



**OFFICER REPORT TO LOCAL COMMITTEE
(GUILDFORD)**

**ALLEGED PUBLIC FOOTPATHS AROUND LIDDINGTON HALL
FARM FIELDS (VARIOUS POINTS OF ENTRY) TO PUBLIC
FOOTPATH 445**

21 MARCH 2012

KEY ISSUE

The County Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 (WCA 1981) to modify the Definitive Map and Statement of Rights of Way (DMS) if it discovers evidence which on balance supports a modification.

SUMMARY

In 2008 Worplesdon Parish Council submitted an application for a Map Modification Order (MMO) to add:

- footpaths around Liddington Hall Farm fields (various points of entry) to public footpath 445.

to the Surrey County Council DMS

It is considered that the evidence shows that the claimed rights have been acquired by the public within the Eastