coloured sienna for their full extent between the outlines or casings, to include all verges and highway waste. These boundaries are consistent with earlier plans, and in particular those boundaries at the enclosed sections of Rowden and Gypsy Lanes.

704. Toll Bars were now visible just south of the junction of Rowden Lane and the A4. Mr Harbour speculated that these may have been necessary at this stage because people may have been previously avoiding paying tolls by using Rowden Lane to bypass this section of the A4.

705. Mr Harbour was not able to draw any reliable conclusion from the tithe map. He thought that the best that could be said about it was that Rowden Lane and Gypsy Lane were coloured sienna, as were all the other highways shown on the plan, but that did not necessarily mean that it was shown as a public highway. The two parcels of land making up the enclosed section of Rowden Lane, parcel numbers 518 and 519, were described in the Award as “Part of the Road to Rowden Farm”. It was not

cultivated or shown subject to tithe apportionment. The parcel making up the enclosed section of Gypsy Lane was described as a “lane” and was again not cultivated or subject to tithe apportionment.

706. Mr Harbour agreed with Professor Williamson that the Tithe Award Plan could be showing either that the road(s) were considered public highway or that they were private roads with no titheable value.

707. Professor Williamson derived some support for his argument that Rowden Lane was a private vehicular road from the Tithe map. Rowden Lane was given two parcel numbers, 518 and 519, whereas the overwhelming majority of the roads were not given parcel numbers. Only a very small number of lanes, no more than five within Chippenham itself, and three within Allington, were given numbers.

708. Parcel 518 was the property of Benjamin Lifely. This parcel and his adjoining fields were tenanted by James and Joseph Austin. Parcel 519 was owned and occupied by Jacob Philips, who again owned adjoining fields. However, Professor Williamson also pointed out that some “numbered” roads were allotted a rent charge, in lieu of tithe on their potential produce, whereas others – including Rowden Lane - were not. Moreover, he indicated that what we call Rowden Lane today was not given a specific name in the 1848 map, but was simply described as “the road to Rowden Farm”.

709. He suggested that the Tithe map very strongly indicated that Rowden Lane was different in status from the public highways like the Bath Road or Lowden Lane. He considered it likely that the Tithe Commissioners were informed that Rowden Lane was a privately owned access way, across which only limited numbers of property owners, rather than the public at large, enjoyed rights of access. He said this was consistent both with the evidence of the earlier large scale maps and other mid-nineteenth century evidence.

710. In particular he referred to the Abstract of Title of Trustees of Mr and Mrs Cambridge's settlement, dated 10 March 1880, which, in referring to an 1820 Indenture of Lease and Release, spoke of a conveyance of "all that Lane or Way" between the said closes called Rowden Down Lane. Moreover, he argued that if Mr Harbour were right in saying that by this time Rowden Lane had become a public highway, then the surface would presumably have vested in the Surveyor of Highways and could not have been so comprehensively conveyed.

711. In my view, this conclusion does not follow. The 1820 document could easily have been referring to the subsoil under the Lane. After all, the Claimants agree that at some stage Rowden Lane became a public highway, and Professor Williamson had already accepted, when dealing with the footpath from Lacock which crossed Rowden Lane, as shown in the 1784 Topographical Map of Chippenham by John Powell that:

*It is perfectly possible that the lane, or some section of it, could have had or acquired pedestrian rights of use, but not vehicular ones.*

712. In 1820, the Lane bore a name then, "Rowden Down Lane" and the word 'lane' has been judicially defined as usually meaning a minor road leading between one main road and another. Accordingly, I do not find Professor Williamson's observations on this point to be persuasive.

713. He also contended that the Tithe Award Plan showed Section C and the southern continuation of Gypsy Lane meeting at such an awkward angle that it would be difficult to negotiate with horse drawn wheeled vehicles. He drew my attention to the enactment of the Highway Act 1773 which empowered Quarter Sessions to stop up highways, much more easily than the previously cumbersome common law process. He seemed to argue that the maintenance of this junction was inconsistent with it being a public highway because, had it been so, the junction would have been altered

and smoothed using the powers under the 1773 Highways Act. In my judgment, the deviation in this case would have been minimal and totally disproportionate to the cost and effort involved in securing a highway diversion order.

714. On the Tithe Map and Award, Rowden Lane and Gypsy Lane were coloured sienna as all the other highways shown on the plan. However, that did not *necessarily* mean it was shown as a public highway. It could have been either that the roads were considered public highway, or that they were private roads within no titheable value.

715. Nevertheless, it is possible to derive some further information from the plan.The plan shows Sections A and B of Rowden Lane in the same way as it shows the Bath Road. Both Sections A and B of Rowden Lane and Bath Road are shown differently from Section C. Either Sections A and B were public with no known owner to tithe or they were private with no titheable value. However, it was known who the owners of Sections A and B were, namely Heath/Lifely and Cambridge. We also know two further things: (a) some private roads on tithe maps were titheable; and (b) the Claimants accept that Sections A and B were public highway of some sort at some time.

716. In my judgment, the 1848 map provides support for the proposition that Sections A and B of Rowden Lane were continuous with the main Bath road, and were not tithed because they were full public vehicular highway. This is consistent too with the shading shown on the OS map for 1900 and with the 1910 Finance Act map, where Rowden Lane is shown as a wide ungated lane, with a central track and verges, coloured the same way as the Bath Road but differently from Section C. This strongly suggests that it was a public vehicular highway.

Map entitled 'Wiltshire' by Edward Weller F.R.G.S 1862

717. This commercially produced map showed Rowden Lane and Gypsy Lane as a thoroughfare, or through route, referred to as a minor "road" in the key. The scale on this plan is approximately four miles to one inch, yet the thoroughfare is clearly shown.

Map produced by surveyors relating to a proposed change to the Borough boundary 30 September 1867

718. All the public highways (carriageways) in the borough are shown coloured yellow by the surveyor of this plan. The enclosed sections of Rowden Lane and Gypsy Lane are also shown coloured yellow, for the full extent of the enclosed sections, as all the other carriageways are shown.

719. Professor Williamson said that the purpose of this map was to define borough boundaries and not to classify local rights of way. As far as the Weller map of Wiltshire of 1862 was concerned, Professor Williamson made the point that no survey had taken place to show the legal status of the particular roads on this map.

Beacons Map of Wiltshire c1876

720. This map was produced by a commercial map maker at a scale of approximately three miles to one inch. Rowden Lane and Gypsy Lane are shown as a thoroughfare and part of the overall road network. Professor Williamson made the point that this map shows not only public vehicular highways but also private farm tracks.

Thoroughfares

721. On a number of occasions in this judgment, I have made reference to through routes and thoroughfares, stating that certain maps gave me the clear impression that

Rowden Lane and Gypsy Lane, connected by a way across the field, constituted a through route or thoroughfare leaving and rejoining the A4.

722. Mr Harbour attaches considerable importance to the notion of "thoroughfare". He is strongly of the view that the historical evidence demonstrates that Rowden Lane and Gypsy Lane formed one through route, amounting to an extremely ancient thoroughfare. He considered that this thoroughfare was in existence before the inclosure of the common lands in 1669. It not only served those common lands but also the place called Rowden.

723. He referred to an article by Colin Seymour entitled "The thoroughfare principle" contained in the Byway and Bridleway Trusts Journal (BBT 2000/1/8). The gist of the article was to confirm that ancient through routes were always considered public vehicular highways. I quote from selected extracts from that article:

*The basic concept of the highway was one of endless route; a thoroughfare made up of countless ways. All ways, be they public roads or private roads, which led from village to village and did not terminate there, or which led to a great road were properly called a highway. This was the presumption that must be the starting point at any enquiry into the status of a way. If a way is a thoroughfare and does not end as a cul-de-sac it is a highway. Thus the burden of proof shifts at this point from those who seek to prove the way to those who seek to disprove its existence. From time immemorial up to the 1850s, only thoroughfares were highways. Ways which terminated at a village, a church, a common field, or a house were termed private ways. A private way and a private road were not strictly the same thing so far as the law were concerned. For, the latter could be a highway whilst the former was distinguished from a highway because it was not a thoroughfare … the difference between a highway and a private way was that the former was a thoroughfare and the latter terminated as a cul-de-sac … All highways are thoroughfares. All public roads*

*which were thoroughfares were highways. All private roads which were thoroughfares were highways. All occupation roads which were thoroughfares were highways. All cross roads were highways because by their very nature they were thoroughfares leading to other places and were part of the road network.*

*… [a statute] requiring sign posts at cross roads referred to them as 'cross highways'. Countless law reports, ancient and modern, start from the premise that if the way was a through route, linking two public roads, that way was itself a highway. The thoroughfare principle was fully understood by the courts at the time and nothing has changed since to alter the law – therefore it still holds good that: every (ancient) thoroughfare is a highway if it connects to another highway or leads to the next town.*

724. Professor Williamson said that he was not at all convinced that Rowden Lane either led between two villages or connected two major highways.

725. In suggesting that Rowden Lane was regarded as a private vehicular road in the nineteenth century, Professor Williamson drew my attention to a Council Minute, dated February 1881, of a meeting of the members of Chippenham Borough Council. At that meeting, a letter from Mr Doswell, the Highway Surveyor of the Chippenham highway district, was read. It asked the Council to join with the other owners of adjoining property in contributing towards the repair of a bridge over the brook in the lane leading to Rowden Farm and the field called Hulberts Hold belonging to the Corporation. It was proposed by Mr Alderman Dowding, and seconded by Mr Careless, that the Council should contribute one-tenth of the expense which would be about £1. This was then agreed. The minute referred to a "bridge in Rowden Lane". He argued that the fact that property owners adjoining the lane were being called upon to pay for the cost of repair of a bridge in the Lane indicated that the Council, as well as the property owners, regarded Rowden Lane as private. The actual bridge in question is , I find, in Section A of Rowden Lane, opposite the public house car park.

726. For me, the interesting thing about this Minute is that the letter had been written by the *Highway Surveyor.* He was asking for contributions for the repair of the bridge. Why was the Highway Surveyor involved, if Rowden Lane was entirely private? Moreover, he was merely asking for a contribution towards repair, he was not suggesting that the adjoining owners were obliged to do so.

727. In my judgment, the fact that the person taking responsibility of the project was the Highway Surveyor provides support for the view that Rowden Lane was regarded at the time as a public vehicular road. A bridge, especially of that width, would not have been necessary if Rowden Lane were a mere bridleway.

728. Even twentieth century correspondence in this case has shown that the Highway Authority responsible for Rowden Lane has had to prioritise. It did not always have the funds to discharge its statutory duties. Therefore, I do not regard the request by the Highway Surveyor in 1881 for a contribution towards the repair of a bridge as constituting the "particularly important piece of evidence" in support of a private road which Professor Williamson believes it is. On the contrary, it is consistent with the First Defendant's case. In any event, it must be seen in the light of the 1896 Council Minute which suggested or implied that Rowden Lane was a public vehicular highway.

<u>1st Edition 1:2500 Ordnance Survey Map 1886</u>

729. This plan shows the first properly detailed survey of Sections A and B of Rowden Lane. The areas shown on this map with double casing lines indicate solid boundary features, such as hedges or fences on both sides. The width of Rowden Lane is again consistent with earlier plans, except that Section A appears now to be narrowed. The public house, the Rowden Arms, appears to the north of Section A. Access to the public house was off Rowden Lane,

730. Mr Harbour thought it would be unusual, if Rowden Lane were a wholly private road, for the owner or owners of Rowden Lane to permit the road to be used for access to the public house without payment of money. Mr Harbour was unaware of any such financial arrangement.

731. Mr Harbour made two further points about the way in which Rowden Lane was shown on this map. The first was that the Lane had its own parcel number and survey area. These are the conventions used by Ordnance Survey for all public roads. The second addressed Professor Williamson's point about the difficulty of negotiating the "V" junction of Section C of Rowden Lane with the northern track leading to Gypsy Lane. In referring to the acute angle formed by this intersection and the alleged impracticability for use as a through route, his view was that the track was only surveyed somewhat generally across the open fields, denoting an approximate width and alignment of the open track. He suggested that the map did not disclose exact limits, as it would naturally wander somewhat depending upon the conditions of the way.

732. I am satisfied, on the balance of probabilities, that the inference can properly be drawn that Rowden Lane at this time had been dedicated and accepted as a public highway. Indeed, it seems likely to me that by the time of this map, the public's right of access was not only on foot or on horseback but also with carts or wagons. I see no reason to limit these just to carts carrying beer barrels for the public house. Moreover, the date of this map is only five years after the Council meeting, recorded in the 1881 Minute, dealing with the repair of the bridge in Rowden Lane, virtually opposite the public house.

Phillips Cycle Map of Wiltshire c1890

733. On the key to this plan cycling roads were coloured brown. Rowden Lane was shown as another type of road shown in the key as "cross roads", as it was shown on Greenwoods Map of Wiltshire 1829. In the Planning Inspectorate's "Right of way section advice note number 4, July 1999" advice is given as to the interpretation of the term "cross road or cross roads" as follows:

*In modern usage, the term "cross road" and "crossroads" are generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term "cross road". These include a highway running between, and joining, other regional centres. Inspectors will, therefore, need to take account that the meaning of the term may vary depending on a road pattern/markings in each map".*

734. However, the note went on to urge caution:

*In considering evidence it should be borne in mind that the recording of a way as a cross road on a map or other document may not be proof that the way was a public highway, or enjoyed a particular status at the time. It may only be an indication of what the author believed (or, where the contents had been copied from elsewhere – as sometimes happened – that he accepted what the previous author believed). In considering such a document due regard will not only need to be given to what is recorded, but also the reliability of the document, taking full account of the totality of the evidence in reaching a decision.*

735. Accordingly, I have to assess each piece of evidence to see how far I can rely on it. This map continues to present a significant thoroughfare running off and to the A4 via Gypsy Lane and Rowden Lane. This thoroughfare strikes me as of greater importance than the intersection of two private tracks leading on to a private farm access. Whilst

reminding myself of the fact that the map draws no distinction between the undoubtedly private access track to Rowden Farm and Gypsy Lane/Rowden Lane route, I nevertheless regard this map as contributing to the fairly consistent picture of a public thoroughfare leading off and back on to the A4.

736. Professor Williamson drew my attention to an Inquiry in 2008, where the Inspector, Mr Grimshaw, accepted the submission that such county maps often only depicted two category of roads, turnpike roads and cross roads, where the latter designation tended to become a "catch-all" for all routes that were not turnpikes, including cul-de-sac occupation roads and other private access roads. He said that it could not therefore be safely assumed that the inclusion of the route as a cross road on these maps necessarily indicated that they had acquired public carriageway status.

737. I have reminded myself of the need to have regard to the totality of the evidence on the issue, and I am fully alive to the limitations of these small scale commercial maps and that they also show undoubtedly private ways as well as public ways. These maps therefore cannot be definitive as to status. Nevertheless, they show a consistency of treatment of the thoroughfare formed by Rowden Lane and Gypsy Lane which I find difficult to explain solely by reference to a private access way for Rowden Farm.

2nd Edition 1:2500 Ordnance Survey 1900

738. The casing lines on Rowden Lane appear to be identical on this survey to those shown on the 1st Edition OS Map 1886. The enclosed section of Rowden Lane again has a parcel number and the acreage is the same at 1.498 acres. However, Section B of Rowden Lane appears to have thicker casing lines on the south side. Mr Harbour argued that it was the practice of the Examiner to establish not only the extent of public and private roads but also the edge of the highway.

739. Certainly an Examiner was instructed to communicate with various authorities such as the proprietors or agents of estates and generally to obtain information from persons locally interested and well informed. He was also able to distinguish between turnpike and parish (usually public) roads and occupation roads (usually private vehicular routes).

740. Before 1884, only first class public roads were drawn with a thickened line. Quoting from the leading expert on the matter, Dr Yolande Hodson, Mr Harbor continued:

*The overall effect of the November 1885 circular is to suggest that it should be possible to make the following identifications on the published 1:2500 plan:*

*(1) First class roads: all shown by the thickest shaded line. By implication, all such roads should be public.*

*(2) Second class roads, category 1: public, shown by a thinner shaded line than (1).*

*(3) Second class roads, category 2: private, shown by a thinner shaded line than (2).*

*(4) Public or private roads in poor repair: shown by thin lines without any shading.*

741. After studying the plan, Mr Harbour said that the thickness of the shading used on Rowden Lane appeared identical to that used on the A4 (London to Bath road – the Great Road). He concluded that, since the A4 would never have been given the thinnest shading category (3), both the A4 and Rowden Lane were either category (1) or (2), both public road categories. I accept Mr Harbour's assessment of the thickness of the lines.

742. Professor Williamson was not so sure that the A4 and Rowden Lane had lines of equal thickness. Nevertheless, even if it did, he relied upon other observations made by Dr Hodson that it is not possible to make an unequivocal distinction between the 3 categories of shaded road on public plans. However, more importantly than this, he said that it simply was not the responsibility of Ordnance Survey officers to conduct a full public enquiry in to the precise legal status of roads. Undoubtedly some enquiries were made, but he argued that their main job was to show what was on the ground. The important thing, therefore, was the condition and appearance of a road rather than its legal status. At most, he concluded that the use of the shaded lane on Section B of Rowden Lane was an indication of its condition, namely it would, to the same extent as a good minor public road, take fast wheeled traffic in all seasons. He developed this by further quoting from Dr Hodson who opined that a shaded line was also applied to private roads, which were maintained up to second class standards.

743. Therefore, his view was that the depiction of roads in the OS large scale maps did not provide a reliable guide to their legal status. Depiction of Rowden Lane on the 1900 map was, he felt, merely an indication that the surveyors found this section of the Lane in reasonable repair. Nevertheless, as he observed, it is interesting that Section C of Rowden Lane, beyond the cattle grid, was not shown either as a first class or as a second class road but only as a cart track. There was, therefore, a material distinction between Sections A and B (considered together) and Section C.

744. I believe that Professor Williamson must be right in concluding that the OS maps could never be *definitive* of legal status. That simply was not their purpose. However, that does not mean that they provide me with no assistance in this case. What does emerge is that there was a material distinction between the surfaces of Sections A and B, which would take fast wheeled traffic in all seasons, and the cart track in Section C. In my judgment, Sections A and B were of a higher order than Section C. Whilst not definitive of its legal status, the condition of repair and maintenance of Sections A and

B of Rowden Lane as produced from this plan persuades me that, in terms of vehicular use, it had a status and role higher than a private drive or road.

745. In reviewing the 19th century evidence as a whole, Professor Williamson, relying heavily on the Borough Council Minute of 1881, concluded that Section B of Rowden Lane continued to be regarded as a private road, used by right by a small group of people, rather than as a public highway. I do not agree with this view.

746. In my judgment, the involvement of the Highway surveyor in 1881, the 1896 Minute (both dealt with more fully in chapter 18), the similar depiction and treatment of the A4 and Rowden Lane and the difference in the quality of maintenance between Section B and Section C shown on the 1900 map lead me to conclude that it is more likely than not that Sections A and B had in fact been dedicated by the owner of Rowden Lane to, and accepted by, the public as a public vehicular highway at this time.

The Finance (1909-10) Act 1910

747. This map is heavily relied upon by the First Defendant because it shows the disputed sections of Rowden Lane as wholly untaxed. This to be contrasted with the land to the east of the cattle grid which was taxed, but was subject to a deduction probably in relation to minor highways running over it. The First Defendant argued that the only reason why Sections A and B of Rowden Lane would be shown untaxed is because it was then a full (ie including vehicular) public highway. If it were anything less than this, it would be taxed, but subject to a deduction to reflect the minor public rights (eg Section C).

748. Moreover, this plan also showed there was, in the field called Home Down, a football ground in 1910. Given the Claimants' concession that Rowden Lane was a public highway on foot and on horseback, I find that is likely that the football ground was not just accessed by people on foot or on horseback. It seems to me likely that carts or

wagons would have been used to convey people (if only the away team) and kit to the ground. Moreover, Rowden Arms Public House, hereditament number 1206, is shown with no access to it, other than over Rowden Lane.

749. Professor Williamson, whilst accepting that the 1910 map suggested that Sections A and B of Rowden Lane were considered by the valuers to be a public vehicular carriageway, whereas Section C was not, urged me not to draw this conclusion. In particular, he pointed to the fact that Rowden Lane may have been shown untaxed and uncoloured because:

1. There was uncertainty over the ownership or occupation of Rowden Lane and therefore there was ignorance as to its true status;

2. There was uncertainty whether Section 26(1) of the 1910 Act could be complied with, namely 'each piece of land which is under separate occupation … shall be separately valued', where use of Rowden Lane was shared as were the costs of its upkeep;

3. Where a number of people had rights to use the road, and customarily did so, the valuation maps may well have treated it in the same way as a public road, even if the valuers had been fully aware that it was not;

4. Not only Rowden Lane but also the two spurs running southwards from it were shown uncoloured. The fact that these spurs were also shown uncoloured and, to Professor Williamson, appeared cul-de-sac occupation roads rather than public highways, undermined the reliance that could be placed upon uncoloured sections of the map. Mr Harbour countered this by showing, (in my view, successfully) that these spurs, namely spur 2 (between Swallow Falls and Elm Tree Farm) and spur 1 (the end of the enclosed section of Rowden Lane by the modern day cattle grid, were indeed public vehicular/cart roads by the eighteenth

century at the latest. Indeed the Tithe Award 1848 also showed spur 1 and spur 2 as untithed and also coloured in the same way as the Bath Road on the Tithe Award plan. Mr Harbour's opinion is that these spur roads, which connected with Rowden Lane, were themselves public vehicular highways and had been used as a means of public access with carts to the Coppice;

5. There was no public consultation process to enquire into the status of map roads shown on the map;

6. Running between parcels 1193 and 1306 on the 1910 map is a public footpath which, like Sections A and B of Rowden Lane, is uncoloured. At its western end, it runs unbounded through parcel 1193, where it changes and becomes coloured and included within the parcel. Professor Williamson says this is comparable to Sections A and B running into Section C on the 1910 plan. Subsequently, this footpath has been known as 'Chippenham 3' on the 1953 Definitive Map. It has never been suggested that it is anything other than a footpath and, therefore, so Professor Williamson concluded, the exclusion of a public way on the 1910 maps is perfectly consistent with that public right of way having a lower status than a public vehicular highway;

7. R v. (1) Secretary for State for the Environment (2) Hertfordshire County Council ex parte Maltbridge Island Management Company Ltd [1998] EWHC Admin 820 [1998] E.G. 134 (C.S.)demonstrated that a 1910 map could not take precedence over other evidence and, in particular, that of private documents (including deeds) which treated the way in question as a private road. In that case, despite the fact that the disputed roads were shown uncoloured in the Finance Act map, Sullivan J ruled, that it was, in fact, a private road. However, the decision to quash the Inspector's decision was based upon a review of the conflicting evidence in a case, where he considered the Tithe Award and the 1910 map to

be ‘neutral with indications pointing both ways’. In the end, Sullivan J concluded that there was insufficient evidence as a matter of law for the conclusion reached by the Inspector, but recognised that he could not substitiute his own assessment of the documentary evidence for that of the Inspector. In Maltbridge, the 1910 map showed a deduction of £10 tax in respect of a way, whereas Rowden Lane was shown wholly untaxed;

Ridley -v- Environment Secretary [2009] EWHC 171 is an example of a case of an Inspector coming to an opposite conclusion on a 1910 Finance Act map, upheld on appeal, on facts more similar to Rowden Lane;

These cases of Maltbridge Island and Ridley -v- Environment Secretary [2009] EWHC 171 are illustrations of decisions reached on different evidential material, including a 1910 map, but each case must turn on its own facts and evidence. It is for me to assess and evaluate the documentary evidence in this case, as I am entitled to do under Section 31 of the Highways Act 1980;

8. Conveyancing documentation concerning land adjacent to Rowden Lane showed that, in 1919, the eastern section of Section B (called “B2”) was conveyed to Brigadier Palmer. The Professor considered that this was not merely a conveyance of the subsoil, but also of the surface of the Lane itself, which could not have happened had it been subject to public vehicular rights. Of course, this is somewhat difficult to reconcile with the Claimants’ current case that Sections A and B *are* a public highway, albeit subject only to rights of way on foot and on horseback;

9. Brigadier Palmer, having assembled the Lackham Estate, sold it to the Right Honourable William James Baron Glanely (formerly Mr Long). In 1927, Lord Glanely sold the estate to Mr Holt MP, who subsequently auctioned the estate off in lots. The sales particulars in relation to lots 4, 5 and 6 (subsequently

purchased by David Townsend) all referred to the lots being approached "off a private road", a reference to Rowden Lane. The auction particulars contained "stipulations" the final one of which read:

> *Where any lot or lots abut on to a private road and the purchaser has been granted a right of way there over he shall contribute to the owner of such road a fair portion of the costs of maintenance thereof.*

750. Mr Townsend purchased lot 5 in 1927 and was granted a right of way over Sections A and B, "so far as the vendor can grant the same". In 1928, he purchased lots 4 and 6 without being granted a right of way over Sections A and B.

751. Professor Williamson concluded that this conveyancing material was supportive of the private status of Rowden Lane, or at least the fact that it was not subject to public vehicular rights. He added that the conveyancing documentation, as in Maltbridge, should take precedence over the 1910 map, because Rowden Lane was being treated and regarded as a private way only a short time after the 1910 Finance Act map. Even if, contrary to his view, the 1910 map could be read as supporting the existence of public vehicular rights over Sections A and B of Rowden Lane, he considered that the manner in which it had been treated in private conveyancing documents drawn up soon afterwards was of much greater value in indicating its status.

752. The Claimants sought to put before me other explanations for why sections A and B of Rowden Lane were uncoloured on this 1910 map. I reject the suggestion that it may have been because Sections A and B were a bridleway rather than a full public vehicular highway. The fact that it may be possible to point to other areas on the plan, eg Footpath 3, shown uncoloured but only a footpath, does not dent my confidence in the map on Sections A and B. The exhaustive enquiry in this case has been on the history of Sections A, B and C of Rowden Lane, not Footpath 3.

753. I am satisfied that it is more likely than not that, if Sections A and B with their wide verges, were merely a bridleway, this would have resulted in a liability to taxation, but a deduction in respect of the minor highway. In my judgment, the probable explanation for sections A and B being untaxed is because they were regarded as a full vehicular highway.

754. The 1910 map is one of three pieces of evidence upon which the First Defendant places especial reliance to prove its case that Rowden Lane was a public vehicular highway. The other two are (i) the 1937 'New Street' declaration for Rowden Lane and (ii) the Definitive Map process.

755. However, the Defendant's case is that, although these are individually potent pieces of evidence, they also support the emerging and consistent picture, apparent in the historical documentation, that Rowden Lane, before and after 1669, has been regarded as a public vehicular highway.

756. The map is, therefore, of some importance. In Agombar, where the disputed stretch of road was called "the Blue Land" the Blue Land was shown with other principal roads in the area as an untaxed public road. Etherton J found that fact to be "most material evidence" in relation to the status of the Blue Land as a highway at that time for the reasons which he gave in paragraphs 46 and 47 of his judgment:

*46. The next documents on which the Defendants rely are a map and schedule prepared pursuant to the Finance (1909-10) Act 1910. The 1910 Act provided for the levying of a duty on the incremental value of land, called increment value duty. The Board of Inland Revenue was to ascertain the site value of all land in the United Kingdom as at 30 April 1909. Commissioners were to undertake a provisional evaluation of the land, which they were to serve on the owner of the land. The 1910 Act provided for the owner to give notice of objection to the provisional valuation.*

*Valuation officers were set up throughout the country, and a Land Valuation Office was appointed to each Income Tax Parish. Between 1910 and the repeal of the Act in 1920 the whole country was surveyed in this way. Mr Alan Harbour, the Rights of Way Officer of Wiltshire County for the Northern half of the county and who was formerly the Land Charges Officer of the council, gave evidence of the painstaking detail with which the land was valued pursuant to the 1910 Act. Although Mr Harbour is not qualified as a lawyer or a surveyor, he has considerable practical experience on issues relating to public rights of way and the proof of their existence. I found his evidence helpful. He emphasised that the effect of the arrangements made under the Act was that local people with local knowledge undertook the valuation and conducted the detailed consultation with the owner of the land. He described how the valuation involved the most comprehensive record of land ever undertaken and became known as "the Second Doomsday". The 1910 Act contains specific provision for reducing the gross value of land to take account of any public rights of way or public rights of user as well as easements. Importantly, the Act contained criminal sanctions for falsification of evidence …*

*47. The 1910 Finance Act map and schedule are, in my judgment most material evidence in relation to the status of the Blue Land at that time. It would be in the interest of the owner of the Blue Land to acknowledge that the Blue Land was a public highway and so not taxable. On the other hand, it would have been the concern of those acting for the Commissioners to establish that the Blue Land was private land and not subject to public rights. The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network in a survey which would have been undertaken by local officers of the Commissioners and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested and maintainable by the District Council, which was the highway authority …*

757. I respectfully adopt that as a statement of the practice and procedure for carrying out this survey, but I must make my own assessment of the value of the 1910 map concerning Rowden Lane in the context of all the evidence in the case.

758. A Land Valuation Officer was appointed to each Income Tax Parish. They were almost always the existing assessors of Income Tax and some 7,000 were appointed nationally. This enabled the Inland Revenue to have local people with local knowledge undertaking the crucial task of identifying hereditaments. As Etherton J observed, valuers would have been extremely reluctant to show any land as a public road if it could be assessed for duty, and landowners were subject to criminal penalties if they falsely claimed a way to be public to minimise tax liability. The base map used for the Finance Map was the 2nd Edition Ordnance Survey map 1900, with which I have dealt above.

759. The landowner of Rowden Farm was allocated hereditament number 1338, amounting, as shown in the valuation book, to 191 acres. However, the enclosed section of Rowden Lane, Sections A and B leading to the start of hereditament 1338 are not included in it. Sections A and B of Rowden Lane are shown uncoloured as a public road, exempt from tax assessment. If Rowden Lane had been a private drive principally for Rowden Farm in 1910, it is likely that this would have been well known in the vicinity at the time. Moreover, if Rowden Lane were owned by Rowden Farm, then one would have expected other landowners on Sections A and B to have had private easements over this land. In fact, it is the First Defendant's case that the first time after 1540 when Rowden Farm regained purported ownership or control of any part of sections A and B was in 1919, when some trustees conveyed part only of section B (B2) back into common ownership with Rowden Farm. However, this common ownership was short lived after 1919. I deal with this more fully later in this judgment, when I analyse the conveyancing history of the area.

760. As far as the enclosed section of Gypsy Lane is concerned, this too had been excluded from tax assessment because it was a full public highway. It would indeed be somewhat coincidental if Gypsy Lane were also shown wrongly as a full public highway because of confusion over ownership or occupation. In my judgment, there was no such confusion.

761. Only all purpose (vehicular) highways were excluded from tax assessment. Minor highways, including footpaths and bridleway were declared as part of the assessment, but the land showed a deduction in taxable value for any incumbrances. In relation to the unenclosed section of Rowden Lane/Gypsy Lane (ie the track over the Cunniger and Home Down) which intersected Section C of Rowden Lane, it is possible that by 1910 the original public use of the way had almost disappeared. This is not so surprising, given that the improvements on the main A4 resulted in a road in good condition available for all free of charge. Hereditament 1338 was assessed with a deduction of £175. In my judgment, this was because of the presence of minor highways over it, including Section C, which, on the Claimants' current case, was a public highway.

762. The Claimants accepted that the deduction of tax in respect of the land through which section C of Rowden Lane ran was in consideration of *some* public right of way in that area, though it cannot now be said whether that was soley in respect of section C. There was extensive cross-examination, based on detailed calculations, by Mr Laurence on behalf of the Claimants, to suggest that the deduction for tax in relation to the land to the east of the cattle grid was unrelated to, or was not wholly explicable by, Section C of Rowden Lane. Mr Laurence sought to show that there were other potential minor rights of way, other than Section C, which would explain the deduction to tax on hereditament 1338. The fact that there may have been other candidates which would have justified a deduction, does not displace my inference (given the

Claimants' admission that Section C was a bridleway) that the deduction of tax was, at least in part, in respect of section C of Rowden Lane.

763. As with so many of the maps I have so far discussed, Section C of Rowden Lane is treated differently from A and B in the 1910 Finance Act map. Section C is shown as part of hereditanent 1338 in the private ownership then of Brigadier Palmer.

764. Why then were sections A and B of Rowden Lane untaxed?

765. In my judgment, this was because the *whole* of Sections A and B of Rowden Lane, including their verges, were found to constitute a public vehicular highway, whereas the area within which Section C ran was found to be private land subject to one or more public rights of way. Moreover, the fact that section C was not distinguished from part 1338 suggests that the section had, by that date, the reputation of a road over which mainly minor rights, namely on foot or on horseback, were then enjoyed by the public. This was in contrast to the road extending along Sections A and B which, I am satisfied, were found to have the status of a full public vehicular highway.

766. Despite the submission to the contrary by the Claimants, I am satisfied that I can confidently rely upon the accuracy of the 1910 map in so far as it concerns Rowden Lane. The Lane was not shown as falling within the hereditament of any private individual, but was shown as part of the general road network in a survey conducted after consultation with all relevant parties. I agree with the First Defendant that that factor is a powerful indicator that those sections of Rowden Lane were at the time thought to be in public ownership and vested in and maintainable by the Highway Authority.

767. The final decision to which I come concerning the status today of Sections A and B is based upon the totality of the evidence, and that includes the 1910 map. Nevertheless, within the category of historical evidence, I am satisfied that the 1910

map is material evidence which is strongly supportive of the First Defendant's contention that Rowden Lane was, in 1910, considered to be a public vehicular highway. The picture which has emerged over the centuries is consistent with this, and continued to be so after 1910, for example in 1937 and in 1955.

768. In reaching this conclusion I have not overlooked the Claimants' case, or the detailed arguments in their written submissions, that the 1910 plan, in relation to Rowden Lane, was unreliable or inaccurate. I just do not accept those submissions. None of matters relied upon by Mr Laurence in his final submissions, individually or cumulatively, undermines my confidence in the 1910 map. Inevitably, with a Lane of this antiquity, and given the wide range of historical documentation with which I have had to contend, few conclusions can be reached as matters of certainty. However certainty is not necessary in this case.

769. On the subject of the 1910 map, and generally, I prefer the evidence of Mr Harbour. It is straightforward and logical, and based on his considerable professional and practical experience. For the same reasons which Etherton J gave in Agombar, I draw the independent conclusion that the treatment of Sections A and B in the 1910 Finance map is most material evidence. The Claimants themselves acknowledged that Professor Williamson was not expert on the workings of the Finance Act.

770. In conclusion, I agree with the First Defendant's submission that the treatment of Rowden Lane in the 1910 Finance Act Map is clear and cogent evidence that Sections A and B of Rowden Lane were acknowledged to be a public vehicular highway in 1910. On the balance of probabilities, I regard that evidence as correct and I accept it.

771. I have elsewhere in this judgment developed the point that the majority of maps show Rowden Lane ungated at its junction with the Bath Road, and that there was no physical obstruction to passage between Sections A and B. There were many and

varied types of members of the public who used Rowden Lane over the centuries. The Lane must have led to a place of public interest or purpose, because it is conceded by the Claimants to be a public highway albeit only on foot and on horseback. Moreover, there is a clear picture of Gypsy Lane and Rowden Lane forming a thoroughfare leading from and to the Bath Road. Rowden Lane has been shown on many maps to be of comparable status to the Bath Road, and the quality of its maintained surface, revealed by the OS maps, is consistent with being used as a vehicular highway. Its width is greater than one would have expected for a footpath or bridlepath. These factors, which have been shown on the plan and maps starting in 1669, are entirely consistent with the picture presented by the 1910 map namely that Sections A and B of Rowden Lane constitute a public vehicular highway.

Urban area highway record 1930

772. Under the Local Government Act 1929, the County Council became responsible for all rural roads and principal roads in the urban areas. Accordingly the urban authority was responsible for minor roads in urban areas. Class A, B and C roads, the principal routes, were shown coloured in that plan, but town streets were uncoloured. The plan shows some amendments made to convert a formerly unclassified road into a town street on 1 April 1952. Sections A and B of Rowden Lane are shown uncoloured on this plan, but with a status of town street.

Original Claim Map for public rights of way, prepared pursuant to the National Parks and Access to the Countryside Act 1949

773. I deal with the question of the Definitive Map process in detail elsewhere in this judgment, but it is convenient, in this review of the historical evidence, to touch on some of the maps produced on the way to its final version. The original Claim Map, Draft/Provisional and eventual Definitive Maps, showing and recording the public rights

of way in Chippenham Borough, all showed Sections A and B of Rowden Lane coloured as a full public highway or, in this map, as an uncoloured town street with lesser rights of way being claimed only over the unenclosed section, Section C, of the Lane. On the maps produced between 1949 and 1955, the enclosed section of Gypsy Lane was now shown as 'Bridleway 2A', with the unenclosed track (initially path 2B), running south from there to join up with Section C, shown as having no public right of way at all.

774. Section C of Rowden Lane was claimed as a public right of way, CRB5. On this plan, principal roads are shown coloured, and minor unclassified roads are shown uncoloured, but all are full public vehicular highways. Sections A and B of Rowden Lane were shown either as a full and unclassified county road or as a town street, with CRB5 joining it.

775. The reference to CRB (Carriage Road used mainly as a Bridleway) is to a non-statutory subset of a RUPP (Road Used as a Public Path) where the main use was a bridleway. It is unlikely that the Council would have claimed CRB5 as a cul-de-sac way, and it is likely that it regarded the enclosed Sections A and B of Rowden Lane as having full public vehicular rights to the point where it connected with CRB5.

<u>Original Claim Form or Survey Sheet for Public Right of Way 5 prepared in 1950</u>

776. What became RUPP 5 (ie Section C of Rowden Lane) was surveyed as part of the preparation of the Definitive Map. The way was only claimed from the end of the enclosed section of Rowden Lane, leading eastward, over the unenclosed section for 167 yards to a distance 100 yards west of Rowden Farm outbuildings. It was described as commencing at a gate on the eastern end (ie cattle grid) of Rowden Lane. The implication was that Rowden Lane was a full public highway connecting with it. The survey sheet showed that Section C was originally claimed as a "carriageway".

However this word was not used in the 1949 legislation, accordingly, those responsible for considering the initial surveys deleted the word “carriageway” and substituted “CRB”, namely a carriage road used mainly as a bridleway. Coincidentally, this survey reveals that there was no cattle grid in existence around the time of this survey in the early 1950s. CRB 5 was described as an open (ie not fenced) way and the surface was hardcore. The way was described as being used as the main access to Rowden Farm.

777. This information, obtained by surveys conducted by Parish or Borough Councils, was then sent to the County Council as the surveying authority for analysis and inclusion in the maps.

Original Definitive Map of public rights of way prepared pursuant to the National Parks and Access to the Countryside Act 1949, relevant date 1 May 1953 (publication of the draft map).

778. On this map, Rowden Lane is shown coloured as a full public highway (i.e. carriageway). The purpose of the Definitive Map and Statement was to identify minor highways within each county. Minor highways included footpaths, bridleways and a new species known as Road used as a Public Path (RUPP). Guidance for inspectors, approved by the Ministry of Town and Country Planning in 1950, gave the following non-statutory guidance for classifying RUPPs under the 1949 Act:

*Highways which the public are entitled to use with vehicles but which are in practice mainly used by them as foot ways or bridle ways should be marked on the map as “C.R.F.” or “C.R.B”.*

779. This was how CRBs were understood in the early 1950s. Furthermore, Butterworths, in their published guide to the 1949 Act, emphasised that RUPP was intended to include a public carriage or cart road, but not intended to include a private carriage, drive or accommodation road. In the memorandum, prepared by the Commons, Open

Spaces and Footpaths Preservation Society in collaboration with the Ramblers Association (recommended by the County Council's Association and approved by the Ministry of Town and Country Planning) the guidance was given that:

*Highways which the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths or bridleways should be marked on the map "C.R.F" or "C.R.B" with a note in the schedule also that their main use was as a footpath or as a bridleway as the case may be.*

780. This notation was used in the preparation of the Definitive Statement to accompany the Definitive Map. However, the term RUPP became a source of some confusion and subsequently, under legislation in 1968, all RUPPs had to be reclassified *either* as a footpath or bridleway *or* as a Byway Open to All Traffic (B.O.A.T).

781. In this case, I am only concerned with the definition of the legal status of Sections A and B of Rowden Lane, and I am not concerned with modifying the Definitive Map or with causing any Section 36(6) list to be amended to include the entirety of the ancient thoroughfare as a public vehicular highway.

Original Definitive Map Statement 1 May 1953

782. Accompanying the Definitive Map was a Definitive Map Statement. This defined the dimensions and characteristics of the way shown on the plan. The Statement showed the straightforward transfer of the information contained in the Parish or Council Survey on to the map. The original Definitive Map Statement, in relation to RUPP 5 stated:

*C.R.B. from the eastern end of Rowden Lane leading south east along the entrance road to Rowden Farm, to the Lacock Parish boundary, 100 yards west of Rowden Farm buildings.*

783. Subsequently, somebody has deleted the initials CRB, substituted the initials BR and converted imperial distances into metric ones. It seems likely that this was done as a result of potential modifications or reclassification of the Definitive Map and Statement conducted under the requirements of subsequent legislation in 1968.

784. Mr Harbour did not analyse any of the nineteenth or twentieth century conveyancing in detail. However, he was of the view that the status of Rowden Lane as a public vehicular carriageway was clearly established centuries before the 1800s, but that declining public use, over time, has resulted in modern doubt. He also concluded that conveyancing practice had sought to address modern doubt - but not historical fact - by ensuring that purchasers of property always had access to the land which was being purchased. He pointed out that there is no known owner of the entire linear strip of Sections A and B of Rowden Lane. He finds this unsurprising, since it was part of an ancient highway. However, had Rowden Lane been merely a private access road, it could only have been owned by the owner of the land on which Rowden Farm stands, since it would be that property's private access drive for its entire length. Other land owners adjacent to Rowden Lane between the A4 and the cattle grid would each have had to negotiate private rights of access along it to their respected property.

785. I shall deal with this later when I analyse the conveyancing history.

<u>Chippenham highway record 1974</u>

786. Under the Local Government Act 1972, County Councils became responsible for all roads in their county, except the trunk roads and motorways. The Act came into effect on 1 April 1974 and, thereafter, Chippenham Borough Council was no longer the highway authority for Chippenham.

787. Plainly, there was a need to transfer information and records from Chippenham Borough Council to the County Council so that the latter would know the highways to

be maintained at public expense. There is, at Appendix ARH21 to Mr Harbor's report, a copy of the 1974 Chippenham highway record. It is not known how this came to be prepared, or who prepared it – ie whether Chippenham Borough Council or Wiltshire County Council. However, whoever prepared it, the plan is wrong in so far as it showed Sections B and C of Rowden Lane to be RUPP 5. Section A of Rowden Lane was shown as a full public vehicular highway. The plan showed some improvements at the junction of Section A with the A4, when compared with the 1900 OS map.

788. There is no known road adoption agreement concerning these improvements. In the 1960s, the new Rowden Arms replaced two previous buildings on this site, namely the old Rowden Arms and the Manor House. It appears, however, that the brewery made land available for dedication to the public as a result of which Section A was widened. Of course, such additional land given to the Highway Authority for widening of Section A presupposed that Section A was already a public highway to be widened.

789. In so far as this map showed Section B to form part of RUPP 5 it is factually and legally incorrect. All the maps prepared during the Definitive Map process had shown Sections A and B of Rowden Lane as a full public highway (i.e. carriageway). In my judgment, this was a simple clerical error made when the map came to be coloured. This error caused considerable confusion until the matter was clarified in 1983.

Amended highways record 1983

790. It would appear that the trigger for the discovery of the incorrect depiction of Section B of Rowden Lane on the highways map was an imminent disciplinary hearing concerning certain council employees who were alleged to have done resurfacing work on Section B without authority. This gave rise to the question whether Section B was or was not a highway at all and, if it was, whether it was a full vehicular highway. I have dealt elsewhere in this judgment with the internal documentation and

correspondence concerning this issue, both before and after the correction of the record in 1983 to reflect the true position concerning the extent of the full public highway on Sections A and B of Rowden Lane.

791. The amended highway map showed how, in 1972, the bridge officer of the First Defendant inspected the culvert taking Lady Field Brook and accepted responsibility for it. The remaining length of Lady Field Brook, which used to run through the Rowden Arms site, was culverted for its entire length when the public house was redeveloped in the 1960s, at the same time as the improvements were undertaken to Section A of Rowden Lane.

792. Numbers 83, 85 and 87 Rowden Hill have joint access over a private access drive just beyond Section A. Slightly further on the right hand side, as one walks away from the A4, is a large housing estate currently in the course of construction. This is being built in land which was within the original curtilage of Brookfields. If the unamended 1974 map were correct, it would raise a doubt over the public's right of access to these properties by car.

793. Mr Harbour believed that Rowden Lane and Gypsy Lane formed a thoroughfare of extreme antiquity, likely to have been in existence before 1669. He opined that the concept of the "private road" is relatively modern in origin and that, in antiquity, all roads that were provided and able to be used were actually used by all for all purposes. The public/private dichotomy concerned only who was responsible for the maintenance of the road. The southern boundary hedge of Rowden Lane was planted and existed by 1784 (see Powell's map of that year), and it was planted to separate the enclosed lands from the highway. If Rowden Lane existed as a public highway before the Highways Act 1835, it became automatically a public highway maintainable at public expense, and now maintainable by the First Defendant under Section 263 of the Highways Act 1980.

794. I am satisfied that this error in the 1974 map was the result of some clerical oversight, and it was correctly amended in 1983 when the highways map showed both Sections A and B of Rowden Lane as a full (vehicular) public highway.

795. I turn now to three other pieces of historical information on which the First Defendant places reliance, in support of its case that Sections A and B of Rowden Lane are a full public vehicular highway at common law.

796. Those three pieces of historical evidence relate to:

1. Rowden Lane's status as a "New Street" in 1937 (chapter 15);

2. The Definitive Map and Statement, referred to above (chapter 16); and

3. Conveyancing history (chapter 17).

**Chapter 15: Rowden Lane as a New Street**

797. Section 30(1) of the Public Health Act 1925 reads:-

*Where it appears to the local authority that the whole or any portion of an existing highway will be converted into a new street as a consequence of building operations which have been, or are likely to be undertaken in the vicinity, the local authority may by order declare such highway, or such portion thereof as may be specified in the order, to be a new street for the purpose of the application thereto of their byelaws with respect of new streets or of any provision in a local Act with respect of the width of new streets.*

798. Chippenham Borough Council had adopted byelaws relating to new streets and buildings on 7 April 1925. Byelaws 7 and 8 stated:-

*Every person who shall lay out a new street intended to be the principal approach or means of access to any building shall except as hereinafter provided lay it out for use as a carriage road.*

799. There were a number of stated exceptions, none of which applied to Rowden Lane.

800. The reason why Rowden Lane was being considered as a new street was because Mr F H Gibbons had submitted plans for a bungalow to be built on Rowden Lane in 1937, showing a "road twelve feet from centre to kerb, footpath six feet wide to be made up to town council byelaws". This is the first property on the near side of Section B of Rowden Lane, as one faces the cattle grid. It is not disputed that the Council's resolution declaring Rowden Lane to be a new street did so in relation to both Sections A and B of Rowden Lane, even though Section 30 of the Public Health Act 1925 allowed a declaration to be made in relation only to a part of the road.

801. The Claimants' case is that no order was in fact made under the 1925 Act (a view confirmed by the Town Clerk in 1970) and that, even if it had been made, it could not create any new legal rights or convert a bridleway into a carriageway. The expression "new street" is not confined to public vehicular highways, and even a minor highway, eg a bridleway, could be declared a new street.

802. The First Defendant argued that Chippenham Borough Council purported to make such an order and, in so doing, it is probable that they considered at the time that Rowden Lane, between the Bath Road and the cattle grid, was a public vehicular highway. Moreover, the Defendant contended that it is improbable that the Council would have decided to impose on private land owners, undertaking residential development in Rowden Lane, the requirement in the byelaws of laying out a carriage

road to provide the principal access to those dwellings over no more than a public bridleway.

803. Was an order in fact made?

804. The procedure for making an order is set out in section 30(2) and (3) of the Public Health Act 1925. At least one month before the decision to make the order declaring a road to be a new street, the council was obliged to cause a notice of the intended order to be posted at each end of that part of the road to which its resolution related, or in some conspicuous position in the street or part affected. The notice was required to contain a statement of the intended order, and to state that any person aggrieved by that order had a right of appeal to Quarter Sessions.

805. There was no requirement in the 1925 Act, once notice had been given and the month had elapsed, for another resolution to make the order. The making of the order simply followed the expiry of the notice period.

806. The practice followed by the Council seems to have been to resolve to give notice that they will make an order declaring a particular way to be a new street after the expiration of one month and then, at least one month later, to make the relevant declaration. Minutes exist for 2 June 1936 and 28 July 1936, in relation to Lowden, and for 1 December 1936 and 5 January 1937 in relation to a portion of Greenway Lane.

807. In relation to Rowden Lane itself, the minutes of proceedings of the Chippenham Council for 2 March 1937 recorded the following resolution:

*That in consequence of building operations which are likely to be undertaken, the Council shall give notice that they will make an order declaring Rowden Lane to be a new street.*

808. The Minutes for 6 April 1937 noted the following resolution:

*On the proposition of Mr Alderman Tuck, seconded by Alderman Stevens, it was resolved that in consequence of building operations which are likely to be undertaken there, Rowden Lane be declared to be a new street.*

809. The marginal note to these Minutes stated “Rowden Lane a new street”.

810. The actual notice posted for these purposes in Rowden Lane has not survived. Nevertheless, I regard it as probable that notices were posted, given the system which had been followed in relation to the earlier lanes or roads described. It is also probable that it was this notice to which Mr Jennings referred in his letter in 1983 to Wiltshire County Council Highways Department where he said:

*I remember that many years ago, perhaps 40 years ago, the council posted a notice in the lane which stated that they were taking over responsibility for the upkeep.*

811. Of course 40 years before 1983 was 1943, and this is after the alleged resolution. Nevertheless, Mr Jennings was speaking in approximate terms, and this seems to be the likely event to which he was referring. The next major event which had some impact on Section A of Rowden Lane was the building of the new Rowden Arms in the 1960s. It seems to me to be unlikely that Mr Jennings was referring in his letter to any road widening, less than twenty years earlier, of Section A following Ushers Brewery’s dedication of additional land adjacent to Rowden Lane for public use. I am unaware of any other event which would have created the need for an official notice to be erected on Rowden Lane, since it is common ground that there has never been any formal resolution adopting it.

812. The Claimants advanced a number of reasons in support of their argument that no order had in fact been made. They relied upon a letter dated 25 June 1970 from the

Town Clerk, saying that he could find no record of “the order” declaring Rowden Lane to be a new street. However, as I have already indicated, the Minutes show that the Council made orders under Section 30(1) of the Public Health Act 1925 declaring existing highways to be new streets by means of its minuted resolutions to that effect.

813. The Claimants also argued that, by analogy with procedures for determining planning applications or applications for modifying the Definitive Map, a specific order was required. In my judgment, the resolutions were sufficient for the operation of Section 30 of the Public Health Act 1925. Section 30 of the 1925 Act prescribed no particular form of order for that purpose.

814. I am satisfied that the resolutions were made, that the notices had been posted and that there was no objection to the proposal. I am also satisfied, on the balance of probabilities, that the Council did make orders under Section 30 of the 1925 Act in the two stage process I have described. The second resolution, of each pair of resolutions, constituted the making of the order declaring eg Rowden Lane to be a new street.

815. It was treated as a binding and important order revealed on local land charge searches. For example, it was revealed in a search dated 9 December 1958, referred to in the abstract of the route of title relating to Brookfields, a property on Section B of Rowden Lane.

816. Accordingly, the system by which the Council set about making declarations in relation to new streets, involved a two stage process. The minuting of this process and the systematic way in which it was followed, resulting in it being shown as a local land charge, satisfy me that the Council acted in accordance with its powers under Section 30(1) of the Public Health Act 1925 in resolving to declare Rowden Lane a new street.

817. Given these facts, and the passage of time since the Minutes were recorded, I draw the inference, on the balance of probabilities, that all necessary procedures were followed and that the order was validly made.

818. In making the order, the Council had to be satisfied of 3 things, namely:

1. That the relevant section of Rowden Lane was then a highway;

2. That the effect of Mr Gibbons' proposed building works was likely to be to convert the relevant section of Rowden Lane into a new street; and

3. That their byelaws with respect to new streets were applicable to the then existing highway that was Rowden Lane, which was intended to be the principal approach or means of access to The Bungalow.

819. I repeat that the making of the declaration did not alter legal rights. It did not create Rowden Lane a public vehicular highway, if it had not been one before the resolution. However, I am satisfied, on the balance of probabilities, that it is right to infer that the Council resolved as it did, because it was apparent to it that Rowden Lane between the Bath Road and the cattle grid was already a public vehicular highway. Had they been of the view that it was merely a private road, but subject to public bridleway or footpath rights only, it seems improbable that they would have imposed on those undertaking the residential development of Rowden Lane the requirement of laying out a carriage road to provide the principal access to those dwellings over no more than a bridleway.

820. In other words, in my judgment, the 1937 resolution is much more consistent with the First Defendant's case and seems improbable on the Claimants' case. The purpose of the byelaws was to require new streets which were intended to serve as the principal means of access to new dwellings to be laid out so as to accommodate vehicular

traffic. Whilst it may have been lawful for the council to have declared Rowden Lane a new street, if it were only a private road subject to a public bridleway, it would hardly have served the practical purpose of securing that Rowden Lane, as an existing highway, should be converted into a new street which was to be capable of serving as a principal approach and means of vehicular access to dwellings to be constructed on Rowden Lane. Moreover, if Rowden Lane were only subject to a public bridleway, it would seem unnecessary to have declared the *whole* of Section B of Rowden Lane to be a new street.

821. The probability is that the Council was satisfied that Rowden Lane fulfilled all the statutory criteria for a new street because it was accepted, as indeed the Finance Act 1910 map had already indicated, that Rowden Lane was already a public vehicular highway.

822. Even if I were wrong in concluding that a valid order had been made under the 1925 Act, declaring Rowden Lane to be a new street, what is important is that the Council purported to exercise its powers. I am satisfied that, in so doing, they considered Rowden Lane to be an existing public vehicular highway, at least to the point where the cattle grid is currently located. I consider it unlikely that the Council acted irrationally in making the declaration they did. On the contrary, they were presented with specific building plans by Mr F H Gibbons and had no doubt received professional advice not only that Rowden Lane was a highway, but also that it was a public vehicular highway so that it was appropriate for it to be laid out as a carriageway in accordance with the byelaws.

823. I agree with the First Defendant's submission that the 1937 declaration was much more supportive of the First Defendant's case than the case of the Claimants.

824. The next piece of evidence strongly relied upon by the First Defendant in support of its claim that Rowden Lane was a public vehicular highway, as a result of common law dedication and acceptance, concerns the whole history of the development and modification of the Definitive Map and Statement.

**Chapter 16: The Definitive Map and Statement ("DMS")**

825. In Regina (Warden and Fellows of Winchester College and another) v Hampshire County Council [2009] 1 WLR 138, at pages 141-143, Dyson LJ, as he then was, explained the statutory background to the legislation thus:

***7*** *Under Part IV of the National Parks and Access to the Countryside Act 1949, county councils as surveying authorities were required to maintain a DMS showing three categories of highway, namely: footpaths, where the public right of way was on foot only; bridleways, where the public right of way was on foot or horseback or leading a horse; and roads used as public paths ("RUPPs") which were defined as highways other than footpaths or bridleways used by the public mainly for the purposes for which footpaths and bridleways are so used. The 1949 Act was amended by the Countryside Act 1968 so as to require surveying authorities to reclassify each RUPP shown on their definitive maps either as a footpath or as a bridleway or as a BOAT in accordance with specified criteria. This reclassification was far from complete when the relevant provisions of the 1949 and 1968 Acts were replaced by Part III of the 1981 Act.*

***8*** *Section 54 of the 1981 Act required surveying authorities, as soon as reasonably practicable, to review all RUPPs remaining on their DMSs and make modification orders reclassifying each as: (a) a BOAT, if a public right of way for vehicular traffic had been shown to exist; or (b) a bridleway, if (a) did not apply and bridleway rights had not been shown not to exist; or (c) as a footpath, if neither (a) nor (b) applied. A BOAT was defined in section 66 of the 1981 Act as "a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used".*

***9*** *Section 53 of the 1981 Act contains provisions relating to orders modifying the DMS. It imposes a duty on the surveying authority to make modifications on the occurrence of certain events.*

***10*** *In 2000, with the reclassification of RUPPs still being far from complete, the Countryside and Rights of Way Act 2000 was enacted. Section 47(2) provided that every way which, immediately before commencement of the Act was shown in any DMS as a RUPP, should be treated instead as a "restricted byway". The 2000 Act in addition made provision for the extinguishment in 2026 of unrecorded rights of way for mechanically propelled vehicles over byways. It also inserted into the 1981 Act (as section 53B) a requirement that every surveying authority should keep a register of applications under section 53(5).*

826. In R -v- Environment Secretary ex parte Hood [1975] QB 891, Lord Denning MR, at page 897 B-D provided further background information as follows:

*In order to understand the statute, one must remember the classification of highways at common law. It was threefold. First, it may be a "foot way", appropriated for the sole use by pedestrians; secondly, a "packe and prime way" (called a bridleway) which is both a horse way and foot way; third a "cartway" which comprehends the other two and is also a cart or carriageway … but, to whichever of these classes it belongs, it is still a highway, 'highway' is the genus of all public ways, as well cart, horse, and footways": see Reg. -v- Saintiff (1705) 6 Mod. Rep. 255, per Sir John Holt CJ. That classification formed the basis of statutory classification in Section 27(6) of the National Parks and Access to the Countryside Act 1949.*

827. Lord Denning then went on to recite the statutory definitions in the 1949 Act of 'footpaths', 'bridleways' and 'Road Used as a Public Path' (RUPP), namely a highway other than a public path used by the public mainly for the purpose for which footpaths or bridleways are so used).

828. At page 897 E-G, he continued:

*Much difficulty was caused by that last definition of "road used as a public path". Seeing that it is a highway, it must come within the third category of the common law namely, a cartway over which the public have a right, not only on foot or horse, but*

*also in carts. The word "mainly" is the problem. The object of the draftsman was to include cartways over which there is a "public right of cartway" but which are used nowadays mainly by people who are walking or riding horses, like the Berkshire Ridgeway or the ways over the South Downs. The draftsman intended to exclude metalled roads used by motorcars.*

829. At pages 897G to 898A, Lord Denning referred to the fact that Local Authorities had used non-statutory definitions "CRF" (cartroad footpath) or "CRB" (cartroad bridleways) for the purposes of preparing their draft maps, and this had been found to be unhelpful. However, he explained that the effect of showing a way on a draft map as either a CRF or a CRB was to show a public cart road used mainly for the purposes for which footpaths and bridle ways are used. He explained that the object of the National Parks and Access to the Countryside Act 1949 was to have all our ancient highways mapped out, put on record and made conclusive, so that people could know what their rights were: See page 896 G-H.

830. At pages 896H to 897, he described the process whereby that statutory object was to be achieved:

*In 1949 the local authorities were required to make enquiries and map out our countryside. First, a draft map; next a provisional map; and finally a definitive map. There were opportunities both for land owners and the public to make their representations as and when each map passed through each stage.*

831. The Parish Councils and Borough Councils were required to carry out local surveys of these minor highways and record their details on a survey sheet.This material was then processed by the County Council which produced the draft, provisional and Definitive Maps and an accompanying Statement, identifying the start and finishing points of the relevant minor highways.

832. The reason why this was dealt with at such length in the trial is not because Sections A and B of Rowden Lane appeared on the Definitive Map as a footpath, bridleway or RUPP (on the contrary, Sections A and B appeared as a full public highway), but because of the treatment received by Section C in the Map.

833. Section C was described as RUPP 5 and latterly Chippenham 5. This designation in the Draft Map was challenged by Mr W Burridge, the landowner of Ivy Park House and Rowden Farm. The basis of his objection was that Section C of Rowden Lane "was not a public way". As a result of this objection, an Inquiry was held by Mr Harold Dale, an inspector appointed by the Wiltshire County Council to hold inquiries into objections lodged in respect of the Draft Map. The hearings were held at Chippenham Town Council Offices on Wednesday and Friday 16 and 18 March 1955.

834. He recommended no modification to the Draft Map in relation to RUPP 5, as there was evidence of considerable use by the public, and no evidence of public right being denied. The County Council accepted Mr Dale's recommendation and, as there was no further objection, the route and description became definitive.

835. The date of the Definitive Map was 1 May 1953, and the entire process had started shortly after 4 April 1950, when Chippenham Borough Council had instructed the Borough Engineer to prepare the plan showing the public rights of way in the Borough for the purposes of the Definitive Map process. In relation to Rowden Lane, the plans prepared for this process provide contemporary evidence that Sections A and B were full vehicular highways, and not a private road subject only to a public bridleway in 1950. Had the Borough Engineer considered that Sections A and B of Rowden Lane were a private road only subject to a public bridleway, he would have shown a public path (footpath/bridle way) over it.

836. On the contrary, he treated Sections A and B of Rowden Lane as if it were a full public vehicular highway because:

(a) Sections A and B have yellow colouring on them which is similar to the yellow colouring used by him to show the other public vehicular highways in the area at the time;

(b) He did not show Sections A and B as bridleway or having any of the lesser public rights of way over it coloured green or purple. The enclosed section of Gypsy Lane was shown in purple as bridleway 2A; and

(c) If Sections A and B of Rowden Lane were not a full public vehicular highway, it would make nonsense of his identification of Section C as a RUPP of the CRB variety. This is because if Sections A and B were purely private subject only to public bridleway rights, Section C (a public cartway/carriageway used mainly as a bridle way) would have been landlocked.

837. I regard this as cogent and compelling evidence that, in or about 1950, Sections A and B of Rowden Lane were regarded as full vehicular highways. It was compiled by someone who could be taken to have knowledge of the highway network at the time.

838. The Claimants have argued that the First Defendant is reading too much into Mr Dale's refusal to modify the draft map, as Mr Burridge had requested. They contended that his conclusion that there was "evidence of considerable use by the public and no evidence of public right being denied" should not be taken as his confirmation that Section C enjoyed public vehicular rights albeit mainly used as a bridle way.

839. The First Defendant maintains that Mr Dale should be taken to have directed himself properly both in law and on the evidence before him. Mr Harbour wrote that Mr Dale was a barrister, but I have had no other confirmation of his professional background.

Moreover, in making his decisions on a number of objections to the Draft Map, of which Section C was only one, he had available to him guidance for Inspectors approved by the Ministry of Town and Country Planning in 1950. It echoed the observations of Lord Denning above in saying:

*Highways which the public are entitled to use with vehicles but which in practice are mainly used by the footways or bridleways should be marked on the map as "CRF or CRB".*

840. I agree with the First Defendant's submission that it was significant that a decision was taken, in the light of that guidance, to label it a RUPP/CRB. If the Borough Engineer and Inspector Dale not been satisfied on the available evidence that Section C of Rowden Lane was a cartway at common law, over which the public had a right to pass with vehicles as well as on horseback or on foot, the CRB designation would have been considered inappropriate.

841. The fact that the Act made the designation of a way as a RUPP conclusive only as to the existence of public rights of footpath and bridleway over it, and not as to its status as a public vehicular highway, does not rob the categorisation of Section C as RUPP5/CRB of its powerful evidential significance. The process of drafting, amending and finally publishing the Definitive Map was important because it was not only informed by ministerial guidance, in addition to the statutory definition, but also by the input of the Borough Engineer and local information.

842. I think it is unlikely that Mr Dale would have focussed his mind merely upon whether there had been public user as a footpath or a bridleway. He would have had regard to the guidance and statutory definition in deciding that no modification should be made to the Draft Map, which had shown Section C as a RUPP/CRB. Had the evidence not supported that conclusion, it was likely that he would have said so and recommended

the downgrading of the RUPP to a bridleway. In my judgment, his failure to recommend any downgrading is persuasive evidence that the considerable public user to which he made reference extended not only to use by horse and on foot but also to vehicular use.

843. The First Defendant does not rely upon the confirmation of Section C as a map as providing conclusive evidence that it was a public vehicular highway, as the Act deems it to be in the context of footpath and bridleway rights. That is merely the statutory effect of designation as a "RUPP".

844. I accept the First Defendant's submission that the material point here is that there is before me now a record made in 1955 of an Inspector, who had received and evaluated evidence (which has since been lost) through a statutory forensic process. He found as a fact that considerable public user of Section C of Rowden Lane supported its inclusion on the definitive map, not merely as a public footpath or a bridleway, but as a public cartway albeit mainly used in 1950 as a bridleway. The only way in which the public could gain access with vehicles to RUPP/Chippenham 5 in the 1950s was by driving along Sections A and B of Rowden Lane. This was because in the Draft and subsequent Maps, the enclosed section of Gypsy Lane was shown as bridleway 2A. Vehicular access was therefore not possible from Gypsy Lane in 1950. In fact, it is probable that Gypsy Lane had been closed to vehicles since about 1910, before the date of the Finance Act map.

845. I am satisfied, on the balance of probabilities, that the Inspector's finding in 1955 in relation to Section C, with its implied acceptance of the existence of public cartway rights, is persuasive documentary evidence that by 1955 the public vehicular user of Rowden Lane in vehicles was sufficient to establish it as a public vehicular highway.

846. As Lord Denning pointed out in Hood, the term “road used as a public path” had caused much difficulty. This was addressed later in the Countryside Act 1968.

847. Under the 1949 Act, a review of the Definitive Map was required every 5 years. In practice, the interval was greater than that. In a review, the existing rights of way could be modified and new rights of way added. The first review of the Map carried out by the Council took place on 1 September 1958. No changes were proposed for Rowden Lane or CRB 5, and they stayed the same.

848. Section 9 of the Countryside Act 1968 required a special review of every road used as a public path (RUPP). They had to be reclassified as either a “byway open to all traffic” (BOAT) or as a bridleway or as a footpath.

849. In October 1968, Chippenham Council, when asked for its suggestion as to the reclassification of CRB 5 suggested “private road to Rowden Farm – to remain classified as bridleway”. In 1972, the Defendant proposed reclassifying it as a footpath. It was this proposed reclassification which was relied on by the Claimants as stopping time running and/or negativing an intention to dedicate as a PVH under s 31 Highways Act 1980, as indicated in chapter 13.

850. The test for reclassification under the 1968 Act, and at the time of the subsequent Inquiry in 1978, required a consideration of three questions:

(1) Whether any vehicular rights had been shown to exist along Chippenham 5;

(2) The suitability of Chippenham 5 for vehicular traffic;

(3) Whether extinguishing public vehicular rights over Chippenham 5 would cause undue hardship to the public.

851. If either of (2) or (3) was not satisfied, then vehicular rights could be extinguished by reclassification to a route less than BOAT, eg footpath or bridleway: See Schedule 3 paragraph 10 of the Countryside Act 1968 (subsequently repealed by Section 54 of the Wildlife and Countryside Act 1981).

852. The 1972 proposal by the Council to classify CRB 5 as a footpath was opposed. As a result, another Inspector held an inquiry to review the proposal to reclassify RUPP 5 as a footpath. In the end, Chippenham 5 was changed from RUPP/CRB to "bridleway". This took effect in 1990 when a statutory order was made, although this reclassification did not extinguish previous public vehicular rights: R v. Secretary of State for the Environment, ex parte Riley 59 P. & C.R. 1

853. However, this statutory process did not necessarily operate as evidence of a finding that public vehicular rights did not exist along Chippenham 5. It would still have been permissible to reclassify RUPP 5 as a bridleway, even if it had enjoyed public vehicular rights, if it was unsuitable for vehicular traffic or if the extinction of public vehicular rights would not cause any undue hardship to the public. The objectors to the reclassification said it should be reclassified as a bridleway not a footpath.

854. By 1978 Chippenham 5 had ceased to provide a vehicular route of any obvious utility to the public, and this alone may have justified the reclassification. I agree with the First Defendant that there is no necessary inconsistency with the suggestion that Section C of Rowden Lane had enjoyed public vehicular rights and the subsequent order reclassifying it as a bridleway.

855. However, it is important to note that, on the map produced for the 1968 Act reclassification of RUPPs *both Sections A and B of Rowden Lane are shown as a public vehicular highway*. These sections were coloured sienna, in the same way as the A4 was coloured. Sections A and B were not shown as having any lesser public

rights of way than the A4. Moreover, the reclassification process did not deal with Section B of Rowden Lane, merely Section C. It would have been necessary to consider Section B had any one claimed that only a lesser right of way existed over Section B by that date. The fact that Section B did not feature in the 1968 Act process provides further support for my finding that the 1974 highway handover map was in error in showing Section B as forming part of RUPP 5.

856. The special review of RUPPs required by the Countryside Act 1968 was eventually abandoned, but the result was preserved and the recommendation implemented in 1990 when Chippenham 5 changed from a RUPP to a bridleway, as a result of an order made under Section 55 of the Wildlife and Countryside Act 1981. Anyone looking at the Definitive Map today would see the map drawn up in the 1950s, which would have to be read subject to subsequent orders which are not shown physically on the map. Thus the Definitive Map and Statement which shows path 5 as a RUPP has to be read subject to that 1990 order. Today path 5 is a bridleway and the enclosed section of Gypsy Lane remains a bridleway.

857. Mr Laurence QC argued that:

1. The First Defendant could not derive any support for its case that Mr Dale regarded Section C as a public vehicular carriageway at the time of his Inquiry in 1955 since, as a matter of law, Mr Dale was neither bound nor entitled to consider whether vehicular rights had been established on the balance of probabilities. He argued that he merely had to be satisfied that the public vehicular rights were reasonably alleged to exist.

2. Even if Mr Dale was bound or entitled to consider whether public vehicular rights had been established on a balance of probabilities, the words which he used

suggested that he did not do so and that he merely concentrated upon whether the public footpath and bridleway rights had been proved to exist.

3. Even if Mr Dale had satisfied himself in 1955 that RUPP 5 was subject to public vehicular rights then anything decided by the Defendant was always subject to review under the review provisions of Section 33 of the 1949 Act. When, in 1972, the First Defendant proposed to reclassify RUPP 5 as a footpath, they presumably did so because they believed that Mr Dale had been mistaken. He argued that in designating RUPP 5 as a footpath on the Draft Revised Definitive Map, the First Defendant would have had to have in its possession evidence which justified its belief that RUPP 5 true status was no more than a footpath.

4. Even if the First Defendant had no grounds for believing that RUPP 5 was only a footpath, it has since 1990 been a bridleway. There was no evidence to suggest that that designation was accorded to the path on hardship or suitability grounds under paragraph 10(b) or (c) of Schedule 3 of the 1968 Act. In other words, there was no evidence that anybody proved before Mr Liddell Hann (the 1978 Inspector) that vehicular rights subsisted (paragraph 10(a) of Schedule 3) but that he then proceeded to downgrade the way to bridleway on hardship or suitability grounds. In fact, the only contest was between footpath and bridleway and the designation chosen was bridleway.

5. The designation as bridleway is without prejudice to the possibility of it being a higher right (Section 56(1)(b) of the 1981 Act) but that does not of course prove that there are such rights.

858. In summary, Mr Laurence submitted that nothing in the Definitive Map process has the effect of advancing the First Defendant's case in any way. The most that could be said is that in the 1950s the First Defendant considered the allegation of public rights for

vehicles for RUPP 5 to be reasonable, but that in 1972 it considered that the true status of RUPP 5 was that of public footpath. In any event, the conclusive status, since the publication of the First Defendant in map and statement, has always been that of bridleway: See Section 32(4)(b) of the 1949 Act).

859. I do not accept these submissions by Mr Laurence.

860. First and foremost, it must be remembered that all maps produced in the Definitive Map process showed Sections A and B of Rowden Lane with the same character as the A4, namely as a public vehicular highway.

861. The whole of the discussion on the Definitive Map in relation to Section C is, from the First Defendant's point of view, to show that Section C enjoyed public vehicular rights because, if it did, this would be consistent with Sections A and B, a public vehicular highway, which connected with it. Moreover, if Section C had enjoyed public vehicular rights in 1950, it would be improbable that Sections A and B of Rowden Lane only had bridleway rights or otherwise vehicles could not have got on to Section C from Rowden Lane or from Gypsy Lane at that time. The Claimants are anxious to establish that there never were public vehicular rights over Section C, because their case is that Sections A and B only ever were subject to bridleway rights.

862. I find it is more likely than not that Mr Dale, the Inspector in 1955, did conclude on the balance of probabilities that public vehicular rights had been proved to exist over RUPP5.

863. I reject Mr Laurence's submission that Mr Dale confirmed Section C status as a RUPP merely on being satisfied that public vehicular rights were *reasonably alleged* to have existed, so long as he was satisfied on the balance of probabilities that public footpath or bridleway rights had been established.

864. In my judgment, this ignores the job that Mr Dale had to do. He was considering a number of objections to the Draft Definitive Map. It was his task to hear the evidence and to advise what, if any, modifications to the particulars contained in the Draft Map and Statement appeared to requisite. The way in dispute was something which had been put on the Draft Map as a RUPP, not merely as a footpath or bridle way. The challenge was that no public rights existed. In refusing any modification, he said that there was "evidence of considerable user by the public and no evidence of public right being denied".

865. I see no reason why an Inspector considering objections to a RUPP classification on a Draft Definitive Map should not have directed himself as to the definition of a RUPP. If he thought that the evidence of public user only demonstrated a footpath or bridleway, he would have recommended a modification. He had the advantage of knowing it was a new category created by a new statute, and he also had all the ministerial and other guidance that went with it. In confirming Chippenham 5 as a RUPP Mr Dale, in my view, was satisfied on a balance of probabilities that CRB 5:

(a) was a highway;

(b) although it was a highway, it was not merely a bridleway or footpath, because if it was just a bridleway, it would be a "public path" and fall outside the definition of a RUPP; and

(c) it was used mainly for the purposes for which footpaths and bridleways are so used.

866. I regard Mr Laurence's argument as to the differential standards of proof required for confirmation of a RUPP as unrealistic and somewhat strained.

867. As was pointed out in Todd v. Secretary of State for the Environment,Food and Rural Affairs [2004]1 WLR 2471 at page 2486H:-

*There is no reason to suppose that the surveying authority or minister should have applied other than the normal standard of proof in determining the matters referred to them by Section 29 when objections to the draft are being resolved.*

868. I see no reason why the inspector should not also have had to be satisfied on the balance of probabilities of the existence of public vehicular rights before confirming a way as a RUPP. In my judgment, the fact that a RUPP designation on a Definitive Map was only conclusive as to the existence of bridleway rights does not detract from the need for proof, on the balance of probabilities of public vehicular rights, however ancient, since this does this form part of the definition of a RUPP.

869. Of course, the fact that a RUPP designation was not conclusive as to the existence of public vehicular rights meant that the issue could be raised in legal proceedings such as these. However it must be remembered that there was no challenge to Mr Dale's finding by an appeal either to Quarter Sessions or by way of further challenge to the public's right to use Chippenham 5 with vehicles to the civil courts before this litigation. I agree with the First Defendant's submission that, the fact that there might have been a challenge, does not impugn the evidential value of the process and findings of Mr Dale in 1955.

870. The fact that the First Defendant suggested downgrading RUPP 5 to a footpath in 1972 does not imply that the First Defendant had positive evidence that it only was a footpath. By 1972, the cattle grid had been installed at the end of Section B making it practically impossible for horses to go over it, and Section C was also later crossed by a footpath. Given that there was a need to reclassify all RUPPs, one can see why footpath was thought to be a possible designation.

871. However, when the matter was investigated at the Inquiry in 1978 it was known that a RUPP could not be reclassified as a footpath, unless there was positive evidence proving that point: See Hood. Had there been established public vehicular rights then it might have been reclassified as a Byway Open to All Traffic (BOAT), unless considerations of suitability or hardship permitted downgrading to a bridleway.

872. I do not accept that the reason why RUPP 5 was reclassified as a bridleway was because the Inspector was necessarily satisfied that there were no public vehicular rights. It could have been because the Chippenham 5 was unsuitable for vehicular traffic or because extinguishing public vehicular rights would not cause undue hardship to the public. Nor do I accept that there was a recognition, in 1972 or 1978, that the wrong decision had been made in 1955. By 1972 it seems likely the evidence given at the 1955 inquiry had been lost, and so any such comparison would inevitably have been impossible or unlikely. I deal below, when considering the evidence of Barbara Burke, with the limited documentary evidence relating to these Inquiries which has survived.

873. Finally, Mr Laurence submitted that Mr Dale could not have concluded that Section C was correctly classified as RUPP 5, unless he was satisfied that there was even more use of Section C on foot or horseback than by vehicles. This argument was rejected in Masters -v- The Secretary of State for the Environment, Transport and the Regions [2001] 1 QB 151, where the Court of Appeal said in relation to comparable provisions in relation to a BOAT, that the interpretation of a BOAT did not require current levels of vehicular use to be measured. Neither a RUPP nor a BOAT required user by vehicles *at the time the designation was made*. It merely required that public vehicular rights *had already been established*. Accordingly, evidence that vehicular use had ceased or of a change in the balance of current user was not a reason for deleting an existing right of way falling within the statutory definition of a BOAT.

874. In my judgment, Mr Laurence's careful and detailed submissions do not undermine the persuasive evidential value of the statutory process under the 1949 Act and Mr Dale's findings in 1955 in support of the contention that Section C had public vehicular rights which connected up with equivalent rights on Sections A and B.

875. In any event, it should not be forgotten that Sections A and B of Rowden Lane were themselves shown the same way as the A4, namely as a full (vehicular) public highway.

Barbara Burke

876. Barbara Burke is employed as senior rights of way officer by the First Defendant. One of her jobs is dealing with the review of the Definitive Map and Statements. She has been dealing with public rights of way in Wiltshire since April 1979. I regarded her as an honest, accurate and reliable witness.

877. She produced in evidence much of the documentation relevant to the Definitive Map and Statement, the relevant date of which was 1 May 1953. The date of the first review under the 1949 Act had a relevant date of 1 September 1958. The date of the second review under the 1949 Act in the special review (to reclassify RUPPs) under the 1968 Act had a relevant date of 31 May 1972. However, there was no final version of the second special review which began in 1972 because, in September 1983, the Defendant was directed to abandon that review subject to the determination of the Secretary of State's objections and representations in respect of local enquiries had already been held. In 1985, the First Defendant received a direction to modify the map and finally an order giving effect to this was made on 22 May 1990 by which the designation of CRB 5 as a RUPP was changed to bridleway. Under the reclassification of RUPPs, the original survey form recommended a change to bridleway. However, the draft revision map and statement showed a proposal as a

footpath. However that was no more than a proposal and had no legal effect on the Definitive Map.

878. The documentation which she has produced provides background to the two Inquiries held in 1955 and 1978.

879. In 1955, Mr Burridge (of Ivy Park House, but also owner of Rowden Farm) raised two objections. First of all, he objected to the track (path 2B) which joined the southern end of Gypsy Lane (bridleway 2A) to its intersection with Rowden Lane, CRB 5. The grounds of his objection related to the entire path 2B. He argued that this was only an accommodation road to Rowden Farm through farm gates with no styles. The adjoining and parallel path number 1 was not objected to. This modification was opposed by the Council which did not agree with that objection. They argued that it was a public right of way and had been used as such without restriction for many years. This submission was supported by the Ramblers Association which argued in fact that footpath 2B showed more sign of use than path 1. In the end, Mr Dale recommended that footpath 2B be deleted. A manuscript note reads “2B delete accom. road alternative to the east”.

880. Mr Burridge made a similar objection to CRB 5. Again he objected to the whole way being on the map alleging that it was only an accommodation road to Rowden Farm through farm gates with no styles attached. A manuscript note under ‘Recommendation’ read “to stay in”. The Council had again disagreed with Mr Burridge’s objection, stating that CRB 5 had been a public right of way used without restriction for many years. They noted that it linked in with Lacock path number 9.

881. Accordingly, it does seem that the issue of public/private status and the suggestion that it was merely an accommodation road were before the Inspector.

882. It seems to me that this supports the conclusion that the Inspector was satisfied that CRB5 was properly designated, having had his attention drawn both to the fact that it was a road and it was a road subject to public right of way. In my view, he regarded it as a way which had established public vehicular rights but was mainly used as a bridleway.

883. Unfortunately no evidence which was before the inspector has survived, nor has his reasoned report. A succinct report and objections is attached to Barbara Burke's statement as BB4. This identified the relevant path subject to the objection as:

*CRB No 5 from Rowden Lane SE along the entrance road to Rowden Farm to the Lacock boundary, 100 yards W of Rowden Farm Buildings.*

884. No modification of that was recommended and the reason given was "evidence of considerable user by the public and no evidence of public right being denied".

885. As far as the 1978 inquiry is concerned, again there is no detailed material as to the Inspector's reasoning. However, as Annex BB9 to Barbara Burke's statement reveals, he was fully aware of the three tests for reclassification laid down in paragraph 10 of part 3 of the third schedule to the Countryside Act 1968. The example there shown indicates that he, albeit not in relation to CRB 5, went through them all individually. It seems to me this supports the conclusion that he may well have upheld the reclassification of CRB 5 as a bridleway not because he considered that vehicular rights had not been established, but because matters such as suitability or hardship justified the downgrading. Finally, there was an attempt also at that same Inquiry to downgrade the status of Gypsy Lane from its pre-existing status as a bridleway to a footpath. This too was unsuccessful.

## Chapter 17: Conveyancing history

886. The First Defendant's contention is that a detailed scrutiny of the historical conveyancing documentation concerning the transfers of land abutting or fronting Rowden Lane suggests that the Lane was treated as a public vehicular highway. In essence, this is not only because of the absence of easements over Rowden Lane which might have been expected if there were no public vehicular rights, but also because Rowden Farm never owned, at least for centuries, any part of Rowden Lane. For a few years between 1919 and 1946 the owner of Rowden Farm, Brigadier General Palmer, owned both Rowden Farm and some of Rowden Lane, where it runs between Elmtree Farm and the Old Piggery on one side and the Burleaze estate on the other up to the cattle grid. This section has been referred to as Section B2 of Rowden Lane. The remaining section to the west has been referred to as B1.

887. The First Defendant therefore alleges that this undermines the contention that Rowden Lane was a private road serving Rowden Farm. From at least 1820, Sections A and B1 of Rowden Lane, or the subsoil thereof, had been in different ownership from Section B2. The last reference to ownership of Sections A and B1 of Rowden Lane itself was in 1820 and is referred to in an abstract of title of the Cambridge Trustees in 1880.

888. The only reference to a transfer of Section B2 of Rowden Lane, after that same 1820 document, was its transfer in 1880, along with modern day Burleaze estate and Rushy Ground, to Richard Rich. When the Rowden Farm estate itself was sold by Mr Long to Brigadier General Palmer in 1904, the land sold did not include Section A and B of Rowden Lane, nor was any right of way granted over it in favour of Rowden farm. This should be contrasted with Gypsy Lane, which again was not included in the sale, but over which the vendor sold a right of way "so far as the vendor is able to grant the same".

889. In April 1919, land owned by Richard Rich was sold to Brigadier Palmer, together with Section B2 (plot 237) of Rowden Lane (referred to as "part of the lane leading from the Bath Road to Rowden Farm which lies between plots 239 [Burleaze] and 234 [Rushy Ground]"). However the inclusion of Section B2 (plot 237) was made expressly subject to "existing rights of way over the said lane" although it does not specify what those rights are. I deal with these transactions in greater detail below.

890. The conveyancing documentation occupies the whole of volumes 4 and 5 of the trial bundle. It contains numerous conveyances, abstracts of title and manuscript indentures which are often difficult to read. In the course of the case, counsel have taken me to numerous conveyances relating to different parts of land bordering Rowden Lane to see whether the conveyancing document was consistent or inconsistent with the existence of a public vehicular highway. I have attempted, in the table below, to identify the modern names of all the relevant properties involved in the transactions, their old or former names, the successive owners of each plot and the date of significant transfers. It does not purport to be an exhaustive analysis of this documentation.

| **Modern Name** | **Old Name(s)** | **Successive Owner** | **Date of Acquisition** |
|---|---|---|---|
| Alma Villa | Little Ground | William Caudle<br>W H Jennings | |
| Brookfields | Little Ground<br>Little Hanging Ground<br>Brickyard Ground | Goddards Trustees<br>Richard Rich<br>GL Palmer<br>Baron Glanely<br>Herbert Holt<br>David Townsend<br>WH Jennings<br>William Hunt<br>Stanley Coleman<br>Mr Clark<br>Mr Ayres<br>2nd and 3rd Claimants | <br>1881<br>1919<br><br><br><br>1928<br>1944<br>1945<br><br><br>1963 |

| | | | |
|---|---|---|---|
| Swallow Falls | Hither or Middle Down | Cambridge Trustees<br>Richard Rich<br>G Palmer<br>Baron Glanely<br>Herbert Holt<br>David Townsend<br>WH Jennings<br>Mrs Fortune (First Claimant) | <br>1881<br>1919<br><br><br>1928<br>1945<br>1970 |
| Elm Tree Farm | Rushy Ground | Cambridge Trustees to David Townsend as above<br><br>RF Jennings | <br><br><br>1945 |
| Old Piggery | Rushy Ground | Cambridge Trustees to David Townsend as above<br>Gibbons/Collins | <br><br>1945 |
| The Bungalow | Great Hanging Down | Mr Frith (and others)<br>Mr Nicholls<br>Mr Young (Executor)<br>Mr Colborne<br>Mr Gibbons<br>Mrs Collins | <br>1886<br><br><br>1937<br> |
| Burleaze Housing Estate | Scotts Further Down | Cambridge Trustees<br>Richard Rich (also Rushy Ground)<br>G Palmer<br>Baron Glanely<br>David Townsend<br>Frederick William Hudson<br>Burleaze Housing Estate – various owners | <br>1880<br><br>1919<br><br>1927<br>1945<br>1960s |
| Rowden Farm | Great Down/Home Down<br>The Breech or Cow Leaze<br>Little Coppice<br>The Great Coppice<br>Little Down<br>Rowden Farm and lands | Walter Long<br>G Palmer<br>Baron Glanely<br>Herbert Holt<br>Reverend Hungerford<br>Mr Hawker<br>Mr and Mrs Burridge<br>Burridge Children | <br>1904<br><br><br><br><br>1946<br>Late 1980s |

891. The earliest references in the trial bundle to the ownership of Rowden Lane are found in a Deed of Release made in 1820, whereby the Heath or Lifely family became owner of the western end of Rowden Lane and the Cambridge family became the owner of the eastern end. By the time of the Tithe Map in 1848, the same division of ownership

of Rowden Lane was maintained, although the western end was now owned by Benjamin Lifely.

892. In June 1868, the modern equivalent of The Bungalow was conveyed from Mr Frith and others to Mr Nicholls. Rowden Lane was not shown on the plan as part of the property conveyed. In 1881, the modern equivalent of Brookfield and Swallow Falls were conveyed from Goddard's Trustees to Richard Rich. The description of the land conveyed excluded Rowden Lane. Neither the 1868 conveyance nor the 1881 conveyance granted any right of way over Rowden Lane.

893. In 1881, there was an auction of plots of land, some of which were on Sections A and B1. Again, Rowden Lane was not shown as part of the property conveyed and no right of way was granted. Interestingly, lots 2 (Rowden Arms) and 4 (Rowden Place cottages) had a public water supply laid on in Rowden Lane by the Chippenham Local Board. These lots were on both sides of Rowden Lane.

894. Turning to Section B2 (ie that section of Rowden Lane running between the modern Burleaze estate on the one side and Elmtree Farm and the Old Piggery on the other side), a conveyance in March 1880 by the Cambridge Trustees to Richard Rich of the modern day Burleaze estate and Elm Tree Farm/the Old Piggery also conveyed Section B2 of Rowden Lane. However this did not answer the question how anyone got from the Bath Road along Sections A and B1 of Rowden Lane in the absence of any private easement, if Rowden Lane were not a public vehicular highway. Even this 1880 conveyance of Rowden Lane, in my judgment, is not inconsistent with the existence of a public vehicular highway over the entirety of Rowden Lane, since the conveyance could have related solely to the subsoil.

895. In 1904, there was a sale of the Rowden Farm estate by Mr Long to Brigadier General Palmer. Gypsy Lane was not included in the sale, but the vendor was selling a right of

way over it “so far as the vendor is able to grant the same”. The land sold did not include Sections A and B of Rowden Lane but there was no sale of any right of way over it of any description included in the sale of the Rowden Farm estate. This is a point of obvious importance. If Rowden Lane were regarded by the vendor or purchaser as a private road with no public vehicular rights, the sale would surely have included a right of way either by reference to a deed or an assertion of a prescriptive right, using the same formula deployed in respect of Gypsy Lane. Plainly, the way in which the right of way, if any, over Gypsy Lane indicated that there was considerable uncertainty about the legal basis of it. However there was a complete absence of any reference to a right of way over Rowden Lane.In my judgment, this is powerful evidence that both the vendor and purchaser of Rowden Farm estate, Mr Long and Brigadier General Palmer, believed that Rowden Lane was a public vehicular highway, not dependent upon private rights. Were it otherwise, the absence of any right of way in favour of Rowden Farm, would have resulted in it being landlocked. Moreover, the sale plan suggests that Sections A and B of Rowden Lane are physically the same and continuous with the main Bath highway.

896. In 1919 Brigadier Palmer, who had already purchased the Rowden Farm estate, also acquired the land which had formerly been owned by Richard Rich following his death. This, together with other property, became known as the Lackham Estate. Just as Richard Rich had conveyed to him Section B2 of Rowden Lane, it was also conveyed to Brigadier Palmer, but referred to as “part of the lane leading from the Bath Road to Rowden Farm”. However, the inclusion of Section B2 (plot 237) was made expressly subject to “existing rights of way over the said lane”, although it did not specify what those rights were.

897. These references to the transfer of Section B2 of Rowden Lane are not inconsistent with the existence of public highway rights, since it could be reference to private ownership of the subsoil rather than the surface. The existing rights of way over the

Lane to which the transfer of Section B2 was subject, in my judgment, included the public's right to pass and re-pass over the lane on foot, on horseback and in carts and vehicles.

898. The land conveyed in 1919 did not include Section B1, nor the central spur running southwards between the 2 plots numbered 236 and 234, nor was any right of way granted over those sections. To me, this seems to demonstrate that those sections were a public vehicular highway, because if they were not, both Rushy Ground and the modern day Burleaze would be landlocked, just like Rowden Farm.

899. In 1927, the Lackham Estate was broken up and sold by auction. Rowden Lane ran between lots 4, 5 and 6. The sales particulars referred to Rowden Lane as a private road, although it was not owned by the Lackham Estate.

900. In 1927, the modern day Burleaze was sold to David Townsend. The conveyance had guarded against the possibility that Rowden Lane was private by granting a right of way "so far as the vendor can grant the same". No attempt was made to convey any part of Rowden Lane itself. In the following year, 1928, the whole of the southern portion of Rowden Lane, including Rushy Ground, was sold by Herbert Holt to David Townsend. Again there was no attempt to grant rights of way of any kind, and the land was sold separately from Rowden Lane itself. The verges were treated as being part of the road. The southern stretch included the land currently owned by the Claimants, Elmtree Farm and the Old Piggery.

901. When the land comprising The Bungalow and its adjacent field were sold to Mr Gibbons in 1937 there was no attempt made to grant rights of way of any kind over Rowden Lane. The inference is that everybody believed that it was a public vehicular highway. This may not be so surprising, since it was around this time that the

Chippenham Borough Council was still in the process of declaring Rowden Lane a new street.

902. Following the death of David Townsend, his personal representative sold what was originally Brookfields and Swallow Falls to W H Jennings, Elmtree Farm to R F Jennings and The Piggery to Mr Gibbons. Again there was no attempt to create rights of way of any kind over Rowden Lane in favour of these properties.

903. In 1945, land comprising the modern day Burleaze was also sold by the executors of David Townsend to Mr Hudson, together with rights over Rowden Lane "so far as the vendor can grant the same". There appears to have been a practice of passing title to land or rights in relation to Section B2 of Rowden Lane whenever Burleaze was sold: See the conveyances of 1880, 1919, 1927 and this conveyance of 1945. When Mr and Mrs Burridge bought Rowden Farm in 1946 rights of way over Rowden Lane and Gypsy Lane were granted by the vendor, even though Sections A and B were not part of the land sold with Rowden Farm, "so far as the vendor can grant the same".

904. When Mr Ayres acquired Brookfields in 1963, no rights were granted in favour of it over Rowden Lane, although the abstract of title disclosed the new street declaration of 1937. Unfortunately, there were inconsistent replies to enquiries given by the Chippenham Borough Town Clerk in 1970 when he said both that Rowden Lane was a new street maintainable at public expense and later saying it was not maintainable at public expense.

905. By the time that the Fortune family bought Swallow Falls in 1970, having no doubt learnt that there was an issue about whether Rowden Lane was considered as maintainable by the Town Clerk, the solicitors acting for the Fortune family quite properly wanted to make sure that they had a right of way to get to the property they were buying. This explains why Will Jennings gave the statutory declaration which he

did. Of course, there had been no express grant of way over Rowden Lane when Will Jennings purchased the field and Swallow Falls in 1944. I am satisfied that he was content to buy then, without any express private right of way, because he believed (and no doubt his solicitor too, from the new street declaration of 1937, which was a local land charge) that Sections A and B of Rowden Lane were a public vehicular highway.

906. Finally, as I have mentioned elsewhere in this judgment, the access deed between Langcote and Ms Ayres in 1977 (and also reflected in the registered title of what is now Brookfields), Rowden Lane was described as a highway, and Langcote was granting Ms Ayres a private right *to* the highway and not *over* it.

907. From this extensive review of the very detailed and voluminous conveyancing documentation, I draw the following conclusions, on the balance of probabilities:

(1) Transfers of the ownership of Sections A and B1 of Rowden Lane had ceased by the second half of the nineteenth century.

(2) Whilst B2 was the subject of a conveyance in 1919, when it was transferred to Brigadier General Palmer, although even then the transfer was expressed to be "subject to existing rights". However when Brigadier General Palmer's successors sold the land to the north of Section B2, the modern day Burleaze, in 1927 it did not include any transfer of Rowden Lane, and the same applied when land to the south (the modern day Elmtree Farm and The Old Piggery) was sold in 1928 by Herbert Holt to Mr Townsend. However, B2 was sold by Baron Glanely to Herbert Holt in 1927, when he sold him he land to the south of Rowden Lane, as well as purporting to grant him a right of way over the whole of Rowden Lane.

(3) There was a separation therefore between the land fronting Rowden Lane and the Lane and verge itself. This was despite the fact that, at some point in time, land on both sides of the lane were owned by the same person simultaneously eg Brigadier General Palmer and David Townsend.

(4) Even if it was, as Mr Laurence argued, inconsistent to include Rowden Lane as a parcel of land being conveyed if its status was a public vehicular highway, there would be no such inconsistency if only the subsoil were being transferred. The failure from 1886 onwards, in relation to Sections A and B1, and from 1919 onwards in relation to Section B2, to transfer Rowden Lane is indicative that the parties did then regard it as a public vehicular highway. In my judgment, the true owners of Rowden Lane had long since lost interest in it and had recognised it had become dedicated fully to the public

(5) Given the absence of private easements in favour of the properties fronting Rowden Lane, they and Rowden Farm would be landlocked if Rowden Lane were not a public vehicular highway. The fact that the parties did not include any part of the road in the conveyance, and also failed to stipulate for private access rights, renders it probable that everybody realised that the road had become a public vehicular highway. Even if the current owners of property fronting Rowden Lane owned one half of the subsoil of Rowden Lane which adjoined property, this did not give a right of way over the entire length of Rowden Lane to gain access to the A4.

(6) After 1927, land on either side of Sections A and B was sold on the basis that Rowden Lane was a public vehicular highway (inferred from the failure to grant a private right of way over it). This happened in 1904, 1919, 1928, 1937, 1945, 1963 and 1967 (the highway access deed for Brookfields). Amongst these transactions, it is particularly significant to note that when Brigadier Palmer in

1919 had assembled the Lackham Estate, he had purchased Rowden Farm but never acquired ownership or express right of way over Sections A and B1 of Rowden Lane. This would have rendered the very valuable Rowden Farm landlocked, unless Rowden Lane were a public vehicular highway.

(7) The twentieth century conveyances, and the qualified rights of way which were granted, seem to me to be probably due to the natural caution or anxiety of conveyancers to ensure that their client had access to the property which they were buying. This has gone as far as requiring a grant by the vendor, who did not own Rowden Lane, of a purported right of way over the Lane as far as the vendor could grant it. This happened in the 1927 and 1945 conveyances of the modern Burleaze area, the 1946 sale of Rowden Farm and the sale of Swallow Falls in 1970. Indeed the statutory declaration in 1970 by W H Jennings illustrates the point quite graphically.

In 1945 he bought land on the southern side of Rowden Lane which encompasses the historical Brookfields and Swallow Falls. His property has received no right of way over Rowden Lane, although one infers the new street declaration would have been registered as a local land charge in 1937. Yet, when it came to selling Swallow Falls to the Fortune family, especially given the mixed signals coming from Chippenham Town Clerk as to whether Rowden Lane was publically maintainable or not, the purchasers insisted upon the grant of a right of way to the extent that he, W H Jennings, could grant the same. Hence the statutory declaration deposed to the many years which he had used Rowden Lane without objection.

I agree that these recent conveyancing techniques have little probative value and owe more to the natural caution of modern conveyancers than to a demonstration of established rights.

(8) Although Section B2 of Rowden Lane was conveyed to Brigadier Palmer in 1919, at a time when he already owned Rowden Farm and therefore there was a common owner of the two, by 1946 at the very latest, Section B2 of Rowden Lane had again been lost by Rowden Farm. This meant that when Mr and Mrs Burridge bought Rowden Farm in 1946 the best that they could get was a grant by the vendor, Mr Hawker, of rights over Rowden Lane "to the extent that the vendor could grant the same". This all seems very uncertain, if one assumes that Rowden Lane was not subject to public vehicular rights. It certainly demonstrates the weakness of the suggestion that Rowden Lane existed primarily as a private road owned by and serving Rowden Farm.

(9) In my judgment, the conveyancing material is consistent with the earlier historical material in supporting the suggestion that Sections A and B of Rowden Lane were public vehicular highways and, as a result, it was unnecessary to keep including it in private conveyances for that reason. Moreover, no land owner has ever granted an express easement qua owner for Sections A and B 1 of Rowden Lane, which one might have expected to have seen if the land had not already been dedicated to the public as a public vehicular highway.

908. The Claimants' case now is not to assert that Rowden Lane is wholly private. They accept that Rowden Lane is a public highway, but subject only to public rights on foot and on horseback. However, the Claimants still allege that they are owners of the subsoil up to the midway point of Rowden Lane along the frontage of their properties and also own the verges. I deal with this issue later.

909. In my judgment, Rowden Lane, which has been so significantly lacking in an obvious owner, is much more consistent with a public vehicular highway of some antiquity than with a private vehicular road subject only to public rights of footpath or bridleway.

## Chapter 18: Maintenance of Rowden Lane

910. Highways are maintainable at public expense if they were created before 1835 or, if created thereafter, have been expressly adopted by the Highway Authority as maintainable at public expense.

911. Both parties have placed before me evidence that Rowden Lane and its verges have been maintained or repaired *both* at public expense and at private expense.

912. Both parties accept that the question whether the lane has been maintained or repaired at public expense is relevant. If it has been so maintained, then in the absence of a satisfactory explanation this would be evidence that it is a public way. However, if public maintenance has not taken place or has only taken place infrequently or irregularly that does not mean that the road is not a public highway. As the correspondence in this case, written at different times by the Council or highway authority has indicated, a lack of maintenance could be attributable to oversight, lack of funds, lack of need or an ignorance of the legal position.

913. In my review of the historical documentation in this case, I have made reference to the similarity in the ways in which Rowden Lane and the Bath Road have been depicted on maps, implying similar levels of status or maintenance.

914. The shading on the 1900 OS map is also a reliable indicator that Sections A and B were well maintained roads suitable for taking fast wheeled traffic in all seasons. This must be contrasted with the different and inferior way in which Section C was depicted. In my judgment, the way in which Sections A and B had been maintained make it unlikely that they simply formed a private road to Rowden Farm, for, if that were so, one might have expected a similar level of maintenance along Section C, and that is not the case. I find that the level of maintenance of Sections A and B is higher than

one would have expected of mere farm tracks in private ownership, and this is most confidently displayed in the 1900 OS map.

915. The most likely explanation for this level of maintenance of Sections A and B, higher than Section C, is that the maintenance was being carried out at public expense and to a standard consistent with a public vehicular highway. Equally, this level of public maintenance and expenditure seems excessive if the public only had a right of way on foot or on horseback.

916. I have already dealt with the 1881 Minute concerning the repair of the bridge in Section A of Rowden Lane, when dealing with Professor Williamson's observations on it above. In addition, it must be remembered that, given the Claimants' concession that Sections A and B are public highways, much of the force of his argument has evaporated. In my judgment, the 1881 Minute indicated not only that Section A was a publicly maintainable highway but also the fact that a bridge needed to be repaired indicated that it was a public vehicular highway, since the presence of a bridge bearing a track way over it was much more consistent with a public vehicular way than a public footpath or bridleway.

917. Professor Williamson did not, however, deal satisfactorily with the Minute of the same Corporation, dated 1 September 1896, which clearly shows that the Corporation did not regard itself as the private land owner of any part of Sections A and B of Rowden Lane, and that it did not regard Rowden Lane as private. This follows from the fact that the lease granted a right of way in favour of a proposed infectious hospital over part of Hulberts Hold to Rowden Lane, *but no further*. In my judgment, this is because it was known that Rowden Lane was a public vehicular highway. One could reasonably expect that there would be a need for wagons or carts to transport the infirm to the infectious hospital.

918. The 1896 minute supports the existence of a public vehicular highway at Section B of Rowden Lane. The 1896 minute read:

*The ground space occupied by the Building of the said hospital to be 30 feet long and 15 feet in width with a right of way thereto from Rowden Lane in common with the council and their tenants …*

919. I accept that residents of Rowden Lane have, from time to time, paid for repair work to the surface of Rowden Lane and have maintained the verges. However the fact that local residents may have carried out some maintenance does not preclude the finding of public highway, nor does it necessarily indicate a private status. As was pointed out in Ward and Ward -v- Durham County Council 1994 70 PCR 585 at 590:

*Many householders clear and maintain the verge or other land adjoining their homes, even though the public has rights thereover.*

920. I reject Mr Laurence's contention that, in relation to the 1881 minutes, the highway surveyor was acting as a co-ordinator out of public spiritedness for the repair of the private road. I regard this as an improbable analysis. In my judgment, it is much more likely that a highway engineer would concern himself with public highways, in accordance with his statutory duty, rather than get involved in purely private matters. The 1881 and 1896 minutes both provide strong evidence that Sections A and B of Rowden Lane were regarded as a public vehicular highway maintainable at public expense in the nineteenth century.

921. Turning to the twentieth century, there is also evidence of public maintenance of Rowden Lane. Professor Williamson, in his report, referred to the first 70 metres or so (Section A of Rowden Lane) as being maintained as a public road for some time. Moreover, the culvert running under Section A (C4/65) has been publicly maintained since at least 1972.

922. As far as the maintenance of Section B is concerned I have set out in great detail, elsewhere in this judgment, the correspondence from 1983 onwards which is supportive of the Highway Authority carrying out maintenance works on Rowden Lane.

923. The aerial photographs analysed by Gary Vaughan show that Sections A and B of Rowden Lane had been maintained at the same level since 1946 at the latest, this is the date of the earliest available aerial photograph. Between 1946 and 1964 there was a seamless gravel surface all the way from the A4 to the cattle grid. By 1973, the entire carriageway configuration was very similar to that which existed in 2006. Since the delivery of my draft judgment to the parties, the Claimants have supplied me with additional photographs taken in 1988. These show the surface of Section B to be of a lower quality than Section A. However, this may be explained by roadworks which may have been carried out on Rowden Lane in 1988: see the letter dated 3 December 1991, from the Area Highway Engineer to Mr Fortune at paragraph 235 above.

924. I am satisfied, therefore, that the Highway Authority has maintained Sections A and B of Rowden Lane in the nineteenth and twentieth centuries. I do not doubt that frontagers in Rowden Lane have, from time to time, carried out ad hoc repairs and surfacing. However, I am satisfied that this is more to do with the Highway Authority having to prioritise its work and the allocation of its resources which may have left the resident feeling that they had to carry out repair work themselves. That there was some frustration by the residents over this, and some restriction on the public monies available, is shown by a letter by Dick Jennings in March 1983 where he recorded the Highway Engineer as saying that there had been a shortage of funds.

925. There are two further Minutes of meetings of Chippenham Borough Council which tend to suggest that the Council regarded Rowden Lane as something more than a mere bridleway or footpath.

926. On 30 November 1954, there was a recommendation that no objection be raised to the placing by the Southern Electricity Board of overhead electricity lines at Rowden Lane. As I have already indicated, there was no evidence of any private way agreement having been granted by any owner of the Lane.

927. On 18 April 1961 the Council resolved that an additional street light be installed in Rowden Lane between the public house and the junction with Rowden Hill. Whilst it may be argued that these add little to the First Defendant's case because, on any view now, Rowden Lane is a public highway, they seem to me to be more consistent with a Council being concerned with a highway of higher status than mere footpath or bridleway.

928. Accordingly, I conclude that, on the balance of probabilities, the highway authority did carry out works of maintenance on Sections A and B of Rowden Lane although they did not regard Rowden Lane as a priority which explains why private residents themselves had to carry out ad hoc repairs.

**Chapter 19: Reputation**

929. Given the mass of documentary evidence in this case, it may be thought that evidence of reputation, or the way in which people have spoken or written in the past about Sections A and B of Rowden Lane, can be of little assistance to me.

930. However, it seems to me that the Fortune family has conducted itself in a way which, in substance, suggested that they considered Sections A and B of Rowden Lane, and the verges, to form part of a public vehicular highway. Correspondence by the Fortune family with the Planning Authorities in 1980, 1988 and 1991 are consistent with their treating Rowden Lane and its verges as a public vehicular highway. In March 1993, the Highway Authority was taking steps to abate nuisance on the verges adjoining Swallow Falls and, in so doing, asserted that the verges were "highway verges". This

was never contradicted by the Fortune family. I accept that Kevin Fortune wrote letters expressing doubts about Rowden Lane, but these seem to me to be more concerned with his desire to have it brought up to the standards of a modern highway. On balance, I regard the correspondence from the Fortune family as more indicative of their view that Sections A and B (and their verges) formed a public vehicular highway than the contrary.

931. In relation to Brookfields, the Access Agreement between Langcote and the Second Claimant, also referred to it the registered title, seems to have proceeded on the basis that Rowden Lane was highway, and, inferentially, a full vehicular highway. However, against this must be set the correspondence from Mr Ayres and Ms. Ayres, where the Lane was alleged to be private, albeit without any concession of any public rights, even on foot or horseback.

932. Finally, whilst it is not simply a matter of counting the numbers for and against any particular propostion, the fact remains that there is little visible support for the Claimants from those whose properties adjoin Section B of Rowden Lane. The Claimants' case is not supported by the vast majority of other owners of developed curtilages which either adjoin or depend upon Section B of Rowden Lane for their vehicular access. If Rowden Lane were bereft of public vehicular rights, one might have expected them to have asserted their private rights by now.

## Chapter 20: Creation of a Highway at Common Law

933. Section 32 of the Highways Act 1980

***Evidence of dedication of way as a highway***

*A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall*

*take into consideration any map, plan, or history of the locality or other relevant document which is tended in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.*

934. The principle underlying the creation of highways was summarised by Etherton J, as he then was, in Robinson Webster (Holdings) Ltd v. Agombar [2001] EWHC; [2002] 1 P. & C.R. 20, at paragraph 30 where he said :

*30. At common law a highway may be created by dedication, express or presumed, by the owner of the land of a right of passage over it to the public at large and the acceptance of that right by the public. Long user by the public as of right is evidence of proof of dedication by the owner and acceptance by the public.*

935. This is a case of presumed dedication, as explained by Lord Blackburn in Mann v Brodie (1884-85) L.R. 10 App Cas 378 at 386 as follows:

*.... where there has been evidence of a user by the public so long and in such manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that it had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on which those who have to find that fact may find that there was dedication by the owner whoever he was.*

936. Section C of Rowden Lane is shown as a bridleway on the Definitive Map and Statement (DMS), and this is conclusive in law as to its status as a bridleway. After what I regard as a significant change in the emphasis of the Claimants' case, the Claimants now accept that Sections A and B of Rowden Lane is a public highway, but

only subject to public rights on foot and on horseback, consistent with the conclusive status of Section C as a bridleway.

937. This concession by the Claimant is not related to any particular time when they accept that the public rights began, or indeed how they began. The resolution under the Public Health Act 1925 by Chippenham Borough Council and the map prepared under the Finance Act 1910 clearly demonstrate that Rowden Lane was subject to public rights of some kind before 1910. Clearly the origins of the public rights are so far back in time that no living person can give evidence of when even the limited public rights conceded by the Claimants began.

938. I am satisfied, and indeed is not in dispute between the parties, that public rights of way on foot and on horseback have been demonstrated to have existed before 1910. If the public used Rowden Lane for a purpose on foot and on horseback before 1910, as I find they did, why would they not also, as a matter of common sense, have used Rowden Lane in vehicles, wagons or carts drawn by a horse, as well on foot or on horseback?

939. Although the Claimants' pleaded case left open the possibility of arguing that Section B of Rowden Lane was subject to limited public rights on foot and on horseback, but definitely not in vehicles, the main thrust of their case was originally that Section B was entirely private for the whole of its length and width. However, until November 2008, the Claimants had admitted that the whole of Section A was a public vehicular highway.

940. Thus the evidence prepared by Professor Williamson and Mr Harbour was focussed on Section B of Rowden Lane only and not Section A. Their reports quite clearly show that the central issue on which they were giving their opinion was whether section B was wholly private or public.

941. Mr Vaughan's evidence too was confined to a consideration of Section B of Rowden Lane, because that was the only area then in dispute. Indeed Professor Williamson's report effectively admitted that Section A appeared to be a public vehicular highway.

942. The Claimants' main case now is that Sections A and B are only a public bridleway, and have been a bridleway since 1949 at the latest. However, what the Claimants' expert evidence has not focussed on, given that the Claimants now concede that Sections A and B are subject to public bridleway rights, is why, how or when the public acquired these limited rights of on foot and on horseback but yet did not also acquire vehicular rights at the same time.

943. Whilst I understand that the First Defendant claims that public vehicular rights were established even before 1669, it is plain to me their case at common law was not confined to the period to 1669 but was based upon the totality of the evidence, documentary and modern user, which was put in front of me. The First Defendant invites me to conclude that it is more probable than not, in the light of all the available documentary and user evidence, that Sections A and B of Rowden Lane have long been a public vehicular highway as a result of dedication and acceptance in common law.

944. For what purposes did the public use Rowden Lane on foot and on horseback for so long and in such circumstance as to constitute Rowden Lane a public highway in common law?

945. Professor Williamson accepted that there must have been a public attraction or attractions at the end of Section B of Rowden Lane to attract the public along it. There must have been sufficient purpose for the public to use Rowden Lane for it to acquire the limited highway rights which even the Claimants concede. It was the First Defendant's case that it is improbable that the public would have had a reason to use

Rowden Lane on foot or on horseback, but not with carts or other vehicles. The location of a cattle grid at the end of section B of Rowden Lane in the 1960s, with no gate at the side to bypass it, must have significantly reduced, if not extinguished, the attractions of Sections A and B of Rowden Lane for horses and riders. The decline in the public's use of Sections A and B on horseback has been more than matched by the increase in the public's use of sections A and B with vehicles. As early as 1784, (see Powell's map of that year), a public footpath from Lacock is shown joining section B of Rowden Lane. I consider it probable that the public's right of way, at least on foot, over Rowden Lane existed before 1784. In fact, for reasons I give elsewhere in this judgment, I am satisfied that they existed before 1669.

946. Who are the public for the purposes of dedication and acceptance of common law?

947. In Jennings v Stephens [1936] 1 Ch 469, at 476, Lord Wright MR said:

*"The public" is a term of uncertain import; it must be limited in every case by the context in which it is used. It does not generally mean the inhabitants of the world or even the inhabitants of this country. In any specific context it may mean for practical purposes only the inhabitants of a village or such members of the community as particular advertisements would reach, or who would be interested in any particular matter, professional, political, social, artistic, or local.*

948. Accordingly, use as of right by the inhabitants of the locality is sufficient. The public undoubtedly used Rowden Lane as of right, otherwise it would not have become a public highway, even on foot or on horseback. Given the existence of these public rights, together with the conveyancing history of Rowden Lane and the lack of express private easements over it, it is unlikely that the Lane merely served as a private drive to Rowden Manor. There is no evidence that Rowden Farm was in common ownership with any parts of Sections A and B of Rowden Lane between 1540 (when it was seized

by the Crown) and 1919. Moreover, neither Section A nor B of Rowden Lane, nor the enclosed section of Gypsy Lane, was in common ownership with Rowden Farm when it was sold off in 1904.

949. For the public to have acquired rights of way over Rowden Lane, even on foot or on horseback, it means that the user was trespassory, and not by force, secretly or with permission (*nec vi, nec clam, nec precario).*

Conclusions on dedication and acceptance at common law

950. On the totality of the historic and modern evidence placed before me in this case, I am satisfied, on the balance of probabilities, that Sections A and B of Rowden Lane have in fact been full public vehicular highways for centuries before 2002.

951. Whilst that is the view to which I have come on the totality of the evidence, there are also specific dates or periods which also demonstrate (if such demonstration be necessary), on the balance of probabilities, the status of sections A and B of Rowden Lane as a full (vehicular) public highway by that time.

952. Whilst in no way detracting from my conclusion reached on the totality of the evidence, the material before me, considered in the light of Section 32 of the Highways Act 1980, has satisfied me that Sections A and B of Rowden Lane were a full public vehicular highway in each of the following periods:

(a) between 1540 and 1669;

(b) between 1669 and 1881;

(c) between 1881 and 1955.

953. In summary, the following matters, in particular lead me to conclude, on the totality of the evidence and on the balance of probabilities, that Sections A and B of Rowden Lane were a full (vehicular) public highway well before 2002.

(i) Rowden existed as a location since at least 1190;

(ii) The borough lands were seized by the Crown in 1540, and allotted to the 'Inhabitant Householders' of Chippenham. This was a group large enough to constitute "the public". They probably used horse drawn carts and wagons to carry away wood from the coppice which became their land by 1544. These inhabitants of Chippenham have used Rowden Lane to access the Coppice either via the two spur roads, if they existed before 1669, or over the unhedged southern boundary of Rowden Lane before the spur roads were created;

(iii) The unruly and disorderly members of the public from Chippenham or elsewhere, who trespassed in and stole wood from the coppice, also constituted a sufficiently large constituency of people to constitute the public. No complaint was made that they were trespassing on private roads when they were undoubtedly using Rowden Lane to gain access to the Coppice. The Borough of Chippenham did not own Rowden Lane and therefore could not give consent to anyone to use Rowden Lane;

(iv) Soldiers with horse-drawn wagon and carts must have used Rowden Lane to access Rowden Manor during the Civil War. Such soldiers must have constituted members of the public, and their use of Rowden Lane must have been trespassory;

(v) By 1669, Rowden was a well established place to which both Gypsy Lane (as it was to become) and "Rowden Way" gave access;

(vi) In 1669, Sections A and B of Rowden Lane had a distinct name, ie “Rowden Way”;

(vii) Rowden Lane and Gypsy Lane, as they were to become known, contained the word ‘Lane’ in their name implying a highway running between two major roads or different sections of the same major road. The presence of a useable through route from the Bath Road, along Rowden Lane, over the unenclosed track, up Gypsy Lane and back on to the Bath Road is clearly demonstrated on historical maps. There are sound reasons why such a through route existed. They include the potential avoidance of paying tolls, the avoidance of badly maintained or unpassable sections of the Bath Road and, at least for a time, to provide some form of access from Gypsy Lane to the Market Place in Chippenham. This through route is shown in the maps of 1773, 1792, 1828, 1829, 1848, 1862, 1867, 1890 and 1910. Professor Williamson accepted that the maps of 1773 1828 1829 and1890 demonstrated a through route;

(viii) Apart from gates shown at the junction of the Bath Road and Section A of Rowden Lane in the 1784 and 1796 maps, no such gates are shown in the maps of 1669, 1848, 1867, 1900, 1910, 1953 and 1974, nor in the aerial photographs of 1946, 1950, 1964 and 1973. Moreover, even by 1784, it is likely that Sections A and B of Rowden Lane were a public highway on foot at the very least, and so it is likely that the public was not excluded from using Rowden Lane in carts or wagons, especially since it was eminently suitable for that use;

(ix) Spurs 1 and 2 leading to Hulberts Hold and the coppice, south of Rowden Lane, have been depicted in a way similar to Rowden Lane. This is consistent

with the use of Rowden Lane and the spurs, by the public in wagons and carts, to gain access to the Borough lands, including the coppice;

(x) There is an abundance of evidence to justify the inference, which I draw, that Rowden Lane was dedicated to and used by the public as of right with wagons and carts. The public used this to gain access to the Borough lands, the infectious hospital (as shown in the 1896 Minute in relation to Hulbert Hold, a piece of land owned by the Council until 1947), those persons ruly and unruly who used the coppice to cut and gather wood, soldiers and those using the football ground shown on the 1910 map. Moreover, as the Claimants' admission, namely that sections A and B of Rowden Lane was a public highway subject to public rights on foot and horseback, showed, the public had a real reason for using Rowden Lane. Either it was a place of public interest or the public had a particular purpose for using it. Given this admission, and the width and level of maintenance of Rowden Lane over the centuries, it seems likely that the public would also have used it with wagons and carts. It must be remembered that the coppice was not common land after 1540 and, after 1669, previously common land had been enclosed. After 1669 the use of Rowden Lane would not have been by commoners as an incident of common.

(xi) Sections A and B of Rowden Lane have been shown to be of a higher standard of status than Section C. If, which I reject, Section C of Rowden Lane was only a bridleway before the 1970s, Sections A and B are, therefore, of a higher status, namely a public vehicular highway.

(xii) There are, and have been no obstructions or gates limiting or restricting access between Sections and B of Rowden Lane.

(xiii) There were never any “Private” signs before 2002.

(xiv) The manner in and the standard to which Sections A and B were maintained (see the Minute of 1881 and the shading on the 1900 map and the quoted correspondence dealing with maintenance), indicate that the Highway Authority had been maintaining, however intermittently, Sections A and B of Rowden Lane.

(xv) The 1896 Minute in relation to the infectious hospital clearly justifies the inference that the Council considered Rowden Lane was then a public highway, because otherwise the infectious hospital would be landlocked, given the absence of any private easement *over* Rowden Lane.

(xvi) The maintenance of the bridge in Section A, as shown in the 1881 minutes, would be unnecessary if Rowden Lane were then merely a public highway on foot or on horseback. A wide bridge maintained by the Highway Authority was plainly excessive if the only public rights were on foot or on horseback.

(xvii) Rowden Lane was shown on some of the less ancient maps as comprising a track with verges. This is more indicative of a public vehicular use rather than use confined to foot or horseback.

(xviii) I draw the inference that Gypsy Lane too was a public vehicular highway, on the totality of the evidence, including the shading shown on the Ordnance Survey map for 1900, the 1910 map and the fact that it bore the name ‘Gypsy’ Lane. This clearly implied the use of that lane with carts and wagons by travelling gypsies. That use could not have been with the permission of Rowden Farm, since Gypsy Lane was not owned by Rowden Farm. The fact

that Gypsy Lane was also a public vehicular highway supports the useable through route contention. Moreover, the Perkins drawing of 1905, derived from maps and other documents which he had seen, referred to a 'cart track' going across the unenclosed sections of Cunniger and Home Down fields.

(xix) Utilities are found in sections A and B of Rowden Lane. There is no wayleave agreement permitting this, and the inference is that they were installed in the highway under statutory powers. Whilst these are not probative on their own of in public vehicular highway, they are entirely consistent with it.

(xx) A public house has existed at the corner of the Bath Road and Section A of Rowden Lane for many centuries. In the 1960s, when a new public house was built, the then narrow section A of Rowden Lane was widened by the dedication of land by the brewery. This could only reasonably have been accepted by the Highway Authority on the basis that the then existing narrow section A was also public vehicular highway.

(xxi) Professor Williamson's report virtually admits that Section A is a public vehicular highway, and this fact had been conceded by the Claimants up to November 2008.

(xxii) The 1910 Finance Act is strongly supportive of Sections A and B as a wholly untaxed public vehicular highway, as opposed to a private road subject to deduction for minor highway rights.

(xxiii) The 1937 Chippenham declaration of Rowden Lane as a new street, to be built to certain standards, would seem to be an over-exacting requirement, if the only public rights over Rowden Lane were on foot or on horseback.

(xxiv) The Definitive Map process, from 1949 to the Inquiry in 1955 (in relation to Section C as RUPP 5 connecting with Sections A and B of Rowden Lane) is highly indicative of Sections A and B status as a public vehicular highway, especially when it was shown as such on the relevant maps. Nor is the strength of this conclusion in any way undermined, in my judgment, by the fact that Section C was subsequently downgraded to a bridleway.

(xxv) The private conveyancing documents, relating to transfers of property adjoining Rowden Lane, and in particular the absence of express grants of rights of way, are probably explicable on the basis that everybody had regarded the public as having full rights of way over Rowden Lane, as it was a public vehicular highway.

954. On the totality of the evidence, therefore, I find that Sections A and B of Rowden Lane were a full (vehicular) public highway for centuries before 2002.

## Chapter 21: Width of the public vehicular highway

### Introduction

955. In paragraph 56 of the Claimants' skeleton argument, dated 3 November 2008, the following was written:

*"The broad issues in the claim are:*

*(1) Whether the Lane is a public vehicular highway or a private road (over which there may or may not be rights of way on foot and on horseback);*

*(2) If it is a full vehicular right of way, its width, and in particular whether it encompasses the grass verges on its southern side".*

956. The Claimants' case at one stage was that Section A of Rowden Lane *was* a public vehicular highway and that all of Section B (including the verges) were private. It is now the Claimants' case that Rowden Lane, in its entirety, is only a bridleway but there is no concession that any bridleway extends across the entire lane including the verges.

957. The way in which the Claimants originally put their case, with its emphasis on the private nature of Rowden Lane, and their subsequent changes to it, has caused some time to be spent in the trial on the topic of who owns the carriageway and verges of Rowden Lane. The ownership of the subsoil is now conceded to be largely academic. The central issue is the nature and extent of the public rights over the carriageway and verges, irrespective of the owner of the subsoil. Nevertheless, out of deference to the arguments which have been advanced before me, I shall consider the issue of the ownership of the subsoil.

958. Counsel for the Claimants accept that is unnecessary for the public to drive vehicles over every part (ie laterally) of the verges in order for the verges to be dedicated, along with the metalled carriageways, as part of the vehicular highway. Nevertheless, they submit that there is no invariable presumption that a highway includes the verges adjoining it: See:Belmore -v- Kent CC [1901] 1 Ch 873. This case established the proposition that, where there are unenclosed spaces by the sides of a metalled highway, there is no invariable presumption that the highway extends to the fence on either side. The nature of the district, the width and level of the margins, and the regularity of the lines of fence are circumstances to be taken into account in determining the fact of dedication.

959. Mr Laurence QC and Ms Clark (in footnote 287 in their amended submissions in reply, dated 1 September 2009) submitted that I am not concerned to determine the extent of the land over which the public *bridleway* and *private* vehicular rights exist. But the Claimants do not suggest that these rights are confined to the central carriageway. They accepted that if, as I have found, the First Defendant established that Rowden Lane is an ancient public vehicular highway, then there is no reason to doubt the applicability of the hedge to hedge presumption. However, they submitted that the claim to a vehicular highway over Rowden Lane, between points M and CG, *based on modern user* can plainly not extend from hedge to hedge given the evidence of stones on the verges.

960. Accordingly, I propose to deal first of all with the question of the ownership of the subsoil under the carriageway and the verges, and then with the extent of any public rights over the verge.

Ownership of the subsoil of Rowden Lane

961. In Micklethwait v. Newley Bridge Company (1886) 33 ChD 133, Cotton LJ, at page 145 said

*In my opinion the rule of construction is well settled, that where there is a conveyance of land, even though it is described by reference to a plan, and by colour, and by quantity, if it said to be bounded on one side either by a river or by a public thoroughfare, then on the true construction of the instrument half the bed of the river or half of the road passes, unless there is enough in the circumstances and/or enough in the expressions of the instrument to show that this is not the intention of the parties.*

962. We know that, in 1820, Sections A and B1 of Rowden Lane (and the land either side, including what Mr Laurence has described as 3(a) - essentially Brookfields and Swallow Falls) was in common ownership: See the 1880 Abstract of Title of the Cambridge Trustees. It is also clear from the 1848 Tithe Map that Benjamin Lifely owned Sections A and B1 of Rowden Lane (parcel 518) and some land either side of it, although all this was tenanted by James and Joseph Austin. In 1881 plot 3(a) was also conveyed to Richard Rich.

963. In 1868, there was a conveyance by Mr Frith to Mr Nicholls of land to the north of Rowden Lane which included today's curtilage of The Bungalow. We do not have this conveyance, only the plan to the conveyance. However, the area shown as conveyed excluded Rowden Lane. It is regrettable that we do not have the conveyance from Mr Frith to Mr Nicholls. Mr Frith was not a sole vendor because the back sheet refers to 'James Frith and others'. Whether these were Trustees or personal representatives of Benjamin Lifely, one just does not know. However, it is interesting to observe that in the sale of plot 3(a) to Richard Rich in 1881, one of the trustee vendors was "Alfred *Lifely* Goddard"

964. We also learn from the 1880 conveyance that plots 3(b) and 3(c) (as described by Mr Laurence - essentially Burleaze and Rushy Ground) together with Section B 2 of Rowden Lane in between were conveyed together to Richard Rich by the Cambridge Trustees in 1880. Accordingly, by 1881 when plot 3(a) was sold to Mr Rich, he owned all the land to the south of Sections A and B of Rowden Lane.

965. The 1881 conveyance to Richard Rich of plot 3(a) conveyed the land

*Together also with all buildings erections fixtures walls party walls roads commons hedges ditches fences ways waters water courses liberties privileges easements advantages and appurtenances whatsoever to the said pieces or parcels of land*

*hereditaments and premises or any part thereof appurtaining or with the same or any part thereof now or heretofore demised occupied or enjoyed or reputed or known as part or parcel thereof or appurtinent thereto*

966. Subject to my observations below, I am inclined to agree with Mr Laurence that there seems to be nothing in the 1881 documentation before me to displace the presumption that the vendors to Mr Rich of parcel 3(a) also owned up to the midpoint of Rowden Lane along the frontage of plot 3(a), and therefore conveyed it to him under the above clause. It matters not whether the road is public or private, when it comes to applying the presumption. I do not consider that the presumption has been rebutted by the 1910 map, as the First Defendant submitted, merely because the map and assessment declared no owner of Rowden Lane.

967. The same may also apply to the land acquired by Mr William Nicholls in 1868 to the north of Rowden Lane.

968. However, in the absence of the full deed or conveyance dealing with the first sale of the land in common ownership, presumably in 1868, I feel it is unsafe to be more emphatic, especially since it is unnecessary for me to reach a conclusion on the ownership of any area of the subsoil if, as I have found, the surface of the Lane, including the verges, is vested in the First Defendant as Highway Authority. However, it may well be that the common owner at some stage conveyed, or can be presumed to have conveyed, to Mr Frith the northern half of Rowden Lane and to the Goddard Trustees the southern half.

969. Mr Laurence then charted the ownership of plot 3(a) (comprising modern day Brookfields and Swallow Falls) down to today. I agree with Mr Laurence and Ms Clark that, if Mr Rich acquired one half of Rowden Lane in 1881, then the Claimants would own the subsoil under their respective verges to the midpoint of Rowden Lane.

However, I emphasise that this would be confined solely to the subsoil.The surface is vested, hedge to hedge, in the First Defendant as Highway Authority.

Does the public vehicular highway extend over the verges?

970. The historical maps show that persons using the metalled surface of the carriageway have never been prevented from using the verges.

971. Where a landowner encloses land by the side of a public highway and within a few feet of the metalled portion then a presumption arises that whatever he has left between the metalled surface and his own fence is dedicated to the public: Copestake v West Sussex County Council [1911] Ch 331, at 338.

972. The hedge to hedge presumption applies where "the hedge was planted against the highway": Hale v Norfolk County Council [2001] 2 WLR 1481, at paragraphs 32-33, per Chadwick LJ. In Rowden Lane, the southern hedge postdated the highway and can be inferred to have been planted to separate the highway from from the adjoining land. The 1669 Inclosure Map shows that the southern side of Rowden Lane was not then enclosed, although 'Rowden Way' already existed. The subsequent planting of a hedge along that southern boundary established a field boundary against the road. I am satisfied that the landowner intended to fence here against the highway.

973. Goodmayes Estates Limited v. First National Commercial Bank and Essex County Council [2004] EWHC 1859 (Ch) was also a case where the status of the verges was in dispute. In considering whether or not the 'hedge to hedge' presumption should apply, the learned judge, Richard Sheldon QC sitting as a judge of the Chancery Division, found that the verges were included in the public highway. He described the road and verges in question as follows, at paragraphs 23 to 28:

*The [roads] are of some antiquity appearing on a map dated 1777 and they had by then existed for some considerable time. The identifiable boundary features on the site which exist today would all appear to post date the highway ... the district is characterised by roads with verges running between hedges ... the centre of the hedges lie some way back from the metalled area ... the line of the hedges on the site and in the neighbourhood is regular. They run in lines broadly adjacent to the roads. The regularity of the lines of the hedges is also apparent in the aerial photographs ... the margins are what may be described [as] of ordinary width common to many country lanes ... the margins vary a little in width ... nothing specific is known of the circumstances in which the hedges or other boundary features were erected or established ... Applying the principles in Hale, the foregoing features tend to suggest that the fence to fence presumption should apply and the boundary line should be drawn along the centre of the hedge.*

974. Whilst I must consider the individual facts and circumstances of the case before me, in order to consider whether the presumption should be applied, there are many similarities between Goodmayes and the instant case.

975. Is it appropriate to apply the hedge to hedge presumption in this case?

976. The boundary features shown in the 1886, 1900 and 1924 Ordnance Survey maps show a high degree of correlation with those seen by Mr Vaughan when he inspected the site in 2007. These boundary features include walls and hedges enclosing the verges and separating them from the adjoining property. The strong hedges and banks, which enclose the verges and separate them and the carriageway from the adjoining plots, have been in the same position for centuries. Where hedges have been removed, they have been replaced by walls or fences typically running along the historic line of the old hedges. Such ditches as are present are consistent with these hedges and wall lines.

977. Rowden Lane is of a fairly consistent width between the hedges and walls, about 11.3 to 13.25 metres. The roadside verges, although varying themselves a little in width, are within what I would regard as the normal range of width for verges adjoining a lane.

978. The aerial photographs too show a relatively unchanging picture over time from 1946 onwards. The maps too seem to show little variability in the extent of the Lane. Ditches are shown coloured blue on plan 4077 revision A attached to this judgment.

979. These factors alone persuade me that it is right to apply the hedge to hedge presumption to Rowden Lane.

980. Moreover, the conduct of the parties also supports the view that the verges form part of the highway

981. The conveyance to the Fortune family of Swallow Falls in 1970 showed the parcel of land conveyed and described as separate from Rowden Lane. The land conveyed ended at the boundary hedge. The 1988 Planning application submitted in respect of Swallow Falls also showed the land owned by the Fortune family ending at the boundary hedge.

982. The 1963 conveyance of Brookfields to Mr Ayres described the land which was being purchased as land which "adjoins Rowden Lane".The plan attached to the conveyance showed no part of the verge included in the legal title expressly conveyed. The Langcote Access Deed in 1977 granted to the Ayres family, in respect of Brookfields, a right of way *to* the highway of Rowden Lane, not *over* it. Moreover, the registered title of the Second and Third Claimants excluded the verges, and claimed no extra rights in respect of it.

983. Accordingly, even if the claimants all own the subsoil from their boundary hedges up to the midpoint of Rowden Lane, the surface of the verges have been treated as part of

the road. I am satisfied that it is the centre line of the hedges rather than the edge of the metalled surface which demarcates the boundaries between wholly private land and the land over which the public have rights. In other words, I find it entirely appropriate to apply the hedge to hedge presumption.

984. This is also consistent with a number of other matters. First, apart from the encroachment by the First Claimant or Kevin Fortune over the verge in front of Swallow Falls, there has been no attempt to enclose the verges or to build on them. Secondly, the letter of the 16 March 1993 from the Highways Authority to Swallow Falls required them to remove the builders' rubble on the 'highway verges'. Thirdly, the construction of the passing bay outside Swallow Falls in 1992 is much more consistent with its being installed on a highway than on a private land. If the latter had been case, one might have expected much greater opposition to it from the Fortune family. Fourthly, the fact that Mr Heselden considered it so important to cover up the passing bay is also a powerful indication of its outward and visible sign as part of the public highway. Fifthly, the presence of telephone poles, electricity and water installations within the verges of Rowden Lane are all indicative of the fact that they were installed in the highway under statutory powers rather than on private land which would have required wayleave agreements. There are no relevant wayleave agreements.

985. The route of the utilities in Rowden Lane is also shown on plan 4077 revision A and indicates, in particular, the water and electricity installations in the verge. More particularly, there is an electricity pole and inspection cover over a public sewer in the verge outside Swallow Falls. Indeed, it was this specific cover which was the subject of a complaint by the First Claimant to the Defendant on 8 May 1982. Outside Brookfields, there is an inspection cover in the verge.

986. Moreover, I am satisfied, on the balance of probabilities, that for centuries the public has used the verges in carts and wagons to pass and repass and, since the 1950s, in

vehicles to park and to pass each other, as an integral part of the vehicular carriageway. Rowden Lane is, and has been regularly, used also by substantial agricultural vehicles and by wide caravans. Nevertheless, I am satisfied that the verges, including those by the cattle grid, facilitate such wide vehicles to pass parked vehicles or cars travelling in the opposite direction. Therefore, the necessity of using the verges to enable opposing traffic to pass each other safely is obvious. The verges in Section B are not separated from the carriageway by any kerbstones.

987. There is no evidence that any obstacles were placed on the verges (now footpaths) of Section A. I do not regard the placing of any obstacles, stones or any other material from time to time on the verges in Section B as rebutting the presumption that the highway extends from hedge to hedge. Some were easily moveable, for example those outside Elm Tree Farm House, as described by Mary Puntis. Items placed on the verges before 2002 were decorative or protective in purpose or ambiguous in meaning. They did not negative dedication as a public vehicular highway over the verges.

988. Accordingly, I am satisfied, on the balance of probabilities, that, for centuries at common law , and since before 1982 under section 31 of the Highways Act 1980, the length of Sections A and B of Rowden Lane comprise a full (vehicular) highway from hedge to hedge, namely across the width of the Lane and its verges.

## Chapter 22: Have Public Vehicular Rights Been Extinguished by NERC 2006?

### Legislative Background to NERC 2006

989. Albeit at the risk of repetition of certain matters already dealt with earlier in this judgment concerning a Definitive Map and Statement ("DMS"), I gratefully adopt the description of the legislative background to NERC 2006, set out paragraphs 7-13 of the judgment of Dyson LJ in Regina (Warden and Fellows of Winchester College and

another) v Hampshire County Council [2009] 1 WLR 138, at pages 141-143, where he said:

***7*** *Under Part IV of the National Parks and Access to the Countryside Act 1949, county councils as surveying authorities were required to maintain a DMS showing three categories of highway, namely: footpaths, where the public right of way was on foot only; bridleways, where the public right of way was on foot or horseback or leading a horse; and roads used as public paths ("RUPPs") which were defined as highways other than footpaths or bridleways used by the public mainly for the purposes for which footpaths and bridleways are so used. The 1949 Act was amended by the Countryside Act 1968 so as to require surveying authorities to reclassify each RUPP shown on their definitive maps either as a footpath or as a bridleway or as a BOAT in accordance with specified criteria. This reclassification was far from complete when the relevant provisions of the 1949 and 1968 Acts were replaced by Part III of the 1981 Act.*

***8*** *Section 54 of the 1981 Act required surveying authorities, as soon as reasonably practicable, to review all RUPPs remaining on their DMSs and make modification orders reclassifying each as: (a) a BOAT, if a public right of way for vehicular traffic had been shown to exist; or (b) a bridleway, if (a) did not apply and bridleway rights had not been shown not to exist; or (c) as a footpath, if neither (a) nor (b) applied. A BOAT was defined in section 66 of the 1981 Act as "a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used.*

***9*** *Section 53 of the 1981 Act contains provisions relating to orders modifying the DMS. It imposes a duty on the surveying authority to make modifications on the occurrence of certain events.*

***10*** *In 2000, with the reclassification of RUPPs still being far from complete, the Countryside and Rights of Way Act 2000 was enacted. Section 47(2) provided that every way which, immediately before commencement of the Act was shown in any DMS as a RUPP, should be treated instead as a "restricted byway". The 2000 Act in addition made provision for the extinguishment in 2026 of unrecorded rights of way for mechanically propelled vehicles over byways. It also inserted into the 1981 Act (as section 53B) a requirement that every surveying authority should keep a register of applications under section 53(5).*

***11*** *The reclassification provisions of the 2000 Act reflected the growing public concern that unmade minor vehicular ways in the countryside, green lanes, enjoyed by walkers and those on horseback, were being damaged by off-road vehicles and motorcycles. That concern was recognised in a consultation document published by DEFRA in 2003. In a foreword the Rural Affairs Minister, Alun Michael, said:*

*"As Rural Affairs Minister, I have been approached by many individuals and organisations who are deeply concerned about problems caused by the use of mechanically propelled vehicles on rights of way and in the wider countryside. I share these concerns, having seen for myself examples of damage to fragile tracks and other aspects of our natural and cultural heritage in various areas of the country. There is considerable concern about behaviour that causes distress to others seeking quiet enjoyment of the countryside … I do not think that it makes sense that historic evidence of use by horse drawn vehicles or dedications for vehicular use at a time before the internal combustion engine existed can give rise to rights to use modern mechanically propelled vehicles. Those who suffer from vehicle misuse find this incomprehensible and in this paper we offer new proposals that are intended to address what many have come to view as the inappropriate and unsustainable way in which vehicular rights are acquired and claimed on rights of way.*

***12*** *In due course the 2006 Act was enacted, and it provided for the extinguishment of all existing public rights of way for mechanically propelled vehicles over ways which, immediately before commencement, either were not shown on the DMS at all or were so shown but only as a footpath, bridleway or restricted byway.*

***13*** *Sections 47 to 50 of the 2000 Act (including in particular the provision reclassifying RUPPs as restricted byways) were brought into force on 2 May 2006, and section 67 of the 2006 Act (together with other provisions in Part 6 of that Act) was brought into force on the same day but immediately after the commencement of sections 47 to 50 of the 2000 Act.*

990. The Winchester College case was concerned with Section 67 NERC 2006, as is the case before me. It was a case, like many others cited in this judgment, in which Mr Laurence QC and Mr Mould QC were on opposite sides, as they are in the instant case. They therefore have a detailed knowledge of that case.

991. Mr Laurence and Ms Clark relied on it heavily in support of their submission that any public vehicular rights were extinguished on 2 May 2006, whereas Mr Mould QC and Mr Burns contended it had no application to the instant case or, at the very least, is distinguishable from the instant case.

992. It is therefore necessary for me to set out Sections 66 and 67 NERC 2006, which came into force on 2 May 2006.

993. Sections 66 and 67 NERC 2006

*Part 6*

*Rights of Way*

*Rights of way and mechanically propelled vehicles*

*66 Restriction on creation of new public rights of way*

*(1) No public right of way for mechanically propelled vehicles is created after commencement unless it is—*

*(a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or*

*(b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.*

*(2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.*

*67 Ending of certain existing unrecorded public rights of way*

*(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—*

*(a) was not shown in a definitive map and statement, or*

*(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.*

*But this is subject to subsections (2) to (8).*

*(2) Subsection (1) does not apply to an existing public right of way if—*

*(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,*

*(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c 66) (list of highways maintainable at public expense),*

*(c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,*

*(d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*

*(e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.*

*(3) Subsection (1) does not apply to an existing public right of way over a way if—*

*(a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,*

*(b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or*

*(c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles—*

*(i) was reasonably necessary to enable that person to obtain access to the land, or*

*(ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.*

*(4) "The relevant date" means—*

*(a) in relation to England, 20th January 2005;*

*(b) in relation to Wales, 19th May 2005.*

*(5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies—*

*(a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or*

*(b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,*

*the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.*

*(6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.*

*(7) For the purposes of subsections (3)(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact—*

*(a) exercising the existing public right of way, or*

*(b) able to exercise it.*

*(8) Nothing in this section applies in relation to an area in London to which Part 3 of the Wildlife and Countryside Act 1981 (c 69) does not apply.*

*(9) Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c 37) has effect subject to this section.*

994. It is common ground that Rowden Lane was not shown in a Definitive Map and Statement on 2 May 2006. It is conceded, therefore, that any existing public right of way for mechanically propelled vehicles over Rowden Lane was extinguished, unless the First Defendant can establish, and successfully rely upon, any of the provisions in Section 67(2) - (8) NERC 2006. The First Defendant's case is that public vehicular rights over Rowden Lane were not extinguished, because of Section 67(2)(a) and 67(2)(b) NERC 2006.

Burden of Proof

995. Because of the late amendment by the Claimants to rely upon NERC 2006, the First Defendant was not in a position to deploy its evidence in support of any Section 67(2)(a) exception above. Accordingly, that issue is one which has been adjourned pending the outcome of this trial. If Rowden Lane had been held not to be a PVH, or if the exception under Section 67(2)(b) were established, it would or may not be necessary to determine the further issue of whether the First Defendant could also prove, on the balance of probabilities, an exception under Section 67(2)(a) NERC. Accordingly, in the instant trial, the First Defendant has only relied upon Section 67(2)(b) NERC 2006 to show that public vehicular rights over Rowden Lane were not extinguished on 2 May 2006.

996. It is common ground between the parties that the burden of proving that public vehicular right has not been extinguished lies upon the First Defendant. In other words, public vehicular highway rights have been extinguished, since they were not shown on a Definitive Map and Statement at 2 May 2006, unless they are preserved by Section 67 (2) NERC 2006.

997. Accordingly, the question to be resolved, at this stage, is whether the First Defendant can satisfy me, on the balance of probabilities, that:

*Immediately before [2 May 2006] … it (an existing public right of way for mechanically propelled vehicles) … was shown in a list required to be kept under Section 36 (6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense).*

Section 36 Highways Act 1980

998. I set out below the text of this Section, emphasising Section 36(6) and 36 (7).

*Part IV*

*Maintenance of Highways*

*Highways maintainable at public expense*

*36 Highways maintainable at public expense*

*(1) All such highways as immediately before the commencement of this Act were highways maintainable at the public expense for the purposes of the Highways Act 1959 continue to be so maintainable (subject to this section and to any order of a magistrates' court under section 47 below) for the purposes of this Act.*

*(2) Without prejudice to any other enactment (whether contained in this Act or not) whereby a highway may become for the purposes of this Act a highway maintainable at the public expense, and subject to this section and section 232(7) below, and to any order of a magistrates' court under section 47 below, the following highways (not falling within subsection (1) above) shall for the purposes of this Act be highways maintainable at the public expense:—*

*(a) a highway constructed by a highway authority, otherwise than on behalf of some other person who is not a highway authority;*

*(b) a highway constructed by a council within their own area under [Part II of the Housing Act 1985], other than one in respect of which the local highway authority are satisfied that it has not been properly constructed, and a highway constructed by a council outside their own area under [the said Part II], being, in the latter case, a highway the liability to maintain which is, by virtue of [the said Part II], vested in the council who are the local highway authority for the area in which the highway is situated;*

*(c) a highway that is a trunk road or a special road; . . .*

*(d) a highway, being a footpath[, bridleway or restricted byway], created in consequence of a public path creation order or a public path diversion order or in consequence of an order made by the Minister of Transport or the Secretary of State*

*under [section 247 of the Town and Country Planning Act 1990 or by a competent authority under section 257 of that Act], or dedicated in pursuance of a public path creation agreement;*

*[(e) a highway, being a footpath[, bridleway or restricted byway], created in consequence of a rail crossing diversion order, or of an order made under section 14 or 16 of the Harbours Act 1964, or of an order made under section 1 or 3 of the Transport and Works Act 1992];*

*[(f) a highway, being a footpath, a bridleway, a restricted byway or a way over which the public have a right of way for vehicular and all other kinds of traffic, created in consequence of a special diversion order or an SSSI diversion order.]*

*(3) Paragraph (c) of subsection (2) above is not to be construed as referring to a part of a trunk road or special road consisting of a bridge or other part which a person is liable to maintain under a charter or special enactment, or by reason of tenure, enclosure or prescription.*

*[(3A) Paragraph (e) of subsection (2) above shall not apply to a footpath[, bridleway or restricted byway], or to any part of a footpath[, bridleway or restricted byway], which by virtue of an order of a kind referred to in that subsection is maintainable otherwise than at the public expense.]*

*(4) Subject to subsection (5) below, where there occurs any event on the occurrence of which, under any rule of law relating to the duty of maintaining a highway by reason of tenure, enclosure or prescription, a highway would, but for the enactment which abrogated the former rule of law under which a duty of maintaining highways fell on the inhabitants at large (section 38(1) of the Highways Act 1959) or any other enactment, become, or cease to be, maintainable by the inhabitants at large of any area, the highway shall become, or cease to be, a highway which for the purposes of this Act is a highway maintainable at the public expense.*

*(5) A highway shall not by virtue of subsection (4) above become a highway which for the purposes of this Act is a highway maintainable at the public expense unless either—*

*(a) it was a highway before 31st August 1835; or*

*(b) it became a highway after that date and has at some time been maintainable by the inhabitants at large of any area or a highway maintainable at the public expense;*

*and a highway shall not by virtue of that subsection cease to be a highway maintainable at the public expense if it is a highway which under any rule of law would become a highway maintainable by reason of enclosure but is prevented from becoming such a highway by section 51 below.*

***(6) The council of every county, metropolitan district and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.***

***(7) Every list made under subsection (6) above shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours and in the case of a list made by the council of a county [in England], the county council shall supply to the council of each district in the county an up to date list of the streets within the area of the district that are highways maintainable at the public expense, and the list so supplied shall be kept deposited at the office of the district council and may be inspected by any person free of charge at all reasonable hours.*** *(my emphasis)*

999. Section 36 of the Highways Act 1980 deals with highways maintainable at public expense.

1000. In summary, highways created before 1835 were highways maintainable by the inhabitants at large of a Parish. The Highway Act 1835 modified the position by providing that no road made after 1835 was to be repairable by the inhabitants at large, unless it was expressly adopted by the Highway Authority under the formal procedure laid down in that Act. Repair of highways created before 1835 remained the responsibility of the inhabitants at large, until the enactment of the Highways Act 1959 which provided that no duty with respect to the maintenance of highways was to lie on the inhabitants at large of any area and, in the main, became maintainable at public expense.

1001. The Highways Act 1980 provided that all highways which, immediately before its commencement, were highways maintainable at the public expense for the purposes of the Highways Act 1959 continued to be so maintainable for the purposes of the Highways Act 1980: See Halsbury's Laws of England, Volume 21 (Highways) (2004 Reissue) paragraphs 249 and 251.

1002. Footpaths, whether created before or after 1835, remained the responsibility of the inhabitants at large until December 1949, when the National Parks and Access to the Countryside Act 1949 applied certain provisions of the Highways Act 1835 to newly created public paths: Halsbury , quoted above.

1003. The relevant provisions of Section 36, for the purposes of the submissions made to me were Section 36(6) and (7) which, at the risk of repetition read:

(6) *The council of every county … shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.*

(*7*) *Every list made under subsection (6) above shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours and in the case of a list made by the council of a county … , the county council shall supply to the council of each district in the county an up to date list of the streets within the area of the district that are highways maintainable at the public expense, and the list so supplied shall be kept deposited at the office of the district council and may be inspected by any person free of charge at all reasonable hours.*

1004. It is common ground that Rowden Lane has never been formally adopted as a highway under any statutory procedure.

1005. The Claimants have contended that none of the lists put forward by the First Defendant as a 'section 36 (6) list' met the actual requirements of section 36(6) and (7) of the Highways Act 1980 and, as a result, the First Defendant cannot bring itself within the exception provided by section 67(2 (b) of NERC 2006. Therefore, any vehicular rights which the public enjoyed over Rowden Lane were extinguished on 2 May 2006.

<u>The 1974 Highways Map for Chippenham</u>

1006. Under the Local Government Act 1929, a county council became responsible for all rural roads and *principal* roads in the urban areas. The Local Government Act 1972 abrogated the distinction between urban and rural highway authorities, and gave responsibility for the remaining roads in urban areas to the county council.

1007. Before 1 April 1974, the Highways Authority for Rowden Lane was Chippenham Borough Council. The 1972 Act transferred the responsibility to the First Defendant, to which Chippenham Borough Council passed its highway records.

1008. Mr Harbour, as Appendix ARH 21 to his report, produced the Chippenham Highway Record Map dated 1974. Unfortunately, it has not been possible to identify the process by which this map was produced.

1009. That map plainly is in error, in my judgment, in that it shows the entirety of Section B of Rowden Lane as part of RUPP 5, when it is plain from all the maps produced, as part of the Definitive Map and Statement process, that RUPP 5 only began at the cattle grid, at the eastern end of Rowden Lane, and then led south east along the entrance road to Rowden Farm to the Lacock parish boundary, some 109 metres west of Rowden Farm Buildings. RUPP 5 was approximately 167 yards (182m) long and of an average width of 10 feet (3m).

1010. The first 70 metres of Rowden Lane on that plan, Section A, was shown coloured orange, representing a full public highway, and indicated that improvements had been made on that Section. Section B of Rowden Lane, in ARH 21, was in the same green colouring as that shown for RUPP 5 *beyond* the cattle grid towards Rowden Farm. Section B must have been coloured green in error.

1011. There is another issue with the coloured plan at ARH 21 in that it shows Footpath 4 (for Chippenham) as stopping either side of Rowden Lane, and not continuing across the Lane. Moreover, the green colouring over Section B appears only over the metalled surface of the Lane, and not the verges. This would therefore create a break in the continuity of Footpath 4 which, on ARH 21, was not shown as running over the verges, but only the metalled surface, of Rowden Lane.

1012. On the evidence, the precise basis on which the new urban area highway records were drawn up is not clear. However, I have no doubt that an error was made in respect of the standing of Section B of Rowden Lane shown on the 1974 Chippenham Highway Record. Section B was shown in green as part of RUPP 5, when it never had

that status on the Definitive Map and Statement, or on any of the plans prepared as part of the Definitive Map process.

1013. The highway records were amended in 1983 (ARH 22), to show the entirety of Sections A and B coloured orange. It would appear that the highway record was amended, in the light of information concerning the maintenance of the whole length of Rowden Lane before 1983, by the County Surveyor, as shown in memoranda set out below.

1014. This erroneous map was, I am satisfied, the source of some confusion and error in correspondence passing between representatives of the Claimants and some Local Authorities in the 1980s, which I set out below.

Correspondence concerning the status of Section B of Rowden Lane in 1983

1015. A memorandum, dated10 February 1983, from the County Surveyor read:

"*Path No. 5 Chippenham*

*As a result of some recent internal disciplinary issues I had cause to investigate the rights of way over Rowden Lane, Chippenham, which, as you know, is part of an unclassified road and part of Road Used as a Public Path No. 5.*

*Without going into detail the internal issue evolved around workmen carrying out works to the surface without permission. The purpose of this memorandum is to enquire whether or not your records are accurate insofar as they only show the unclassified road continuing as far as Ordinance Survey Grid Line 91 – the edge of that particular Ordinance Survey print. In practice and in accordance to my records (and indeed as shown on the Definitive Map) the unclassified road continues further at least up to the cattle grid which is situated at approximately Ordinance Survey Reference 911½ 723½. Certainly, so far as my Area Highway Engineer is concerned, the County Road*

*extends further than that shown on your records and works have been done to it as a road in the past*

1016. That memorandum was sent by the County Surveyor to the County Secretary and Solicitor, who replied on 23 February 1983:

"*Path No. 5 Chippenham*

*My highway records for the Borough of Chippenham are those which were handed over by the former Chippenham Borough Council at the time of local government reorganisation in 1974. I have had no reason to doubt their accuracy.*

*Should you consider the length of unclassified road to extend further than shown on highway maps in my Registry Sub-Section would you kindly supply a plan showing the length of highway which is involved in order that my records may be amended."*

1017. The County Surveyor replied on 15 March 1983:

*"Path No. 5 Chippenham*

*I refer to your memorandum of 23 February 1983 and I now enclose for your records an Ordinance Survey Sheet showing the extent of the unclassified road in Rowden Lane, Chippenham, and the extent of right of way No. 5."*

1018. The County Secretary and Solicitor responded on18 March 1983:

*"I refer to your memorandum dated 15 March, 1983.*

*In order to ensure that my highway records are absolutely correct would you confirm that the highway limits extend to the ditches and/or hedges on either side? ie to the curtilages of the properties fronting Rowden Lane. The extract from the OS maps is returned herein."*

1019. The County Surveyor, on 29 March 1983, wrote:

*"Rowden Lane, Chippenham*

*I refer to your memorandum of 18 March 1983.*

*I am sorry I have no legal record of the width of this right of way but would assume that it is between the boundaries shown by the Ordinance Survey on the attached print. You will appreciate that my records are correct as to length only."*

1020. The Ordinance Survey map referred to in these memoranda (Volume 6, page 20) shows the unclassified road running between the A4 and the cattle grid, and RUPP 5 only beginning at the cattle grid.

1021. In a memorandum, dated 29 March 1983, from A.H.E. (presumably Area Highway Engineer) to the County Surveyor, the engineer wrote:

*"Rowden Lane, Chippenham*

*With reference to your memo dated 10 March 1983, I consider that it would be prudent to place the road on my list of roads requiring surfacing during the year 1983/84, should funds be available and to give it reasonably high priority although I would not consider the surface to be of a problem to vehicles at the present time, having regard to the unclassified nature of the road."*

1022. On 8 July 1983, R.F ("Dick") Jennings wrote to the County Surveyor. The letter was probably typed and drafted by his daughter, Mary Puntis. It read:

*"I am considering a small parcel of land adjacent to Rowden Lane and would be grateful if you could provide the following information:*

*a) Is Rowden Lane a Public Highway which is controlled by Wilts County Highways Department?*

b) *If it is, what distance from its junction with the A4 is deemed to be controlled by the Highways Department, and when did it become a "Public Highway" …"*

1023. On 19 July 1983, Mr Jones replied, on behalf of the County Surveyor:

*"Rowden Lane, Chippenham*

*I refer to your letter of 8 July, 1983, regarding the above.*

*In answer to your questions, according to my records, the length of Rowden Lane which is maintained by the County Council as an unclassified County Road, extends from its junction with road A4 for a length of approximately 550 yards to a point east of Elm Tree Farm. Beyond this point it becomes an unmade track and, although it is still a public highway, its present status is that of 'road used as a public path'. However, under the Special and Second Review of the definitive map, this length of track which leads to the Lacock Parish boundary will become bridleway and will be shown as such when the definitive map of rights of way is eventually published.*

*I am sorry I have no record of when the road became a public highway but I trust the above information will be of help to you."*

1024. I have mentioned above that the errors in the 1974 Chippenham map gave rise to some confusing correspondence in the 1980s. An example of this occurred in July 1982 in letters, set out below, passing between the solicitors for a prospective purchaser of a property on Burleaze, the rear of which bordered on Rowden Lane and its verge.

1025. On 6 July 1982, A C Dann and Sons, solicitors, wrote to North Wiltshire District Council (a successor to Chippenham Borough Council) as follows:

*"<u>Re, Rowden Lane, Chippenham, Wilts</u>*

*We are acting on behalf of a client who is purchasing a property in Burleaze, which has a rear boundary onto Rowden Lane, with a pedestrian access onto it.*

*We should be glad if you could kindly inform us whether or not Rowden Lane has been taken over by the local authority, or whether it is still a private road. If it has not been taken over, we should be glad to know whether there is any likelihood of there being any road changes in respect of the taking over in the future."*

1026. The solicitor to North Wiltshire District Council referred the letter to the County Secretary and Solicitor of the first Defendant, who replied on 19 July 1982:

*"I refer to your letter of 6 July addressed to the North Wiltshire District Council.*

*The track to which I believe you are referring, lying to the rear of Burleaze, is at present classified as a Road Used as a Public Path (RUPP). However, following an enquiry into the status of the path in 1978, the track has been reclassified as a bridleway, and this reclassification will be included in the next review of the Rights of Way Map.*

*In the case of RUPPs and bridleways, the County Council has a responsibility for keeping such paths freely available for use by pedestrians, horse riders and pedal cyclists."*

1027. This exchange of correspondence took place some six or seven months before the error in the 1974 Chippenham Highways Map was discovered in February 1983, and subsequently corrected. Mr Harbour, in his correspondence in 1989 and later, quoted earlier in this judgment, explained more fully how and when this error was discovered.

How were the Highways recorded ?

1028. Between 1 April 1974 and 1994, the First Defendant's records of highways maintainable or maintained at public expense were held in different ways. Some consisted of plans or maps, while others comprised lists of highways.

1029. Rowden Lane was shown in a book of maps, kept up to date by the First Defendant, called the "Burgundy Books", the title being derived from the colour of their hard covers. These books comprised pages and pages of Ordnance Survey maps, measuring, in my estimation, approximately 2-3 feet wide and 2 feet from top to bottom. There was a key to those highway records which is shown at page 28 of Bundle 14.

1030. The legend to that key showed different colours for different rights of way eg 'Highway (Classified roads)', 'Public Highway (Unclassified roads and paths)', 'Byway Open To All Traffic (B.O.A.T.)', 'Restricted Byway', 'Bridleway', 'Public Footpath', 'Cycleway', 'Highway Rights Stopped Up' and finally, identified by a light brown band, 'Highway Maintainable At Public Expense According To Type Of Use Customarily Made Of It'.

1031. Owing to its length, Rowden Lane was shown on two of these maps, coloured as a Public Highway (unclassified road and paths).

1032. I infer that the highway records for what had been Chippenham Borough Council, and latterly North Wiltshire District Council, came to the First Defendant as Highway Authority in the forms of coloured maps showing the different forms of highway, as opposed to a printed or printable list of maintainable highways. I draw this inference from the way in which Rowden Lane had been shown in the 1974 Chippenham map, and how it was corrected in 1983, by reference to coloured Ordinance Survey maps.

1033. In 1994, the First Defendant decided to create a computerised highway database ("Exor"). This task was dealt with by Jan Kuipers who, since 1991, has been the Highways Systems Manager for the First Defendant.

1034. The process whereby the then existing records were put onto the Exor database was described by Mr Kuipers. I accept his evidence of this process, as I do all his evidence. In particular, I accept that this was done by examining the highway records showing roads which were publicly maintained. A data entry for each stretch of maintainable or maintained road was put on the database.

1035. The data relating to Rowden Lane was placed on the database on 10 November 1994, as shown on the database template (entry record) for Rowden Lane, at page 784D in Bundle 2. The supporting plan is at page 784E in the same bundle. On 16 October 1995 (2/784F), an inventory of the street assets (gulleys, lamp-posts etc) on Rowden Lane was carried out by employees of the First Defendant and kept on the database, cross-referenced to Rowden Lane's unique computer reference number.

1036. The information on the database included, for each road, its numerical road type, its name or description, its database unique reference, operational area, road number, section number, whether maintainable or maintained at public expense ('A') or not ('U'), classification according to a Code of Practice, urban speed limit of 40mph or less and its eastern and northern coordinates for its start and finish points.

1037. Selected information on the database could be extracted and placed into required column headings on spreadsheets. It would then be possible to select any column, and sort its contents alphabetically to produce, for example, an alphabetical list of streets on the database. An example of a spreadsheet, in alphabetical order, showing Rowden Lane is at page 784C in Volume 2 of the trial bundle (without column headings). An example of a spreadsheet, not in alphabetical order, is shown (with column headings), at pages 237, 238 and following in Trial Bundle 10.

1038. A print out in this format, comprising about 11,000 'Adopted' roads (but not 19 rogue or unadopted roads) is referred to as a print out of the Exor database. A road was given the 'A' designation, whether formally adopted or not, provided it was maintained by the First Defendant. It therefore included ancient, ie pre-1835, highways.

1039. In summary, the relevant data for Rowden Lane was derived from the maps in the Burgundy Books and placed into the Exor database. I shall return later to the question of, and to the Claimants' submissions on, what was, or should have been, recorded in the Burgundy Books and the Exor before they could in law constitute a proper Section 36(6) list.

1040. Once saved in an electronic database, it became possible to make the information available for inspection by the public on the internet. The First Defendant did so, again using a spreadsheet, giving details of roads, (see, for example, Rowden Lane at 2/784H) form showing road classification, road number, road description, length and start and finish co-ordinates. All this was available for inspection on the First Defendant's website (http://www.wiltshire.gov.uk/road-adoption-disclaimer.htm) by those who accessed the site on and after 23 January 2006. This has been referred to as the Website list.

Candidates for a section 36(6) list?

1041. Three possible 'candidates' for a qualifying Section 36 (6) Highways Act 1980 list are:

a) The Burgundy Books; and/or

b) The Exor database; and/or

c) The First Defendant's website

1042. Although the Exor database was set up in 1994, and the website was available to the public on or after 23 January 2006, the maps in the highway record (the Burgundy

Books) are and were kept up to date. More particularly, they were kept up to date as at 1 May 2006.

1043. Having identified the candidates for a Section 36 (6) list, it is necessary to consider each one in greater detail to see whether it can or does satisfy the requirements of NERC. However, in order to identify the complicated issues with which I must deal, I set out below extracts from the final version of the pleadings as a convenient introduction to the topic.

1044. By its most recent pleading on the topic, 4 May 2009, the First Defendant has alleged that its Section 67 NERC and 36(6) 'list' was deposited and kept in its Exor computer records at its offices in Trowbridge.

<u>The pleaded issues on the section 36 (6) list</u>

1045. Paragraph 12 of the Re-Re-Amended Particulars of Claim is in the following terms:

*12 (1) In order to establish the exception contained in subsection 67(2)(b) of the 2006 Act, D1 must show that Rowden Lane:*

> *'immediately before commencement … was not shown in a definitive map and statement but was shown in a list to be kept under Section 36 (6) of the Highways Act 1980 …*

*(2) To do that D1 must show that on 1/05/2006:*

*(i) there was a list in writing which D1 or its predecessor had made under Section 36 (6) of the 1980 Act (or earlier legislation) and thereafter kept corrected up to date;*

*(ii) that list had been deposited at the offices of the council and was physically available for public inspection there;*

*(iii) that list contained wording identifying it as a list made and kept corrected up to date under Section 36 (6) of the 1980 Act;*

*(iv) that list contained details of all the publicly-maintainable streets within D1's area and not just the streets which were in fact publicly maintained;*

*(v) that list contained details of all the publicly-maintainable streets within D1's area including publicly-maintainable footpaths, bridleways, byways open to all traffic and restricted byways.*

*(3) None of the "lists" contended for by D1 as being "a list required to be kept under Section 36 (6) of the 1980 Act" within the meaning of Section 67(2)(b) of the 2006 Act, complied with the requirements in paragraph (2) above (or any of them) on 1/05/2006 (or on any other date).*

*(4) The Claimants aver that D1 has accordingly failed to establish the said exception.*

1046. In its Defence (dated 4 May 2009) to paragraph 11 of the Re-Amended Particulars of Claim, in which the Claimants had asserted without particularisation that any PVH had been extinguished by virtue of Section 67 NERC, the First Defendant put its case in the following terms:

*5. Further or in the alternative, section 67(1) of the 2006 Act does not apply to the said public right of way by virtue of section 67(2)(b) of the 2006 Act, it being the fact that on 1 May 2006 the said public right of way was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980, that is to say, a list of highways maintainable at public expense.*

6. *In the present case, on 1 May 2006, the First Defendant kept the said list on deposit in computer records which it held as Highway Authority for the County of Wiltshire at its offices at Trowbridge. The list was open to inspection by the public in terms which substantially accorded with the requirements of Section 36 (7) of the Highways Act 1980. The list was made in writing within the meaning of Section 320 of the Highways Act 1980 and Section 5 of and Schedule 1 to the Interpretation Act 1978.*

7. *On 1 May 2006 the material section of Rowden Lane was shown in the said list as a highway maintainable at public expense.*

8. *It is denied that the First Defendant must show the things stated in paragraph 11 (2) of the Re-Amended Particulars of Claim in order to establish that Section 67 (1) of the 2006 Act does not apply to extinguish the public right of way for mechanically propelled vehicles over the material section of Rowden Lane. In particular, for Section 67(2)(b) of the 2006 Act have the effect of saving the said public right of way, it is necessary only to establish that on 1 May 2006 –*

   *(i) the section of Rowden Lane over which the said public right of way was then enjoyed was not shown in a definitive map and statement; and*

   *(ii) the said section of Rowden Lane was shown in a list kept by the First Defendant under Section 36 (6) of the Highways Act 1980.*

   *Each of those requirements was satisfied in the present case.*

9. *It is immaterial to the determination of the present case whether or not a list required to be kept under Section 36(6) of the Highways Act 1980 should or should not (as is the judgment of the First Defendant) include publicly maintainable footpaths, bridleways, byways open to all traffic and restricted byways. The material facts for the determination of the present case are those stated in paragraphs 5-8 above.*

*10. The First Defendant is satisfied that as at 1 May 2006 the said list was a list of streets within its area which were then maintainable at public expense and that the list was substantially in accordance with the requirements of Section 36 of the Highways Act 1980. Further and in any event, as at 1 May 2006, the said list correctly included the section of Rowden Lane over which there was the said public right of way for mechanically propelled vehicles."*

1047. The Claimants filed a Reply (dated 15 May 2009) to the First Defendant's pleading of 4 May 2009. In it, the Claimants alleged that any section 36(6) list had to be in visible form on a page, that the First Defendant's list was of maintain**ed**, not maintain**able** streets, that it did not contain minor publicly maintainable highways, that it contained no wording identifying it as a section 36(6) list. Moreover, the Reply repeated and adopted the matters set out in paragraph 12 of its Re-Re-Amended Particulars of Claim, which I have set out fully above.

1048. Accordingly, the Claimants' contention is that, on 1 May 2006, there was not in existence any list within the meaning of Section 67 (2)(b) of the 2006 Act and/or of Section 36(6) of the 1980 Act. This argument was developed at greater length in the closing submissions of the parties.

<u>The written submissions on the issues</u>

1049. Whilst the burden of proving the exception created by Section 67(2)(b) rests upon the First Defendant, and not the Claimants, it is helpful at this stage to summarise the Claimants' contentions on this issue. The Claimants' submissions are contained in:

(a) Paragraphs 84-90 of the First Claimant's revised skeleton argument, dated 3 November 2008;

(b) The First Claimant's written submissions on what the First Defendant must establish in order to rely upon Section 67(2)(b) of any NERC 2006 (together with

draft new paragraph 12 for the Re-Re-Amended Particulars of Claim) dated 21 April 2009;

(c) The Claimants' first and second supplementary skeleton argument on Section 36(6) and NERC 2006, both dated 23 April 2009;

(d) Paragraphs 208 and 209 of the Claimants' first closing written submissions, dated 19 June 2009; and

(e) Footnotes 289-318 in the Claimants' written submissions, dated 1 September 2009, in reply to the First Defendant's closing submissions dated 21 July 2009; and

(f) Footnote 32 in the Claimants' Response (dated 18 September 2009) to the First Defendant's submissions (dated 11 September 2009) in response to Claimant's submissions in reply

1050. The First Defendant dealt with these issues in:

(a) Paragraphs 226-230 of Mr Burns undated skeleton argument in November 2008;

(b) First Defendant's skeleton argument for a telephone case management conference on 24 April 2009;

(c) Paragraphs 572-606 in the First Defendant's closing submissions dated 21 July 2009;

(d) In paragraph 30 of the First Defendant's submissions (dated 11 September 2009) in response to the Claimants' submissions in reply.

1051. The Claimants' core submission is that even if Rowden Lane were found to be a public vehicular highway, the public's right to use mechanically propelled vehicles on Rowden Lane ceased on 2 May 2006, because Rowden Lane was not on a 'list' in writing which conformed to Section 67(2)(b) NERC 2006 and 36(6) of the Highways Act 1980.

1052. Such was the importance of this issue to the parties that counsel asked me to resolve it, even if I reached the conclusion that there was no public vehicular highway on sections M-H-CG on Rowden Lane.

The scheme of Part 6 (Rights of Way) NERC 2006

1053. The use of mechanically propelled vehicles over public rights of way in the countryside was causing concern. Whilst nothing could be done to extinguish existing vehicular rights already recorded on a Definitive Map and Statement, NERC sought to address the issue by preventing any future vehicular rights being established by mere usage, and by eliminating any existing vehicular rights which had not been recorded on the Definitive Map and Statement.

1054. Therefore, one purpose of Part 6 NERC was to limit those vehicular rights which could be recorded on English and Welsh Local Authorities' Definitive Maps and Statements showing public rights of way. Section 66 halted the implied creation of rights of way (by user over 20 years) in the future for mechanically propelled vehicles. Instead, the public's rights of way for mechanically propelled vehicles could be created after 2 May 2006 only if they were expressly provided for in an enactment or if they related to a road intended to be used by mechanically propelled vehicles and constructed for that purpose under an enactment.

1055. Having limited the creation of any *new* implied rights of way for mechanically propelled vehicles, all *existing* public rights of way for mechanically propelled vehicles were extinguished on 2 May 2006 unless, immediately before that date, those particular rights were shown on a Definitive Map and Statement.

1056. This represented something of a legislative sledge hammer to crack a relatively small nut. Section 67 NERC extinguished *all* motor vehicular rights (as Mr Laurence said, even over the M4), unless those rights were recorded on a Definitive Map and

Statement. However, the real aim of this section was to extinguish vehicular rights over unrecorded Byways Open to All Traffic (BOAT).

1057. Section 66(1) of the Wildlife and Countryside Act 1981 defines a Byway Open To All Traffic as:

"A highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public *mainly for the purposes for which footpaths and bridleways are so used"***.** (My emphasis)

1058. A byway open to all traffic, a bridleway, a footpath and a restricted byway have all been referred to as 'minor highways' in the course of this trial. The scheme of the Act is to extinguish public rights of way for mechanically propelled vehicles over any highway, including the M4, unless it is recorded on a Definitive Map and Statement. However one would not record the M4 on a Definitive Map and Statement, because the M4 is *mainly* used for vehicular purposes. The Act therefore starts from the premise of extinguishing public rights of way for mechanically propelled vehicles over ways which would not be recorded on the Definitive Map and Statement in the first place.

1059. The only public vehicular rights which could have been so recorded were minor vehicular highways not *mainly* used for vehicular traffic (otherwise known as Byways Open To All Traffic). Since the ordinary road network (and the M4) *are mainly* used for vehicular traffic (and would therefore not be recorded on the Definitive Map and Statement), a curious paradox was created whereby <u>all</u> public vehicular rights were extinguished if they were not shown on the Definitive Map and Statement, *even though they would not be eligible to be so shown.*

1060. Having extinguished the vast majority of public vehicular rights on the national road network in s67(1), section 67(2) sets out the exceptions to this extinguishment, and puts the burden of establishing one of those exceptions on the person asserting the existence of public vehicular rights.

1061. Five exceptions were created by s67(2). Perhaps the most intriguing is s67(2)(e) which preserves a public right of way for mechanically propelled vehicles, if it was created by virtue of use by such vehicles during a period ending before 1 December 1930.

1062. Why was this exception created? It first became an offence to drive a mechanically propelled vehicle "off-road" on 1 December 1930. Therefore, the combined effect of this exception and s67(1) is to ensure that, in general, no past use by mechanically propelled vehicles may give rise to a public right of way for mechanically propelled vehicles, unless it was a lawful use before 1 December 1930.

"For this exception to apply, the right of way for mechanically propelled vehicles must have been created by inference of dedication at common law, through use by mechanically propelled vehicles before 1 December 1930…. This means that evidence of use before that date must be sufficient to show that a claim for dedication under the strict common law tests would have succeeded at that time."

See paragraphs 35 to 38 in Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways… Version 5 – May 2008,published by the Department for Environment, Food and Rural Affairs (DEFRA).

1063. This exception reversed the decision by the House of Lords in Bakewell Management Ltd v Brandwood [2004] 2 AC 519 which decided that a right of way might arise where mechanically propelled vehicles have used a route for the 20 year period, even where

that use was illegal. Section 67(2)(e) NERC has preserved from extinguishment only public vehicular rights, created by lawful vehicular use before 1 December 1930.

1064. The other exceptions to extinguishment should also be briefly considered.

1065. Section 67(2)(c) and (d) preserved from extinguishment an unrecorded public right of way for mechanically propelled vehicles in existence on 1 May 2006, if it was created expressly by an enactment, instrument or otherwise or if it was created by the construction of a road intended to be used by such vehicles under statutory powers. These two exceptions mirrored s66 NERC, which confined the creation, on or after 2 May 2006, of any new public rights of way for mechanically propelled vehicles to those created by an enactment, instrument or otherwise or constructed under statutory powers as a road intended to be used by such vehicles.

1066. The final two categories of unrecorded rights of way for mechanically propelled vehicles preserved by s67(2) from extinction on 2 May 2006 were ways:

(a) whose main lawful use by the public, during the period of 5 years ending with the commencement, was use for mechanically propelled vehicles; or

(b) not shown on a Definitive Map and Statement, but shown in a list required to be kept under Section 36(6) of the Highways Act 1980 (list of highways maintainable at public expense).

1067. There is an obvious difference between Section 67(2)(a) and (b).

1068. 67(2)(a) saves from extinguishment a way mainly used lawfully by mechanically propelled vehicles. This will preserve the ordinary road network, which would not usually qualify for entry on a Definitive Map and Statement because it was *mainly* used

by mechanically propelled vehicles. Although one might expect many such ways to have been created expressly by an enactment or instrument or constructed under statutory powers as a road, s67(2)(a) will also capture public vehicular highways created by implied dedication and acceptance still being used mainly and lawfully by vehicles in the 5 year period before 2 May 2006.

1069. Section 67(2)(b) does not contain any requirement as to how long a way had been used, or what its main use was. This subsection preserves from extinguishment unrecorded public rights of way for mechanically propelled vehicles *merely* by being present on a list required to be kept of highways maintainable at public expense.

1070. Whereas a way recorded on a Definitive Statement is a record of public rights (eg byway open to all traffic, bridleway, footpath etc), a s36(6) list is concerned with highways (which need not be highways over which exist rights of ways for mechanically propelled vehicles) which simply are maintainable at the public expense. Furthermore, the s36(6) list relates to *maintenance* of the highway (including footpaths), and not to a record of public rights of way for mechanically propelled vehicles.

1071. In my judgment, the exception in Section 67(2)(b) serves at least two very useful purposes. First, it avoids the question of whether the use of a highway was *mainly* vehicular, a difficult factual assessment, where the burden of proof lies on the person seeking to argue that the unrecorded right has not been extinguished. S67(2)(b) would therefore be useful in a case where the evidence was equivocal as to the main lawful use in the 5 years preceding 2 May 2006.

1072. This exception has little connection with the extinguishment of public rights of way for mechanically propelled vehicles over minor vehicular highways. However, its second

useful function is that it is a *public record*, albeit created for an entirely different statutory purpose. If the purpose of section 66 NERC 2006 is to extinguish all unrecorded public rights of way for mechanically propelled vehicles, which could have been shown on a Definitive Map and Statement available for public inspection, then an acceptable alternative was the presence of that same way in an accessible public record, albeit created for a different statutory purpose, namely a list of highways maintainable at public expense.

1073. This analysis of the role and purpose of ss66 and 67 NERC leads me to conclude that s67(2) NERC should not be given a restrictive interpretation. On the contrary, Parliament having extinguished certain public vehicular rights of way merely because they were not shown on a Definitive Map, on which many of them simply could not have been recorded, a purposive interpretation should be given to the exceptions, especially when the burden of proof is cast upon the person seeking to establish that a particular unrecorded vehicular right of way has not been extinguished. Moreover, it seems to me appropriate that, if NERC starts from the premise of abolishing such a wide category of vehicular highways (and beyond the mischief at which the Act was directed, namely unrecorded BOATs), the exceptions to this extinguishment should not, in the absence of clear and compelling language to the contrary, be construed narrowly.

1074. Nevertheless, given the blanket extinguishment of so many public motor vehicular rights of way, and the limited number of exceptions, it is important, to know with some degree of clarity, whether a vehicular right of way has been extinguished or not.

1075. Although decided on subsections 67(3) and (6) NERC, the decision of the Court of Appeal in R (on the application of Warden and Fellows of Winchester College and another) -v- Hampshire County Council cited above, emphasised the need for certainty

in this area. It is also a case on which Mr Laurence and Ms Clark place considerable reliance.

1076. Even if the NERC did extinguish a particular unrecorded public vehicular right of way, it did not leave stranded those who lived on that road or way. The rights of frontagers and visitors were protected by the conferment of a statutory easement under s67(5) NERC, if no other exception or extinguishment applied. This statutory easement would exist even if a frontager had no existing private easement, whether by prescription or otherwise.

*Winchester College* case

1077. This case did not involve any of the exceptions set out in section 67(2) of NERC 2006. Rather, it concerned subsections 67(3) and (6). These provisions save from extinguishment an existing public right of way for mechanically propelled vehicles if:

(a) before 20 January 2005, an application was made under Section 53(5) of the Wildliife and Countryside Act 1981 for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,

(b) before 2 May 2006, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application.

1078. Section 67(6) reads:

*For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.*

*Paragraph 1 of Schedule 14 to that Act provided:*

*"An application shall be made in the prescribed form and shall be accompanied by:*

*(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates and*

*(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.*

1079. The *Winchester College* case involved two distinct applications to upgrade to a byway open to all traffic (i) a bridleway (the Tilbury Application) and (ii) an existing RUPP (the Fosberry Application).

1080. In both cases the Local Authority upgraded the bridleway and the RUPP on the Definitive Map by modifying them so as to show them as Byways Open to All Traffic. The landowners sought judicial review of that decision. The two factual matters which lay at the heart of the judicial review were:-

(1) In relation to both applications, although the prescribed form had been completed the supporting evidence had only been listed, and copies of the maps, documents and statements had not accompanied the completed application form;

(2) In relation to the Fosberry Application alone, there were defects in the Certificate of Service purportedly given by Mr Fosberry, pursuant to paragraph 2(3) of Schedule 14 to the 1981 Act. This essentially required the applicant to file a certificate stating that notice of the application had been served on every owner and occupier of any land to which the application related. However, the Applicant merely fixed a notice on the site and sent photos of it by email to the authority. The case proceeded on the basis that the Authority must have known that the requirements of paragraph 2 had not been complied with, and was aware that

the notice had not been served on the registered owners, merely displayed on site. The local authority had power to order, but had not in fact ordered, that the notice could be served by addressing it to the owner of the land and affixing it to some conspicuous object or objects on the land.

1081. Mr Laurence, who acted for the landowner, argued in relation to both applications that no qualifying application had been made under Section 67(3) and (6), because the prescribed form had not been accompanied by the supporting documentation, maps and statements. At first instance, the judge had drawn a distinction between the actual application form itself and the supporting evidence, finding that only the former had to be present for an application to be made. In the Court of Appeal, it was held that, for the purposes of Section 67(3) of NERC, an application under Section 53(5) of the 1981 Act was not made in accordance with paragraph 1 of Schedule 14 to the 1981 Act, unless it satisfied all three requirements of paragraph 1, namely that it had been (i) made in the prescribed form (ii) accompanied by a map drawn to the prescribed scale and showing the way(s) to which the application related; and (iii) accompanied by copies of any documentary evidence (including statements of witnesses) which the applicant wished to adduce in support of the application.

1082. In summary, the Court of Appeal held that because no qualifying application had been made in accordance with section 67(6) NERC, the extinctive provisions of section 67(1) applied.

1083. In relation to the Fosberry application, Mr Laurence also argued that the Council had no jurisdiction to make a decision on his application under section 53(5), if any of the paragraph 2 requirements of schedule 14 had, to the Council's knowledge not been complied with. This was because, in such a case, the resulting paragraph 2(3) certificate would be invalid.

1084. At first instance, the judge held that the failure to comply with the statutory procedural requirements at paragraph 2(2) did not render the Council's decision on the applications invalid. The purpose of the requirement was to ensure that each landowner and occupier affected by an application was made aware of it. In fact, all landowners and occupiers affected by the Fosberry application had received notice of it in good time to enable them to consider the application and make representations to the Council in respect of it. Accordingly, the Council was entitled to waive the formal requirements and to determine the application as it did. This decision was upheld in the Court of Appeal.

1085. The reasoning of the Court of Appeal in relation to these two different outcomes is important. Indeed, Mr Laurence and Ms Clark rely upon the reasoning of the Court of Appeal on the 'qualifying application' point. Therefore, I must look closely at that decision.

1086. In essence, Mr Laurence submitted that just as there was no 'qualifying application' in the *Winchester College* case, there was in the instant case no 'qualifying section 36(6) list'.

1087. In relation to the 'qualifying application' point, Dyson LJ, with whom the other members of the court agreed, said the following:-

> **[37]** But the question that arises in relation to s 67(6) is not whether the council had jurisdiction to waive breaches of the requirements of para 1. It is whether the applications were made in accordance with para 1. For present purposes, the question of whether the applications were made in accordance with para 1 is only relevant to whether extinguishment by sub-s (1) is disapplied by sub-s (3). It has nothing to do with the wider question of whether, absent the 2006 Act, the council would be entitled to treat a non-compliant application as if it complied by waiving what the judge referred to as breaches of 'procedural' requirements.
>
> **[38]** In any event, I accept the submission of Mr Laurence that the purpose of s 67(6) is to define the moment at which a qualifying application is made because timing is critical for the purpose of determining whether sub-s (1) is disapplied. The moment identified by Parliament as the relevant moment is when an application is made in accordance with para 1. A purported subsequent waiver of the obligation to

accompany the application with copies of documentary evidence cannot operate to alter the date when the non-qualifying application was made or to treat such an application which was made on a particular date as having been made in accordance with para 1 when it was not. All a waiver can do, with effect from the date of the waiver, is to permit the decision-maker to treat itself as free to determine the application even though it was not made in accordance with para 1.

**[39]** The main emphasis of the judgment and Mr Mould's oral submissions was on the argument that the failures to accompany the applications with copies of the documentary evidence were breaches of procedural requirements which did not affect the council's jurisdiction to waive the breaches and determine the applications. For the reasons that I have given, this argument is irrelevant to the s 67(6) question.

**[40]** But at [37] the judge also said that 'an application does not fail to constitute an application' because it is not accompanied by a map and copies of the evidence that the applicant wishes to adduce. I take this to mean that an application which is invalid because it is not so accompanied is nevertheless made in accordance with para 1. That is to say, it is so made if it is made in the form set out in Sch 7 to the 1993 regulations or 'in a form substantially to the like effect' (reg 8(1)) and it refers to new evidence which is not irrelevant (see [43] of the judgment).

**[41]** In his skeleton argument, Mr Mould submits that an application under s 53(5) is *made* when it is made in the prescribed form and identifies the route to which the application relates. He says that it is immaterial to the question whether an application has been *made* that it is accompanied by copies of all, some or none of the documentary evidence relied on by the applicant as the evidential basis for the application.

**[42]** I cannot accept that an application which is not accompanied by a map (sub-para (a)) or by copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application (sub-para (b)) is made in accordance with para 1 of Sch 14. An application is not so made unless it is made in accordance with all three requirements of the paragraph. There is no warrant for saying that an application which is in accordance with the first requirement of the paragraph, but not the second or third, is made in accordance with the paragraph.

**[43]** Section 67(6) could have said that, for the purposes of s 67(3), an application under s 53(5) is made when it is made in the form prescribed by reg 8 of the 1993 regulations. Mr Mould's argument proceeds as if it did. The judge's approach is the same, although he adds that it is implicit in the function of s 53(5) that, in order to be made in accordance with para 1 of Sch 14, an application must also refer to new evidence that is not irrelevant.

**[44]** Mr Litton adopts a yet different approach. He submits that an application is made in accordance with para 1 if it is made in the prescribed form (or a form to substantially like effect) and the requirements of para 1(a) are satisfied. He says, however, that it is not necessary for the making of an application that the requirements of para 1(b) be met. He seeks to justify the different treatment of the two subparagraphs of para 1 by saying that this is required by a purposive construction. He submits that the requirement that the application should be accompanied by a map showing the public right of way to which the application relates is important: it is necessary to identify clearly the rights of way in respect of which the rights are being claimed. On the other hand, a strict insistence that an application should be accompanied by copy documents serves no real purpose and confers no obvious advantage over providing a list of the documents in support of

the claim, particularly where the authority is already in possession of, or has access to, such documents.

**[45]** I can see that the distinction Mr Litton seeks to draw may be relevant to the question whether a failure to comply with para 1 should be waived in the particular circumstances of the case. But I do not see how the distinction can be relevant to determining whether an application has been made in accordance with para 1. As a matter of construction, it seems to me that, in order to be made in accordance with the paragraph, an application must be accompanied by both a map and copies of documentary evidence or neither. It is impossible to spell out of para 1 that an application may be made in accordance with it if it is accompanied by one but not the other.

**[46]** In my judgment, as a matter of ordinary language an application is not made in accordance with para 1 unless it satisfies all three requirements of the paragraph. Moreover, there are two particular indications that an application is only made in accordance with para 1 of Sch 14 if it is made in accordance with all the requirements of the paragraph. First, para 1 is headed 'Form of applications'. The word 'form' in the heading is clearly not a reference only to the prescribed form. It is a summary of the content of the whole paragraph. It is a reference to how an application should be made. It must be made in a certain form (or a form substantially to the like effect with such insertions or omissions as are necessary in any particular case). It must also be accompanied by certain documents. The requirement to accompany is one of the rules as to how an application is to be made.

**[47]** Secondly, Sch 7 to the 1993 regulations shows that the prescribed form itself requires the route to be shown on the map 'accompanying this application' and the applicant to 'attach' copies of the following documentary evidence (including statements of witnesses) in support of the application. This language reflects the content of sub-paras (a) and (b) of para 1. It is artificial to say that, in order to be made in accordance with para 1, an application must be made in the prescribed form or a form to substantially like effect; but that it need not be accompanied by a map or have attached to it the documentary evidence and witness statements to be adduced even though these are referred to in the body of the prescribed form itself. The language of the form shows that an application is only made in accordance with para 1 if it is made in the prescribed form and is accompanied by a map and the documentary evidence and witness statements to be adduced.

**[48]** It is submitted by Mr Mould and Mr Litton that a strict interpretation of para 1 leads to absurdity and cannot have been intended by Parliament. For example, the application may list a number of documents, but by oversight may be accompanied by only some of them. The absurdity may be sharpened by the fact that the authority has the originals in its possession or has access to them.

**[49]** I acknowledge that matters of this kind are relevant to the question whether the consequences of the failure to make the application in accordance with para 1 are such that the failure can and should be waived in the particular circumstances of the case. But in relation to the specific s 67(6) question, I do not see how they are relevant to whether the application, when it was made, was made in accordance with para 1. In relation to that question, Parliament stipulated that an application is made when it is made in accordance with all the requirements of the paragraph.

**[50]** It is also necessary to consider the case where an application is not accompanied by the copy documents because the applicant is unable to obtain them. Mr Laurence concedes that it would be absurd to hold that an application is not made in accordance with para 1 where copy documents do not accompany it

because the applicant cannot obtain them. In order to avoid such absurdity, he submits that the obligation should be construed as being to accompany the application with copies of all the documents which the applicant wishes to adduce in support of his application, save for any which it is impossible for him to obtain. Such a construction is justified on the basis that 'unless the contrary intention appears, an enactment by implication imports the principle of the maxim *lex non cogit ad impossibilia* (law does not compel the impossible)': see Section 346 of *Bennion on Statutory Interpretation* (4th edn, 2002).

**[51]** I accept this submission. Mr Mould submits that this exception is not expressed in the legislation and is uncertain as to its extent and application. He says that it is unclear how, as regards any given application, the question whether it is impossible for the applicant to supply a copy of a document is to be judged and by whom such judgment is to be made. The court should be slow to adopt so arbitrary and uncertain an approach.

**[52]** But it is intrinsic to the maxim of construction that it arises by implication. Further, in my view the difficulties identified by Mr Mould are overstated. It should not be difficult for a surveying authority (or if necessary the court) to verify the explanation given by the applicant for his failure to copy a particular document. I do, however, acknowledge that to this limited extent there is an element of uncertainty in the application of para 1 if, for the purposes of s 67(3), it is strictly construed in the way that I have described.

**[53]** Uncertainty cannot be avoided on the approach advocated by Mr Mould and Mr Litton either. This is because, on that approach, the question whether an application is a qualifying application where there is a failure to comply with para 1(a) and/or (b) depends on whether the authority is entitled to waive the non-compliance. That in turn depends on an assessment of the consequences of the non-compliance for the authority in the particular circumstances of the case. The consequences for authority A which has copies of the missing documents are obviously different from the consequences for authority B which has no copies of the documents. Predicting the assessment is far from certain.

**[54]** In his analysis of the first issue, the judge did not address the effect of s 67(6) at all. Nor do the submissions of Mr Mould and Mr Litton. In my judgment, s 67(6) requires that, for the purposes of s 67(3), the application must be made strictly in accordance with para 1. That is not to say that there is no scope for the application of the principle that the law is not concerned with very small things (de minimis non curat lex). Indeed this principle is explicitly recognised in reg 8(1) of the 1993 regulations. Thus minor departures from para 1 will not invalidate an application. But neither the Tilbury application nor the Fosberry application was accompanied by any copy documents at all, although it was clear from the face of the applications that both wished to adduce a substantial quantity of documentary evidence in support of their applications. In these circumstances, I consider that neither application was made in accordance with para 1.

**[55]** I wish to emphasise that I am not saying that, in a case which does not turn on the application of s 67(6), it is not open to authorities in any particular case to decide to waive a failure to comply with para 1(b) of Sch 14 and proceed to make a determination under para 3; or to treat a non-compliant application as the 'trigger' for a decision under s 53(2) to make such modifications to the DMS as appear requisite in consequence of any of the events specified in sub-s (3).

**...**

***Conclusion on the first issue***

**[59]** It follows that neither the Tilbury application nor the Fosberry application was a qualifying application. The Tilbury application was made before 20 January 2005 and was not a s 53(5) application for the purposes of s 67(3)(a). The result is that for that reason his application did not save the rights for mechanically propelled vehicles over Chilcomb Bridleway 3 from extinguishment by s 67(1). The Fosberry application was made after 20 January 2005 and before the commencement date of 2 May 2006. If the rights for mechanically propelled vehicles to which that application was relevant were to be saved from extinguishment, this could only be if a determination was made before 2 May 2006 under para 3 of Sch 14 'in respect of [an application made under s 53(5)]': see s 67(3)(b). The reference to 'such an application' in s 67(3)(b) is to an application made under s 53(5) for the purposes of s 67(3)(a). For this reason, the relevant rights in that case (over Twyford RUPP 16) were not saved from extinguishment by s 67(1) either. I would, therefore, decide the first issue in favour of the claimants in respect of both applications.

1088. As far as the second issue in the *Winchester College* case was concerned (namely, the incorrect Certificate of Service) Dyson LJ said this:

**[63]** The council was required by para 3(1), as soon as reasonably practicable after receiving a certificate under para 2(3), to decide whether or not to make the order to which the application related. Mr Laurence submits that, because to the knowledge of the council, Mr Fosberry had provided his certificate under para 2(3) without complying with the requirements of para 2(2), the council's decision in this case could not be a determination under para 3. It follows that the requirements of s 67(3)(b) were not satisfied.

**[64]** The judge rejected this argument. He found that, when Mr Fosberry provided his certificate, the council must have known that the requirements of para 2 were not being complied with. It was aware that notice had not been served on Mr and Mrs Wood or Humphrey Farms Ltd and these were the registered owners. Mr Fosberry's certificate stated that notices had been displayed on the site, but no direction had been given by the council pursuant to para 2(2) that notice could be served by addressing it to the owner by the description 'owner' of the land and affixing it to some conspicuous object or objects on the land.

**[65]** The judge held at [58] that these failures to comply with the statutory procedural requirements of para 2(2) did not render the council's decision on the applications invalid. The purpose of the requirements is to ensure that each landowner and occupier affected by an application is made aware of it. All landowners and occupiers affected by the Fosberry application received notice of it in good time to enable them to consider the application and make representations to the council in respect of it. The council was entitled to waive the formal requirements and to determine the application as it did.

**[66]** Mr Laurence submits that the council had no jurisdiction to make a decision pursuant to an application made under s 53(5) if any of the para 2 requirements had to its knowledge not been complied with. That is because in any such case, the resulting para 2(3) certificate would be invalid.

**[67]** In my view, the judge was right on this issue. As Mr Mould submits, the correct approach is to apply ordinary public law principles. In so far as there is shown to have been a failure to comply with the procedural requirements of para 2, it is necessary to ask whether and, if so, to what extent any substantial prejudice has been suffered as a result. On the facts of this case, the council was entitled to waive the failure to comply with the procedural requirements.

1089. Dyson LJ then summarised the different outcomes on the appeal in the following way:

**[68]** In my view, the difference between the failure to comply with para 1 (the first issue) and the failure to comply with para 2 (the second issue) is fundamental. As I have explained, in the first case the effect of s 67(6) was that s 67(3)(a) was not engaged and s 67(1) applied. It was irrelevant whether the failure was a breach of a procedural requirement which could be waived. On the other hand, in the second case s 67(6) is not in play. The only question here is whether the determination was a determination under para 3. On the face of it, the council unquestionably decided to make a determination. It purported to be a determination in respect of the Fosberry application: see [26]–[27], above. It must follow that it was purportedly a determination under para 3 (rather than a free-standing decision pursuant to s 53(2)). Moreover, the determination was made following receipt of what purported to be a certificate under para 2(3).

**[69]** It is true that the certificate was not properly issued, but it does not follow that the consequent determination was invalid. In *R v Soneji* [2005] UKHL 49 at [23], [2005] 4 All ER 321 at [23], [2006] 1 AC 340, having reviewed the authorities on the distinction between mandatory and directory requirements, Lord Steyn said: 'the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity. That is how I would approach what is ultimately a question of statutory construction.'

**[70]** Adopting that approach, I conclude that Parliament cannot fairly be taken to have intended that, if a para 2(2) certificate is wrongly issued, it must follow that a determination on which it is based is invalid. The facts of the present case show that the better approach is to examine the consequences of the defect in the certificate. If they are serious and the defective certificate has caused real prejudice, then it may be that the determination on which it is based should be declared to be invalid. But in my judgment, on the facts of this case the judge reached the correct conclusion on this issue and for the right reasons.

Observations on the *Winchester College* case.

1090. Whilst the Court of Appeal expressly recognised that the timing was critical, when it came to determining whether section 67(1) NERC was disapplied, plainly the decision itself turned upon the interaction between subsections 67(3) and 67(6) NERC. In summary, because no qualifying application was made before any of the dates

specified in section 67(3) NERC, any public right of way for mechanically propelled vehicles was extinguished on 2 May 2006.

1091. Even making the fullest allowance for the need for clarity and certainty in determining whether or not a public right of way for mechanically propelled vehicles was extinguished on 2 May 2006, I see little scope for extending the argument based on a non 'qualifying' application in the *Winchester* case to a non 'qualifying' section 36(6) list for the purposes of section 67 NERC in the case which I have to decide.

1092. As the Court of Appeal itself indicated, the *Winchester* case was decided upon a specific statutory provision, the wording of which was expressed in clear and ordinary language. Moreover, it was concerned with section 67(3), and not section 67(2) with which I am concerned. Moreover, section 67(3) contained transitional provisions relating to extant applications to amend the Definitive Map and Statement itself, on which the rights of way were to be recorded.

1093. In my judgment, *Winchester* is concerned with a very specific question of statutory construction, namely *when* an application was made. Either a valid application was made by a relevant time or it was not. Furthermore, the nature of the application was one which was integral to the recording of a public right of way for mechanically propelled vehicles on the Definitive Map and Statement itself. By contrast, section 67(2)(b) (… not shown in a definitive map and statement but shown in a list required to be kept under section 36(6) of the Highways Act 1980), proceeds on the premise that the way is unrecorded on the Definitive Map as a public right of way for mechanically propelled vehicles.

1094. A section 36(6) list can contain details of all forms of highways maintainable at public expense. It is not confined to rights of way for mechanically propelled vehicles.

Moreover, the clear purpose of such a list is the *maintenance of,* not the *recording of* vehicular rights over, highways which have to be maintained out of the public purse.

1095. Accordingly, it is difficult to see why a list of a broad category of highways (and not confined to rights of way for mechanically propelled vehicles) compiled for the purposes of maintenance liability, should provide a record relevant for the prevention of extinguishment of a right of way for mechanically propelled vehicles.

1096. It seems to me that the characteristic of a section 36(6) list, most relevant to preventing the extinguishment of vehicular highway rights, is the fact that it is a public document open to inspection. It is its status as a public document, required to be kept by statute albeit for different purposes, open to inspection by the public, which is its important characteristic.

1097. In short, a record of a public right of way for mechanically propelled vehicles contained within a document, compiled for the purposes of identifying all highways which are publicly maintainable, is an adequate alternative form of public record to a Definitive Map and Statement, for the purposes of saving that right of way from extinguishment. A Definitive Map and Statement constitute a register of public rights of way, whereas a Section 36(6) list is a list of all types of highway maintainable at the public expense, yet the latter is deemed to be a sufficient public record to keep alive the relevant public right of way.

1098. The decision of the Court of Appeal in the *Winchester College* case rested upon the express wording of Section 67(6). This is further exemplified by its conclusion on the Fosberry application. Even though the certificate which had been filed was prima facie incorrect and invalid, the Court of Appeal recognised that it was nevertheless open to the Council to waive this procedural requirement.

1099. If the issue of timing, clarity or certainty were so critical, and if one had to know whether a determination was valid or not, one might have expected, as Mr Laurence had argued, that no valid determination could be made when there had been an invalid certificate.

1100. In my judgment, the manner in which the Court of Appeal disposed of these two issues, with their differing outcomes, indicates that, in the absence of clear language compelling the court to do so, the question is not the clear cut one of 'Was there a *qualifying* Section 36(6) list for the purposes of Section 67(2)(b) NERC 2006 on 1 May 2006?' The decision maker (ie the Council in the *Winchester* case) or the list maker (ie the Highway Authority as in Section 36(6)) may use an element of judgment in its task.

1101. Accordingly, I do not regard *Winchester* as underpinning a principle of wider applicability, namely that unless there is strict compliance with an exception contained in Section 67(2) then the public right of way for mechanically propelled vehicles in question is extinguished. It is necessary to look at the terms of each exception in the context of the underlying purpose of the legislation.

1102. Leaving aside subsection 67(2)(e) (concerned with vehicular use before 1 December 1930) subsections 67(2)(a) to (d) have in common the theme of easily available evidence, namely that, even though the right of way for mechanically propelled vehicles is not shown in a Definitive Map and Statement, there is either a public statute /document or recent lawful usage which saves from extinction through s67(1) a public right of way for mechanically propelled vehicles in existence on 1 May 2006.

<u>The Claimants' submissions on section 67(2)(b) NERC in summary</u>

1103. According to the Claimants' case, in order to come within the exception provided by section 67(2)(b) NERC, a qualifying section 36(6) list must have the following characteristics, namely it must :

(a) be in writing;

(b) be physically in existence on a piece of paper or other physical medium on 1 May 2006. This follows from the statutory requirement that such a list should be made, kept corrected up to date and available for inspection. These words connote a list in actual existence in a physical form;

(c) not require generation or bringing into existence by the press of a button or other device;

(d) comprise only one list, not several;

(e) contain minor highways (e.g. footpaths, by ways open to all traffic, restricted byways) maintainable at public expense, in addition to major vehicular highways maintainable at the public expense;

(f) not contain highways which are not maintainable at public expense

(g) be a list of publicly maintainable, not publicly maintained highways

(h) identify itself as the section 36(6) Highways Act list and

(i) be a compliant list, in the sense that it must contain all relevant categories of publicly maintainable highway, even if some names have been missed off by error, It cannot be one which omits a whole category (e.g. minor highways) deliberately.

Minor Highways

1104. Mr Kuipers said in evidence that minor highways did not feature on the First Defendant's Exor database. In the light of this admission, Mr Laurence argued that

there was a deliberate omission of a specified category of publicly maintainable highway which should have featured on the s36(6) list with the result that it was not a qualifying s36(6) list. He contended that this was a different situation from an otherwise compliant s36(6) list which needed correction.

1105. At this stage, it is important not to overlook the fact that, even on the Claimants' case, Rowden Lane, between points M-H-CG, is a bridleway maintainable at public expense. The First Defendant's primary case is that Rowden Lane is a publicly maintainable highway because it is a pre-1835 public vehicular highway, albeit never formally adopted. Accordingly, on both cases, Rowden Lane should feature on the First Defendant's section 36(6) list of highways maintainable at public expense.

1106. Indeed, Rowden Lane does, and on 1 May 2006 did, feature in the Exor database, on the website and in the Burgundy Books. I am satisfied that if a member of the public visited the First Defendant's offices in Trowbridge on 1 May 2006 and asked whether Rowden Lane was a street or highway maintainable at public expense, she or he would have been told that it was not only maintainable at public expense but that it was maintained at public expense. Rowden Lane was therefore shown on *some* list of highways which the First Defendant considered it was legally obliged to maintain as at 1 May 2006.

1107. The issues which I have to decide relate to what are the characteristics of a section 36(6) list, for the purposes of section 67 NERC, and whether any of the First Defendant's candidates possessed those characteristics.

1108. In summary, the Claimants say the First Defendant's Exor list did not possess the necessary characteristics, whereas the First Defendant alleges that the computerised Exor database constituted its section 36(6) list, even if it were a defective one, and Rowden Lane was on it.

1109. Does a section 36(6) list ("the council of every county shall cause to be made and shall keep corrected up to date a list of the streets within their area which are highways maintainable at the public expense") have to contain minor highways maintainable at public expense?

1110. Section 329 of the Highways Act 1980 provides that, except where the context otherwise, "street" has the same meaning as in Part III of the New Roads and Street Works Act 1991.

1111. Section 48 of that latter Act reads

"(1) In this Part "street" means the whole or any part of any of the following, irrespective of whether it is a thoroughfare –

(a) any highway, road, lane, footway, alley or passage,

(b) any square or court; and

(c) any land laid out as a way whether it is for the time being formed as a way or not.

…

(2)The provisions of this part apply to a street which is not a maintainable highway subject to such exceptions and adaptations as may be prescribed".

1112. The Claimants' contention is that all highways, major and minor, are within the definition of "street". It follows therefore that a section 36(6) list must include publicly maintainable minor highways (eg bridleways, restricted byways, footpaths etc), and so a s36(6) list which deliberately omitted minor highways was not a qualifying s 36(6) list. Minor highways should be recorded both on the Definitive Map and Statement and (if they were publicly maintainable) on a s 36(6) list.

1113. Mr Laurence developed his submission on the minor highways point by drawing my attention to a publication called *Rights of Way - A Guide to Law and Practice*, by Riddall and Trevelyan, 4th Edition, where, at page 158, the learned authors say the following:

*Some authorities have taken the view that the list of streets and the definitive map are mutually exclusive: that a way should not be included in both. This view is mistaken. The definitive map records only the public's rights; the list of streets records only the highway authority's maintenance liability. Since most rights of way shown on definitive maps are also maintainable at public expense (see Chapter 10), it follows that there is likely to be a considerable overlap between the contents of the two documents. But the entries on the two will not be identical. For example, a highway that satisfies the description of byway open to all traffic but which is not publicly maintainable will appear on the definitive map but not on the list of streets; a carriageway that is publicly maintainable and is used principally by vehicular traffic will appear in the list of streets but not on the definitive map.*

1114. Accordingly, Mr Laurence submitted that there was no mutual exclusivity between a Definitive Map and Statement in a s36(6) (list) and, because the Exor database did not contain details of minor highways maintainable at public expense, it was deficient and did not preserve any public right of way for mechanically propelled vehicles over Rowden Lane under section 67(2)(b) NERC.

1115. The First Defendant's answer to the minor highways point was that section 36(6) did not require *all* publicly maintainable highways to be shown. The definition of "street" is apt to cover minor highways, but not every publicly maintainable minor highway was a street within s36(6). It was a matter of judgment whether or not any particular highway is a street maintainable at public expense. If an error had been made, it was argued that an Exor list which omitted highways, or was otherwise out of date, was still a s

36(6) list. Since s 36(6) contains the power to correct an omission, even the omission of the category of minor highways, does not prevent the Exor database being a s 36(6) list, and, at 1 May 2006, the First Defendant had a list with over 11,000 sections of publicly maintainable highway on it marked with the letter "A".

1116. In my judgment, unless the context indicates to the contrary, a list of the streets which are highways maintainable at the public expense should include minor highways. This is because the purpose of such a list is to identify those highways which are maintainable out of the public purse, and I cannot see why there should be a difference between publicly maintainable major and minor highways in this context.

1117. It is has been suggested on behalf of the First Defendant that Mr Laurence's 'minor highways' argument represents a collateral attack which should have been dealt with by way of an application for judicial review. Such an application is manifestly out of time. Mr Laurence's answer to this contention, and I think the correct answer, is that since the burden of proof is upon the First Defendant to establish that public vehicular rights were not extinguished (and the argument could only be run on and after 2 May 2006) it is for the First Defendant to make out its exception. Accordingly, there is no impermissible collateral attack by the Claimants.

1118. If the First Defendant's Exor database did not contain details of minor highways, is this fatal to the First Defendant's case?

1119. In my judgment, the omission of minor highways from the First Defendant's Exor database does not, of itself, prevent it from establishing Section 67(2)(b) exception for the following reasons:

1. The Act which has to be construed is NERC. One question for consideration is whether the Exor database constitutes a section 36(6) list *for the purposes of section 67(2)(b) NERC 2006*.

2. Section 36(6) itself envisages that the list can be corrected. I see no reason why the power of correction only extends to the occasional highway, as opposed to a complete category which has been omitted. In my judgment, all omissions from the list can be corrected. The question is whether that which falls to be corrected can in fact properly be called a section 36(6) list for the purposes of the 2006 Act.

3. Unlike the *Winchester College* case, there is no clear statutory language which drives me to the conclusion that a list, which omits minor highways, fails to qualify as a section 36(6) list. It does not seem to me that the exception should be construed narrowly.

4. Section 67 NERC is concerned with public vehicular rights of way not recorded on the Definitive Map and Statement. In other words, one only gets to the exceptions in section 67(2) if a relevant right of way is not so recorded. In those circumstances, I do not feel compelled by the language of section 67 NERC to strike down a section 36(6) list because it omits minor highways *maintainable at the public expense*, when one only has to consider the exception at all if the way is not *recorded on a Definitive Map.* I appreciate that there is scope for overlap between the Definitive Map and Statement and a section 36(6) list. I also accept that they are not mutually exclusive in principle.

However, where the starting point is that *any* public vehicular highway not recorded on the Definitive Map is extinguished, it seems wrong to construe an exception based upon the entry of a highway on a section 36(6) list (compiled for a completely different statutory purpose) so strictly as to render it inapplicable merely because minor highways are omitted from that list. Whilst I accept this is not in logic a complete answer, it certainly fortifies my view that, as a matter of construction, there is nothing in section 67 which requires me to give to a section 36(6) list the narrow interpretation advanced by Mr Laurence.

5. It seems to me that a Highway Authority has to exercise some judgment in deciding whether or not a particular way is a highway maintainable at public expense, especially in the absence of a formal adoption. There is room for judgment to be exercised in the compilation of a section 36(6) list, just as there was judgment to be formed about waiving procedural requirements in the *Winchester College* case. Again, the two cases are not exactly comparable, but the need to exercise some judgment in the compilation of the list militates, in my view, against too narrow an interpretation of the exception. A section 36(6) list is concerned with maintenance of a much wider category of highway than a right of way for mechanically propelled vehicles.

In my judgment, it is the existence of a *publicly available list* of highways which is the reason for the exception. The Act sought to eliminate unrecorded byways open to all traffic, but saved from extinction a way which was otherwise recorded on a public document required by statute to be kept. Because of the relative mismatch of purpose between the object to be achieved by NERC and the specific section 36(6) exception, I am inclined very strongly against a narrow interpretation of the exception, having regard to the purpose of the legislation and the purpose for which the section 36(6) list was required to be kept.

1120. Finally, before leaving this topic I should address one submission made by the First Defendant which I believe lacks substance. The First Defendant argued that if Mr Lawrence's submission were correct, it would have the effect of extinguishing public vehicular rights of way over the major road network in Wiltshire. I do not think that this is correct. The major road network would be preserved from extinguishment by its main and lawful use over the preceding five years by mechanically propelled vehicles. Alternatively, such roads would usually have been created under an express enactment. Therefore, Mr Laurence's interpretation of the exception contained in section 67(2)(b) would not have had this widespread effect.

1121. That is not to say that the exception in section 67(2)(b) was unimportant. As I have already indicated, this exception obviated the need to argue about what the main and lawful use of a particular way was over the preceding five years. It encompassed the equivocal cases, as well as the little used minor and unclassified roads of antiquity which had not been created by any statute or had not been formally adopted.

1122. Accordingly, whilst I do not regard any failure by the First Defendant to make out its exception under section 67(2)(b) as threatening the survival of the major road network in Wiltshire, I do not accept that the exception applies only to a very limited number of cases of Byways Open To All Traffic.

1123. The First Defendant has satisfied me, on the balance of probabilities, that the omission of the category of minor highways from its s36(6) list does not of itself prevent it from discharging the burden of proof on it of establishing the exception.

1124. On the contrary, I am satisfied, on the balance of probabilities, that not only was the Defendant's Exor database *capable* of constituting a section 36(6) list but also, subject to the arguments with which I later deal, it *did in fact* constitute such a list for the purposes of Section 67 NERC 2006, notwithstanding the omission from it of the category of minor highways.

1125. For the sake of completeness, I should add that I accept Mr Kuipers' evidence that on the only occasion in 22 years service he could remember of the First Defendant being asked for a complete list of the highways it maintained (a request by Kennet District Council), the First Defendant supplied not only the Exor database list but also the Definitive Map and Statement for the area concerned.

Written list

1126. All parties accept that a section 36(6) list must be in writing.

1127. Section 320 of the Highways Act 1980 provides:

> "All notices, consents, approvals, orders, demands, licences, certificates and other documents authorised or required by or under this Act to be given, made or issued by, or on behalf of, a highway authority or a council, and all notices, consents, requests and applications authorised or required by or under this Act to be given or made to a highway authority or council, shall be in writing."

1128. Section 5 of, and Schedule 1 to, the Interpretation Act 1978 define "writing", unless a contrary intention appears, as follows:

> "Writing" includes typing, printing, lithography, photography and all other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly."

1129. This is not an exhaustive definition of what "writing" means.

1130. The Claimants have argued that the examples in the definition have in common a physical and tangible end product on which the words are visible. Therefore, a list on a computer database which had to be opened to be visible on a computer screen, or printed off in hard copy, did not physically exist until generated, and so could not be "made", "kept", "deposited" or "corrected up to date". Can a list which has to be generated by, or retrieved from, a computer be said to exist in writing before such generation?

1131. NERC 2006 is a modern statute to be construed against a background which includes the existence of modern technology. The Exor database was only compiled in 1994, long after the enactment of the Highways Act 1980 (and its earlier equivalent) and the Interpretation Act 1978. In any event, I would regard words and data recorded in a computer language on a computer hard-drive as being written. They are written in a computer language. Moreover, I would regard words and numbers retained in

computer language on a computer database as a “mode of representing or reproducing words in a visible form”. I see nothing in the statutory definition which precludes an intermediate process producing the image or document containing the words.

1132. It would be a strange paradox if a typed or manuscript list of streets, written in a language or code which might have to be interpreted using a dictionary or other guide, met the statutory definition. If documents, for example company records, were kept on a microfiche, they would be in physical form and constitute a photograph containing words in visible form. However such a microfiche would not be legible without the intervention of a viewer to magnify the content of the microfiche. Yet, no doubt, this would still be a physical and existing list in writing.

1133. I find as a fact, on the balance of probabilities, and hold as a matter of law, that the First Defendant’s Exor database of highways maintained at public expense, which can be rendered visible to the public either by printing off a copy of it or by displaying it on a computer screen, constitutes a list in writing for the purposes of the Interpretation Act 1978, the Highways Act 1980 and section 67 NERC 2006.

1134. Such a computer database was made and kept as well as corrected up to date by the First Defendant, at its office in Trowbridge, where members of the public are and were able to inspect the list either on a computer screen or by receiving a print off. Usually, a member of the public wants to know whether a named street is maintained or maintainable at public expense or not. An enquiry at the First Defendant’s offices on 1 May 2006 would have found Rowden Lane on the list of highways maintained at public expense.

Must a qualifying section 36(6) list be a self contained list which identified itself as a section 36(6) list without the need for further enquiry?

1135. It is the responsibility of each Authority to decide how best to make and keep corrected up to date its own s36(6) list. Each case must be decided on its own facts but, in my judgment, there is no need to introduce any prescriptive rules about the format in which any such list is to be kept.

1136. I find as a fact, on the balance of probabilities, and hold as a matter of law that the First Defendant's Exor database is not precluded from being a qualifying section 36(6) list merely because it does not contain a statement identifying itself as such, or requires some further explanation from a council official to address the enquirer's query. A section 36(6) list is designed to serve a practical purpose, namely whether a particular section of highway was to be maintained out of a private or public purse. In my view, the First Defendant's Exor database, with information retrievable at the press of one or two buttons, constitutes, on the balance of probabilities, a s36(6) list, even if it requires the intervention of a council employee to explain how the database works.

1137. In my judgment, the First Defendant's Exor database (containing over 11,000 sections of road maintained by the Highway Authority, with start and finish co-ordinates as exemplified by the extract at JK1) clearly constitutes such a list without the need for any further label.

Maintainable not maintained

1138. A 199 page printout, produced by Mr Kuipers on 13 November 2008 (trial bundle 10, pages 237/238 and following), represents a complete list of all roads maintained at public expense within Wiltshire, as at Tuesday 13 November 2008. This was produced from a report run on Mr Kuipers' computer, using the data held within the Exor database. All the streets on this printout had the status "A". This means 'maintained by the local authority'. At page 10/239 is a list of 19 roads, all bearing the

designation “U”, namely unadopted. They too are shown on the database, but which are not maintained at public expense. The 199 page list is headed “List of streets maintained at public expense”.

1139. Leaving aside the minor highways argument, with which I have dealt above, Mr Laurence submitted that a list of streets maintain**ed** at public expense is not a list of streets maintain**able** at public expense, and so not a qualifying s36(6) list. The Exor database contains both the 11,000 “A” roads and the 19 rogue or “U” roads.

1140. The Claimants argued that the fact that the Highway Authority has in fact maintained certain streets does not mean that they are maintainable at public expense. Mr Kuipers’ evidence, which I accept, is that when printing off a list of highways maintainable at public expense he would sort the lists so as to produce only “A” streets or roads and would exclude the 19 “U” (unadopted roads). The Claimants’ contention is that a single list which contains “A and “U” roads and which contains streets which are maintained in fact at public expense, whether or not they are legally obliged to do so, is not a list of highways maintainable at public expense for the purposes of section 36(6) of the Highways Act 1980 and section 67 NERC 2006.

1141. I do not agree with this submission.

1142. The “U” roads appear on the list because they are roads in the course of construction or because the highway authorities are expecting soon to adopt them. The fact that these 19 “U” roads appear on the list does not rob the list of its essential quality as the First Defendant’s list of highways maintainable at public expense. 19 such “U” roads in a list of over 11,000 “A” roads is, in my judgment, de minimis and irrelevant. In any event, even if it were impermissible to show the “U” roads on the same list as the “A” roads, that is a simple matter of correcting an error which section 36(6) envisaged could be done.

1143. Mr Kuipers' evidence, which I accept, was that every street bearing the "A" designation was a street which was in fact inspected, maintained and repaired by the First Defendant. It is important to remember that NERC was concerned with the extinguishment of unrecorded public rights of way for mechanically propelled vehicles. It has nothing to do with the liability to maintain highways out of the public purse.

1144. It seems to me that the question which I have to ask is whether, in fact, the Exor database purported to be the First Defendant's section 36(6) list. As the heading itself indicated ("List of streets maintained at public expense") it is plainly referring, in substance, to section 36(6) of the Highways Act. The only departure is the use of the word maintained instead of maintainable.

1145. As a matter of common sense, it seems improbable that a Highway Authority would use public money to maintain highways it has no obligation to maintain. In my judgment, 'maintained' and 'maintainable' are, for the purposes of the First Defendant's Exor database, substantially synonymous terms. However, I accept that there may be in Wiltshire public highways which were dedicated and accepted after 1835 but which were not the subject of any formal statutory process, and so not maintainable at public expense. Nevertheless, having regard to the mischief at which section 67 NERC 2006 is directed, I am of the view that, on the facts of this case, the difference between 'maintainable' and 'maintained' is an insignificant one.

1146. The fact remains that the highways created post 1835, otherwise than through a process of formal adoption or some other statutory procedure making them maintainable by the public purse, are either insignificant in number as a matter of common sense or, in any event, do not in any way undermine my confidence in the view, reached on the balance of probabilities, that the Exor database was the First Defendant's section 36(6) list in fact. It contained a list of the roads for which the First Defendant had accepted liability to maintain. To that extent, in any event, they were maintainable at public expense.

1147. Even if I had found that Rowden Lane only became a public vehicular highway in or after 1835 (and therefore not maintainable at public expense, because it has never been formally adopted), I would still have held that it was not extinguished by s67 NERC. I would have held that the fact that Rowden Lane was actually *recorded* on an otherwise compliant s36(6) list on 2 May 2006 (even though, on this assumption, it was not publicly maintainable and should not have been on the list) was sufficient to preserve it, having regard to the mischief at which sections 66 and 67 NERC were directed and the power to correct the list under s 36(6).

Can there be more than one section 36(6) list?

1148. I agree with Mr Laurence that the Highway Authority can only have one qualifying definitive and master section 36(6) list at any one time, having regard to the requirements of section 36(6) and (7) Highways Act 1980. Not only does the statute referred to "a" list, but the requirement that it should be made, kept corrected up to date, deposited and available for inspection fortifies this conclusion. This does not, however, preclude multiple originals of the list if in identical form to the master list.

1149. The First Defendant's case is that the Exor database was in fact its s 36(6) list. I agree with that view.

1150. I find, on the balance of probabilities, that the computerised Exor database was in writing, was the First Defendant's list of highways maintainable at public expense, notwithstanding (i) that it had to be generated by the computer to be visible (ii) that it did not describe itself on its face as a section 36(6) list and (iii) its omission of minor highways. Moreover, I am satisfied that such a list was in existence on 1 May 2006, even if no physical printout of the contents in the list had been made.

1151. Moreover, I am satisfied on the balance of probabilities that, on 1 May 2006, sections M – H - CG of Rowden Lane were shown in a list of highways maintainable at public

expense, which the First Defendant kept, as required by section 36(6) of the Highways Act 1980 and for the purposes of section 67 NERC 2006.

Other candidates for the section 36(6) list

1152. On 4 May 2009, the First Defendant pleaded reliance only on the Exor database as its qualifying s36(6) list. However, during the trial, and before the pleading of 4 May 2009, the Claimants and the Defendants had raised in court other potential candidates for a qualifying list. However, I received no closing submissions on the other candidates, since the First Defendant had expressly relied only on the Exor database before those written closing submissions were due. Nevertheless, even in the absence of those submissions and any further evidence which the parties might have called on those other candidates, it may be of assistance if I give my necessarily provisional views on those other candidates.

1153. Of course, the core information on the Exor database was reproduced on the First Defendant's website. Many, if not all, of the Claimants objections to the Exor database applied to the website list. The website contains details only of the "A" roads and does not contain details of minor highways. For all the reasons which I have advanced in relation to the Exor database, my provisional view (subject to (i) any amendment to allege the other candidates, (ii) any further evidence and (iii) further submissions) would be to regard the website as also constituting a qualifying section 36(6) list, notwithstanding the road adoption disclaimer appearing on the website.

1154. The Burgundy Books were kept up to date, as well as the information on the Exor database and website. Could the Burgundy Books also qualify as a s36(6) list?

1155. Mr Laurence's objections to the Burgundy Books, as a qualifying section 36(6) list, included the following:

(a) A book of coloured maps is not ‘a list’ in writing of streets maintainable at public expense;

(b) The maps themselves do not tell you which of the depicted ways are intended to be included within a section 36(6) list;

(c) The legend attached to the plans does not enable a distinction to be drawn between whether a street is maintained or maintainable;

(d) The key entitled “Key to large scale highway records” does not identify itself as a section 36(6) list, and further information would need to be given, namely that it is only those roads coloured yellow and orange which are streets legally maintainable at public expense;

(e) On the maps, the legal status of the ways depicted is unknown.

(f) Although the maps within the Burgundy Books contain both major and minor ways, there is no clarification as to which ones are maintainable at public expense.

1156. It can be seen that one difference between the Burgundy Books and the Exor database/ website is that minor highways do appear on the maps in the Burgundy Books, but it is only the ways coloured orange and yellow which are maintainable at public expense.

1157. In my judgment, the Burgundy Books also purport to be a list of highways maintainable at public expense. They contain both major and minor highways, and their purpose is self evident. The Burgundy Books may need correction and the legend may need clarification, but, subject to the qualifications I have expressed above, my provisional view would be to regard the Burgundy Books also as constituting a qualifying s 36(6) list.

Conclusion on NERC 2006

1158. The First Defendant has satisfied me, on the balance of probabilities, that Rowden Lane was, on 1 May 2006, shown in a list required to be kept under section 36(6) of the Highways Act 1980 (list of highways maintainable at public expense). This list comprised its Exor database. I would also have been minded, albeit provisionally only, to conclude that the details available on the website and the Burgundy Books themselves would independently have constituted a qualifying section 36(6) list for the purposes of making out the exception in section 67(2)(b) NERC 2006.

1159. Accordingly, the First Defendant has satisfied me, on the balance of probabilities, that it has made out the exception in section 67(2)(b) NERC 2006. As a result, section 67(1) of that Act did not extinguish the public right of way for mechanically propelled vehicles, which I find always to have existed, along the relevant sections of Rowden Lane.

## Chapter 23: Summary of Findings of Fact

1160. I make the following findings, on the balance of probabilities:

1. Rowden Lane has been dedicated as a public vehicular highway in accordance with common law, as well as under section 31 of the Highways Act 1980.

2. Rowden Lane and Gypsy Lane were not merely the historical private drives to Rowden Manor.

3. Plans and maps of 1773, 1792, 1828, 1829, 1848, 1862, 1867, 1890 and 1910 show a vehicular through route from the Bath Road to Rowden Lane, along a track of unenclosed fields, to Gypsy Lane and back on to the Bath Road. They do not show either Rowden Lane or Gypsy Lane as a cul de sac.

4. While there is an absence of any depiction of a vehicular track cutting the corner at point K on any map large enough to show this detail, point K has always been in an open field which would have provided an ample turning area for carts and carriages and, if the field were used in that way, the wheel marks may not have been susceptible to formal mapping.

5. The old maps are, at least, consistent with, but in fact demonstrate, a usable vehicular through route having existed along Rowden Lane and Gypsy Lane before 1910.

6. There existed public attractions at the end of Section B sufficient to attract the public there from the Bath Road. Rowden Lane was used by members of the public. This included users such as wood cutters, footballers and persons going to football matches. Sufficient members of the general public made trespassory user of Sections A and B sufficient to give rise to a common law presumption of dedication as a public highway.

7. On the 1848 Tithe Award Map, the sienna colouring on sections A and B shows a vehicular road which is significant and similar physically to the main public vehicular network, although the soil is declared to be held by private owners who were not made subject to a rent charge.

8. The shaded lines on the 1900 Ordnance Survey Map, marking sections A and B of Rowden Lane, are in the same form as the shaded lines marking the Bath Road on the same map. The shaded lines indicate that Sections A and B were metalled and well maintained at the time of the survey for that map.

9. The 1910 Finance Map shows Section A and B of Rowden Lane as an untaxed public road comprising a full vehicular highway.

10. In maps showing the requisite level of detail, Rowden Lane is consistently shown as occupying a curtilage separate from the surrounding land in private ownership. The verges, whether or not owned by the adjoining legal titles, are part of the land used as road.

11. After (i) the 1919 conveyance by the Rich Trustees to General Palmer and (ii) the 1927 conveyance from Baron Glanely to Herbert Holt, the legal title of Sections A or B of Rowden Lane are not shown in any 20th Century plan or map as being owned by any identifiable person.

12. No land owner has, in his capacity as owner of Rowden Lane, granted an express easement over Sections A or B1 of Rowden Lane.

13. On 6 April 1937, Chippenham Council declared the whole of Sections A and B of Rowden Lane to be a new street.

14. On 6 April 1937, Chippenham Council were satisfied that Rowden Lane was a public vehicular highway to the point where the cattle grid now is located.

15. In 1955, Inspector Dale was satisfied on the evidence which he heard that Rowden Lane Section C was subject to public rights of way (i) on foot (ii) on horseback and (iii) as a cartway.

16. The Highway Surveyor's involvement in the repair of the road bridge carrying Section A of Rowden Lane in 1881, as evidenced by the 1881 Chippenham Corporation Minute, shows that the road was regarded as a publicly maintainable public vehicular highway in 1881.

17. The bridge was constructed, and has subsequently been maintained, to carry the metalled vehicular carriageway and exceeds the reasonable needs of a horseman or pedestrian.

18. An 1896 Minute of the Chippenham Corporation shows that the Corporation (at that time responsible for roads in Chippenham) did not regard itself as the private landowner of any part of Sections A and B of Rowden Lane, and that it did not regard Rowden Lane as private.

19. There is significant evidence of public maintenance of Sections A and B as a carriageway from before 1983.

20. There is no positive evidence that Sections A and B or Rowden Lane are public bridleway rather than public vehicular highway.

21. No horse riders use Sections A and B of Rowden Lane and have not done so for many years.

22. The general public made regular vehicular use of Sections A and B of Rowden Lane up to the cattle grid from the 1960s up to 2002 for purposes of accessing the countryside to the east for recreational purposes.

23. HGV drivers in the 1960's were turned back not on the basis that they were trespassing in a private road, but rather because they were on the wrong road.

24. There is no other credible evidence that Mr and Mrs Burridge (the owners of Rowden Farm up to about 1985) or their agent, or Dick Jennings (the father of Mary Puntis) did turn or attempt to turn members of the public away from Sections A and B before 1985, or at any time.

25. Painting the “Private” sign across the carriageway at the junctions of Sections A and B brought the public’s right to use Section B into question between 12 August 2002 and 4 September 2002.

26. Before this 2002 sign was so painted, there was no private sign erected or displayed in Rowden Lane at any time.

27. The centre lines of the hedges on Rowden Lane demarcate the boundaries between private land and the highway.

28. As the verges are public highway, the Claimants had no right to obstruct them, and the First Defendant was empowered by Sections 113 and 143 of the Highways Act 1980 to remove the obstructions.

29. Sections A and B of Rowden Lane were properly shown, on and before 2 May 2006, on a list required to be kept under section 36(6) of the Highways Act 1980.

30. Public vehicular rights over Sections A and B of Rowden Lane have not been extinguished by the Natural Environment and Rural Communities Act 2006.

**Chapter 24: Conclusion**

1161. I am satisfied, on the balance of probabilities, that Sections A and B of Rowden Lane have, for hundreds of years, been a full vehicular public highway across its entire width measured from hedge to hedge. This status is not affected by the provisions of the Natural Environment and Communities Act 2006, and, in particular, section 67 thereof.

1162. Section 130 of the Highways Act 1980 provides as follows:

(i) *It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the Highway Authority, including any roadside waste which forms part of it.*

*...*

(iv) *Without prejudice to the foregoing provisions of this section, it is the duty of a local highway authority to prevent any unlawful encroachment on any roadside waste comprised in a highway for which they are the highway authority.*

(v) *Without prejudice to their powers under section 222 of the Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of the section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient.*

1163. Accordingly, the First Defendant, as Highway Authority, was entitled to remove the obstructions and obstacles from the verges in 2002 and 2006. Any rights which the Claimants may have in the subsoil did and do not entitle them to place obstructions and obstacles on the highway verges.

1164. Moreover, the structure erected by the First Claimant on the verge outside Swallow Falls, shown purple on plan 4077A, together with the existing posts, stones and sleepers placed on the grass verges and hard standing outside Brookfields, constitute an unlawful encroachment on the highway and should be removed.

His Honour Judge McCahill QC

Draft Judgment released: 15 April 2010

Judgment delivered in Court: 12 October 2010

AUTH668

Court of Appeal

# *Fortune and others *v* Wiltshire Council and another

## [2012] EWCA Civ 334

2012 March 5, 6, 7, 8; 20 Arden, Longmore, Lewison LJJ

*Highway — Right of way — Mechanically propelled vehicles — Highway authority required to maintain list of highways maintainable at public expense — Statute extinguishing public rights of way for mechanically propelled vehicles not shown as such on definitive map and statement subject to exceptions — Extinguishment not to apply where right of way shown in highway authority's list of highways maintainable at public expense — Local authority maintaining inaccurate list of such highways on electronic database only — Whether "in writing" and "deposited" at authority's offices — Whether amounting to list for purposes of exception — Disputed highway shown on database — Whether public's right to use highway with mechanically propelled vehicles extinguished — Interpretation Act 1978 (c 30), s 5, Sch 1 — Highways Act 1980 (c 66) (as amended by Local Government Act 1985 (c 51), s 8, Sch 4, para 7 and Local Government (Wales) Act 1994 (c 19), s 22(1), Sch 7, para 4), ss 36(6)(7), 320 — Natural Environment and Rural Communities Act 2006 (c 16), s 67(1)(2)(b)*

Against the objection of local residents, planning permission was granted for the building of a large number of houses on land adjoining a lane which was highway. The relevant sections of the lane were not shown in the definitive map and statement of "roads used as public paths", which Part IV of the National Parks and Access to the Countryside Act 1949 required county councils to maintain, but they were shown as a road maintainable by the local authority in a record on the authority's electronic database. The claimants, who owned properties fronting the lane, brought proceedings against the local authority and one of the developers, alleging that the lane was not a public vehicular highway and that the public were restricted to using it on foot and on horseback and were not entitled to use it with mechanically propelled vehicles on the basis that, even if the lane had been a public vehicular highway before 2006, the public's right to use it with mechanically propelled vehicles had been extinguished by section 67 of the Natural Environment and Rural Communities Act 2006[1]. Section 67(1) provided for the extinguishment of existing public rights of way for mechanically propelled vehicles over ways which were either not shown in the definitive map and statement, or which were shown there only as footpaths, bridleways or restricted byways but, by subsection (2)(b), subsection (1) did not apply to an existing public right of way if immediately before commencement of the Act it was not shown in the definitive map and statement but was shown in a list of highways maintainable at public expense required to be kept under section 36(6) of the Highways Act 1980[2]. A list made in accordance with section 36(6) was required by section 36(7) to be "kept deposited" at the authority's offices. The judge held that (i) the list of streets kept by the local authority in electronic form satisfied the requirement in section 320 of the 1980 Act that documents required to be kept under that Act be "in writing", construed accordingly with Schedule 1 to the Interpretation Act 1978[3], and (ii) the public's right to use the relevant sections of the lane with mechanically propelled vehicles had not been extinguished by section 67(1) of the

[1] Natural Environment and Rural Communities Act 2006, s 67: see post, paras 136, 137.
[2] Highways Act 1980, s 36(6)(7), as amended: see post, paras 139, 140.
S 320: see post, para 164.
[3] Interpretation Act 1978, s 5: "In any Act, unless the contrary intention appears, words and expressions listed in Schedule 1 . . . are to be construed according to that Schedule."
Sch 1: see post, para 165.

© 2013 The Incorporated Council of Law Reporting for England and Wales

2006 Act because the records in the electronic database of streets maintained by the authority constituted a list of highways maintainable at public expense for the purposes of section 36(6) of the 1980 Act and so the specific exception provided by section 67(2)(b) applied.

On the first claimant's appeal—

*Held*, (1) that, having regard to the definition of "writing" in Schedule 1 to the Interpretation Act 1978, records in an electronic database were "in writing" for the purposes of section 320 of the Highways Act 1980; that, therefore, the list of streets which were highways maintainable at public expense kept on the local authority's database was a list which section 36(6) of the 1980 Act required it to make, notwithstanding that it was not kept in physical form; and that, construing the word "deposited" in section 36(7) accordingly, the list was "kept deposited" at the authority's offices as required by section 36(7) (post, paras 163, 164, 165–167).

(2) Dismissing the appeal, that the judge had been justified in concluding that, prior to the coming into force of the Natural Environment and Rural Communities Act 2006, the lane had been a vehicular highway, dedicated at common law, across its full width; that section 67(2)(b) of the 2006 Act required merely that a list made and kept under section 36(6) of the Highways Act 1980 should exist and that the right of way was shown in it, not that the list be fully compliant with section 36(6); that, since the purpose of section 67(2)(b) of the 2006 Act was not to protect vehicular rights of way from being extinguished only where there was an accurate list under section 36(6) of the 1980 Act but to give effect under section 67(1) to the concern about mechanically propelled vehicles misusing green lanes, the fact that the list might be defective, need correcting, omit necessary information or contain an erroneous entry did not prevent it retaining its character as a list of streets made and kept under section 36(6) for the purposes of section 67(2)(b) of the 2006 Act; and that, accordingly, since the lane was shown in the list kept on the authority's electronic database, section 67(1) of the 2006 Act did not apply and the public vehicular rights of passage over the relevant sections of the lane had not been extinguished thereby (post, paras 123, 127, 128–129, 159–160, 161, 162, 163, 168, 169).

*R (Warden and Fellows of Winchester College) v Hampshire County Council* [2009] 1 WLR 138, CA distinguished.

Decision of Judge McCahill QC sitting as a judge of the Chancery Division affirmed.

The following cases are referred to in the judgment of the court:

*Assicurazioni Generali SpA v Arab Insurance Group (Practice Note)* [2002] EWCA Civ 1642; [2003] 1 WLR 577; [2003] 1 All ER (Comm) 140, CA

*Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23; [2007] 1 WLR 1325; [2007] Bus LR 129; [2007] 4 All ER 765 HL(E)

*Fairey v Southampton County Council* [1956] 2 QB 439; [1956] 3 WLR 354; [1956] 2 All ER 843, CA

*Folkestone Corpn v Brockman* [1914] AC 338, HL(E)

*Leigh v Jack* (1879) 5 Ex D 264, CA

*Maltbridge Island Management Co Ltd v Secretary of State* [1998] EGCS 134

*Mann v Brodie* (1885) 10 App Cas 378, HL(Sc)

*Micklethwait v Newlay Bridge Co* (1886) 33 Ch D 133, CA

*Moser v Ambleside Urban District Council* (1925) 23 LGR 533, CA

*Oxfordshire County Council v Oxford City Council* [2004] EWHC 12 (Ch); [2004] Ch 253; [2004] 2 WLR 1291

*R v Exall* (1866) 4 F & F 922

*R v Secretary of State for the Environment, Ex p Hood* [1975] QB 891; [1975] 3 WLR 172; [1975] 3 All ER 243; 73 LGR 426, CA

*R (Maroudas) v Secretary of State for the Environment, Food and Rural Affairs* [2010] EWCA 280; [2010] NPC 37, CA

© 2013 The Incorporated Council of Law Reporting for England and Wales

*R (Smith) v Land Registry (Peterborough)* [2010] EWCA Civ 200; [2011] QB 413; [2010] 3 WLR 1223; [2010] 3 All ER 113, CA
*R (Warden and Fellows of Winchester College) v Hampshire County Council* [2008] EWCA Civ 431; [2009] 1 WLR 138; [2008] 3 All ER 717; [2008] RTR 301, CA
*Robinson Webster (Holdings) Ltd v Agombar* [2002] 1 P & CR 243
*Suffolk County Council v Mason* [1979] AC 705; [1979] 2 WLR 571; [1979] 2 All ER 369, HL(E)
*Todd v Adams and Chope (trading as Trelawney Fishing Co)* [2002] EWCA Civ 509; [2002] 2 All ER (Comm) 97; [2002] 2 Lloyd's Rep 293, CA

The following additional cases were cited in argument:

*Commission for New Towns v JJ Gallagher Ltd* [2002] EWHC 2668 (Ch); [2003] 2 P & CR 24
*Hale v Norfolk County Council* [2001] Ch 717; [2001] 2 WLR 1481; [2001] RTR 397, CA
*Hollins v Oldham* (unreported) October 1995, Judge Howarth
*Jennings v Stephens* [1936] Ch 469, CA
*Marriott v Secretary of State for the Environment, Transport and the Regions* [2001] JPL 559
*R v Inhabitants of the County of Southampton* (1887) 19 QBD 590, DC
*R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335; [1999] 3 WLR 160; [1999] 3 All ER 385; [1999] LGR 651, HL(E)
*R v Secretary of State for the Environment, Ex p Burrows* [1991] 2 QB 354; [1990] 3 WLR 1070; [1990] 3 All ER 490; 89 LGR 398, CA
*R (Ridley) v Secretary of State for the Environment, Food and Rural Affairs* [2009] EWHC 171 (Admin)

No additional cases were referred to in the skeleton arguments.

**APPEAL** from Judge McCahill QC sitting as a judge of the Chancery Division in the Bristol District Registry

By a claim form the claimants, Vera Mary Ann Fortune, Rosemary Phoebe Ayres and John Stewart Heselden, the owners of property fronting onto Rowden Lane, Chippenham, Wiltshire, brought proceedings against the defendants, Wiltshire Council and Taylor Wimpey UK Ltd, whereby they disputed the nature and extent of the public's right of way over Rowden Lane, following the grant of planning permission for a residential development comprising 138 houses adjacent to the lane, which was to be implemented by, inter alios, the second defendant. The second defendant played no active role in the action and agreed to be bound by the judgment. On 12 October 2010 Judge McCahill QC dismissed the claim.

By an appellant's notice dated 24 February 2011 and pursuant to permission granted by the Court of Appeal (Lloyd LJ), the first claimant appealed on the grounds, inter alia, that (1) the judge's reasoning and conclusions in his treatment of the evidence generally were flawed in numerous respects; (2) the judge had wrongly rejected the claimants' case that public rights of way for mechanically propelled vehicles over Rowden Lane could be extinguished because they were not immediately before the commencement of the Natural Environment and Rural Communities Act 2006 shown on the relevant definitive map and statement or were only shown as a footpath, bridleway or restricted bridleway; and (3) the judge

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH671

A had erred in law in failing to hold that Rowden Lane was not shown on a qualifying list on 1 May 2006.

The facts are stated in the judgment of the court.

*George Laurence QC* and *Nicholas Caddick QC* (instructed by *Nicholsons Solicitors LLP, Lowestoft*) for the first claimant.

*Timothy Mould QC* and *Jeremy Burns* (instructed by *Head of Legal*
B *Services, Wiltshire Council, Trowbridge*) for the local authority.

The second defendant did not appear and was not represented.

The court took time for consideration.

20 March 2012. **LEWISON LJ** handed down the following judgment of
C the court.

*Introduction*

**1** This is the judgment of the court.

**2** In 2002, against the objection of local residents, planning permission was granted for the erection of 138 houses on land adjoining Rowden Lane in Chippenham. However it will be difficult, if not impossible, to implement
D the permission unless that part of Rowden Lane with which we are concerned is a public vehicular highway. The first claimant, Mrs Fortune, one of the residents, says that although it is a public highway, the public are restricted to use on foot and on horseback, and are not entitled to use it with vehicles (or at least not with mechanically propelled vehicles). Wiltshire Council says that it is a public vehicular highway. The first claimant says
E that even if it was a public vehicular highway before 2006, the public's right to use it with mechanically propelled vehicles has been extinguished by statute. The council says that the right remains in being.

**3** The second defendant, Taylor Wimpey, one of the developers, was joined as a party to the action but has played no active role, having agreed to be bound by the decision. The dispute was tried in Bristol by Judge McCahill QC over some 12 days. In a reserved judgment of remarkable
F length and detail he decided all the issues in favour of the council. The full judgment is available on BAILII. With the permission of Lloyd LJ the first claimant appeals.

**4** Mr George Laurence QC and Mr Nicholas Caddick QC presented the first claimant's case. Mr Timothy Mould QC and Mr Jeremy Burns presented that of the council.

G **5** Although Mr Laurence made serious criticisms both of the judge's findings of fact and of his legal conclusions, he acknowledged the conspicuous care with which the judge had dealt with the many points, both factual and legal, that were argued before him. We associate ourselves with that generous tribute; although as will be seen we did not find it necessary to deal with all the issues that the judge had to decide.

**6** The judge began by considering whether a public vehicular highway
H had arisen by 20 years' use in the period between 1982 and 2002. He found that it had. He next considered whether Rowden Lane had in any event been a public vehicular highway since before 1835 (when the first of the modern Highways Acts came into force). He considered a variety of documentary evidence and concluded that it had been. His next task was to consider the

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH672

width of the highway. He held that the "hedge to hedge" presumption applied. Having reached those conclusions he then considered whether the public's right to use the highway with mechanically propelled vehicles had been extinguished by section 67 of the Natural Environment and Rural Communities Act 2006 ("NERCA"), or whether it had been preserved by one of the specific exceptions in the Act. He decided that one of the specific exceptions applied (leaving over the question whether another specific exception might also apply). We heard the issues in a different order. We began by inviting the parties to argue the case for and against dedication at common law. If the appeal failed to dislodge the judge's conclusion on that issue, then the questions of modern use and the width of the highway would not arise. At the conclusion of the argument we indicated that we had not been persuaded that the judge's conclusion was wrong. The only remaining issue was the point arising under NERCA, and we heard argument on that.

*Topography*

7 Mr Laurence produced a helpful annotated plan based on the current Ordnance Survey map which helps to understand the topography, and which is annexed to this judgment. The section of Rowden Lane in dispute runs south eastwards from its junction with the A4, Bath Road at Rowden Hill to a cattle grid. From its junction with the A4, for the first 70 metres, Rowden Lane appears initially as a suburban street, with pavement, kerbs and street lights. The judge referred to this westernmost section of Rowden Lane as "section A". This section of Rowden Lane stops just beyond the car park of a pub called the Rowden Arms. From about 70 metres east of the A4 until it reaches a cattle grid, Rowden Lane has a more rural character. This section of Rowden Lane consists of a metalled road, with grass verges bounded on both sides either by hedges or stone walls, beyond which lie those properties that front or back onto the lane. The judge referred to this section of Rowden Lane as "section B". It runs for about 400 metres. It is from this section of Rowden Lane that there is access to the land over which planning permission has been granted. Continuing in a south-easterly direction across the cattle grid the continuation of Rowden Lane leads towards what is now Rowden Farm. Shortly before it reaches Rowden Farm it is joined by another way coming in from the north. The junction was referred to as "point K" and is so marked on the plan. If the traveller were to turn north up that other way he or she would (nowadays) walk along a former footpath northwards in the direction of the Bath Road, which would in due course become the modern Gipsy Lane (sometimes called Gypsy Lane). Gipsy Lane debouches onto the Bath Road. Thus it would be theoretically possible to travel in a loop from the junction of Rowden Lane and the Bath Road, down to the junction of the two ways at point K, and back up again to rejoin the Bath Road at its junction with Gipsy Lane.

8 The section of the Bath road that leads from its junction with Rowden Lane to its junction with Gipsy Lane rises at a fairly steep gradient. There are also gradients if the traveller were to follow Rowden Lane down from the junction with the Bath Road and then back up Gipsy Lane. Although Mr Caddick made submissions about these gradients they were not explored in detail at trial. The judge had a site view; and the gradients did not seem to him to be an impediment to the council's case.

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH673

A 9 If, instead of turning north along the footpath, the traveller were to continue along Rowden Lane he would shortly arrive at Rowden. The current Ordnance Survey map shows a collection of houses, together with Rowden Manor and the site of Rowden. Earlier versions of the Ordnance Survey map also show the remains of intrenchments, a moat, and a fort.

10 The judge recorded that it was common ground that Rowden Lane
B was a public highway. The dispute between the parties was over the nature of the rights which the public could exercise over the lane, and the width of the highway over which those rights could be exercised. Until shortly before trial in November 2008, the first claimant and her fellow claimants admitted that section A was a public vehicular highway. With the judge's permission, they then changed their case to withdraw their admission in respect of section A and instead to contend that the disputed section of Rowden Lane
C (i e both sections A and B) is no more than a bridleway. Thus the first claimant accepts that the disputed section of Rowden Lane is subject to public rights of way, but asserts that those public rights of way are limited to passage on foot and on horseback. She also accepts and asserts that, at least historically, it would have been possible for public rights of passage on foot and on horseback to have been acquired over a thoroughfare (or usable
D through route) starting at the junction between Rowden Lane and the Bath Road, and ending back on the Bath Road via the junction at point K and Gipsy Lane. The concession relating to sections A and B of Rowden Lane is made because of the inclusion of section C of Rowden Lane on the definitive map where it is shown as a road used as a public path and the deeming provisions of the Highways Act 1980 and its predecessors.

E *Legal principles*

11 Lord Diplock introduced the subject in *Suffolk County Council v Mason* [1979] AC 705, 709–710:

> "The law of highways forms one of the most ancient parts of the common law. At common law highways are of three kinds according to
F the degree of restriction of the public rights of passage over them. A full highway or 'cartway' is one over which the public have rights of way (1) on foot, (2) riding on or accompanied by a beast of burden and (3) with vehicles and cattle. A 'bridleway' is a highway over which the rights of passage are cut down by the exclusion of the right of passage with vehicles and sometimes, though not invariably, the exclusion of the right of driftway, i e, driving cattle, while a footpath is one over which the
G only public right of passage is on foot. At common law too a public right of way of any of the three kinds has the characteristic that once it has come into existence it can be neither extinguished nor diminished by disuse, however long the period that has elapsed since it was last used by any member of the public—a rule of law that is the origin of the brocard 'once a highway, always a highway.' "

H 12 The public may acquire a right of way either by dedication and acceptance, or by the operation of some statutory provision. Dedication may be express, or may be inferred from use of the way by the public. In the case of ancient highways dedication by inference from public use is the most common method of establishing the existence of a highway. The classic

© 2013 The Incorporated Council of Law Reporting for England and Wales

description of dedication by inference is that of Lord Blackburn in *Mann v Brodie* (1885) 10 App Cas 378, 386:

> "where there has been evidence of a user by the public so long and in such a manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on which those who have to find the fact may find that there was a dedication by the owner whoever he was."

**13** Use by the inhabitants of a locality counts as public use for this purpose: *Fairey v Southampton County Council* [1956] 2 QB 439, 457; *Oxfordshire County Council v Oxford City Council* [2004] Ch 253, para 100.

**14** The presumption of dedication from use by the public is "a probable inference from facts proved to the fact in issue, and it follows that in a particular case it is for the judges of fact to determine whether, on the evidence adduced, it can reasonably be drawn": *Folkestone Corpn v Brockman* [1914] AC 338, 354. One obvious area for evidence is the nature of the way over which the public right of way is claimed. If the way leads from one recognised highway to another, or from one inhabited settlement to another, the inference may be relatively easy to draw. If, on the other hand the way leads nowhere, the inference may be more difficult to draw. But there is no rule of law that precludes a factual conclusion that a public highway has been established over a route that ends in a cul de sac. In *Moser v Ambleside Urban District Council* (1925) 23 LGR 533, 540 Atkin LJ said:

> "I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway, and you can get no further either by reason of physical obstacles or otherwise."

**15** We doubt whether this is limited to a place of "popular resort" in the recreational sense. A way leading to a seaport or to a settlement at the end of a peninsula might equally be a highway.

**16** Mr Laurence submitted on the authority of *Folkestone Corpn v Brockman* that long use by the public, even if it is use of the quality usually described as use "as of right", does not necessarily result in the conclusion that there has been a common law dedication of a highway; or even that it raises a presumption of such a dedication. It is evidence from which an intention to dedicate may be inferred: no more than that. He commended a passage from the speech of Lord Dunedin, at p 375:

> "User is evidence, and can be no more, of dedication. The expression that user raises a presumption of dedication has its origin in this, that in cases where express dedication is out of the question, no one can see into a man's mind, and therefore dedication, which can never come into being without intention, can, if it is to be proved at all, only be inferred or presumed from extraneous facts. But that still leaves as matter for inquiry what was the user, and to what did it point. And this must be considered, not after the method of the Horatii and Curiatii, by taking a set of isolated findings, saying that they presumably lead to a certain result, and then proceeding to see if that presumption can be rebutted, but by considering

© 2013 The Incorporated Council of Law Reporting for England and Wales

A the whole facts, the surroundings which lead to the user, and from all those facts, including the user, coming to the conclusion whether or not the user did infer dedication."

**17** Lord Dunedin illustrated his point with two examples, at pp 375–376:

B "If you know nothing about a road except that you find it is used, then the origin of the road is, so to speak, to be found in the user, and in such cases it is safe to say, whether strictly accurate or not, that the user raises a legal presumption of dedication. That really means no more than this, that the evidence points all one way. Hundreds of highways are in this position. But suppose, on the other hand, you do know the origin of a road. Suppose it is the avenue to a private house, say, from the south. C But from that house there leads another avenue to the north which connects with a public road different from that from which the south avenue started. This is not a fancy case. The situation is a common one in many parts of the country. Would the mere fact that people could be found who had gone up the one avenue and down the other—perhaps without actually calling at the house—raise a presumption that the landholder had dedicated his private avenues as highways? The user D would be naturally ascribed to good nature and toleration."

**18** These passages concern the question whether an inference of an intention to dedicate should be inferred as a result of long public use. If there was no relevant public use then the question of an intention to dedicate for that use does not arise. It is only if there was long public use of the relevant kind (in this case with vehicles) that the question of an intention to dedicate E is live. It is not entirely easy to see why Mr Laurence placed such heavy reliance on the quoted passages, because it is conceded that the disputed sections of Rowden Lane were part of a highway (albeit limited to use on foot and on horseback). This concession necessarily entails an intention to dedicate. What Mr Laurence has to submit is that although there was an intention to dedicate, and although use by the public included use with F vehicles, the intention was limited to use on foot and on horseback. *Folkestone Corpn v Brockman* [1914] AC 338 says nothing about that situation.

**19** However, although he conceded that Rowden Lane was a highway, Mr Laurence made it clear that he was not conceding that anyone ever had any actual intention to dedicate Rowden Lane as a highway. Its status as a highway came about because of the conclusive effect of the definitive map G and the deeming provisions of the 1980 Act (and its predecessors). Under section 31 of the 1980 Act dedication may be presumed from 20 years' use. The relevant parts of that section provide:

"(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of H right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

"(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to

© 2013 The Incorporated Council of Law Reporting for England and Wales

use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise." A

**20** Since section 31(1) refers to a deemed dedication that must, in our judgment, entail (at least) a deemed intention to dedicate; and we consider that this is reinforced by the ability of the owner to prove a lack of intention to dedicate. Thus intention to dedicate is part of the concept of the deemed dedication. Accordingly even though Mr Laurence's concession was partly B based on the deeming provisions, in our judgment that necessarily entails an intention to dedicate. Mr Laurence did, however, accept that (a) if the highway was created by dedication and acceptance at common law and (b) if the use of the way by the public included use with vehicles as well as on foot and on horseback, then it would be unsustainable to conclude that the inferred intention to dedicate was limited to passage on foot and horseback only, to the exclusion of vehicles. C

**21** There are two other points to be made about *Folkestone Corpn v Brockman*. First, the origin of the way in question was known in that case. It was laid out by the Earl of Radnor in 1827 in connection with the residential development of land of which he was life tenant. Second, the way in question ran entirely over land in the same ownership: viz that of Lord Radnor (or the trustees of the settlement of which he was life tenant). Lord D Dunedin's observations about two carriageways through a private park must be read in that context. It may be easier to infer an intention to dedicate where a way runs through land owned by several owners all of whom (at least) use it.

**22** In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from E circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922, 929:

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, F for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

**23** In addition section 32 of the 1980 Act provides:

G "A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for H which it was made or compiled, and the custody in which it has been kept and from which it is produced."

**24** At common law the inhabitants of a parish were bound to repair the highways within their area unless it could be shown that responsibility had

© 2013 The Incorporated Council of Law Reporting for England and Wales

A attached to an individual or a corporate body by reason of tenure, inclosure or prescription. The Highway Act 1835 modified the position by providing that no road or occupation way made after 1835 was to be repairable by the inhabitants at large unless it was expressly adopted by the highway authority under the formal procedure laid down in the Act. All footpaths, whether created before or after 1835, remained the responsibility of the inhabitants B at large until December 1949, when the National Parks and Access to the Countryside Act 1949 ("NPACA") applied certain provisions of the Highway Act 1835 to public paths. After 1835 it was possible for roads to be created which did not become the liability of any person or persons to repair. Apart from such roads as these, repair of highways by inhabitants at large remained the underlying principle of the law until the enactment of the Highways Act 1959 which provided that no duty with respect to the C maintenance of highways was to lie on the inhabitants at large of any area.

**25** Since the Highways Act 1959, as regards liability to repair, highways fall into three main classes: (1) highways repairable at the public expense; (2) highways repairable by private individuals or corporate bodies; and (3) highways which no one is liable to repair. See *Halsbury's Laws of England*, 4th ed (2004 reissue), vol 21, para 247.

D **26** In view of the first claimant's reliance on the way that Rowden Lane was dealt with in conveyancing documents, it is also necessary to say something about the ownership of highways. Arden LJ traversed this ground in *R (Smith) v Land Registry (Peterborough)* [2011] QB 413.

**27** Before the Highway Act 1835 the property in a highway belonged to the frontagers, even though it was repairable by the inhabitants at large. Section 41 of the Highway Act 1835 provided that the "scrapings" of a E highway should vest in the parish surveyor of highways or, where a district surveyor had been appointed, in the district surveyor. By section 149 of the Public Health Act 1875 streets in urban districts which were repairable by the inhabitants at large, were vested in the urban authority for that district. Chippenham was an urban district. Urban district authorities also took on the previous repairing duties of the highway surveyors. Similar provisions F relating to rural districts were made by the Local Government Act 1894. The Local Government Act 1929 made county councils highway authorities for main roads within their areas, and vested the "materials thereof and drains thereto belonging" in them. It was not until the Highways Act 1959 that there was a clear statutory provision that vested highways themselves (as opposed to the scrapings and materials of highways) in the relevant highway authority. That is carried forward into G the current legislation: 1980 Act, section 263(1). The point is that before 1836 it would not be surprising for conveyances to deal with the soil of a highway; and even after 1835 it was only the scrapings or materials of the highway that vested in the surveyor. The modern position under which the "top two spits" of a highway is vested in the highway authority did not come about until much later.

H

*Approach to appeals on fact*

**28** The judge's conclusions which are challenged are essentially questions of fact. His ultimate conclusion came after examining a number of different strands of evidence: what is sometimes called a multi-factorial

© 2013 The Incorporated Council of Law Reporting for England and Wales

evaluation. In *Todd v Adams and Chope (trading as Trelawney Fishing Co)* [2002] 2 All ER (Comm) 97, para 129 Mance LJ said:

> "Once the appellant has shown a real prospect (justifying permission to appeal) that a finding or inference is wrong, the role of an appellate court is to determine whether or not this is so, giving full weight of course to the advantages enjoyed by any judge of first instance who has heard oral evidence. In the present case, therefore, I consider that (a) it is for us if necessary to make up our own mind about the correctness or otherwise of any findings of primary fact or inferences from primary fact that the judge made or drew and the claimants challenge, while (b) reminding ourselves that, so far as the appeal raises issues of judgment on unchallenged primary findings and inferences, this court ought not to interfere unless it is satisfied that the judge's conclusion lay outside the bounds within which reasonable disagreement is possible. In relation to (a) we must, as stated, bear in mind the important and well-recognised reluctance of this court to interfere with a trial judge on any finding of primary fact based on the credibility or reliability of oral evidence."

**29** In *Assicurazioni Generali SpA v Arab Insurance Group (Practice Note)* [2003] 1 WLR 577 this court approved that approach; and it was again approved by the House of Lords in *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] 1 WLR 1325.

**30** That said, it is not the function of this court to retry the case. Our function is to decide whether the appeal should be allowed on the ground that the judge was wrong: CPR r 52.11(3)(a). It is for the first claimant to persuade us that he was wrong, either in his findings of fact or in his application of the law.

*The case for the council at trial*

**31** The case for the council was based largely on the expert evidence of Mr Alan Harbour. He considered a variety of materials. They included local histories, old maps, local authority records and so on. He summarised his conclusions at the end of his first report in a section headed "Synopsis". He said:

> "In my opinion Rowden Lane is an ancient vehicular public highway, in existence before its first known map recording in 1669. The vehicles involved in such use could have included carts, wagons, sledges and more latterly carriages. The main purpose of the historical public use would appear to have included access to the open common lands surrounding Rowden Lane prior to the inclosure of these lands. In addition it is also quite probable that Rowden Lane was used as access to the place known as Rowden; and also as an alternative use to the Great (London) Road so as to avoid its poor condition and possibly later to avoid the paying of tolls on the section of the main road it bypasses."

**32** There were thus three distinct types of public use on which Mr Harbour relied. The first two did not entail the use of Rowden Lane as part of a vehicular through route which joined the London (or Bath) Road at each end. The third type did. Although Mr Laurence said in the course of his reply in this court that he had not understood what the council's case was, in our judgment this synopsis made it perfectly clear.

© 2013 The Incorporated Council of Law Reporting for England and Wales

A 33 The case for the first claimant was based largely on the expert evidence of Professor Williamson. His conclusion was that the disputed section of Rowden Lane was formally created in about 1669 as a private access road and that it continued to be regarded as such well into the 20th century. Although a public bridleway might have existed along it (or part of it), Rowden Lane was never a full public highway open to vehicles. It was very unlikely that Rowden Lane formed part of a through route enabling a B traveller with a vehicle to bypass the London Road. There would have been no advantage to be gained, and the through route would have required the navigation round a very difficult V shaped junction unsuitable for wheeled traffic where Rowden Lane met Gipsy Lane.

34 The judge began his consideration by discussing modern use of Rowden Lane. However, as mentioned we began by looking at the C historical material on which the judge also relied. The judge preferred the evidence of Mr Harbour to that of Professor Williamson, where they were in conflict. He gave reasons for this conclusion running to some 20 paragraphs of his judgment. Put bluntly, he considered that Professor Williamson was more of an advocate than an independent expert. Mr Laurence criticised the judge for having preferred the evidence of Mr Harbour to that of Professor Williamson. He pointed to a number of errors that he said Mr Harbour D had made. However, in his evaluation of the expert evidence the judge gave weight to these errors, which he acknowledged, but explained why nevertheless he preferred Mr Harbour's evidence. The evaluation of expert evidence subjected to lengthy cross-examination (of which we have only had extracts) is pre-eminently a matter for the trial judge. We decline to interfere with or discount the judge's evaluation of the expert evidence. E Having said that, where the judge's reasoning depended on documents that can be interpreted without the aid of expert evidence we have formed our own view.

*Two questions*

35 Before delving into this fascinating material, there are two F fundamental questions that in our judgment the first claimant's case does not adequately deal with. She accepts that Rowden Lane is a public highway. It follows therefore that at some time in the past it must have been dedicated as a highway (no doubt inferred by long public use). However, the first claimant says that the public rights of way are limited to use on foot or with animals. The first question is: if it is accepted that the public used the way as of right, where were they going to? The answer must be either that they were G using Rowden Lane as part of a network of highways (i e as a thoroughfare) or they were visiting some particular place simply as members of the public. Indeed the judge recorded that Professor Williamson accepted that there must have been a public attraction or attractions at the end of section B of Rowden Lane to attract the public along it (para 945), and the judge so found. The judge's finding was well supported by the evidence to which we were referred.

H 36 Much of the skeleton argument for the first claimant is devoted to attempting to demonstrate that the public had no reason for using Rowden Lane. But that argument is inconsistent with the first claimant's acceptance that Rowden Lane was (and still is) indeed a highway. The concession and assertion that Rowden Lane was and still is a highway also seems to us to

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH680

deal with the point that Lord Dunedin made in *Folkestone Corpn v Brockman* [1914] AC 338. If there was public use "as of right" then it is effectively conceded that an intention to dedicate should be inferred. It would make no sense to conclude that while the landowner intended to dedicate the way as a highway for foot traffic and riders, use by carters was use by mere toleration. So the real question is: was there sufficient evidence upon which the judge could conclude that there was public use of the way with vehicles?

**37** The second question is: given the width and nature of Rowden Lane from the earliest recorded times, how does it come about that there has been a dedication for use by pedestrians and riders but not for horses and carts? The latter question was posed by the judge (paras 673 and 942); but neither the grounds of appeal nor the skeleton argument really provide an answer.

*The early maps and other material*

**38** The judge began his consideration of this material with a short history of Rowden. Rowden lies on what was formerly a down. Its old name was Rughdon, probably meaning rough down. It was already a place in occupation in 1190. The principal residence of the area was a mansion house or manor, now Rowden Farm, close to the River Avon. Rowden Manor was also the site of an ancient fort.

**39** In 1434, it passed to the Hungerford family who, ten years before, had purchased Sheldon and the Manor and Hundred of Chippenham. In 1554, Queen Mary granted a charter to the borough of Chippenham. She also gave it certain lands which she had confiscated from Walter Lord Hungerford, who had called King Henry VIII an heretic. Lord Hungerford was executed at Tower Hill. His manors of Chippenham, Sheldon and Lowden, together with a very considerable number of other Wiltshire manors elsewhere, were forfeited and remained in the Crown until the next heir, then a minor, reached the age of 21.

**40** Some 23 days before the heir of Lord Hungerford came of age, Queen Mary gave about 66 acres of Lord Hungerford's land to the borough. These lands included the Great Coppice. The judge said of the Great Coppice that it lay over an area of 17 acres and (para 610) that there was "a general right for the inhabitant householders of Chippenham to coppice wood from it. It was harvested every seven years for quantities of poles needed to make sheep hurdles (fencing)". This finding was based on the work of Mr Baines, a local historian, writing in 1980. It is not now disputed. It was accepted that the inhabitants of Chippenham were not exercising the right to take wood in their capacity as commoners; and that the inhabitants of Chippenham constituted the public for the purposes of the law of highways.

**41** In addition to Mr Baines' work the judge also considered Mr Frederick Goldney's Records of Chippenham (1889). That work referred to a record from 1647 by which the coppice was allotted to the inhabitant householders of Chippenham "according to decree". Mr Goldney also recorded complaints in 1649 that the right to take wood from the coppice was being abused by "diverse unrulye and disorderlie people not onelie of this town and pishe but alsoe of other pishes adjoyneing hereunto". The judge drew two important inferences from this material.

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH681

A First that access to the Great Coppice was down Rowden Lane (para 611); and second that the removal of wood would have required a horse and cart (i e use by vehicles): para 613.

**42** The judge was helped in his reconstruction of the landscape as it was in the 16th century by a plan prepared in 1905. This plan was the work of Mr John Perkins who explained in an accompanying memorandum that it had been prepared from borough records and "other authoritative
B local maps and plans". He said that the plan had been "prepared at first hand from the original official records of the borough (which comprise very many deeds, documents, [maps], plans and minute—and other books) and from other local [maps] and plans already mentioned." This plan showed clearly a spur road leading off Rowden Lane to the Great Coppice. It also showed a cart track more or less in the position of Gipsy Lane joining
C Rowden Lane at about point K. Mr Laurence said that this plan was obviously inaccurate and that the judge should have ignored it. We reject that submission. The maker of the plan said that it had been compiled from a variety of original sources; and there is no reason to doubt that assertion. It is true that the depiction of the spur road does not appear on some later plans. But that is a question of weighing all the evidence. It is not a question of ignoring some of it.
D

**43** By the 17th century Rowden Manor was a large property with a quadrangle inside and a moat around it. The Hungerfords were Parliamentarians and the Royalists seized and sacked it.

**44** The earliest contemporaneous map that the judge considered was an inclosure map dating from 1669. He set out the rival contentions of Mr Harbour and Professor Williamson: paras 620–632. The 1669 map
E depicted Rowden Lane as "Rowden Way". One of the points of disagreement between the experts was whether (as Professor Williamson contended) the 1669 inclosure agreement *created* Rowden Way in substitution for old tracks across the common, or whether (as Mr Harbour contended) it *recognised* a pre-existing way. The judge concluded that Rowden Way existed well before 1669, because it already had its own
F name, and it led to a named destination. Rowden was a place of interest, and therefore the public had a reason to, and did, visit it: para 633. The judge also noted that Rowden Lane (and gates across the way) was wide enough to take horses and carts, and that Rowden Lane came off a main road (now the A4).

**45** Mr Laurence said that the judge had ignored the evidence of this map in coming to his conclusions that the public had used Rowden Lane to
G gain access to the Great Coppice. His point was that the solid lines on the map represented impassable boundary features and no gates were shown in the boundary adjoining the Great Coppice. He pointed to some evidence given by Professor Williamson in which he interpreted solid lines as boundary features. The judge did not refer to this evidence expressly. But he must have rejected it. It is not difficult to see why. If Professor Williamson's interpretation of the solid lines were correct, then no allottee of land (with
H the possible exception of one) would have been able to access his land, since all the allotted parts were bounded by solid lines on the map. Second, as Mr Laurence accepted, the only alternative means of access to the Great Coppice would have been along the Lacock road. But in the first place that would have necessitated crossing a stream in order to access the coppice.

© 2013 The Incorporated Council of Law Reporting for England and Wales

So there was a natural physical barrier to that means of access. Mr Laurence suggested that there might have been a bridge over the stream; but there was no evidence at all to support that. In the second place anyone coming from Chippenham to the Great Coppice would have reached the junction of Rowden Lane and the Bath Road well before the Lacock Road; and it would have been natural to have taken the first turning off the main road. In our judgment the judge was fully justified in concluding that Rowden Lane was used as a means of vehicular access to and egress from the Great Coppice, as well as to gain access to the place called Rowden.

**46** This was a very important finding. What it meant was that the origin of the way was very old and, moreover, was unknown. To revert to the passage from Lord Dunedin's speech in *Folkestone Corpn v Brockman* [1914] AC 338, 375 that Mr Laurence commended:

> "If you know nothing about a road except that you find it is used, then the origin of the road is, so to speak, to be found in the user, and in such cases it is safe to say, whether strictly accurate or not, that the user raises a legal presumption of dedication. That really means no more than this, that the evidence points all one way."

**47** The next map that the judge found to be of assistance was Andrews and Dury's Map of Wiltshire, produced in 1773. This was a commercially produced map. The judge said that this map did not show footpaths, but only vehicular routes: para 655. This finding accorded with the evidence of Professor Williamson who accepted that by and large Andrews and Dury basically showed vehicular ways, although there might have been one or two bridleways. The judge found that this map showed Rowden Lane as part of a thoroughfare, which Professor Williamson also accepted in cross-examination; although he did to some extent retract that concession in re-examination. The judge said of this map that "it was the first map of the county to be based on a meticulous original survey, and that it is considered by experts to be of very fine quality. It was described, in a catalogue of Wiltshire maps, as one of "the finest maps of Wiltshire before the Ordnance Survey". The map shows Rowden Lane, Gipsy Lane and the intervening track across the field to be of a fairly uniform width. According to the judge

> "this map demonstrated that it is more likely than not that in 1773 there was a clearly visible and established thoroughfare between the Bath Road, Gipsy Lane, across the fields to connect with Rowden Lane and back onto the Bath Road": para 650.

Although he accepted that the map did not prove the public status of the topography that it recorded, he inferred that the map showed the ways to be "of some local significance, and more than just private tracks": para 651.

**48** It is also worth noting that on the Andrews and Dury map the junction between Rowden Lane and Gipsy Lane is shown as a right angle (i e not an acute "V" shape). Other junctions depicted on this map illustrate different angles of junction between roads. Mr Laurence said that this feature should be ignored because Andrews and Dury was only a schematic map. However, both experts praised its quality. The depiction of the junction is a piece of evidence that the judge was entitled to take into account. There is no warrant for ignoring it completely. Even if the Andrews and Dury map did not plot the angle of junction accurately, the

© 2013 The Incorporated Council of Law Reporting for England and Wales

point remains that it still showed a vehicular through route. Moreover, if the Andrews and Dury map was merely schematic as Mr Laurence suggested, the angle shown on that map may have represented a "swept curve" at point K about which there was so much debate both at trial and before us. In addition the Andrews and Dury map also showed a spur road leaving Rowden Lane shortly before its junction with Gipsy Lane. This feature is inconsistent with the contention that Rowden Lane was no more than a private track serving Rowden Farm.

**49** The judge then considered a map of 1784 made by Mr Powell, a land surveyor. Again he set out the rival views of Mr Harbour and Professor Williamson. His own impression from the map was that Rowden Lane and Gipsy Lane were roads of some importance. They were hedged on both sides, had worn or used surfaces and seemed to be important parts of the local public road network, at para 675. Even if Rowden Lane was not a thoroughfare he would still have regarded Rowden Lane as part of the local public road network. It was shown on the map as wider than footpaths; and pecked lines on the map showed a used or surfaced part of the road with verges on each side. This would have accorded with Professor Williamson's concession that there must have been one or more attractions at the end of Rowden Lane so as to attract the public to go there at all, at para 945, and with the judge's previous finding that Rowden Lane was used both as access to the Great Coppice and to the place called Rowden. But in fact the judge said that he was persuaded by Mr Harbour that Rowden Lane was part of a thoroughfare, at para 678.

**50** There are number of other features of this map worthy of mention. Footpaths were clearly marked as such on the map, but Rowden Lane carried no such notation. The map also distinguished in terms of nomenclature between "Rowden Down Lane" (which corresponds with sections A and B of the modern Rowden Lane) and "Rowden Farm Lane" which runs from a pond adjoining one of the footpaths to Rowden Farm. The very fact that the two parts of the way are given different names (and that only one of them is linguistically tied to Rowden Farm) suggests that Rowden Down Lane was more than a mere private access to Rowden Farm. At the eastern end of Rowden Down Lane Rowden Down Lane meets a field called Home Down (at a point which corresponds with the modern cattle grid). A way continues across Home Down represented by pecked lines on the map. But there is also a spur depicted in the same way as Rowden Down Lane itself, which turns at right angles to Rowden Down Lane (i e to the south). This spur does not form part of the access to Rowden Farm: it must be going somewhere else. This feature of the map also undermines Mr Laurence's submission that Rowden Down Lane was no more than a private access to Rowden Farm. At the beginning of Rowden Farm Lane (its western end) the way widens out adjacent to the pond. This may well represent a place where animals were allowed to drink.

**51** The judge found corroboration for the thoroughfare theory in two other maps he examined: Archibald Robertson's map of 1792, and the first Ordnance Survey map of 1828. Both these maps showed a "clearly demonstrated through route from the Bath Road (A4), along Gypsy Lane, across fields and back along Rowden Lane to the A4" of sufficient importance to be shown on the map: paras 681, 689. In the course of his cross-examination Professor Williamson agreed that Robinson's map

© 2013 The Incorporated Council of Law Reporting for England and Wales

showed Rowden Lane as part of a through route for vehicles. Robinson's map also showed the junction between Rowden Lane and Gipsy Lane as a rectangular bulge which might well have accommodated turning vehicles. Professor Williamson had no alternative explanation. Professor Williamson also agreed that the Ordnance Survey map showed a vehicular through route; but added the qualification that he was not accepting that it had any particular legal status.

**52** The next plan that the judge examined was a plan of property belonging to a Mr Heath. It dated from 1796. It depicted the main road, described as "the Turnpike Road from London to Bath", and "Rowden Lane". It also shows another spur road coming off Rowden Lane in addition to that shown on Mr Powell's map of 1784. This spur corresponds with the spur shown on the plan prepared by Mr Perkins in 1905. This map also shows gates (including field gates). The spur in question appears from this map to have been fenced or hedged. It was uncoloured on the map. The significance of this plan, in the judge's view lay principally in its colouring. The Bath road was coloured brown on the plan as was Rowden Lane. Not all the roads shown on that plan were coloured; and the judge drew the inference that the brown colouring was intended to say something about the status of the coloured roads: namely, that they were public roads.

**53** The first Ordnance Survey map was produced in 1828. It showed the spur road that had been depicted on the 1796 plan, and showed it as fenced or hedged. It also showed the angle between Rowden Lane and Gipsy Lane as a less acute angle than the "V" shape that Professor Williamson spoke to.

**54** The judge moved on to consider Greenwood's map of Wiltshire, produced in 1829. Greenwood was a well known commercial map-maker who produced maps of many English counties. The judge considered that this map also showed a thoroughfare which included Rowden Lane. Professor Williamson agreed. It was not coloured in the same way as the Bath road; but nor were a multitude of other roads linking disparate settlements. The legend of the map showed that the colouring of the Bath Road meant that it was a turnpike or toll road, whereas that of Rowden Lane meant that it was a "cross road". As the judge pointed out, in 1829 the expression "cross road" did not have its modern meaning of a point at which two roads cross. Rather in "old maps and documents, a "cross road" included a highway running between, and joining other, regional centres". Indeed that is the first meaning given to the expression in the Oxford English Dictionary ("A road crossing another, or running across between two main roads; a byroad"). Professor Williamson agreed in cross-examination that a "cross road" was a reference to a road forming part of a thoroughfare. The judge gave a further explanation of the significance of the expression later in his judgment, at para 733, by reference to the *Planning Inspectorate, Rights of Way Section, Advice Note No 4, Advice on the Definition of a Cross Road* (July 1999), para 2:

> "In modern usage, the term 'cross road' and 'crossroads' are generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term 'cross road'. These include a highway running between, and joining, other highways, a byway and a road that joined other regional centres. Inspectors will,

© 2013 The Incorporated Council of Law Reporting for England and Wales

A therefore, need to take account that the meaning of the term may vary depending on a road pattern/markings in each map."

55 The guidance went on, at para 8, to urge caution as the judge recognised, at para 734:

"In considering evidence it should be borne in mind that the recording of a way as a cross road on a map or other document may not be proof B that the way was a public highway, or enjoyed a particular status at the time. It may only be an indication of what the author believed (or, where the contents had been copied from elsewhere—as sometimes happened—that he accepted what the previous author believed). In considering such a document due regard will not only need to be given to what is recorded, but also the reliability of the document, taking full account of the totality C of the available evidence in reaching a decision."

56 The judge concluded that Greenwood's map supported "the emerging picture" of an established thoroughfare. In our judgment the label "cross road" added further support. This map also shows the angle between Rowden Lane and Gipsy Lane as a less acute angle than the "V" shape that Professor Williamson spoke to.

D 57 The next map that the judge considered in detail was the first piece of evidence that post-dated the Highway Act 1835 which marked the beginning of the modern law of highways. This was the Chippenham and Allington Tithe Award 1848. On this map Rowden Lane was coloured sienna (as were all public roads). On the other hand Rowden Lane (or at least sections A and B) was given parcel numbers, which other public roads were not. The names of the owners and occupiers of both parcels were E given. The description of these parcels was "Part of the Road to Rowden Farm" and no titheable value was attributed to it. Nevertheless the experts agreed that the tithe award plan could show either that Rowden Lane was considered to be public highway, or that it was a private road with no titheable value. The judge considered the rival arguments. He concluded that the 1848 map provided support for the proposition that sections A and F B of Rowden Lane were public carriageways. He gave weight to the fact that it was common ground that Rowden Lane was a public highway of some sort. He placed most weight on the colouring on the map which was consistent with the treatment of Rowden Lane in other maps. For example a map of 1867 produced for the purpose of a proposed change to the borough boundary showed Rowden Lane coloured in the same way as all public carriageways.

G 58 Mr Laurence's attack on the judge's conclusion is twofold. First he says that the tithe map says nothing about the status of Rowden Lane. It could have been a private road rather than a public one. The first difficulty with this submission is that it overlooks (as do so many of Mr Laurence's submissions) the admitted fact that Rowden Lane *was* a highway. Second, the judge acknowledged that the mere fact that Rowden Lane was not tithed H did not of itself show that it was a public carriageway. He drew the inference from other indications. Third, in drawing his conclusion the judge was entitled to look (as he did) at the totality of the evidence. He was not required to consider the tithe map in isolation.

59 The second main prong of the attack is that on the tithe map section C is shown as titheable, subject to a deduction. It follows from this,

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH686

says Mr Laurence, that section C cannot have been subject to public rights of way with vehicles. If section C was not subject to public rights of way with vehicles, then it follows that sections A and B of Rowden Lane must have ended in a cul-de-sac at the cattle grid separating section B from section C. It is obvious, says Mr Laurence, that a public vehicular right of way would not have ended in a cul de sac. We do not accept that this is a valid criticism of the judge. First, in the light of the judge's finding that Rowden Lane had been used by the inhabitants of Chippenham for retrieving wood from the Great Coppice and to have access to the place called Rowden, and Professor Williamson's concession that there was some attraction at the end of Rowden Lane such as to attract public use it is not obvious that Rowden Lane would not have ended in a cul de sac. Second, there is no legal impediment to the presumed dedication of a public vehicular way ending in a cul de sac. Third, the judge had in fact found that Rowden Way was part of a thoroughfare as shown by earlier maps (as Professor Williamson had accepted); and once public vehicular rights had been established over Rowden Lane they would not have ceased to be exercisable merely because part of the thoroughfare fell into disuse or became blocked.

60 The judge considered two further commercial maps: Edward Weller's map of 1862 and Bacon's map of 1876. Both these maps showed Rowden Lane as part of a through route. Bacon's map also showed some farm tracks or accommodation roads; but where these were depicted they did not join with other roads. That said, the judge did not place special reliance on either of these maps, except as part of a general picture.

61 The judge turned to consider the Ordnance Survey map of 1886. This showed Rowden Lane bounded by solid lines (which suggested solid boundary features such as hedges or walls). The width of the road was consistent with other maps. By now the pub had been built to the north of section A of the road, which provided its only access. The judge accepted the significance of the fact that Rowden Lane had its own parcel number and survey area which was one of the conventions used by the Ordnance Survey for public roads. He was satisfied that it was a proper inference that by the time of this map Rowden Lane had been dedicated and accepted as a public highway and that the public rights of passage included passage with vehicles: para 732. The 1900 edition of the Ordnance Survey map showed much the same thing. However on this map section B of Rowden Lane was shown bounded by a thicker line. By contrast section C of Rowden Lane (beyond the cattle grid) was not shown with these lines. The judge set out the rival views of the experts. Mr Harbour said (and the judge accepted) that the thickness of the lines bounding section B were of the same thickness as those bounding the Bath road. Mr Harbour, relying on part of a paper by Dr Yolande Hodson (who is an acknowledged expert on Ordnance Survey maps) said that this denoted that section B of Rowden Lane was a public road. Professor Williamson disagreed; but accepted that the thickness of the lines showed that this section of Rowden Lane (but not section C) was capable of accepting fast wheeled traffic in all seasons. The judge accepted that the condition of the road was not definitive of its legal status (as Dr Hodson had indeed said in her paper), but held that this map showed that section B of Rowden Lane had a status and role higher than a private drive or road: para 744.

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH687

A **62** Later in his judgment the judge drew another inference from this map. He said (para 914):

> "The shading on the 1900 OS map is also a reliable indicator that sections A and B were well maintained roads suitable for taking fast wheeled traffic in all seasons. This must be contrasted with the different and inferior way in which section C was depicted. In my judgment, the
B way in which sections A and B had been maintained make it unlikely that they simply formed a private road to Rowden Farm, for, if that were so, one might have expected a similar level of maintenance along section C, and that is not the case. I find that the level of maintenance of sections A and B is higher than one would have expected of mere farm tracks in private ownership, and this is most confidently displayed in the
C 1900 OS map."

**63** He concluded that the most likely explanation for the enhanced level of maintenance was that it was maintained at public expense and to a standard consistent with a pubic vehicular highway. He also pointed out that this level of maintenance would have been unjustified if sections A and B of Rowden Lane were simply a bridleway: para 915. This is not
D a conclusion that the judge reached simply relying on the shading: it is a conclusion he reached on a consideration of the shading in its wider context.

**64** On 1 September 1896 the Chippenham Borough Council resolved to grant a lease of land adjoining Rowden Lane for use as a hospital. The grant was to include a right of way "thereto from Rowden Lane". The hospital building was very small (only 10 feet long and 15 feet wide). The buildings
E were, however, built, because they show up on later versions of the Ordnance Survey map. It is inconceivable that vehicles were not used in connection with the hospital. It is also probable that the reason why the granted right was to stop at Rowden Lane was that Rowden Lane was (or was reputed to be) a vehicular highway.

**65** The next map that the judge considered was the map prepared for
F the purposes of the Finance (1909–10) Act 1910. The judge described the background to this Act by reference to paras 46 and 47 of the judgment of Etherton J in *Robinson Webster (Holdings) Ltd v Agombar* [2002] 1 P & CR 243. As it happens Mr Harbour gave evidence in that case too; and Etherton J accepted his evidence about the background to the Act. In fact Mr Harbour reproduced his description of the background in his report in the present case. There can be no possible criticism of the judge for
G accepting Mr Harbour's evidence.

**66** The 1910 Act was part of the embodiment of Lloyd George's "People's Budget" 1909 which followed the resolution of the constitutional crisis of 1909–1910. Among other things it imposed a new tax on land called increment value duty. This was to be levied on the increase in the value of land between its initial valuation and its subsequent sale or transfer, or on the death of the owner. It was an early form of capital gains tax.
H In order to establish baseline valuations, the 1910 Act provided for a valuation to be made of all the land in the United Kingdom as at 30 April 1909; an exercise described as the "New Domesday" survey. The survey was carried out by the Valuation Office of the Board of Inland Revenue. England and Wales were divided into valuation divisions, which were subdivided into

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH688

valuation districts. Within each valuation district, a number of income tax parishes were created: these were the basic units for the Valuation Office survey. A land valuation officer was appointed to each income tax parish. They were almost always the existing assessors of income tax and some 7,000 were appointed nationally. This enabled the Inland Revenue to have local people with local knowledge undertaking the crucial task of identifying hereditaments. The Act contained specific provision for reducing the gross value of land to take account of any public rights of way or public rights of use as well as easements. Valuers would have been extremely reluctant to show any land as a public road if it could be assessed for duty, and landowners were subject to criminal penalties if they falsely claimed a way to be public to minimise tax liability.

**67** Mr Laurence criticised the judge for having said (in common with Etherton J) that valuers would have been reluctant to show land as a public road if it could be assessed for duty; but that was Mr Harbour's evidence. Professor Williamson did not offer a contrary opinion. Mr Laurence also said that the judge was wrong to rely on what Etherton J had said about the importance of the Finance Act 1910 map. But the judge said that he would carry out his own independent assessment of what the map showed (para 757): and that is precisely what he did. Despite Mr Laurence's submissions we reject the assertion that the judge relied on *Robinson Webster (Holdings) Ltd v Agombar* [2002] 1 P & CR 243 for anything other than the general background.

**68** Professor Williamson produced some written material which gave some more details about the background to the 1910 Act and the interpretation of maps and other materials produced in the course of carrying its provisions into effect. Section 11 of the Planning Inspectorate Consistency Guidelines (2nd revision June 2008) says, at para 11.7:

> "The 1910 Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i e they will be shown uncoloured and unnumbered . . . So if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books; however there may be other reasons to explain its exclusion."

**69** Professor Williamson also produced an article in Rights of Way Law Review May 2002 *(Uncoloured Roads on 1910 Finance Act maps*) in which Mr David Braham QC writes, in section 9.3, p 153:

> "In areas where the valuation work was completed, all the omitted roads were either stretches of road which ran between inclosures 'fenced roads', or roads in built-up areas. The valuations and deductions required by the Act were duly made where an unfenced stretch of highway crossed a larger area which had to be valued anyway. In such cases the larger area, such as a field or private park, was valued and a deduction was made in respect of the public right of way: that was so even if other stretches of the same highway were fenced roads which were omitted from the valuation."

© 2013 The Incorporated Council of Law Reporting for England and Wales

A 70 Mr Braham also writes in the same article, on p 157:

> "The fact that the road is uncoloured may point strongly to the conclusion that the road was recognised as a highway at the time but, viewed in isolation, the fact that the road is uncoloured leaves open the question whether it was recognised as a public carriage road or as a lesser highway."

B 71 The consensus of opinion, therefore, is that the fact that a road is uncoloured on a Finance Act map raises a strong possibility or points strongly towards the conclusion that the road in question was viewed as a public highway. The Planning Inspectorate Consistency Guidelines suggest that such a highway was *normally* a vehicular highway, although Mr Braham warns that *if viewed in isolation*, the lack of colouring leaves C open the question whether the highway in question was no more than a bridleway. In addition, different treatment was given to fenced and unfenced highways.

72 The base map used for the Finance Act Map was the 2nd Edition Ordnance Survey Map 1900. The judge said (para 761) that only all purpose (vehicular) highways were excluded from tax assessment. Minor highways, including footpaths and bridleways were declared as part of the D assessment, but the land showed a deduction in taxable value for any incumbrances. The position is a little more nuanced than the judge described, as the quoted documents show.

73 As Mr Mould pointed out the Finance Act Map showed that land on both sides of most of the disputed section of Rowden Lane was owned by Mr Rich. In fact the soil of the lane had been expressly conveyed to him E some years before, so there was no possible doubt about who owned the vast majority of the disputed section of Rowden Lane. The disputed part of Rowden Lane itself (up to what is now the cattle grid) is shown on the Finance Act Map as uncoloured; and it does not form part of any taxable hereditament.

74 One of the pieces of evidence before the judge in relation to the 1910 map was the treatment of Brigadier Palmer who owned land which F included section C of Rowden Lane and much more besides. He claimed (and was given) a deduction of £125 from the assessed value of his land. There was debate at trial about what the deduction represented. The judge was under the impression that the first claimant had accepted that the deduction was claimed in relation to some form of public rights over section C of Rowden Lane. Mr Laurence says that the first claimant G accepted no such thing. However, we come back again to the point that it is accepted that there were in fact public rights over section C of Rowden Lane. So whether or not Brigadier Palmer did *in fact* claim the deduction on account of public rights over section C, even on the first claimant's case he would have been *entitled* to make that claim. That being so, we cannot see how the judge can be said to have been wrong to infer that Brigadier Palmer exercised his entitlement to that extent. It is, however, the case that H Brigadier Palmer did not claim a deduction for a full vehicular highway across his land. The judge commented that vehicular use of Gipsy Lane had probably ceased by 1910 because of improvements to the Bath Road and the absence of tolls. He said that the treatment of Brigadier Palmer's land suggested that section C of Rowden Lane had lost its reputation as a

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH690

vehicular highway. In our judgment that was a legitimate inference for him to have drawn.

75 The judge noted that the Finance Act Map showed not only the pub with its access from Rowden Lane but also a football ground at Home Down. It, too, was accessible from section B of Rowden Lane. The judge drew the inference that the public visiting the football ground or the pub would have come and gone not only on foot or on horseback, but also in vehicles. The voluminous grounds of appeal and skeleton argument do not challenge this inference. In his oral submissions Mr Laurence criticised the judge for having drawn this inference, submitting that the public could as easily have come by vehicle from Gipsy Lane to the north east of the football ground. Maybe they could have: but why could they not have come from both directions? Which route they used might well depend on where they were coming from. This does not seem to us to be a reason that fatally undermines the judge's inference. Moreover the judge found that by 1910 vehicular use of Gipsy Lane had fallen into disuse; and Mr Laurence did not challenge this finding. The judge also noted that sections A and B of Rowden Lane were uncoloured (and untaxed) on the map. Section C of Rowden Lane, by contrast, was taxed but was subject to a deduction. Mr Harbour's view was that this was strong evidence that sections A and B of Rowden Lane were subject to full rights of public passage (i e it was a public carriageway). It may be noted here that section C was unfenced; and hence might have been mapped differently for that reason.

76 Professor Williamson agreed that the map tended to show that sections A and B of Rowden Lane were considered by the valuers to be a public carriageway. However, he put forward three principal reasons why the judge should not draw that conclusion: para 749. The first was predicated on uncertainty of ownership of Rowden Lane. But it is clear that the relevant sections of Rowden Lane were owned by Mr Rich. The second related to the treatment of a different footpath some distance away from Rowden Lane. This was shown on the map as partly uncoloured and partly coloured. The judge observed that the history of that other footpath had not been investigated in the evidence before him; and declined to draw any inference about why it had been treated in that way on the map. In fact it may well be the case that the footpath in question was partly fenced and partly unfenced, which may provide the explanation for its differential treatment on the map. But like the judge we decline to draw any inference from that treatment for essentially the same reason. The third reason was based on the evidence of private conveyancing, to which we will return.

77 The judge considered Professor Williamson's points and concluded, at para 753:

> "I am satisfied that it is more likely than not that, if sections A and B with their wide verges, were merely a bridleway, this would have resulted in a liability to taxation, but a deduction in respect of the minor highway. In my judgment, the probable explanation for sections A and B being untaxed is because they were regarded as a full vehicular highway."

78 The judge's conclusion echoes what is said in the Planning Inspectorate Consistency Guidelines, in the passage we have quoted. But the judge did not treat the Finance Act Map as definitive. It was simply one

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH691

A piece of the jigsaw puzzle. He considered that this conclusion was consistent with all the evidence of earlier maps. As he put it, at para 771:

> "I have elsewhere in this judgment developed the point that the majority of maps show Rowden Lane ungated at its junction with the Bath Road, and that there was no physical obstruction to passage between sections A and B. There were many and varied types of members
B of the public who used Rowden Lane over the centuries. The lane must have led to a place of public interest or purpose, because it is conceded by the claimants to be a public highway albeit only on foot and on horseback. Moreover, there is a clear picture of Gipsy Lane and Rowden Lane forming a thoroughfare leading from and to the Bath Road. Rowden Lane has been shown on many maps to be of comparable status to the Bath Road, and the quality of its maintained surface, revealed by
C the OS maps, is consistent with being used as a vehicular highway. Its width is greater than one would have expected for a footpath or bridlepath. These factors, which have been shown on the plan and maps starting in 1669, are entirely consistent with the picture presented by the 1910 map namely that sections A and B of Rowden Lane constitute a public vehicular highway."

D

**79** In other words the judge adopted the caution urged by Mr Braham and did not consider the Finance Act Map in isolation. The main focus of attack on the judge's conclusions drawn from this map is again founded on the proposition that a vehicular right of way would not have ended in a cul de sac. We have already explained why this attack on the judge's inferences drawn from the tithe map does not show that the judge was wrong. But in
E the case of the 1910 map there is an additional factor which supports the judge's conclusion, namely the existence of the football ground and the inference that he drew that people must have come and gone to and from the football ground in vehicles. We note also that the hospital also features on the Finance Act Map where it is (uncoloured) allotment 1304. It would have been uncoloured because it was occupied by a local authority.

**80** Mr Mould submitted, correctly in our judgment, that the treatment
F of the disputed section of Rowden Lane on the Finance Act Map shows very clearly that it was regarded at that time as a highway. For it to have been so regarded it must necessarily have been dedicated as a highway at some time earlier than 1910. That in turn entails that the then owner of the land over which it ran had the necessary intention to dedicate at common law (because there was no statutory presumption of dedication at that time). The action
G of Mr Rich (who was in fact the owner of the soil) in claiming that Rowden Lane was a highway is in itself powerful evidence of previous dedication. At the time of the Finance Act Map it is also clear from all the cartographic evidence that Rowden Lane was physically capable of accommodating vehicles. Not only that, but the first claimant asserts that it was in fact used by vehicles (although not by members of the public). It had existed in that
H physical configuration for centuries.

**81** In 1937 a Mr Gibbons submitted plans to the Chippenham Borough Council for the construction of a bungalow to be built on Rowden Lane. The plans also showed a road, 12 feet from kerb to centre together with a footpath to be "made up to town council byelaws". At the time the borough council had statutory powers under section 30 (1) of the Public Health Act

© 2013 The Incorporated Council of Law Reporting for England and Wales

1925 to declare by order that "an existing highway" be a "new street" for the purpose of the application of local byelaws. The borough council had in fact adopted such byelaws in 1925. These required a new street to be laid out as a carriage road. It was clearly established that in March 1937 the borough council resolved to make such an order declaring Rowden Lane to be a new street. What was not so clear was whether the resolution was put into effect by means of a formal order. The judge concluded that it had: para 817. Although this conclusion is challenged, it does not seem to us that it matters. The fact of the resolution is itself evidence of the status (or at least the reputed status) of Rowden Lane at the time. That is indeed how the judge treated it. He said (para 819):

> "I repeat that the making of the declaration did not alter legal rights. It did not create Rowden Lane a public vehicular highway, if it had not been one before the resolution. However, I am satisfied, on the balance of probabilities, that it is right to infer that the council resolved as it did, because it was apparent to it that Rowden Lane between the Bath Road and the cattle grid was already a public vehicular highway. Had they been of the view that it was merely a private road, but subject to public bridleway or footpath rights only, it seems improbable that they would have imposed on those undertaking the residential development of Rowden Lane the requirement of laying out a carriage road to provide the principal access to those dwellings over no more than a bridleway."

**82** Mr Laurence stressed the general benefit to public health that the inhabitants of Rowden Lane (or perhaps of Chippenham generally) would have enjoyed as a result of the application of the byelaws to Rowden Lane. But in our judgment the judge was right in saying that to resolve to require Mr Gibbons to upgrade a bridleway to the physical condition of a public carriageway all on account of a bungalow would have been overkill (or, as we now say, disproportionate).

**83** In the immediate post-war period a number of reports recommended a national survey of public rights of way, especially rights of way on foot and with horses. Part IV of the National Parks and Access to the Countryside Act 1949 ("NPACA") was the result. Lord Denning MR explained in *R v Secretary of State for the Environment, Ex p Hood* [1975] QB 891, 896:

> "The object of the statute is this: it is to have all our ancient highways mapped out, put on record and made conclusive, so that people can know what their rights are. Our old highways came into existence before 1835. They were created in the days when people went on foot or on horseback or in carts. They went to the fields to work, or to the village, or to the church. They grew up time out of mind. The law of England was: Once a highway, always a highway. But nowadays, with the bicycle, the motor car and the bus, many of them have fallen into disuse. They have become overgrown and no longer passable. But yet it is important that they should be preserved and known, so that those who love the countryside can enjoy it, and take their walks and rides there. That was the object of the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968. In 1949 the local authorities were required to make inquiries and map out our countryside. First, a draft map; next a provisional map; and finally a definitive map. There were opportunities

© 2013 The Incorporated Council of Law Reporting for England and Wales

A both for landowners and the public to make their representations as and when each map passed through each stage. In 1968 there was to be a review and reclassification."

84 In order to understand the framework it is necessary to refer to some of the statutory definitions contained in section 27 (6) of NPACA. First, a "footpath" means "a highway over which the public have a right of way on B foot only . . ."

85 Second, a "bridleway" means

"a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway."

C

86 Third, a "public path" means: "a highway being either a footpath or a bridleway."

87 It follows, therefore, that a highway over which the public have a right of way with vehicles cannot be either a footpath or a bridleway. Nor can it be a public path. Lastly a "road used as a public path" (or "RUPP") means: "a highway other than a public path, used by the public mainly for D the purposes for which footpaths or bridleways are so used."

88 It follows from the statutory definitions that a RUPP is a highway over which the public have rights of way with vehicles (since public paths are excluded from the definition). It also follows that a *private* carriageway over which the public have access on foot or on horseback only cannot be a RUPP. The highest status it can have is that of a public path. The compiling of the draft map, the provisional map and the definitive map were required E to show any way which in the opinion of the authority "was . . . or was . . . reasonably alleged to be" a RUPP: section 27(2) of NPACA.

89 In accordance with their statutory duties the council carried out the required survey. The judge recorded the process, at paras 773–775. The Claim Map, Draft/Provisional and eventual Definitive Maps, showing and recording the public rights of way in Chippenham borough, all showed F sections A and B of Rowden Lane coloured as a full public highway or, on this map, as an uncoloured town street with lesser rights of way being claimed only over the unenclosed section, section C, of the lane. Section C of Rowden Lane was claimed as a public right of way, CRB5. This acronym was a non-statutory subset of the statutory category RUPP. It was contained in a memorandum prepared by the Commons Open Spaces and Footpaths Preservation Society and approved by the Ministry of Town and County G Planning. One subdivision was CRB which stood for a carriage road mainly used as a bridleway. The other was CRF which stood for a carriage road used mainly as a footpath. The memorandum said: "Highways which the public are entitled to use with vehicles but which are in practice mainly used by them as foot ways or bridle ways should be marked on the map as 'CRF' or 'CRB'."

H 90 The important point is that both subdivisions acknowledged that the public were entitled to use the way in question with vehicles.

91 The judge commented (para 775):

"It is unlikely that the council would have claimed CRB5 as a cul-de-sac way, and it is likely that it regarded the enclosed sections A and B of

© 2013 The Incorporated Council of Law Reporting for England and Wales

Rowden Lane as having full public vehicular rights to the point where it connected with CRB5."

**92** Mr Burridge, who then owned Rowden Farm, challenged the claim that section C was a RUPP. The ground of his challenge was that Rowden Lane was not a public way at all. This challenge led to an inquiry before an inspector in March 1955. The inspector rejected the challenge because he found that there was evidence of considerable use by the public; and section C was therefore shown on the definitive map as part of a RUPP: paras 832, 833. It is noteworthy that Mr Burridge did not make an alternative challenge that if there were public rights of way they were limited to passage on foot or horseback. If he had made such a challenge, the way might have been recorded as a footpath or as a bridleway. But it was not.

**93** In addition the only way in which a vehicle could access section C was by passing along sections A and B. If, therefore, section C was subject to public rights of passage with vehicles, it inexorably followed that so were sections A and B. The Definitive Map was accompanied by a Definitive Statement. That stated in relation to RUPP5 (i e section C of Rowden Lane): "CRB from the eastern end of Rowden Lane leading south east along the entrance road to Rowden Farm, to the Lacock Parish boundary, 100 yards west of Rowden Farm buildings."

**94** The judge regarded the treatment of Rowden Lane on the definitive map as strong evidence. In his words, at para 837:

> "I regard this as cogent and compelling evidence that, in or about 1950, Sections A and B of Rowden Lane were regarded as full vehicular highways. It was compiled by someone who could be taken to have knowledge of the highway network at the time."

**95** He added, at para 844:

> "I accept the [council's ] submission that the material point here is that there is before me now a record made in 1955 of an inspector, who had received and evaluated evidence (which has since been lost) through a statutory forensic process. He found as a fact that considerable public user of section C of Rowden Lane supported its inclusion on the definitive map, not merely as a public footpath or a bridleway, but as a public cartway albeit mainly used in 1950 as a bridleway. The only way in which the public could gain access with vehicles to RUPP/Chippenham 5 in the 1950s was by driving along sections A and B of Rowden Lane. This was because in the Draft and subsequent Maps, the enclosed section of Gipsy Lane was shown as bridleway 2A. Vehicular access was therefore not possible from Gipsy Lane in 1950. In fact, it is probable that Gipsy Lane had been closed to vehicles since about 1910, before the date of the Finance Act Map."

**96** Mr Laurence said that no legitimate inference could be drawn from this material about the existence of vehicular rights of way over sections A or B of Rowden Lane. The first reason he gave was that it was no part of the function of an inquiry under NPACA to deal with the status of public carriageways. However, the first claimant's case is that sections A and B of Rowden Lane were not in fact subject to any public vehicular rights. In that case the highest possible classification those sections of Rowden

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH695

A Lane could have commanded was classification as a RUPP (on the basis that it was "reasonably alleged" that public vehicular rights existed), although on her case they should have been classified as a public path. Since the object of the statutory inquiry under NPACA was precisely to record public rights of way on foot and on horseback (including RUPPs), if the first claimant is right sections A and B should have been investigated. The fact that they were not is some evidence that they were reputed to B be public carriageways. The second objection is that the inclusion of section C of Rowden Lane as part of a RUPP shows no more than that the inspector formed the view that it was "reasonably alleged" that the public had vehicular rights of way over section C. That is a fair point, as Mr Mould acknowledged. In our judgment the judge may well have given too much weight to the results of the definitive map process. But this was C only one strand in the evidence; and the fact that he may have given too much weight to this particular piece of evidence does not, in our judgment, fatally undermine his overall conclusion.

**97** Mr Laurence's principal criticism of the judge really boils down to two main points. First he says that the judge placed too much reliance on the small scale commercial maps, which he should have ignored. Instead he should have concentrated on the large scale plans. Second, the topography D shown by the larger scale maps makes the allegation that Rowden Lane was part of a thoroughfare improbable.

**98** We deal first with the argument that the judge should have ignored what he called the "small scale maps" entirely; and should have concentrated only on the large scale maps (i e principally the 1784 map). We reject that submission. First, it conflicts with the statutory instruction in E section 32 of the 1980 Act which says that the court "*shall* take into consideration *any* map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified . . ." (Our emphasis.) Second, the consistency of treatment of Rowden Lane and Gipsy Lane in commercially produced maps for well over a century showed, if nothing else, the F reputation enjoyed by Rowden Lane. Section 12 of the Planning Inspectorate Consistency Guidelines (2nd revision June 2008) (which Professor Williamson produced) concludes by quoting a paper by Christine Willmore dealing with old maps:

> "What is looked for is a general picture of whether the route seemed important enough to get into these documents fairly regularly. A one-off G appearance could be an error . . . consistent depiction over a number of years is a positive indication."

**99** That is the approach that the judge adopted, testing each provisional conclusion against what had come before and what came after. In our view the judge's approach to "consistent depiction" was fully justified.

**100** The second main argument rests on topography. According to Professor Williamson Rowden Lane and Gipsy Lane (which were two parts H of the thoroughfare found by the judge) meet in an acute V shaped junction. The argument is that it would have been very difficult (although not impossible) for a horse and cart to negotiate the V shaped junction. If Rowden Lane and Gipsy Lane had been used as a connected through route, then horses and carts would have had to have cut the corner. If they

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH696

had done this with any regularity then there would have been visible traces of cart tracks, which the map-makers would have recorded. The judge dealt with this point, at para 676:

> "I am not persuaded that the junction of the two tracks, section C and the southernmost continuation of Gipsy Lane, form the impractical 'V' junction described by Professor Williamson, nor that they are simply different private access tracks to Rowden Farm. Rowden Farm Lane is narrower than either Rowden Lane or Gipsy Lane, and there is no visible obstruction on the plan to stop the corner being cut at the 'V' junction."

**101** As we have pointed out, many of the commercial maps (including the Ordnance Survey map of 1828) showed a junction at a less acute angle than that to which Professor Williamson spoke. At least two maps (including the 1784 map on which Mr Laurence relied heavily) showed a bulge which could have represented a place for carts to manoeuvre. In addition as the judge pointed out in the quoted passage, the width of Rowden Lane and Gipsy Lane (as compared with Rowden Farm Lane) might have left space for at least smaller two-wheeled carts to make the turn. It must also be recalled that the judge had a site view of which he took full advantage. We are not persuaded that the point about the V shaped junction, even if correct, is of such force as to outweigh all the other material that led the judge to his conclusion.

**102** In addition it must not be forgotten that one strand in the council's case was that the disputed section of Rowden Lane was a vehicular highway even if it did not form part of a through route. Mr Harbour had said that there was sufficient attraction along its length to cause the public to use it with vehicles. Professor Williamson appears to us to have accepted this. Thus the question whether vehicles would have negotiated the junction at point K with more or less ease was not determinative of the case.

*Maintenance*

**103** Part of the judge's reasoning was informed by his consideration of evidence of maintenance. It is common ground that proof that a way has been maintained at public expense is evidence that it is a highway. Among the documents that the council disclosed was a minute of the Chippenham borough council from February 1881. It related to a bridge which crossed a brook in section A of Rowden Lane. At that meeting, a letter from Mr Doswell, the highway surveyor of the Chippenham highway district, was read. It asked the council to join with the other owners of adjoining property in contributing towards the repair of a bridge over the brook in the lane leading to Rowden Farm and the field called Hulberts Hold belonging to the corporation. It was proposed by Mr Alderman Dowding, and seconded by Mr Careless, that the council should contribute one tenth of the expense which would be about £1. This was then agreed.

**104** Professor Williamson attached particular importance to this minute. He said that it demonstrated that the council and other landowners with property along the lane were behaving in precisely the same way as the residents do currently: contributing equally to its upkeep. This, he said, was inconsistent with a belief that Rowden Lane was a public highway. The judge dealt with this point:

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH697

A "726. For me, the interesting thing about this minute is that the letter had been written by the *Highway Surveyor*. He was asking for contributions for the repair of the bridge. Why was the Highway Surveyor involved, if Rowden Lane was entirely private? Moreover, he was merely asking for a contribution towards repair, he was not suggesting that the adjoining owners were obliged to do so.

B "727. In my judgment, the fact that the person taking responsibility of the project was the Highway Surveyor provides support for the view that Rowden Lane was regarded at the time as a public vehicular road. A bridge, especially of that width, would not have been necessary if Rowden Lane were a mere bridleway." (Original emphasis.)

105 We do not find the first of the judge's points persuasive. The request, after all, concerned the repair of a bridge: so who better to deal C with it than the council employee who knew about roads and bridges? The second point seems to us to be equivocal. If, as the council say, Rowden Lane had been dedicated as a highway before 1835 then the highway would have been liable to be repaired by the parish, rather than by the frontagers. On that basis, the minute does not support the council's case. On the other hand, if the highway had been dedicated after 1835 then it would not D automatically have been repairable by the parish. It would only have become repairable at public expense if it had been adopted. If that is the explanation for this minute, then it is consistent with the council's case. However, building on the bedrock that it is common ground that there was some kind of highway over Rowden Lane, the judge's final point namely that a bridge of this width would not have been needed if all that was in question was a bridleway is a good one.

E 106 He returned to this point later in his judgment when he said, at para 916:

"I have already dealt with the 1881 minute concerning the repair of the bridge in section A of Rowden Lane, when dealing with Professor Williamson's observations on it above. In addition, it must be remembered that, given the claimants' concession that sections A and B F are public highways, much of the force of his argument has evaporated. In my judgment, the 1881 minute indicated not only that section A was a publicly maintainable highway but also the fact that a bridge needed to be repaired indicated that it was a public vehicular highway, since the presence of a bridge bearing a track way over it was much more consistent with a public vehicular way than a public footpath or bridleway."

G 107 Although we would not go so far as to say that this particular minute positively indicates that Rowden Lane was a highway, the remaining points are well made. All in all we would not place any real reliance on this episode one way or the other.

108 In the 1950s, Rowden Lane had a hard surface of compacted gravel. At this stage, there was no further evidence of the council or of any H highway authority taking responsibility for the maintenance of the lane. Potholes appear to have been filled in on an "ad hoc" basis by adjacent property owners. In the 1960s, the lane was resurfaced, and this was paid for effectively by the farms and businesses on Rowden Lane. In 1965 the borough council minutes revealed approval of expenditure by the council for the improvement of Rowden Lane (in conjunction with the brewery that

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH698

owned the pub). This was about the time that the pub was rebuilt, and as part of the conditions of the planning permission Rowden Lane was to be widened. This necessitated the giving up of some land by the brewery, which it did. This can realistically only be interpreted as a dedication by the brewery.

**109** Following the local government reorganisation in 1972 the Wiltshire County Council became the highway authority in place of Chippenham Borough Council. Records were transferred from the latter to the former. However, the records transferred by Chippenham Borough Council to Wiltshire County Council showed only section A of Rowden Lane as a public carriageway. Section B was shown as part of RUPP5. This designation of section B contradicted the definitive map (although it would still have recognised the existence of a public right of way with vehicles). The judge held, at para 789, that this was a mistake which was corrected in 1983. Since at least 1972 a culvert running under section A of Rowden Lane has been maintained at public expense. Presumably this culvert enclosed the brook which had been crossed by the bridge referred to in the borough council's minute of 1881. Since that time or earlier section A as a whole has also been maintained at public expense.

**110** The mistake about section B came to light in 1983. In or about 1983 the highway authority resurfaced Rowden Lane. The sections that were resurfaced were sections A and B: para 389. It was the first recorded work to section B at public expense. It was this that brought the mistake to light, because someone in the council queried whether public money should have been spent on section B. Upon investigation it transpired that section B had been incorrectly recorded on the definitive map as part of RUPP 5. That error was corrected. Since that time the council has accepted liability to repair both sections A and B of Rowden Lane (although its cash resources have rarely resulted in actual work).

**111** Mr Caddick, who argued this part of the first claimant's case, submitted that the 1881 minute did not support the council's case. For the reasons we have given, we agree. He also submitted that the evidence of contributions made by the frontagers to the resurfacing of Rowden Lane in the 1960s contradicted the council's case. We agree with that too. On the other hand, the council has maintained the culvert since 1972; and has accepted responsibility for the repair of section B of Rowden Lane since 1983. It has carried out work to section A of Rowden Lane since before then. No one has been able to suggest how section A of Rowden Lane could have a different status as a highway from section B. All in all we conclude that the evidence of maintenance (or lack of it) does not contribute significantly to either side's case.

*Conveyancing evidence*

**112** It is now time to consider the conveyancing evidence on which the first claimant heavily relies. As one might expect parcels of land accessed from Rowden Lane have changed hands from time to time. Some light may be shed on the status of Rowden Lane by the way in which access was dealt with by local conveyancers. Mr Laurence accepts that the conveyancing evidence does not all point to the same conclusion. There may be cases in which private conveyancing documents all point one way: viz to the conclusion that there was no highway. In such a case the force of the

© 2013 The Incorporated Council of Law Reporting for England and Wales

AUTH699

A evidence of private conveyancing documents may outweigh the value of public documents such as a tithe map or a Finance Act assessment which were not prepared for the express purpose of recording public rights of way. *Maltbridge Island Management Co Ltd v Secretary of State* [1998] EGCS 134 is one such example. But in the present case it is accepted that the private conveyancing documents do not speak with one voice. Moreover, in so far as they suggest that there was no highway at all they are B simply wrong.

**113** It is a general principle of the interpretation of conveyances that where land is bounded by a river or a public highway a conveyance of the land will pass half the river bed or half the soil of the highway, as the case may be. This principle is clearly articulated by this court in *Micklethwait v Newlay Bridge Co* (1886) 33 Ch D 133. All three Lords Justices approved C the principle. It is only necessary to quote one of them, Lopes LJ, at p 155:

> "if land adjoining a highway or a river is granted, the half of the road, or the half of the river is presumed to pass, unless there is something either in the language of the deed or in the nature of the subject matter of the grant, or in the surrounding circumstances, sufficient to rebut that presumption, and this though the measurement of the property which is D granted can be satisfied without including half of the road or half of the bed of the river, and although the land is described as bounded by a river or a road, and notwithstanding that the map which is referred to in the grant does not include the half of the river or the road."

**114** It will be noted that the presumption comes into play when the land in question adjoins a highway. In *Leigh v Jack* (1879) 5 Ex D 264 E Cockburn CJ explained the rationale for the presumption, at p 270:

> "It is presumed that those who were seised of the neighbouring land devoted the surface of their soil to the public, in order to confer a common benefit on all those desirous of using the highway, without, however, parting with the ownership of the soil itself."

F **115** In other words the presumption is founded on the assumption that the land is bounded by a highway (i e that there has been a dedication and acceptance by the public), and upon the further assumption that the surface of the land is vested in the highway authority. In those circumstances it is difficult to see how the application of the presumption could lead to the conclusion that the owner of land adjoining the highway could have rights of vehicular passage over the surface of the highway otherwise than in his G capacity as a member of the public. Nor, of course, does the application of the presumption give the landowner any right of passage over the other half of the highway in question; or over land forming part of a highway that is not coterminous with his own.

**116** The argument based on the conveyancing documents has a number of strands. The first is that there are conveyances from the 19th and 20th centuries that expressly convey parts of section B of Rowden Lane. H These conveyances are respectively dated 11 April 1820, 28 October 1836, 31 July 1841, and 30 April 1919. It is difficult to see how this really advances the first claimant's case. Before 1836 no part of the highway would have been vested in anyone other than the frontagers. Until the last quarter of the 19th century only the scrapings would have been vested in the

© 2013 The Incorporated Council of Law Reporting for England and Wales

surveyor. Even after that, the land itself (apart from the surface of the highway) would have belonged to the frontagers, so a conveyance of the soil of Rowden Lane is not inconsistent with the existence of a highway. Moreover, as Mr Laurence points out, the principle of interpretation would pass these parcels (minus the surface of the highway) even if the conveyances did not mention them at all.

**117** The second strand is that where conveyance plans depicting Rowden Lane have survived from 19th century conveyances, it is not expressly called Rowden Lane but the way is annotated with the words "From Rowden Farm" or "To Rowden Farm". This contrasts with the depiction of the main road labelled "To Bath" or "To Chippenham". The inferences that the first claimant seeks to derive from these plans are twofold: that the label "To" or "From" Rowden Farm only suggests that there was no through route, and that the reference to the way serving Rowden Farm suggests that it was a private track. The conveyances with these features include conveyances of 3 November 1851, 29 September 1858, an abstract of title of 3 March 1884 and another dated 5 March 1884; and there is a similar notation on auction particulars in 1881. If these inferences were relied on in order to advance a case that there was no highway at all, they might well have some force. We come back (yet again) to the fact that it is common ground that Rowden Lane is agreed to have been a highway (open at least to pedestrians and riders). So these annotations on the plans must be seen in the context of their describing an acknowledged highway. Moreover the 1669 enclosure map shows the same road as leading to "Rowden Farm *and other lands*"; and the 1784 plan calls the disputed section of Rowden Lane "Rowden Down Lane" as opposed to "Rowden Farm Lane".

**118** The third strand is that in 1927 the Lackham Estate was put up for sale in lots by auction; and auction particulars were prepared. Four lots bordered Rowden Lane. The catalogue description of each said that it was accessed by a "private road"; and the special conditions of sale envisaged that each purchaser would be required to contribute to the cost of upkeep. The argument based on this is that given the public nature of the auction and the likelihood of close public scrutiny, the fact that these auction particulars were "of the utmost importance". It can be accepted that these auction particulars do point to the conclusion that whoever drew them up thought that Rowden Lane was a private road. But the fact is that the draftsman of the particulars was wrong. Rowden Lane was a highway (open at least to pedestrians and riders). It would have been misleading simply to call it a "private road". So while the judge might have given more weight to this piece of evidence than he did, it is an exaggeration to describe it as "of the utmost importance". It is one piece of evidence among many; albeit one of the few pieces of evidence that positively supports the first claimant's case. But its force is blunted by the fact that the provision in the special conditions of sale about contributions to the upkeep of the road was not carried through into any conveyance.

**119** The Lacock Estate was conveyed in 1927 to a Mr Holt. The conveyance to him granted a right "so far as the vendor has power to grant the same" to pass and repass "with or without horses cattle and other animals carts waggons carriages motor cars and agricultural implements" over Gipsy Lane. The conveyance also included a similar right "so far as the

© 2013 The Incorporated Council of Law Reporting for England and Wales

A vendor has power to grant the same" over Rowden Lane, which the conveyance described as "the lane or roadway leading from Rowden Farm to the Main Bath Road". We accept that the grant of an express right of way over Rowden Lane is suggestive that it did not have the status of a highway. However, the draftsman of this conveyance was, no doubt, under the same misapprehension as the draftsman of the auction particulars prepared earlier in the same year. Moreover the granted right includes both passage on foot B and with horses and other animals, both of which were already existing public rights, even on the first claimant's case. Not surprisingly, subsequent conveyances which had the 1927 conveyance as their root of title repeated the grant.

**120** In addition, although Mr Laurence placed reliance on section 62 of the Law of Property Act 1225 and its predecessor section 6 of the C Conveyancing Act 1881 which obviate the need to include general words in conveyances, these provisions apply only to conveyances made after 31 December 1881. In so far as there are conveyances that pre-date 1882 which do not include general words, they tend to support the inference that Rowden Lane was a vehicular highway.

**121** The judge recorded that a number of other conveyances dealing with land adjoining Rowden Lane did not include any express right of way D over the lane. These included in particular the resolution to grant the lease of what became the hospital. The judge reasoned, at para 907(5):

> "Given the absence of private easements in favour of the properties fronting Rowden Lane, they and Rowden Farm would be landlocked if Rowden Lane were not a public vehicular highway. The fact that the parties did not include any part of the road in the conveyance, and also E failed to stipulate for private access rights, renders it probable that everybody realised that the road had become a public vehicular highway. Even if the current owners of property fronting Rowden Lane owned one half of the subsoil of Rowden Lane which adjoined property, this did not give a right of way over the entire length of Rowden Lane to gain access to the A4."

F

**122** The important fact is that the soil of Rowden Lane never belonged to the owner of Rowden Farm and there is no evidence of any grant of a right of way. It is improbable in those circumstances that Rowden Lane was no more than a private carriageway serving Rowden Farm. The situation on the ground is quite unlike that described by Lord Dunedin in *Folkestone Borough Council v Brockman* [1914] AC 338.

G **123** Mr Laurence fills the gap by suggesting that the frontagers would have acquired vehicular rights of way by prescription. Given that the premise is that Rowden Lane is a highway we find it difficult to see how private prescriptive rights of passage can come into existence. The status of Rowden Lane as a highway (which everyone agrees) is dependent on the inference that at sometime in the past there was a dedication. As far as one can tell that dedication must have taken place at a time when Rowden Lane H was actually being used by carts and other vehicles (otherwise the prescriptive rights for vehicular use would not have come into existence). The existence of a prescriptive right depends on the inference (which may be fictional) of a grant or grants. In this case Rowden Lane ran through land owned by many different owners; so a series of grants would have to be

© 2013 The Incorporated Council of Law Reporting for England and Wales

presumed. The presumed grants would have had to have been made not only in favour of the owner for the time being of Rowden Farm but also in favour of all those other persons who from time to time owned land abutting Rowden Lane. They would have to have been made by a series of landowners each of whom owned a part of the soil over which Rowden Lane ran. Why, then should it be inferred that the dedication was a limited dedication, subject to the frontagers' private rights to use Rowden Lane with vehicles, rather than a dedication which reflected the actual use made of the lane, which included use with vehicles? To infer a whole series of grants and dedications running in parallel is unnecessarily complicated. The principle of Occam's razor surely applies here. The simpler explanation for the factual state of affairs is that there was an unlimited dedication. Accordingly in our judgment the judge's reasoning was correct.

**124** We return to the question posed by the judge: given the width and nature of Rowden Lane from the earliest recorded times, how does it come about that there has been a dedication for use by pedestrians and riders but not for horses and carts? A passage in Professor Williamson's cross-examination on Day 4 went like this, at pp 129–130:

> "*Q*. And if they wanted to go along with horses, can you think of any reason why they might want to go along with horses but not want to go along pulling a cart behind the horses?
>
> "*A*. It might reside in the extent to which the use was tolerated, when dedication occurred, i e you might be prepared to tolerate user on foot or by horseback in the same way you might not be prepared to tolerate full use by vehicles largely because of damage done to road surfaces and to crops and standing fields etc. There might be reasons why you would allow one and not the other."

**125** If this hypothesis were correct it would lead to the conclusion that vehicular use of the way was not tolerated. But if that were the case, then prescriptive rights would not have arisen either. It is quite implausible to suggest that the landowners over whose soil the way ran would have checked passing vehicles to see whether they belonged on the one hand to frontagers along the way or to persons using the way at the invitation, express or implied, of those frontagers; or on the other hand to members of the public. It is the sort of factual inference that Mr Laurence rightly accepted would be unsustainable.

**126** The judge summarised the findings that led him to conclude that Rowden Lane was a highway usable by the public on foot, with animals, and with vehicles, at para 953:

> "(i) Rowden existed as a location since at least 1190.
>
> "(ii) The borough lands were seized by the Crown in 1540, and allotted to the 'inhabitant householders' of Chippenham. This was a group large enough to constitute 'the public'. They probably used horse drawn carts and wagons to carry away wood from the coppice which became their land by 1544. These inhabitants of Chippenham have used Rowden Lane to access the coppice either via the two spur roads, if they existed before 1669, or over the unhedged southern boundary of Rowden Lane before the spur roads were created.
>
> "(iii) The unruly and disorderly members of the public from Chippenham or elsewhere, who trespassed in and stole wood from the

© 2013 The Incorporated Council of Law Reporting for England and Wales

A coppice, also constituted a sufficiently large constituency of people to constitute the public. No complaint was made that they were trespassing on private roads when they were undoubtedly using Rowden Lane to gain access to the coppice. The borough of Chippenham did not own Rowden Lane and therefore could not give consent to anyone to use Rowden Lane.

"(iv) Soldiers with horse drawn wagon and carts must have used Rowden Lane to access Rowden Manor during the Civil War. Such B soldiers must have constituted members of the public, and their use of Rowden Lane must have been trespassory.

"(v) By 1669, Rowden was a well established place to which both Gipsy Lane (as it was to become) and 'Rowden Way' gave access.

"(vi) In 1669, sections A and B of Rowden Lane had a distinct name, i e 'Rowden Way'.

C "(vii) Rowden Lane and Gipsy Lane, as they were to become known, contained the word 'lane' in their name implying a highway running between two major roads or different sections of the same major road. The presence of a useable through route from the Bath Road, along Rowden Lane, over the unenclosed track, up Gipsy Lane and back on to the Bath Road is clearly demonstrated on historical maps. There are sound reasons why such a through route existed. They include the D potential avoidance of paying tolls, the avoidance of badly maintained or unpassable sections of the Bath Road and, at least for a time, to provide some form of access from Gipsy Lane to the market place in Chippenham. This through route is shown in the maps of 1773, 1792, 1828, 1829, 1848, 1862, 1867, 1890 and 1910. Professor Williamson accepted that the maps of 1773 1828 1829 and 1890 demonstrated a E through route.

"(viii) Apart from gates shown at the junction of the Bath Road and section A of Rowden Lane in the 1784 and 1796 maps, no such gates are shown in the maps of 1669, 1848, 1867, 1900, 1910, 1953 and 1974, nor in the aerial photographs of 1946, 1950, 1964 and 1973. Moreover, even by 1784, it is likely that sections A and B of Rowden Lane were a public highway on foot at the very least, and so it is likely that the public was not F excluded from using Rowden Lane in carts or wagons, especially since it was eminently suitable for that use.

"(ix) Spurs 1 and 2 leading to Hulberts Hold and the coppice, south of Rowden Lane, have been depicted in a way similar to Rowden Lane. This is consistent with the use of Rowden Lane and the spurs, by the public in wagons and carts, to gain access to the borough lands, including G the coppice.

"(x) There is an abundance of evidence to justify the inference, which I draw, that Rowden Lane was dedicated to and used by the public as of right with wagons and carts. The public used this to gain access to the borough lands, the infectious hospital (as shown in the 1896 minute in relation to Hulbert Hold, a piece of land owned by the council until 1947), those persons ruly and unruly who used the coppice to cut and H gather wood, soldiers and those using the football ground shown on the 1910 map. Moreover, as the claimants' admission, namely that sections A and B of Rowden Lane was a public highway subject to public rights on foot and horseback, showed, the public had a real reason for using Rowden Lane. Either it was a place of public interest or the public

© 2013 The Incorporated Council of Law Reporting for England and Wales

had a particular purpose for using it. Given this admission, and the width and level of maintenance of Rowden Lane over the centuries, it seems likely that the public would also have used it with wagons and carts. It must be remembered that the coppice was not common land after 1540 and, after 1669, previously common land had been enclosed. After 1669 the use of Rowden Lane would not have been by commoners as an incident of common.

"(xi) Sections A and B of Rowden Lane have been shown to be of a higher standard of status than section C. If, which I reject, section C of Rowden Lane was only a bridleway before the 1970s, sections A and B are, therefore, of a higher status, namely a public vehicular highway.

"(xii) There are, and have been no obstructions or gates limiting or restricting access between sections A and B of Rowden Lane.

"(xiii) There were never any 'Private' signs before 2002.

"(xiv) The manner in and the standard to which sections A and B were maintained (see the Minute of 1881 and the shading on the 1900 map and the quoted correspondence dealing with maintenance), indicate that the highway authority had been maintaining, however intermittently, sections A and B of Rowden Lane.

"(xv) The 1896 minute in relation to the infectious hospital clearly justifies the inference that the council considered Rowden Lane was then a public highway, because otherwise the infectious hospital would be landlocked, given the absence of any private easement *over* Rowden Lane. [Original emphasis.]

"(xvi) The maintenance of the bridge in section A, as shown in the 1881 minutes, would be unnecessary if Rowden Lane were then merely a public highway on foot or on horseback. A wide bridge maintained by the highway authority was plainly excessive if the only public rights were on foot or on horseback.

"(xvii) Rowden Lane was shown on some of the less ancient maps as comprising a track with verges. This is more indicative of a public vehicular use rather than use confined to foot or horseback.

"(xviii) I draw the inference that Gipsy Lane too was a public vehicular highway, on the totality of the evidence, including the shading shown on the Ordnance Survey Map for 1900, the 1910 map and the fact that it bore the name 'Gipsy' Lane. This clearly implied the use of that lane with carts and wagons by travelling gipsies. That use could not have been with the permission of Rowden Farm, since Gipsy Lane was not owned by Rowden Farm. The fact that Gipsy Lane was also a public vehicular highway supports the useable through route contention. Moreover, the Perkins drawing of 1905, derived from maps and other documents which he had seen, referred to a 'cart track' going across the unenclosed sections of Cunniger and Home Down fields.

"(xix) Utilities are found in sections A and B of Rowden Lane. There is no wayleave agreement permitting this, and the inference is that they were installed in the highway under statutory powers. Whilst these are not probative on their own of in public vehicular highway, they are entirely consistent with it.

"(xx) A public house has existed at the corner of the Bath Road and section A of Rowden Lane for many centuries. In the 1960s, when a new

© 2013 The Incorporated Council of Law Reporting for England and Wales

A public house was built, the then narrow section A of Rowden Lane was widened by the dedication of land by the brewery. This could only reasonably have been accepted by the highway authority on the basis that the then existing narrow section A was also public vehicular highway.

"(xxi) Professor Williamson's report virtually admits that section A is a public vehicular highway, and this fact had been conceded by the claimants up to November 2008.

B "(xxii) The 1910 Finance Act is strongly supportive of sections A and B as a wholly untaxed public vehicular highway, as opposed to a private road subject to deduction for minor highway rights.

"(xxiii) The 1937 Chippenham declaration of Rowden Lane as a new street, to be built to certain standards, would seem to be an over-exacting requirement, if the only public rights over Rowden Lane were on foot or

C on horseback.

"(xxiv) The definitive map process, from 1949 to the inquiry in 1955 (in relation to section C as RUPP 5 connecting with sections A and B of Rowden Lane) is highly indicative of sections A and B status as a public vehicular highway, especially when it was shown as such on the relevant maps. Nor is the strength of this conclusion in any way undermined, in my judgment, by the fact that section C was subsequently downgraded to

D a bridleway.

"(xxv) The private conveyancing documents, relating to transfers of property adjoining Rowden Lane, and in particular the absence of express grants of rights of way, are probably explicable on the basis that everybody had regarded the public as having full rights of way over Rowden Lane, as it was a public vehicular highway."

E

**127** Even if some of these factual findings can be chipped away at the margins, in our judgment the judge was amply justified in concluding on the material before him that (even without reliance on the evidence of modern use) Rowden Lane was a vehicular highway.

**128** The next question that the judge had to consider was the width of the highway. The judge recorded, at para 959, that Mr Laurence accepted

F that if the council established that Rowden Lane is an ancient public vehicular highway, then there is no reason to doubt the applicability of the hedge to hedge presumption. Since the judge did so find, and we have upheld his finding, this issue does not arise. The challenge to the judge's conclusion about the width of the highway was based on the premise that the sole reason for his conclusion was the presumption of dedication under

G section 31 of the Highways Act 1980.

*NERCA*

**129** The judge rejected the first claimant's claim that any vehicular right of way for the public over sections A and B of Rowden Lane was extinguished by section 67 of NERCA. He dealt with it in chapter 22, paras 989–1159 of his judgment. We conclude that the judge was right on

H the points which have been argued substantially for the reasons he gave.

**130** Section 67 of NERCA was enacted as a result of public concern about inappropriate use of "green lanes". Green lanes are minor unmade rights of way, over which vehicular rights of way existed but which were generally enjoyed by walkers and horseback riders. Users of mechanically

© 2013 The Incorporated Council of Law Reporting for England and Wales

propelled vehicles ("MPVs"), such as motorcycles, were using some green lanes for recreational purposes and causing damage to them.

**131** Parliament reacted to this concern by restricting the ways that could be used for this purpose. The legislative technique chosen for this purpose was to graft, onto then recent legislation for the official recording of rights of way, the sanction of extinguishment for public rights of way for MPVs in default of such recording by midnight on 1 May 2006. That is the time when section 67 of NERCA came into effect ("the NERCA commencement date").

**132** The intricacies of the legislative history are described in paras 7 to 13 of the judgment of Dyson LJ in *R (Warden and Fellows of Winchester College) v Hampshire County Council* [2009] 1 WLR 138, with which Ward and Thomas LJJ agreed. We have briefly outlined the legislative history at para 83 above and it is sufficient for our purposes at this stage to summarise the main steps. Initially, Part IV of NPACA required county councils to maintain definitive maps and statements showing (1) footpaths; (2) bridleways, and (3) RUPPs, or "roads used as public paths". As explained in para 87 above, RUPPS were highways other than footpaths and bridleways which were used by the public mainly for the purposes for which footpaths and bridleways are so used. NPACA was amended by the Countryside Act 1968. This required county councils to reclassify each RUPP as a footpath, a bridleway or a byway open to all traffic, or "BOAT".

**133** In the Wildlife and Countryside Act 1981 ("WCA"), BOATs were redefined as highways over which the public have vehicular rights of way but which are used by the public mainly for the purposes for which footpaths and bridleways are so used. WCA made provision to amend the definitive map and statement and the *Winchester* case is concerned with the requirements for such applications.

**134** The Countryside and Rights of Way Act 2000 ("CROW") introduced a further requirement to distinguish between RUPPs still shown on definitive maps and statements that conferred the right to use MPVs and those that did not ("restricted byways"). These provisions reflect Parliament's concern that rights of way should be recorded on a register open to public inspection.

**135** The extinguishment of rights of way was a later addition to this process. In the first instance, CROW provided for the extinguishment of unrecorded rights to use ways for MPVs in 2026. However, section 67 of NERCA was subsequently enacted, which provided for their extinguishment in 2006.

**136** Section 67(1) of NERCA thus provides for the extinguishment of rights of way which were either not shown on the definitive map or statement, or which were there classified as only footpaths, bridleways or restricted byways, i e not for use by MPVs:

> "67. *Ending of certain existing unrecorded public rights of way*
>
> "(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement— (a) was not shown in a definitive map and statement, or (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway. But this is subject to subsections (2) to (8)."

© 2013 The Incorporated Council of Law Reporting for England and Wales

A **137** Section 67 is both dramatic and draconian. It had a "once and for all" effect at the NERCA commencement date. Parliament provided for exceptions from section 67(1), and they are set out in section 67(1)–(8). These exceptions include subsection (2)(b), which falls for consideration on this appeal. This provides:

> "(2) Subsection (1) does not apply to an existing public right of way
B if— . . . (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c 66) (list of highways maintainable at public expense) . . ."

**138** Thus the draconian provisions of section 67(1) did not apply if, even though the relevant rights did not appear in the definitive map and
C statement (or are so shown only as a footpath or bridleway), they were, immediately before the NERCA commencement date, shown in the list ("the list of streets") which the council is required to maintain by virtue of section 36(6) of the Highways Act 1980.

**139** We now move away from examining the nature of section 67 of NERCA to examining the requirements of section 36. As the judge observes, this provides for a completely different kind of register, namely one relating
D to the maintainability of the highway, not the type of rights that it conferred. Thus section 36(6) (as amended by section 8 of and paragraph 7 of Schedule 4 to the Local Government Act 1985) provides:

> "The council of every county, metropolitan district and London borough and the common council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are
E highways maintainable at the public expense."

**140** The effect of the first claimant's claim was to throw on to the council the onus of proving that the exception in section 67(2)(b) was met. Accordingly, it is necessary to consider the statutory requirements relating to the list of streets. Section 36(7) (as amended by section 22(1) of an
F paragraph 4 of Schedule 7 to the Local Government (Wales) Act 1994) stipulates where the list of streets is to be kept, and provides for the list of streets to be made available for public inspection:

> "Every list made under subsection (6) above shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours and in the case of a list made by the council of a county in England, the county council shall
G supply to the council of each district in the county an up-to-date list of the streets within the area of the district that are highways maintainable at the public expense, and the list so supplied shall be kept deposited at the office of the district council and may be inspected by any person free of charge at all reasonable hours."

**141** There is no provision in section 36(7) for the Secretary of State to
H make regulations prescribing the form of the list of streets; in particular, whether it could be in electronic form. This may be contrasted with the provisions of section 31A of the 1980 Act (as inserted by section 57 of CROW). Section 31A deals with the information that a landowner must lodge with the council if he wishes to dedicate a right of way to the public.

© 2013 The Incorporated Council of Law Reporting for England and Wales

This makes provision for the council to keep a register of maps, statements and declarations lodged under section 31(6). With effect from 1 October 2007, regulations made pursuant to section 31A provided for the manner in which this information was to be kept. In particular, it provided that it should be kept in both written and electronic form: the Dedicated Highways (Registers under section 31A of the Highways Act 1980) (England) Regulations 2007 (SI 2007/2334), regulation 4. Section 36(7) is, by contrast, completely silent as to the form of the list of streets. The explanation for why section 36 is silent on the medium in which the list of streets is to be kept will be addressed later in this judgment.

**142** Returning to section 67 of NERCA, in this case, sections A and B of Rowden Lane were not shown in the definitive map and statement as a RUPP. They were coloured as an ordinary public road (although these sections did not form any part of the council's claim or the inspector's inquiry). In addition they were shown as a road maintainable by the council in a record that the council contended constituted its list of streets. They were indeed a road maintainable by the council as they had become a public vehicular highway before 1835.

**143** The issue for determination in respect of this claim, namely the issue whether that record satisfied the exception in section 67(2)(b), was a mixed question of fact and law. Questions as to the actual form of the list and what it contained were questions of fact and questions as to what it should contain or the form it should take were questions of law. This appeal raises no question of fact under this issue and thus there is no doubt thrown on the judge's relevant findings of fact, to which we now turn.

**144** The judge found as a fact that the council maintained its list of streets in the form of an electronic database, known as the Exor database ("EDB"). This contained all the information required to be in it as regards the categories of streets for which data was included in it. The EDB was accessible for the purposes of amendment and public inspection at the council's Trowbridge office. The list was headed "list of streets maintained at public expense". It revealed the date of inclusion of an entry so that a search could be carried out to disclose which streets were shown in the list of streets immediately before the NERCA commencement date. This finding disposes of the objection to the EDB on the basis that it did not reveal that information.

**145** The EDB included some 19 streets that were in fact maintained at public expense even though they had not become maintainable at public expense. The judge dismissed an objection to reliance on section 67(2)(b) on the basis of their inclusion at para 1144 of his judgment.

**146** More seriously, however, the EDB failed to include footpaths and bridleways and a category of minor roads, which the council was liable to maintain. As explained below, Mr Laurence argues that this is fatal to the council's reliance on it under section 67(2)(b). A person wishing to inspect an entry in the EDB could see relevant entries through the council's website, or from a computer terminal in the council's offices or from a printout provided by the council.

**147** An entry in the EDB for sections A and B of Rowden Lane had been created in 1994, well before the NERCA commencement date, and could have been inspected on that date. The entry referred to those sections as an

© 2013 The Incorporated Council of Law Reporting for England and Wales

A "adopted" road, which meant for this purpose that the council accepted that it was under a liability to maintain it.

**148** The council also kept books known (by reference to their red binding) as the "burgundy books" containing information about roads that it maintained. The judge was prepared to say that, if the list of streets had to be kept in hard copy, these books satisfied the statutory requirements but we are not concerned with that holding. However, the judge's primary
B conclusion was that the EDB constituted a list of streets, albeit a defective one for the purposes of section 36(6) of the 1980 Act, and that the exception in section 67(2)(b) of NERCA was, therefore, satisfied.

**149** Mr Laurence's challenge to the judge's conclusions of law on the first claimant's NERCA claim falls into two main parts. First, he submits that the EDB could not qualify as the list of streets for the purposes of
C section 36(6) primarily because the council had deliberately excluded minor highways, though he does not allege any bad faith on the part of the council. His second submission is directed to the lack of physicality of the EDB which he submits prevents it from being a qualifying list. The first claimant can succeed on her appeal if she succeeds on either of those points.

D *Was the EDB a list of streets for the purposes of section 36(6) of the 1980 Act and of section 67(2)(b) of NERCA?*

**150** In support of his first submission, Mr Laurence adopts both a textual and a purposive approach of section 67(2)(b). He relies on the words "required to be kept" and on the concluding words in brackets "(list of highways maintainable at public expense)" in that subsection. These, he contends, are textual indications that the list of streets must be full and
E complete. That means, he further submits, that the list of streets had to contain particulars of four categories of highways, namely (1) publicly maintainable footpaths; (2) publicly maintainable bridleways; (3) ordinary publicly maintainable public roads, and (4) minor publicly maintainable vehicular highways mainly used on foot and on horseback. In common with other councils, as Mr Laurence informed us, the council did not include the
F fourth category in its list, nor indeed the first and second categories. In fact, the evidence of the council was that its website made that very point clear.

**151** In support of his purposive argument, Mr Laurence submits that the self-evident statutory purpose of section 36(6) is that there should be an accurate list of streets available for inspection by the public. Nothing in the Parliament's attitude to the use of MPVs on minor highways was inconsistent with that policy, or diminished its importance. Furthermore,
G the purpose of extinguishing vehicular rights of way for MPVs could not be carried out as Parliament had intended, that is, with an exception for those not shown on the definitive map and statement but included in the list of streets, unless there was full compliance with section 36(6).

**152** Mr Laurence sought support for his purposive approach in the decision of this court in the *Winchester* case [2009] 1 WLR 138. That case concerned section 67(3), and not section 67(2)(b) of NERCA. Section 67(3)
H contains a further exception from section 67(1): this applied, inter alia, if, before 20 January 2005, an application had been made under section 53(5) of WCA for an order making modifications to the definitive map and statement so as to show the way in question as a BOAT. However, section 67(6) of NERCA contains a stipulation for deciding when an

© 2013 The Incorporated Council of Law Reporting for England and Wales

application under section 53(5) of the WCA was made: this stipulation provided that an application under section 53(5) of WCA was made when it was made "in accordance with" paragraph 1 of Schedule 14 to the WCA. and that, accordingly, the application was not valid of it was not so made. Therefore the local authority in that case could not rely on the exception to section 67(1) of NERCA contained in subsection (3).

**153** Mr Laurence submits that the strict approach of this court in that case means that the exception in section 67(2)(b) had also to be interpreted strictly. This court is thus required to be satisfied that the list of streets relied on by the council in this case was a list that complied with the requirements of section 36(6) of the 1980 Act. Accordingly, it would have had to include all four categories of highways. Otherwise the list must be rejected and this court must conclude that the exception was not satisfied. Since the *Winchester* case decides, as he puts it, that a qualifying application under section 67(3) was one that complied strictly with paragraph 1 of Schedule 14 to the WCA a qualifying list of streets under section 67(2)(b) had to comply strictly with section 36(6)(7). Moreover, submits Mr Laurence, the court must interpret section 67(2)(b) without any predisposition related to the merits of the defendant's case on this point.

**154** Similarly, Mr Laurence submits that, since the EDB is not a list of all the streets required to be included in it, it was not a "list of the streets" for the purposes of section 36(6) and, therefore, the requirements of section 67(2)(b) are not met. While Mr Laurence accepts that a list of streets could contain inaccuracies requiring correction and still qualify as a "list" for the purposes of section 36(6), he submits that a list omitting three of the four categories of highway which should be included simply could not qualify.

**155** The judge, at para 1092 of his judgment, rejected the argument that section 67(2)(b) of NERCA had to be strictly construed. He held that the exception was of obvious utility despite the different purpose of the list of streets from that of the definitive map and statement. He considered that the *Winchester* case was distinguishable as it turned on different wording in section 67, at para 1102.

**156** Mr Mould seeks to uphold the judge's judgment. If, in order for the exception in section 67(2)(b) to apply, the list of streets had to be fully compliant with section 36(6), there would be uncertainty as to whether a right of way was excluded from extinguishment because it would be necessary to look at the whole of the list and form an evaluative view as to the nature of the exclusions. His submission is that Parliament could not have intended that result. Moreover, if Mr Laurence's interpretation were correct, this court would have to write words into that provision such as "provided that the list complies with section 36(6) of the 1980 Act". This would amount to an impermissible rewriting of section 36(6), and this was outside the scope of interpretation.

**157** Mr Mould contends that the *Winchester* case [2009] 1 WLR 138 is distinguishable because the crucial words in that case were "in accordance with" paragraph 1 of Schedule 14 to the WCA. By contrast, in the present case the list must simply be one that is required to be kept "under" section 36(6) of the 1980 Act.

**158** Mr Mould accepts that a "street" includes the highway. He also accepts, for the purposes only of this appeal, that Mr Laurence is correct in

© 2013 The Incorporated Council of Law Reporting for England and Wales

A saying that the list of streets had to include all four categories of highways listed by him. However, Mr Mould points out that this was not the view of the council as at the NERCA commencement date and that, accordingly, there is no evidence that the council took a deliberate decision not to comply with section 36(6) in the sense of taking a decision that the council knew would not comply with the statutory requirements.

B **159** We agree with Mr Laurence that the court must, in determining a question of statutory interpretation, steer between the Scylla and Charybdis of the textual and purposive approaches, but having thus set our course we arrive at a different destination from that of Mr Laurence. As a matter of plain language, section 67(2)(b) does not, in our judgment, require the list to be fully compliant with section 36(6). The requirement to which it refers is that such a list should exist, as was found to be the case by the judge.

C Moreover, section 36(6) of the 1980 Act contemplates that the list may require to be corrected. It none the less proceeds on the basis that what has to be corrected is a "list", even though it is defective in some respects. Therefore, a list can be a list for the purposes of section 36(6) even though it omits information that is required to be recorded in it, or contains an erroneous entry.

D **160** With regard to the purposive approach, we agree with Mr Mould's submission that Mr Laurence's interpretation of section 67(2)(b) would not promote the purpose of section 67. We understand Mr Laurence's concern that the list of streets should be accurate but the sanction for inaccuracy is not, in our judgment, to be found in section 67 of NERCA but in the enforcement of the statutory duties on public authorities under the 1980 Act, in the normal way, such as by the relator action. The truth is that

E the purpose of section 67(2)(b) is not to protect vehicular rights of way from extinguishment only where there is an accurate list of streets but to give effect to the concern about the misuse of green lanes described above. In the *Winchester* case [2009] 1 WLR 138, Dyson LJ sets out a passage from the foreword to a consultative document issued by the Department for the Environment and Rural Affairs in which the Rural Affairs Minister, Alun

F Michael, said, at para 11:

> "As Rural Affairs Minister, I have been approached by many individuals and organisations who are deeply concerned about problems caused by the use of mechanically propelled vehicles on rights of way and in the wider countryside. I share these concerns, having seen for myself examples of damage to fragile tracks and other aspects of our natural and cultural heritage in various areas of the country. There is considerable

G concern about behaviour that causes distress to others seeking quiet enjoyment of the countryside . . . I do not think that it makes sense that historic evidence of use by horse drawn vehicles or dedications for vehicular use at a time before the internal combustion engine existed can give rise to rights to use modern mechanically propelled vehicles. Those who suffer from vehicle misuse find this incomprehensible and in this

H paper we offer new proposals that are intended to address what many have come to view as the inappropriate and unsustainable way in which vehicular rights are acquired and claimed on rights of way."

**161** As to the proposition, based on the *Winchester* case, that there must be strict compliance with section 36(6) of the 1980 Act for the

© 2013 The Incorporated Council of Law Reporting for England and Wales

exception in section 67(2)(b) to apply, we agree with the judge and Mr Mould that the case is distinguishable. That case turns on the provisions of section 67(3)(6). Most importantly section 67(6) requires the application to be "in accordance with paragraph 1 of Schedule 14".

**162** We would add that the court in the *Winchester* case did not rule out the possibility of minor discrepancies being disregarded under the principle that the law is not concerned with very little things (de minimis non curat lex). This court gave further consideration to that qualification on the requirement for strict compliance in the later case *R (Maroudas) v Secretary of State for the Environment, Food and Rural Affairs* [2010] NPC 37 (Dyson, Richards and Jackson LJJ). That case made it clear that this court was prepared to contemplate "minor departures", for example the fact that, for a short period of time, the application was not signed as required by the form prescribed by regulations under Schedule 14 for use when making such an application. We accept, however, the complete exclusion of one or more categories of streets cannot be regarded as minor for this purpose. This does not undermine our conclusion on this issue because, for the reason given, the *Winchester* case is not here in point. The inaccuracies in the list did not cause it not to have the essential character of a list of streets. It in fact included over 11,000 streets maintainable by the council.

**163** A number of other arguments were made to the judge. Mr Laurence argued for instance that the list had to identify itself as a list of streets pursuant to section 36(6) of the 1980 Act. He also argued that the list failed to comply with section 36(6) because there were some streets in it for which the council had not yet assumed liability for maintenance. The judge rejected these arguments, at paras 1140–1142, 1136, 1145–1146. We likewise reject those arguments. The character of the list was not affected by the inclusion of the 19 streets for which the council had not yet undertaken liability for maintenance. The judge went on to hold that the list of streets was "deposited" at the council's office in Trowbridge for the purposes of section 36(7). Consistently with our conclusion that a statutory list of streets can be kept in computerised form, the word "deposited" has to be interpreted compatibly with that possibility. In the light of our conclusions on the section 67(2)(b) issue, we expect the parties to be able to agree to an order for the dismissal also of that issue either forthwith or as soon as it finally becomes clear that it no longer needs to be decided.

*Was the council entitled to keep the list of streets in computerised form?*

**164** The thrust of Mr Laurence's second submission centred on the fact that the council's list of streets was not kept in physical form. Mr Laurence submits that the EDB is not a list of streets at all because it was kept in computerised form. He further submits that the list must also be such that member of the public can inspect it in its physical form at the council's offices. The judge rejected this submission. Section 320 of the 1980 Act provides that documents required to be kept under that Act must be in writing:

> "All notices, consents, approvals, orders, demands, licences, certificates and other documents authorised or required by or under this Act to be given, made or issued by, or on behalf of, a highway authority or a council, and all notices, consents, requests and applications authorised

© 2013 The Incorporated Council of Law Reporting for England and Wales

A or required by or under this Act to be given or made to a highway authority or a council, shall be in writing."

**165** By virtue of section 5 of, and Schedule 1 to, the Interpretation Act 1978: " 'Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly."

B **166** The judge moreover found that a person reading the EDB or a printout from it could read the entries in it so that the requirements of this definition of "writing" were met. There was no need for there to be any express statutory permission for the council to maintain its list of streets in electronic form, as Mr Laurence had contended.

**167** In our judgment, there is no doubt that the judge was correct on this point. The position under section 36(6) is distinguishable from C the register governed by the section 31A regulations. In the latter case, the regulations had to provide for the register to be kept in computerised form because it was desired in that case that both hard and electronic forms of the register should be kept.

*Conclusions*

D **168** For the above reasons, we dismiss the appeal on this ground. The judge did not rule on a further issue whether the exception in section 67(2)(a) was available to the council. He adjourned that issue to a date to be fixed. In the light of our conclusions on the section 67(2)(b) issue, we expect the parties to be able to agree to any order for the dismissal also of that issue.

E *Result*

**169** We conclude that the judge was right to find that sections A and B of Rowden Lane were a public vehicular highway, dedicated at common law. We also conclude that the judge was right to hold that public vehicular rights of passage over those sections of Rowden Lane were not extinguished by NERCA. We therefore dismiss the appeal.

F *Appeal dismissed.*

GEORGINA ORDE, Barrister

G

H

© 2013 The Incorporated Council of Law Reporting for England and Wales

Case No: CO/3431/2014

Neutral Citation Number: [2015] EWHC 85 (Admin)
**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/01/2015

**Before** :

**MR JUSTICE COLLINS**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **TRAIL RIDERS FELLOWSHIP** | **Claimant** |
| **- and -** | |
| **SECRETARY OF STATE FOR THE ENVIRONMENT, FOOD AND RURAL AFFAIRS** | **Defendant** |

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Mr Adrian Pay** (instructed by **Messrs Brain Chase Coles Solicitors**) for the **Claimant**
**Ms Jacqueline Lean** (instructed by **Treasury Solicitor's Department**) for the **Defendant**

Hearing dates: 5 December 2014

- - - - - - - - - - - - - - - - - - - - -

Judgment

**Mr Justice Collins:**

1. This claim is brought pursuant to paragraph 12 of Schedule 15 of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of an inspector on behalf of the defendant who on 4 June 2014 confirmed with modifications an order entitled the Derbyshire County Council (Byway Open to All Traffic along Bradley Lane between Pilsley village and the A619 – Parishes of Pilsley and of Hassop) Modification Order 2010. The title is somewhat misleading since the modification in question substituted Bridleway for Byway Open to All Traffic (BOAT) in the order. The County Council had sought to designate Bradley Lane as a BOAT, hence the title of the order.

2. The effect of the designation as a bridleway instead of a BOAT is that no motorised vehicles can use it. It is limited to pedestrians, horse riders or pedal cyclists. The claimant has in the past used it for motorcycles and wishes to be able to continue that use.

3. That Bradley Lane is a highway is not disputed. In order to decide whether it was a vehicular highway, the inspector had to consider such historical documentary evidence as was available. In addition, if he was not persuaded that the documentary evidence showed that the route was a vehicular highway, he had to consider whether there had been a use by the public as of right and without interruption for a period of twenty years before its status was brought into question (see Section 31 of the Highways Act 1980). The inspector held a public enquiry in December 2012. He concluded that the County Council had not established to the required standard, namely the balance of probabilities, that the route was a vehicular highway. He decided that it should be designated as a bridleway. Objections were raised to the conclusion that it should be designated as a bridleway and so the inspector held a second inquiry in March 2014. His original decision was regarded as an interim decision. Following the second inquiry, he maintained his interim decision.

4. I should first set out the statutory and common law background. At common law, a highway's classification was threefold. First, it could be a footway, appropriated to the sole use of pedestrians. Secondly, it could be what was described as a pack and prime way, called a bridleway, which was both a horseway and a footway. Thirdly, it could be a cartway, which comprehended the other two and was also a cart or carriageway. A report of a committee which had been set up to consider access to the countryside in 1947 advised that in order to prevent rights of way being forgotten and lost a complete survey should be put in hand so that an authoritative record of rights of way could be prepared. This was dealt with in the National Parks and Access to the Countryside Act 1949 (the 1949 Act). Section 27(1) of the 1949 Act required every county council to carry out a survey of "all lands in their area over which a right of way……is alleged to subsist" and prepare "a draft map of their area showing thereon a footpath or a bridleway…..". Section 27(6) defined the following relevant expressions:-

> " 'footpath' means a highway over which the public have a right of way on foot only.

'bridleway' means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway.

'road used as a public path' means a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used.

'public path' means a highway being either a footpath or a bridleway".

5. Much trouble was caused by the definition of 'road used as a public path' (RUPP). It was intended to cover highways which were cartways at common law, but the problem lay in the word 'mainly'. In R v Secretary of State for the Environment ex parte Hood [1975] 1 QB 891 Lord Denning, MR said at p 897F :-

"The object of the draftsman was to include cartways over which there is a public right of cartway, but which are used nowadays mainly by people walking or riding horses….The draftsman intended to exclude metalled roads used by motor cars".

6. Following resolution of any issues raised in the draft map and statement prepared by a council, a definitive map and statement (DMS) was to be prepared. Section 32(4) of the 1949 Act provided:-

"A [DMS] shall be conclusive as to the particulars contained therein…..to the following extent, that is to say –

(a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date specified in the statement a footpath as shown on the map.

(b) where the map shows a bridleway, or a [RUPP] the map shall be conclusive evidence that there was at the said date a highway as shown on the map and that the public had thereon at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid……"

7. In the Countryside Act 1968, the 1949 Act was amended to remove the RUPP categorisation. Section 33 applied Schedule 3. The 1968 Act required there to be a special review so that inter alia RUPPs were no longer to be shown. Paragraph 9(1) of Schedule 3 provided:-

"In the special review the draft revision, and the definitive map and statement shall show every road used as a public path by one of the three following descriptions:-

(a) a "byway open to all traffic",

(b) a "bridleway",

(c) a "footpath",

and shall not employ the expression "road used as a public path" to describe any way".

Paragraph 10 sets out the test to be applied for reclassification of RUPPs. It reads….. "The considerations to be taken into account are:-

(a) whether any vehicular right of way has been shown to exist,

(b) whether the way is suitable for vehicular traffic having regard to the position and width of the existing right of way, the condition and state of repair of the way and the nature of the soil…..".

8. The 1981 Act repealed and replaced the material provisions of the 1949 and 1968 Acts. Sections 53 to 58 of the 1981 Act set out the approach for categorisation of highways which now (subject to some amendments in the Countryside and Rights of Way Act 2000 (the 2000 Act)) must be applied. Section 53 requires that the DMS be kept under continuous review. Section 53(2) requires the relevant authority to make such modifications to the DMS as appear to it to be requisite in consequence of inter alia the discovery by the authority of evidence which shows that a right of way which is not shown in the DMS subsists or is reasonably alleged to subsist (s.53(3)(c)(i)).

9. Section 56 of the 1981 Act provides that a DMS shall be conclusive evidence in relation to each of the three categories, namely footpath, bridleway and BOAT. But in relation to footpaths and bridleways, the designation in the DMS was to be without prejudice to any question whether the public had any right other than those shown in the DMS. The 2000 Act by s.47 made further provisions where DMSs' continued to show RUPPs and provided that any such way should be shown as a "restricted byway", which s.48(4) defined as meaning a right of way by foot, or horseback or leading a horse and for vehicles other than mechanically propelled vehicles.

10. Section 66 of the 1981 Act gives definitions which follow, for footpaths and bridleways, those which had been contained in the 1949 Act. A BOAT is defined to mean:-

"a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used".

11. I should refer in addition to the Local Government Act 1929. This transferred to county councils responsibility for all highways in rural districts for which the district council was highway authority. These were termed 'county roads', but road as defined simply meant a 'highway repairable by the inhabitants at large'. Thus 'road' in the Act did not necessarily connote a vehicular use. Bakewell RDC showed the order route on a map which was handed over to the County Council (called a handover map) as an 'unscheduled other district road'. It is described as 'bad, grass grown and little used'. It is recorded by the County Council as a non-classified highway (NCH). Neither of these classifications necessarily imply that there is or was a right of vehicular use.

12. This claim is brought under Paragraph 12 of Schedule 15 to the 1981 Act. Schedule 15 sets out the procedural requirements which must be followed before any order such as that in issue in this claim is made. Paragraph 12 provides:-

> "12. (1) If any person is aggrieved by an order which has taken effect and desires to question its validity on the ground that it is not within the powers of section 53 or 54 or that any of the requirements of this Schedule have not been complied with in relation to it, he may within 42 days from the date of publication of the notice under paragraph 11 make an application to the High Court under this paragraph.
>
> (2) On any such application the High Court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with those requirements, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant.
>
> (3) Except as provided by this paragraph, the validity of an order shall not be questioned in any legal proceedings whatsoever."

This approach of the court is the same as that applicable in claims under sections 288 or 289 of the Town and Country Planning Act 1990. Thus it is only if an error of law is established that I can find in the claimant's favour. It is important to bear in mind that it is not permissible for there to be any review of the factual issues. The inspector was bound to exercise his judgment on the facts found by him (most of which in this case are based on documentary material) and that judgment cannot be impugned unless it was one which could not rationally have been reached or which was erroneous because of a failure to have regard to a material particular or because regard had been had to an immaterial particular.

13. Ground 2 relied on by the claimant sought to challenge the inspector's conclusion that the order route was a bridleway. The claimant's 'interest' was to establish that the inspector was wrong to conclude that it was not a BOAT. Thus whether if not a BOAT it should have been designated to be a bridleway rather than pedestrian way does not affect the claimant's interests. But in reality as Mr Pay recognised Ground 2 added nothing since his attack lay against the failure to decide that the order route was a BOAT. Furthermore, if it was not a BOAT, there was no error of law in the inspector's conclusion that it was a bridleway.

14. The inspector is to be regarded as an expert tribunal so that the hurdle to surmount to establish perversity is a high one. Furthermore, since the approach is the same as that which applies to judicial review, I must be careful not to let any views I may hold on the merits influence my judgment. That would be to retry the case and to allow my assessment of the evidence to drive my decision. Thus only if the inspector fails to apply the correct test or as I have said, to take all and only relevant factors into account, the weight to be given to them being a matter for him, or the decision reached was perverse can the claim succeed. I echo the words of Charles J in R (Elveden Farms Ltd) v SSEFRA [2012] EWHC644 (Admin) at paragraph 3.

15. The earliest recorded reference to the order route dates from 1627. It is described as a rugged track used by packhorses which led through Pilsley and across the valley to

Hassop. Various maps were produced at the two inquiries from the latter part of the 18th century. While consistent with the order route being part of a way which goes between Pilsley and Hassop, the inspector concluded that none of these maps established that it was for carts or other vehicular traffic. That conclusion cannot be impugned and Mr Pay did not seek to challenge it.

16. However, the fact that there was a way between Pilsley and Hassop of which the order route formed part is of importance. In 1801 an Act of Parliament authorised the diversion of a section of the road between Baslow and Bakewell to an alignment corresponding to what is now the A619 road. The order route lies between Pilsley and the A619. The way to Hassop continues after a short turn along the A619. It was referred to in the inquiry as HRB6. It is now a restricted byway pursuant to the provisions of the 2000 Act since it was recorded in the DMS produced in 1951 as a RUPP. The order route was not given any description in the DMS, a matter to which for reasons which will become apparent Mr Pay attaches considerable importance.

17. Mr Pay submits that the inspector made two substantial errors in relation to the significance of the description of HRB6 as a RUPP and the absence of any description of the order route. First, in his ground 5, he submits that the inspector was wrong in attaching no weight to the description of HRB6. He refers to paragraph 36 of the inspector's second decision. The inspector had drawn attention to the provisions of s.32(4)(b) of the 1949 Act and the corresponding provisions of s.56(1)(d) of the 1981 Act which provided that where a map showed a bridleway or a RUPP it was conclusive evidence that the way was a highway which the public could use with horses or on foot but was 'without prejudice to any question whether the public had at that date any right of way other than the right agreed'. He continued:-

> "Therefore the depiction of a RUPP was only conclusive evidence of a footpath or bridleway rights, with the possibility of the existence of public vehicular rights left open. This means that I do not consider that any reliance can be placed on the original recording of this way as a RUPP before it was reclassified under the provisions of the [2000 Act]".

18. Ms Lean says that this must be read in context. In paragraph 34 the inspector said:-

> "In respect of Hassop RB6, the surveyor considered it to comprise of sections of footpaths and RUPPs in 1951. Reference is also made to the relevant schedules to use by agricultural vehicles. This evidence is not supportive of Hassop RB6 being a recognised vehicular through route at the time. However, as Mr Kind points out the whole of this way was subsequently recorded on the definitive map as a RUPP. Whilst the reason for the change is not known, I accept that the decision by the Council to show the way as a RUPP should be given some weight. Nevertheless, as outlined below, an issue arises in relation to the public rights that existed in relation to RUPPs."

Thus it is clear that the inspector did recognise that some weight should be attached to the description of HRB6 as a RUPP. Accordingly, what he is saying in paragraph 36 is not, as Mr Pay suggested, that no weight should be attached to the description but that in the inspector's view the designation was not a reliable indicator of vehicular rights.

19. Mr Pay makes the point that designation of a bridleway would not exclude the possibility of vehicular rights. Thus designation as a RUPP showed that the view was taken that there was at least a reasonable possibility of vehicular rights. This is consistent with observations of the Court of Appeal in Fortune v Wiltshire CC [2013] 1 WLR 808. In that case, it was accepted that the inclusion of a relevant part of a way known as Rowden Lane as a RUPP showed that the view had been formed that vehicular rights were "reasonably alleged". But the inspector did not misdirect himself in considering that in the circumstances the designation of HRB6 as a RUPP did not necessarily show that either HRB6 or the order route in fact carried vehicular rights.

20. Mr Pay in his Ground 4 submits that the inspector misdirected himself in considering the significance of the failure to give the order route any designation in the DMS, coupled with what was shown in the 'handover map' following the 1929 Act. It was shown coloured green in the handover map which suggested that it was regarded as an "un-scheduled other district road". The order route was described as "Bad, grass grown and little used". This certainly indicates that it was regarded as a highway but is hardly a pointer to vehicular use. The County Council recorded it as a non-classified highway (NCH). It stated, as set out in its case before the inspector, that a note on the council records indicated that that did not in itself show that the route carried vehicular rights. The council's witness at the first inquiry confirmed that a percentage of NCHs had been found following public inquiries not to be BOATs. The inspector in paragraph 31 of his final report accepted that the handover map could be supportive of the order route having the reputation of a vehicular highway, but made the proper reservation that the issue was not subjected to any public scrutiny. Hence the importance of the council witness's evidence.

21. The handover map together with the council's records shows that the order route was regarded as a highway. Since historically it was with HRB6 a way between Pilsley and Hassop and HRB6 was recognised on the DMS as a highway, it was certainly strange that the order route was not given a classification. It is incidentally to be noted that HRB6 was divided into sections of footpaths and RUPP: that is not consistent with overall vehicle use. Mr Pay submits that the omission of the order route is only consistent with it being considered that it carried vehicular rights which were not limited.

22. In his interim report, the inspector at paragraph 48 stated:-

> "The claimed route was not alleged to be a public right of way when the original definition map was compiled. However, this may have been due to the fact that the route was already recorded in the Council's maintenance records. The fact that Pilsley footpath No 2 connects at both ends with the claimed route is also suggestive of the route being a highway".

In his final report, at paragraph 33 he said that it remained his view that evidence in relation to the compilation of the DMS suggested that the order route was considered to be a highway but not necessarily vehicular in nature. If it was a highway, it should have been identified in the DMS as a footpath, bridleway or RUPP unless it was for vehicular use. So Mr Pay submits that its absence is powerful evidence that it was regarded as having vehicular rights.

23. The inspector does not specifically refer to this submission (if it was made), and Mr Pay submits that he was wrong to say that the order route was not alleged to be a public right of way. This showed, he submits, that the inspector seemed to fail to appreciate that not all rights of way qualified for inclusion in the DMS. However, the suggestion that it was considered to be a vehicular right of way is not supported by the evidence and certainly it would be very strange if it was vehicular when HRB6 was not. The inspector's review of the material evidence was thorough and the nature of the route was itself inconsistent with general vehicular use. At most, it could have been a RUPP which would now be a restricted byway by virtue of s.47(2) of the 2000 Act which would exclude mechanically propelled vehicles.

24. On the findings of fact made by him, the inspector was justified in considering that the omission from the DMS was an error which may have resulted from a failure to appreciate that the order route was a highway. The view that it was for general vehicular use was inconsistent with his findings. Obviously, if his findings were not lawfully reached, different considerations will apply.

25. In his Ground 3 Mr Pay asserted that the inspector failed to appreciate that the naming of the order route as Bradley Lane showed that it was for vehicular use. This submission is based upon what is said to be the evidential impact of the use of the word 'lane'. In Fortune v Wiltshire CC [2010] EWHC B33 (Ch), HH Judge McCahill QC, sitting as a deputy judge of the Chancery Division, had had to consider whether Rowden Lane was a highway for use of vehicular traffic. At paragraph 712 he said:-

> "…..[T]he word 'lane' has been judicially defined as usually meaning a minor road leading between one main road and another".

In paragraph 953 (vii) the judge in the summary of his findings stated that the word 'lane' implied a highway running between two major roads. The Court of Appeal did not comment on the judge's observations about the significance of the word 'lane' but decided on a review of the evidential findings made by him that his decision was correct.

26. The inspector in his final decision referred to the definition of 'lane' which I have set out above. In paragraph 17 he said this:-

> "Irrespective of whether the claimed route could be defined as running between the two main roads I am not satisfied from the judgment or dictionary definitions provided that the word 'lane' is necessarily supportive of a route being a particular class of highway. The status of a route is a matter to be determined from the evidence as a whole. In my view, it is a descriptive term and provides no clarification regarding what rights exist over a particular route."

This is entirely consistent with the approach of the Court of Appeal in the Fortune case. Mr Pay suggested that the inspector had ignored the impact of A-G v Woolwich (1929) J.P.173, a decision of Shearman, J. But the judge there said that 'lane' usually meant a minor road leading between one main road and another main road, observations which were picked up in the Fortune case.

27. Some support for vehicular use was said to result from the fact that a short section of the order route was known as High Street, being an extension of the street running

through Pilsley. But that description is limited to twentieth century documents and in any event cannot, as the inspector properly concluded, show that the whole of the order route must have had vehicular rights. It is unnecessary in the circumstances to consider what a street means in law or statute.

28. The inspector in his two decision letters considered at length and in detail the evidence of documents and maps from the nineteenth and twentieth centuries. Much was made on the claimant's behalf of evidence relating to plans for railways to be constructed during the nineteenth century which would have crossed the order route. These could be regarded as consistent with the view being taken by those responsible for the plans that there were vehicular rights. Nevertheless, the plans were never put before Parliament and so there was no detailed consideration of the issue. Mr Pay accepted the inspector's conclusions in relation to the railway evidence to the effect that the evidence was supportive of the claim that the route was a vehicular highway but was not conclusive.

29. I do not consider that it is necessary to lengthen this judgment by going through the evidence and the inspector's conclusions in detail. Suffice to say that I accept that he could properly as a matter of judgment have found the order route to be a BOAT, but equally he was entitled as a matter of judgment to reach a contrary conclusion. None of the specific matters raised by Mr Pay with which I have dealt persuade me that the inspector's decision is flawed.

30. In Ground 1 Mr Pay submits that the decision was irrational. Essentially, he submits that overall the evidence was such that the only reasonable conclusion was that the order route was open to vehicular traffic. This is an impossible submission. As I have said, the inspector could properly have concluded in the claimant's favour, but the condition of the order route, described in the 1930s as "Bad, grass grown and little used" and not significantly improved since, coupled with the history which is inconclusive and certainly does not show with any degree of clarity that vehicular use was or is available as of right, entitled him to conclude as he did. Ms Lean's criticism of Ground 1 that it is essentially an attempt to retry the factual issues seems to me to have merit.

31. I should only add that there was evidence of use which was relied on to attempt to show a 20 year vehicular use as of right and, it is said, to support the claim that such use had been permitted. The inspector dealt with the user evidence saying (paragraph 65 of his interim report):-

> "I accept there was some vehicular use of the route prior to the 1990s and this is supported by the evidence of [two witnesses] at the inquiry. However, in the light of the quality of the user evidence supplied and the fact that there is credible conflicting evidence, I am unable to conclude that, on balance, the vehicular use is sufficient to raise a presumption of dedication under the statute…..Furthermore, I consider that the quality of the user evidence is not sufficient to infer the designation of a vehicular highway at common law."

32. Mr Pay recognised that he could not challenge the conclusion in relation to the designation under statute. And it seems to me that the further conclusion that the user evidence did not infer vehicular designation was inevitably correct.

33. It follows that I dismiss the claim.

# 2-064 Dedication of way as highway presumed after public use for 20 years

Encyclopedia of Highway Law and Practice
Volume 1
Part II - Highways Act 1980
Highways Act 1980

Section 31

**31.— Dedication of way as highway presumed after public use for 20 years**

2-064

**(1)** Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

[(1A) Subsection (1)—

**(a)** is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but

**(b)** applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.]

**(2)** The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

**(3)** Where the owner of the land over which any such way as aforesaid passes—

**(a)** has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and

**(b)** has maintained the notice after January 1, 1934, or any later date on which it was erected,

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

**(4)** In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so, however, that no injury is done thereby to the business or occupation of the tenant.

**(5)** Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.

**(6)** An owner of land may at any time deposit with the appropriate council—

**(a)** a map of the land [...], and

© 2021 Thomson Reuters.

**(b)** a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;

and, in any case in which such a deposit has been made, [...] declarations [in valid form] made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time—

**(i)** within [the relevant number of] years from the date of the deposit, or

**(ii)** within [the relevant number of] years from the date on which any previous declaration was last lodged under this section.

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgment of such previous declaration, as the case may be, are in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

**[(6A)** Where the land is in England—

**(a)** a map deposited under subsection (6)(a) and a statement deposited under subsection (6)(b) must be in the prescribed form,

**(b)** a declaration is in valid form for the purposes of subsection (6) if it is in the prescribed form, and

**(c)** the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 20 years.

**(6B)** Where the land is in Wales—

**(a)** a map deposited under subsection (6)(a) must be on a scale of not less than 6 inches to 1 mile,

**(b)** a declaration is in valid form for the purposes of subsection (6) if it is a statutory declaration, and

**(c)** the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 10 years.

**(6C)** Where, under subsection (6), an owner of land in England deposits a map and statement or lodges a declaration, the appropriate council must take the prescribed steps in relation to the map and statement or (as the case may be) the declaration and do so in the prescribed manner and within the prescribed period (if any).]

**(7)** For the purposes of the foregoing provisions of this section "owner", in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5)[, (6), (6C) and (13)] *"the appropriate council"* means the council of the county or London borough in which the way (in the case of subsection (5)) or the land (in the case of [subsections (6), (6C) and (13)]) is situated or, where the way or land is situated in the City, the Common Council.

**[(7A)** Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.

**(7B)** The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act]

**(8)** Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes.

**(9)** Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstances in which it might have been presumed or proved immediately before the commencement of this Act.

© 2021 Thomson Reuters.

**(10)** Nothing in this section or section 32 below affects [section 56(1) to the Wildlife and Countryside Act 1981 (which provides that a definitive map and statement] are conclusive evidence as to the existence of the highways shown on the map and as to certain particulars contained in the statement) […]

**[(10A)** Nothing in subsection (1A) affects the obligations of the highway authority, or of any other person, as respects the maintenance of a way.]

**(11)** For the purposes of this section *"land"* includes land covered with water.

**[(12)** For the purposes of subsection (1A) "mechanically propelled vehicle" does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (electrically assisted pedal cycle).]

**[(13)** The Secretary of State may make regulations for the purposes of the application of subsection (6) to land in England which make provision—

**(a)** for a statement or declaration required for the purposes of subsection (6) to be combined with a statement required for the purposes of section 15A of the Commons Act 2006;

**(b)** as to the fees payable in relation to the depositing of a map and statement or the lodging of a declaration (including provision for a fee payable under the regulations to be determined by the appropriate council).

**(14)** For the purposes of the application of this section to land in England "prescribed" means prescribed in regulations made by the Secretary of State.

**(15)** Regulations under this section made by the Secretary of State may make—

**(a)** such transitional or saving provision as the Secretary of State considers appropriate;

**(b)** different provision for different purposes or areas.]

## Amendments

The words in square brackets in subs.(7) were inserted by the Local Government Act 1985, s.8 and Sch.4 with effect from April 1, 1986.
The words in square brackets in subs.(10) were substituted and the words omitted were repealed by the Wildlife and Countryside Act 1981, s.72(11), which came into force on November 30, 1981.
The words in square brackets in subs.(6) were inserted by the Countryside and Rights of Way Act 2000, Sch.6, with effect from February 13, 2004 in England by virtue of the Countryside and Rights of Way Act 2000 (Commencement No.4) Order 2004 (SI 2004/292), below, and with effect from May 31, 2005 in relation to Wales by virtue of the Countryside and Rights of Way Act 2000 (Commencement No.7) (Wales) Order 2005 (SI 2005/1314) (W.96), below.
Subssections 1A, 7A , 7B 10A and 12 were inserted by the Natural Environment and Rural Communities Act 2006, ss.68 and 69 as from May 2, 2006 by virtue of SI 2006/1176, below, in relation to England, and as from November 16, 2006, by virtue of SI 2006/2992, below, in relation to Wales.
Subsections (6A), (6B), (6C), (13), (14) and (15) were inserted by, and the words in square brackets in subss.(6) and (7) were omitted and inserted by, the Growth and Infrastructure Act 2013 s.13, with effect from October 1, 2013.

## Derivation

2-064. 1 1959, s.34; 1963, Sch.6, para.11; 1972, Sch.21, para.13.

© 2021 Thomson Reuters.

# Definitions

2-064. 2 "appropriate council": for the purposes of this section is defined in subs.(7) of this section.
"highway": s.328(1).
"land": for the purposes of this section is defined in subs.(11) of this section,
"maintain": for the purposes of this section has the meaning assigned to it in subs.(7) of this section.

# General Note

## Scope

2-065 This provision, which was first enacted in the Rights of Way Act 1932, simplifies the common law rule under which dedication can be inferred from user by stating that certain assumptions prevail unless the contrary is proved. Where a way has been actually enjoyed by the public as a right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence to the contrary. Specific means are identified whereby a landowner may negative any apparent intention to dedicate. He may place an appropriate notice on the way, and if it is torn down or defaced he may protect his rights by giving notice to the local authority that the way has not been dedicated. He may also submit to the authority maps of his land showing the ways which he admits to have been dedicated and may subsequently make declarations that no further ways have been dedicated in the absence of proof to the contrary, these acts negative an intention to dedicate. Whilst a landowner may establish his lack of intention to dedicate by other means the burden is on him to provide sufficient evidence that his lack of intention was brought home to those who were using the claimed right of way; *R. (Godmanchester) v Secretary of State for the Environment Food and Rural Affairs [2008] 1 A.C. 221*.
There are several elements within the section.

**1. A way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication**

2-065. 1 It is not clear what ways might be of such a character that use by the public could not at common.law give rise to any presumption of dedication. It has been held, however, that, notwithstanding the definition of "*land*" in subs.(11) to include land covered by water, a right of navigation along a river is not included within the meaning of a right of way over land within this section: see *Attorney-General ex rel. Yorkshire Derwent Trust Ltd v Brotherton [1991] 3 W.L.R. 1126*.
A way which has no connection at either end to a place to which the public have a right (as distinct from a terminable licence) to be cannot be a highway as it will not be open to the public at large but only to those who have the licence of the landowner at each end to get to it; see *Bailey v Jamieson (1876) 1 CPD 329*; *Kotegaonkar v Secretary of State for the Environment, Food and Rural Affairs [2012] EWHC 1976*. Such a way might, therefore, fall under this description.

**2. Actual enjoyment by the public as of right**

2-065. 2 It is an essential characteristic of a highway that it should be open to the public at large and not simply to a limited section of the public. The usage "as of right" must, therefore, be usage by the public at large. It is not possible, therefore, for a highway to be created if the public at large have no way of getting to it. Usage by the licensees or invitees of an adjacent

© 2021 Thomson Reuters.

owner will not be usage by the public at large; see *Bailey v Jamieson (1876) 1 CPD 329*; *Kotegaonkar v Secretary of State for the Environment, Food and Rural Affairs [2012] EWHC 1976 (Admin)*.
In *Merstham Manor v Coulsdon and Purley UDC [1937] 2 K.B. 77*, it was held that to bring a case 2 within the ambit of a predecessor to this section, the person asserting the right of the public to use the way must establish, on the one hand, that the public have actually had the amenity or advantage of using the way openly and not secretly or by force or with permission given from time to time and without interruption (in the sense of actual and physical stopping of their enjoyment of the way) and, on the other hand, the actual suffering of the exercise of that right by the landowner for the full period of 20 years. Hilbery J. considered the words "*actually enjoyed by the public as of right*" at 81 and 82. He noted that the phrase was reproduced from the Prescriptions Act 1832, and said:
"When considering these words as used in the Prescription Act, 1832, Lindley L.J. in *Rollins v Verney (1884) 13 Q.B.D. 304* at 308 said: "A right of way cannot be actually enjoyed by one person without being permitted or suffered by the owner of the land, over which the way is enjoyed and if the one must actually enjoy it for the full period of 20 years, the other must actually suffer it for the same period. Moreover, as the enjoyment must be as of right and without interruption for the full period of 20 years, it follows that for the same period there must have been an opportunity of resistance and interruption" … I take the word "enjoyed" to mean, as Stirling J. said in *Smith v Baxter [1900] 2 Ch.138* at 144, 'having had the amenity or advantage of using'."

Hilbery J. then considered the words "*as of right*" and took them to mean that the acts of enjoyment must have been done openly, not secretly, not by force and not by permission from time to time given. This was the approach adopted in the common law cases which required that use should have been nec clam, nec vi, necprecario. In *Mann v Brodie (1885) 10 App.Cas. 378, 386* Lord Blackburn had said, at 386:
"where there has been evidence of a user by the public so long and in such a manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on which those who have to find the fact may find that there was a dedication by the owner whoever he was."

The nature of "user as of right" as being of such a character and extent to bring home to the owner of the land that a public right was being asserted has been confirmed in a number of judgments of the House of Lords and now by the Supreme Court; see *R. (Lewis) v Redcar [2010] UKSC 11*. However, in a number of cases an equal emphasis had been placed (wrongly) on how their user had appeared to the users of the way themselves.
In *Jones v Bates [1938] 2 All E.R. 237* it was found as a fact that previous owners of the land in question had permitted the public to use a way over it for a period of more than 20 years because they (the owners) thought there was a public right to do so. The trial judge found that there was a defined path over the land, but that the evidence was insufficient to establish the existence of a public right to use it, and that the persons who had used the path had done so on sufferance. It was held by the Court of Appeal (Farwell J. dissenting on the ground that the question was one entirely of fact, on which the finding of the county court judge could not be disturbed) that, on the facts found, the judgment could not be supported, for the words "*as of right*" meant user by persons believing themselves to be exercising a public right to pass from one highway to another. On proof of such user without interruption for 20 years, dedication must be presumed. A similar view appeared to have been taken in *Hue v Whiteley [1929] 1 Ch.440*, where Tomlin J. said, at 445:
"A man passes from one point to another believing himself to be using a public road, and the state of his mind as to his motive in passing is irrelevant. If there is evidence, as there is here, of continuous user by persons as of right (i.e., believing themselves to be exercising a public right to pass from one highway to another), there is no question such as that which arose in *Attorney-General v Antrobus*."

In *O'Keefe v Secretary of State for the Environment and Isle of Wight CC [1996] J.P.L. 42*, Pill J. held that user as of right for the purposes of s.31 involved use in the honest belief that there was a public right of passage and which was an open and peaceable assertion of that right. If acts of user amounted to an assertion of a public right of way in the belief that such a right existed over the required period and were actually or presumptively known to the landowner who did nothing, the use was as of right within the meaning of the statute.
A powerful critique of the case law on the supposed requirement that the public using a right of way are required to believe that they are using it as of right was made in *"False Trail" by J. G. Riddall at [1997] 61 Conv. 199*. Then in *R. v Oxfordshire CC Ex p. Sunningwell PC [1999] 3 W.L.R. 160* the House of Lords held, in the context of claims in relation to village greens, but after a detailed consideration of the highway cases, that user as of right does not require any such belief. Lord Hoffmann, with whom the rest of the House agreed, pointed to the heresy that had been introduced into the law:
"My Lords, in my opinion the casual and, in its context, perfectly understandable aside of Tomlin J. in *Hue v Whiteley [1929] 1 Ch.440* has led the courts into imposing upon the time-honoured expression *'as of right'* a new and additional

© 2021 Thomson Reuters.

requirement of subjective belief for which there is no previous authority and which I consider to be contrary to the principles of English prescription. There is in my view an unbroken line of descent from the common law concept of nec vi, nec clam, nec precario to the term '*as of right*' in the Acts of 1832, 1932 and 1965. It is perhaps worth observing that when the Act of 1832 was passed, the parties to an action were not even competent witnesses and I think that Baron Parke would have been startled by the proposition that a plaintiff asserting a private right of way on the basis of his user had to prove his subjective state of mind. In the case of public rights, evidence of reputation of the existence of the right was always admissible and formed the subject of a special exception to the hearsay rule. But that is not at all the same thing as evidence of the individual states of mind of people who used the way. In the normal case, of course, outward appearance and inward belief will coincide. A person who believes he has the right to use a footpath will use it in the way in which a person having such a right would use it. But user which is apparently as of right cannot be discounted merely because, as will often be the case, many of the users over a long period were subjectively indifferent as to whether a right existed, or even had private knowledge that it did not. Where Parliament has provided for the creation of rights by 20 years' user, it is almost inevitable that user in the earlier years will have been without any very confident belief in the existence of a legal right. But that does not mean that it must be ignored. Still less can it be ignored in a case like Steed when the users believe in the existence of a right but do not know its precise metes and bounds. In coming to this conclusion, I have been greatly assisted by Mr J. G. Riddall's article *'A False Trail' in [1997] 61 The Conveyancer and Property Lawyer 199*."

This position has been reaffirmed by the House of Lords in a number of cases on public rights of way and village greens and, most recently, by the Supreme Court in *R. (Lewis) v Redcar [2010] UKSC 11*, per Lord Walker:
"I have no difficulty in accepting that Lord Hoffmann was absolutely right, in *Sunningwell [2000] 1 AC 335*, to say that the English theory of prescription is concerned with 'how the matter would have appeared to the owner of the land' (or if there was an absentee owner, to a reasonable owner who was on the spot)."

Thus usage which is of such a sporadic nature that it would not be likely to make the landowner aware of the potential claim of right would fail the test—nec clam. Equally, user as of right is not consistent with user which is permitted under licence whether that licence is express or implied. In *R. v City of Sunderland Ex p. Beresford [2003] UKHL 60*, a village green case, the House of Lords had to consider the circumstances in which an implied licence could be said to have been granted. Per Lord Bingham, at para.5:
"I can see no objection in principle to the implication of a licence where the facts warrant such an implication. To deny this possibility would, I think, be unduly old-fashioned, formalistic and restrictive. A landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants' use of the land is pursuant to his permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use."

Their Lordships were, however, clear that inaction or even positive encouragement could not be regarded as demonstrating an implied licence. Positive encouragement by a landowner was capable of demonstrating both a licence and dedication. Per Lord Rodger:
"In Roman law 'precarium' is the name given to a gratuitous grant of enjoyment of land or goods which is revocable at will. The arrangement is informal and is based on the grantor's goodwill, whether more or less enthusiastic. But, however informal, the arrangement does involve a positive act of granting the use of the property, as opposed to mere acquiescence in its use. The name suggests, and the Digest texts indicate, that in Roman law the paradigm case is of a grant in response to a request. The arrangement lasts for only so long as the grantor allows…"

It is clear from this judgment that the landowner would have to be able to demonstrate the revoca-bility of the permission granted in order to establish that user was by licence.
The decision in Beresford has been largely overruled by the Supreme Court in *R.(Barkas) v North Yorkshire County Council [2014] 2 W.L.R. 1360* but it is not thought that all the principles expressed above as to what amounts to user precario have been invalidated – although the requirement for evidence of the revocability of the "permission" may have gone. In Barkas the Supreme Court drew the distinction between user "by right" and "user as of right". Recreational land set out by a local authority for public use, therefore, was used by the public "by right" rather than as of right. Usage "by right" was to be equated with usage by permission which was to be distinguished from a use which is a trespass but which, if acquiesced in, could amount to usage "as of right". Lord Neuberger expressed the view that people are either on land with permission or as trespassers; at para 27

© 2021 Thomson Reuters.

"As against the owner (or more accurately, the person entitled to possession) of land, third parties on the land either have the right to be there and to do what they are doing, or they do not. If they have a right in some shape or form (whether in private or public law), then they are permitted to be there, and if they have no right to be there, then they are trespassers. I cannot see how someone could have the right to be on the land and yet be a trespasser (save, I suppose, where a person comes on the land for a lawful purpose and then carries out some unlawful use). In other words a "tolerated trespasser" is still a trespasser."

In *R.(Newhaven Port & Properties Limited) v East Sussex C.C. [2015] 2 W.L.R. 601* a port area was subject to byelaws controlling and restricting, inter alia, public access (including swimming, dog walking and playing games). Usage of a beach by the public for recreational activities not specifically prohibited by those byelaws was found to have been impliedly permitted by virtue of the byelaws – following *Barkas*.
In *Powell v Secretary of State for Environment, Food and Rural Affairs [2014] EWHC 4009 (Admin)* it was argued that in addition to the tripartite test (*nec vi*, *nec clam*, *nec precario*) endorsed in *Lewis* as amounting to the sole test as to whether usage was or was not as of right it was appropriate to consider whether the usage was such that the reasonably vigilant landowner would not have been expected to resist it. Dove, J rejected this argument. The application of the tripartite test applied objectively as to how the usage would have appeared to the owner of the land was all that was required. It was also argued that the usage of the way in question had effectively been "clam" or secret in that the way in question was still shown on the Definitive Map although it had in fact been diverted more than 20 years previously so that the reasonable landowner would have assumed that usage was permitted and would not have resisted it. This was also rejected.
Under Scottish law it has been held that in order to satisfy the prescription requirements of the Prescription and Limitation (Scotland) Act 1973 s.3, i.e. use for "a continuous period of 20 years openly, peaceably and without judicial interruption", it was not necessary for the use to be adverse to the interests of the landowner. The argument that there had to be a conflict of interest between the proprietor and the users was unsustainable. See *Cumbernauld and Kilsyth DC v Dollar Land (Cumbernauld) 1993 S.L.T. 1318, HL*. As to whether any rights falling short of highway rights may be created in favour of members of the public by tolerance or licence, see *CIN Properties Ltd v Rawlins , The Times, February 9, 1995*.
User as of right might imply that the use made by the public of a way must be lawful. This gives rise to problems in relation to the establishment of vehicular rights over an existing public footpath or bridleway. Since the passage of theRoad Traffic Act 1930 s.14, it has been a criminal offence to drive a motor vehicle over a public bridleway or footpath without lawful authority or excuse; see now s.34 of the Road Traffic Act 1988. In *Robinson v Adair , The Times, March 2, 1995* (applying principles set out in *Manning v Top Deck Travel Group Ltd (1993) 68 P. & C.R. 14, CA*, in relation to the acquisition of private rights of way by prescription) Dyson J. held that the statutory presumption in s.31 could arise in relation to use of a way which was prohibited by a public statute:
"The principle is that the law will not countenance the creation of rights based on long user which is prohibited by public statute. That principle applies equally to claims to easements by prescription as it does to claims to the deemed dedication of a highway."

In *Hereford and Worcester CC v Pick (1996) 71 P. & C.R. 231* the Divisional Court followed *Robinson v Adair*. The decision was also followed in a number of other cases: *Stevens v Secretary of State for the Environment (1998) 76 P. & C.R. 503*; *R. v Planning Inspectorate Cardiff Ex p. Howell (2000) (unreported)*; *Hayling v Harper [2003] EWCA Civ 1147*.
In *Bakewell Management Ltd v Brandwood [2004] 2 All E.R. 305* the House of Lords has very largely overruled this line of authority. The appellant appealed against a decision that he was not entitled to a right of way for vehicles based on 20 years user across a common owned by the respondent. The Court of Appeal held that because it was an offence under the Law of Property Act 1925 s.193(4), to drive without lawful authority on the common and since no lawful authority had ever been given to drive on the common, a right of way could not have been acquired—applying *Hanning v Top Deck Travel (1994) 68 P. & C.R. 14*. The House of Lords held that the case of Hanning, and cases based on it, were wrong and ought not to be followed. Whilst it was true that a lawful grant could not authorise an act which, if done, would be illegal (*George Legge & Son Ltd v Wenlock Corp [1938] A.C. 204*), it did not follow that acts in breach of public law prohibitions could never lead to the acquisition of legal rights by prescription. It was possible under s.193(4) for a landowner to make a lawful express grant of easement. In such a case the statutory prohibition did not apply. Long and uninterrupted use was capable of supporting a presumed grant by the landowner of an easement which, if granted, would have been lawful and effective. It was accepted that a prescriptive right, or a right under the lost modern grant fiction, could be obtained by long use which was not illegal in the sense of being tortious. Public policy did not, therefore, prevent conduct that was illegal in that sense from leading to the acquisition of property rights. *Hanning* could only be justified on the footing that conduct illegal in a criminal sense was, for public policy purposes, different in kind from conduct illegal in a tortious sense. There was no reason why that should be so where the conduct in question was use of land that was not a criminal use of land in all circumstances but was criminal only because it was a user of land for which the owner had given no 'lawful

© 2021 Thomson Reuters.

authority'. If an easement over land could be lawfully granted by the landowner, the easement could be acquired under the Prescription Act 1832 s.2 or by the fiction of lost modern grant, whether the use relied on was illegal in the criminal sense or illegal merely in the tortious sense. There was no valid reason of public policy to bar that acquisition. Lords Hope and Scott, with whom Lord Bingham and Lady Hale agreed, both expressed the view that the same principles applied to the acquisition of highway rights contrary to s.34 of the Road Traffic Act 1988. Lord Scott, however, emphasised that the application of the principles of implied dedication assumed that the landowner had the power to dedicate the way—had he done so expressly. He said, at p.318:
"It would not, in my opinion, have been open to the landowner to have dedicated the footpath as a public vehicular highway if use by vehicles would have constituted a public nuisance to pedestrians using the footpath. But I respectfully disagree with the proposition derived from *Hanning's* case and to *Robinson's* case. If it would have been lawful for the landowner to make the dedication in question I can see no reason why the dedication should not have been presumed from long use."

This qualification draws on the authority of *Sheringham UDC v Halsey (1904) 68 LP. 395* where it was held that usage of a narrow footpath passageway by vehicles amounted to a public nuisance and, therefore, no vehicular rights could lawfully have been dedicated over the passageway. Per Joyce, J at p.396:
"It appears to me that the user of this lane for wheel traffic was in its inception and has been all along a public nuisance; that it is illegal, and no length of time can legalise it. It is not shown that anyone did in fact dedicate this lane as a public highway, and I think—in fact it is clear to me—that under the circumstances no-one had power. There was no-one who had power so to dedicate it; that is, to dedicate it as a public highway for carriages. Just consider for a moment. After the award, and when this was a public highway, the owner of the soil himself, the lord of the manor, was not entitled to drive down this pathway. He would have been guilty of a public nuisance just as much as anybody else; and if the owner of the soil, whoever he was (if there was one) could not do this himself, it is perfectly plain to mind that he could not authorise anybody else to do it. Therefore, in other words, he could not dedicate, and he had no power to dedicate, this strip of land to the public for use as a general carriageway."

This decision has to be treated with little caution. On the facts—usage by carriages and carts of a narrow passageway (4ft, 4in at one point) was undoubtedly dangerous and inconvenient for pedestrians, as the Judge found; see also *Stevens v Secretary of State for the Environment (1998) 76 P. & C.R. 503*, per Sullivan J. However, when a landowner dedicates land as a footpath, he cannot be assumed to have given up his right to drive vehicles over that path in every case—otherwise landholdings would effectively be severed by the path. In *Vestry of St. Mary, Newington v Jacobs (1871) L.R. 7 Q.B. 47* the Divisional Court held that a landowner was acting lawfully in driving vehicles from his land to the vehicular highway over a footway. Mellor, J. said, at pp.52–53:
"The owner, who dedicates to public use as a highway a portion of his land, parts with no other right than a right of passage to the public over the land so dedicated, and may exercise all other rights of ownership, not inconsistent therewith; and the appropriation, made to and adopted by the public, of a part of the street to one kind of passage, and another part to another, does not deprive him of any rights, as owner of the land, which are not inconsistent with the right of passage by the public.

If this were not so, the owner of a large estate, having dedicated a portion of his land to the use of the public as a roadway, and they, or the persons representing them, having raised a footpath on one side of such roadway for their own more convenient use thereof, would, after a lapse of time, be so bound by this convenient arrangement of such roadway as to be unable to open a new gateway or entrance to his land from such roadway, without being liable to be convicted under the provisions of the Highway Act. If this were really the law, the result would be most serious to owners who have dedicated, or may dedicate, roadways to the public; and in towns would, to a great extent, prevent the owners of houses and buildings from changing their character and use to any purpose of business which could not be accomplished without the use of a horse, or cart, or carriage.

That such is not the law, appears to us to be the result both of principle and authority; and we think that the provisions of the Highway Acts and theMetropolis Local Management Act, so far as they apply to roads or street, are subordinate to the paramount rights reserved by the owner. We do not deny that the owner cannot derogate from the grant of roadway made by him to the public, and cannot do anything which would really and substantially interfere with the right of passage by the public."

The same principles would seem to apply to driving over footpaths. The creation of vehicular rights over ways dedicated initially as footpaths would not appear, depending on degree of usage and the circumstances of the case, to amount inevitably to a public nuisance where it arises out of the reasonable use of land.

© 2021 Thomson Reuters.

Sullivan J also expressed the view in *Stevens v Secretary of State for the Environment (1998) 76 P. & C.R. 503* that the same principle might apply to the riding of a bicycle on a footpath where this would create a danger to pedestrians and constitute a public nuisance—so that no rights could be acquired by such conduct: see *Sheringham UDC v Halsey (1904) 68 J.P. 395*. This proposition, however, which could also apply to the riding of horses on a public footpath, seems much less certain. The riding of horses or a bicycle would only constitute a nuisance where it was shown that a danger was caused to the lawful usage of the footpath.See further *Garland and Salaman v Secretary of State for Environment, Food and Rural Affairs [2020] EWHC 1814 (Admin)* in relation to the confirmation of a definitive map modification order upgrading a footpath to a bridleway in which the Court accepted the proposition that it is not open to a landowner to dedicate a footpath as a bridleway in circumstances where use by horse riders or cyclists would constitute a public nuisance to pedestrians lawfully using the footpath. That question was to be determined by the inspector on the basis of the particular factual evidence before him. In *Dyfed CC v Secretary of State for Wales (1990) 59 P. & C.R. 275* the Court of Appeal held that there was no rule of law that use of a highway for recreational walking was incapable of leading to a deemed dedication under this section.

An access way to a market area may become a highway through the operation of subs.(1) of this section although a market franchise extends over the whole market area, including the site of the access way. The rights of the public prevail over the rights conferred by a franchise. *Brandon v Barnes [1966] 1 W.L.R. 1505*. The 20-year period may be used to establish unrestricted dedication to the public where previously the public right of way had been subject to some limitation: see *Gloucester CC v Farrow [1985] 1 W.L.R. 741*. In that case the unrestricted user of the highway (a market square) for highway purposes for more than 20 years was held to override market rights granted by franchise but not exercised for 100 years.

## Usage establishing a restricted byway

Since the passing of the Natural Environment and Rural Communities Act 2006 the circumstances in which new rights of way for mechanically propelled vehicles can be created have been significantly curtailed. A new kind of right of way—a "restricted byway" over which there are public rights of way for non-mechanically propelled vehicles has been created. In *Whitworth v Secretary of State for the Environment, Food and Rural Affairs [2010] EWCA Civ 1468* the question arose as to whether the use of a bridleway by cyclists could give rise to the creation of a restricted byway. The court at first instance appears to have accepted that usage by bicycles prior to 1968 amounted to usage by non-mechanically propelled vehicles capable of creating a restricted byway but that usage after the passing of the 1968 Act would not. The question was how evidence of usage straddling the passage of the 1968 Act was to be viewed as a whole. The Court, taking into account the totality of the evidence (of which usage was just one part), concluded that there had been evidence on which the Inspector could reasonably base his conclusions that greater rights than those relating to a bridleway had been created. The Court of Appeal, however, held that once the way had become a brid leway, as the Inspector found that it had by 1968, any further use by cyclists could not be said to have been acquiesced in by the landowner because he no longer had any right to object to this form of usage. The Order was quashed. This decision seems to have been reached by looking at the landowner's conduct in the light of the legal status of the bridleway as it was subsequently established rather than on the basis of the landowner's knowledge or belief at the time.

See also *Slough Borough Council v Secretary of State for Environment Food and Rural Affairs [2018] EWHC 1963 (Admin)*.

### 3. Without interruption

2-065. 3 In *Merstham Manor v Coulsdon and Purley UDC [1937] 2 K.B. 77* Hilbery J considered the expression "without interruption" and said at 85:

"I therefore think that the word "interruption" in the expression in the Act 'without interruption' is properly to be construed as meaning actual and physical stopping of the enjoyment, and not that the enjoyment has been free of any acts which merely challenge the public to that enjoyment."

In *Lewis v Thomas [1950] 1 K.B. 438* it was held that in determining whether the user of a right of way has been "as of right without interruption" the following considerations should be borne in mind:

1. *Interruption* means "interruption in fact."

2. The presence or absence of a challenge may well be a relevant circumstance in determining whether truthfully there has been interruption in fact.

3. The circumstances in which the barring of the way takes place and the absence of any intention to stop anybody going along it—if it be the case—will be a relevant circumstance.

4. A deliberate barring of a way for an appreciable period will not necessarily lose its effect merely because no one happened to try to use the way during that period.

Per Cohen LJ at p.447:
"It seems to me that the reference to interruption in the subsections is to the fact of an interruption and that the question of intention is primarily relevant if, and only if, the owner, against whom the right of ways is asserted, seeks to prove no intention to dedicate. I think intention may be involved in the question whether a particular act is not interruption."

The answer of the defendants to the plaintiff's claim of trespass was that they had been exercising a public right of way for agricultural vehicles and cattle. The evidence showed that during the requisite period of years, when the public right of way was claimed to have been established, a tenant of two fields, along which the right of way was claimed, had locked a gate which was across the way on his own property between the two fields. This he had done at night at certain periods of the year when his corn was stacked, as he had found that cattle had wandered into the cornfield. He always saw to it that the gate was unlocked in the morning. On these facts, the county court judge held there was a public right of way. Held, on appeal, the judge was entitled to find that there had been "no interruption" and that the locking was done at such times only as would not be likely to, and did not, in fact, interrupt (as it was not intended to interrupt) the user for farm vehicles and cattle. Therefore, the appeal had to be dismissed. The court applied *Jones v Bates [1938] 2 All E.R. 237*; and *Moser v Ambleside Urban DC (1924) 89 J.P. 59*. See also *Ward and Ward v Durham CC (1995) 70 P. & C.R. 585*; *Rowley v Secretary of State for Transport, Local Government and the Regions [2002] EWHC 1040* (Admin); See also *Ali v Secretary of State for Environment, Food and Rural Affairs [2015] EWHC 893 (Admin)*.
Building work which blocked the line of a way for temporary periods, requiring pedestrian and horses to follow a slightly different route, was found not to amount to an interruption in *Fernlee Estates Ltd v City and County of Swansea and National Assembly for Wales [2001] EWHC Admin 360 (unreported)*.
In contrast, in *R. (on the application of Pereira) v Environment & Traffic Adjudicators [2020] EWHC 811 (Admin)*, the claimant received a penalty charge notice for parking her vehicle outside her house on a privately-owned part of a pavement in circumstances where she and her husband had regularly parked their cars in that location for some 13 years. The pavement was wide enough for three cars to park side by side. An adjudicator found as a fact that a vehicle had been parked there during each of 200 days over that 13 year period for some hours each day, but went on to find that the pavement had been dedicated as a highway under s.31 so that the offence of parking on any part of a road under s.15(1) of the Greater London Council (General Powers) Act 1974 was accordingly committed. In so determining, the adjudicator pointed out that whenever a car was parked on the pavement, a pedestrian would have been able to avoid the obstruction which it presented by deviating and walking along the pavement around the car. It was held that such amounted to an error of law by the adjudicator as use of a way leading to deemed dedication under s.31 required uninterrupted use of a particular way identified with some precision. Per Fordham J at [12]:
"It is, in my judgment, an error of law to allow fluctuation in the course of passage across land to constitute the maintenance of 'a course of passage', so as to support a conclusion of uninterrupted enjoyment by the public of 'a way' over land. What is needed is greater precision, the identification of what the uninterrupted 'way' is, and an analysis of whether the location in question falls within that uninterrupted 'way'."

See further *Attorney General Ex rel Yorkshire Derwent Trust Ltd v Brotherton [1992] 1 AC 425* in which Lord Oliver pointed out at 434C that "… a public right on land depends upon proof of public user over an exactly demonstrated course".

**4.**

For a full period of 20 years to be calculated retrospectively from the date when the right of the public to use the way is brought into question.

**2-065. 4** The statutory period of 20 years, which provides an alternative to the common law means of dedication, has no fixed starting point, but only a finishing point. So long as there is any 20 period of uninterrupted use ending in an act which has brought right of the public to use the way into question this requirement of the section will be satisfied. Thus there can be

more than one occasion on which the right to use the way has been brought into question and in each case it will be the immediately preceding 20-year period that is relevant; *Rothschild v Buckinghamshire CC (1957) 55 L.G.R. 595*; *Paterson v Secretary of State for the Environment, Food and Rural Affairs [2010] EWHC 394 (Admin)*.
In *Wright v Secretary of State for the Environment, Food and Rural Affairs [2016] EWHC 1053 (Admin)* Ouseley J, whilst accepting that evidence of sufficient quality and quantity must be demonstrated over the full 20-year period, set out the basic approach as follows
"The relevant law is not contentious. *Mann v Brodie (1885) 10 App. Cas. 378* shows that use must be by a sufficient number of people to show that it was use by the public, a number which may vary from case to case. *R. (on the application of Lewis) v Redcar and Cleveland Borough Council [2010] UKSC 11, [2010] 2 AC 70*, and others cited in it, deal with the quality of the user. The use had to be sufficient to bring home to the mind of the reasonable non-absentee landowner that the public were asserting a continuous right to use each route in question. The user over the twenty year period did not have to be by the same people."

The Act applies to enjoyment of the way before the commencement of the 1932 Act as well as after it. Once the 20 years' enjoyment has been had as of right by the public, then whether the 20 years' enjoyment was before or after the Act, the way is subject to the terms of the Act, a highway: *Fairey v Southampton CC [1956] 2 Q.B. 439*. See also *Attorney General and Newton Abbot Rural DC v Dyer [1947] Ch. 67*.
The point as to the running of time was also considered in *De Rothschild v Buckinghamshire CC (1957) 55 L.G.R. 595*. The public used a path across the appellant's land from 1914 to 1940, although the appellant had not intended the public to enjoy a right of way. From 1940 to 1947 the land was requisitioned and there was no evidence of public user. Prior to 1914 and again in 1948 the public right to use the path was questioned by the padlocking of a gate and by the erection of notices. The Divisional Court (Lord Goddard CJ, Slade and Gorman JJ) allowing the appeal, held, that the relevant dates for considering presumed dedication by 20 years uninterrupted use under the Rights of Way Act 1932, were 1914 and 1948, and as there was no evidence of 20 years' uninterrupted use prior to 1948 no statutory presumptions of dedication arose.
Where there is evidence of 20 years public use giving rise to the presumption that the way is a highway it is permissible to take into account earlier usage as part of the reputation of the way to confirm a finding that a way has become a highway: see *Rowley v Secretary of State for Transport, Local Government and the Regions [2002] EWHC 1040*, Admin.
In order for the right of the public to have been "brought into question by notice as aforesaid or otherwise" (within the meaning of what is now subs.(2)) there must be some act which raises the issue of the status of the way sufficient to bring it home to the public that their right to use the way is being challenged, so that they must be apprised of the challenge and have a reasonable opportunity of meeting it: see *Fairey v Southampton CC [1956] 2 Q.B. 439*; see also *Godmanchester Town Council v Secretary of State for Environment, Food and Rural Affairs & Cambridgeshire CC [2007] UKHL 28*. The making of an application to add the way to the definitive map may amount to an act bringing the right of the public to use the way into question and, where this occurs, the relevant date is that on which the application is made; see s.31(7A), (7B) (below) and *R. v. Secretary of State for the Environment , Ex p. Stewart (1979) 77 LGR 431*. However, where an objection has been made to an application to modify the Definitive Map the question whether this is a separate act bringing into question the right to use the way will depend on whether the objection has been made known to those who are likely to use the path; see *R. v Secretary of State for the Environment, Transport and the Regions Ex p. Dorset CC (1999) (unreported)*.
Per Dyson J:
"The challenge must therefore be brought home to the users. Leaving aside the statutory means provided by s.31(3), what does this mean? It clearly does not require that every user should be told by the owner of the challenge, or even that it be shown that every user has been made aware of the challenge by other means, for example, by reading a notice in a local newspaper. But whatever means are employed, they must be sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway. Anything less will not satisfy the need identified by Denning L.J. to bring home to the users the owner's challenge, so that they are given an opportunity to meet it. The persons to whom the challenge has to be brought home are the users of the way. Thus, it is no good for the owner to speak to a complete stranger, who as Denning L.J. said, would know nothing of the public right, and would not be concerned to assert it.

If he applied this test to the present case, the Inspector must have concluded that the April 1975 objection was sufficient to bring home to the users that the owner was challenging their right to use the way. The objection was sent by the Department to the Council in April 1975, and it is the notification to the Council which Mr Hobson submits the Inspector was entitled to find was sufficient to bring home the challenge to the users. But there was no evidence that the Council conveyed the existence or details of the objection to the users at any time before the proposals were abandoned. In my judgment, it was not open to the Inspector reasonably to rely on the notification of the objection to the Department and the Council as sufficiently bringing home to the users the owner's challenge. Neither of these bodies had any interest in asserting the

© 2021 Thomson Reuters.

existence of the right of way. It is true that they were interested in whether a footpath was deemed to have been dedicated along the route in question and had statutory functions to perform in relation to the Map. Moreover, if a right of way had been acquired by prescription, they were interested to ensure that it was not obstructed. But they were not persons who might wish to assert and defend their right to use the way. Mr Hobson suggested that the Council received the objection as agent for the users. I do not agree. The Council was not under any duty to communicate the objection to the users unless an inquiry was held, and it seems that it did not do so."

The question whether the making of the application to modify itself had brought the right to use the way into question does not seem to have been addressed.

The act which brings into question the right of the public to use a way does not have to be that of the landowner himself: see *Applegarth v Secretary of State for the Environment Transport and the Regions [2001] EWHC Admin 487*; see also per Lord Scott in *Godmanchester Town Council v Secretary of State for Environment, Food And Rural Affairs & Cambridgeshire CC [2007] UKHL 28*, at [70]. Similarly, if the landowner merely turned back one stranger on an isolated occasion, that would not be sufficient to make it clear to "the public" that they had no right to use the way. He must make it clear to those members of the public who would be most concerned to assert the right; e.g. the villagers, local residents, etc., *Fairey v Southampton CC [1956] 2 Q.B. 439*.

The phrase "brought into question" was considered in *Owen v Buckinghamshire CC (1957) 55 L.G.R. 373*, where it was held that the ploughing up of a path across a field is not sufficient to bring the right of the public to use the way into question for the purposes of s.1(6) of the Act of 1932. A path across a field used by the public was ploughed up in 1906 because of an alteration in the method of ploughing. The public continued to use the field until 1930 and the path would disappear under ploughing and re-appear with use. There was no evidence of user of the path after 1930. In 1956 the occupiers of the farm to which the field belonged applied under s.31 of the National Parks and Access to the Countryside Act 1949, for a declaration that there was no public right of way over the farm. The justices held that the footpath must be deemed to have been dedicated as a highway because the ploughing up of the path in 1906 was sufficient to bring the right into question. On appeal, it was held that the ploughing up of the path was not an unequivocal act by which the right of the public to use the field was "brought into question." The first challenge to the use of the footpath was the objection put forward in 1956. Therefore as the public had not been using the footpath uninterruptedly for 20 years there was no public right of way over the land. See also *Ward and Ward v Durham CC (1995) 70 P. & C.R. 585*.

It would appear that most acts that are capable of amounting to interruptions by a landowner to continuous usage by the public as of right and/or which are capable of being regarded as sufficient evidence of contrary intention will also be sufficient to bring the right of the public to use the way into question. In *Godmanchester Town Council v Secretary of State for Environment, Food And Rural Affairs & Cambridgeshire CC [2007] UKHL 28* the House of Lords considered the relationship between acts of bringing the right of the public to use the way into question, acts of interruption to the usage as of right and the demonstration of a contrary intention. Lord Hoffman, at [24], [38] and [40], considered the overlap in the following way

"The evidence which will satisfy the proviso is not something less than enjoyment as of right but something different. For example, there may be a notice which says "No 'right of way. Trespassers will be prosecuted". Nevertheless, for upwards of 20 years members of the public may have ignored the notice and used the way, openly and apparently in the assertion of a right to do so. Their user will satisfy section 31(1) but the landowner, even on the most objective test, will have satisfied the proviso. (It may be that putting up the notice also brought the right to use the way into question, in which case, as in the *Fairey* case, the public would succeed if they could prove another 20 years' user before the notice went up. But that is another matter.)"

"It is true that acts negativing an intention to dedicate would also, by calling the right into question, throw the inquiry back into an earlier period."

"…section 31(2) speaks of the right being called into question by a notice_or otherwise_and it is hard to imagine an act which called the right into question and did not also evidence an intention not to dedicate."

Lord Hope, at para.54, suggested that even the specific acts set out in subss.(3)–(6) would also bring the right of the public to use the way into question. Lord Scott, at para.70, although expressing agreement with Lord Hoffman drew attention to the fact the right of the public could be brought into question by persons other than the landowner with power to dedicate and concluded, therefore, that there was "no necessary symmetry between acts that bring the public right into question and acts of the landowner to demonstrate that he does not intend dedication."

It was made clear in *Easteye Ltd v Malhotra Property Investments Ltd [2020] EWHC 2606 (Ch)* that a person claiming dedication under s.31 must identify the date of calling the right of way into question from which the 20 years is to be

© 2021 Thomson Reuters.

calculated retrospectively. As the Defendants were unaware of the date of the installation of a gate, the claim under s.31 failed as they were unable to prove the requisite 20 years user as of right prior to that date.

**5. Deemed dedication**

2-065. 5 The presumption as to the extent of the public right of way ought to be drawn with reference to all the circumstances existing at the time when the question as to the extent of the public right arises and not from a state of circumstances that is proved to have existed in the past: per *Parker J in Copestake v West Sussex CC [1911] 2 Ch.331*. See also *Gloucestershire CC v Farrow [1985] 1 W.L.R. 741*.

**6. Sufficient evidence that there was no intention during that period to dedicate**

2-065. 6 There is an inevitable connection between the behaviour of a landowner (acquiescence) that leads to habitual usage by the public being regarded as being "as of right" and the question as to whether or not he has intended to dedicate his land as a highway. The presumption in s.31 only arises where it is proved that usage has been uninterrupted and "as of right" for the required period. For the presumption of dedication to have arisen, therefore, there must have been objective evidence that was consistent with dedication. The Act, however, then allows for a landowner to prove that "there was no intention during that period to dedicate it". This possibility of proving lack of intention arises where the objective evidence has demonstrated that usage was as of right. There is an interesting question, therefore, as to what the legislator has contemplated would be sufficient to counter this evidence to demonstrate that nonetheless dedication was not intended.
It is quite clear that the law does not allow for a landowner who has dedicated land as a highway subsequently to have second thoughts and to deny the fact of dedication. It cannot, therefore, be enough for a landowner to claim that notwithstanding the objective evidence to the contrary his own hidden intention had never been to dedicate. Thus, in *Fairey v Southampton City Council [1956] 2 Q.B. 439 Lord Denning*, at p.457, in considering the similar provisions in the Rights of Way Act 1932 went so far to say, obiter:
"In my opinion a landowner cannot escape the effect of 20 years' prescription by saying that, locked in his own mind, he had no intention to dedicate: or by telling a stranger to the locality (who had no reason to dispute it) that he had no intention to dedicate. In order for there to be "sufficient evidence that there was no intention" to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large—the public who used the path, in this case the villagers—that he had no intention to dedicate."

This approach of requiring "overt acts" from a landowner has been followed in a number of reported cases and probably in countless Inspectors' decisions. In *R. v Secretary of State for the Environment , Ex p. Blake [1984] J.P.L. 101*, Walton J, at 102, said:
"Quite clearly, it was not sufficient for the landowner merely to come along and beat his breast and say that all was lost, because there was an intention never to dedicate. That intention had to be manifested by sufficient overt or notorious acts."

In *Ward v Durham CC (1995) 70 P. & C.R. 585 Sir Donald Nicholls VC*, at p.590, used similar wording.
"In the absence of overt acts demonstrating an intention not to dedicate, such as displaying a 'no right of way' notice, the court ought to be slow to find that a landowner's unexpressed intention not to dedicate is sufficient evidence for the purpose of section 31."

See also *R. v Secretary of State for the Environment, Ex p. Cowell [1993] J.P.L. 851*; *O'Keefe v Secretary of State for the Environment and Isle of Wight CC [1996] J.P.L. 42*; *Jaques v Secretary of State for the Environment [1995] J.P.L. 1031*.
There is a difference, however, between open and objectively ascertainable actions of a landowner which clearly demonstrate his intention and actions that are made known to every user of the alleged path. Whilst a notice declaring that a path is not a right of way may be seen and torn down by some users it may never be seen by others. Most of those who use a path will probably not be aware of the existence of a statutory declaration lodged with the local highway authority. However, the legislation expressly allows for such actions of a landowner to go to proving lack of intention to dedicate. It might be thought, however, that lack of intention, is capable of being proved objectively, without being drawn to the attention of users of the path. Indeed, if it had been so drawn to their attention before the expiry of a sufficient period to give rise to dedication then this might have brought their usage into question and have raised a question as to whether

© 2021 Thomson Reuters. 

their continued usage could be "as of right". If so, then apart from the statutory means provided by s.31(5) and (6) it is difficult to see what the requirement to prove a contrary intention adds to the statutory test. In a series of cases the courts attempted to deal with the situation where such evidence of lack of intention did exist but had not been brought to the attention of users of the path in question: see *R. v Secretary of State for the Environment, Transport and the Regions Ex p. Billson [1998] 3 W.L.R. 1240*; *R. v Secretary of State for the Environment, Transport and the Regions Ex p. Dorset CC (1999) (unreported)*; *Norman and Bird v Secretary of State for the Environment, Food and Rural Affairs and Derbyshire County Council [2006] EWHC 1881 (Admin)*.

The House of Lords has now held in *R. (on the application of Godmanchester Town Council v Secretary of State for Environment, Food And Rural Affairs & Cambridgeshire CC [2007] UKHL 28* that upon the true construction of s.31(1), "intention" meant what the relevant audience, namely the users of the way, would reasonably have understood the landowner's intention to be. The appellants had appealed against decisions that they had not established a public right of way over two separate areas of land. In one case the Secretary of State had found that the claimed footpath had been used without interruption for 20 years for the purposes of the Highways Act 1980 s.31(1) but that there was sufficient evidence of a contrary intention not to dedicate as the owners had previously written to the council expressing their concern over trespassers. In the other case a public footpath was claimed over a country estate. The tenancy agreement for the estate contained a clause that the tenant would "warn and keep off all unauthorised persons from…trespassing". The Secretary of State again found that the way had been used without interruption for 20 years but that the provisions of the clause amounted to an overt and contemporaneous expression not to dedicate for the purposes of s.31(1). The Appellants contended that there had to be some act on the part of the landowner that was overt in the sense that the owner's intention had come to the attention of users of the way. The House of Lords held that the law as stated by Denning L.J. in *Fairey v Southampton CC (1956) 2 Q.B. 439* was correct. The test was objective. The reasonable user would have to understand that the landowner was intending to disabuse him of the notion that the land was a public highway. Outside the criminal law and parts of the law of torts, it was common to use the word "intention" in an objective sense. The Court of Appeal had taken too narrow a view of the purpose and effect of the proviso. It had been drafted against the background of the common law. The presumption of dedication at common law involved a dialogue between the landowner and the public. A landowner had to communicate his intention to the public in some way if he was to satisfy the requirements of the proviso. Section 31(1) requires "sufficient evidence" that there was no such intention. The specific steps available in s.31 for landowners to make their lack of intention to dedicate known would be otiose if their contrary intention did not have to be demonstrated objectively.

The decision of the House of Lords means almost inevitably (although their Lordships appear to have stopped just short of deciding) that the only acts which can demonstrate a contrary intention will also amount to a bringing of the way into question so as to terminate the period against which the usage giving rise to the claimed presumption has to be measured; see Lord Hoffman at para.38. Furthermore, the test of "as of right" and of "contrary intention" would appear now to be conflated. Essentially, therefore, the proof of 20 years use "as of right"—which itself depends upon an objective assessment of the landowner's intention—will now mean that unless the landowner has used one or other of the statutory means of indicating a contrary intention the dedication of the highway will be presumed.

It was also argued in *Godmanchester* that there had to be sufficient evidence of the contrary intention for the whole 20-year period and that the proviso to s.31(1) meant "during the whole of that period" rather than "at some point during that period". The House of Lords rejected this submission. The intention not to dedicate did not have to be continuously demonstrated for the whole 20-year period. Once it had been demonstrated, however, it would seem that usage would no longer be as of right and the right of the public to use the way would have been brought into question.

In *Attorney-General and Newton Abbot RDC v Dyer [1947] Ch.67* of the court dealt with general issues and with the situation where land had been in strict settlement. F Lane was constructed after 1832, but before 1843. From 1832 onwards the land over which the lane ran was held in strict settlement. From 1877, however, until 1883 there was power in the tenant for life and T, the tenant in tail, and thereafter T until he sold the land in 1920, to appoint the settled land to any person for an absolute interest. In 1921 the farm reached by the lane was conveyed to the defendant, together with the soil of the southern portion of the land and a right of way over the northern portion. In 1923 the defendant disputed the existence of any public right of footway over the lane. At a meeting on November 30, 1925, between the defendant and his solicitors and representatives of the claimants, the rural district council, the defendant agreed that a right of footway existed over the lane, and he unlocked the gate he had locked across the way. In 1937 the defendant again locked the gate, and the Attorney-General, on the relation of the rural district council, claimed a declaration that there was a right of footway over the land. Held, first, that on 30 November 1925, the defendant conceded, in consideration of the council abandoning their intention to litigate their claim, that a public right of footway existed over the lane. The council were entitled to an injunction to restrain the defendant from obstructing the way on the ground of contract. Secondly, that on the evidence the lane had been enjoyed as a public footway as of right and without interruption for a period of over 40 years prior to the right being disputed by the defendant in 1923. Thirdly, the end of the period specified by the Act might be before the commencement

© 2021 Thomson Reuters.

of the Act. Fourthly, that, if the claimants had to rely on their alternative claim at common law, it would not have succeeded. In the circumstances the fact that between 1877 and 1920 there was a power of appointment over the settled land did not justify the court in inferring a lost grant. Judgment was given for the claimants.

In *R. v Secretary of State for the Environment Ex p. William Greaves Blake [1984] J.P.L. 101*. A road known as Green Drive was shown on the draft definitive map as a footpath. After various procedural stages had been completed an Inspector appointed by the Secretary of State for the Environment recommended that the path be recorded as a footpath rather than as a bridleway—as was being contended by the appellant. The Secretary of State accepted his Inspector's recommendation and Walton J. dismissed an application for judicial review of that decision. The facts were that until 1970 two locked gates existed across the path of Green Drive forcing potential users of the path on horseback to deviate from the path—in one case by a substantial diversion. In 1970 the gates were removed allowing, thereafter, unrestricted use. Walton J. held that the existence of the locked gates was evidence of an intention not to dedicate as a bridleway and that the circumnavigation of these obstacles by riders did not establish sufficient use as of right to bring the statutory presumption into play. If the case for the applicant had been correct it would, in practical terms be impossible for a landowner to prevent the acquisition of a right of way as, by reason of the nature of the terrain, it would always be possible for persons wishing to use the path to find a way round obstacles placed in the path and thereafter to claim that they were using the path as of right. What in fact they were doing was acknowledging the existence of the obstruction. Walton J also found that a notice which had not been maintained so as to comply with subs.(3), could still be taken into consideration as evidence of lack of intuition to dedicate at the time which it was erected.

A second argument, which was raised by the applicant, was that the period of unrestricted use after 1970 should be regarded as an offer of an alternative right of way by the landowner to the route taken by horse riders up until that date. On his argument the period after 1970 could be added to the previous use for the purposes of the prescription. Reliance was placed on a similar proposition regarding private rights of way in *Davis v Whitby [1974] Ch.186*. In rejecting this argument Walton J. affirmed that if a right of way had already come into existence prior to the alternative route being "offered" no individual or groups of individuals could bargain away that right of way for another. The analogy with the situation in *Davis v Whitby* (above) therefore broke down.

Where the landowner is not known this will not prevent a claim under s.31 from succeeding. Once the required degree and quality of user is proven the burden shifts to the landowner to demonstrate that he had no intention to dedicate. If that owner cannot be identified there is no duty on the Claimants to demonstrate that he did dedicate: see *Applegarth v Secretary of State for the Environment Transport and the Regions [2001] EWHC Admin 487*; *Ward and Ward v Durham CC (1995) 70 P. & C.R. 585*.

There is one difficulty in the approach that now seems to be adopted by the courts in equating acts which bring the right to use the way into question with acts demonstrating a contrary intention; see *Godmanchester* (above). Insofar as an act which demonstrates a contrary intention brings the right to use the way into question then it will necessarily be too late to negative any intention to dedicate during the immediately preceding 20-year period. There seems, therefore, to be little room left for the application of the proviso. The coincidence between the act negativing intention and one bringing the 20-year period to an end was recognized in *Godmanchester* (at para.24) by Lord Hoffman but its consequence was not addressed.

**2-066** Section 31 specifies a number of specific ways by which a contrary intention may be deemed to have been shown - by means of appropriately worded and sited notices to the public, a notice given to the appropriate council and by the deposit with the appropriate council of a map and statement stating what ways, if any, the owner admits to have been dedicated over his land. The suggestion that these amounted to the exclusive means by which a contrary intention could be demonstrated was, however, rejected in *Godmanchester*. These provisions are precisely worded and need to be considered carefully.

## Notices

**2-066. 1** Under subs.(3) it is expressly provided that the erection and maintenance of a notice will "in the absence of proof of contrary intention" be sufficient evidence to negative the intention to dedicate the way as a highway. The notice must have been erected "in such a manner as to be visible to persons using the way" and must be in such terms as to be "inconsistent with the dedication of the way as a highway." The notice must have been "maintained" after January 1, 1934 or any later date on which it was erected.

The first point to note about this provision is that the terms of the notice must be such as, read objectively, would convey to the persons using or attempting to use the way the indication that the owner was not dedicating the way as a public right of way. A notice stating "Private" or "Private Land" may not always be sufficient on its own (as it may be taken to refer to

© 2021 Thomson Reuters.

the land on either side of the way) and may need to be seen in context; *Paterson v Secretary of State for the Environment, Food and Rural Affairs [2010] EWHC 394 (Admin)*. In *R. (Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust v Oxfordshire County Council [2010] EWHC 530 (Admin)* - a village green case - Judge Waksman Q.C., at para.22, set out a number of factors to be considered in relation to the effectiveness of notices some of which would appear also to be relevant to s.31.
"From those cases I derive the following principles:

> (1)The fundamental question is what the notice conveyed to the user. If the user knew or ought to have known that the owner was objecting to and contesting his use of the land, the notice is effective to render it contentious; absence of actual knowledge is therefore no answer if the reasonable user standing in the position of the actual user, and with his information, would have so known;
>
> (2)Evidence of the actual response to the notice by the actual users is thus relevant to the question of actual knowledge and may also be relevant as to the putative knowledge of the reasonable user;
>
> (3)The nature and content of the notice, and its effect, must be examined in context;
>
> (4)The notice should be read in a common sense and not legalistic way;
>
> (5)If it is suggested that the owner should have done something more than erect the actual notice, whether in terms of a different notice or some other act, the Court should consider whether anything more would be proportionate to the user in question. Accordingly it will not always be necessary, for example, to fence off the area concerned or take legal proceedings against those who use it.

The aim is to let the reasonable user know that the owner objects to and contests his user. Accordingly, if a sign does not obviously contest the user in question or is ambiguous a relevant question will always be why the owner did not erect a sign or signs which did…

In my judgment the following principles also apply:

> (6)Sometimes the issue is framed by reference to what a reasonable landowner would have understood his notice to mean " — that is simply another way of asking the question as to what the reasonable user would have made of it;
>
> (7)Since the issue turns on what the user appreciated or should have appreciated from the notice, it follows that evidence as to what the owner subjectively intended to achieve by the notice is strictly irrelevant. In and of itself this cannot assist in ascertaining its objective meaning;
>
> (8)There may, however, be circumstances when evidence of that intent is relevant, for example if it is suggested that the meaning claimed by the owner is unrealistic or implausible in the sense that no owner could have contemplated that effect. Here, evidence that this owner at least did indeed contemplate that effect would be admissible to rebut that suggestion. It would also be relevant if that intent had been communicated to the users or some representative of them so that it was more than merely a privately expressed view or desire. In some cases, that might reinforce or explain the message conveyed by the notice, depending of course on the extent to which that intent was published, as it were, to the relevant users."

Secondly, the notice must not only be erected it must be "maintained". If an appropriate notice is almost immediately torn down and not re-instated then clearly a new 20-year period could, in any event, begin to run. It less clear what effect the notice will have had. If the notice was in place for long enough for members of the public using the path to become aware of it then it may have been sufficient to bring the right to use the way into question or even to interrupt the continuity of the usage as of right. However, it may not amount to "sufficient" evidence of a contrary intention because it will not have been "maintained" and subs.(5) then provides an alternative method of demonstrating that contrary intention through giving notice to the appropriate council. Erection of a notice, which is then torn down and not replaced, where the landowner has not then availed himself of the provisions in s.31(5) will probably not be sufficient evidence of a contrary intention on its own. If, on the other hand, the notice was in place long enough to make members of the public aware of the landowner's intention then it would appear from the views expressed in *Godmanchester* that it might have operated to bring the right of the public to use the way into question and thus to have terminated the relevant 20-year period. The expression of the owner's intention

© 2021 Thomson Reuters.

would, therefore, have come too late -unless the notice could be taken together with other earlier actions of the landowner to amount to sufficient intention not to dedicate at an earlier point in time.
Even where a notice has been erected then it is open to the claimant asserting that a public right of way exists to try to prove a contrary intention - i.e. that the landowner *did* intend to dedicate. A difference between the wording here and that in subs.(1) which requires "sufficient evidence" of a *contrary* intention i.e. not to dedicate may to suggest some distinction in the quality of the evidence required - as some members of the House of Lords in *Godmanchester* placed some weight on the use of those words in subs.(1). The reference to a contrary intention does, at least, mean that the wording of, and intention behind, notices will be given some scrutiny.
Where land is leased then it will effectively be the occupier of the land who either takes the necessary action or, alternatively, fails to take such action to prevent the acquisition of rights of way over the land. The fact that the land is leased will be no bar to the acquisition of a public right of way over it even if the tenant is under an obligation in his lease to take all necessary action to prevent the establishment of such rights of way; see per Lord Hoffman in *Godmanchester* at para.47. Subsection (4), therefore, provides for the owner of the freehold reversion to take steps himself to ensure that rights of way are not created over his land during the tenancy.
Where notices are torn down or defaced by those claiming to use a path then this would, it is suggested, usually be good evidence that the right to use way has been brought into question as the notices clearly would have come to the intention of, at least, some of those who used the way. In that case it would be evidence of the owner's lack of intention to dedicate in the immediately preceding 20-year period that would be relevant. However, subs.(5) provides the landowner - i.e. the person who is for the time being entitled to dispose of the fee simple in the land but not a tenant, see subs.(7) - with an alternative course of action to that of constantly replacing the notices. The owner may give notice to the appropriate council that the way is not dedicated as a highway. The "appropriate council" is the county council (or the council to whom the functions of the county council have been transferred i.e. the relevant highway authority) and service of a notice on a parish or district council will not comply with the terms of the section; see per Sales, J. in *Paterson v Secretary of State for the Environment, Food and Rural Affairs [2010] EWHC 394 (Admin)*; see also per Lord Hoffman in *Godmanchester*, at para.34. This procedure was likened by Lord Hoffman in *Godmanchester*, at para.34, to the provisions relating to substituted service:
"A notice to the council under section 31(5) is plainly regarded as second best and is only allowed when the original notice has been torn down or defaced, just as substituted service is allowed only when there is good reason to dispense with personal service."

and is likely to be construed strictly.
In *Paterson* (above) the issue arose as to what the temporal effect of a notice served under subs.(5) would be. Sales J—although finding that the claimed notice did not satisfy the terms of subs.(5) in its terms, in the circumstances in which it was served and in relation to the identity of the appropriate Council on whom it was alleged to have been served - also considered this issue. Drawing on the need for the contrary intention to have been outwardly expressed during the relevant 20-year period he concluded that a notice served on the appropriate council prior to that period would not operate to establish an intention not to dedicate during that period. Per Sales J, at para.38:
"a notice under section 31 (5) will count as sufficient evidence of the requisite intention provided it is given in the relevant period. It does not avail a landowner to say that a notice under section 31 (5) was given many years, perhaps decades, before the relevant period."

The difficulty with this approach is, of course, that the landowner will not know in advance what 20-year period will be relied on in the future by claimants of a public right of way. Sales J therefore, has introduced into the section a requirement - which is not in subs.(5) although a similar one does appear in subs.(6) (see below) - that the landowner must renew his notice at regular (not less than 20 years) intervals so as to renew the evidence of contrary intention in any given 20-year period. However, as a landowner relying on notices erected and maintained under subs.(3) would have had to renew those notices to ensure that no 20-year period occurred without a contrary intention having been shown, Sales J took the view that the same approach should be applied to subs.(5) notices -albeit that in contrast to subss.(3) and (5) there is no suggestion that the process may have to be repeated. At para.40, he made the point in the following way:
"As Lord Hoffmann pointed in *Godmanchester* at [34], a notice under section 31(5) provides a second—best mechanism of providing sufficient evidence of an intention not to dedicate a way to the public which becomes available if the primary mechanism of erecting signs under section 31(3) is defeated by those signs being torn down or defaced. It would be strange if the second—best form of evidence of a notice under section 31(5) could have greater practical effect than the primary form of evidence of a sign erected under section 31(3), which does have to have been in place during the relevant period. Moreover, there is no reason to assume that because a sign was torn down or defaced in, say, 1960 that it would be torn down many years later in a 20 year period (say, in 1979). Since the object of the Act is to provide for acts of the landowner to have effect only if they are appropriate to disabuse a reasonable user of the notion that a way is a public highway (see *Godmanchester*

© 2021 Thomson Reuters. 

at [32]), one would expect the Act to provide an incentive for the landowner to try erecting signs again after a period of time has elapsed, as the best means of informing the relevant audience that there is no public right of way. The construction of section 31(5) advanced by Mr Simpson, however, would remove all incentive for a landowner to do that (indeed, on that construction, it would be in the interests of a landowner to arrange for a sign to be torn down or defaced in order to trigger his rights to a superior form of protection in section 31(5))."

Not for the first time the judicial fear of Machiavellian attempts of landowners to frustrate the statutory provisions has influenced the construction of s.31. Sales J set out the way in which his construction fitted in with the general scheme of s.31, at para.41
"To give a notice under section 31(5) this extended temporal effect would also undermine the general object of section 31 to operate as a regime for the acquisition of rights drawing on the model of the prescription regime introduced by the Prescription Act 1832, based on a presumption arising from long user by the public. This object naturally suggests that there should be a focus on objective matters acts and omissions capable of being known to relevant landowners and the users of the way in the relevant 20 year period. To give section 31(5) the extended temporal effect for which Mr Simpson contends would mean that one could not stop at investigating what happened in the relevant 20 year period before some objective act bringing the right of way into question, but would have to extend the investigation of the facts over a much more extended period of time. Section 31(5) is part of a regime intended to facilitate issues of proof in relation to dedication of a public right of way, so I do not think that Parliament intended it to have this effect."

Curiously, the register that has now been created for subs.(6) declarations (see s.31A below) will not include notices served under subs.(5). Sales J, at para.49, also suggested that a subs.(5) notice could only be validly served in the precise circumstance there set out - i.e. after a subs.(3) notice has been torn down or defaced; see also Lord Hoffman in *Godmanchester*. This is presumably a recognition that it is regarded only as a "second best" procedure which should only be capable of being relied upon where it can be demonstrated that the better procedure (of actually posting a notice on or near the way) has been tried and failed.
It is, however, difficult to see the purpose and extent of subs.(5) in the light of the construction given to the subsection in *Paterson*. If a landowner erects a notice, which is not pulled down or defaced, and it remains intact for many years then this notice could be taken into account if it was in place during any relevant 20-year period. If the notice is pulled down then the landowner is given the option to provide the notice under subs.(5). There seems to be no reason why this statutory form of notice should not then be treated in the same way as a notice which has remained in situ and intact. There is nothing in the section nor, it is suggested, in the scheme of the legislation that requires a notice that subsists in the possession of the local authority to be regularly renewed. An intact notice, which has not been pulled down, may have been erected many years prior to the 20-year period but will remain effective with no further action from the landowner so long as it remains in existence during that period. It is difficult to see why the statutory alternative of giving a notice to the local authority should not similarly subsist. The users of the path will obviously have the opportunity to see the notice where it is maintained in situ but they would equally have the opportunity to inspect any notices held by the local authority. The comparison with the provisions for depositing maps and statements might suggest that where Parliament intended a requirement for regular renewal it has said so—although the anomaly of that omission has to be noted.
The presence of notices indicating that usage of a way is contentious may, in addition to raising the issue of contrary intention, be sufficient to prevent usage from being as of right. This, at least, has been sufficient to defeat a claim of acquiescence in usage in village green and easement cases; see *Taylor v Betterment Properties (Weymouth) Ltd [2012] EWCA Civ 250*; *Winterburn v Bennett [2016] EWCA Civ 482*.

## The deposit of maps and statements

2-066. 2 The other method whereby an owner (see again subs.(7) for meaning of 'owner') may take action, which will count, in the absence of proof of his contrary intention, as sufficient evidence of a lack of intention to dedicate, is set out in subs.(6). The owner may at any time deposit with the appropriate council a map of the land at the defined scale (not less than 6 inches to the mile) together with a statement indicating what ways, if any, he admits to have been dedicated as highways. Such a map or statement will, then have effect for 10 years but this can be extended by the submission of a statutory declaration every 10 years (or less) confirming either that no new ways have been dedicated or identifying which ways have been dedicated during that period. Proof of a contrary intention in the landowner is still possible. The map and statement would not, it is suggested, have any weight in relation to a claim based on 20 years use prior to its submission. Whilst the 10-year periods

© 2021 Thomson Reuters.


AUTH742

should prevent any new rights being claimed based on s.31 during the currency of a deposited map and statement, it would still seem to be possible for a claim to be based on common law implied dedication relying on a lesser period or based on express dedication which has occurred between the original deposit and the subsequent declaration - or between declarations. The claimant would simply argue that the landowner's conduct and actions exhibited a contrary intention.
It seems that the courts are likely to construe this provision reasonably strictly and the submission of a declaration after the expiry of the 10-year period may not be sufficient to extend the life of the original statement. In such a case the landowner would have to submit a new map and statement as this can be done "at any time". The appropriate council is again the county council or Council of a London Borough - or where there is no county council (e.g. unitary authorities) the relevant council to whom the powers of the former county council have been transferred. A map and statement submitted to the incorrect authority is unlikely to have any effect.
Section 31A (see below) now requires the appropriate council to keep a register of maps and statements deposited under subs.(6). Section 31A(3) and the regulations made under that provision also allow information to be taken off the register where there is a material error. There is no provision for the register to have any conclusive effect and it is unclear what result would occur from a Council failing to record on the register an validly deposited map, statement or declaration. The regulations require that the council gives the landowner 28 days notice before removing the record from the register but there is no provision which states that the map, statement or relevant declaration will not longer continue to have effect. However, it is possible that the error could render the deposit or declaration ineffective or that the landowner's inaction could be taken into account in determining whether there is any contrary intention.
See hereon the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 (SI 2013/1774), below, which prescribe the requirements as to the form such applications to deposit maps and statements must take and other procedural requirements in relation to England.

## Subsection Notes

2-067 Subsection (1). "*land*. "A right of navigation along a river is not included within the meaning of a right of way over land within this section: see *Attorney-General Ex rel. Yorkshire Derwent Trust Ltd v Brotherton [1991] 3 W.L.R. 1126*.
"*other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication*." The presumption may not arise if the right is enjoyed on sufferance or tolerance or if it is enjoyed by a limited class or if the person who purported to dedicate the way has no power in that behalf—if, for example, he is a leaseholder and has acted without the consent of the reversioner.
"*actually enjoyed*" See *Merstham Manor v Coulsdon and Purley UDC* (above).
"*as of right*." To enjoy a way *as of right* means to have used the way nec vi, nec clam, nec pre-cario (not by force, nor stealth, nor by the licence or permission of the owner). For user to be "as of right" it must have been of such a character as should have brought home to the owner of the land the fact that the public were claiming the right to use the way; see *R. v Oxfordshire CC. ex p. Sunning-well P.C. [2000] 1 A.C. 335*; *R. (Beresford) v Sunderland City Council [2004] 1 A.C. 893*; *Godmanchester Town Council v Secretary of State for Environment, Food And Rural Affairs & Cambridgeshire CC [2007] UKHL28*; *R. (Lewis) v Redcar & Cleveland B.C. [2010] UKSC 11*.
As to the interpretation of enclosure awards: see *Dunlop v Secretary of State for the Environment, The Times, 5 May 1995*.
For some time it was considered that where the user relied on was subject to a statutory prohibition — for example vehicular usage of a public footpath which is prohibited by s.34 of the Road Traffic Act 1988—that user could not give rise to the acquisition of rights: see *Robinson v Adair, The Times, 2 March 1995*; see also *Hanning v Top Deck Travel (1993) 68 P. & C.R. 14*; *Cargill v Crutts [1981] 1 W.L.R. 441*; *Hereford and Worcester CC v Pick (1996) 71 P. & C.R. 231*; *Stevens v Secretary of State for the Environment [1998] N.P.C. 51*; *R. v Planning Inspectorate Cardiff Ex p. Howell (2000) (unreported)*. In *Bakewell Management Ltd v Brandwood [2004] 2 All E.R. 305* the House of Lords has overruled this line of cases. The House of Lords has concluded that a prohibition against usage "without lawful authority" did not per se prevent the acquisition of a right by user based on the presumption of dedication—so long as the landowner would have had the right to have dedicated the land to that use.
"*without interruption*." This phrase refers to interruption by the landowner and not to continuity of de facto use by the public *Lewis v Thomas*, above. The interruption of user, if it is to prevent the operation of the presumption, must occur within the claimed 20-year period and must not be confused with the bringing into question of the way which ends that period: see *Ward and Ward v Durham CC (1995) 70 P. & C.R. 585*.
*is to be deemed to have been dedicated* means that the way thus becomes a highway by operation of law: per Scott LJ in *Jones v Bates*, above, at 246.

© 2021 Thomson Reuters.


AUTH743

"*no intention*." The burden of proving absence of intention is on the landowner or other person seeking to deny the public right. This may be done either by one of the ways provided by this section (subss.(3) (4) (6)), or by the methods available at common law, such as proof of user by consent or evidence as to the title to the land rendering dedication impossible. Evidence of overt acts sufficient to show the public at large that the landowner had no intention to dedicate will generally be required: see *Fairey v Southampton CC [1956] 2 Q.B. 439*; *Ward v Durham CC* above. Where the landowner has shown an intention not to dedicate by overt acts directed to potential users of the way he will have satisfied the burden in subs.(1) notwithstanding the fact that these acts have, in fact, failed to cause the public to cease using the alleged way and have failed to make those members of the public realise that their user is not of right. See *Jaques v Secretary of State for the Environment, The Independent, 8 June 1994*.

In *R. v Secretary of State for the Environment and Hereford & Worcester CC Ex p. Badman* (1996) the court emphasised that where a landowner sought to argue that he was unaware of usage of a path across his land the onus of so doing was on him —as part of any evidence demonstrating a contrary intention. See also *Diment v N. H. Foot Limited [1974] 1 W.L.R. 1427* for the position taken by the courts in respect of private rights of way.

Where an Inspector had addressed his mind solely to the question whether or not landowners had taken sufficient steps to make their intention not to dedicate clear to the general public and had totally overlooked the need to decide whether there was user as of right and not permissive user the confirmation of a modification order adding a footpath to the definitive Map was quashed: see *National Trust v Secretary of State for the Environment (1998) (unreported)*.

Subsection (1A) For a decision which has considered the evidence required to demonstrate that the public have acquired the right to use a way as a restricted byway, see *Whitworth v Secretary of State for the Environment, Food a Rural Affairs [2010] EWCA Civ 1468*.

Subsection (3). The date given here—1 January 1934—is the date when the Rights of Way Act 1932, came into force. In *Burrows v Secretary of State for Environment, Food and Rural Affairs [2004] EWHC 132 (Admin)* it was held that a notice must have been erected by or on the authority of the landowner to have the effect of rebutting the presumption but that, although the notice did not have to be in place for the whole of the claimed 20-year period, it would have to be in place for a substantial time so that the intention of the landowner can be brought home to the public.

Subsections (5)–(6). Notices may be given to, and maps, statements and statutory declarations deposited with the council of a county or London Borough or the Common Council of the City of London: see subs.(7).

Subsection (6). The amendment to subss.(6)(i) and (ii) which amended the periods of six years to ten years does not apply in a case where an owner or his predecessors in title have, more than six years before 13 February 2004, in relation to England, and before 31 May 2005 in relation to Wales, deposited a map and statement in accordance with s.31(6), and that owner or his predecessors in title have not, within the period of six years ending on 12 February 2004, in relation to England, and ending on 31 May 2005 in relation to Wales, lodged a statutory declaration (whether or not there has been a previous declaration) in accordance with s.31(6): see art.3(2) of the Countryside and Rights of Way Act 2000 (Commencement No.4) Order 2004 (SI 2004 /292), below, in relation to England, and art.5 of the Countryside and Rights of Way Act 2000 (Commencement No.7) (Wales) Order 2005 (SI 2005/1314) (W.96), below, in relation to Wales.

See further section 31A requiring local authorities to keep a register containing information in relation to maps, statements and declarations lodged under subs.(6).

See further hereon the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 (SI 2013/1774), below, which prescribe the requirements as to the form such applications to deposit maps and statements must take and other procedural requirements in relation to England.

Further amendments to this subsection are made by the Growth and Infrastructure Act 2013 s.13, which came into force on 1 October 2013; see para.3-3894 below.

Subsection (8). "*incapacity of a corporation*": see *British Transport Commission v Westmorland CC; Same v Worcestershire CC [1958] A.C. 126*. A statutory company has no power to grant a public right of way where the enjoyment by the public is incompatible with the statutory objects of the company. The question of incompatibility is one of fact, the test being whether at the date when the question is considered by the tribunal of fact, there is any likelihood that the existence of the alleged right of way would interfere with the adequate and efficient discharge of the undertakers' statutory duties. In *R.(Newhaven Port & Properties Limited) v East Sussex C.C. [2015] 2 W.L.R. 601* the Supreme Court has held that incompatibility of public bodies to act inconsistently with their statutory purposes does not solely depend on the incapacity of a statutory body to make a grant or to dedicate land but is a matter of statutory construction – i.e. in that case, whether section 15 of the Commons Act 2006 applies to land which was held for purposes inconsistent with its use a town or village green. In view of the wording of subs.(8) it would seem that this approach is not possible in relation to dedication of highways in the light of the *Westmorland* case which the Supreme Court has not overruled.

In the *Westmorland* case the appellants had made an application pursuant to s.31 of the National Parks and Access to the Countryside Act 1949, for a declaration that no public right of way existed over a bridge spanning a railway owned and occupied by them. The right of way in question was a footpath crossing the railway line by means of the bridge. Quarter

© 2021 Thomson Reuters.

sessions found that there had been a dedication, and refused to make the declaration sought. The appellants contended that the dedication of the alleged right of way was incompatible with the statutory objects of their predecessors in title whose undertaking was now vested in the appellants. They relied, inter alia, on s.16 of the Railways Clauses Consolidation Act 1845, which enacted that they might from time to time alter, repair or discontinue the works and substitute others, and they contended that if this passage over the bridge was dedicated the effect would be to deprive them of a statutory right to remove it should it be no longer required. Held, that the right of way had been dedicated because on the facts dedication was not incompatible with the statutory objects of the appellants. The House of Lords affirmed the decision of the Court of Appeal *[1956] 2 Q.B. 214*. *R. v Leake (Inhabitants) (1833) 5 B. & Ad. 469*; *Birkdale District Electric Supply Co v Southport Corporation [1926] A.C. 355*; *South Eastern Railway v Warr (1923) 21 L.G.R. 669*; and *South Eastern Ry v Cooper [1924] Ch. 211* applied; *Ayr Harbour Trustees v Oswald (1883) 8 App. Cas. 623*, and *Paterson v Provost of St Andrews (1881) 6 App.Cas. 833* distinguished; *Mulliner v Midland Railway (1879) 11 Ch. D 611* disapproved.

In *Ramblers Association v Secretary of State for Environment Food and Rural Affairs [2017] EWHC 716 (Admin)* the question arose as to the date on which the issue of compatibility was to be decided. The court held that the relevant date had been decided in the *Westmorland* case and was the date when the fact finding tribunal was considering the question; per Dove J, at paras 44–5:

"There are in my view sound practical reasons why the facts should be assessed at the point in time when the question arises. Firstly, the consideration of whether or not the recognition of the right of way would be incompatible with the statutory undertaker's statutory duties is in large part going to be a forward-looking exercise. It is an examination of the position at the time when the order is being considered, but against facts and forecasts which consider the question not simply at that moment, but also looking forward to consider whether on the balance of probabilities it is likely that in future the statutory undertaker's statutory duties would be compromised and there would be incompatibility between the operator's statutory objects and the existence of the way. The fact that it is a forward-looking exercise would render it peculiar for that test to be applied at some point in the past.

> 45.Secondly, it would be a curious factual enquiry for an examination to be made as to the safe and efficient operation of the railway, for instance, in the present case either at 1970 or 1986. Such an enquiry would have to be taken on the basis of technical standards and engineering knowledge at that point in time in the past (assuming that could be reliably ascertained). Evidence of accidents or near misses or other difficulties in operating the railway after the date in 1970 or 1986 would be inadmissible or at least arguably irrelevant. The artificiality of such an enquiry is in my judgment a strong pointer towards it being inappropriate to examine the question under section 31(8) at some earlier date than the date of determination. Mr Laurence recognised the force of the difficulties created by the exclusion of supervening events bearing directly upon the safe and efficient operation of the railway, and in his reply he sought to develop a hybrid approach whereby it would be possible for the Inspector to take account of such evidence, albeit still reaching a conclusion based upon a date at the start of the relevant 20 year period. In my view, whilst respecting Mr Laurence's endeavour to try to find a solution to the problem created by adopting an earlier date for examination of the question, this hybrid approach throws into sharper focus the practical problems created by taking the earlier date as the date for assessment. How such a hybrid approach could operate in practice is, in my view, very unclear and uncertain. Whilst there may be a mismatch between the timescales for the questions posed under section 31(1) and 31(8) when considering whether an order should be made or confirmed, the nature of those enquiries (retrospective under section 31(1), and both retrospective and importantly prospective under section 31(8)) and the practical issues with which they are engaged justify the difference in the times at which those questions are to assessed."

The Court also agreed with the Inspector, who had refused to confirm an order adding the path across the railway to the Definitive Map, that, as crossing the railway land was unlawful, no question of user as of right could arise; *Bakewell Management v Brandwood [2004] UKHL 14*; was distinguished. The Court also agreed that the Inspector was correct in dismissing the idea that the Order could be confirmed as two cul de sac each leading up to the railway line.

The *Ramblers Association* decision was distinguished in *Network Rail Infrastructure Ltd v Welsh Ministers [2020] EWHC 1993 (Admin)* in which the Inspector had confirmed a modification order adding a footpath to the definitive map which passed over land owned by Network Rail. It was contended that user as of right could not have taken place as the path crossed two railway lines and so its use would have involved the commission of a criminal offence. However, the Court upheld the Inspector's findings, rejecting Network Rail's irrationality submissions, that although there could be no presumption of dedication under s.31, the documentary evidence demonstrated that the path pre-existed the construction of the railway, thereby rendering issues of statutory incompatibility irrelevant.

© 2021 Thomson Reuters.

In *Jaques v Secretary of State for the Environment, The Independent, 9 June 1994* the question arose as to whether there has to be an owner capable of dedicating land as a highway over the whole of the 20-year period. Laws J held that the fact that during the 20-year period there is no single person in possession of the land capable of dedicating, whilst fatal to a claim to implied dedication at common law, cannot defeat a claim under s.31(1). However, a right of way cannot arise under s.31(1) if, during part of the relevant period, there is no person at all having the legal right to create a public right of way. Whilst therefore a tenant can, together with his landlord, create a public right of way, where land was requisitioned by the military authorities the effect was that no person having an interest in the land had the power to dedicate it as a public right of way. See also *Tehidy Minerals v Norman [1971] 2 Q.B. 528* where a similar principle was applied in relation to common land.
A landowner who has dedicated a path over his land as a footpath, which path then becomes maintainable at the public expense and vested in the highway authority (see s.263, below) does not thereby lose the power to dedicate over that path a further public right of bridleway: *R. v Secretary of State for the Environment Ex p. Perko 11 May 1994 (unreported)*.
In *Easteye Ltd v Malhotra Property Investments Ltd [2020] EWHC 2606 (Ch)*, the issue arose as to whether dedication of a right of way along an alley during the period it was owned by a charity was prevented by s.31(8). The Court held that s.31(8) only prevents a deemed dedication where the secondary use would preclude the landowner from using the land for the purpose for which it is held. If the land can be used for the statutory or public purpose consistently with the secondary use, there is no bar to dedication. The test of incompatibility is one of fact and is judged by what can be reasonably foreseen and guarded against, not that which is possible but improbable. The approach to incompatibility in *Westmorland* was stated to be unaffected by *Newhaven* in relation to highways.
Subsection (9). Dedication may be expressed or presumed. Blackburn J in *Greenwich Board of Works v Maudslay (1870) L.R. 5 Q.B. 397*, at 404, summed up the position as follows: "It is necessary to show, in order that there may be a right of way established, that it has been used openly as of right, and for so long a time that it must have come to the knowledge of the owners of the fee that the public were so using it as of right, and from this apparent acquiescence of the owners a jury might fairly draw the inference that they chose to consent, in which case there would be a dedication."
The quality of user required to establish a public right of way is the same both under s.31 and at common law in that it must be open, uninterrupted and as of right. The notoriety of use was relevant at common law in the sense that the greater the notoriety the more readily will dedication be inferred. It is also relevant to intention to dedicate: see *Nicholson v Secretary of State for the Environment [1996] C.O.D. 296*.

## Cross References

**2-067. 1** Section 56 of the Wildlife and Countryside Act 1981 deals with the conclusive evidential nature of the Definitive Map of rights of way. Section 55 places local authorities under a duty to keep these maps under continuous review.

End of Document © 2021 Sweet & Maxwell

# 2-068 Evidence of dedication of way as highway

Encyclopedia of Highway Law and Practice
Volume 1
Part II - Highways Act 1980
Highways Act 1980

Section 32

**32. Evidence of dedication of way as highway**

2-068 A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

## Derivation

2-068. 1 1959 s.35.

## Definition

"highway": s.328(1).

## General Note

### Scope

2-068. 2 This section prescribes the evidence, including hearsay evidence of certain kinds, which may be received for the purposes of determining questions relating to the dedication of highways. The section replaces a similar provision in the Highways Act 1959 which in turn repeated a provision in the Rights of Way Act 1932 and is, in any event, declaratory of the common law. The court may take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence. It would be impossible to provide a complete list of all the types of plan, map or other relevant documentation which might assist in demonstrating whether or not a highway existed at a particular point in time. The documents referred to below could be regarded as a guide to any research into the history of a way:

- Ordnance survey maps for the periods when the path is alleged to have been in existence. The first of the regular series of O.S. maps (the Old series) date from the early 1800s. The larger scale maps were the results of surveys dating from 1840 onwards.

© 2021 Thomson Reuters.


AUTH747

• Maps prepared by private map-makers; those which are sufficiently detailed to show the lesser roads date predominantly from the beginning of the nineteenth century but there are a few reliable map makers whose maps were surveyed in the late eighteenth century.

• Tithe maps.

• Plans and maps associated with the construction of turnpike roads.

• Plans and maps lodged by the railway companies in gaining their statutory powers.

• Inclosure Awards and maps.

• Manorial maps and records.

• Estate plans—including sale plans.

• aps prepared for the purposes of the Finance Act 1910.

• Coal mining maps.

• Title deeds to properties fronting a way.

• Maintenance records—from Quarter Sessions and subsequently from the statutory highway authorities.

• Records of legal proceedings connected with the way—particularly indictments for nonrepair, stopping up and diversion orders.

• Local authority maps of streets maintainable at the public expense.

• Local histories.

The section is phrased in terms that require a Court to take into account certain types of documents but which equally indicates that the weight to be given to those documents remains at the discretion of the Court, after weighing up the specified factors set out in the section. Those factors are, in the main, directed to the question as to whether the document in question can be regarded as being authoritative on the issue of status and/or the date on which a way may have acquired that status. Some documents may have been compiled specifically for the purpose of recording the status of a way as it is understood by the compiler — examples are the lists of streets maintainable at the public expense under section 36(6) and the Definitive Map and Statement. The latter documents are conclusive evidence of the matters that are set out in the Wildlife and Countryside Act 1981, s.56, below. The section 36(6) list must carry considerable weight insofar as it records the view of the local highway authority that a way is a highway maintainable at the public expense but less weight in terms of other information that such a document may contain or omit. Other documents – for example Ordnance Survey maps – may have been prepared for the purpose of indicating the physical existence of a way and expressly disclaim any intent to indicate status. Nonetheless, the physical characteristics of ways as recorded on maps may help in determining status – for example by confirming the existence of a route between two points of public resort at a particular point in time and thus explaining why, and for what purpose, the public might have wished to use such a route. Other documents will, at least, be evidence of reputation.
The types of document set out in the section documents may be considered by the court where it has to determine whether or not a way has been dedicated as a highway " *or the date on which any such dedication, if any, took place*. " The latter issue will be important where issues arise as to whether or not a particular way is maintainable at the public expense and, in particular, whether it is an "ancient highway" (i.e. one which was dedicated to the public prior to the coming into force of the Highway Act 1835) or whether a public footpath was dedicated prior to the coming into force of the National Parks and Access to the Countryside Act 1949.
Sometimes maps and other documents are relied upon in order to demonstrate the width of a highway or its precise route relative to other features. However, in *Copestake v West Sussex CC [1911] 2 Ch.331*, a case decided under the common law, it was held that a tithe map was not admissible as evidence of the physical extent of a public right of way. Parker J. said at 341: "It was the business of the persons responsible for the making of this map to ascertain what land in the parish was, and what was not, titheable. It was not their business to define the extent of public rights of way."

This can perhaps be regarded as an example of the courts looking at the purpose for which a particular map was prepared but it also reflected the common law rule that hearsay evidence was admissible of the reputation of the way rather than its physical extent: see *R. v Berger [1894] 1 Q.B. 823*. However, a similar approach was taken in *Webb v Eastleigh BC (1958) 56 L.G.R.*

© 2021 Thomson Reuters.

*124* following the enactment of s.3 of the Rights of Way Act 1932 which was in similar terms to s.32. The 1932 Act was understood to have cleared up the uncertainty as to whether map evidence was admissible unless the actual maker of the map could be produced or its authenticity sufficiently established. Nonetheless Salmon, J said in *Webb v Eastleigh* (i.e. after 1932), Although [maps] are evidence of the existence of a highway, [they] are not evidence of the boundaries of the highway.

There seems to be no reason under present evidential rules why map evidence should not, in appropriate cases, be evidence of the extent of a way—for example, if it be established by other means that a public right of way existed over a particular path at a particular point in time, an ordnance survey map for that period might be strong evidence of the route of the public right of way. Equally, if a public right of way is shown to exist and the ordnance survey map shows the existence of a marked path of ascertainable width, or shows unusual configurations in the line of the path, there seems to be no reason why that evidence should not now be admissible. Although s.32 does not refer to use of this documentation for establishing the physical limits of a highway it is suggested that whether any land, including that by the side of a proved way, carries highway rights over it is capable of falling within the issue whether or not a way has been dedicated as a highway: see *Abel v Orpington Urban DC (1963) 61 L.G.R. 546*. In cases where the operation of the so-called "hedge to hedge presumption" has been considered the courts have often given considerable weight to plans and maps indicating the presence of fences or hedges bounding a highway; see, for example, *Hale v Norfolk County Council [2001] Ch. 717*, *Attorney General v Beynon [1970] Ch 1*. A practical note of caution has to be sounded, however, over the use of maps to determine the width or even the precise route of a path. Even at the largest scale of published Ordnance Survey maps the width of any line shown on a plan would scale out as covering a substantial width of ground and the problem of accuracy increases as the scale grows smaller. Furthermore, all maps in the pre-digital age only claim to be accurate within a certain margin of error. Maps can nonetheless be very useful to show the physical relationship between known objects or features on the ground.
The weight that will be given to any particular map or document will obviously depend on the circumstances. This section indicates matters which will be of particular importance including the antiquity of the tendered document, the status of the person by whom, and the purpose for which, it was made or compiled, and the custody in which it has been kept and from which it is produced. Of these matters one of the most important is " *the purpose for which it was made* ". Most of the documents listed above will not provide conclusive evidence as to the status of a way as the purpose for which they were made was not to distinguish between public rights of way and private rights of way or to determine who was liable to maintain a way. Rather they will be surveying exercises designed to record what was physically on the ground: see *Webb v Eastleigh BC (1958) 56 L.G.R. 124*. This is particularly true of the Ordnance Survey maps. Other records will be more directly related to the question whether or not a way carried public rights. Where a railway line a canal or a turnpike road cut across the line of an existing public road express statutory authority would have been required. Equally, records of the stopping up and diversion orders and proceedings for the non-repair of highways would have been concerned directly with the status of the ways with which they were concerned. Other documents and maps may be less clear as to what they can prove—for example, tithe maps and inclosure maps. However, even where the purpose of a map or document was not to record public or private rights of way, a recognition in that map or document that a way had the reputation of being a public highway will have significance where it was produced for a public purpose or where the recognition of the public right of way operated against the interest of the person or body on whose behalf it is prepared. Where a private mapmaker is involved then evidence of the repute and practice of the mapmaker in question will be especially relevant.
There are a number of cases in which various strands of map and other documentary evidence have been carefully analysed and weighed against each other. These cases provide valuable insight into the process adopted by the courts in assessing the importance of map evidence and, in some case, the particular weight that that is likely to be given to specific types of map or to maps prepared by specific map makers; see, in particular, *Fortune v Wiltshire Council [2012] EWCA Civ 334*; *Ridley and Masters v Secretary of State for the Environment, Food and Rural Affairs [2009] EWHC 171*; (Admin); *Commission for New Towns v J J Gallagher Ltd [2003] 2 P & CR 3; Robinson Webster (Holdings) Limited v Agombar [2002] 1 P. & C.R. 20*. See also section 12 of the Consistency Guidelines published by the Inspectorate.

## Ordnance Survey Maps

Ordnance Survey maps were drawn by experienced surveyors whose interest and expertise was in accurately recording physical features identifiable on the ground. There is nothing on the maps themselves to indicate what enquiries those surveyors may have made in order to determine the status or reputation of particular roads or paths. They would, however, be concerned to distinguish tracks that appeared only to be used by, or suitable for, those on foot rather than users in vehicles and on horses – hence the notation of paths after 1883 as "F.P."; see OS Maps – A Concise Guide for Historians by Richard Oliver. However, as the Inspectorate's Consistency Guidelines make clear, conflicting instructions appear to have been given to surveyors over a number of years and OS maps after 1888 have contained a disclaimer to the effect that inclusion of a path

© 2021 Thomson Reuters. 

on an OS map was not evidence of the existence of a public right of way. The courts themselves have been reasonably clear and consistent as to how Ordnance Survey maps are to be regarded as evidence as to the existence or extent of highways.
*Attorney-General v Antrobus [1905] 2 Ch. 188* per Farwell, J. at p. 203
Such maps are not evidence on questions of title, or questions whether a road is public or private, but they are prepared by officers appointed under the provisions of the Ordnance Survey Acts, and set out every track visible on the face of the ground, and are in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey.

See also *Moser v Ambleside Urban DC (1025) 89 J.P. 118*; *Attorney-General v Meyrick and Jones (1915) 79 J.P. 515*; *Attorney-General and Croydon DC v Moorsom Roberts (1908) 721. P. 123*. They may, however, be important in identifying that a particular way existed on the ground at a particular date, whether it was gated, and as to its general route.

## Inclosure plans and awards

These may be useful for two reasons. First, they may record roads set out by the Inclosure Commissioners which were to be maintained as public highways. Secondly, they may also show other roads which were then already in existence: see, for example, *R. v Berger [1894] 1 Q.B. 823*. Many Inclosure Acts granted powers to Commissioners to stop up and divert existing roads and highways—although usually only after following a set procedure and, in some cases, requiring an application to the justices. In such cases, the award and map may be evidence both of the repute of those existing roads and highways and, where there is evidence that a replacement road was set out, of the status of the roads created in their place. In interpreting Inclosure Awards it will be necessary to have regard not only to the award of the Commissioners but also to the empowering Act.
During the eighteenth century there were a large number of local Inclosure Acts which, in order to rationalise land holdings and to create larger coherent plots, frequently gave Commissioners the power to stop up or turn (divert) existing roads and paths and the power to create new ones which took better account of the re-arrangement of landholdings. In 1801, in order to standardise the provisions in inclosure legislation and to shorten the process of obtaining statutory authority "An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure ; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts" was passed – often referred to as the Inclosure (Consolidation) Act 1801 or as the General Inclosure Act 1801. The purpose of the Act was to set out standard clauses that could then be incorporated by reference in subsequent local inclosure acts. The Act contained several clauses authorising the interference with existing public and private roads and rights of way and authorising the creation of new ones. The most relevant provisions with respect to the potential creation of new public rights of way were ss.8 and 10.
Section 8 provided authorisation for the Commissioners
[i] to set out and appoint the publick Carriage Roads and Highways, through and over the Lands and Grounds intended to be divided, allotted, and inclosed, and

[ii] to divert, turn, and stop-up any of the Roads and Tracts, upon and over, all, or any Part of the said Lands and Grounds, as he or they shall judge necessary so as such Roads and Highways shall be, and remain thirty Feet wide at the least, and so as the same shall be set out in such Directions as shall, upon the Whole, appear to him or them most commodious to the Publick, and he or they are hereby further required.

Section 10 provided authority for the Commissioners
to set out and appoint such private Roads, Bridleways, Footways, Ditches, Drains, Watercourses, Watering Places, Quarries, Bridges, Gates, Stiles, Mounds, Fences, Banks, Bounds and Land Marks, in, over, upon, and through or by the Sides of the Allotments to be made and set out in pursuance of such Act, as he or they shall think requisite, giving such Notice and subject to such Examination, as to any private Roads or Paths, as are above required in the Case of publick Roads, and the same shall be made, and at all Times for ever thereafter be supported and kept in Repair, by and at the Expence of the Owners and Proprietors for the Time being of the Lands and Grounds directed to be divided and inclosed, in such Shares and Proportions as the Commissioner or Commissioners shall in and by his or their Award order and direct.

Section 11 was also of some significance in that it provided
That after such publick and private Roads and Ways shall have been set out and made, the Grass and Herbage arising thereon shall for ever belong to and be the sole Right of the Proprietors of the Lands and Grounds which shall next adjoin the said Roads and Ways on either Side thereof, as far as the Crown of the Road; and all Roads, Ways and Paths, over, through, and upon such Land and Grounds which shall not be set out as aforesaid, shall be for ever stopped up and extinguished and shall

© 2021 Thomson Reuters.

be deemed and taken as Part of the Lands and Grounds to be divided, allotted, and included, and shall be divided and allotted, and inclosed accordingly . . .

In *R. v Secretary of State for the Environment, Ex p Andrews (1996) 71 P & CR 1* it was argued that s.8 provided authority for the Commissioners to set out and appoint public footpaths and bridleways and that s.11 provided support for this interpretation in that it made clear that the effect of the inclosure process was to wipe the slate clean with respect to any existing ways and to be determinative as what private and public rights of way were to exist over the inclosed lands for the future.
Schieman J held, *inter alia*, that
". . . The only express power given to create new highways in section 8 is that in (i) and such highways need to be at least 30 feet wide. It is implicit in the minimum width provision that it is not intended to give an express power to create public rights of way on foot alone, although there is nothing to prevent the creation of such rights as part of a general right of passage.

4. The draftsman of the 1801 Act did address the question of the creation of footpaths in section 10 but limited it to private footpaths. (It is common ground that the adjective "private" in section 10 governs not merely roads but also bridleways and footways.)"

That common ground as to the effect of s.10 was abandoned in *R. (Andrews) v Secretary of State for Environment Food and Rural Affairs [2015] EWCA Civ 669* where it was argued that it was in fact s.10 that provided the authority for the setting out of public bridleways notwithstanding that the clause begins with the word "private"—in other words that "private" only governed the first word in the list ("roads") and that the remainder of the list could be either public or private as appropriate to the circumstances of the case. The Court of Appeal, overruling the judge at first instance, agreed that section 10 could and should be interpreted in this way. The reasons for this approach, which fly in the face of any literal statutory interpretation of the section, were:

(i)The 1801 Act is not drafted with the degree of accuracy and consistency of language that is found in modern statutes and a literal interpretation was not appropriate; a purposive interpretation should be adopted.

(ii)On the expert evidence that had been before the Inspector it was established that the practice in the local legislation that preceded the 1801 Act had been (mostly) to give Commissioners powers in respect of public footpaths and bridleways.

(iii)The court had to take into account the importance of footpaths and bridleways to rural communities—the majority of whom would not have owned carts or carriages.

(iv)As the 1801 Act made provision for the setting out and appointing of public carriage roads and highways and private bridleways and footpaths (all of which had been the subject of the pre-1801 Acts), it would have been very odd if the 1801 Act had not also made provision for the setting out and appointing of public bridleways and footpaths when that power too had been conferred by the pre-1801 Acts.

(v)It would have been very odd for new paths not to have been authorised because the Award was intended to be definitive (for evidential purposes, and as it was accepted that the award could set out existing footpaths and bridleways,
because . . . those would always be vulnerable to inquiry into the pre-existing facts to determine whether or not a public right of way existed before the inclosure award was made. By far the more natural inference is that Parliament intended the commissioner to have full power to deal with all relevant rights with respect to the land for the future, including full power to set out and appoint all public bridleways and footpaths whether pre-existing, with altered course or new; and people (including future generations and future purchasers of property in the area) could simply look at the award and map to know what rights and ways there are.
Per Lewison LJ at [47].

(vi)It would have made no sense to give commissioners the power to divert, turn or stop up existing public bridleways and footpaths, but not the power to create new public bridleways and footpaths.

(vii)It was not impossible to read the word "private" as governing only the first item in the list, namely roads, and to read the remaining items as being unqualified, i.e. as being either public or private.

(viii)There were other pointers in the Act (e.g. in s.11) that suggested that power to set out public footpaths and bridleways had been granted.

© 2021 Thomson Reuters.

It will also be important to ascertain whether the award was ever implemented and whether the stated roads were actually laid out: see *R. v Wright (1832) 2 B. & Ad. 681*; *Cubitt v Maxse (1873) L.R. 8 C.P. 704*; *R. v Secretary of State for the Environment Ex p. Andrews [2015] EWCA Civ 669* (above). The omission of a path from the Inclosure Map is not evidence that such a path did not exist and carry public rights: see *Harber v Rand (1821) 9 Price 57*.

Differences in language used in awards can sometimes create problems of interpretation: see *Dunlop v Secretary of State for the Environment (1995) 70 P. & C.R. 307*. Inclosure Awards were creatures of their time and should be considered in the context of the understanding and practice of highway law as it was at that time. In this regard Wellbeloved's Treatise on the Law of Highways published in 1929 provides a good insight as to the legal understanding of highway rights and the issues that were engaging lawyers in the early part of the 19 th century.

In *Craggs v Secretary of State for the Environment Food and Rural Affairs [2020] EWHC 3346 (Admin)*, the issue for the Court was whether an Inclosure Award of 1799 was effective to create a public bridleway over a route in circumstances where that Award had previously been found in *Buckland v Secretary of State for the Environment, Transport and the Regions [2000] 1 W.L.R. 1949* to have unlawfully sought to create a vehicular highway over the same route where such creation was outwith the powers of the Enabling Act. The Court in *Craggs* had to determine whether the intra vires, namely lawful, element of the Award was capable of being severed from the unlawful parts of the Award. Mrs Justice Lieven noted that the approach to be applied from caselaw was as follows:

> "(a)Firstly, the court must determine what are the ultra vires elements of the instrument in question;
>
> (b)In determining severability, the court must consider whether there is vires for the element which is being sought to be retained. The court must be careful not to, in effect, legislate for a new or different provision;
>
> (c)The court should then apply the test of textual severability, which will be met if the offending words can be disregarded and the text remain grammatical and coherent;
>
> (d)If textual severance is possible, then the court applies a test of substantial severability, which will be met if what remains is essentially unchanged in its legislative purpose, operation and effect;
>
> (e)However, if textual severance is not possible then the court can still sever the provision, but it must be satisfied that in upholding only part of the impugned provision, there is no change in the 'substantial purpose and effect of the impugned provision'."

Applying that approach, she concluded that severance was possible, and insofar as the Award created a public carriage road on the route, it was ultra vires, but the creation of a public bridleway along that route was intra vires and the Award was effective.

## Tithe Maps

Tithe maps have been held to be admissible in evidence to prove the existence of a road (e.g. *Kent CC v Loughlin (1975) 234 E.G. 681*), but they will not be evidence as to the status of the road: see *Attorney-General v Antrobus [1905] 2 Ch. 188*; *Copestake v West Sussex CC [1911] 2 Ch.331*; *Stoney v Eastbourne RDC [1927] 1 Ch.367*; *Attorney-General v Stokesley RDC (1928) 26 L.G.R. 440*; *Attorney-General v Beynon [1970] 1 Ch.1*; *Maltbridge Island Management Co. v Secretary of State for the Environment [1998] E.G.C.S. 134*. Roads generally were not tithable. However, tithe maps were prepared under the authority of the Act of Parliament by Commissioners who had the power to take evidence on oath. The inclusion of a road on, or the omission of a road (see *Kent CC v Loughlin [1975] J.P.L. 348*; cf. *Stoney v Eastbourne RDC [1927] 1 Ch.367*) from, the map was a material matter to a landowner over whose land a road might pass. The assertion by the landowner of the existence of a road—which would have exempted the part of his land from tithe—would be strong evidence of his acceptance of the existence of a defined way across his land. Per Farwell J in *Attorney-General v Antrobus [1905] 2 Ch.188*:

The first objection is taken to a tithe map and award produced from the proper custody and acted upon, according to the witness's evidence, since 1863, and, doubtless, from the time it was made in 1847. It is tendered as evidence on the question whether there was or was not a public road across two fields which appear in that tithe map and award. In my opinion it is admissible on that question, and for this reason. In the first place, the document is a public document: it is prepared under the provisions contained in the Tithe Communication Act of 1836. The Commissioners under that Act have power to examine witnesses on oath. An agreement may be come to and ratified by the Commissioners as to the amount of tithe rentcharge to be apportioned on various lands within the parish. Such parts of the land as are not titheable are matters which concern all the parish. It is certainly to the interest of anyone who has land part of which is not titheable to put forward his claim and establish it if he can… It is also a clear matter of publicity, and I find Stuart V.-C, in a case of *Giffard v Williams (1869) 38 L.J.Ch. 597*

© 2021 Thomson Reuters.

at 604, referring to a Tithe Commissioner's award and map, says: 'But the Act of Parliament requires these things to be done, not in a corner, but upon notice in all the most public places; so that it is impossible to treat this document otherwise than as a public one, and as public evidence that at that time the owner of the undivided moiety of this field was aware of the facts.

Similarly, in *Attorney-General v Stokesley RDC (1928) 26 L.G.R. 440* it was held that a tithe map and award, if produced from proper custody may, in cases in which the question is whether a highway was dedicated to the public before or after 1836, be used in conjunction with evidence of uninterrupted public user throughout living memory, as evidence (a) that there was at the date of the award a carriageway along the line shown on the map, and (b) of reputation that the way so shown had by the date of the award been dedicated to the public.

## Maps prepared for the purposes of the Finance Act 1910

The Finance Act 1910 introduced the increment value duty on land. Landowners were able to apply for a reduction in the duty payable in respect of their land where that land was crossed by public rights of way; see R.W.L.R., 9.3, 17 for a description of the process; and see also D. Braham, "Uncoloured Roads on 1910 Finance Act Maps", R.W.L.R, 29.3, 153. The maps and the registers held by the Public Record Office, when read together, may be evidence of the existence of rights of way over particular plots of land; see the discussion in *Fortune v Wiltshire Council [2013] 1 WLR 808*. The maps, save insofar as they are on an ordnance survey base, do not always identify the route of the right of way referred to in the register and, therefore, may only be of corroborative evidential value.

## Definitive Maps

Definitive Maps The Definitive Map and Statement prepared or maintained under the Wildlife and Countryside Act 1981 is conclusive evidence as to certain of the particulars contained in the Map and Statement; see Wildlife and Countryside Act 1981 s.56, below. Even when a modification to that Map is being sought to delete a path from the Map s.56 should be taken into account in giving some weight to the inclusion of the path on the Map in the first place; see *Trevelyan v Secretary of State for the Environment, Transport and the Regions [2001] 1 W.L.R.1264*."

## Subsection Notes

" *dedicated as a highway*. " See note to s.31(9). See *Copestake v West Sussex. CC [1911] 2 Ch. 331* where it was held that a tithe map was not admissible as evidence of the extent of a public right of way. In *Stoney v Eastbourne RDC [1927] 1 Ch. 367*, it was held that assuming the tithe map of 1840 (which was before the court) was admissible in evidence between the parties, it was made for a different purpose, and although it was satisfactory evidence of the matters therein recited it could not be accepted as evidence of the non-existence of a public right which might have been, but was not, inserted in it and was not relevant to the purposes for which the map was made. But a tithe map may be good evidence of the existence of a highway. In *Webb v Eastleigh BC (1958) 56 L.G.R. 124*, Salmon J said at [127]:
"These maps, although they are evidence of the existence of a highway, are not evidence of the boundaries of the highway… The cartographer merely records the physical features which he considers of importance, and which he observes on the ground. He is not a lawyer, and does not purport to interpret, or even to consider, the legal significance of what he sees."

Where a boundary hedge is delineated on an Ordnance Survey map by a line, that line indicates the centre of the existing hedge. That is in accordance with the practice of the Ordnance Survey and courts can take notice of that practice as at least prima facie evidence of what a line on the map indicates: *Davey v Harrow Corporation [1958] 1 Q.B. 60*.
Deposited plans may be used as prima facie evidence of the extent of dedication: *Abel v Orpington Urban DC (1963) 61 L.G.R. 546*.
" *date on which such dedication, if any, took place* " See *Attorney-General v Stokesley RDC (1928) 26 L.G.R. 440*.

End of Document © 2021 Sweet & Maxwell

The Motoring Organisations' Land Access & Recreation Association

# Unsealed Unclassified Roads

## Their History, Status, and the Effect of the Natural Environment & Rural Communities Act 2006



MOTORING ORGANISATIONS' LAND ACCESS & RECREATION ASSOCIATION

30 years 1986 to 2016

AUTH754

The Motoring Organisations' Land Access & Recreation Association

# Unsealed Unclassified Roads

## Their History, Status, and the Effect of the Natural Environment & Rural Communities Act 2006

First published: March 2013

Revised: September 2018

LARA Document: 2018.09.21

Front cover photograph by kind permission of Dave Tilbury ©

© LARA 2018

You can find LARA at www.laragb.org and contact us at admin@laragb.org

## Foreword

Motorists, both everyday and 'sporting', have been driving on public roads since the birth of the motor vehicle and it is now well over one hundred years since the first reliability trials along the rough roads of the day attracted pioneer drivers, and manufacturers keen to improve their everyday road vehicles*.

The years between the two World Wars were a period of rapid change to many roads, with 'tarmac' becoming the favoured surface for roads in urban areas, and for roads between the major conurbations. But the final push for the tar gangs did not happen in rural areas until the late 1950s and early 1960s, and even in the late 1960s there were few drivers who did not, at some time, drive on 'stone' or 'dirt' roads and considered this as quite unremarkable.

Over the last forty years, as cars and motor cycles have developed on the assumption that roads will be smooth and have a sealed surface, the typical car driver or motorcycle rider has come to regard 'rough roads' as something to be avoided. But a considerable number of enthusiasts continue to derive a great deal of harmless pleasure from exploring the UK's superb network of ancient roads, many of which are still unsealed.

As driving on unsealed roads has changed from being an everyday occurrence experienced by the majority to a leisure activity enjoyed by a minority, there has been an inevitable increase in the friction between the various user groups. This has led many of those who choose not to drive on unsealed roads to question whether these are, indeed, 'roads' in their understanding of the term. The result has been a number of legal battles about the status and use of unsealed unclassified roads in England and Wales, despite the marginal legal distinction between whether a road is sealed or unsealed. We believe that, when properly researched, the origins and management of unsealed unclassified roads clearly point to them having vehicular rights.

The first version of this LARA report was published in March 2013. This first major revision incorporates some minor changes to the original text, and three additional sections dealing with the relationship between roads, as recorded on the highway authority's 'List of Streets', and byways open to all traffic (BOATs), as recorded on the 'Definitive Map and Statement' of public rights of way.

We welcome all comments, and suggestions for clarification or improvement. LARA and its Member Organisations are ready and willing to work with highway authorities, and the various non-motorised user groups, to preserve this important part of our national heritage.

Andrew Knightly Brown
Honorary Chairman of LARA
September 2018

* For more information on the evolution of off-tarmac motoring, see the Reference Document *The Origin and Evolution of Recreational Motoring on Unsealed Roads*.



AUTH756

## Contents


| | | |
|---|---|---|
| 1. | Background | 4 |
| 2. | What are unclassified roads? | 4 |
| 3. | Road: its ordinary meaning and judicial discussion | 5 |
| 4. | 'Road' in statute and practice | 6 |
| 5. | Statutory references to publicly maintainable highways | 10 |
| 6. | Evolution of highway authorities: the 'publicly maintainable highway' | 13 |
| 7. | Unsealed unclassified roads: relationship with the definitive map | 17 |
| 8. | Ascertaining the status of unclassified roads: evidence and presumptions | 20 |
| 9. | Establishing status: a practical approach | 23 |
| 10. | Understanding the effect of NERCA 2006 | 26 |
| 11. | Traffic signs and waymarks | 28 |
| Reference Documents | | 30 |

## 1. Background

1.1. Anyone who regularly uses or manages unsealed unclassified public roads could probably tell you that they are recorded on each local highway authority's 'list of streets', are sometimes (but less often of late) called 'green roads' or 'green lanes', are at the bottom end of highway authorities' hierarchy of public roads, and are thereby doomed to receive little, if any, regular maintenance.

1.2. But such a description fails to say whether unsealed unclassified roads, as a particular type of public road, are conclusively or presumptively carriageways, or whether some are just bridleways, or footpaths. There is a considerable degree of polarisation of views here. A member of the public wishing to drive a motor vehicle on such roads would tend to the view that such roads are at least presumptively public carriageways; someone opposed to such motor use might tend to the view that any unclassified road is no more than a public footpath unless and until a higher status is proved in each case.

1.3. That argument has bounced back and forth for more than thirty years, but the effect of s.67 of the Natural Environment and Rural Communities Act 2006 (NERCA 2006) has been to introduce a further layer of complication. This paper seeks to address that uncertainty and clarify just what is known, and what might be presumed, about the humble unsealed unclassified road. And, while it is the unsealed variant of the unclassified road that generates most heat, much of what is set out here applies equally to minor sealed roads in the countryside, many miles of which are now deteriorating steadily back towards an unsealed condition.

1.4. This paper builds on and acknowledges *Unclassified County Roads: a study into their status. August 2004*, commissioned and published by the Trail Riders Fellowship (see *Reference Documents*).

## 2. What are unclassified roads?

2.1. 'Unclassified road', or its older variant 'unclassified county road', is not a defined statutory term. 'Classified road' is and has been a statutory term for a considerable period, stretching right back in concept, if not application, to the early days of the Ministry of Transport in 1919. 'Unclassified road' is a term used by most highway authorities in distinction from what is understood by 'classified road'.

2.2. Such a definition-by-distinction arose in the Agriculture (Improvement of Roads) Act 1955 where in s.5(1), "'*unclassified road' means a road which is a maintainable highway but is neither a trunk road nor a road classified under the Ministry of Transport Act, 1919.*"

2.3. The question of what characterises unclassified roads becomes in turn a question of identifying what are the characteristics of the larger set of roads, which set encompasses both unclassified roads and classified roads.

2.4. No legal consequences directly flow from a road being recorded by a highway authority as an unclassified road. Nothing obliges any authority to keep a list of unclassified roads as such. The fact that a route has been identified or referred to at any point as an unclassified road is no more than an evidential indication of its reputation, whereupon follows the complicated question of what this might indicate.

2.5. A metalled road is dictionary-defined: "*A metalled road has a level surface made of small pieces of stone; used especially of country roads and tracks.*" Road metal is stone. A sealed road is a

metalled road with a waterproof and smooth top layer (such as asphalt), which surface is sometimes known as 'blacktop'.

2.6. An unsealed road is usually a road that has never been sealed, although some sealed roads are breaking up and deteriorating so much that they are now better described as unsealed. An unmetalled road might be termed a 'green road', or 'green lane', even though the surface is more dirt than grass.

## 3. Road: its ordinary meaning and judicial discussion

3.1. According to the *Oxford English Dictionary*, the word 'road' is cognate with the verb 'ride'. Thus its original meaning seems to be that reflected in the first entry in the Oxford English Dictionary: "*The act of riding on horseback; also a spell of riding; a journey on horseback*' (with examples given from the 9th century to the 17th century). The fourth entry is '*An ordinary line of communication used by persons passing between different places usually wide enough to admit of the passage of vehicles as well as of horses or travellers on foot"* (with examples given from the 17th century onwards). Thus, the more modern meaning of 'road' seems to ordinarily connote a way which is capable of being used by vehicles.

3.2. This common understanding of the meaning of 'road' has been recognised judicially, in particular, in the context of the extended definitions of 'road' in the Road Traffic Act 1930, Road Traffic Act 1972 and Road Traffic Act 1988.

3.3. S.121 Road Traffic Act 1930, s.196(1) Road Traffic 1972 and s.192 Road Traffic Act 1988 each define 'road' as '*any highway and any other road to which the public has access, and includes bridges over which a road passes*.'

3.4. In Oxford v. Austin [1981] RTR 416, Kilner-Brown J said that the definition involved two questions, "*the first question which has to be asked is whether there is in fact in the ordinary understanding of the word a road, that is to say, whether or not there is a definable way between two points over which vehicles could pass. The second is whether or not the public, or a section of the public, has access to that which has the appearance of a definable way.*" No attention seems to have been paid in that case to the words '*any highway and any other road*' in the definition of 'road' under discussion (s.196(1) RTA 1972). The court was dealing with the question of whether a car park was a 'road' and, therefore, may have not been focussing on the possibility of non-vehicular highways being 'roads' within the definition. However, the case is useful for illustrating what the court interpreted the word 'road' as meaning.

3.5. In Lang v. Hindhaugh [1986] RTR 271, the court was again examining the definition of 'road' in s.196(1) RTA 1972, in the context of the offence of driving on a road while disqualified from driving under s.99 RTA 1972. The defendant had driven his motorcycle on a public footpath, where the alleged offence took place. Croom-Johnson LJ said "*I think there can be no doubt from the description of the place where the motorcycle was being ridden that the ordinary man in the street looking at it would have done what the Crown Court did and said 'That is not a road', but it was found to be a highway. It was a highway because it was a public footpath ...*" and then proceeded to determine the appeal by observing that the definition in s.196(1) RTA 1972 extended the ordinary meaning of the word 'road' to other public rights of way which would not ordinarily be understood to be roads. The important point for this analysis is not the interpretation of the extended definition contained in s.196(1) RTA 1972,

but rather the recognition that any ordinary man in the street would not regard a footpath as a road.

3.6. Cutter v. Eagle Star Insurance Co. Ltd [1997] 1 WLR 1082 was a similar case to Oxford v. Austin, involving the question of whether a car park (or a route in a car park) could be a road. The Court of Appeal expressed themselves in language which again contemplated vehicular usage, although as in Oxford v. Austin the question of whether the route was available for vehicles was not an important point. As with Oxford v. Austin, the case is useful for illustrating what the court naturally interpreted the word road as meaning, although if the point had been in issue, it would have been clear that RTA 1988 in fact had an extended definition of road which included other highways.

3.7. These cases, Lang v. Hindhaugh in particular, seem to illustrate that the ordinary meaning of road connotes a vehicular highway, and that it is only by means of an extended definition in the Road Traffic Acts that 'road' acquires a meaning capable of encompassing other, non-vehicular highways, such as footpaths.

## 4. 'Road' in statute and practice

4.1. As regards unsealed unclassified roads, the issue here is simple: does the word 'road' denote, presume, or suggest that an unsealed unclassified road is *ipso facto* a public road for vehicles? This is not the same question as 'is an unsealed unclassified road a public road for vehicles by virtue of its being *recorded* as an unclassified road?' That issue is addressed later.

4.2. Most of the Highway Act 1835 stayed in force until supersession by the Highways Act 1959. S.5 remained in force until 1959, and it provides, "*... that the word 'Highways' shall be understood to mean all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements.*"

4.3. In Robinson v. Richmond Borough Council [1955] 1 QB 401, Lord Goddard CJ noted that "*... the Act distinguishes between roads and footpaths. It says that a road can be a highway and that a footpath can be a highway. They are not the same things; for one is a road and the other is a footpath.*" In the period 1835 to 1959, for the purposes of the Highway Act, 'road' meant a public road for vehicles; 'highway' was the generic term (as it generally was and is) for the different species of public right, including bridleways and footways.

4.4. In the Ministry of Transport Act 1919, road classification was introduced for the purposes of allocating advances from the Minister to local authorities for the construction of new roads and the improvement or maintenance of existing roads. The Act does not define 'road', but s.2 in specifying the powers and duties of the Minister, refers to "*roads, bridges and ferries and vehicles and traffic thereon.*" The Act of 1919 was a response to the enormous growth in private and commercial motor traffic in the 20th century.

4.5. In the Roads Improvement Act 1925, Parliament provided "*... to make further provision for the improvement of roads, including the prescription of building lines, and for purposes connected therewith.*" S.1 deals with trees, shrubs, margins, guardrails, and similar in publicly repairable 'highways'. S.2 amends the Development and Road Improvement Funds Act 1909, as regards trees, shrubs, margins and building lines along 'roads'. S.3 deals with the acquisition and exchange of land for building new 'roads'. S.4(1) deals with sight lines on 'highways'. S.4(8) deals with the improvement of 'roads'. There is a clear distinction in the Act between highways generally, and roads. In s.11, "'*road' includes any bridge, viaduct, subway, road, ferry and*

*footway.*" For the purposes of this Act a road is a type of publicly repairable highway; highway and road are not synonymous.

4.6. In the Local Government Act 1929, s.29(1), "*The council of every county shall be the highway authority as respects every road in the county which at the appointed day is a main road or which would, apart from this section, at any time thereafter have become a main road, and every such road and every other road as respects which a county council become by virtue of this Part of this Act the highway authority, shall be termed a county road, and all enactments relating to main roads shall as from the appointed day have effect as if for references therein to main roads there were substituted references to county roads.*"

4.7. S.30(1) "*... every county council shall be the highway authority as respects such parts of the county as is for the time being comprised in a rural district ... Provided that nothing in this section shall affect the functions of rural district councils under the Local Government Act 1894, as respects rights of way and encroachment on roadside wastes ...*"

4.8. S.134 "*In this Act unless the context otherwise requires ... 'road' means a highway repairable by the inhabitants at large, and save as in this Act otherwise expressly provided includes any bridge so repairable carrying the road.*"

4.9. The Local Government Act 1929 (above) operated to transfer the role and duty of highway authority, in rural districts, from the rural district councils to the county councils. That transfer of generic highway authority status was effected by s.30, which raises the question, what was the purpose and effect of s.29?

4.10. S.29 operates to retain highway authority status for the county councils for all current and future 'main roads', in rural and urban districts. As regards all other roads, which are transferred from rural district councils by virtue of s.30, these will thereafter be known as 'county roads'. From the date of commencement, s.29 had a retrospective effect and substituted the term 'county road' for 'main road'.

4.11. The definition of 'road' in s.134 presents something of a difficulty in construction here. Where, as here, a 'road' is a publicly repairable highway, does this mean that 'road' encompasses all species of highway – to draw from s.5 of the Highway Act 1835, "*... all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements.*" If this wide range of types of highway are all 'roads' for the purposes of the 1929 Act, then every footpath, bridleway, causeway, etc., in a county is, by virtue of s.29(1), a 'county road', and will thereafter be known as 'county roads'. So far as is known, no county authority followed that path.

4.12. Reading s.29(1) with the definition of 'road' in s.134, "*unless the context otherwise requires... 'Road' means a highway repairable by the inhabitants at large*", seems to produce the result that any highway, including a bridleway or a footpath, which was transferred by this part of the Act becomes a county road: since the word 'road' in "*... every other road as respects which a county council become by virtue of this Part of this Act the highway authority, shall be termed a county road ...*" would seem to include a bridleway or a footpath. This seems to be the most obvious literal interpretation of s.29(1) read with s.134.

4.13. However, there is at least a respectable argument this is not how s.29(1) should be construed. The definition of 'road' in s.134 is not immutable: s.134 has an express saving for "*unless the context otherwise requires.*" Furthermore, it is not necessarily clear that the definition of 'road' is intended to expand 'road' beyond its natural meaning: it may be that all that was intended was to limit the meaning of the word 'road' only to highways which were

roads in the ordinary sense of the word and which were highways maintainable at public expense (cf. the discussion of the meaning of 'street' above by reference to Robinson v. Local Board of Barton-Eccles (1883) 8 App Cas 798). That is to say, a footpath would not be included because it is not a road; also, a road not maintainable at public expense would not be included because it is not maintainable at public expense. In favour of this interpretation is that were s.29(1) intended to include all highways maintainable at public expense which were transferred, it would be rather more natural to expect that the draughtsman would simply have used the word 'highway' to achieve that result. Contrast especially s.30 which does use the word 'highway'. In s.29(1), it is not unnatural to suppose that the draughtsman was thinking of 'roads' in the ordinary sense.

4.14. Further, the 1929 Act, unlike the 1835 Act, does not define 'highway', and states that the definition of 'road' in s.134 is subject to the context within the Act. Given that s.30 operates to make the county council the highway authority for the purposes of carrying out statutory duties contained within the Highway Act 1835 (with limited powers to deal with obstructions and encroachments reserved to the rural districts; and limited powers of improvement reserved to the rural parishes) the definition of 'highway' for the 1929 Act might reasonably be taken to be that in s.5 of the 1835 Act. 'Road' therefore, in the context of s.29 of the 1929 Act, should be construed as not being 'any type of highway', but rather as a 'road for the purposes of s.5 of the 1835 Act, which is a publicly repairable highway.' If this argument is accepted then a county road (whether classified or unclassified), by express definition, was and is a publicly repairable highway, and by construed definition was and is a publicly repairable s.5 Highway Act 1835 road. By s.30, a county council (with the reservations to rural district councils) also was the highway authority for non-publicly repairable highways of all types. The best contextual construction of the meaning of 'county road' in the 1929 Act is that it is a publicly repairable carriageway highway. But that must immediately be qualified by saying that there were 'handed over' in 1929, and again listed in (e.g.) 1959 and 1980, a relatively small number of surfaced urban paths and stairs that were plainly not vehicular highways.

4.15. In the 1929 handover process, most county authorities made or adopted a 'handover map' of public roads. This was not a statutory requirement, but in most counties encompassing former rural district highway authorities, these were usually the first county-wide map of 'admitted' publicly maintainable roads, and they formed the basis of non-statutory 'county road maps' in use at least until the commencement of the Highways Act 1959. Research indicates that most counties made and updated 'county road maps' until circa 1974 (a period of major local government reorganisation) when there was a general shift across to written lists. There was no statutory requirement for any form of 'list of streets' in rural areas until 1974. These handover maps can be significant evidence as to the reputation of a road as a publicly repairable road in 1929 (or slightly after) and also some evidence of the status of those roads. The mileage of roads shown in the handover maps can be compared to the mileage in statutory road returns.

4.16. In the Restriction of Ribbon Development Act 1935, s. 24, 'road' means "*a highway and includes any part of a highway and any proposed road and any bridge or tunnel over or through which a highway passes or a proposed road is intended to pass, and "trunk road" shall be construed accordingly.*" On the face of it, the definition here of 'road' is wide enough to encompass all species of highway, including bridleways and footpaths. But in s.1(5), "*In determining the standard width to be adopted as respects any road, a highway authority and the*

*Minister shall take into account the requirements of all classes of traffic, including foot passengers and cyclists likely to use the road, and shall consider the provision of margins for the accommodation of ridden horses and driven livestock.*" Clearly the application of the Act to 'roads' presumes that these are (or will be in the case of 'proposed roads') roads for all classes of traffic.

4.17. It is useful to consider the purpose of the Restriction of Ribbon Development Act 1935, which was simply to regulate built development along roads (in the ordinary sense). It was an early form of town and country planning legislation. Ribbon development was a direct consequence of the rapid proliferation of the private motor car and motor bus in the 1920s and 1930s. Immediately before the 'common motor age' significant residential development was primarily along railway corridors. Ribbon development affected public motor roads and roads proposed to be built – obviously 'estate roads' – but also bypasses and trunk roads (e.g. The East Lancs Road) which, by 1935, were being planned and built in many locations.

4.18. In the Agriculture (Improvement of Roads) Act 1955, under 'Proposals for improvement of roads', at s.1(1), "*The council of any county ... may submit to the Minister proposals for effecting an improvement to which this Act applies in respect of any unclassified road or unadopted road in the area of the council.*" S.1(5)&(6) provide that where funding is applied to unadopted roads, these will afterwards become publicly maintainable highways. The purposes for which such improvements may be funded are, by s.1(3)(a) "*that the road is situated in, or affords access to, a livestock rearing area, and, (b) that the improvement would promote the use, or the more efficient use, of land in that area for any purpose of agriculture or forestry.*"

4.19. In s.5, 'Interpretation',

"'*Improvement', in relation to a road, includes the widening of the road, the cutting off of corners of the road, and the provision for the road of a cattle grid and of any works required in connection with a cattle grid, and 'improve' shall be construed accordingly.*"

"'*Unadopted road' means a road which (whether it is a highway or not) is not a maintainable highway.*"

"'*Unclassified road' means a road which is a maintainable highway but is neither a trunk road nor a road classified under the Ministry of Transport Act 1919.*"

4.20. It would be difficult rationally to construe the Agriculture (Improvement of Roads) Act 1955 as applying to anything other than public carriageway highways and private carriageway roads. A construction that 'unclassified road' here means a non-classified county road in a rural district sits comfortably with construing s.29 of the Local Government Act 1929 to deal with carriageway highways, while s.30 deals with all highways.

## 5. Statutory references to publicly maintainable highways

5.1. The TRF's 2004 Report *Unclassified County Roads: a study into their status, August 2004* (see *Reference Documents*) used the term 'unclassified county road' (UCR). That was a legacy term of jargon, rather than a statutory definition, and was even by then increasingly inappropriate as 'the county' (in the context of two-tier local government) progressively ceased to be the highway authority for many places in England and Wales. According to the Local Democracy Think Tank (in 2017) there are in England 27 county councils and 125 single-tier unitary councils, which are all highway authorities. In Wales, the 1974 local government review merged many of the old counties, and the authorities became, and remain, single-tier county-unitary, or county borough-unitary. There are 22 such councils and all are highway authorities.

5.2. One consequence of the Local Government Act 1929 was to make county councils the highway authority for all publicly repairable highways in rural areas, and for main roads in urban areas. Previously, county councils were the highway authority for main roads, and district councils were the highway authority for other highways. This transfer gave rise to the term 'county road' (and is detailed in the TRF's 2004 Report), and 'unclassified' started to be used as a descriptive term for roads that were not classified (i.e., initially not Class I, Class II, for statutory purposes).

5.3. In the Agriculture (Improvement of Roads) Act 1955, 'unclassified road' is used as an express, albeit undefined in the Act, term, serving to define the scope of the Act as regards the improvement of some public roads.

5.4. The Local Government Act 1929 did not operate to transfer general responsibility for urban roads to county councils. That happened much later, and so, at least until 1974 in rural areas where most such roads are found, 'unclassified county road' was a reasonable descriptive term for a public highway at the bottom end of the roads hierarchy, and also (generally) not on the definitive map and statement of public rights of way. As a description, or as a term of jargon, 'unclassified county road' has over the past 15 years steadily been replaced by 'unclassified road': much the same, but not specific to any particular type of council.

5.5. Is it possible to frame a contemporary and adequate understanding of 'unclassified road'? Yes, but this requires a proper appraisal of the statutory and non-statutory systems of road classification. Road classification, in the sense of roads for vehicles (but this is not undisputed – although it seems probable that classification was intended to deal only with vehicular routes, this is not expressed in the statute) goes back to the Ministry of Transport Act 1919, from which came Class I and Class II roads. Class I and Class II have themselves (as a rather crude generality) evolved into A roads and B roads. Highway authorities generally 'classify' the other roads (as distinct from public rights of way) for which they are responsible as, e.g., C roads, D roads, *et seq*., with most authorities (but not all) using the term 'unclassified', and some also using a term that denotes 'unsealed', typically a 'G' (for green) prefix. Some authorities in the English Midlands use the term 'field road' for unmetalled public roads. 'Metal' as regards roads means stone, not a sealing coat such as asphalt; but a sealed-surface road is, by definition, metalled.

5.6. Any definition (in the loosest terms) for use now and beyond has to incorporate the terms and effect of current legislation, essentially the Highways Act 1980 and the Natural Environment and Rural Communities Act 2006.

5.7. S.36 of the Highways Act 1980 provides:

*Highways maintainable at public expense.*

*(1) All such highways as immediately before the commencement of this Act were highways maintainable at the public expense for the purposes of the Highways Act 1959 continue to be so maintainable (subject to this section and to any order of a magistrates' court under section 47 below) for the purposes of this Act.*

*(6) The council of every county, metropolitan district and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.*

5.8. S.67 of NERCA 2006 provides:

*(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—*

*(a) was not shown in a definitive map and statement, or*

*(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.*

*But this is subject to subsections (2) to (8). Subsection 67(2) contains a number of exceptions, the exception for relevant purposes being:*

*(2)(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),*

5.9. S.67 of NERCA 2006 came into force in England on 2 May 2006 and in Wales on 16 November 2006. The effect of s.67 is to freeze the s.36(6) list of streets at the relevant commencement date as regards unclassified roads. A working description of an unclassified road then becomes this:

*'A minor road shown in the highway authority's s.36(6) list of streets on 2 May 2006 (England) or 16 November 2006 (Wales), which was not on that date shown in the definitive map and statement for the area as either a footpath, bridleway, or restricted byway.'*

5.10. Why the reference to the definitive map and statement? S.36 requires 'all such highways' – i.e. publicly maintainable (maintenance includes repair) highways – to be shown in the s. 36(6) list of streets. In practice, few footpaths, bridleways or restricted byways (mainly former roads used as public paths (RUPPs)) are shown in the s.36(6) list of streets for an area; rather they are recorded in the definitive map and statement. Whether this failure to show 'all' qualifying highways in a s.36(6) list vitiates that list for the purposes of s.67(2)(b) was considered at length by the Court of Appeal in Fortune v. Wiltshire Council [2012] EWCA Civ 334; [2012] 3 All ER 797 (see below) where it was held that a list of streets not showing 'all' publicly repairable highways is still a valid list. But, for reasons now generally lost in time, in some places some roads (or parts of roads) on the list of streets are also shown in the definitive map as either footpath, bridleway or restricted byway (former roads used as public path). According to Fortune, the list of streets *should* include bridleways, footpaths and restricted byways; and so one should expect at least some 'roads' to be on both the list of streets and the definitive map.

5.11. Roads that are wholly (i.e. the whole length between termini) shown on both the list of streets and the definitive map are commonly referred to as 'dual status roads', and on the face of it these have, by virtue of s.67(1)(b), lost any public right of way for mechanically

propelled vehicles that existed before commencement. There may be limited exceptions to this general rule applicable in any case, such as where the 'dual status' occurs only along part of a road between its termini. It is necessary to distinguish these 'dual status' roads, each of which has a conclusive status by virtue of being in the definitive map and statement, from 'ordinary' unclassified roads, each of which retains its public right of way for mechanically propelled vehicles, if such a right existed before 1 May / 16 November 2006.

5.12. None of this makes any reference to byways open to all traffic (BOAT). BOAT is defined in s.66(1) of the Wildlife and Countryside Act 1981: "'*byway open to all traffic' means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used.*" And in s.56(1)(c), "*where the map shows a byway open to all traffic, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way for vehicular and all other kinds of traffic;*"

5.13. There is no doubt regarding the conclusive nature of public rights with mechanically propelled vehicles on a BOAT for as long as that BOAT remains shown in the definitive map and statement. Should BOATs also be shown in the s.36(6) list of streets? BOATs should *prima facie* appear on the s.36(6) list of streets, but BOATs are not all publicly repairable just by virtue of their being BOATs. BOATs that were formerly RUPPs are publicly repairable (although there is a caveat here regarding some RUPPs reclassified under the Countryside Act 1968 processes), but BOATs added by a s.53 definitive map modification order are only publicly repairable as BOATs if they were already publicly repairable roads before the definitive map order was confirmed.

5.14. What about those unclassified roads (or, indeed, 'field roads', or 'G' roads, or whatever) that do not have a sealed surface? How might those be defined? NERCA 2006 provides a form of words that can be used in such a definition. In S.22BB Traffic regulation on byways etc. in National Parks in England and Wales:

*(1) This section applies to a road—*

*(a) which is in a National Park in England or Wales,*

*(b) which is—*

*(ii) a carriageway whose surface, or most of whose surface, does not consist of concrete, tarmacadam, coated roadstone or other prescribed material ...*

5.15. Borrowing from ss.(ii) provides a working non-statutory description of an *unsealed* unclassified road:

*'A minor road shown in the highway authority's s.36(6) list of streets on 2 May 2006 (England) or 16 November 2006 (Wales), which was not on that date shown in the definitive map and statement for the area as either a footpath, bridleway, or restricted byway, and whose surface, or most of whose surface, does not consist of concrete, tarmacadam, coated roadstone or other prescribed material.'*

5.16. Again, this necessarily leaves out any statement as to whether such an unsealed unclassified road carries a public right of way for mechanically propelled vehicles.

## 6. Evolution of highway authorities: the 'publicly maintainable highway'

6.1. This section is important because a proper knowledge of the evolution of the common law and statute as regards publicly repairable highways, and highway authorities, is the key to understanding how the s.36(6) list of streets has come about, and what evidential weight might properly be given to such a listing of a road. This chronology is necessarily simplified a little (there is a lot of arcane and complex administrative law in here), but it seeks to include everything relevant and material. The current term 'publicly repairable' is used throughout, even where, historically, the burden lay on the 'inhabitants', or the 'inhabitants at large.' It is not a crucial distinction. 'Repair' is essentially reactive, whilst 'maintenance' is proactive. but the terms tend to get used interchangeably, as in, 'keep in good repair.'

6.2. The position before 20 March 1836. In Glen's *Law of Highways* 1865, at page 158. "*It is a general rule of common law that highways, except in certain excepted cases, shall be repaired by the inhabitants of the territory wherein they are situated ...*" (12 Mod. 409; R v. St Giles, Cambridge, 5 M&S 260).

6.3. The Highway Act, 1835, s.5 provides, "*... that the word 'Highways' shall be understood to mean all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements.*"

6.4. S.23 provides, "*... no road or occupation way made or hereafter to be made by and at the expense of any individual or private person, body politic or corporate, nor any roads already set out or to be hereafter set out as a private driftway or horsepath in any award of commissioners under an inclosure Act, shall be deemed or taken to be a highway which the inhabitants of any parish shall be compellable or liable to repair, unless the person, body politic or corporate, proposing to dedicate such highway to the use of the public shall give three calendar months previous notice in writing to the surveyor of the parish of his intention to dedicate such highway to the use of the public, describing its situation and extent, and shall have made or shall make the same in a substantial manner and of the width required by this Act, and to the satisfaction of the said surveyor and of any two justices of the peace of the division in which such highway is situate in petty sessions assembled, who are hereby required, on receiving notice from such person, body politic or corporate to view the same, and to certify that such highway has been made in a substantial manner requiring such view, which certificate shall be enrolled at quarter sessions holden next after the granting thereof, then and in such case, after the said highway shall have been used by the public, and duly repaired and kept in repair by the said person, body politic or corporate, for the space of twelve calendar months, such highway shall for ever thereafter be kept in repair by the parish in which it is situate ...*"

6.5. Although the scope of s.23 looks to be confined to new roads that have been physically 'made' (in the sense of construction), it was held in Cababé v. Walton-Upon-Thames District Council [1912] 1 KB 481 that these provisions also apply to roads (within the scope of this section) that have come into being after 1835 by 'deemed dedication'. In Cababé there was evidence that the road, originally an awarded bridleway, and later a private road, had become a public highway (by inference a vehicular highway) by about 1862; certainly the right of way arose after 1835.

6.6. In Roberts v. Webster [1967] QBD 298 "*A street works authority served notices on the frontagers of a lane requiring them to undertake repairs under section 204 of the Highways Act, 1959. The frontagers objected that the lane was a highway repairable at the public expense and that section 204 did not apply. The authority conceded that at the present time the lane was a*

*public highway having been used as of right by the public for a substantial period of time, but contended that it had achieved that status after 1835 ... There was no evidence of formal dedication or enrollment but maps showed that it had existed as a road since before 1835, and it was shown, inter alia, on an enclosure award made in 1859 under the Inclosure Act, 1845. No public money had ever been spent on it. Although largely built up, residential development had not taken place before 1900. Quarter sessions, concluding that the enclosure award of 1859 was such powerful evidence that they should infer from it that a highway existed over the lane in 1859 and that it was not shown that it had not existed before 1835, dismissed an appeal from a decision of the justices upholding the objections.*

"*On appeal by the authority, Held, dismissing the appeal ... quarter sessions were entitled to infer from the evidence that a highway existed over the road in 1859 and the authority's onus of showing that it was not a highway in 1835 had not been discharged.*"

6.7. In Robinson v. Richmond Borough Council [1955] 1 QB 401, the full court considered the situation where a public footpath had been deemed dedicated, evidenced by recent user, in or around 1938. The council wished to apply the Private Street Works Act 1892 to the strip of land over which the footpath ran, but were barred if the footpath, i) existed, and, ii) was publicly repairable. Lord Goddard CJ noted (our emphasis) that s.23 of the 1835 Act did not apply to all highways, but only to the types of highway specified in that section. A s.23 'highway' does not include a 'footpath', and so the common law rule regarding public repairability still applied to footpaths after 1835 (and up to 1959). His Lordship observed (at page 407), "*... the Act distinguishes between roads and footpaths. It says that a road can be a highway and that a footpath can be a highway. They are not the same things; for one is a road and the other is a footpath.*" This distinction has a bearing upon the understanding of the 'handover provisions' in the Local Government Act 1929.

6.8. Highways Act 1862.

S.36: "*Where the inhabitants of any parish are desirous of undertaking the repair and maintenance of any driftway or any private carriage or occupation road, within their parish, in return for the use thereof, the district surveyor may, at the request of the inhabitants of such parish assembled in a vestry duly convened for the purpose, and with the consent in writing of the owner and occupier of every part thereof, apply to the justices in petty sessions to declare such driftway or road to be a public highway to be repaired at the expense of the parish; and upon such application being made, it shall be lawful for the justices to declare the same to be a public carriage road to be repaired at the expense of the parish.*"

S.42(1), "*This Act shall be construed as one with the principal Act so far as is consistent with the provisions of this Act.*" [The 'principal Act' is the Highway Act, 1835].

6.9. This 'adoption provision' in the 1862 Act does not replace s.23 of the 1835 Act. It is applicable by a 'district surveyor', which officer existed only in highway districts. It is notable that the outcome of such a dedication was a public carriage road, even if the way being dedicated was of a lesser traffic status.

6.10. Public Health Act 1875 (as amended), S.4 Definitions, "*Street includes any highway . . . and any public bridge . . . , and any road lane footway square court alley or passage whether a thoroughfare or not.*"

S.144, "*Every urban authority shall within their district exclusively of any other person execute the office of and be surveyor of highways …* [which provision, by s.25 of the Local Government Act 1894, then also applies to rural district councils].

S.146, "*Any urban authority may agree with any person for the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall accordingly become on completion highways maintainable and repairable by the inhabitants at large within their district; they may also, with the consent of two-thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads.*"

S.149, "*All streets being, or which at any time become highways repairable by the inhabitants at large within any urban district ... shall vest in and be under the control of the urban authority.*"

6.11. Local Government Act 1888.

This Act operated to transfer main roads to the responsibility of county councils. Main roads were primarily former turnpike roads ('disturnpiked') but other roads could be declared to be main roads. Doing this (e.g. for a road to a railway station) spread the repair and improvement burden across a wider section of the inhabitants.

6.12. Private Street Works Act 1892.

S.5, "*The expression 'street' means (unless the context otherwise requires) a street as defined by the Public Health Acts and not being a highway repairable by the inhabitants at large.*"

S.19, "*Whenever all or any of the private street works in this Act mentioned have been executed in a street or part of a street, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may by notice to be fixed up in such street or part of a street declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of street as defined in the notice shall become a highway repairable by the inhabitants at large.*"

S.20, "*If any street is now or shall hereafter be sewered, levelled, paved, metalled, flagged, channelled, and made good (all such works being done to the satisfaction of the urban authority), then, on the application in writing of the greater part in value of the owners of the houses and land in such street, the urban authority shall, within three months from the time of such application, by notice put up in such street declare the same to be a highway repairable by the inhabitants at large.*"

6.13. S.30 and Part 1 of Schedule 1 to the Local Government Act 1929 (below) gives county councils the powers of urban authorities under ss.19 & 20 (above) with regard to streets in rural districts. County councils could, after 1929 (until 1959), 'adopt' such private streets in rural areas. S.23 of the Highway Act 1835 remained in force until 1959, but adoption by the 'street works' process did not require certification by the justices and was less onerous on councils.

6.14. Local Government Act 1894.

S.25(1), "*As from the appointed day, there shall be transferred to the district council of every rural district all the powers, duties and liabilities of ... any highway authority in the district ...*"

This is the provision that transferred repair duties for highways from the parishes, highway boards, and highway unions, situated in rural districts, to the rural district councils. In urban areas the urban authority retained this duty.

6.15. Public Health Act 1925.

S.84(1) "*Every urban authority shall, within six months after the commencement of this Act, cause to be prepared a list of the streets within their district which are repairable by the inhabitants at large.*

"*(2) Any list prepared under this section shall be open to the inspection of any person, without payment, during the ordinary office hours of the urban authority.*"

6.16. Local Government Act 1929.

S.29(1), "*The council of every county shall be the highway authority as respects every road in the county which at the appointed day is a main road or which would, apart from this section, at any time thereafter have become a main road, and every such road and every other road as respects which a county council become by virtue of this Part of this Act the highway authority, shall be termed a county road, and all enactments relating to main roads shall as from the appointed day have effect as if for references therein to main roads there were substituted references to county roads.*"

S.30(1) "*... every county council shall be the highway authority as respects such parts of the county as is for the time being comprised in a rural district ... Provided that nothing in this section shall affect the functions of rural district councils under the Local Government Act 1894, as respects rights of way and encroachment on roadside wastes ...*"

S.134 "*In this Act unless the context otherwise requires ... 'road' means a highway repairable by the inhabitants at large, and save as in this Act otherwise expressly provided includes any bridge so repairable carrying the road.*"

6.17. Highways Act 1959.

S.38(6), "*The council of every borough and urban district shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense; and every list made under this subsection shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours.*"

S.312(2) and Schedule 25 of the 1959 Act operated to repeal s.23 of the Highway Act 1823 (above).

6.18. Local Government Act 1972.

S.187(1), "*For the purposes of the Highways Act 1959 to 1971 the local highway authority for highways outside Greater London shall be the county council.*" This provision took away the highway authority role from urban authorities, but many urban authorities were, in the same process of local government reorganisation, merged into metropolitan counties. By virtue of s.15 of Schedule 21 to the Local Government Act 1972, effective 1 April 1974, s. 38(6) of the Highways Act 1959 was amended to read:

"*The council of every county and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense; and every list made under this subsection shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours.*"

Thus the requirement for non-urban publicly maintainable highways to be shown in a highway authority's list of streets commenced on 1 April 1974.

6.19. Highways Act 1980.

S.36(6), "*The council of every county, metropolitan district and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.*" This provision was amended by s.8 and Schedule 4 of the Local Government Act 1985 to include 'Metropolitan Districts', but has not been updated on the legislation.gov website, so as to reflect the evolution to 'unitary authorities' in England (see reference the Local Government Act 1992, below).

6.20. Local Government Act 1985.

S.8(1) "*Schedule 4 to this Act shall have effect for amending the law relating to highways, streets and bridges, and Part I of Schedule 5 to this Act for amending certain enactments relating to road traffic, the principal purpose of the amendments being to transfer functions relating to those matters—*

*"(b) from metropolitan county councils to metropolitan district councils.*"

6.21. Local Government Act 1992.

This Act paved the way for a sequence of changes whereby 'unitary authorities' (single-tier authorities) came into being. Some unitary councils have the same footprint as a previous county authority (and may still be called 'county of ...'), but most have been carved out of counties, tend to be places of considerable population density, but are not wholly urban in character. Unitary councils are the highway authority for the area and must maintain the list of streets in the same way as a county council.

## 7. Unsealed unclassified roads: relationship with the definitive map

### The purpose and evolution of the definitive map and statement

7.1. The definitive map and statement of public rights of way (DMS) was created by the National Parks and Access to the Countryside Act 1949 (NPACA 1949). S.27 provided that the draft DMS be made to record all subsisting or reasonably alleged footpaths and bridleways. S.27(6) defined the 'road used as a public path' (RUPP), which roads were also to be surveyed, but is silent as to what conclusive rights were established by the recording of any RUPP on the DMS.

7.2. The surveys for making the draft DMS were carried out under the guidance of '*Surveys and Maps of Public Rights of Way for the purposes of Part IV of the National Parks and Access to the Countryside Act, 1949. Memorandum prepared by the COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY in collaboration with the Ramblers Association; recommended by the County Council's Association and approved by the Ministry of Town and Country Planning. January 1950.*' (MTCP).

7.3. It is sometimes said that there is no proof that this process was followed in any particular place, but it is hard to see that a DMS using standard notation could have come about otherwise and, in any case, a presumption that the Ministry guidance was followed should apply (see MTCP Circular No. 81 of 1950).

7.4. MTCP Circular No. 91 of 1950 provided some further guidance on RUPPs: "*(6) The phrase 'road used as a public path' which is defined in section 27 is intended to describe highways such as the Berkshire Ridgeway, and other 'green ways' which are now mainly used as footpaths and bridleways, although greater public rights of passage over them exist or are alleged to exist.*"

7.5. MTCP Circular No. 58 of 1953 returned to the question of RUPPs, and what the recording of a RUPP indicated."*The survey provisions of the Act are only directed to establishing the existence of such rights of way as are proper to footpaths and bridleways, and are not intended to settle the question of whether the public have any other rights over such ways (e.g. a right of way for wheeled traffic). The surveying authorities are also required to show any way which in their opinion was a [RUPP] that is to say a highway which is used mainly but not entirely for walking or riding (e.g. a Green Way such as the Berkshire Ridgeway).*'

7.6. In some counties some unclassified roads, or parts of some unclassified roads, were shown in the DMS as variously footpath, bridleway, or RUPP.

7.7. Once the first definitive maps and statements were made and published, deficiencies in the review procedures, and concerns about RUPP status, emerged. In 1968 the *Gosling Committee* reported to the government with recommendations for statutory changes to the 1949 Act, one of which was that the DMS should not be concerned at all with public vehicular rights of way. RUPPs ought to be recorded as either footpath, bridleway, or unclassified road and, if the latter, should not be recorded on the DMS.

7.8. The Countryside Act 1968 instead introduced the 'Special Review' and 'Limited Special Review' processes for determining the status of RUPPs and recording them on the DMS as either footpath, bridleway, or BOAT. This was the first time that the DMS had been expressly intended to record public vehicular rights of way.

7.9. The Special Review processes were completed in some places (incidentally with considerable wrongful loss of bridleways) but in other places became bogged down and intractable. By 1979 the initial moves were underway for what was to become the Wildlife and Countryside Act 1981 (WCA 1981) and any then-current Special Reviews were directed by the ministers to be variously abandoned, completed, or finished as far as they had got. One such was in Cumbria.

7.10. Cumbria had a part-finished Special Review when WCA 1981 commenced, where some of the RUPPs being reclassified were also shown on the list of streets (actually then the county highways map) as unclassified roads. There was considerable confusion at the time as to whether the unclassified road status 'trumped' the RUPP status and, of itself, sufficiently proved public vehicular rights on such a road. The Department of the Environment corresponded with the Rights of Way Review Committee about this, particularly in a letter of 9 June 1983. [Note: in that letter the suggestion that UCRs could be added to the DMS as RUPPs is wrong. The 1968 Act barred the addition of any 'new' RUPPs to the DMS.]

7.11. This letter of 9 June1983 was the first in a sporadic series of letters to and from the Secretary of State seeking clarification about the status of unclassified roads. These letters have been collated and published in the LARA Reference Document *The Status of Unsealed Unclassified Roads. Letters from Government Departments*: see the section *Reference Documents* in this report.

**The effect of the Wildlife and Countryside Act 1981**

7.12. Part III of WCA 1981 provides that surveying authorities can (and should) make definitive map modification orders on the discovery of evidence, and that persons can apply for such orders via an application process. Part III of WCA was made with the intention of completely and accurately recording in the DMS all those ways missed in the 1949 and

1968 Act surveys and reviews. The inclusion of BOATs as a category of potential route addition arose not so as to import all unsealed unclassified roads, but so as to record 'lost' minor vehicular highways which would have qualified as RUPPs under the 1949 Act process, but which were missed at the time.

**Government guidance relating to WCA orders**

7.13. The great majority of BOATs added to the DMS under s.53 of WCA 1981 were, until the intervention of NERCA 2006, ways that were not already on the list of streets. Some authorities made WCA s.53 orders for roads already on the list of streets, and this prompted correspondence with government departments, leading to further advice. This advice has been collated into LARA Reference Document 2008.08.03 *The Status of Unsealed Unclassified Roads. Letters from Government Departments*: see the section *Reference Documents* in this report.

**Where are we now?**

7.14. So this progressively amended government advice, 1983 – 2018, and still current, taken with the effect of s.67 of the Natural Environment and Rural Communities Act 2006 (NERCA 2006) comes down to this:

7.15. There is no statutory reason why any road on the list of streets cannot or should not be recorded in the DMS if it meets Part III WCA 1981 criteria. Such a road could potentially be recorded (according to all the evidence) as either:

BOAT,

bridleway,

footpath,

(but not as a restricted byway unless a 'new' road on the list of streets since 2 May 2006 (England)).

7.16. This potential for list of streets roads to be recorded on the DMS is not to be taken as a 'prompt' for authorities to make such orders.

7.17. The 'vast majority' of rural unsealed public roads are likely to be shown as carriageways on investigation.

7.18. It is open to anyone to make an application based on evidence to record any list of streets road on the DMS, but there is no burden on any person so to do: the rights on any road are a matter of evidence in each case, regardless of WCA 1981 provisions.

## 8. Ascertaining the status of unclassified roads: evidence and presumptions

8.1. The bare fact of a road's inclusion in the s.36(6) list of streets is not, of itself, 'conclusive' as to that road's status: footpath, bridleway or carriageway. Leaving aside the 'conclusivity of status' conferred by virtue of any route's being shown, for the time being, in the definitive map and statement, the status or traffic class of road is a matter of evidence, or to a limited degree of presumption.

### The 'urban passages' argument

8.2. There is a commonplace argument put forward that it is unsafe to presume that roads shown in the s.36(6) list of streets are public vehicular roads because some shown there plainly are not vehicular routes. The examples given are flights of steps in towns, and paved church paths and other pedestrian ways in towns. The key to understanding the reason for this lies in the evolution of the list of streets as set out elsewhere in this report. These patently non-vehicular routes are generally found in urban areas. It is unsurprising that pedestrian passages, steps, paved ways, and other such urban routes would, as a consequence of the 19th century health and streets legislation, be listed (or mapped) as publicly repairable streets.

8.3. These urban streets, be they vehicular or not, are not the nub of the unclassified road status issue: almost invariably an argument about a public road's status concerns a rural unclassified road. It is essential to appreciate the evolution of the recording − statutory and non-statutory − of rural roads, because this helps in determining any such road's traffic status.

### The rural road network

8.4. Consider a typical rural area in an historical county. In that area there will be a network of 'roads', and a network of public paths (footpaths and bridleways; there may also be restricted byways deriving from former roads used as public paths (RUPP)). The traffic status of the roads may be broken into three general areas:

8.4.1. Where the road is maintained and used as a general motor road: sealed surface, road signs, white lines, regular ordinary motor traffic: The status of the road is not likely to be in dispute.

8.4.2. Where the road is not used as a general motor road with a sealed surface, road signs, white lines, regular ordinary motor traffic, but has a clearly defined origin of status, such as its being set out in by an inclosure Act and award, or its being a former turnpike. This clear origin of status situation applies regardless of the current physical nature of the road, and its current traffic.

8.4.3. Where the road is not used as a general motor road, and has no clear root of status: it is simply recorded and used as part of the local network of minor roads. It is this type of road that gives rise to most argument about status. What can be said about such a road, both generally, and in its particular circumstances?

### The list of streets and evidence of status

8.5. As a matter of law, should the list of streets only include highways which carry vehicular rights? The answer to this is no since it seems quite clear that the definition of street in s. 329 of the Highways Act 1980 includes, for example, 'footways'.

8.6. As a matter of evidence, is inclusion in the list of streets some evidence that the way carries vehicular rights? The answer to this is a qualified yes. It is a qualified yes since this is dependent upon the proposition that highway authorities generally, or particular authorities, misunderstood the extent of, or failed to comply with, their duties under s.38(6) of the Highways Act 1959 (as amended) and s.36(6) Highways Act 1980, and habitually only recorded vehicular highways on the list of streets. It seems that the proposition may well be true (either generally or in the case of particular authorities) and the complicated legislative background to s.38(6) of the Highways Act 1959 (as amended) and s.36(6) Highways Act 1980 (i.e. the evolution to, and through, the Local Government Act 1929) may explain why authorities only tended to include vehicular highways on their list of streets. An additional factor may well have been that the duty to maintain bridleways and footpaths was not so conspicuous to local authorities because the comprehensive process of recording public paths only commenced with the National Parks and Access to the Countryside Act 1949 and mostly continued into the early 1960s.

8.7. In the case of a particular authority, or authorities generally, the evidential weight of this inclusion might depend on a detailed analysis of the provenance of their particular list of streets against a tracing of the relevant legislation. The evolution of an authority's 'handover maps', through the various 'county road maps', to the lists of streets, all juxtaposed with the making of the definitive map and statement, has the potential to show the reputation of a road, or roads, within the authority's area.

8.8. The point which follows may serve to shortcut this analysis in most cases. As a matter of evidence, where a way is included in the list of streets but is not recorded on the definitive map, is this evidence that the way carries vehicular rights? The answer to this seems that, in a particular case, the inclusion in the list of streets of a way which is not recorded on the definitive map is fairly powerful evidence that the way carries vehicular rights (or is or was reputed so to do) since, on the premise that the list of streets should include all publicly maintainable highways, the only reason why a highway which is recorded on the list of streets should not also be recorded on the definitive map is that it is a vehicular highway (not being in character a BOAT).

8.9. This point has additional force if it can be established in the case of a particular authority that all minor highways recorded on the definitive map do not appear in the relevant list of streets. The point may also gain additional force from any further analysis of the provenance of the list of streets (see above) and, in particular, the sort of conclusions that it is suggested might be drawn from road mileage returns.

8.10. On this last point, there is an important further point: it may be that in the case of particular authorities the list of streets currently kept does include minor non-vehicular highways but at an earlier point in time did not. The fact that the list of streets now includes minor non-vehicular highways, does not necessarily destroy any inference which might be drawn from earlier versions of the list of streets, particularly if it can be shown that there was a particular point in time when all minor non-vehicular highways were added to the list of streets.

**The list of streets and the presumption of regularity**

8.11. There is sometimes an argument advanced that the inclusion of a road in the list of streets 'may well be a mistake, anyway.' This does not stand up to scrutiny. The Highways Act 1980 provides (our emphasis):

8.12. S.36(6), "*The council of every county, metropolitan district and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.*"

8.13. From 1 April 1974, and up to 1 January 1981, due to local government reorganisation, s. 38(6) of the Highways Act 1959 was amended to provide, "*The council of every county and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.*"

8.14. These councils were and are under a duty to keep this list up to date. There is a presumption that this duty was carried out properly: *omnia praesumuntur rite esse acta*, or the 'presumption of regularity'. In Calder Gravel Ltd. v. Kirklees Metropolitan Borough Council (1990) 60 P&CR 322, Sir Nicholas Browne-Wilkinson, V-C: "*The truth of the matter is, perhaps not surprisingly, that with the passage of time and given the confusion which must exist, given reorganisation as frequently as this, the necessary evidence for me to make a proper affirmative finding either one way or another that there was or was not a written document is simply not available. People have died; documents have been lost. It seems to me impossible on an ordinary judicial basis to make a firm finding in the absence of clearer evidence … "The same presumption of regularity can arise where the validity of an act done by a public authority depends on the existence of a state of facts which cannot, with the passage of time, be proved; The presumption is that the statutory authority has acted lawfully and in accordance with its duty.*"

8.15. It is open to any person to show, as regards any road, that a mistake was made on that road's inclusion in the list of streets. In the absence of such evidence of mistake the list has to be presumed to be properly made, and that the council had reason to show that road in its list of streets. Mistakes may be proved, but they cannot lightly be presumed.

**The list of streets and earlier road records**

8.16. The recording of a road in the list of streets in 1974 (or later) was probably not the first recording (by the highway authority at the time) of that road. The evolution of the way a council regarded its roads – and therefore regarded any of its roads – leading up to the making of the current s.36(6) list of streets, can be evidence of status of those roads or any of them.

8.17. In LARA Reference Document *Roads returns & records. Recording the mileage of roads since 1815* (see the section *Reference Documents*), the sequence and evolution of statutory road mileage returns, by county, since 1816, is set out. It is evident that, for almost every historical county, the highway authorities' count of the mileage of public vehicular roads is consistent, starting in 1816, through 1839, 1920, 1960/1 to 1973/3. There is a sequence of five returns, across over 150 years, with a small but steady growth, which is consistent with new road building, even in rural areas, and where the earliest two returns are expressly for vehicular roads.

8.18. It is sometimes argued that, because (almost) all footpaths and bridleways before 1959 were publicly repairable, that these returns after 1839 might include footpaths or bridleways, as might the 1929 'handover maps'. The post-1839 returns might include footpaths or bridleways, but based on the mileages successively recorded, the probability is that they do not.

**The class of traffic is an indicator of the status of a road**

8.19. Take the situation where an unclassified road in a rural area was shown in the 1929 handover map, and was on the s.36(6) list of streets on 2 May 2006 (England) or 16 November 2006 (Wales). There is no documentary evidence of the origin of the road's status (e.g. an inclosure award). The public uses the road with, variously, motors, pedal cycles, horses, and on foot. How does a tribunal set about determining the status of this publicly repairable public road?

8.20. In the absence of express, status-specific historical evidence, there are three types of evidence that can go to show the probability of public vehicular status:

8.20.1. Map evidence.

8.20.2. Through-route presumption.

8.20.3. The traffic that uses and has used the road.

8.21. These topics are explored in the LARA Reference Document *Evidence of public road status. The view of the courts* (see the section *Reference Documents*).

**Traffic regulation orders as an indicator of status**

8.22. S.15 of the Road Traffic Regulation Act 1984 provides maximum time periods for temporary traffic regulations orders, depending upon the class of highway to be regulated.

8.23. Orders in respect of footpaths, bridleways, restricted byways, and BOATs, shall not remain in force for more than six months (s.15(1)(a)). For highways of any other class, the limit is eighteen months (s.15(1)(b)).

8.24. This period as regards footpaths and bridleways is not limited to those paths recorded in the definitive map and statement.

8.25. In making a traffic order on an unclassified road the traffic authority must comply with the allowable time periods in s.15. In making an order for more than six months in respect of an unsealed unclassified road, the traffic authority is asserting that the road has a traffic status higher than footpath or bridleway.

## 9. Establishing status: a practical approach

9.1. The question of the status of unsealed unclassified roads is not a new issue. It was been a live topic since (at least) the Cumbria Special Review in the early 1980s, and was considered and consulted in the processes that led to the Countryside and Rights of Way Act 2000. This was the Government's view then:

**Department of the Environment, Transport and the Regions. Improving Rights of Way in England and Wales 1999**

[2.10] *The proposition that unclassified roads should be brought into the rights of way system would have advantages only if it could be achieved without a major increase in bureaucracy. Several practical problems would have to be overcome. Although section 36 of the Highways Act 1980 requires local authorities to maintain a list of highways maintainable at public expense, not all of these may be suitable for recording on definitive maps and it would be necessary to define more precisely which roads would qualify. Furthermore, the Government believes that the recording of these roads on definitive maps would place an unacceptable burden on highway authorities if, as we believe, this would require individual definitive map orders to be made on a case by case basis.*

*The effect would be to place a duty on highway authorities similar to that presently imposed by section 54 of the Wildlife and Countryside Act 1981 to reclassify RUPPs.*

**An Economic Appraisal of the Proposals: Improving Rights of Way in England and Wales 2000**

[49] *We estimated that around 6,000 miles of unsealed unclassified roads that might be available in England and Wales for recording on the definitive map. The cost of recording unclassified roads on the definitive map would vary depending on the ease of establishing the rights over them. Our survey suggested authorities anticipated this to be a costly process, requiring expenditure of £19m. A further cost of £2.3m could be incurred by central government as a result of the need for public inquiries.*

9.2. This assessment of the scale of a blanket screening-by-order approach to unsealed unclassified roads remains valid. Nothing has happened to displace or contradict it. Such a blanket exercise would be a massive administrative undertaking and would block the definitive map process for many years.

9.3. Nobody rationally disputes that the very great majority of screened-by-order unclassified roads would be found to carry public vehicular rights: "*We are prepared to accept that the vast majority of unsealed rural routes shown in the list of streets held by most highway authorities are likely to be shown to be carriageways on investigation.*" Dave Waterman, DEFRA, 11 June 2012.

9.4. Dave Waterman of DEFRA reiterates this view in an email letter of 11 July 2018: "*Defra's policy on UCRs is that we cannot make blanket assumptions about rights over unclassified roads because there are some cases where the rights are not clear. Should it be necessary, each road would have to be assessed on the evidence. Where any dispute about status occurs, the local authority should endeavour to ascertain what rights exist over that road, and make sure that it is properly recorded on the appropriate records, i.e. the Local Street Gazetteer, list of streets, and/or the DMS. This is not to suggest that all unclassified roads would all need to go through the DMMO process. There is no duty on local authorities to proactively screen and research the status of every unclassified road, but they are obliged to modify the DMS where this is requisite upon the 'discovery of evidence' in any case.*"

9.5. There are certainly attractions to testing the status of all UURs by way of DMMOs:

9.5.1. Certainty as to status and lawful user as a consequence.

9.5.2. The additional protections that DMS recording brings.

9.6. Set against this:

9.6.1. It was not the purpose of the legislation to use the DMS order process proactively to test the status of all UURs.

9.6.2. It would be a massive administrative undertaking and would block the definitive map process for years.

9.6.3. Derbyshire apart, the very great majority of orders to add UURs that were on the list of streets in 2006, and were not 'dual status', result in BOAT status, and so 'certainty' apart, the outcome of each exercise is still that these are public vehicular roads.

9.6.4. These applications/orders tend to attract objections and are often hard-fought. The potential workload is therefore high, and the period for undertaking such a task must realistically run beyond current lifetimes.

9.6.5. The numerical scope for orders can only get bigger as, variously, a consequence of inspectorial decisions, and the rapid degradation of minor roads.

9.7. It is sometimes argued that highway authorities should examine every unsealed unclassified road to 'screen' for those that do carry public vehicular rights. That is not a proper screening process. There is nothing to stop any person or council from resolving a disputed-status case by making, or applying to be made, an order for whatever status the historical evidence suggests is appropriate. If councils look to test the status of all unsealed unclassified roads in a 'screening' process, then:

9.7.1. Screening is not the wholesale examination of candidates in order to identify a relative few with particular characteristics.

9.7.2. Screening is the identification on a criteria basis of candidates which merit more-thorough examination.

9.7.3. Screening, having identified these candidates for more-thorough examination, will discard some and send others on for yet-deeper examination.

9.7.4. Examples of this screening approach are common in, e.g., airport check-in, and medical early diagnosis, according to, e.g. age, gender, weight, medical history, family history.

9.7.5. Screening of roads can only be aimed at identifying those without public vehicular rights, as (per DEFRA) *the very great majority* do carry public vehicular rights.

**LARA proposes:**

9.8. Where any person sets out an evidence-based case that a specified unclassified road is either a footpath or a bridleway, then LARA's member organisations will carefully assess that evidence, carry out further research if appropriate, and will present the evidence to the surveying authority under s.53(2)(b) of the Wildlife and Countryside Act 1981. If the evidence in the case points to the road being a footpath or bridleway only, then the surveying authority will make the appropriate order. It will be the surveying authority's decision.

9.9. This initial informal inquiry could be facilitated by the Local Access Forum if parties prefer and agree.

9.10. Where there is persuasive evidence in any case, the motoring organisations will acquiesce in and publicise temporary traffic regulation provided there is no unreasonable delay in the process.

9.11. The '*very great [vehicular] majority*' of unsealed unclassified roads are thereby kept out of the order process, avoiding needless expenditure of public and volunteer resources.

## 10. Understanding the effect of NERCA 2006

### The impact of the Natural Environment & Rural Communities Act 2006

10.1. This section does not (at this time) address 'dual-status' roads, where a road (or part of a road) is, and was at the relevant date, on the list of streets, and also recorded in the definitive map and statement as a footpath, bridleway, or restricted byway. The relevant date for NERCA 2006 is 2 May 2006 in England and 16 November 2006 in Wales.

10.2. NERCA 2006 operates first to extinguish all public vehicular rights of way (including 'roads') and then 'saves' some of these with express provisions. In s.67:

*(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—*

*(a) was not shown in a definitive map and statement, or*

*(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.*

*But this is subject to subsections (2) to (8).*

*(2) Subsection (1) does not apply to an existing public right of way if—*

*(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),*

### The list of streets on 2 May/16 November 2006

10.3. The government has issued guidance about the impact and consequences of NERCA 2006:

*Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways. A guide for local authorities, enforcement agencies, rights of way users and practitioners. Version 5 - May 2008.*

In this guidance at paragraph 32, "*Local authorities are strongly advised to ensure that they have retained a copy of their list of streets as of 2 May 2006 as this will be required in determining whether the 67(2)(b) exception is engaged in the future.*" What if a highway authority has not retained a copy of the list of streets as on 2 May 2006 in England, or 16 November 2006 in Wales?

10.4. If a road was a publicly repairable road shown in the s.36(6) list of streets at some date before 2 May / 16 November 2006, then that is indicative that the council in making the list and keeping the list up to date regarded the road as being publicly repairable. A publicly repairable road does not cease to be publicly repairable unless either, i) the road itself is stopped up (normally by s.116 of the Highways Act 1980, or, ii) the liability for the public to repair the road has been removed by a 'cessor order' made under the provisions of s.47 of the Highways Act 1980:

*'Power of magistrates' court to declare unnecessary highway to be not maintainable at public expense.*

*'(1) Where a highway authority are of opinion that a highway maintainable at the public expense by them is unnecessary for public use and therefore ought not to be maintained at the public expense, they may, subject to subsections (2) to (4) below, apply to a magistrates' court for an order declaring that the highway shall cease to be so maintained.'*

10.5. Where an order has been made by magistrates under s.116 or s.47, at a date since the road appeared in the s.36(6) list (by definition, after 1979) then there will be an enrolled court order to that effect. Short of very compelling evidence that such an order was made, and has been lost since, such as council minutes or a statutory newspaper notice, there cannot reasonably be any presumption of closure in such an administratively short timescale. The presumption of 'once a highway, always a highway' (Dawes Hawkins (1860) 29 LJ CP 343) holds as 'once a publicly repairable highway, always a publicly repairable highway'.

10.6. In the absence of a copy of the list of streets as advised by the Secretary of State, where a road was shown in the s.36(6) list before 2 May/16 November 2006, there is a rebuttable presumption that it was still shown in the list on that date.

**What form must a list of streets take?**

10.7. This issue was considered at length in Fortune v. Wiltshire Council [2012] EWCA Civ 334, where the Court of Appeal upheld the decision of Judge McCahill in the Administrative Court. The outcome may be summarised thus:

10.8. A s.36(6) list of streets for the purposes of s.67(2)(b) of NERCA 2006 is still a valid list even if it does not show all publicly repairable 'streets', including footpaths and bridleways, but shows only what are *prima facie* 'roads'.

10.9. There can be only one list of streets at any time. The council may also have earlier 'county road maps', but a more-recent list takes precedence over such records.

10.10. If a council does not have a written 'list', then a map of roads is capable of being a valid list as long as it has a sufficient key to identify the roads that it shows. But a valid list and a map cannot both comprise the list of streets.

10.11. The list of streets can be held in digital 'database' format and still be valid for s.36(6) and s. 67(2)(b) purposes.

10.12. A highway authority has some discretion about how it keeps its list of streets (per Fortune). In Slough Borough Council v. Secretary of State for Environment Food and Rural Affairs [2018] EWHC 1963 (Admin), held that the council could validly have a part of its list of streets recording 'private streets', but inclusion of a private street here did not of itself operate to save a public motor vehicular right of way for the purposes of s.67(2) of NERCA 2006.

10.13. In Trail Riders Fellowship v. Secretary of State for Environment Food and Rural Affairs [2017] EWHC (Admin) 1866, where Hertfordshire County Council had both a written list of streets and a GIS map, a drafting error in the GIS map did not of itself destroy the s. 67(2) saving provided by the road's recording in the written list.

## 11. Traffic signs and waymarks

11.1. The current traffics signs rules are set out in regulations:

*2016 No. 362. ROAD TRAFFIC. The Traffic Signs Regulations and General Directions 2016.*

11.2. In general, traffic signs that complied to the earlier 2002 Regulations remain lawful until replaced, when they must comply with the current regulations.

11.3. In the consultation phase for the proposed revisions to the 2002 Regulations, LARA and other organisations dealing with rights of way made submissions to the Department for Transport asking that it should be possible to:

11.3.1. Place a traffic sign identifying an unclassified road as being a public road, and / or,

11.3.2. Place statutory waymark symbols indicating the route of an unclassified road.

11.4. These suggestions were not incorporated into the 2016 Regulations, but the Department for Transport told LARA that it now has the matter on its list for revisions.

11.5. As things stand with the 2016 Regulations, no waymark is available for unclassified roads, but two types of traffic sign can be used, both of which make it clear that the road so signed is a public road.

11.6. Part 2 of the Regulations has '*Sign background for directional signs for motorways, primary routes, non-primary routes, cyclists and pedestrians*' (page 266) and this sets out '*Sign table - Schedule 12, Part 2.*'

11.7. Item 3 in that table is '*Sign placed on or near a non-primary route (Type A and B)*', where Type B is the ubiquitous sign found at junctions, indicating a destination, and sometimes with a distance added.




11.8. The destination can be a place, or another road, with some other variations, and this is set out in '*Sign table - Schedule 12, Part 3*' (page 270). The legend on the sign cannot simply indicate the status of the highway, as the 'item 9' sign type can for, e.g., footpaths or bridleways.

11.9. The size of the legend on a traffic sign is prescribed by 'x height' of the characters, and the margin around the legend. There is scope to make an Item 3 sign on a minor unclassified road smaller than a usual sign found at crossroads to inform through motor traffic.

11.10. Part 2 of the Regulations has '*Advisory signs*' (page 185), and this sets out '*Sign table - Schedule 11, Part 2.*'

11.11. Traffic signs of a type not set out in the Traffic Signs Regulations and General Directions 2016 may be authorised under s.64(1)(b) of the Road Traffic Regulation Act 1984 by the relevant 'national authority', i.e. the Secretary of State in England, or the Welsh Ministers in Wales.

11.12. Item 23 is '*Diagram 820 Route unsuitable for type of vehicle indicated (Alternative types)*', which provides for the well-known 'Unsuitable for motor vehicles' rectangular sign, which has been in use since the 1950s in various colour combinations. This sign was and is expressly intended for unsealed public roads.



## Reference Documents

The Reference Documents listed below are all available from the LARA website. The web links are to the version of each Reference Document current in September 2018. If the web link generates an error message, the most likely reason is that the Reference Document has been updated. Go to http://laragb.org, select 'Reference Documents', and follow the links or use the *Search* facility.

### By LARA

| | |
|---|---|
| LARA Document 2018.08.18 | *Evidence of public road status. The view of the courts* Link to document |
| LARA Document 2018.08.15 | *Roads returns & records. Recording the mileage of roads since 1815* Link to document |
| LARA Document 2018.08.03 | *The Status of Unsealed Unclassified Roads. Letters from Government Departments* Link to document |
| LARA Document 2017.03.23 | *The Origin and Evolution of Recreational Motoring on Unsealed Roads* Link to document |

### By Others

| | |
|---|---|
| Trail Riders Fellowship | *Unclassified County Roads: a study into their status*, August 2004 Link to document |

# Highway authority records

Pages 1-9

The origins and evaluation of highway records.

**John Sugden, Ph.D., C.Eng., MICE, MCIT, Assistant Director Planning &Transport, Cleveland County Council.**

*The records kept by highway authorities are generally a consolidation of the records of different authorities prepared under legal frameworks which were quite different in urban and rural areas respectively. These highway records are seriously inadequate for today's requirements and often result in local authorities being open to challenge on the fulfilment of their legal duties or the legality of their actions.*

---

A highway authority is caught between two different constraints when carrying out its responsibilities. On the one hand, the maintenance of highways is a legal duty, which can be enforced through the courts. On the other hand, unlike a private individual, a highway authority is subject to the *ultra vires* rule. This means that it is unlawful for an authority to spend money on anything that it has not been specifically authorised to do by Parliament.

It follows that for a highway authority to keep within the law it is necessary for it to know precisely which ways are highways for which it is the authority. If it fails to maintain a highway for which it is the authority then it falls foul of the legal duty to maintain. On the other hand, if it repairs what it believes to be a highway for which it is responsible, but this turns out not to be the case then it has also acted unlawfully because the expenditure is *ultra vires*. Bearing in mind the extensive nature of the highway network, it is virtually impossible to keep within the law without a detailed record of those highways for which the authority is responsible.

A further need for records arises from the ownership of highways. Those highways that are maintainable at public expense vest in the highway authority. This gives the authority a property right in the highway, and gives it ownership of the materials out of which the highway is actually constructed. Given the substantial value of this property, it would be surprising if the authority had no record of the location and extent of its interest.

If the efficient operation of a highway authority requires good records, it must be clear that it is particularly important in any changes to the area or responsibilities of the authority that good records are passed on to the new authority. This is a particularly relevant point at the moment with significant changes to local government now proposed for April 1996 with the possibility of a continuing programme of further changes.

**Historic records of highway authorities**

In the light of the importance of good records, it is tempting to jump to the conclusion that there must have been such records in the past, particularly where there were local government changes. Such records could provide important information in establishing the status of disputed highways today.

Unfortunately, such records rarely exist before the 1920s. They may have been lost, but in most cases it seems much more likely that they never existed. To appreciate why, it is necessary to look at the historic development of highway authorities.

For many centuries, highway maintenance was the responsibility of individual parishes or townships, there being some 15,000 separate authorities in England and Wales. There were no professional staff, and control was in the hands of the inhabitants 'in vestry assembled' together with an elected parish surveyor. There was really nobody to keep the records, and in any case the network would be generally small enough for the knowledge of it to be preserved through a kind of community folk-lore.

It was only in the Victorian era that the management of highway maintenance was reformed to give the modern local government system. The process of change was carried out in an extremely complex and piecemeal fashion that has been described elsewhere in this Review.[1] There is one important thread that runs through all the changes, the Victorian view that the problems of towns were quite different from those of the countryside. This distinction runs right through from the first Public Health Act 1848 up to the Local Government Act 1972. The development of larger and more professional highway authorities, with the need for records, occurred within this framework. To be able to interpret the available records it is necessary to consider separately the origins of the urban and rural records.

**Urban Districts**

The concept of an urban district was first introduced in the Public Health Act 1848

[1] RWLR s.1.1 pp.31-48



AUTH785

which allowed areas to become Urban Sanitary Districts, where special legislation applied to promote public health. In these areas a whole new body of legislation was introduced regarding streets. The areas of application of these laws was gradually extended throughout the Victorian era so that by 1895 the law of urban streets applied throughout all cities, boroughs and county boroughs together with designated areas known as urban districts. All other places were included in rural districts. There were significant differences in highway law in respect of rural and urban areas until the consolidation of highway law in the Highways Act 1959. Even after that, some distinctions between urban and rural districts remained until 1974 when a uniform system was applied throughout all areas.

The urban street legislation introduced in 1848 included two innovations that have importance to highway records. Firstly, all streets that were maintained by the public were required to be paved and to vest in the authority. This meant that for the first time, the highway authority had some property rights in the highway. Secondly, where streets were not maintained by the public the authority could require them to be paved at the expense of the frontagers, and subsequently adopt them as highways maintained by the public.

Both of these aspects would seem to provide compelling reasons why authorities should have been required to keep records of which streets were maintained by the public. Given that such streets and their paving materials vested in the authority as their property, one would have thought that they would have been anxious to have maintained some record of what they owned, at least for their own purposes. The question of which streets were maintained by the public was of great financial consequence to frontagers, and inevitably led to disputes, and much argument could have been avoided by an official record of the streets that were maintained.

***Public Health Act 1925***

Although there were good reasons for keeping records, for many years there was no legal requirement to do so. However, s.84 of the Public Health Act 1925 eventually required urban authorities to maintain a list of streets that were highways maintainable by the inhabitants at large. This list was to be a public document and available for inspection free of charge. In most areas it seems to have been the practice to prepare a series of plans showing these streets, as well as a schedule listing them. There was a need for the plan because disputes arose on the question of exactly how wide was the highway maintained by the public.

The provisions of the 1925 Act seem to have given rise to some confusion as to what was required and how the law should be interpreted. Therefore the issue today is not normally to establish whether the authorities acted correctly, but to establish what those who prepared the documents were intending to record.

A list of streets maintainable by the inhabitants at large is not conclusive evidence of the maintenance status of the streets shown, nor indeed of those not shown. Nevertheless, it would be extremely difficult for an urban authority that had recorded a street as being maintainable by the inhabitants to subsequently deny that this was the case, at least in respect of the great majority of streets for which they were the highway authority. This is clearly of value to the frontagers.

If a street is not properly made up and is not maintainable by the inhabitants at large, then the authority can require it to be made up at the expense of the frontagers. This would involve the frontagers in a substantial expense which would be avoided if they were able to prove that the street was already maintainable by the inhabitants at large. It would be difficult for the authority to deny this if they had already recorded it as such.

The very reasons that make the recording of a street important to the frontagers works against the interests of the authority who may well feel that it is preferable to have a list with the least possible number of maintained streets on it. Whilst local authorities have legal duties to carry out certain tasks, whether they actually do so will depend on what benefits they see from so doing, and what forces can be brought to bear on them. Given that having a comprehensive list is contrary to the interests of the authority, it is necessary to look at what action a frontager could take if a street, believed to be maintainable by the public at large, was not recorded as such.

The Public Health Act 1925 provided no formal mechanism for objection to the non-inclusion of a street in the list. However, as frontagers will normally be electors of the authority which prepared the map there are



AUTH786

clearly ways in which political pressure can be brought to bear. Even where authorities do not really want to carry out their legal duties, they will not wish to give the impression that they are actively flouting the law. The practical implication is that a frontager who can provide conclusive evidence that his street is a highway maintainable by the public should be able to persuade the authority to alter the list to include the street. However, where the case is in any way unclear then there is little the frontager can do other than throught the legal procedures that the lists are there to simplify. For example, if the authority make up a street and seek to claim the costs from the frontagers, then the latter may object on the grounds that the street is already maintainable by the inhabitants at large notwithstanding the fact that it is not recorded as such on the list of streets.

In practice many of the potential disputes hinge on the question of whether a street constructed after the Highway Act 1835 has or has not been made up and adopted under the provisions of the Public Health Acts. If it has, then there should be records held by both the authority and the frontagers, and it would be very difficult for the authority not to record such streets. The implication of this is that lists of streets are almost always comprehensive in respect of streets that have been formally adopted under public health powers; whether other streets are so comprehensively recorded is very much more doubtful. There is something of a vicious circle here in that many municipal engineers regard the record as being solely of streets that have been adopted; in many highway offices the record is invariably described as 'the adopted streets record'. Failures to record properly all the highways in the past seems to have led to a belief that not all highways maintainable by the public need to be recorded.

To consider this point it is necessary to look in detail at two questions: what is a highway maintainable by the inhabitants at large and will it invariably be a street?

***Highways maintainable by the inhabitants at large***

The common law description of a highway 'maintainable by the inhabitants at large' was replaced in s.38 of the Highways Act 1959 by the more modern description of 'maintainable at public expense'. The requirement to maintain lists of streets was altered accordingly, and so in this article the more modern, and understandable, version will be used.

At common law, all new highways automatically became maintainable at public expense. However, the Highway Act 1835 introduced the concept of adoption, whereby new carriageways did not become maintainable at public expense until they had been adopted. Adoption required a certificate from the justices that the new road was constructed in a substantial manner. At least in the early days, this did not mean that it had to be paved or even have a gravel surface. The widespread introduction of gravel roads to country districts did not come about until the latter part of the century. Thus it seems likely that for many years it was possible for properly formed earth roads to be adopted.

Alternative methods of adoption later became available through the Public Health Acts. These applied to streets and did require them to be paved before adoption. The widespread adoption of urban streets in later years has given rise to an erroneous idea prevalent among municipal engineers that the descriptions 'maintainable at public expense', 'adopted' and 'paved' have the same meaning. This, of course, is far from the case.

Highways maintainable at public expense will include streets adopted under public health provisions which will also be paved. But there may well be other roads that have been adopted under the powers of the Highway Act 1835 and are only earth roads; it does not follow that all adopted highways are paved. Moreover, there will also be ancient highways (that existed before the 1835 Act) that have never been adopted but which nevertheless are maintainable at public expense. This category also includes most public paths because the common law rule that new highways automatically became maintainable at public expense continued until the National Parks and Access to the Countryside Act 1949. Many of these highways that have never been adopted will have been paved, but most public paths and a significant network of green lane carriageways have not been.

It needs to be noted that within urban districts there were highways for which the county council was the authority, rather than the district council. These were originally the former turnpike roads, later designated main roads, and after 1930 all classified A and B roads. The requirement to list the streets maintainable by the inhabitants at large was not



AUTH787

restricted to those for which the district council had responsibility but also included those maintained by the county council. In fact, it seems to have been the practice to include these in the lists of streets, possibly because these important roads would invariably be paved. In practical terms, of course, it makes very little difference because there is rarely any question concerning the legal status of classified roads.

*Streets*

Surprisingly, the meaning of a street is far from clear. There are, in fact, different meanings at common and statute law. In the common law sense, street has its normal meaning of an urban thoroughfare lined with buildings. However, in the Public Health Acts the word was given a wider definition which includes any highway. It follows that a literal interpretation of the statutory meaning leads to the conclusion that unpaved country roads are defined as streets, as are public paths.

Whether this is, in fact, the case has never been satisfactorily decided. It is not proposed to consider the question in detail here as it has been fully discussed elsewhere in this Review.[2] The key point to note is that given the uncertainty over what is meant by a street, it is open to considerable uncertainty as to whether a list of streets should include highways other than urban streets in the normal sense. It should also be noted that the provision for the surface of streets maintainable at public expense to vest in the highway authority was also unclear in its application. There must be doubt as to whether before 1959 such highways as green lanes or rural public paths vested in the highway authority if they fell within an urban area. It will be seen that this uncertainty was not fully cleared up until the consolidation brought about by the Highways Act 1959, despite the fact that all rural highways quite clearly vested in the county as highway authority after the implementation of the Local Government Act 1929.

When considering a list of streets it needs to be remembered that the person compiling it may have thought that only adopted highways were maintainable at public expense, and that only paved highways could be adopted; or may have thought that the term street excluded highways outside built-up areas, or may have wanted to protect the authority by including only those streets where there was absolutely no doubt that they were maintainable at public expense. In practice, examination of the lists shows that in almost every case the streets shown are those with a paved surface, albeit not necessarily always within built-up areas. Rural public paths or unsurfaced roads are rarely recorded.

Where a highway is recorded on a list of streets it indicates that the highway authority believed that there was no argument that the route was a public highway maintainable at public expense. However, it does not follow that this necessarily means a highway for all classes of traffic. Urban footpaths are frequently recorded if they are paved and have been adopted. As lists of streets do not normally record the rights over them, it is only possible to conclude, from the fact that a street was included, that the authority accepted that it was a highway of some sort.

On the other hand, the fact that many highways maintainable at public expense were not recorded, means that no real conclusions can be drawn from the fact that an alleged public highway was not shown. In practice, of course, this means that urban lists of streets are rarely of much value to rights of way workers who need to prove the status of a highway. Because in practice the streets that are shown are likely to be paved, there is unlikely to be any argument over their status anyhow. Public paths and unsurfaced carriageways are not usually recorded, and no useful conclusion can be drawn where they are not.

**Rural Districts**

It is now proposed to examine the different situation that applied in the rural parts of the country, that is to say all areas that were not within urban districts, boroughs or county boroughs. Under the Local Government Act 1894, all such areas were divided up into rural districts, each controlled by a rural district council.

With the exception of former turnpike roads, the rural districts became the highway authority for all highways in their area.[3] In doing so, they took over from the former highway boards, or where these had not previously been formed, from the parishes which had been responsible for the maintenance of highways since the Middle Ages. The new authorities inherited the powers of the old within the areas where they had operated. As the highway boards had greater powers of improvement than the parishes, these powers only applied within the parishes where a highway board had previously

[2] RWLR s.10.4 pp.23-28

[3] Supra note 1



AUTH788

operated. Under neither of these arrangements had the roads actually vested in the authority, as was the case with streets that lay within urban districts.

However, former turnpike roads were treated differently. They were designated 'main' roads and, since the Local Government Act 1888, had been the responsibility of the county councils. These councils acquired the powers of the former highway boards which allowed them wide powers of improvement. In addition, however, the main roads became vested in the county councils.

*County roads*

The involvement of rural district councils as highway authorities lasted for some 35 years until 1st April 1930 when the Local Government Act 1929 came into force. In simple terms, this transferred the responsibility to the county council for all highways in rural districts for which the district council was the highway authority. The powers which the county council exercised were the same as had previously applied on main roads. This means that the highways that were transferred became vested in the county council, whereas they had not previously vested in the district council. It also meant that the more extensive powers of improvement that derived from the highway boards were now available in respect of all areas and not just those that had originally been subject to highway boards.

The 1929 Act introduced the concept of a 'county road'. A county road was simply a highway for which the county council was the highway authority. This had a significantly different connotation in urban and rural areas.

In urban areas the county council was normally only the highway authority for the classified A and B roads. The county roads were thus the more important links and were to be distinguished from the more local roads and streets for which the district was the authority.

In rural areas, however, all highways that were maintained by the public had been transferred to the county. It follows that the term county road should in theory denote not only all carriageways, whether surfaced or not, but also all public paths. However, whilst this may be the position in strict legal terms, it does not necessarily follow that those who actually dealt with highways used the term in that way. In practice, it was almost invariably the case that a county road was taken to mean a carriageway for which the county was the highway authority.

It is possible that this usage arose from the rather obscure way in which the 1929 Act was drafted, at least to non-lawyers. S.29 of the Act specified that all roads for which the county council became the highway authority by virtue of the Act should be termed county roads. The Act also specified that the county council should become highway authority for all the highways for which the rural district councils had been previously responsible, so where these were roads they must have become county roads. The problem lies in what is meant by a 'road'.

In normal usage a road implies a vehicular route; a public path is not normally regarded as a road. But the definition of terms in the 1929 Act[4] defines a road as 'any highway maintainable by the inhabitants at large'. As public paths were highways and almost all of them were maintainable by the inhabitants at large, it follows that for the purposes of the 1929 Act they are roads. Thus by virtue of s.29 they became county roads.

Whilst the position seems clear enough in a legal sense, albeit somewhat obscurely worded, the correct meaning of a county road never seems to have been adopted by the staff of county surveyors' departments who actually administerd the highways. They invariably used the term county road to mean a carriageway for which the county was the highway authority. Unlike the municipal engineers' idea of a street, a county road did not have to be surfaced but it certainly excluded footpaths and bridleways.

In a legal sense, the concept of a county road disappeared with the Local Government Act 1972. Nevertheless, over twenty years later the term is still in regular use among those county staff generally working in rural areas. The usage remains that a county road is a carriageway maintainable at public expense, and certainly quite different from a footpath or bridleway.

**Handover Maps**

The 1929 Act created a major change in the responsibilities of county councils. From being responsible only for a limited network of main roads, they overnight inherited a vast network of local roads and paths. There were very obvious practical advantages in having a record of which routes were their

[4] S.134



AUTH789

responsibility. Thus it appears that most counties set about preparing a record map around 1930. The county would, of course, have to rely on information from the rural districts as to which roads were to be recorded and the passing over of this information seems to have been part of the handover process. For this reason, the first maps from around 1930 are frequently referred to as the handover maps.[5] As a general rule, these maps were subsequently updated at regular or irregular intervals and usually became referred to as the county roads maps.

It is important to note that these were internal working documents. Unlike the lists of streets in urban areas, there was no requirement for the maps to be open to public inspection. The practice varied with some authorities being quite secretive about the maps, whilst others produced coloured versions for public sale. Either way, there was no opportunity for the public to challenge the accuracy of the map. Given that the document was an internal one, it was clearly open to the county surveyor to include on the map whatever classification of routes was found to be most convenient.

In practice it seems clear that in preparing the map, the surveyors' concept of a county road was used rather than the strict legal definition. In other words, the map was intended by the surveyors to record all carriageways that were maintained by the public, whether surfaced or not, but not to include public paths.

**Understanding the county roads map**

In considering a county roads map the starting point should be that those who prepared the map intended it to be a record of all carriageways that were maintained by the public. As the council was the highway authority for these roads and the roads vested in them, those who prepared the maps should have had detailed knowledge of the extent and status of the roads in question, and thus, the maps should form cogent evidence that vehicular and other rights existed.

On the other hand, it has to be accepted that the maps were purely internal documents[6] and the public had no mechanism of challenging what was shown on them. Thus they cannot be regarded as conclusive and there is always a possibility that a mistake might have been made. In particular, because the maps were primarily to record the roads that vested in the council rather than the rights over them, there might well have been some mistakes in the classification. It is possible that a highway recorded as a county road, and hence as a carriageway, might actually have been a bridleway or even a footpath; the record would still be accurate in depicting a highway that vested in the authority. Nevertheless, it is submitted that the recording of a county road should be regarded as indicating a belief of the highway authority that vehicular rights existed.

What if an alleged highway is found to be not recorded on the county roads map? Unlike the urban lists of streets, it seems to have been normal for county roads maps to record all carriageways, whether surfaced or not. So where a route is not shown it would appear to indicate that the authority was not aware of a carriageway maintainable at public expense. As highways vested in the authority, the omission must be important evidence that no right existed. However, this conclusion has to be tempered by two caveats.

Firstly, the county roads map was intended to record roads that were maintained by the public. There are, of course, also public highways that are maintained by private individuals by reason of tenure, inclosure or prescription. These would not be county roads and thus might not figure on the county roads map, although some counties did include them in a different colour so that they were not forgotten.

Secondly, county roads maps were not intended to record public bridleways or footpaths. Thus the omission of a route from the county roads map, albeit showing that it was not regarded as a carriageway, does not in any way indicate that it was not regarded as a public path.

**The definitive map**

Definitive maps of public paths and certain other highways were required to be produced by the National Parks and Access to the Countryside Act 1949. Although a few counties, districts and parishes seem to have prepared internal records of public paths before the 1949 Act, they appear to be the exception and not many of these records survive. In practice the preparation of the maps was a slow process, but in most areas was completed during the 1950s. Definitive maps are, or course, central to the law relating to public rights of way and as such have been the subject of numerous articles in this Review.[7] Here it is intended merely to note the effects

[5] Memorandum LGA 9 setting out the practical implications of the Local Government Act 1929, and the step by step action to be taken by councils, shows the care with which the powers and responsibilities were to be transferred. However, it did not specify the need to prepare maps, though most counties did prepare them.

[6] In contrast to the list of streets required by the Public Health Act 1925, s.84

[7] See generally RWLR s.8.2



AUTH790

of the pre-existing records of highways on the preparation of the definitive maps, particularly in respect of the recording of routes with vehicular rights.

The Act required Roads Used as Public Paths (RUPPs) to be recorded. A RUPP was a highway other than a public path (in other words a public carriageway) that was "used by the public mainly for the purposes for which footpaths or bridleways are so used".[8] It seems clear that the intention was that unsurfaced public carriage roads should have been classified as RUPPs.

The definition of a RUPP took no account of whether the way was recorded in any other place; there seems no reason why the fact that a route may already have been recorded in a list of streets or on a county roads map should have had any bearing on whether it was also recorded on the definitive map. However, it appears that some surveying authorities took the line that carriageways already recorded as such should not be recorded again on the definitive map. The different records systems in urban and rural districts has thus tended to affect the ways in which routes were recorded.

County councils were required to produce definitive maps for the whole of their areas, whether in urban or rural districts. However, in preparing the maps they were required to obtain information from the district councils. Although the requirement was the same in urban and rural districts, the fact that the county council was the highway authority for minor highways in rural but not urban districts seems to have affected the way in which the returns were treated.

In urban districts, the district council was the highway authority for all public highways other than county roads. It follows that the district would be responsible for public paths as well as any carriageways that might rate as RUPPs. It seems likely that, although the county was supposed to check the information submitted, in urban districts they would generally have had to accept what the district council said as they would have had no way of knowing whether it was correct or not.

Although district councils already had lists of streets, these were normally restricted to paved highways. In most instances these would not be eligible for inclusion on the definitive map and so the question of whether routes that were already recorded should be recorded again would not normally arise. In particular, potential RUPPs would not normally be on the list of streets and so district councils seem to have had few inhibitions about recording them.

There were paved public footpaths in addition to those alongside roads in many towns. These would clearly have met the definition of the 1949 Act and should have been recorded on the definitive map; there was no rule that urban footpaths should be excluded. In practice, though, these almost invariably seem to have been excluded. Modern housing layouts since the 1950s have favoured such footpaths and very many have been constructed and adopted as public highways; again these never seem to be added to the definitive map. It appears likely that authorities both at the time of the definitive map and afterwards have taken the line that paths shown on lists of streets need not be recorded on the definitive map; it will be seen that a similar approach was adopted in rural areas in respect of county roads.

The position in rural districts was significantly different from that in urban districts in that the county council was the highway authority for all highways, including the ways required to be shown on the definitive map. The county was thus in a position to take a much more critical look at the information supplied by the rural district councils. It seems that in some counties at least, standardised criteria were applied across the county and significant alterations made to information supplied by the districts. Frequently, it will be found that routes that were recorded by the districts as public paths or RUPPs, but which were also recorded on the county roads map, were not taken forward to the definitive map. A result of this is that there are often more RUPPs in former urban district areas than in rural districts.

The policy of not recording routes on both the county roads map and the definitive map throws an interesting light on what the counties meant by the county roads map. In recent years, some people have sought to argue that as the legal definition of a county road includes all public paths, then the recording of a county road indicates only that the county surveyor believed there was some public rights but not necessarily any higher than on foot. This argument not only ignores the invariable use of the term county road within county surveyors' departments, but also fails

[8] National Parks and Access to the Countryside Act 1949, s.27(6)



AUTH791

to explain why it was the practice not to record on the definitive maps any routes that were already on the county roads map.

Let us consider the hypothesis that those who drafted the county roads map intended to record all highways maintainable at public expense, including public paths. If we accept this, it means that those who maintained the county roads maps knew that many of the roads depicted were footpaths or bridleways. But as the same people were responsible for drawing up the definitive map, it raises the obvious question as to why these known paths were not then included on the definitive map. Meanwhile, thousands of miles of additional paths were depicted on the definitive map that had never figured on the county roads map. If it is argued that the county roads map was intended to record all known highways, then where did all the additional ones come from? They can hardly have been suddenly discovered, bearing in mind that there was in most cases evidence of previous maintenance of features such as bridges. But even if they had suddenly been found, if the county roads map was supposed to show all highways, then why were not the newly discovered paths added as county roads?

The simple fact is that the hypothesis that county staff intended to use the term county road in its strict legal sense does not stand up to argument. All the indications are that the term was, and still is, intended to mean a public carriageway and not to include either a footpath or a bridleway.

**Consolidation of highways law**
*Highways Act 1959*
In most areas the work on the definitive maps was completed before the coming into force of the Highways Act 1959. The law of highways was still significantly different between urban and rural areas. Although the basic law in both areas derived from the Highway Act 1835, urban authorities relied heavily on powers from the Public Health Acts whilst in rural areas the counties relied more on the powers given to the Victorian highway boards.

The Highways Act 1959 brought these separate strands together. A common approach was adopted for all highways that were maintainable at public expense, this description replacing the former description of maintainable by the inhabitants at large, which was a relic of the days of statute labour. All such highways were to vest in the highway authority,[9] thus removing any lingering doubts as to whether highways in urban areas that were not streets were so vested. In a similar fashion, a consistent set of powers for maintenance and improvement was specified for all highways, irrespective of whether they were streets or not.

However, in the matter of records, the distinction between urban and rural districts was retained. The requirement for lists of streets to be maintained was included in s.38 of the 1959 Act, but as before it only applied in urban districts and boroughs. The doubt as to what a street meant remained.

**Consolidation of highway authorities**
*Local Government Act 1972*
The distinction between urban and rural highway authorities, a feature of highways law since the 1840s, was only finally laid to rest by the Local Government Act 1972. With effect from 1st April 1974, this brought about the most fundamental changes to local government since the Victorian era.

The legislation redrew the local government map, making extensive alterations to boundaries particularly at the district level, where districts were combined to give far fewer but larger authorities. At the same time the distinction between urban and rural districts was abolished. In highway terms, the rural model was adopted throughout, with the county councils taking over all the highways that had previously been the responsibility of the urban authorities.

These changes meant that s.38 of the Highways Act 1959 had to be amended in that the requirement for urban authorities to keep lists of streets no longer had any meaning. A simple solution was found to this in that schedule 21 to the 1972 Act amended the Highways Act 1959 so that all highway authorities now have to maintain records of streets.[10]

The response of the counties was equally simple: in most cases they did nothing at all. Few if any counties appear to have made any attempt to prepare a record of streets for the former rural districts which were in any way consistent with what had been prepared for the former urban districts. The rationale for this seems to have been that there were already county road maps and these could now be regarded as the lists of streets. Unfortunately,

[9] S.226

[10] The requirement is now to be found in the Highways Act 1980, s.36.



AUTH792

some countries still do not appreciate the implications of this, and remain secretive about the records or try and hide behind the claim that they are only internal records. This is, of course, no longer true. If the county roads map constitutes the list of streets, then it is a document which the authority have prepared under statute and which the public are entitled to inspect. The problems faced by those who allege that routes should have been, but were not, included are precisely the same as arose previously in urban areas and which were described above.

As the years have gone by, the original records have tended to wear out and in many cases new maps have been prepared including all the routes shown on the county roads maps and on the urban lists of streets. Few staff now appreciate the quite different origins of these two types of records and the fact that the criteria for preparing them were originally quite different in urban and rural areas.

**The way forward**

It is difficult to avoid the conclusion that the records kept by most highway authorities are seriously inadequate for the task in hand. They are generally a consolidation of the records of different authorities, prepared under two quite different legal frameworks in urban and rural areas respectively. Moreover, even the legal requirements themselves were unclear and open to different interpretations by the people preparing them. Although it might be expected that each authority would have applied at least a broadly consistent approach across its area, this assumption is only helpful if the old boundaries are known. Now a new generation of local government officers, who never knew the old authorities, is coming to the fore and the folk-knowledge of the old areas is fast disappearing.

The situation is made worse by the inevitable creeping in of simple drafting errors. Records of the location of highways are best kept on a map base and these are normally hand-drawn. The accuracy of these maps can only be maintained by hand corrections, a system prone to errors. Eventually the maps wear out and need to be replaced. The only way to do this is by transcribing the information onto a new map. As metric scales replace imperial scales there is every chance that the new map will not be to the same scale as the old and will probably be a new survey showing different base features. To transcribe information accurately from one map to another requires a level of cartographic draughtmanship which is only available within a few authorities. The practical result is that redrawn maps frequently show different information from the original maps from which they were copied.

This is a particular difficulty where local government is reorganised into smaller units, or where boundaries are moved. Having a single map may just about be feasible where there is only one authority. But if an authority is divided then each will need a copy. The only practical way of doing this is to transcribe the information with all the attendant problems. As current proposals for reorganisation almost all involve splitting authorities into smaller units, there are undoubtedly major problems ahead.

There is an important moral to be drawn from this. Where maps are redrawn it is vital that original sources are retained so that any discrepancies that arise in the future can be resolved by reference to the originals. This is particularly important when a reorganisation is taking place; invariably this is taken as an opportunity to dispose of unnecessary papers whereby vital documents can easily be lost. At an early stage in the reorganisation, the key documents should be identified and steps taken to ensure their safe-keeping, for example, in the county records office.

In the longer term a new approach to the keeping of highway records is urgently needed. As we move towards the new millenium and the information superhighway, more and more local authorities are introducing computer-based geographic information systems (GIS). Is it too much to hope that the effort can be made to transfer all the disparate highway records to a GIS and to carry out the necessary checks to ensure that the data is as consistent and accurate as possible, and readily available to the public? This article started by pointing out the importance of accurate records to a highway authority; the accuracy of the records in many authorities means that they are constantly open to challenge on the legality of their actions whether they have failed to maintain a highway which is not shown on the records and have therefore not fulfilled their statutory duty; or whether they have maintained a route which is shown on the records but should not be shown and therefore their action is *ultra vires*. In our increasingly litigious society, authorities with inaccurate highway records are indeed living dangerously.



AUTH793

## Cookies on GOV.UK

We use some essential cookies to make this website work.

We'd like to set additional cookies to understand how you use GOV.UK, remember your settings and improve government services.

We also use cookies set by other sites to help us deliver content from their services.

Accept additional cookies | Reject additional cookies | View cookies (/help/cookies)





Guidance

# Wildlife and Countryside Act

# 1981 - Definitive Map Orders: Consistency Guidelines

Updated 16 March 2021

## Contents


1. Introduction
2. Putting The Guidelines Into Practice
3. Case Law
4. Wildlife And Countryside Act 1981 and The Definitive Map and Statement
5. Dedication / User Evidence
6. Highway Records and Related Documents
7. Inclosure Awards
8. Tithe Commutation Documentation
9. Turnpikes
10. Railway And Canal Deposited Plans
11. Part 1 - Finance Act 1910

12. Farm Survey Records
13. War Power Closures
14. Maps (Commercial, Ordnance Survey, Estate Etc) and Aerial Photographs
15. Glossary of Abbreviations
16. Contact Details



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines

**Please note the future of this document is under review and no revision of its contents will be made in the meantime. These guidelines were last reviewed in April 2016 and so should not be relied on and you should seek your own legal advice.**

# 1. Introduction

## 1.1 How to use these Guidelines

1.1.1. These Guidelines provide information and references to resources and relevant case law to assist in the interpretation and weighing of evidence on Definitive Map Orders (DMOs).

1.1.2. The Guidelines are divided into topic or document related sections. Before referring to a particular section of the Guidelines, it is recommended that time is taken to familiarise with 'Putting the Guidelines into Practice', Section 2. This sets the context in which Inspectors approach DMOs and provides helpful background to the type of guidance available and how it should be applied

1.1.3. Each subsequent Section, where appropriate, begins with a list of relevant reference material from guidance which must be applied, to directory and advisory guidance, followed by a list of other publications on each subject. Most of this material is available in the public domain: where this is not the case, links are provided, including for the referenced Rights of Way Advice Notes.

1.1.4. The Guidelines refer to a number of publications and articles, this should not be taken to imply that the Inspectorate endorses any of them. Although they all contain some useful advice, it should be borne in mind that they have often been written from a particular standpoint. Moreover, in some cases the advice may have been overtaken by later research. In the circumstances, the relevance of such advice and the weight to be attached to it in any particular case has to be carefully assessed in the light of the circumstances prevailing at the time.

1.1.5. Each DMO case is considered by the Inspector on its own merits taking into account the relevant tests laid down by statute and the evidence presented in each case. It is a matter of fact that, whilst there may appear to be similarities between cases, the particular combination of evidence in each case is unique.

1.1.6. It is important to bear in mind that whilst the Inspector, in any given case, will determine the weight to attach to each individual piece of evidence, they will be considering the evidence together, as a whole. Having evaluated all the evidence, the Inspector's Decision will be reached on the balance of probabilities.

1.1.7. Exceptionally the Inspector may be convinced that it is appropriate to depart from the Guidelines. However, in such cases their Decision will include an explanation of the reasoning which led them to this conclusion.

## 1.2 What the Guidelines cannot do

1.2.1. The Guidelines are neither definitive nor exhaustive and do not set any precedent. They are subject to change, whether by the application of new case law, or as a result of new understanding following academic research.

# 2. Putting The Guidelines Into Practice

## 2.1 Reference Material

### Departmental Guidance

Letter from the Head of Countryside Division (dated 24/08/98) on ‘unclassified roads’

### Other Publications

Halsbury’s Laws of England (Volume 21 ‘Highways’) Fourth edition

## 2.2 The Hierarchy of ‘Guidance’

### Introduction

2.2.1. The law and facts of a case largely determine the preparation and making of an Order, the consideration of representations, and the eventual decision on the Order. Mandatory, directory and advisory considerations generally give an Inspector little latitude in exercising judgment.

- **Mandatory Guidance:**Statute law and case law where the judgment is a binding precedent to be disturbed only by a higher court of record (see Section 3 ‘Case Law’).
- **Directory Guidance:**Other judgments where the reasoning pursued clearly appears to have a bearing on the matters before an Inspector (see Section 3 ‘Case Law’), Regulations and Schedules.
- **Advisory Guidance:** Circulars and Advice Notes that explain procedures and government policy and which may assimilate the outcomes of advisory bodies and consultations.

2.2.2. There is often other reference material which can assist, but does not bind, an Inspector. It falls into two broad categories:

- **Explanatory:** Subject papers by authors of recognised legal and/or academic standing and research papers into social and environmental aspects of highways.
- **Of interest:** Articles on behalf of statutorily recognised user groups or affiliated organisations or interested parties and anecdotal pieces, often in the form of recorded journeys or local histories.

### Statute Law

2.2.3. Statute law is law arising from Acts of Parliament or any regulations arising from an Act. Statute law also includes byelaws made by any local authority.

### Case Law

2.2.4. Case law arises from judicial judgments handed down by the various Courts of Record (principally the High Court, Court of Appeal and the Supreme Court (formerly the House of Lords)) The judgments provide a legal framework as to the interpretation of statute law. (see

Section 3 ‘Case Law’).

**Regulations**

2.2.5. Statutory Instruments are secondary, or subordinate, legislation made under authority contained in Acts of Parliament. Regulations are Statutory Instruments.

**Circulars and other Departmental Guidance**

2.2.6. Circulars and Departmental Guidance set out the policy of Government departments and offer a view as to the interpretation of legislation. The main guidance in respect of rights of way is provided by the Department for Environment Food and Rural Affairs Circular 1/09 or in Wales the Welsh Office Circular 5/93 on ‘Public Rights of Way’

**Other Publications**

2.2.7. There is a plethora of articles, books etc on rights of way issues. These are often produced by authors who are recognised as having considerable specialist professional knowledge of rights of way matters. Experts do not always agree amongst themselves and when tested in the Courts their opinions do not always survive (see Part 3). A view in an article should not be accepted as authoritative unless it has received judicial approval. Expert evidence deserves due respect, but Inspectors should always use their critical judgment in considering such evidence.

2.2.8. A more localised type of expertise may legitimately be claimed by those who have researched evidence relating to a particular Order. These individuals may appear at a hearing or inquiry on behalf of campaigning organisations or as concerned individuals. However, their contributions have to be critically scrutinised and assessed as with all other evidence.

2.2.9. Some enthusiasts now share their opinions on the internet or in informal publications. This widespread dissemination can lead to several witnesses at a hearing or inquiry drawing on the same source for their opinions. Whether they have the same source can sometimes be usefully explored but, whatever their source, the repetition of opinions does not affect their factual or intellectual merit, one way or the other.

2.2.10. British literary heritage is rich in personal recollections of 18th and 19th century travellers. Informal local histories may also be tendered in evidence. Such works should not generally be relied upon as primary sources of evidence. Nevertheless they not infrequently provide useful corroboration of evidence gleaned from documents of superior provenance.

**Concluding Comment**

2.2.11. Inspectors must make their decisions on the evidence of fact put before them, within the framework of Statute Law as interpreted by the Court and with the assistance of other reputable guidance.

## 2.3 General Considerations

**Consideration of Evidence**

2.3.1 An analysis of hearing or inquiry evidence usually comprises three stages: the identification of fact, the derivation of an inference from that fact, and an assessment of the evidential weight of the inference.

**Identification of Fact**

2.3.2. When a document is introduced at a hearing or inquiry, the facts it contains become [inquiry] evidence, whether relied upon by the witness or not. Consequently, it is necessary to consider the portion of the document on which the witness relies, not by itself, but in context. Similarly, it is necessary to study maps carefully to see whether the feature relied upon is supported by other information on the map. As Mummery L J said in O'Keefe (O'Keefe v SSE and Isle of Wight Council [1997]) … it is important to read all the documents… as a whole and not to examine passages taken out of context. If appropriate, Inspectors should attempt to resolve any apparent inconsistency by questioning the witness who introduced the document. Such additional evidence can often be of value to the Inspector later, when considering the issues. Section 32 of Highways Act 1980 (HA 80) indicates how the Inspector should evaluate a document as a whole and determine the weight to give to the facts derived from it.

**Inference**

2.3.3. More often than not documentary evidence will not supply a seamless array of facts leading to a confident conclusion. In such cases, gaps in evidence may be bridged by the use of one or more of a number of legal presumptions. One of them is contained in the maxim: Once a highway, always a highway (Dawes and Hawkins [1860]). This presumption must prevail unless some legal event causing the highway to cease can actually positively be shown to have occurred. Another – what is termed the 'presumption of regularity' - can be invoked where there is a lack of evidence on whether proper legal procedures were followed.

2.3.4. An approach to the application of an inference derived from evidence was suggested by McCullough J in 'West Yorkshire MCC v Harry Brown' (1983). The decision-maker should give … careful consideration of what should prima facie be drawn from a fact and then see whether, upon consideration, this should be rebutted or whether it should ripen into an inference upon which further conclusions may in turn be based. However any inference must be tested against other hearing or inquiry evidence. No matter how reasonable the inference drawn, it is generally no more than a rebuttable presumption.

**Evidential Weight**

2.3.5. When all the material considerations have been identified, the weight attaching to the evidence as a whole must be assessed. Most recent case law guidance is to be found in the Hollins v Oldham 1995 (C94/0206, unreported) judgment.

2.3.6. There is a distinct and important difference between the 'cumulative' and 'synergistic' approach to the weighing of evidence. Under the cumulative approach a number of relatively lightweight pieces of evidence (e.g. three commercial maps by different cartographers, all produced within the same decade or so) could be regarded as mere repetition. Thus, their cumulative evidential weight may not be significantly more than that accorded to a single map. If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.

2.3.7. Section 32 of the Highways Act 1980 requires any court or tribunal to which documentary evidence is adduced to take such evidence into consideration "before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place". It is also required by that section to give such weight to the

document it considers is “justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it was produced.”

2.3.8. Section 32 is declaratory of the common law. Inspectors should follow it in how they treat documentary evidence. In assessing the value of a document, Inspectors should, for example, take into account evidence of the facts surrounding its creation and its provenance such as, in the case of a private map, the reputation of the person who produced it. The surrounding circumstances may point to a document being of some weight.

2.3.9. For example, the document may have been prepared by someone acting in a public capacity, the procedures for producing it may have involved external checks or public participation, or what was recorded may be the result of a person acting against his interest. A document may not on its own be conclusive of the status of a way. This may, for example, be because it was prepared merely to record the physical existence of the way or who was responsible for maintaining it. Documentary evidence will often support other such evidence or user evidence and so ought not to be considered in isolation.

2.3.10. In general, the weight to be attached to documentary evidence is for the Inspector, subject to the administrative law test of reasonableness.

**Balance of Probability**

2.3.11. Once all of the evidence has been individually assessed, the ‘balance of probability’ test demands a comparative assessment of the evidence on opposing sides. This is a complex balancing act, involving careful assessment of the relative values of the individual pieces of evidence and the evidence taken together. It is the infinitely variable nature of this assessment which makes WCA 81 case decisions unique.

**Written Evidence**

2.3.12. It is unusual for all statutory and other contributors of evidence to be able to appear at a hearing or inquiry. They may present written representations in the form of Statutory Declarations, Witness Statements made to a solicitor, User Evidence Forms, statements which would serve as a proof of evidence had the author appeared (often supported by the documents relied on) or simply letters to The Planning Inspectorate or the Inspector. Provided that these documents pass the test of relevance they must be examined for material considerations. The latter then form part of an Inspector’s post-hearing or inquiry deliberations. The evidential weight attaching to the various types of evidence can vary. Legally attested documents will carry more weight than other statements. The need for critical scrutiny of User Evidence Forms is addressed in ‘Dedication.’ Other written representations should be subjected to similarly disciplined scrutiny. However, evidence tested in cross-examination is best evidence. Untested post-hearing or inquiry submissions should normally be accorded less weight.

## 2.4 Topic Related Guidance

**What is a Cross Road?**

2.4.1. In modern usage, the term “cross road”/“crossroads” is generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term. These include a highway running between, and joining, other highways,

a byway and a road that joined regional centres. Inspectors will, therefore, need to take into account that the meaning of the term may vary depending on the road pattern/markings in each map.

2.4.2. In the case of Hollins v Oldham [1995] which considered this matter, Judge Howarth stated:

“Burdett’s map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used upon payment of a toll and, secondly, other types of roads which are called cross roads. That does not mean a place where two roads cross (as one would understand it to be in this case) but a road called a cross road.”

2.4.3. An Inspector will need to consider the term “cross road” in relation to each particular map or document. That a cross road appears on an old map or document does not automatically indicate public rights: the designation of a way will depend on analysis of the particular map and the categorisation of other ways shown on the map.

2.4.4. In Hollins v Oldham the Judge analysed the two categorisations and concluded that a “cross road” must mean a public road for which no toll was payable, stating: “This latter category, it seems to me, must mean a public road in respect of which no toll is payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they were produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use.”

2.4.5. The Judge further acknowledged that just because a mapmaker regarded a way as a public right of way of a particular status does not mean that he was necessarily correct. He stated: “Pingot Lane must have been considered, rightly or wrongly, by Burdett as being either a bridle way or a highway for vehicles.”

2.4.6. Therefore, in reaching a conclusion in relation to a particular piece of evidence, it is necessary to consider it with the totality of all other relevant evidence, as illustrated in the judgement: “The whole of the documents have to be examined to assess their reliability. It seems to me that I have to assess each piece of documentary evidence to see how far I can rely upon it. This applies just as much to official documents such as the definitive map or ordnance survey sheets or tithe surveys as it does to other records such as commercially produced maps. They have all been produced by human beings and are so liable to error to some extent.”

2.4.7. In considering documentary evidence, the recording of a way as a cross road on a map or other document may not be proof that the way was a public highway, or enjoyed a particular status at that time. It may only be an indication of what the author believed (or, where the contents had been copied from elsewhere that he accepted what the previous author believed). In considering such a document due regard will not only need to be given to what is recorded, but also the reliability of the document, taking full account of the totality of the available evidence in reaching a decision.

**Named Highways**

2.4.8. It is sometimes asserted that a named highway is probably a public highway. One strand of the argument runs like this. One of the requirements of Section 69 Highways Act 1773, was that all 'common highways' had to be named before indictment for obstruction or disrepair could take place. This requirement continued in Highways Act 1835. As private roads were not liable in this way, they did not need to be named. It therefore follows that a named way is probably a public highway.

2.4.9. Inspectors may have some difficulty with this argument. Although the statutory element is probably correct (supporting evidence would be required), it is a matter of fact that nowadays many public highways are not named and some private roads are. Furthermore, road names, like place names, can be corrupted over time, or even disappear completely, and new names appear through local usage. These new names would have no legal import but, nonetheless, they may have found their way onto OS maps and into List of Streets. (Section 36(6) of the Highways Act 1980 requires every highway authority to make and keep up to date, a list of streets within its area which are highways maintainable at the public expense.)

2.4.10. In summary, the arguments that a named highway is probably a public highway, or, at least, that its naming carries some inference of public status, should be thoroughly tested. Of themselves, they are not persuasive evidence.

**Unclassified County Roads (UCR)**

2.4.11. This classification has no legal standing but it carries some inference that the public may use the highway with vehicles. Extant advice is that 'all other relevant evidence must be taken into account' (see letter from the head of Countryside Division dated 24 August 1998).

**Administrative Boundaries**

2.4.12. On the Definitive Map, some long and apparently continuous highways change status at administrative (e.g. parish/community) boundaries, when common-sense suggests they should not. An Inspector may well meet a situation where an Order highway continues into the next administrative area and be invited to accord it the status already awarded there. An Inspector should not feel bound to do so. It would not be safe to draw any firm inference from the awarded status without knowing the diligence of the procedure leading to its award. There was sometimes considerable inconsistency between parishes' diligence during the creation of the Draft Definitive Map. If, however, the section under consideration continues at both ends as a public highway of the same description, and if there is no other access to the mid-section, and if the ends lie in different parishes, a more firm inference may be drawn. It is a question of considering all the relevant evidence (see also Eyre v New Forest Highways Board 1892).

**Rural Culs-de-Sac**

2.4.13. The courts have long recognised that, in certain circumstances, culs-de- sac in rural areas can be highways. (e.g. Eyre v New Forest Highways Board 1892, Moser v Ambleside 1925, A-G and Newton Abbott v Dyer 1947 and Roberts v Webster 1967). Most frequently, such a situation arises where a cul-de-sac is the only way to or from a place of public interest or where changes to the highways network have turned what was part of a through road into a cul-de-sac. Before recognising a cul- de-sac as a highway, Inspectors will need to be persuaded that special circumstances exist.

2.4.14. In Eyre v New Forest Highway Board 1892 Wills J also covers the situation in which two apparent culs-de-sac are created by reason of uncertainty over the status of a short, linking section (in that case a track over a common). He held that, where a short section of uncertain status exists it can be presumed that its status is that of the two highways linked by it.

# 3. Case Law

## 3.1 Introduction

3.1.1. The principal sources of the law in England and Wales are statute law and common law. The major part of common law is contained in the accumulated decisions of judges, often referred to as case law. An Inspector may be bound by it. It is therefore essential that he/she be aware of potentially relevant judgments. The following general guidance may assist.

**Judicial Precedence**

3.1.2. Decisions of "courts of record" are binding on all inferior courts and tribunals. In terms of domestic law, the principal courts of record are the High Court, the Court of Appeal and the Supreme Court. A higher court of record binds the decisions of a lower court of record. Decisions have immediate effect. They apply during any period in which an appeal could be lodged or, having been lodged, is pending.

3.1.3. An Inspector is bound to follow the decisions of all courts of record, but is not normally bound by decisions of the County or Magistrates' Courts ('stopping up' decisions are obvious exceptions). Whilst not binding, decisions by courts other than those of record may be 'persuasive'. The weight to be attached to them will depend on the circumstances. Inspectors are not bound by another Inspector's decisions. These are frequently quoted at inquiry but do not set any precedent. It is often the situation that the circumstances in the case are somewhat different.

3.1.4. A past decision of a court of record is binding on a present case (sometimes termed 'instant' case), only to the extent that the facts are comparable. If the facts in a present case are materially different, an Inspector may reach a different decision, but should explain why the apparent precedent has not been followed, i.e. distinguish the present case from the precedent decision. If there are extant two conflicting decisions of the High Court (both of which are, in principle, binding on inferior courts), an Inspector is entitled to choose which to follow.

**Judicial Precedents etc**

3.1.5. A judgment will usually follow a fairly standard sequence. The issues raised are first described and the relevant statute law is rehearsed. There then follows the judge's reasoning. This may contain extensive quotations from judicial precedent and include personal opinion. The decision which follows will be binding in respect of the issue(s) addressed.

3.1.6. In some cases e.g. R v SSE ex parte Andrews 1993 (see Section 7 'Inclosure Awards'), the point at issue may be widely applicable. The decision will therefore be binding in all cases where the issue arises. In other judgments, e.g. Dunlop v SSE and Cambridgeshire County Council 1995 (see Section 7 'Inclosure Awards'), the decision may be specific to a particular issue and is therefore binding only in relation to that. However, in the reasoning, a judge may offer opinions which appear to be more widely applicable. Such opinions can be influential

beyond the confines of the actual decision if they are central to it. Other opinions expressed may be obiter dicta (incidental statements made in passing). Such opinions are not legally binding, but as they represent the view of a distinguished judge they should normally be followed. Judicial precedents quoted with approval in the judgment must, where relevant, be followed by an Inspector. As a general rule, the more senior the judge or court, the more persuasive the opinion.

3.1.7. A further consideration is that many judgments which had previously withstood the test of time have now been overtaken by, or absorbed in, more recent judgments. If witnesses inadvertently seek to rely on somewhat dated judgments they should be invited to consider whether later judgments affect their case. Fortunately, overtaken or absorbed judgments are usually identified in the later judgments and the way and extent that they have influenced it are identified

**Relevance**

3.1.8. Case law should be the subject of legal submission, not given in evidence and subject to cross-examination. Witnesses will sometimes introduce case law which does not read across to the case before the Inspector. On other occasions extracts may be quoted which are taken out of context and inappropriately used to suit a particular argument, or partial quotes used which disguise or distort the full meaning. An Inspector should always try to obtain full copies of judgments from someone quoting case law, or at least a sufficient extract to see the quotation in context. Its production may also help informed cross-examination.

**Availability of Full Judgments**

3.1.9. Identification of relevant case law in these guidelines is achieved from three sources.

- 'Leading Cases' i.e. those cases considered to be most useful are identified in each topic-related section. These judgments are essential reading. Inspectors are provided with copies for retention.
- Judicial precedents which are considered to be relevant to the point at issue are often found within 'leading cases'.
- There are a number of legal encyclopaedias, which offer a detailed oversight of the law with comprehensive references. Parties to Orders relying on such material would be expected to produce it at inquiry in sufficient detail.

**Concluding Comment**

3.1.10. Consistent interpretation and application of case law is essential. If an Inspector is aware of relevant case law which the parties show no sign of introducing, at the earliest opportunity and in a neutral manner, attention should be drawn to it. Obviously it will benefit all parties to know the judicial precedents the Inspector anticipates will need to take into consideration.

## 4. Wildlife And Countryside Act 1981 and The Definitive Map and Statement

## 4.1 Reference Material

**Statutes and Regulations**

- National Parks and Access to the Countryside Act 1949
- Countryside Act 1968
- Highways Act 1980, section 31 (HA 80)
- Wildlife and Countryside Act 1981, sections 53, 54 and 66 and Schedules 14 and 15 (WCA 81)
- SI 1993 No.12 – The Wildlife and Countryside (Definitive Map and Statement) Regulations 1993
- Countryside and Rights of Way Act 2000, sections 47, 48 and 49 (CROW)
- Natural Environment and Rural Communities Act 2006, sections 66, 67 and 71 (NERC)

**Case Law**

- Canon v Villars [1878] 8 ChD 415 – private easements
- Eyre v New Forest Highway Board (1892) 56 JP 517 – meaning of 'highway' at common law, culs-de-sac, dedication and maintenance
- R v SSE ex parte Kent County Council CO/2605/93 – not appropriate to use s53(3)(c)(iii) to delete a way which is known to exist but the line is uncertain
- R v Isle of Wight ex parte O'Keefe [1989] JPEL 934 1994, 1996 and 1997 – s53 and s54 'interpreted' and OMA's pre-Order making responsibilities ("O'Keefe 1")
- O'Keefe v SSE and Isle of Wight Council (QBD) (1994) [1996] JPEL 42 ("O'Keefe 2")
- O'Keefe v SSE and Isle of Wight Council (CA) (1997) EWCA Civ 2219, [1998] JPEL 468 ("O'Keefe 3")
- R v SSE ex parte Riley (1989) 59 P & CR 1 – reclassification to bridleway and extinguishment of vehicular rights
- R v SSE ex parte Burrows and Simms [1990] 3 All ER 490 [1991] 2 QB 354 – status of Definitive Map and modification thereof through 'discovery' of evidence Fowler v SSE and Devon County Council [1992] JPEL 742 – recording at a particular status on the DMS does not mean that higher rights could not exist.
- Mayhew v SSE [1992] 65 P & CR 344 – status of Definitive Map and modification thereof through 'discovery' of evidence, suitability and traffic regulation orders
- Lasham Parish Meeting v Hampshire County Council and SSE [1993] JPEL 841 – duly made objections and 'relevance'
- R v SSE ex parte Bagshaw and Norton [1994] 68 P & CR 402 – Schedule 14 appeals - 'subsists or is reasonably alleged to subsist'
- R v SSW ex parte Emery (CA) [1998] 4 All ER 367 – continuation of the Bagshaw debate
- R v Oxfordshire CC ex parte Sunningwell PC [1999] 3 All ER 385 – belief element of 'as of right'.
- Masters v SSETR [2000] 4 All ER 458 (CA) – statutory definition of BOAT
- Trevelyan v Secretary Of State For Environment, Transport & Regions [2001] EWCA Civ 266 – cogent evidence needed to modify definitive map and statement

- Leicestershire County Council v SSEFRA CO/4566/2002 – continuation of the Bagshaw debate and the test to be applied at the confirmation stage; presumption against change
- Todd and another v Secretary of State for Environment, Food and Rural Affairs [2004] EWHC 1450 - burden of proof 'on the balance of probabilities'. With reference to Norton and Bagshaw the decision at Schedule 15 is whether the route subsists. No significantly different view on interpretation or reference to new evidence without an opportunity to comment.
- Burrows v Secretary of State for Environment, Food and Rural Affairs [2004] EWHC 132 (Admin) – 'discovery of evidence'; there must be some new evidence, which, when considered together with all the other evidence available, justifies modification of the Definitive Map and Statement.
- Norfolk County Council, R (on the application of) v Secretary of State for Environment, Food & Rural Affairs [2005] EWHC 119 (Admin) - under section 56, the definitive map is the primary document; if the statement cannot be reconciled to it then the position shown on the map prevails and a degree of tolerance is permissible. Neither the map nor statement is conclusive at review stage; there is no evidential presumption in favour of the map.
- Winchester College, Warden & Fellows Of & Anor R (on the application of) v Food & Rural Affairs [2007] EWHC 2786 (Admin) – for an exception to apply under NERC in relation to an application to record a BOAT the application must comply with the requirements of Paragraph 1 to Schedule 14 of WCA 81.

**Circulars and other Departmental Guidance (available from Government bookshops or on-line)**

Defra Rights of Way Circular 1/09 (https://www.gov.uk/government/publications/rights-of-way-circular-1-09)

General information on rights of way available at:

- www.gov.uk/government/organisations/department-for-environment-food-rural-affairs (https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs)
- www.nationalarchives.gov.uk (https://www.nationalarchives.gov.uk/)
- Welsh Office (WO) Circular 5/93: Public Rights of Way (applicable only to cases in Wales)
- WO Circular 45/90: Modifications to the Definitive Map: Wildlife and Countryside Act 1981 (applicable only to cases in Wales)
- Ministry of Town and Country Planning Circular No.81 1950 covering the Surveys and Maps of Public Rights of Way produced by the Commons, Open Spaces and Footpaths Preservation Society in association with the Ramblers' Association (the Memorandum)
- Ministry of Town and Country Planning Circular No. 91 1950 covering guidance to surveying authorities on action to be taken following completion of surveys
- Ministry of Town and Country Planning Circular No. 53 1952 - Procedural guidance to surveying authorities on DMS preparation procedures

- Ministry of Town and Country Planning Circular No. 58 1953 – Further procedural guidance to surveying authorities on DMS preparation procedures

**Planning Inspectorate Guidance**

Guidance booklet on Procedures for Considering Objections to Definitive Map and Public Path Orders (/guidance/object-to-a-public-right-of-way-order)

Planning Inspectorate Advice Notes (/government/collections/rights-of-way-advice-notes)

**Other Publications**

- 'A guide to definitive maps and changes to public rights of way' (http://publications.naturalengland.org.uk/publication/31038) - Countryside Agency, May 2003;
- 'Rights of Way: A guide to law and practice' by John Riddall and John Trevelyan (published by the Open Spaces Society and the Ramblers' Association) – Section 4 in particular – and the Blue Book Extra on-line resource (https://www.ramblers.org.uk/advice/paths-in-england-and-wales/rights-of-way-law/the-blue-book/the-blue-book-extra.aspx);
- 'Public Rights of Way and Access to Land' by Angela Sydenham – Chapter 5 in particular
- Articles in Section 8 (Recording of Highways) of the Rights of Way Law Review.

## 4.2 Guidance

**Introduction**

4.2.1. Over the years, statutes on rights of way matters have frequently inter-related. Sections 53 and 54 WCA 81 and section 31 HA 80 do so today in relation to Definitive Map Orders. Guidance on the revision of the Definitive Map for England is in Circular 1/09, particularly section 4, and, for Wales, Annex B, WO Circular 5/93.

**Case Law**

4.2.2. There are many judgments dealing with the interpretation of these statutes, most of which build on former judgments. The judgments in R v SSE ex parte Burrows and Simms (1990) and R v Isle of Wight ex parte O'Keefe (1994) provide an overview of the legislation.

4.2.3. The Burrows and Simms judgments can be read in conjunction with WO Circular 45/90, which succinctly deals with the reversal of the judgement in Rubenstein (Rubenstein v SSE [1989]). The Circular, however, does not mention two significant aspects of the judgment, namely confirmation that s53(c)(ii) permits both upgrading and downgrading of highways and that s53(3)(c)(iii) permits deletions from the Definitive Map.

4.2.4. Mayhew confirms that the discovery of evidence under S53(3)(c) does not have to be the discovery of fresh evidence. It held that the meaning of "to discover" is to find out or become aware. This implies a mental process of the discoverer applying their mind to something previously unknown to them.

4.2.5. Lasham amplifies the legal justification for the fact that Inspectors are not empowered to take amenity issues into account in determining definitive map orders.

4.2.6. Bagshaw and Norton arises from a Schedule 14 appeal. It addresses the 'subsists or is reasonably alleged to subsist' issue. The gist of the judgment is that the statutory test comprises two separate questions, one of which must be answered in the affirmative before an Order is made. The two questions are (1) whether a right of way subsists or (2) whether a right of way is reasonably alleged to subsist. The Emery judgment provides further clarification on the "reasonably alleged to exist" question at the Schedule 14 stage.

4.2.7. In the Todd and another judgment, Evans-Lombe J made it clear that only the first question is applicable at the Schedule 15 stage. He concluded that the confirming authority (whether the local authority confirming an unopposed order or the Secretary of State confirming an opposed order) must be satisfied on the balance of probabilities that the right of way subsists. This means that when considering the confirmation of an order, Inspectors are only able to consider whether on the balance of probabilities the right of way subsists.

4.2.8. An article in Section 8 of the RWLR entitled 'ex parte Bagshaw ex parte Norton' addresses the question of whether an Order based on presumed dedication should be made under s53(3)(b) or s53(3)(c)(i). Normally this would only be of concern when considering whether an Order is properly made. However, by inference the Bagshaw judgment appears to accept that either sub-clause is an acceptable vehicle in these circumstances. Pill J in O'Keefe No.2 appears to agree.

4.2.9. The O'Keefe judgments result from what was, in effect, an assault upon the legality of the Definitive Map process in general and sections 53 and 54 of WCA 81 in particular. They provide sound guidance on a range of issues, but comment on 'as of right' has been overtaken by Sunningwell. They also remind OMAs that they should make their own assessment of the evidence and not accept unquestioningly what their officers place before them.

4.2.10. The conclusion reached in the Masters appeal resolves previous uncertainty about the meaning of s66 (1) WCA 81 in respect of BOAT (see also Section 5 'Dedication'). It supersedes the Nettlecombe, original Masters and Buckland and Capel judgments on the matter.

4.2.11. In relation to BOATs the effect of NERC is to extinguish vehicular rights of way on commencement – 2 May 2006 for England and 11 May 2006 for Wales – subject to certain exceptions, including the date of application and the date of determination by the surveying authority. Winchester found that for such exceptions to be relevant the application must fully comply with the requirements of Paragraph 1 of Schedule 14 to WCA 81. It is appropriate firstly to determine whether or not the vehicular rights subsist and, secondly, whether or not any exceptions apply; if vehicular rights subsist but the exceptions are not engaged then the appropriate status is restricted byway.

4.2.12. There are many other judgments on matters which now fall within the scope of WCA 81. For the most part, the referenced judgments contain relevant extracts from these former leading cases (see Section 3 'Case Law').

**RWLR Articles**

4.2.13. Many of the judgments have formed the background to articles in the RWLR. These articles are generally a reduction of the judgments to a form more readily understandable by the public at large.

4.2.14. Other RWLR articles cover various aspects of the Definitive Map itself. Largely, they address pre-inquiry matters, with emphasis on the OMA's order making role and responsibilities. Where they do include comment which affects the interpretation of case law or evidential values, it is important to note the date of the articles. Some of the articles advance opinions which have subsequently been discounted or overturned by the Courts.

**The Definitive Map**

4.2.15. The Definitive Map and Statement are conclusive as to the status of the highways described, generally without prejudice to the possible existence of higher rights (defra Circular 1/09, WO Circular 5/93). This conclusivity is not, however, a permanent feature: as Lord Diplock put it in Suffolk CC v Mason (1979) The entry on the definitive map does not necessarily remain conclusive evidence forever. It had been held, in the case of Rubinstein v Secretary of State for the Environment (1989), that once a right of way was shown on a definitive map, it could not be deleted, but the judgments in Simms & Burrows 1981 made it clear that s53 of WCA 81 allowed both for the addition or upgrading of rights of way on the discovery of new relevant evidence, and for their downgrading or deletion. In his judgment Purchas LJ stated that he could see no provision in the 1981 Act specifically empowering the local authority to create a right of way by continuing to show it on the map, after proof had become available that it had never existed. Parliament's purpose, expressed in WCA 81, he said, included the duty to produce the most reliable map and statement that could be achieved, by taking account of changes in the original status of highways or even their existence resulting from recent research or discovery of evidence.

4.2.16. Parish/community councils usually provided the information regarding the routes to be added to the Definitive Map and Statement and the status of those routes. It is not uncommon for witnesses (e.g. local inhabitants, parish/community councils or user organisations) to assert that the parish/ community council's inputs to the Definitive Map process are not reliable. It is variously argued that they did not have the proper guidance, or that they misinterpreted it, and these assertions then form the basis of the case for the modification. The Memorandum attached to Circular No.81 was distributed down to parish council / parish meeting level and the legal 'presumption of regularity' applies. Unless claimants can demonstrate otherwise, it should be assumed that a parish/community council received this detailed guidance and complied with it. The diligence with which a parish/community council met the remit is a different question. The Council minutes can be a useful source of information on this procedure, and other local highway issues which have arisen since the relevant date. As the minutes are a public record of the perception of the parish/ community council at that time, and therefore probably also represent the perception of parishioners, they may carry significant evidential weight. Other procedural guidance was issued to surveying authorities in Circulars 91/1950, 53/1952 and 58/1953.

4.2.17. In Burrows v Secretary of State for Environment, Food and Rural Affairs [2004] the judge commented that modification of the definitive map requires the discovery of evidence. An inquiry cannot simply re-examine evidence considered when the way or ways in question were first entered on the Definitive Map; there must be some new evidence, which, when considered together with all the other evidence available, justifies the modification.

**Deletion and downgrading**

4.2.18. When considering whether a right of way already shown on definitive map and statement should be deleted, or shown as a right of way of a different description, the Inspector is not there to adjudicate on whether procedural defects occurred at the time the

right of way was added to the definitive map and statement (for example notice was incorrectly served). Unless evidence of a procedural defect is relevant to establishing the correct status of the right of way concerned (for example a key piece of documentary evidence indicating a different status was ignored), there can be no reason to consider it. There must be presumption that the way is as shown on the definitive map and statement, even if the procedures were defective, unless there is evidence to establish that the way should be shown as being of a different status, or not shown at all. See Section 4 of Circular 1/09 and paragraphs 4 and 7 of WO Circular 45/90.

4.2.19. Trevelyan confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete or downgrade a right of way. Lord Phillips MR stated at paragraph 38 of Trevelyan that: “Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

4.2.20. In the Leicestershire case the Inspector refused to confirm an order which sought to modify the definitive map and statement to show a path which was shown on the map as running through the curtilage of one cottage, as running through the curtilage of another. Collins J held that in these circumstances, “it is not possible to look at (i) [s53(3)(c)(i)] and (iii) [s53(3)(c)(iii)] in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed” He went on “If [the Inspector] is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive…..where you have a situation such as you have here, it seems to me that the issue is really that in reality section 53(3)(c)(iii) will be likely to be the starting point, and it is only if there is sufficient evidence to show that that was wrong – which would normally no doubt be satisfied by a finding that on the balance of probabilities the alternative was right – that a change should take place. The presumption is against change, rather than the other way around”.

4.2.21. Another case relevant to deletions is Kent. The Inspector refused to confirm an order under S53(3)(c)(iii) on the basis that the confirmed order would have deleted the whole of the footpath whose position but not existence was in dispute. In upholding the decision, the judge stated that it seems inherently improbable that what was contemplated by section 53 was the deletion in its entirety of a footpath or other public right of way of a kind mentioned in section 56 of the Act of 1981, the existence, but not the route, of which was never in doubt.

4.2.22. The correct way to remove from the definitive map rights whose existence was not in doubt would have been to extinguish (or divert) them under the Highways Act 1980. As the judge continued: one would expect to look elsewhere [than s53(3)(c)(iii)] for statutory provisions which were concerned with the question whether or not an established right of way (but not its route) should continue to exist.

4.2.23. Previous guidance has indicated that, in the case of a way that had been incorrectly shown on the definitive map, a case for dedication could be established on the basis of use in the period between the first recording of the way and its subsequent removal. The current view of Defra (as stated in Circular 1/09 version 2) is that it is not possible for a right of way to be dedicated for the purposes of section 31 of HA 80 when use is by virtue of it already being shown on the definitive map; use in such circumstances cannot be 'as of right' as rights that cannot be prevented cannot be acquired.

# 5. Dedication / User Evidence

## 5.1 Reference Material

### Statutes

- Law of Property Act 1925 section 193 ("LPA25")
- Rights of Way Act 1932 ("RWA32")
- National Trust Act 1939
- Countryside Act 1968 section 30 ("CA68")
- Highways Act 1980 section 31 ("HA80")
- Wildlife and Countryside Act 1981 sections 53(3)(b), 53(3)(c), 66(1) ("WCA81")
- Road Traffic Act 1988
- Charities Act 1993 section 36
- Countryside and Rights of Way Act 2000 ("CROW00")
- Natural Environment and Rural Communities Act 2006 ("NERC06")

### Case Law

- Poole v Huskinson (1843) 11 M & W 827 - common law dedication – intention to dedicate – interruption – limited dedication
- Hollins v Verney 1884 - sufficiency of user
- Dawes v Hawkins [1860] 8 CB (NS) 848 - no time limit on dedication – once a highway etc
- Mann v Brodie 1885 - common law dedication – sufficiency of user – presumption – Scottish law – difference of English law
- R v Southampton (Inhabitants) 1887 19 QB 590 – 'the public'
- Sherrington UDC v Holsey 1904 - physical character of a way
- Thornhill v Weekes (1914) 78 JP 154 - physical character of a way
- Moser v Ambleside RDC (1925) 89 JP 59 - effect of ancient maps, modern – culs-de-sac surveys, interruptions, noticeboards – pleasure user
- Hue v Whiteley [1929] 1 Ch 440 - 'as of right'
- Merstham Manor v Coulsdon and Purley UDC [1937] 2 KB 77 – ROW Act 1932 – 'as of right' – 'without interruptions'
- Jones v Bates [1938] 2 All ER 237 - dedication at common law – meaning of as of right (ROW Act 1932) – burden of proof – bringing into question

- Lewis v Thomas 1950 1 KB 438 - interruption – intention to dedicate
- Fairey v Southampton County Council [1956] 2 QB 439 – whether ROW Act 1932 is retrospective – intention to dedicate – differentiation between common law/statute law dedication – burden of proof
- Davis v Whitby [1974] 1 All ER 806 - 20 years user
- Dyfed County Council v SSW (1989) 58 P & CR 68 – Recreational use giving rise to public rights of way
- British Transport Commission v Westmorland County Council [1957] 2 All ER 353 – dedication must be compatible with purpose of land held
- R v SSE ex parte Cowell [1993] JPEL 851 - Toll – annual manifestation of non- dedication
- Jaques v SSE [1995] JPEL 1031 - common law dedication – true construction of S31 HA80 – no intention to dedicate – burden of proof – effect of requisitioning
- Robinson v Adair (1995) Times 2 March 1995 -illegal vehicular user post 1930 – effect in relation to s31 (1) HA80
- Nicholson v Secretary of State for the Environment [1996] – common law dedication
- Stevens v SSETR (1998) 76 P & CR 503 - rights along RUPPs – effect of Road Traffic Act 1930 on vehicular user evidence
- R v SSE ex parte Billson [1998] 2 All ER 587 - duration of no intention to dedicate - rights over common land
- R v Wiltshire CC ex parte Nettlecombe [1998] JPEL 707 – definition of BOAT – current user
- Masters v SSE [2000] 4 All ER 458 (CA) - definition of BOAT – balance of predominant user - 1929 Handover map – OS maps
- R v Oxfordshire CC ex parte Sunningwell PC [1999] 3 All ER 385 – history of prescription of dedication – belief element of as of right
- R v SSETR ex parte Dorset CC [1999] NPC.72 - bringing into question – no intention to dedicate
- Buckland and Capel v SSETR [2000] 3 All ER 205 - meaning of BOAT – discourse on Nettlecombe and Masters judgments
- R v Planning Inspectorate Cardiff ex parte Howell (2000) unreported – vehicular use post 1930 (see also Robinson v Adair; and Stevens v SSETR)
- Rowley and Cannock Gates Ltd v SSTLR [2002] EWHC (Admin) – positive actions of a tenant
- R v City of Sunderland ex parte Beresford 2003 UKHL 60 – the proposition that use pursuant to permission given by the landowner is always precario is not correct. Also toleration equates with acquiescence; not permission
- Bakewell Management Ltd v Brandwood [2004] UKHL 14 – presumed dedication of a public vehicular right of way

- R (on the Application of Godmanchester Town Council) (Appellants) v SSEFRA and R (on the application of Drain) (Appellant) v SSEFRA [2007 UKHL 28 – lack of intention to dedicate – overt acts by the landowner to be directed at users of the way – duration of no intention to dedicate
- James Wild v SSEFRA and Dorset CC (2009) (CA) [2009] EWCA Civ 1406 – lack of intention to dedicate – duration of no intention to dedicate - ownership
- R on application of the Ramblers Association and SSEFRA and interested parties 2008 (CO 2325/2008) - a cul-de-sac is capable of being dedicated as a highway
- R (Lewis) v Redcar and Cleveland Borough Council and Anor [2009] EWCA Civ 3 (15 January 2009)
- R (Lewis) v Redcar and Cleveland Borough Council and Anor [2010] UKSC 11 (03 March 2010)
- Whitworth v SSEFRA [2010] WWCA Civ 1486 - sufficiency of user and use by bicycles R (Powell and Irani) v SSEFRA [2014] EWHC 4009 (Admin)

**Planning Inspectorate Guidance**

- Rights of Way Advice Note No.12 – Wildlife and Countryside Act 1981 – Vehicles and Rights of Way
- Rights of Way Advice Note No.15 – Breaks in user caused by Foot and Mouth Disease

**Defra Guidance**

- The Natural Environment and Rural Communities Act 2006 Part 6 and Restricted Byways: A guide for local authorities, enforcement agencies, rights of way users and practitioners

**Other Publications**

- Halsbury's Laws of England Vol.21 paragraphs 65-86
- Rights of Way - A Guide to Law and Practice', 4th Edn. 2007, (published by the Open Spaces Society and the Ramblers' Association)
- Relevant articles may be found in the Rights of Way Law Review

## 5.2 Guidance

**Introduction**

5.2.1. Dedication of rights of way to the public can arise under statute law (s31 HA80) and under common law. The references above provide a good basis for understanding a controversial subject. It has given rise to a number of judicial interpretations, with some earlier judgments being superseded.

5.2.2. These guidelines initially concentrate on issues affecting the interpretation of s31 HA80 and then address some aspects of deemed dedication at common law. Comment on specific related topics is found later on in this section.

**Section 31, Highways Act, 1980**

5.2.3. Under s31 HA80 dedication of a route as a public highway is presumed after public use, as of right and without interruption, for 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 year period runs retrospectively from the date of bringing into question. The main issues to be considered in relation to the statute are therefore:

- when the status of the claimed route was called into question;
- the extent and nature of the claimed use;
- whether there is evidence of a lack of intention to dedicate a public right of way.

**'Bringing into Question'**

5.2.4. House of Lords in R (on the application of Godmanchester and Drain) v SSEFRA [2007] ("Godmanchester") is the most recent case addressing the meaning of s31(2) HA80 endorsing earlier judgements in regard to what act or acts constitute 'bringing into question.'

5.2.5. In R v SSETR ex parte Dorset County Council 1999 Dyson J was not satisfied that a landowner's letter to DoE, passed to the County Council but not communicated to the users, satisfied the spirit of s31(2). The test to be applied is that enunciated by Denning LJ in Fairey v Southampton County Council 1956. Dyson J's interpretation of that judgment is that: "Whatever means are employed to bring a claimed right into question they must be sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway."

5.2.6. The "bringing into question" does not have to arise from the action of the owner of the land or on their behalf. In Applegarth v Secretary of State for Environment, Transport and the Regions [2001] EWHC Admin 487, the owner of a property whose access was via a track claimed to be a bridleway, challenged the public use although he did not own the track. Munby J stated: "Whether someone or something has "brought into question" the "right of the public to use the way" is…a question of fact and degree in every case." Thus any action which raises the issue would seem to be sufficient. However, where there is no identifiable event which has brought into question the use of a path or way, s31 ss (7A) and (7B) of HA80 (as amended by s69 of NERC06) provides that the date of an application for a modification order under WCA81 s53 can be used as the date at which use was brought into question.

**User Evidence**

5.2.7. Claims for dedication having occurred under s31 HA80 will usually be supported by user evidence forms ("UEFs"). Analysis of UEFs will identify omissions, lack of clarity, inconsistencies and possible collusion, although the completion of common parts of the form by someone organising collection of the evidence is not necessarily indicative of collusion. Analysis allows the rejection of invalid UEFs (e.g. no signature, no clear description of the way or of how it was being used) and to note the questions to raise at inquiry. A similar analysis should be made of other types of user evidence, such as sworn statements, letters and the landowner's evidence. UEFs are not standardised, and pose differing questions of varying pertinence and precision.

5.2.8. If the potential value of UEFs is to be realised they must be completed with due diligence. All questions should be answered as accurately and as fully as possible. If there are questions which, from the claimed duration and extent of use, appear capable of being

answered yet are not, it may be reasonable to assume that the respondent's recall was insufficient to provide this information. This may then lead to a question as to whether the claimed use is accurately recalled. The evidential weight of the form may well be reduced.

5.2.9. Similarly if an overall picture emerges, from a variety of sources, which differs significantly from the respondents' recollections, or if a particular difficulty which must have been encountered during claimed use is not mentioned, a question may be raised as to whether the use is accurately and honestly recalled.

5.2.10. Sometimes objectors do not challenge user evidence in cross- examination. If so, the Inspector may question the evidence, in order to be in a position to decide what evidential weight to place on the UEFs. If few, or no, users attend the inquiry, questions may be posed to the party presenting the evidence, so that the evidential weight can be determined. As with other evidence, user evidence tested in cross-examination generally carries significantly more weight than untested evidence.

5.2.11. Wandering at will (roaming) over an area, including the foreshore (Dyfed CC v SSW 1989), cannot establish a public right (Halsbury's Laws of England, Vol.21, paras 2 and 4 refer). Use of an area for recreational activities cannot give rise in itself to a presumption of dedication of a public right over a specific route. Attention should be paid to the maps attached to UEFs, and any description of the used route, to ensure that the Order route is under discussion.

**'The Public'**

5.2.12. There appears to be no legal interpretation of the term 'the public' as used in s31. The dictionary definition is "the people as a whole, or the community in general". Hence, arguably, use should be by a number of people who together may sensibly be taken to represent the community. However, Coleridge LJ (as he was then) in R v Southampton (Inhabitants) 1887 said that "user by the public must not be taken in its widest sense… for it is common knowledge that in many cases only the local residents ever use a particular road or bridge."

5.2.13. Consequently, use wholly or largely by local people may be use by the public, as, depending on the circumstances of the case, that use could be by a number of people who may sensibly be taken to represent the local community. It is unlikely that use confined to members of a single family and their friends would be sufficient to represent 'the public'.

5.2.14. It was held in Poole v Huskinson (1843) that "there may be a dedication to the public for a limited purpose … but there cannot be a dedication to a limited part of the public".

**Sufficiency**

5.2.15. There is no statutory minimum level of user required to show sufficient use to raise a presumption of dedication. Use should have been by a sufficient number of people to show that it was use by 'the public' and this may vary from case to case. Often the quantity of user evidence is less important in meeting these sufficiency tests than the quality (i.e., its cogency, honesty, accuracy, credibility and consistency with other evidence, etc.)

5.2.16. Use of a way by different persons, each for periods of less than 20 years, will suffice if, taken together, they total a continuous period of 20 years or more (Davis v Whitby (1974)). However, use of a way by trades- people, postmen, estate workers, etc., generally cannot be taken to establish public rights.

5.2.17. It was held in Mann v Brodie 1885 that the number of users must be such as might reasonably have been expected, if the way had been unquestionably a public highway. It is generally applicable that in remote areas the amount of use of a way may be less than a way in an urban area. Lord Watson said: “If twenty witnesses had merely repeated the statements made by the six old men who gave evidence, that would not have strengthened the respondents’ case. On the other hand the testimony of a smaller number of witnesses each speaking to persons using and occasions of user other than those observed by these six witnesses, might have been a very material addition to the evidence.”

5.2.18. Arguably, therefore, the evidence contained in a few forms may be as cogent - or more cogent – evidence than that in many. R. v. SSETR (ex p. Dorset) [1999] accepted that, although the evidence within five UEFs was truthful, it was insufficient to satisfy the statutory test. The finding did not consider whether use by five witnesses would satisfy the test.

5.2.19. In Whitworth Lord Justice Carnwath thought it arguable that the use of a way by two individuals on bicycles should be treated as an assertion of a private right rather than evidence of use by the public.

5.2.20. In R (Lewis) v Redcar and Cleveland Borough Council UKSC 11 (03 March 2010) Lord Walker said that if the public is to acquire a right by prescription, they must bring home to the landowner that a right is being asserted against him. Lord Walker accepts the view of Lord Hoffman in Sunningwell that the English theory of prescription is concerned with how the matter would have appeared to the owner of the land or, if there was an absentee owner, to a reasonable owner who was on the spot. In R (Powell and Irani) v SSEFRA [2014] EWHC 4009 (Admin) Dove J confirmed that the judgements in Lewis were not authority for an additional test beyond the tripartite ‘as of right’ test. The judgements in Lewis confirm that the extent and quality of use should be sufficient to alert an observant owner to the fact that a public right is being asserted. The presumption of dedication arises from acquiescence in the use. Again in Redcar, in the Court of Appeal Dyson LJ refers to Hollins and Verney and the words of Lindley LJ. “… no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term … the user is enough at any rate to carry to the mind of a reasonable person… the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such a right is not recognised, and if resistance is intended.”

**‘As of right’**

5.2.21. Use ‘as of right’ must be without force, secrecy or permission (‘nec vi, nec clam, nec precario’). It was once thought that users had to have an honest belief that there was a public right. In Sunningwell 1999 it was held that there is no requirement to prove any such belief. However, if a user admits to private knowledge that no right exists, it may have a bearing on the intention of the owner not to dedicate.

5.2.22. Force would include the breaking of locks, cutting of wire or passing over, through or around an intentional blockage, such as a locked gate.

5.2.23. In Sunningwell, 1999, Lord Hoffman said that s1 of the RWA32 (the precursor to section 31 of the HA80) was an echo of the Prescription Act 1832, with the purpose of assimilating the law of public rights of way to that of private rights of way. Lord Hoffman goes on to say that the issue of dedication of a highway was how the public using the way would have appeared to the landowner. The use must have been open and in a manner that a person rightfully entitled would have used it, that is not with secrecy. This would allow the landowner the opportunity to challenge the use, should he wish.

5.2.24. If there is express permission to use a route then the use is not 'as of right'. The issue of implied permission, or toleration by the landowner, is more difficult. In the context of a call not to be too ready to allow tolerated trespasses to ripen into rights, Lord Hoffmann, Sunningwell 1999, held that toleration by the landowner of use of a way is not inconsistent with user as of right. In R (Beresford) v Sunderland CC [2003], Lord Bingham stated that a licence to use land could not be implied from mere inaction of a landowner with knowledge of the use to which his land was being put. Lord Scott stated in the Beresford case "I believe this rigid distinction between express permission and implied permission to be unacceptable. It is clear enough that merely standing by, with knowledge of the use, and doing nothing about it, i.e., toleration or acquiescence, is consistent with the use being "as of right"."

5.2.25. Permission may be implied from the conduct of a landowner in the absence of express words. Lord Bingham, in Beresford, stated that: "…a landowner may so conduct himself as to make clear, even in the absence of any express statement, notice, record, that the inhabitants' use of the land is pursuant to his permission." But encouragement to use a way may not equate with permission: As Lord Rodger put it, "the mere fact that a landowner encourages an activity on his land does not indicate … that it takes place only by virtue of his revocable permission." In the same case, Lords Bingham and Walker gave some examples of conduct that might amount to permission, but the correct inference to be drawn will depend on any evidence of overt and contemporaneous acts that is presented.

**'No Intention to Dedicate'**

5.2.26. Once use is established as of right and without interruption, the presumption of dedication arises. Section 31 provides for methods which show that during the period over which the presumption has arisen there was in fact no intention on the landowner's part to dedicate the land as a highway. This would defeat a claim under the statute and is often referred to as 'the proviso'.

5.2.27. Under s31(3) a landowner may erect a notice inconsistent with the dedication of a highway, and if that notice is defaced or torn down, can give notice to the appropriate council under s31(5). Under s31(6), an owner of land may deposit a map and statement of admitted rights of way with "the appropriate council". Provided the necessary declaration is made at twenty year intervals thereafter (the Growth and Infrastructure Act 2013 has, with effect from 1 October 2013, increased the interval between highways statements from 10 to 20 years), the documents are (in the absence of evidence to the contrary) "sufficient evidence to negative the intention of the owner or his successors in title to dedicate any additional ways as highways". This is for the period between declarations, or between first deposit of the map and first declaration.

5.2.28. "Intention to dedicate" was considered in Godmanchester, which is the authoritative case dealing with the proviso to HA80 s31. In his leading judgement, Lord Hoffmann approved the obiter dicta of Denning LJ (as he then was) in Fairey v Southampton County Council [1956] who held "in order for there to be 'sufficient evidence there was no intention' to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path…that he had no intention to dedicate".

5.2.29. It is clear from Godmanchester that actions satisfying the proviso will, usually, also bring the public right to use the way into question. It nevertheless remains the case that not every act which brings the rights of the public into question will necessarily satisfy the proviso.

5.2.30. Lord Hoffmann held that “upon the true construction of section 31(1), ‘intention’ means what the relevant audience, namely the users of the way, would reasonably have understood the owner’s intention to be. The test is … objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to ‘disabuse’ [him]’ of the notion that the way was a public highway”.

5.2.31. For a landowner to benefit from the proviso to s31(1) there must be ‘sufficient evidence’ that there was no intention to dedicate. The evidence must be inconsistent with an intention to dedicate, it must be contemporaneous and it must have been brought to the attention of those people concerned with using the way. Although s31 ss (3), (5) and (6) specify actions which will be regarded as “sufficient evidence”, they are not exhaustive; s31 (2) speaks of the right being brought into question by notice “or otherwise”.

5.2.32. Godmanchester upheld the earlier decision of Sullivan J in Billson that the phrase “during that period” found in s31 (1) did not mean that a lack of intention had to be demonstrated “during the whole of that period”. The House of Lords did not specify the period of time that the lack of intention had to be demonstrated for it to be considered sufficient; what would be considered sufficient would depend upon the facts of a particular case.

5.2.33. However, if the period is very short, questions of whether it is sufficiently long (‘de minimis’) may arise, and would have to be resolved on the facts.

5.2.34. In the Court of Appeal case Lewis v Thomas 1949, Cohen LJ quoted with approval the judgment of MacKinnon J in Moser v Ambleside UDC 1925: “It was said, very truly, in the passage of Parke, B in Poole v Huskinson (1843) that a single act of interruption by the owner was of much more weight upon the question of intention than many acts of enjoyment. If you bear quite clearly in mind what is meant by an act of interruption by the owner, if it is an effective act of interruption by the owner…himself – and is effective in the sense that it is acquiesced in, then I agree that a single act is of very much greater weight than a quantity of evidence of user by one or other members of the public who may use the path when the owner is not there and without his knowledge. “The fact that the owner…locks the gates once a year…is, or may be, a periodic intimation…that he is not intending to dedicate a highway, but it must be an effective interruption;…if you have evidence of an interruption which is not effective in the sense that members of the public resent the interruption and break down the gate, or whatever it is, and that defiance of his supposed rights is then acquiesced in by the owner, or…if it is an attempted interruption by a tenant without the…authority of the owner and is also an interruption that is ineffective and a failure because the public refuse to acquiesce in it, then, as it seems to me such an ineffective interruption, either by the owner or by the tenant, so far from being proof that there is no dedication, rather works the other way as showing that there has been an effective dedication.”

5.2.35. However, in Rowley v SSTLR & Shropshire County Council May 2002, Elias J held that the acquiescence of a tenant may bind the landowner on the issue of dedication. Also, in the absence of evidence to the contrary, there is no automatic distinction to be drawn between the actions of a tenant acting in accordance with their rights over the property and that of the landowner in determining matters under s31HA80. “the conclusion…that there was no evidence that any turning back had in any event been authorised by the freeholder involved an error of law. A similar argument was advanced in Lewis v Thomas [[1950] 1 K.B 438] and rejected, the court apparently taking the view that if it is alleged that the freeholder has a different intention to the tenant, there should at least be evidence establishing that.”

5.2.36. In cases where a claimed right of way is in more than one ownership, and only one of the owners has demonstrated a lack of intention to dedicate it for public use, it should be considered whether it is possible that public rights have been acquired over sections of the way in other ownerships, even if this would result in cul de sac ways being recorded (R on application of the Ramblers Association and SSEFRA and interested parties 2008 (CO 2325/2008) this is not decided case law but a consent order where the Secretary of State submitted to judgement).

5.2.37. If there is no contradictory evidence in accordance with the proviso to s31(1), deemed dedication is made out and the Order should be confirmed. This is so whether there is an owner who cannot provide sufficient evidence of lack of intention or whether there is no identified owner available to produce such evidence.

**Status**

5.2.38. Dedication of a highway of a particular status will depend, amongst other things, on the type of public user. The definitions of minor highways in s66 (1) WCA81 are particularly relevant. In England roads used as public paths, RUPPs, were reclassified to restricted byways under CROW00 following commencement of the relevant section of that Act in 2006. Public vehicular rights have been removed from such routes, although transitional savings may allow the status of some to be reconsidered.

5.2.39. The definition of a byway open to all traffic, BOAT was settled in the Court of Appeal in Masters v SSETR (2000). Roch LJ held: "…Parliament did not intend that highways, over which the public have rights for vehicular and other types of traffic, should be omitted from definitive maps and statements because they had fallen into disuse if their character made them more likely to be used by walkers and horse riders than vehicular traffic."

5.2.40. Section 66(1) of NERC06 provides that no public rights of way for mechanically propelled vehicles can be created unless expressly provided for or if the rights relate to a road constructed for the use of mechanically propelled vehicles. S67(1) of NERC06 extinguished, with effect from 2 May 2006 (in England), public motor vehicular rights over every highway that was not shown on the definitive map and statement before that date, or was shown only as a footpath, bridleway or restricted byway. Section 67(2) and (3) provide certain exceptions to that extinguishment of rights for mechanically propelled vehicles.

5.2.41. For reclassification of RUPPs to BOATs under section 54 of the WCA81, the decision depends on the test of whether public vehicular rights exist and does not require current vehicular (or any other) use. For orders recording BOATs under section 53, public vehicular rights must be shown to exist but to satisfy the description BOAT, the question of use should be addressed, in the light of Masters. There are tests to determine whether or not public vehicular rights have been subsequently extinguished under the NERC06.

5.2.42. Use without lawful authority of mechanically propelled vehicles, adapted or intended for use on the roads, on footpaths, bridleways and elsewhere than on roads became a criminal offence in 1930. However, lawful authority may be granted by a landowner, and Lord Scott, in Bakewell Management Ltd v Brandwood [2004] (in the context of the acquisition of an easement to drive over common land) held that if such a grant could have been lawfully made, the grant should be presumed so that long de facto enjoyment should not be disturbed.

5.2.43. A grant would not be lawful if, for example, it gave rise to a public nuisance. The granting of vehicular rights over an existing footpath might constitute a public nuisance to pedestrians using that path. In considering the creation of rights for mechanically propelled vehicles before 2 May 2006, subject to any exceptions provided by NERC06, consideration will need to be given as to whether vehicular use of the way has given rise to, or is likely to give rise to, a public nuisance.

5.2.44. Section 31, HA80, as amended by section 68 of NERC06, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway. In Whitworth it was suggested that subsequent use by cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the CA68, could not give rise to anything other than a bridleway. Whilst Carnwath LJ accepted that regular use by horse riders and cyclists might be consistent with dedication as a restricted byway, it was also consistent with dedication as a bridleway. In such an instance of statutory interference with private property rights, he determined, it was reasonable to infer the dedication least burdensome to the owner.

**Dedication at Common Law**

5.2.45. The common law position was described by Farwell J, and Slessor and Scott LJ in Jones v Bates 1938, quoted with approval by Laws J in Jaques v SSE 1994, who described the former's summary as "a full and convenient description of the common law". Other leading cases regarding dedication at common law are Fairey v Southampton CC 1956, Mann v Brodie 1885 and Poole v Huskinson 1843. Jaques is particularly helpful on the differences between dedication at common law and under statute. Dyson J's judgment in Nicholson v Secretary of State for the Environment 1996 comments further on aspects of these differences.

5.2.46. Halsbury states – "Both dedication by the owner and user by the public must occur to create a highway otherwise than by statute. User by the public is a sufficient acceptance…An intention to dedicate land as a highway may only be inferred against a person who was at the material time in a position to make an effective dedication, that is, as a rule, a person who is absolute owner in fee simple;…At common law, the question of dedication is one of fact to be determined from the evidence. User by the public is no more than evidence, and is not conclusive evidence … any presumption raised by that user may be rebutted. Where there is satisfactory evidence of user by the public, dedication may be inferred even though there is no evidence to show who was the owner at the time or that he had the capacity to dedicate. The onus of proving that there was no one who could have dedicated the way lies on the person who denies the alleged dedication".

5.2.47. Regardless of whether or not dedication at common law is argued as an alternative, in case the s31 claim fails, there should be consideration of the matter at common law. Whilst the principles affecting dedication by landowners and acceptance by user will normally apply in both statute and common law (even though there is no defined minimum period of continuous user in common law), there is an important difference in the burden of proof. Denning LJ clarified in Fairey v Southampton County Council 1956 that RWA32, which was the precursor to s31 of HA80: "…reverses the burden of proof; for whereas previously the legal burden of proving dedication was on the public who asserted the right…now after 20 years user the legal burden is on the landowner to refute it."

5.2.48. From these comments it follows that, in a claim for dedication at common law, the burden of proving the owner's intentions remains with the claimant. For the reasons given by Scott LJ in Jones v Bates 1938, this is a heavy burden and, in practice, even quite a formidable body of evidence may not suffice. However, should it be asserted in rebuttal that there was no one who could have dedicated the way, the burden of proof on this issue would rest with the asserting party (Halsbury).

5.2.49. In Nicholson Dyson J commented on an assertion that Jaques was authority for the view that the quality of user required to found an inferred dedication was different from that required to found a statutory dedication. To bring the statutory presumption into play it was not necessary that the user should have been so notorious as to give rise to the presumption, necessary for common law purposes, that the owner must have been aware of it and acquiesced in it. Dyson J stated, "The relevant criteria so far as the quality of the user is concerned are the same in both cases. The use must be open, uninterrupted and as of right. The notoriety of the use is relevant for common law purposes in the sense that the more notorious it is, the more readily will dedication be inferred if the other conditions are satisfied. But notoriety is also relevant for the purposes of the statute, since the more notorious it is, the more difficult it will be for the owner to show that there was no intention to dedicate."

**Land Held in Trust or Mortgaged (common law only)**

5.2.50. Halsbury gives useful guidance; Volume 21 para 73 states: "Where a mortgagor (borrower) is still in possession of the mortgaged land it would seem that the mortgagee's (lender's) assent to a dedication is necessary, and that a dedication cannot be inferred from user unless the mortgagee can be shown or presumed to have had knowledge of it."

5.2.51. Trustees of land held on trust for sale generally have power to dedicate on their own provided that no incompatibility is introduced (Halsbury Vol.21 para 74 refers). For leaseholds and copyholds the consent of both landlord and lessee, or copyholder, would usually be required for dedication. However, the detailed wording and provisions of the trust or mortgage document should always be checked, in case there are specific requirements for enabling powers. A public body can in general create a right of way, provided that the public use would not be incompatible with the purpose of the body. (See also relevant RWLR articles and note the provisions of HA80 s31(8)).

**Crown Land**

5.2.52. HA80 does not apply to land belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, the Duchy of Cornwall, a government department or held in trust for a government department. If an agreement has been made between the appropriate authority charged with the administration of the land and a highway authority then the provisions of HA80 can apply; in the absence of any such agreement, there cannot be a presumption of dedication of a public right of way over Crown land under s31.

5.2.53. The Crown Estate manages property belonging to the monarch in right of the Crown. The Crown Estate does not include land belonging to a government department; such land is nonetheless Crown land and is exempt from the provisions of HA80. Forestry Commission land, Defence Estate land and National Health Service land is Crown land, as those lands are owned by the relevant Secretary of State.

5.2.54. With regard to the land assets of the remaining and former nationalised industries, whether the land at issue could be regarded as Crown land will depend upon the terms of that body's enabling legislation. The presumption is that a public corporation (such as a nationalised industry) is not a Crown body and therefore the land belonging to that body is not Crown land.

5.2.55. It seems likely that s31 would not apply to land leased to the Crown, as the land subject to the lease would belong to the Crown for the duration of the lease. However, whether it would be possible for the freeholder of the land to dedicate a public right of way during the operation of the lease would depend upon the terms upon which the lease was granted.

5.2.56. Although Crown land is exempt from the provisions of s31 of HA80, this would not prevent or preclude a presumption of dedication arising in a 20-year period prior to, or after, such ownership or leasehold of the land.

5.2.57. Under common law, there can be a presumption of dedication of a way over Crown Land. However, there cannot be such a presumption over land requisitioned by the Crown, as there would be no one with power to dedicate (Jaques 1994).

**Common Land**

5.2.58. Public rights of way over defined routes can and do exist on common land and can be established by deemed dedication through use over a number of years. However, the effect of various statutes, including schemes of regulation and management under Part 1 of the Commons Act 1899, and s193 of the LPA25, which create (often restricted or conditional) public rights of recreational access, may have to be considered, since these apply to a substantial number of commons.

5.2.59. This issue is addressed in R v SSE ex parte Billson 19987, and background information can be found in the RWLR article 'Public Access to Common Land' 15.4. (This judgment was partially overruled in the Godmanchester judgment.) Public rights of access have been conferred on nearly all common land (where no previous statutory rights existed) by Part I of CROW00, and s.12(3) makes clear that: "the use by the public or by any person of a way across land in the exercise of the right conferred [under Part I] is to be disregarded".

**The National Trust**

5.2.60. The Trust has power to dedicate highways by virtue of s12 of the National Trust Act 1939. However, Trust bylaws may be in place and operate as a conditional permission to use the land. Such bylaws may prevent a presumed dedication under s31, whether users were aware of them or not. Useful reference can be made to National Trust v SSE [1999] JPL 697, holding that the permissive nature of the use of NT land precluded user as of right.

**Land in management agreement with Natural England**

5.2.61. Where land is subject to a management agreement with Natural England under s7 of the NERC06 (e.g., Environmental Stewardship agreement), use of a way across the land is to be disregarded during the term of the agreement for the purposes of presumed dedication (see s7(5))

**Charities**

5.2.62. Section 36 of the Charities Act 1993 provides that no land held by or in trust for a charity shall be conveyed, transferred, leased or otherwise disposed of without an order of the Court of the Charity Commission. 'Land' includes any estate, interest, easement, servitude or right in or over land, and thus the dedication of a right of way over land would seem to qualify as a means of 'disposal'.

5.2.63. However, even in the absence of such an order, and/or where dedication is to be presumed by virtue of long use, it is considered there is nothing to prevent the statutory dedication of public rights of way over land held for charitable purposes, provided always that such a dedication would not be contrary to the stated purposes of the charity concerned, by reference to Section 31(8) of the Highways Act. This provides that the incapacity of a body or person in possession of land for public and statutory purposes to dedicate a way over land is not affected by Section 31 provisions as a whole, if the existence of a highway would be incompatible with those purposes.

5.2.64. At common law, the lack of any owner with the capacity to dedicate could be a bar to the necessary finding of an actual intention to dedicate.

**Physical Characteristics of a Claimed Way**

5.2.65. In some circumstances the physical characteristics of a way can prevent a highway coming into existence through deemed or inferred dedication. In Sheringham UDC v Holsey 1904 it was held that use by wheeled traffic of a public footway appointed by an Inclosure Award at 6 feet wide had always been an illegal public nuisance in view of the obstruction and danger to pedestrians, and no length of time could legalise it. Furthermore, there was no one with power to dedicate. Hence there could not have been any dedication of the way as a vehicular highway.

5.2.66. In Thornhill v Weeks 1914, Astbury J observed that: "it seems impossible that a lady who resided there would at once start dedicating a way through her stable yard … In trying to form an opinion whether an intention to dedicate has existed, one must have some regard to the locality through which the alleged path goes. The fact that it goes through the stable yard [close to the house] is strong enough to raise a presumption against an intention to dedicate."

5.2.67. Where physical suitability of a route is argued, referring to gradient, width, surface, drainage, etc., there should be awareness that what may now be regarded as extremely difficult conditions may well have been relatively commonplace and frequently met by stagecoaches, hauliers and drovers in times past. Special arrangements were often in place to negotiate them.

# 6. Highway Records and Related Documents

## 6.1 Reference Material

**Statutes**

Highway Act 1835 – sections 5 & 23 Highways Act 1862 Public Health Act 1872 Highways and Locomotives Act 1878 (see 'Turnpikes') Local Government Act 1894 Local Government Acts 1924, 1929 Rights of Way Act 1932 National Parks and Access to the Countryside Act 1949 Highways Act 1980 Note: The above list is not exhaustive. They are some of the acts from which Highway Records may emanate.

### Other Publications

Articles in Sections 1 (History) and 9 (Evidence of the Existence of Highways) of the RWLR.

## 6.2 Guidance

### Introduction

6.2.1. All highway records have to be interpreted carefully, with particular attention paid to the meanings of words within the given context. Usually they will provide suggestive, rather than conclusive, evidence on the case as a whole, but they may be conclusive evidence of what they purport to show. Below are listed some of the types of highway records that may be presented at inquiries, with some general commentary. It is helpful, in understanding 19th century evidence, to know something of the development of the highway network in England and the legal framework within which the development took place. The RWLR article on 'Highway Use and Control up to 1895' provides a useful outline.

### Case Law

R v SSE & Somerset CC ex parte Masters [1999] CO3453/97 – amongst other things, evidential status of 1929 Handover Maps

Fortune and others and Wiltshire County Council [2010]EWHC 2683 (Ch) and [2012] EWCA Civ 334 – thorough examination of relevant highway documents and their evidential value

### Manorial Records

6.2.2. Manorial records may include Court Rolls (which carry the same weight as their successors in Quarter Sessions); and books and papers relating to a variety of matters, including references to issues connected with highways and bridges.

### Quarter Sessions and Petty Sessions

6.2.3. Quarter Sessions records go back a long way. They may provide conclusive evidence of the stopping up or diversion of highways. Presentments or indictments for the non-repair of highways may also be found here and may provide strong evidence of status where they are confidently identifiable. It should be borne in mind that Quarter Session records are conclusive evidence of those matters the Court actually decided, but are not conclusive in relation to other matters. Reliance on orders alone can be misleading and evidence of completion may be required. Petty Sessional records may also be a source of evidence.

### Deposited Plans of Public Undertakings

6.2.4. The legal deposit of plans or public undertakings was first provided for in the 1793 Standing Orders of the House of Lords. The need for such deposits was recognised following the canal mania of the early 1790s when it became evident that canal bills were being hurried through Parliament without proper scrutiny. Thereafter, promoters of canal or waterworks bills (and later bills for other public undertakings) were required to submit to the Lords plans of works, books of reference, and other papers before a bill was brought up from the Commons to the Lords. In 1837 an Act compelled the local deposit of plans of public undertakings with the Clerk of the Peace, although in practice local deposit had been taking place from a much earlier date.

6.2.5. Plans of canals, river navigations and highway diversions are common from 1793 onwards. By the early 19th century, records of harbour works and turnpike improvements are also found. From 1829 until the late 19th century railway undertakings predominate. (Canal, Railway and Turnpike documentary evidence is covered in more detail in later sections of these guidelines). Papers relating to schemes for street lighting, tramways, gas, electricity and water undertakings become numerous in the late 19th century.

6.2.6. Any of these various types of document may provide evidence on adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways.

**County Records**

6.2.7. County records go back into the 19th century and may consist of any of the following, in addition to those items already mentioned:

- County Surveyor's Annual/Quarterly Reports
- Report of County Works
- Committee Special Reports on Main Roads
- Various minutes, estimates, tenders and grants
- Rights of Way Reports
- 1929 Handover Maps and Records
- County List of Streets
- County Surveyor's Map and other records of Roads and Bridges
- Aerial Photographs
- Definitive Maps and Statements

Often these records bear notes relating to rights of way. Some of the annotations may have been for internal administrative purposes and may sometimes reflect only the views of the surveyor or engineer of the day. The evidence they provide therefore needs to be viewed in context. An article in Section 9 of the RWLR called 'Highway Authority Records' provides helpful background, particularly on those relating to County Roads and the Definitive Map.

**1929 Handover Maps**

6.2.8. The following comments apply to the 1929 and all other formal handover/takeover documents and to today's List of Streets. (Section 36(6) of the Highways Act 1980 requires every highway authority to make and keep up to date, a list of streets within its area which are highways maintainable at the public expense.) The view that this form of documentary evidence may be relevant appears to have been endorsed by Hooper J in R v SSE and Somerset County Council ex parte Masters 1999. The Secretary of State for the Environment (SSE) had argued that such documents were a positive indication of what the Highway Authority then believed to be the status of the roads listed. Hooper J rejected as irrelevant a counter argument that SSE's conclusion was one which could not lawfully be reached in the light of Stevens v SSE 1998. He found that SSE's decision to treat the handover documentary evidence as a relevant consideration had not been one that no reasonable tribunal could have taken on the evidence available, i.e. it was not 'Wednesbury unreasonable' (Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1KB223). It should be noted

that it is unsafe to hold that the fact that a road does not appear to have been accepted by the new highway authority at the time of handover necessarily suggests that it can not have been a highway.

6.2.9. The evidential strength of handover and similar documents is that they are conclusive evidence of the highway authority's acceptance of maintenance responsibility, a commitment that would not normally have been undertaken lightly. However, Inspectors should be mindful that these documents were principally for internal administrative use, were not readily available to the public and did not purport to be a record of rights. Consequently, while such evidence may weigh in favour of the existence of public rights, their evidential weight will be for the Inspector to decide in the context of other evidence.

**Highways Act 1980 Section 56**

6.2.10. It is sometimes argued that a successful claim against a highway authority under HA80, s56, at the Magistrates' Court and is a legal event which establishes a public right. The Court's decision may be legal evidence of a maintenance responsibility, and may be evidence in support of public rights; but it is not, in itself, conclusive in that respect.

**Deposited Maps of Admitted Rights of Way**

6.2.11. Under s31(6) of the Highways Act 1980 a landowner can deposit with the appropriate Council a map of their land on a scale of not less than 6 inches to the mile with a statement indicating what ways (if any) over the land they admit to have been dedicated as highways. If this is done, a statutory declaration by the owner or his successors in title should be lodged within 10 years to the effect that no additional way (other than specifically indicated in the declaration) has been dedicated. Similar statutory declarations should be made every subsequent 10 years. (This figure was amended from six years to 10 years by the Countryside and ROW Act 2000 and came into force in England on 13 February 2004 and in Wales on 31 May 2005. Transitional provisions apply to deposits and declarations made prior to the change.) As this procedure was first introduced in the Rights of Way Act 1932, records of any statutory declarations made can go back many years. In the absence of proof to the contrary, a properly made statutory declaration of this type is sufficient evidence to rebut the intention of the owner or his successors in title to dedicate any additional highway during the associated relevant period. Councils are required to keep a register of these deposits and declarations for public inspection (brought into force in England on 1 October 2007 (Statutory Instrument 2007/2334) and in Wales on 15 January 2006).

6.2.12. Following the 1932 Act, many local authorities began to produce lists and maps usually only of non-vehicular rights of way, which may survive in more or less detail. Such documents may reflect the view of the authority, and may provide supporting evidence of the status of a way, but are not conclusive.

**Parish Records**

6.2.13. Prior to 1894 when the Local Government Act transferred responsibility for the maintenance of public highways to Rural District Councils, such responsibility generally belonged to the parish. Relevant Acts often included provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of

Highways who was obliged to keep a detailed account of public monies expended. Some of these records survive, usually in county archives. Under the 1862 Act parishes could combine to form Highway Boards, and their records are also found in county archives.

6.2.14. It is generally accepted that longer distance use of horse drawn vehicles increased significantly during the late 18th and early 19th century. Some highways which had been adequate for hoofed traffic were unsuitable for wheeled traffic and consequently fell into disuse. Parishes were often reluctant to expend time, money and effort for the benefit of travellers who merely passed through. It was frequently the maintenance of highways, which was the main point of contention in legal wrangles concerning the highway network, not the rights to use a particular highway.

6.2.15. Because of the reluctance of some parishes to spend money on highway maintenance, a rebuttable presumption can arise from an entry in a local Highway Surveyor's Account Book. However, it is necessary to check that the highway can be identified accurately from the records. Some of the names used may since have been changed, corrupted or, like some highways, have fallen into disuse.

6.2.16. More recent parish records are also of great importance, particularly those relating to the Parish Survey from which the Definitive Map followed. These usually include a statement which accompanied the Draft Map, a survey card and also the relevant contemporary parish council minutes.

**Deeds of Sale (Conveyance or Transfer)**

6.2.17. The inclusion of a specific reference to a public right of way within (or adjacent to) land being conveyed is of some evidential value. However, it should be borne in mind that the conveyance or transfer was essentially dealing with private rights of property and was not prepared with a view to defining public rights. Similarly, the inclusion in a conveyance or transfer of mutual private rights for the purchaser and others over the land is not conclusive evidence that there is no public right over it. Mutual private rights might have been included by the conveyancer out of abundant caution. The evidence provided by a conveyance or transfer needs to be considered along with all other relevant evidence.

6.2.18. Sales particulars, as opposed to the actual conveyance document, should be treated with special caution. The art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.

## 7. Inclosure Awards

## 7.1 Reference Material

**Statute**

Pre-1801 Private Inclosure Acts Inclosure Consolidation Act 1801 Post-1801 Local Acts (see Note below) General Inclosure Act 1836 Inclosure Act 1845

**Note:** The evidential significance of Private and Local Acts can be established only by careful study. Inspectors should therefore request extracts that are long enough for them to interpret quoted extracts within their context. In particular, a copy of any 'definitions' section contained in the Act concerned should be obtained.

**Case Law**

Roberts v Webster [1967] 66 LGR 298, 205 EG 103 – evidential weight of Inclosure documents

R v SSE ex parte Andrews [1993] JPL 52 [1993] – interpretation of sections 8,and 11 of the 1801 Act (Andrews 1993)

Dunlop v SSE and Cambridgeshire County Council [1995] 70 P & CR 307, 94 LGR 427 – definition of a 'private carriage road'

Buckland and Capel v SETR [2000] 1 WLR 1949, [2000] 3 All ER 205 – procedure when an award is 'ultra vires'

Cubitt v Maxse [1873] LR 8 CP 704 – 'setting out', public acceptance

Hall v Howlett (1976) EGD 247 – setting out a new private road almost conclusive that there was no pre-existing public road in the same position

Logan v Burton [1826] 5 B & C 513 – 'stopping-up' in old enclosures

Micklethwaite v Vincent [1893] 69 LT 57 – propriety of an award not at issue after so many years

Fisons Horticulture Ltd v Bunting and others [1976] 240 EG 625 – unchallenged long-standing awards upheld

Commission for New Towns v J J Gallagher Ltd [2003] 2 P & CR – definition of a private carriage road in an inclosure award (incorporating the 1801 Act provisions) in relation to evidence of a pre-existing public carriageway

Meldale Ltd v Ludgershall Parish Council (2007) – an interesting exercise in construing a pre-1801 inclosure act and award by the Adjudicator to HM Land Registry (available on www.bailii.org (http://www.bailii.org))

Parker v Notts CC and SSEFRA (2009) – another judicial view of the construction of a pre-1801 inclosure act and the inference that the proper procedures were carried out.

R (oao Andrews) and Secretary of State for Environment, Food and Rural Affairs [2015] EWCA Civ 699 (Andrews 2015) – places a purposive interpretation upon the terminology used in section 10 of the 1801 Act

**Planning Inspectorate Guidance**

Rights of Way Advice Note No.11 – Guidance on Dunlop etc

**Other Publications**

Articles in Section 9 (Evidence of the Existence of Highways) of the Rights of Way Law Review.

## 7.2 Guidance

**Introduction**

7.2.1. Between 1545 and 1880 the old system in parts of England and Wales of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned, although locally powerful landowners may have had significant influence on the outcome. By the early eighteenth century, a process developed by which a Private Act of Parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined in the nineteenth century with the passing of two main general acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.

7.2.2. The four articles noted above offer detailed insights into the inclosure process and highlight the difficulties faced today in interpreting these late 18th century and early 19th century documents.

7.2.3. The significance to rights of way casework arises from the evidential value of inclosure awards as legal documents giving effect to the creation or extinguishment of public highways, depending on the powers given to the Inclosure Commissioners. (Note that pre-1835 the term “highway” did not usually include footpaths or bridleways.) Awards and maps may also provide supporting evidence of other matters, such as the existence or status of public rights of way over land adjacent to but outside the awarded area.

7.2.4. By the time Parliament brought the inclosure process to a close in 1876, it was estimated that over 5200 Private Inclosure Acts had been passed covering almost seven million acres with even more covered by agreements. In assessing inclosure evidence, it should be remembered that the process evolved over several centuries, that different Inclosure Commissioners and surveyors were involved with different levels of expertise, operating in different parts of the country at different times with different local practices and traditions. It therefore cannot be assumed that the interpretation of one map and award can be unequivocally applied to another, even in an adjacent parish.

**The Inclosure Process**

7.2.5. Inclosure was achieved by different means during different periods, broadly (but not exclusively) in the following phases:

- **1500s onwards** Inclosure by agreement * 1600s onwards Local inclosure acts
- **After 1801** Local inclosure acts operating together with the provisions of the Inclosure Consolidation Act 1801 (unless expressly stated not to apply)
- **After 1836** Local inclosure acts operating together with the provisions of the General Inclosure Act 1836 (unless expressly stated not to apply)
- **After 1845** Few local acts, mostly inclosure under the Inclosure Act 1845

7.2.6. In general, the process involved a number of distinct stages (although each individual Act should be checked since procedural variations do occur, especially in earlier inclosures); these were:

1. The Act
2. Appointment of the Inclosure Commissioners
3. Survey (in fact this may have pre-dated the Act)

4. Advertisement
5. Division, including setting out highways (marking on the ground)
6. Hearing objections to the above
7. Allotment of lands to individuals
8. Hearing objections to the above
9. Final Award
10. Enrolment of the Award
11. Making up of highways under the supervision of a surveyor
12. Justices' declaration that the highway was satisfactorily made up and thereafter publicly maintainable

7.2.7. The point at which the public acquired the right to use the highway may have arisen at the enrolment stage or, as in the case of Cubitt v Maxse 1873, upon the Justices' declaration (which was never made in that particular case); each individual Act should be checked.

**Evaluating inclosure evidence**

7.2.8. It is impossible to fully evaluate inclosure evidence on the basis of extracts from a map and award alone. Where the process was carried out under statute, the relevant inclosure act must be examined to establish the extent of the powers available to the Inclosure Commissioners.

7.2.9. The facts set out in an inclosure award carry significant evidential weight (Roberts v Webster [1967]), but they are not always easy to determine. The problem often relates to the exact meaning of the words used and these matters have been the subject of prolonged debate. For example, the meaning of the word 'private' continues to be a much debated issue. Also of fundamental importance has been the correct interpretation of the language of Sections 8 and 10 of the 1801 Act and the applicability of Section 11.

7.2.10. The following approach to dealing with inclosure awards is recommended:

**1. The land to be inclosed**

i) Is the land in question that described in the Act?

ii) Is the route across old inclosures or across land being newly inclosed?

**2. The route in question**

i) How does the award describe the route? Check the width awarded, the description of the right, the route description and whether the route is said to be for the benefit of any particular persons.

ii) How is it depicted on the inclosure map? Was it a pre-existing way?

iii) How are other routes described in the award and depicted on the map?

**3. The extent of the Commissioners' powers**

i) Consider the terms of the relevant act and establish the extent of the Commissioners' powers in relation to highways and other roads. If the awarded highway in question does not fall within the scope of those powers it should be regarded as ultra vires (beyond the authority conferred by law) unless there is good evidence to show it was a pre-inclosure public highway. If it was a pre-existing way, what did the act say was to happen to these?

ii) If the setting out of the way in question was ultra vires, consider whether the way was 'made' (in the sense of being physically constructed), and whether there is evidence that it was subsequently used by the public. If it was, then this may be evidence from which it could be concluded that a public right of way has been dedicated and accepted.

iii) If the setting out was intra vires (within the relevant powers), consider whether any other event was required by the act or award before the way became a highway (as distinct from before becoming maintainable at public expense), for example, a declaration by the Justices of the Peace that a carriageway had been "fully and sufficiently formed, completed, and repaired" (see 7.17 below). In the case of Cubitt v Maxse 1873 not all the required events had occurred and therefore no public rights accrued. Note that the requirement in Section 9 for a way to be "made up" applied only to public carriage roads.

iv) What is the quality of the map showing the route? Is it at a large scale? can its accuracy be ascertained?

7.2.11. Inspectors should normally accept that an award based on the 1801 Act and not shown to be ultra vires is very strong evidence of the legal status of the highways described, although in Jacombe v Turner (1892) 1QB 47 and Collis v Amphlett (1918) 1Ch 232 an inclosure award was found to be only conclusive as to matters within the Commissioners' jurisdiction. In the 1893 case of Micklethwaite v Vincent where an inclosure award dated 1808 was at issue, the Court of Appeal held that "Even if the Commissioners in this case have acted ultra vires, it would be impossible to hold that the award at this distance of time could be impeached."

7.2.12. A highway may have originated as a private road or path but later became public through express dedication or use by the public leading to presumed dedication. The case of Reynolds v Barnes (1909) 2Ch 361 is one such example. However further evidence would be required to demonstrate subsequent dedication to the public.

**Inclosure by agreement**

7.2.13. Agreements to enclose land could be informal or formal, the latter often being confirmed by a legal court and the former, by their very nature, being unlikely to be evidenced by records still existing today.

7.2.14. Formal inclosure agreements were usually made between the lord of the manor and the principal farmers and landowners, and were normally drawn up by a local solicitor. Without the powers to do so under an Act of Parliament, the parties concerned would have had no authority to alter existing public rights of way. However agreements may provide evidence of pre-existing highways or of dedication by the landowner (if there is corresponding evidence to show acceptance by the public).

**Local inclosure acts**

7.2.15. A Private Act of Parliament to inclose land authorised the process, defined (in broad terms) the land to be inclosed and set out the procedures to be followed by, and the powers available to, the Commissioners.

7.2.16. These Acts were many and varied and each must be studied to ascertain its precise terms.

**Inclosure Consolidation Act 1801**

7.2.17. In 1801 Parliament determined to simplify the process of Private Bills by standardising the clauses most frequently used so that these would be automatically incorporated into Local Acts, thus making them shorter and allowing for more efficient passage through the Parliamentary process.

7.2.18. Sections 8 and 9 of the 1801 Act included a set of provisions relating to public carriage roads including a minimum width requirement (30 feet) and the appointment of a surveyor to oversee the making up of the roads to a satisfactory standard followed by a declaration to that effect by the Justices. Commissioners were also empowered to stop up roads running through old enclosures but were required to obtain an order from the Justices to do so. Where a local inclosure act imported section 11 of the 1801 Act, any pre-existing roads on the lands being inclosed would be extinguished unless these had been 'set out' in the award by the Commissioners.

7.2.19. Section 10 dealt with "private roads, bridleways, footways, ditches, drains, (etc.)". The Court of Appeal has held that the term 'private' in section 10 qualified only 'roads' and was not used to qualify all other items listed in the section. The items listed after 'private roads' which Commissioners were empowered to set out and appoint could therefore be either public or private.

7.2.20. Section 44 of the 1801 Act applied its powers and provisions to all local Acts (passed after 2 July 1801) unless the latter specified otherwise. In such cases, the provisions of both the local Act and the 1801 Act should be examined.

**The General Inclosure Act 1836**

7.2.21. Even after the 1801 Act, the passage of Private Acts continued to be difficult and expensive. Pressure to provide a more efficient system resulted in the 1836 Act which authorised inclosure without an Act of Parliament, on standard terms contained in the 1836 Act, if two thirds of the landowners agreed.

**The Inclosure Act 1845**

7.2.22. The 1845 Act enabled landowners to dispense with the need for an Act of Parliament to authorise inclosure. They could proceed by agreement under the 1836 Act under the direction of an independent national body of Commissioners operating a code agreed by Parliament. Sections 62–68 of the 1845 Act set out similar provisions to the 1801 Act although the minimum width requirements accorded with the Highways Act 1835: 20 feet wide for a new public cartway, 8 feet for a public horseway and 3 feet for a public footway beside a carriageway or cartway.

7.2.23. The Act required the Inclosure Commissioners to produce an Annual General Report for the approval of the Principal Secretary of State and both Houses of Parliament. The schedules published at the end of these Annual Reports itemised the progress of each inclosure, giving the date when each key stage was confirmed by the Commissioners.

7.2.24. Between 1845 and 1852 the Inclosure Commissioners could authorise the inclosure of certain lands without first obtaining the prior consent of Parliament; such inclosures are not included in the same Schedules attached to the Annual Reports but are listed separately as 'Cases Authorised by the Inclosure Commissioners not requiring the previous Authority of Parliament'. However this practice ceased with the passing of an "Act to amend and further extend Acts of Inclosure, Exchange and Improvement of Land" in 1852.

**Presumption of Regularity** (paragraph 2.3.9. refers)

7.2.25. One consequence of the complexity of the inclosure process is that there may not be evidence to confirm that each stage in the process was completed in its entirety. It is, for example, frequently the case that records of declarations by Justices of the Peace are not available. Although an Inspector may usually rely on a presumption that the correct procedures were followed at the time unless there is evidence to the contrary, this cannot provide a remedy where it is reasonably certain that the legal requirements were not complied with. However an omission may not always be fatal to the case and it might be appropriate to consider the possibility that public acceptance of an awarded highway, if supported by the evidence, occurred nevertheless.

7.2.26. The cases of Micklethwaite v Vincent 1893 and Fisons Horticulture Ltd v Bunting and others 1976 show that the Courts generally uphold long- standing awards that were not challenged at the time.

**Recent case law**

7.2.27. Inclosure awards can be evidence of the existence, or repute, of highways at the time they were made. Two relatively modern judgments are useful though previous authority establishes the point (for example, R v Berger [1894] 1 QB 82).

7.2.28. First, in Roberts v Webster (1967) 66 LGR 298, Widgery J (as he then was) considered an 1859 inclosure award made under the Inclosure Act 1845. The case concerned an appeal against a decision of the justices at the quarter sessions which had involved them deciding whether a highway existed before 1835 so as to decide whether the highway was publicly maintainable. The justices' decision was based on the award as evidence that the highway existed in 1859. Widgery J stated: "It seems to me that the inclosure award of 1859 is very powerful evidence indeed to support the view that Pipers Lane at that time was reputed to be a public highway….If they (the justices) concluded, as they did, that the inclosure award was such a powerful piece of evidence that they should infer from it that a highway existed over this road in 1859, I can see no fault in their doing so. Indeed, speaking for myself, I am prepared to say that had I been sitting with the justices at quarter sessions, I feel sure that I should have adopted the same view."

7.2.29. Second, Hall v Howlett (1976) EGD 247, the question was whether an overgrown lane was an obstructed public highway. Evidence was given that under an inclosure award a "private carriage road and driftway" was created over the line of the lane in question. Widgery CJ said: "Then we were shown what on any view must be an important matter, namely an inclosure award…. I should have thought that if the Commissioners set out a new private road in an inclosure award it is almost conclusive that the Commissioners did not think that there was already a public highway there, because there is no basis to establish and lay out a new private road over existing public highway. I think this is a point of considerable weight to go into the scales when those scales are operated by the tribunal of fact concerned with this matter." However, see the more recent case of Gallagher 2002 below.

7.2.30. There were two judgments in the 1990s (Andrews 1993 and Dunlop 1995) which had a major impact on the controversy concerning interpretation of inclosure evidence. The judgement in Andrews 1993 in relation to section 10 of the 1801 Act was overturned by the Court of Appeal in Andrews 2015.

7.2.31. In Andrews 1993, Schiemann J decided that:

- the power in Section 8 'to divert, turn and stop up ….' was an ancillary power to be exercised if existing highways interfered with the proper functioning of the new highway system
- existing public footpaths across newly enclosed land (which are not specifically mentioned in Sections 8 and 10), being in the category "old and accustomed roads" (within the meaning of the proviso to Section 8) are not stopped up by the award. (Schiemann J also set the Logan v Burton [1826] judgment in context)
- it was inappropriate to rule on the 'setting out' issue.

[Note: although not specifically mentioned, it may be reasonable to assume Schiemann J's references to footpaths also apply to bridleways.] In Andrews 2015 the Court of Appeal held that, in construing the 1801 Act as a whole and setting the Act in the context of events prior to its enactment, a purposive approach was to be taken to the language used in section 10 and that the powers conferred by that section included the setting out of public bridleways and footpaths.

7.2.32. The Court of Appeal considered it unnecessary to address the question of whether Commissioners could set out bridleways and footpaths at widths of less than the 30 feet minimum specified in section 8 of the 1801 Act. Given that there is no minimum width requirement specified in Section 10 and that the bridleways at issue in Andrews 2015 were set out at widths of 15 feet and 10 feet respectively, it is implicit in the judgement in Andrews 2015 that Commissioners were empowered to set out public bridleways and footpaths at widths of less than 30 feet.

7.2.33. In Dunlop in 1995 Sedley J decided that the words 'private carriage road' were deliberately used in the [Glatton with Holme] inclosure award as a term of art distinguishing the particular road according to the extent of the particular rights over it from the public carriage roads on which all subjects enjoyed right of vehicular passage. Earlier in the judgment, as a conclusion arising from his study of 18th and 19th century publications, Sedley J had concluded: "This history furnished compelling evidence for the construction advanced on the applicants behalf, namely, that both in the Act of 1801 and the Glatton with Holme Inclosure Award of 1820 public and private carriageway roads were deliberately distinguished, and that the distinction signified differential rights of user, embracing all the monarch's subjects in the former case and a limited if unspecified class in the latter."

7.2.34. This judgment has been strongly criticised (see below) and some seek to limit its application. In the latter context it has been argued that … [the judgment] does not, and indeed could not, offer a conclusive interpretation to be used on all occasions. Other documents, or even the same document given different evidence, may give rise to a different meaning for the same phrase [private carriage road]. In any event such investigations at best can only decide the legal status of the actual award subject to the decision. This is an expert opinion, but nevertheless it may do less than full justice to Sedley J's reasoning (see Section 3 'Case Law' for the argument in principle). The language of the judgment permits only one

interpretation of the words ‘public’ and ‘private’ when used to describe the status of a carriage road. The terms refer to the lawful class of user. This interpretation applies equally to both the 1801 General Act and the Glatton with Holme Award 1820. Two rebuttable inferences appear to arise:

- The terms ‘public’ and ‘private’, when used in the 1801 General Act, have the same distinction in respect of any other highway so described in it e.g. private road, public bridleway etc. It would be perverse to argue otherwise.
- The terms when used in any other local acts which derive from the 1801 General Act probably have the same meaning as that in the Glatton with Holme Award.

7.2.35. There is a strongly held opinion that these inferences are wrong because the judgment itself is wrong. It is argued by some that the terms ‘public’ and ‘private’ refer to maintenance responsibilities, since maintenance rather than rights dominated highway disputes during the inclosure period. However, this has not been tested in the Courts and Inspectors should look very carefully at arguments concerning the meaning of the words ‘public’ and ‘private’, particularly in the context of the inclosure award in question.

7.2.36. There is also an assertion that the absence of definition in an award of the class of user entitled to use a private carriage road is evidence of a public right. For the reasons given by Sedley J in his judgment, this is a self- defeating argument.

7.2.37. Use of the term ‘private’ in a local act does not exclude the possibility that some form of public right existed. That may be obvious from the language of the award itself, e.g. the description of a highway as a ‘public bridleway and driftway and private carriage road.’ In some instances it is explicit in the award that the public have full rights of use over the ‘private’ road. In other cases it may be that the class of authorised vehicular user has, in subsequent case law, been held to constitute ‘the public’ (see guidance on ‘Dedication’). In yet further cases, there may possibly be evidence of subsequent user unrelated to the language of the award. Nonetheless, despite all these possibilities, when the term ‘private carriage road’ is used in the 1801 Act or in a local act, the term of itself does not confer or infer a public right of passage by vehicle.

7.2.38. Despite the criticism of this judgment, Inspectors should follow it unless and until a Court holds otherwise.

7.2.39. In Gallagher in 2002 the case concerned the status of a lane claimed to be a public vehicular highway but which was shown in an inclosure award of 1824 as a “private carriage road”. Neuberger J accepted other evidence was sufficient to show that the route was a public carriageway prior to (and since) the date of the award and “in the light of the provisions of the Inclosure Act 1801, that, if (the) lane was a public carriageway at that time, the Inclosure Award cannot have deprived it of that status.” However he did not dissent from the interpretation of “private carriage road” adopted by Sedley J in the Dunlop case, that it meant and still means “a private road (as opposed to a public highway) for carriages.”

**Concluding Comment**

7.2.40. Inclosure documents can provide conclusive evidence of public rights of way. However, the lack of consistency between different maps and awards with their corresponding Act(s) of Parliament, means that every case must be examined individually in the context of all the local circumstances and the prescribed details of the process, all of which may vary.

# 8. Tithe Commutation Documentation

## 8.1 Reference Material

### Statute

Tithe Commutation Act 1836 ((as amended by the Tithe Act Amendment Act, 1837)

### Case Law

Robinson Webster (Holdings) Ltd v Agombar (2001)(9 April 2001 HC 000095): weight attached to evidence of occupation of land by the parish officers

Attorney – General v Antrobus [1905] 2 Ch 188: Whether or not a piece of land is a road is one of the matters material to the preparation of the award and plans. This is subsequently qualified by… I must not be understood as deciding that, in my opinion, the tithe map would be evidence on any matter (although it is a public document) which is not within the scope and purview of the authority of the Commissioners who made it

Copestake v West Sussex County Council [1911] 75 JP 465: The tithe map is not admissible as evidence of the extent of a public right … It was the business of the person responsible for making this map to ascertain what land in the parish was, and was not, titheable. It was not their business to define the extent of public rights of way. However, this would not be regarded as correct today. (See Maltbridge Island Management Co v SSE below)

Maltbridge Island Management Co v SSE and Hertfordshire County Council [1998] EWHC Admin 820: Sullivan J held that evidence based on an analysis of Tithe Maps and Apportionments may be admissible as to the existence or non-existence of a public right of way. The weight to be attached is a matter for the Inspector. It cannot be conclusive. He also approved the passage in Sauvain, 2nd Ed, p47, paragraphs 2-72

Kent County Council v Loughlin [1975] JPEL 348, 235 EG 681: The judgment asserts that on the question of whether there was a road at the specific place the tithe map was of much importance. The judgment continues that the absence of a lane from the tithe map is sufficient to show that the lane did not exist as a road at the time, but Lord Denning MR acknowledged that it could have existed as a footpath. (But see also Gallagher)

Giffard v Williams (1869) 38 LJ Ch 597: It is impossible to treat the tithe map otherwise than as a public document

Smith v Lister (1895) 64 LJ QB 709: Accepts both first and second-class maps as evidence

Stoney v Eastbourne Rural District Council [1927] 1 Ch 367: The judgment maintains that ..to say that an ordinary pasture or arable field, over which a right of public footpath exists, has its titheability confined to other parts of the field, not including the small strip of land covered by the footpath, seems to me quite contrary to common sense and to the documents which we have before us

Attorney – General v Stokesley Rural District Council [1928] 26 LGR 440: If produced from proper custody, tithe maps may, in cases where the question is whether a highway was dedicated to the public before or after 1836, be used in conjunction with evidence of uninterrupted user within living memory as evidence that the way was dedicated to the public

Webb v Eastleigh Borough Council 1957: Although maps may be evidence of the existence of a highway, they are not evidence of the legal boundaries of the highway

Merstham Manor Ltd v Coulsdon and Purley Urban District Council [1937] 2 KB 77: Tithe maps make no distinction between a public and a private road, their object is to show what is titheable and the roadways are marked upon them as untitheable parts of land whether they are public or private

Attorney-General v Beynon [1970] 1 Ch 1, a tithe map was stated to be admissible evidence for determining the physical boundary of a road

Commission for New Towns v J J Gallagher Ltd [2002] 2 P & CR 24: A lane, owned by two people, farmed as pastureland with tithe rent-charge apportioned to it is not inconsistent with it being a public carriageway

**Other Publications**

'Rights of Way: A guide to law and practice' by John Riddall and John Trevelyan (published by the Open Spaces Society and the Ramblers' Association), pages 139 and 140

The Tithe Surveys of England and Wales, by Roger Kain and Hugh Prince, CUP 1985

The Tithe Maps of England and Wales, by Roger Kain and Richard Oliver, CUP 1995

The Planimetric Accuracy of Tithe Maps, The Cartographic Journal vol 13 part 2 (Dec 1976) pages 177-183

Tithe Surveys for Historians' by Roger J P Kain and Hugh C Prince (published by Phillimore & Co. Ltd) 2000

Instructions issued by the Tithe Commissioners to the tithe map surveyors for the purpose of the Tithe Commutation Act 1836 (PRO IR18 14586)

'Conventional Signs to be used in the Plans made under the Act for the Commutation of Tithes in England and Wales (British Parliamentary Paper 1837 XLI 405)

Relevant articles may be found in the Rights of Way Law Review

## 8.2 Guidance

**Introduction**

8.2.1. The 1836 Act converted tithes (the tenth part of the annual produce of agriculture), provided for the support of the priesthood and religious establishments, into a tithe rent-charge, a monetary payment based on the seven year average price of wheat, oats and barley. This was normally done parish by parish and resulted in some 12,000 documents which apportioned the payment fairly over the different lands in the tithe district. The apportionment of tithes was recorded in a schedule and on a map. Files containing correspondence pertaining to the production of the documents occasionally survive in local record offices.

8.2.2. Tithe documents are solely concerned with identifying titheable land. Apportionments are statutory documents which were in the public domain and tithe maps have been treated by the courts as good evidence as to whether land was titheable or not titheable. However, tithe maps were not intended to establish or record rights of way. There are a number of reasons why land might not have been subject to tithe in addition to the possibility of it being highway land. One of these was that the land was barren, but other examples include land held either by the church or some other religious community, or land which had only recently been converted to productive land from previous barren heath or waste land. It is dangerous to assume the maps to be proof of something that it was not the business of the Commissioners to ascertain, or to lay down rigid rules for their interpretation. Tithe commutation documents vary considerably from one to another in quality and detail.

8.2.3. The referenced article 'Interpreting Tithe Map Evidence', includes a useful extract from the instructions issued to the tithe map surveyors, and provides a helpful insight into the subject. The remaining 'other publications' provide additional insight into the tithe commutation process. However, the importance and interpretation they place on the depiction of a route as a separate parcel of land is not altogether agreed.

**Case Law**

8.2.4. While there appears to be some divergence of opinion between some of the judgments, this is not necessarily the case. Both A – G v Antrobus and Kent County Council v Loughlin relate to roads which would have crossed someone's titheable landholding and which were not shown on the tithe map (negative evidence). In Copestake v West Sussex County Council the road was shown bounded on either side by the fences of old enclosures (positive evidence). In the former cases, but not the latter, the presence, or not, of a road was clearly a material matter, as it would have affected the productivity of the landholding and hence the rent payable. (See also Gallagher.)

**Evidential Value**

8.2.5. Tithe documents can generally give no more than an indication as to whether any way is public or private. This is because a private right of way can diminish to no less an extent than a highway the productiveness of the land for tithe assessment. Nevertheless, the absence of a route from a Tithe Map does not necessarily mean that no highway existed. It may simply mean that its existence had no effect on the tithable value of the land (see also 'Status' below). Where tithe maps are shown to have been based on earlier parish or estate maps (see below at 8.10, they may have evidential value relating to the purpose for which they were originally produced.

**First and Second Class Maps**

8.2.6. The Tithe Commissioners appointed Lieutenant R K Dawson as the Assistant Tithe Commissioner and Superintendent of the surveys. He produced advice and instructions on the technical specifications for the maps which, in part, led to the amendment of the Tithe Commutation Act.

8.2.7. The amending Act of 1837 established two classes of tithe map. First class maps had the Commissioners' seal attached, showing them to be reliable as a true record of matters relating to the purposes for which the map was designed. However, second class maps, which

failed in some, often minor, way to meet the stringent test for first class status, are not necessarily inferior from a cartographic point of view. Both first and second class maps have been accepted by the courts as evidence.

8.2.8. Following the amendment to the 1836 Act, the Tithe Commissioners revised their instructions on the form of maps, setting out that the most acceptable plans would be the plain working plans containing little ornamentation and colour. (See below with regard to copies.) Whilst First Class Maps still had to conform to the prescribed technical specifications in terms of surveying techniques, the Commissioners no longer considered it essential for a system of conventional signs to be used.

8.2.9. Maps may have been newly prepared for the tithe survey, but existing maps could also be used as a base. These varied from estate maps to Township and Parish Maps, some of which may have dated from many years prior to the tithe commutation process. The decision on whether or not to commission a new survey was entirely a matter for the landowners concerned.

**Statutory Copies**

8.2.10. The 1836 Act required three maps to be produced: an original and two statutory copies. The original was retained by the Tithe Commissioners; one copy was for the relevant diocesan office and the second copy was for local deposit in the tithe district. The original map may be less colourful than the copies produced for local use and there may be variations between the maps. Some of the variations may be due to copying error and some may be deliberate (for example the use of extra colour or adornment). It is therefore important to identify which copy of the map is being examined. The original maps are generally the ones to be found in the Public Record Office.

**Other Related Documents**

8.2.11. Each Tithe Map will have been accompanied by an Apportionment giving the details of the way in which payment of the commuted tithes had been divided up or ‘apportioned’. In addition there may be a file of incidental notes and documentation containing information on a variety of related matters and in varying detail. Either of these documents may provide information which can assist in the interpretation of the map in relation to the existence of highway rights. Without reference to these documents, the value of the evidence of the map alone may be affected.

**Colouring of Roads**

8.2.12. The colouring of a road (usually sienna) on a tithe map is not, in itself good evidence of public vehicular rights. There is general agreement among the RWLR authors that the colouring on maps varies. It is therefore important to establish whether there is a key or other information in the tithe documents which provides an explanation. In the absence of such an explanation or other corroborative evidence the colouring is arguably of little evidential value in itself.

**Status**

8.2.13. Both public and private roads had the capacity to diminish the productiveness of land for the assessment of tithe. It follows therefore that the inclusion of a road under the heading ‘roads and waste’ is not, in itself, good evidence that it was public. However, the annotation of a road ‘to’ or ‘from’ a named settlement is suggestive of public rights. Where a road is shown

braced to adjacent titheable land, this indicates that the parcels have been measured together and tithe apportioned accordingly. It is not inconsistent with the existence of highway rights (see Gallagher). The Award will sometimes establish the ownership of the way depicted, but again, this does not preclude the existence of highway rights. It is unlikely that a tithe map will show public footpaths and bridleways as their effect on the tithe payable was likely to be negligible.

**Concluding Comment**

8.2.14. Tithe maps are generally good evidence of the topography of the roads they portray, especially those which form boundaries of titheable land. They may not necessarily be good evidence either of public rights or the nature of any public right that may exist. The full value of a particular map can only be determined by careful consideration of all the available tithe documents, including any relevant contemporaneous instructions or keys, and by comparing it with other reputable maps of the time to establish the relevance of the way to the overall road network. However, as statutory documents, where they do provide evidence it should be given the appropriate weight bearing in mind the original purpose of the documents concerned and the issues identified above.

## 9. Turnpikes

## 9.1 Reference Material

**Statute**

Enabling Acts relating to specific turnpikes

General Turnpike Act 1766

General Turnpike Act 1773

General Turnpike Act 1822

Highways and Locomotives (Amendment) Act 1878: Particularly Sections 13 and 16 which deals with the status of roads which ceased to be turnpikes after 31 December 1870. The sections are sub-headed “Disturnpiked roads to become main roads, and half the expense or maintenance to be contributed out of county rate” and “Power to reduce main road to status of ordinary highway”.

**Case Law**

Northam Bridge Co. v London and Southampton Rail. Co. (1840) 1 Ry & Can Cas 653: A turnpike road is a road on which a turnpike is lawfully erected and on which the public are bound to pay tolls. The distinctive mark of a turnpike road is the right of turning back anyone who refuses to pay toll

R v French (1878) 3 QBD 187: Approves and follows the above judgment

Austerberry v Corporation of Oldham (1885) 29 Ch D 750: It is doubtful whether a highway subject to the condition that the public shall pay tolls to the owner for using it can be dedicated to the public

Midland Rail Co. v Watton (1886) 17 QBD 30: It would be incorrect to describe a road as a turnpike merely because the proprietors take toll for the use of it, without being subject to any statutory liabilities in respect of it, such as are imposed on the trustees of turnpike roads

R v Winter (1828) 8 B & C 785: R v Mellor (1830) 1 B & Ad 32: R v Thomas 1857: If a road had been a highway before the legislature made it a turnpike road, it remained as an ordinary highway if the powers of the Turnpike Act expired. If a road was first made under the Turnpike Act, upon the expiring of the Act the public right of passage was at an end unless some other means were taken to renew or continue the right

**Other Publications**

Halsbury's Laws of England Vol.21

Pratt and McKenzie's: Law of Highways (21st Edn.) London (Butterworth) 1967 – pages 12 & 13

Burns' Justices of the Peace and Parish Officer 1800 (19th Edn.)

Statutory Authorities for Special Purposes: Sidney and Beatrice Webb 1922 (reprinted in 1963) – Chapter III deals with The Turnpike Trusts

The Turnpike Road System in England: 1663 to 1840. Dr William Albert 2007

## 9.2 Guidance

**Introduction**

9.2.1. Turnpiking was mostly concerned with the repair and improvement of existing roads, with repairs being carried out by a Turnpike Trust. The creation of a Turnpike Trust for a particular road did not remove the statutory duty of maintenance from the Parishes through which the road passed. In general Turnpike Trusts were created for a fixed term, often 21 years, with the statutory authority being periodically renewed by Act of Parliament. The Enabling Acts contain a great deal of information and should be read in full; relying on selective passages can be misleading. It is also important to establish what general legislation was in force at the time the turnpike lapsed.

9.2.2. There is little guidance on turnpikes other than the relevant case law and that contained in specialist publications on highway law, such as Pratt and McKenzie and Halsbury, Vol.21, Two books which cover the subject in some detail are listed above (S & B Webb and Dr W Albert).

**Statute**

9.2.3. The first Trusts to be established by statute were administered simply by Justices of the Peace in various counties, and the first toll-gate, set up at Wadesmill in Hertfordshire, was administered by the Quarter Sessions. From 1706 the number of Turnpike Trusts increased steadily to a maximum in 1835 of over 1100 Trusts, responsible for over 20,000 miles of roads.

9.2.4. Where a highway or turnpike had been lawfully diverted, the 1773 Act made provision for the liability for maintenance of the old section of road to be transferred to the new section of highway or turnpike with the liability to maintain the former section being extinguished. The

1773 Act also made provision for the erection of direction posts at cross roads, for depth posts at fords and for mile stones inscribed with the names and distances of the principal towns found on the road.

9.2.5. The 1822 Act made specific provisions for the disposal by sale of turnpike roads that had become superfluous and allowed the trustees to stop up any former roads, or such parts of them, which in their judgment had thereby become useless or unnecessary. However, roads leading to towns, villages, mills, churches, etc., to which the new roads did not directly lead, were to be kept open either as private or as public ways. While this does not appear to be covered in the previous legislation, Burns indicates that similar provisions were in force in 1800.

9.2.6. The provision of milestones or mileposts along turnpike roads became a requirement following the passing of the General Turnpike Act of 1766 but was common in many local enabling Acts from 1744.

9.2.7. Despite examples of well-run Trusts and some roads being kept in good repair, the proper financial control and regulation of the Turnpike Trusts in general was poor, and led to numerous General Acts of Parliament at various times to try to improve the procedures. It is therefore necessary to be clear on the date of the Trust in question, and all the relevant legislation which may affect it and which may have been in force at the time, when evaluating the evidence.

**Case Law**

9.2.8. The contention that the term ‘turnpike’ could apply to any route where toll was collected was disposed of by Austerberry v Corporation of Oldham and Midland Rail Co. v Watton, which make it clear that a turnpike can only be dedicated under statute. Case law also shows that turnpikes reverted to their original status when the turnpike ceased to operate. It is therefore important to establish the pre-turnpiking status of the way (see ‘Status’, next).

**Status**

9.2.9. Under the 1878 Act roads disturnpiked after 31 December 1870 were converted into main roads. Disturnpiked main roads could be declared by county authorities to be ordinary highways. This does not mean that all ex-turnpikes carry public rights. If a route was a public highway prior to becoming a turnpike, it automatically reverted to its original status. However, if a road was created specifically to be part of a turnpike and the enabling Act did not specify that it was to be a highway in perpetuity, the public right of passage would expire when the turnpike expired, unless this happened after 31 December 1870 or unless some other means were taken to renew or continue the right. The argument that a route cannot be public if the public have to pay to use it does not apply to turnpikes, where the collection of tolls was authorised by statute for the purpose of repair.

9.2.10. It is important to read fully the enabling Act of Parliament to determine the status of the route prior to turnpiking, and to determine if any new roads were authorised to be set out. It is also important to read the subsequent Acts that renewed the Turnpike Trust until its eventual winding up. The enabling Act will generally specify the lifespan of the Turnpike Trust (usually 21 years). The Acts will provide an indication of the status of the route prior to turnpiking and the powers of the Trustees to create new routes, to stop up others, to deviate the line of the turnpike and what was to happen to the former route if the turnpike was diverted. The enabling and renewal Acts will also give details of the tolls to be levied and may provide local

authorisation for the erection of toll houses, toll bars and mileposts. The enabling Act may cover more than one route and may also refer to other roads in the vicinity to which the turnpike connects.

**Concluding Comment**

9.2.11. Turnpike roads were public carriageways, and many retained this status when the turnpike ceased to operate. Others which were not public roads prior to turnpiking reverted to their original status when the relevant Turnpike Act lapsed or when the Trust was wound up. Some were stopped up. The status of former turnpikes is not always readily apparent and often can be established, on a balance of probability, only by a careful study of all the relevant evidence. The physical evidence of the route on the ground may now bear no resemblance to the physical conditions pertaining before or during the time of the turnpike, and assumptions made on the basis of current physical characteristics should be treated with caution.

## 10. Railway And Canal Deposited Plans

## 10.1 Reference Material

**Statute**

Special Acts of Parliament

Railways Clauses Consolidation Act 1845: Inspectors should be familiar with the following clauses:

- Clause 10: Certified true copies of the plans and books of reference, and alterations of, to be received as evidence of the contents thereof
- Clauses 46-51: Crossing of Roads and construction of bridges

**Case Law**

Monmouthshire Canal Company v Hill (1859) 4 H & N 421: A towpath is legally part of a canal

Grand Junction Canal Company v Petty (1881) 21 QBD 273: Any dedication to the public along a towpath is a limited dedication and cannot set up a right to prevent or limit the use of the towpath

Dartford Rural District Council v Bexley Heath Railway Co. [1898] AC 210: The 1845 Act does not impose a duty upon a railway company to carry a footpath over the railway or the railway over the footpath by means of a bridge

**Other Publications**

‘Rights of Way: A guide to law and practice’ by John Riddall and John Trevelyan Fourth Edition (published by the Open Spaces Society and the Ramblers’ Association) page 33 - towpaths

Woolrych – A treatise of the law of ways: including highways, turnpike roads and tolls, private rights of way, bridges, ferries and railways in relation to highways and turnpike roads 1847(2nd Edn.): Chapter X (concerns the 1845 Act)

Article in Section 9 (Evidence of the Existence of Highways) of the Rights of Way Law Review.

## 10.2 Guidance

### Introduction

10.2.1. Individual railway and canal schemes were promoted by Special Acts. The process for Canal Schemes was codified in 1792 by a Parliamentary Standing Order and these arrangements were extended to cover Railway Schemes in 1810. The requirements for railways were expanded in the 1845 Act, with public rights of way which cross the route of a railway to be retained unless their closure has been duly authorised. Therefore, although it was not the primary purpose of the deposited plans to record rights of way, they can provide good evidence in this context.

### Evidential Value

10.2.2. Both canal and railway deposited documents were in the public domain. The statutory process required for the authorisation of railway schemes, and to a lesser extent canal schemes, was exacting and the book of reference and deposited plans made in the course of the process needed to be of a high standard. In particular, railway plans, which were normally specifically surveyed for the scheme, usually record topographical detail faithfully. They have been admitted by the courts as evidence of public rights of way. Where available, surveyor's notes can provide useful information regarding the then function of a particular way.

10.2.3. The process for the authorisation of railway schemes provided for scrutiny of the plans by involved parties. Landowners would not have wished unnecessarily to cede ownership, Highway Authorities would not have wanted to take on unwarranted maintenance responsibilities, and Parish Councils would not have wished their parishioners to lose rights. Therefore an entry in the book of reference that a way was in the ownership of the 'Surveyor of Highways' may be persuasive evidence of a public right of some description. However, the weight to be given to this can only be determined when it is considered alongside all the other evidence. There may be reputable evidence to rebut it such as a deed, conveyance or local map. The material available relating to canal schemes is generally more limited, both in quality and scope, than that for railway schemes.

10.2.4. Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain. Whilst they are likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process. As above, the weight to be attached will need to be determined alongside all the other available evidence.

### Status

10.2.5. Railway plans and cross-sections usually differentiate between public and private roads. Where this is not the case and the route is described as 'road' in the book of reference, it is sometimes possible to establish the nature of the way by reference to the description of other roads. Unless the existing roadway was less than 25 feet (in which case section 51 of the 1845 Act set the minimum by reference to the average available width for the passage of carriages within 50 yards of the point of crossing), the minimum width for bridges carrying roads over the railway in the 1845 Act (section 50) is 25 feet (7.62 metres) for public roads and 12 feet (3.66 metres) for private roads. However, caution needs to be exercised regarding the latter as some high status estate roads had wider bridges. The minimum dimensions of bridges carrying the railway over roads are set out in section 49 of the 1845 Act. There were no specified widths for bridleways or footpaths. Section 47 of the 1845 Act set out the

requirements for the gating of crossings on the level. If a manned level crossing is shown, the associated route is likely to be a public vehicular road. Canal maps and their associated books of reference do not always differentiate between public and private roads. A towpath is legally part of a canal but may also be a highway.

10.2.6. The status of a way had an impact on the cost of the scheme and it is unlikely that railway plans would show a route at a higher status than was actually the case. There was no obligation to bridge footpaths under the 1845 Act and, as a general rule, unless there is specific provision in the Special Act, any public route requiring a bridge is of at least bridleway status. Bridleways and footpaths which are not shown on the plan are sometimes described in the associated book of reference. Canal plans and their associated books of reference record roads, but do not normally record bridleways and footpaths. Any public rights along a towpath are generally limited to footpath.

**Concluding Comment**

10.2.7. For the above reasons deposited plans can be good evidence to support a claim that a highway existed at the time they were made. Where this is not the case, they are still useful in establishing that a particular route existed.

## 11. Part 1 - Finance Act 1910

## 11.1 Reference Material

**Statute**

Finance (1909 – 1910) Act 1910

Inspectors should be familiar with the following sections:

- Sections 7–10; 35, 37 & 38: Exceptions
- Section 25: Allowable deductions
- Sections 26 & 27: Valuation of land for the purposes of the Act
- Section 30: Duties of Commissioners to keep records

**Case Law**

Robinson Webster (Holdings) Ltd v Agombar [2001] EWHC 510 (ch) (9 April 2001) – weight attached to evidence of non-inclusion of a route in the taxable land of a hereditament

Maltbridge Island Management Co v SSE (31/7/98) – whether weight may be attached to Finance Act evidence

Fortune v Wiltshire CC [2012] EWCA Civ 334 – significance of the exclusion of a route from adjacent hereditaments when weighed with all other relevant evidence

**Other Publications**

‘Valuation Office Records Created under the Finance (1909-10) Act 1910’, National Archives Information Leaflet no. 68

‘Land and Society in Edwardian Britain’, Brian Short, Cambridge University Press, 1997

Maps for Family and Local History, The records of the Tithe, Valuation Office and National Farm Surveys of England and Wales, 1836 – 1943, Geraldine Beech and Rose Mitchell, published by The National Archives, second edition, 2004

The National Archives Research Guide, National Farm Surveys of England & Wales, 1940 – 1943

The National Farm Survey 1941 – 1943; State Surveillance and the Countryside in England and Wales in the Second World War, Brian Short,

Charles Watkins, William Foot and Phil Kinsman, published by CABI Publishing, 1999

The following articles, which are of interest, have appeared in the RWLR:

- ‘Rights of Way and the 1910 Finance Act,’ - Zara Bowles, RWLR Sept 1990 (see below at 11.2);
- ‘Uncoloured roads on 1910 Finance Act maps,’ David Braham Q.C. May 2002

## 11.2 Guidance

### Introduction

11.2.1. The 1910 Act provided for the levying of tax (‘Increment Value Duty’) on the increase in site value of land between its valuation as at 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. There was a complex system for calculating the ‘assessable site value’ of land, which allowed for deductions for, among other things, the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user and to the right of common and to any easements affecting the land (Section 25(3)).

11.2.2. Whilst numerous articles of relevance have appeared in the RWLR, ‘Rights of Way and the 1910 Finance Act’ by Zara Bowles (RWLR Sept 1990) provides a short overview of the Act in relation to public rights of way. However, some of the views and conclusions expressed should now be seen as questionable as subsequent research has informed general understanding of these records. Professor Short’s book and the National Archives leaflet set the historical context.

### Evidential Value

11.2.3. Evidence of the possible existence of a public right of way in Finance Act documentation usually arises in one of two ways:

- reference to it in one or more of the various documents forming part of the valuation process, or
- exclusion of a route from the assessable parcels of land shown on the map record.

Reference to a possible route in the documentation

11.2.4. An early part of the valuation process was the completion of a ‘Form 4’ by the landowner. This form asked whether the relevant unit of land ownership (these were known as ‘hereditaments’) was subject to any public rights of way or any public rights of user. Information from Forms 4 was copied into Field Books in the District Valuation Office before the valuers went into the field to inspect and assess the hereditaments. In these books, and in other forms such as Form 36, sent back to landowners with the provisional valuation, and Form 37, the office copy of Form 36, the distinct categories were run together into ‘public rights of way or user’. Information from the Field Books (which are kept in the National Archive at Kew), including deductions in value for ‘public rights of way or user’, was copied into the relevant columns in the Valuation Books, which are normally now found in Local Record Offices. Working plans (see below at 11.7), sometimes with detailed annotations, were completed in the field and the final record plans, which normally show only hereditament boundaries, were compiled from them.

11.2.5. Although direct evidence of the acknowledgment by a landowner of a public right of way from an entry on a Form 4 may be considered to be very strong, the vast majority of them were destroyed after the transcription of their information into the Field Books. However, evidence of the existence of a public way across a hereditament may be deduced from, for example, a Field Book entry showing a deduction under ‘public rights of way or user’, with further clear hand-written details, such as use of the words ‘public footpath’. The position of such a way may be shown by annotations on the working plans or written information in the Field Book. But where hereditaments were large and crossed by numerous paths it may not be possible to conclude from written information that a particular route was referred to. Even where field plans are annotated, and paths marked as ‘public’, it may be unclear when and by whom annotations were made. Evidence from Field Books and plans may provide good evidence of the reputation of a way as public, but care should be exercised when drawing conclusions from material not known to be provided directly by or on the authority of the landowner.

11.2.6. It has been asserted that the term ‘public right of user’ refers to private rights of way, but, apart from some apparently anomalous entries on a few surviving Forms 4, there is no evidence of this use of the term. It would normally refer, when distinguished from a public right of way, to a non-linear public right, such as a right of recreation. A private right of way is normally a form of easement, and a deduction for such a way would be expected to be found under the heading of easements.

**Exclusion of a route on the map record**

11.2.7. Working copies of the plans are normally found in Local Record Offices. Most final record plans are in the National Archive. They are based on large-scale Ordnance Survey plans. The 1910 Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i.e. they will be shown uncoloured and unnumbered. It is possible, but by no means certain, that this is related to s.35(1) of the Act: No duty under this part of the Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority. The practice would also be compatible with s.25(3) which states that The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to… any public rights of way. So if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books; however, there may be other reasons to explain its exclusion. It has been noted, for example, that there are some

cases of a private road set out in an inclosure award (see section 7) for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments; however this has not been a consistent approach. Instructions issued by the Inland Revenue to valuers in the field deal with the exclusion of 'roadways' from plans, but do not explicitly spell out all the circumstances in which such an exclusion would apply.

11.2.8. In his article 'Uncoloured roads on 1910 Finance Act maps' (RWLR May 2002) David Braham Q.C. considers the significance of exclusion of a route from assessable land. This approach received judicial endorsement in the case of Fortune v Wiltshire CC [2012] in which Lewison J gave careful consideration to the interpretation of routes excluded from adjacent hereditaments. In essence he concluded that the Finance Act records are not definitive; they are "simply one part of the jigsaw puzzle" to be considered along with other relevant material particular to each case.

**Concluding Comment**

11.2.9. Documents and plans produced under the Finance Act can provide good evidence regarding the status of a way. In all cases the evidence needs to be considered in relation to the other available evidence to establish its value; this is particularly important where a deduction for a public right of way is shown in the Finance Act records but its line is not apparent. It should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments although this may be a strong possibility, depending on the circumstances. It must be remembered that the production of information on such ways was very much incidental to the main purpose of the legislation.

## 12. Farm Survey Records

12.0.1. When the Second World War began in September 1939, Britain needed to increase food production at home. The Minister of Agriculture and Fisheries ("MAF") was empowered under Defence (General) Regulation 49 to set up County War Agricultural Executive Committees ("County War Ags") which had the authority to direct what was grown, take possession of land, terminate tenancies, inspect property, and organise farm workers. To assist with this 85% of the agricultural area was surveyed between June 1940 and early 1941 with farms classified in terms of their productivity; however, only summary statistics survive from this survey.

12.0.2. In April 1941 MAF authorised a survey of every farm and holding of five acres or more, giving rise to the following documents:

- A Farm Record with information on conditions of tenure and occupation; the natural state of the farm, including fertility; the adequacy of equipment, water and electricity supplies; the degree of infestation with weeds or pests; and the management condition.
- A census return for 4 June 1941 including statistics of crop acreages, livestock numbers and information on rent and length of occupancy.
- A map of the farm showing the farm boundaries, on an OS base map.

12.0.3. The National Farm Survey began in spring 1941 and was largely complete by the end of 1943, being undertaken by the district committees made up largely of farmers who visited and inspected each farm, interviewing the farmer. Copies of the documents produced by the

survey, as well as background information on the purpose and organisation of the survey, are held by The National Archive.

12.0.4. Section B of the Farm Survey form includes two questions relating to 'roads', identifying as 'good', 'fair' or 'bad' under B.4., the "Situation in regard to road" and B.7., the "Condition of farm roads". B.4. seems to refer to the position of the farm in relation to access to and from the public road network for the transport of goods to and from the farm (B.5. similarly refers to railways). B.7. refers to the condition of farm roads, however, the inclusion of a particular route is unlikely to be identified on the relevant map; even then it is possible that public rights could co-exist with any private rights and so the value of the record is questionable. There are instances where a road is excluded from the farm boundaries but, from a sample, these appear to be known vehicular highways. B.7. was frequently crossed through if there were no internal roads.

12.0.5. The records do provide reliable information regarding land ownership and tenancy at the time they were compiled; it is often referred to as the second Domesday survey. It is possible that information regarding rights of way might arise from the Survey, although, from an investigation of the records for several areas of the country, it seems unlikely. In any event the primary purpose of the records should be borne in mind when determining the weight to be given to any evidence arising.

## 13. War Power Closures

## 13.1 Permanent Closures or Diversions of Rights of Way

13.1.1. Powers are available to the Secretary of State for Defence under the Defence Act 1842 and Defence Act 1860 to permanently stop up or divert public footpaths, public bridleways or Restricted Byways (Amendments made by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006). There is no opportunity to object to such a closure or diversion, although any such action taken under the 1842 Act requires the Secretary of State to provide an alternative path or way; under the 1860 Act, the provision of an alternative path is optional. These nineteenth century statutes remain in force (as evidenced by their amendment by subsequent legislation), and have been used to stop up or divert public rights of way in the vicinity of military airfields and communications sites in the 1980s and 1990s (Molesworth airfield (1985); Menwith Hill (1985); RAF Upper Heyford (1990) and RAF Lakenheath (1999)).

13.1.2. Section 13 of the Military Lands Act 1892 allows application to be made to the Magistrates Court for the closure or diversion of a footpath (but not a bridleway) which crosses or runs inconveniently or dangerously near to any land leased by the military under the Act. Before making an Order, the Court must be satisfied that a convenient new path will be provided for public use.

13.1.3. Section 8 of the Land Powers (Defence Act) 1958 allows the Secretary of State to permanently stop up or divert any highway where the land is to be used for the purposes of an installation provided or to be provided for defence purposes, or used by a manufacturer of aircraft wholly or mainly for the manufacture of aircraft used for defence purposes, and the Secretary of State is satisfied that, for the land to be used effectively without danger to the public, it is necessary that the highway must be stopped up or diverted.

**Temporary Closures of Rights of Way**

13.1.4. The Land Powers (Defence Act) also provides for the temporary closure or diversion of rights of way for the limited purposes outlined in paragraph 3 above.

13.1.5. Provision was made for the temporary closures of highways during the First World War under the Defence of the Realm (Acquisition of Land) Act 1916. Orders made under Section 6 of that Act could not remain in force for more than 12 months following the end of the War, unless the consent of the Railway and Canal Commission was obtained. Under the Treaty of Versailles, the First World War ended on 28 June 1919. Unless an Order made under the 1916 Act had been extended in operation, the latest date upon which it could have any effect would be 28 June 1920.

13.1.6. The Emergency Powers (Defence) Act 1939 was intended to only operate for one year, but continued in force throughout the whole of the Second World War, and until 24 February 1946. The Act provided for the making of Defence (General) Regulations for a wide variety of topics, including the temporary stopping up or diversion of highways; in addition, the regulations permitted County Agricultural Executive Committees to authorise the ploughing of rights of way, subject to their eventual restoration and the provision of diversions.

13.1.7. After the war, the Requisitioned Land and War Works Act of 1945 provided for orders to be made for the permanent stopping up or diversion of highways which had been temporarily stopped up or diverted under the 1939 Regulations. The Requisitioned Land and War Works Act of 1948 extended the scope of this power to encompass highways which had in practice been temporarily closed or diverted but for which no formal order had been made under the Regulations. In both cases, the power to make such orders was intended to be available only until two years after the war period. This was defined as the period during which the Emergency Powers (Defence) Act, 1939 and the Supplies and Services (Transitional Powers) Act, 1945 were in force. The latter Act was originally brought in to last for 5 years until 10th December 1950 but each year after that Parliament extended the Act for a further year until, on 25th March 1959, the Emergency Laws (Repeal) Act repealed the whole of the Supplies and Services (Transitional Powers) Act 1945 (with two exceptions which are not relevant here). However their provisions (and those of the Supplies and Services (Defence Purposes) Act, 1951 in relation to the stopping up or diversion of highways across or adjoining defence land) continued to be operative until terminated by the Land Powers Defence Act, 1958 with effect from 31st December 1958. Objections to orders made under the 1945 and 1948 Acts were heard by the War Works Commission; some records survive in both national and local archives.

13.1.8 The 1958 Act included a power to vary or revoke orders made under the 1945 Act without any time limitation. However, where such a proposal was published before 31st December 1960 to vary an order made under the 1945 Act (because a condition requiring the provision or improvement of an alternative highway had not been satisfied and therefore the stopping up or diversion had not come into operation) then the highway could remain closed pending the coming into operation of the variation order, or for a further six months if the variation was disputed and subsequently rejected by the War Works Commission.

13.1.9. The Land Powers (Defence Act) 1958 also applied the provisions of the Town and Country Planning Act (1947) to situations where the land is required to be used for defence purposes. Any stopping up or diversion proposed under these provisions can be permanent or temporary but introduced the now well-established procedures for advertisement of such proposals.

**Practical considerations**

13.1.10. Unless extended by due process, any temporary closures of rights of way made under emergency powers during the First or Second World Wars would have ceased to have effect on 28 June 1920 or 31 December 1958 as appropriate.

13.1.11. In individual cases, there may be some local belief and reputation that wartime closures had a permanent effect; this is not the case with regard to closures under the 1916 Act or the regulations made under the 1939 Act. Similarly, the general authority to close and plough up rights of way ceased to have effect when the enabling regulations were repealed. Only in those cases where further legal action was taken could the temporary wartime closures become permanent.

13.1.12. The requirement for action to be taken under the 1916 or 1939 Acts to close a route provides evidence of the existence of public rights prior to that closure, and the orders made normally deal authoritatively with the previous status of the right of way in question. Such orders can therefore be a very useful and persuasive source of evidence in connection with the existence and nature of public rights.

# 14. Maps (Commercial, Ordnance Survey, Estate Etc) and Aerial Photographs

## 14.1 Reference Material

**Statutes**

Survey Act 1841

**Case Law**

Hollins v Oldham 1995 C94/0206, unreported. Judicial view on cross roads: ‘Burdett’s map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used on payment of a toll and, secondly, other types of roads which are called cross roads … This latter category, it seems to me, must mean a public road in respect of which no toll was payable’.

Kent County Council v Loughlin 1975 (see also Section 8) Denning LJ stated ‘The county council archivist produced maps between 1769 and 1819. None showed Fairly Lane at all, but they were to so small a scale that they showed only public carriageway roads’. This remark is taken by some to mean that Lord Denning considered that all highways on pre-1820 maps are public highways. However, it is unlikely that he was generalising on all highways on such maps.

Attorney General v Antrobus (1905) – Judicial view on whether OS maps are evidence of a way being public or private: “Such maps are not evidence on questions of title, or questions whether a road is public or private…..in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey”.

Clode and Others v LCC 1913 - Judicial views on some commercial maps ‘I do not think that the Horwood maps were admissible in evidence … they were apparently but the speculations of a publisher, not official productions, put forth as topographical guides to parts of London. In my opinion these maps are not admissible for that purpose, the maps were just a private adventure for the purpose of profit on the sale of them’.

Attorney General v Horner, 1913 – Some judicial views on the Ordnance Survey map of 1874. 'Such maps are not evidence on questions of title, or questions whether a road is public or private, but…set out every track visible on the face of the ground and are in my opinion admissible on the question of whether or not there was in fact a visible track at the time of the survey'.

Merstham Manor Ltd v Coulsdon UDC 1936 Some judicial views on various maps 'The road is again shown on the map of 1802 by Faden and again in Greenwood's map of 1822 and 1823; but, of course, these maps only show it as a road. There is nothing in the maps to show whether or not the topographer-author was intending to represent the road on his map as a public highway. All the Ordnance Survey maps show the road, but it was admitted by Mr Godley, a witness from the Ordnance Survey Department, that they show any road which is there on the surface whether it is a public highway or not'.

Masters v SSE [1999] WL 809077: the inferences that can be drawn from thickened casing lines or 'shading' on the south and east sides of roads shown on OS maps. Where evidence is presented which shows that, on the basis of detailed comparison with other public roads in the locality, the shading of the route in question resembles the way other known public carriageways were depicted by OS, the inference may be drawn that the status is similar.

Commission for New Towns v J J Gallagher Ltd [2003] 2 P & CR: Contains a useful discussion on the value of a wide range of mapping evidence in a case where the expert witnesses were Dr Hodson and Professor R Kain

Norfolk County Council v Mason [2004]: Contains a discussion on the value of a number of different map sources as evidence.

**Planning Inspectorate Guidance**

Rights of Way Advice Note No.4 – meaning of 'cross road' See paragraph 2.4.1. et seq.

**Other Publications**

'Rights of Way: A guide to law and practice' by John Riddall and John Trevelyan (published by the Open Spaces Society and the Ramblers' Association Chapter 6.4).

'OS Maps – a concise guide for historians' - R Oliver 1993. As well as providing a concise history of the OS, it includes a lengthy chapter on the depiction of detail on OS maps, comprising a comprehensive dictionary from 'Accuracy' through to 'Zincography.' This is a very useful book for detailed information on OS maps.

'Ordnance Survey instructions to field examiners and revisers and internal Circulars (various dates 1884 – 1961) list in detail the tasks of field examiners engaged in the revision of Ordnance Survey maps at various scales in relation to roads, bridle roads and footpaths.

'Ordnance Survey Maps – a descriptive manual' - J B Harley, 1975 - A comprehensive study of the development of OS maps.

'Maps and Air Photographs,' - G C Dickinson - The first chapter is particularly good on the different mathematical projections developed for maps.

'The Early Years of the Ordnance Survey,' - C Close (published in 1926 and reprinted in 1969), - The early history of the OS, by the Director of the OS from 1911 – 1920.

‘Map of a Nation – A biography of the Ordnance Survey’ – Rachel Hewitt 2010

‘The Ordnance Survey of the United Kingdom’ – T. Pilkington White, 1886 – A history of the OS by its serving Executive Officer. Available as a reprint on demand.

‘Maps and Map-Makers’ - R V Tooley 1952 – Chapter viii covers the County maps in detail.

## 14.2 Guidance

### Introduction

14.2.1. The fundamental problem with all maps is that they incorporate compromises in their efforts to represent a spherical surface onto a flat surface. Thus, no one map is capable of simultaneously representing accurately the four factors involved of distance, direction, area and shape. That said, the 17th and 18th centuries saw a tremendous surge in the development of the mathematical requirements of maps, and in the manufacture of the precision instruments required for the accurate assessment of bearing and level.

14.2.2. In many instances, the purpose of the presentation of a map at an inquiry is to support arguments regarding the status of a route. Any route on such a map needs to be assessed carefully against the route shown on the Order Map, to ensure that the routes substantially agree. The age of the map may also be significant in relation to its accuracy, as will the key attached labelling the types or status of the routes inscribed on the map.

14.2.3. Prior to the Rights of Way Act 1932 only those maps and records produced under express statutory authority , such as Inclosure and Tithe Awards, or deposited plans, were admissible as evidence in determining the existence or otherwise of rights of way. The 1932 Act first provided that any map, plan, history or other relevant document shall be taken into account, meaning that documents such as early surveys and Ordnance Survey maps became admissible evidence. Accordingly, the views expressed on such documents in some of the earlier case law should be read with this in mind.

### Pre-1800 Maps and Atlases

14.2.4. The value of pre-1800 maps and atlases is variable, as they are generally compromised by a lack of sophistication. Colonel Close, a former Director General of the OS, considered that picturesque and interesting as old county maps are, they leave a great deal to be desired on the score of accuracy ….. errors of up to 10% can be found in Elizabethan maps’. Only a few were based on trigonometric surveys, or on a recognised mathematical projection.

14.2.5. The original six ‘Great Post Roads’ are shown on Thomas Gardiner’s maps of 1677. Secondary roads are also shown on these maps branching off at the main Post Towns. The key attached to some of the maps shows several of these branch routes as ‘By posts (foot and horse)’. However, if the key does not accompany the maps, they are unlikely to be good evidence regarding the status of these secondary routes.

14.2.6. Most of the county maps produced in considerable numbers in the second half of the 18th century were in response to an offer by the Royal Society of Arts of a prize of £100 for a map of any county on a scale of 1 inch to the mile. In 1765, Benjamin Donn won the £100 award offered by the Royal Society for his map of Derbyshire.

14.2.7. Many of these early map makers made use of trigonometric surveys in the production of their County maps, including Burdett for Cheshire and Derbyshire, Yates for Lincolnshire, Staffordshire and Warwickshire, Armstrong for Durham, Prior for Leicestershire, Hodskinson for Suffolk and Strachey for Somerset. Cary maintained a high standard with his maps, and in 1794 was employed by the Postmaster General to supervise the survey of 9000 miles of turnpike roads. Cary also employed Aaron Arrowsmith to be the land surveyor for his 'Map of the Great Post Roads between London and Falmouth,' produced in 1784. It was as a result of Cary's belief that he could copy OS maps without restriction that, in 1817, the OS took steps to copyright the maps it produced.

14.2.8. Although the second half of the 18th century saw considerable progress, both in the number of maps produced and in their technical accuracy, they were not always reliable for their topographical details. Dr Hodson maintains that the greatest scope for error … lies with the county map, few of which were surveyed entirely de novo (RWLR article 'The evaluation of older maps' July 1999, section 9.3, page 31). Nevertheless, in Gallagher Neuberger J was satisfied that the historical maps he was considering demonstrated that Beoley Lane had existed as an identified way since about 1722, accepting that old maps contained inevitable inaccuracies. He was less able to draw confident conclusions from any of the historical maps as to whether or not it was a public carriageway. The map on which he placed most reliance was that of Cary (dated post- 1800).

14.2.9. However the evidential value of the older maps can be significant in helping to determine the location of a way, and may be helpful in determining the status of a route, especially in conjunction with other maps. Although the level of accuracy of sketch maps may be difficult to determine, they too can be of value in some circumstances.

**Ordnance Survey Maps**

14.2.10. The formation of the Ordnance Survey in 1791 reflected the experience gained in the military survey of Scotland by William Roy, the intellectual founder of OS, and was in response to a military need for accurate maps of southern England in preparation for a possible Napoleonic War. Whilst the earliest one-inch maps were produced in response to these military concerns, there was a shortage of trained military surveyors and many of the early maps were produced by local civilian surveyors. The suggestion that all road or ways shown on the first edition of the one inch maps are of roads or ways suitable for wheeled artillery is likely to be no more than a generalisation. However, the Old Series 1 inch maps did label turnpike roads and distinguished them from other roads by a thickening of the casing lines on the south and east side of the road.

14.2.11. Over the years, OS developed a variety of maps to meet the growing need for accurate and up-to-date maps of the UK and the production of maps for sale to the public became an activity of increasing importance to OS from the early twentieth century, although the sale of maps to the public had occurred throughout its existence.

14.2.12. The first one-inch maps (1:63,360) were produced in 1801 and covered Kent, part of Essex and London. It was not until 1873 that the whole of the UK was covered. They were relatively unsophisticated monochrome maps, with relief indicated solely by hachures. Inspectors may also be presented with copies of the Ordnance Drawings, which were carried out for southern England over the period 1789 – 1840. They were drawn to a variety of scales, 2 inches, 3 inches and 6 inches to the mile. Some of the drawings were made 20 years before the relevant one-inch map was published. Some larger scale drawings show footpaths which did not appear on the printed map.

14.2.13. A demand for maps showing the countryside on a larger scale led to a six inch to the mile map of Ireland, (1:10,560). This was then extended to the rest of the UK. From 1840, the one inch maps of northern England and Scotland were reductions of the six-inch survey.

14.2.14. The industrial development of the Victorian era, followed by the rapid expansion of towns and communications, led to a demand for even larger scale plans. In 1858, it was decided to publish the whole of the UK on a scale of 1:2500 (approximately 25 inches to the mile).

14.2.15. The first edition OS maps, in the eyes of Colby, the Superintendent of the Survey, were prodigies of excellence in comparison with earlier maps, but it became apparent that some of the early one-inch maps suffered from errors as they had been made in a hasty manner during the war. This was particularly true regarding the maps for Lincolnshire, Hampshire and Lundy Island, although Colby had sought to identify, correct and eliminate inaccuracies found during the surveying process. In addition, the maps had been constructed using a mathematical projection which had some inherent inaccuracies at the extremes of the map to the north and south. To overcome this problem, the OS utilised a series of meridians for differing parts of England and Wales. As a result, roads and paths on adjacent maps at county boundaries do not always match precisely, and reflect the north/south errors in the projection. However, since this mismatch is created by the projection process used for the making of the map, the positional accuracy is not significant.

14.2.16. The process of refashioning the old County Series scale maps to National Grid standards was undertaken between 1948 and 1980. The process, referred to by the OS as 'Overhaul' or the 'Cotswold Adjustment', attempted to eliminate errors, particularly those of distortion and mismatching. The methodology used involved a degree of 'cut and paste' technique to align the former projection with the National Grid. Recent advances in global positioning systems and their ready availability have revealed positional discrepancies on the ground. These differences, where they occur, are normally of 3 – 5 metres, but can be up to 10 metres in places. However, the fact that satellite technology may demonstrate that all the objects in a given area are a few metres out in relation to their current depiction on a two-dimensional plan will have little impact upon the relative position of one feature to another on the ground. Any positional inaccuracy revealed by GPS technology does not detract from the usefulness of pre-GPS Ordnance Survey maps as a record of what was observable on the ground at the time of the maps were surveyed.

14.2.17. The status of routes on early OS maps is still a matter of debate at inquiries. The following points may assist in reaching a decision on the evidence provided by a particular map.

14.2.18. Bench marks were located along a line of levelling, and often followed lines of communication. However, they can also be found on rocks in the middle of private land. Consequently it cannot be assumed that a bench mark is indicative of a public right of way.

14.2.19. Access for surveyors was governed by the Survey Act of 1841, which gave surveyors virtually unlimited access. Thus, the indication of spot heights along a route would not necessarily be proof of a public right of way.

14.2.20. The practice of annotating paths 'F.P.' on large scale maps from 1883 arose from an instruction to surveyors issued in February of that year (quoted by Dr R Oliver in 'OS Maps – a Concise Guide for Historians') that 'the object of….'F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic'. The inclusion of "F.P." gave rise in

1885 to letters being written to The Times complaining that the public were likely to view such annotations as indicating the existence of a public footpath. On behalf of the OS, Col. Pilkington-White responded that it was the practice to show paths on the ground, irrespective of whether they were public or private. From 1888, Ordnance Survey maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way. (On late 20th century OS maps which show those ways which are recorded in definitive maps and statements, the disclaimer is modified to acknowledge that some routes shown are public rights of way.)

14.2.21. An 1893 OS circular instructed that "all footpaths over which there is a well-known and undisputed public right of way should be shown". This instruction appears to be at odds with the disclaimer that the post-1888 maps carried and with the 1885 response of Col. Pilkington-White in The Times. The 1893 Circular was also issued after the 1893 Dorrington Committee had concluded that no inquiry by the surveyor could determine whether a path was a public or private one.

14.2.22. The Instructions to Surveyors (see 'Other Publications' above) set out the parameters under which the surveyors were to undertake their task. It was not until 1905 that surveyors were instructed that 'OS does not concern itself with rights of way, and survey employees are not to inquire into them.' However in the same paragraph of these Instructions, there is a note stating that 'A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public'. The 1905 instructions appear therefore to be somewhat ambiguous; subsequent instructions to surveyors contain equally ambiguous instructions as surveyors were given directions as to the nature of paths that should and should not be recorded whilst maintaining that public rights of way were not the concern of OS.

14.2.23. The Dorrington Committee also recommended the adoption of a fourfold classification scheme for roads being shown on OS maps, with each classification being dependant on the width of the road at issue and the type of traffic each road could carry. In relation to what were to be shown as first and second class roads, the committee considered that it was 'desirable that the roads thus classified as first and second class should be of such a nature that the public are certain of having free access over them, not disturbed either by their physical condition or by their being private' and that 'any of the roads in these two classes which are not repaired by an authority under legal obligation to maintain them, and are in consequence not highways, should be indicated by a slight modification of the characteristic adopted, such as dotted lines. This paragraph would apply principally to roads in public and private parks, private roads of good character, but not necessarily open to the public.'

14.2.24. A number of other documents were produced in connection with the production of OS maps which can be of assistance in providing supporting evidence of the existence and status of some routes. Information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features. Some of the County Series maps were accompanied by Books of Reference, which contain details of the numbered land parcels. Other sources of information include Boundary Remark Books and the subsequent Boundary Record Maps.

14.2.25. In 'OS Maps – a concise guide for historians,' Oliver states that Footpaths and bridleways were not normally identified as such on 1:10,560 and larger scale mapping prepared before c1883, although occasional exceptions are encountered, e.g. on several 1:10,560 or 1:2500 first edition sheets in Yorkshire, North Riding and southern Durham. Otherwise, particularly on 1:10,560 maps, foot and bridleways, tracks and very minor roads

look much the same. Oliver also states that pecked lines were used for features which were not obstructions to pedestrians, which were indefinite, or surveyed to a lower standard than usual. They could also be used to indicate overhead details such as electricity transmission lines.

14.2.26. From 1884 onwards, on the large scale plans, those metalled public roads for wheeled traffic, kept in proper repair by the local highway authority, were to be shown with shaded or thickened lines on the south and east sides of the road. In a paper by Yolande Hodson 'Roads on OS 1:2500 Plans 1884-1914' (RWLR July 1999) explains the background to this practice and Dr Hodson remarks that the primary purpose of the shading of roads on the large-scale maps was to guide the draftsman in the preparation of revisions to the 1" maps. Although Dr Hodson concludes that shaded lines are not necessarily an indication that such roads shown in such a manner were public, the judgment of Hooper J in the case of Masters at first instance suggests that, in some circumstances, this may have been the case.

14.2.27. The 1" series of maps produced from the 1890s onwards (including the 'Popular' series) were marketed at the touring and walking public and paved the way for the current small-scale Explorer and Landranger series. These maps were produced to compete with the product of the commercial map makers in business at the time (primarily Bartholemew, whose ½" series had been extensively used by the military in the Great War as it contained a coloured road classification system). In 1912 a War Office Committee had recommended the introduction of a coloured system of road classification for OS maps which was used in the preparation of the Popular Edition (1919 – 1926). The Committee recommended that "Carriage Drives, private roads and minor roads are never coloured"; whereas on the popular edition the key stated "private roads are uncoloured".

14.2.28. Until 1931, the OS and highway authorities used different systems to classify roads. Although the numbers used in the Ministry/Department of Transport's national classification began to appear on 1:2500 maps from 1938 and on 1:10,560 maps from 1945, OS had begun publishing the half inch Ministry of Transport Roads Map series showing the national classification in 1922.

14.2.29. Most roads on OS current 1:25,000 and 1:50000 maps are coloured according to their category, as identified in the key/legend. However, some minor ways may be left uncoloured. These are known informally as "White Roads." The OS has consistently felt unable to identify the status of these minor ways which are described as "other road, drive or track."

14.2.30. The areas of each field were published on 1:2500 maps, with a parcel number to identify the particular field. Bracing indicates parcels that were measured together. A road braced with a private field may be suggestive of private status. But this would be no more than the surveyor's perception and would carry little evidential weight.

14.2.31. Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage. It has been argued that all parcels which have the shape of a way and are so numbered and measured are therefore highways. This argument has not been substantiated. Such depiction is far from conclusive for the confirmation of highway status.

14.2.32. Later OS surveys and maps, especially the larger scale plans, provide an accurate representation of routes on the ground at the time of the survey. The inaccuracies of the earlier projection were virtually eliminated by the development of an alternative form of map projection. However, it should be emphasised that the depiction of a way on an OS map is not,

of itself, evidence of a highway. The courts have treated Ordnance Survey maps as not being evidence of the status of a way. For example, in the case of Attorney-General v Antrobus [1905] 2 Ch 188 at 203, Farwell J stated in relation to an Ordnance map of 1874: “Such maps are not evidence on questions of title, or questions whether a road is public or private, but they are prepared by officers appointed under the provisions of the Ordnance Survey Acts, and set out every track visible on the face of the ground, and are in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey”.

14.2.33. Similarly, in Moser v Ambleside Urban District Council (1925) 89 JP 118 at 119, Pollock MR stated: “If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate”

14.2.34. In Norfolk CC v Mason [2004] NR205111, Cooke J observed “Throughout its long history the OS has had a reputation of accuracy and excellence……. It has one major, self-imposed, limitation; it portrays physical features, but it expresses no opinion on public or private rights— though no doubt it is obvious what a blue line labelled “M1” must mean.”

14.2.35. Nevertheless, the inclusion of a route on a series of OS maps can be useful evidence in helping to determine the status of a route, particularly when used in conjunction with other evidence (Section 2.16 to 2.21, ‘Evidential Weight’ refers).

**Other post-1800 Maps**

14.2.36. The 19th century saw a considerable increase in the production of maps in the UK. Estate Maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public rights of way which crossed the estate. They usually form part of a collection of estate papers, which may be deposited in county record offices.

14.2.37. Bryant and Greenwood produced well-made maps, using surveyors and a triangulation system. Greenwood published surveys of 38 counties between 1817 and 1834, while Bryant covered 11 English counties between 1822 and 1835. There was considerable competition between them, with both publishing maps virtually simultaneously for Surrey (1822/1823) and Gloucestershire (1824). The competition between Bryant and Greenwood, and the other map makers, may explain why the standards of accuracy of some of the maps produced differ from county to county. Though Greenwood employed his own surveyor for his triangulation work, there was criticism by Thomas Hodgson, also a surveyor, that Greenwood’s system of measuring distances for his maps was based on ‘pacing’ not ‘chaining.’ Hodson suggests that the high costs of Greenwood’s surveys and the speed with which they were done, reinforces the view that his topographical mapping was imperfectly executed. (RWLR article ‘The evaluation of older maps’ July 1999, section 9.3, page 31.)

14.2.38. Other map makers producing County maps at the time included Baker, Campbell, Donald, Drinkwater, Ellis, Fryer, Green, Hennet, Hutchings, Jeffreys, Lindley and Crossley, Phillips, Price, Ruff, Swine and Teesdale. Most of these businesses collapsed due to the increasing competition from the OS.

14.2.39. Maps produced to record specific activities, such as mining and encroachment, are generally good evidence of what they portray. 14.2.40. In 1901, the War Office was using large numbers of the half-inch series maps produced by Bartholomew. These had been reduced

from OS maps, but Bartholomew's maps included a new method of layer relief colouring, which was particularly popular with the War Office.

14.2.41. Some Motorists' or Cyclists' maps are occasionally quoted as evidence that routes had been used by vehicles prior to the date when the Road Traffic Act 1930 made the use of motor vehicles on bridleways and footpaths an offence without lawful authority. Certainly there is some evidence that the CTC (Cyclists Touring Club) corresponded with Bartholomew regarding routes used by their members. However, current evidence indicates that, although Bartholomew were highly regarded as map producers, they did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and status of the roads on their maps. Moreover, they do not appear to have examined the legal status of the routes on their Cyclists' Maps before colouring them for use as suitable for cyclists. Neither do they appear to have assessed the legal status of the roads on their Motorists' Maps prior to publication.

14.2.42. As a result of the OS taking HG Rowe and Co to the High Court in 1913 for infringement of its copyright, it was legally established that Rowe's New Road Map for Cyclists and Motorists was no more than a direct photographic reduction from the OS map.

14.2.43. Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour of such status.

**Aerial Photography**

14.2.44. Aerial photographs may be presented at an inquiry in order to confirm the existence of a route at the time the photographs were taken. Confirmation is often difficult, especially if confirmation of a footpath is sought from a single photograph. It must be borne in mind that it is hard to determine the correct orientation of the photograph unless the direction of the flight has been indicated on the back of the photograph. It is essential to try and find 3 points on the photograph which are shown on the map. The orientation of the photograph should be checked with a map and it must be remembered that the scale of the map and the photograph is likely to differ. The time of day a photograph was taken can be significant, as shadows can hide or distort the line of a narrow path. An oblique photograph may also hide a number of features which exist on the map.

14.2.45. An aerial photograph cannot be taken as evidence of what rights might exist over a route, only that a route might be discernible on the ground at the date when the photograph was taken.

**Concluding Comment**

14.2.46. Most maps are potentially helpful evidence of the physical existence of routes, especially if consistently shown. However, they are less helpful in terms of determining the status of the routes shown, and all mapping evidence is more helpful in conjunction with other evidence.

## 15. Glossary of Abbreviations

All ER - All England Law Reports

BOAT - Byway Open to All Traffic

Defra - Department for Environment, Food and Rural Affairs

CA - Court of Appeal

CA68 - Countryside Act 1968

CC - County Council

CROW - Countryside and Rights of Way Act

DMO - Definitive Map Order

DMS - Definitive Map and Statement

DoE - the then Department of the Environment

EWCA - England and Wales Court of Appeal

EWHC - England and Wales High Court

HA 80 - Highways Act 1980

JPL/JPEL - Journal of Planning and Environment Law

NT - National Trust

NERC - Natural Environment and Rural Communities Act 2006

OMA - Order Making Authority

OS - Ordnance Survey

P&CR - Property, Planning and Compensation Report

QBD/QB - Queen's Bench Division

QCs - Queen's Counsel

ROW - Rights of Way

RUPP - Road Used as Public Path

RWA32 - Rights of Way Act 1932

RWLR - Rights of Way Law Review

SSE - Secretary of State for the Environment

SSEFRA - Secretary of State for Environment, Food and Rural Affairs

UCR - Unclassified Road

UEFs - User Evidence Forms

UKHL - United Kingdom House of Lords

UKSC - United Kingdom Supreme Court

WCA 81 - Wildlife and Countryside Act 1981

1WLR - Vol. 1, Weekly Law Report

WO - Welsh Office

## 16. Contact Details

**Natural England** ‘A guide to definitive maps and changes to public rights of way (NE112)’ (https://webarchive.nationalarchives.gov.uk/20150303031059/http://publications.naturalengland.org.uk/publication/31038)

**Ramblers** ‘Rights of Way: A guide to law and practice’ by John Riddall and John Trevelyan

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

Phone: 020 7339 8500 Email: bluebook@london.ramblers.org.uk

Acts of Parliament, Regulations and Circulars are available from Government bookshops.

**Websites**

UK Government – Departments covering relevant issues (https://www.gov.uk/government/topics/rural-and-countryside) Natural England – the government’s advisor on the natural environment (https://www.gov.uk/government/organisations/natural-england)

OGL
All content is available under the Open Government Licence v3.0, except where otherwise stated © Crown copyright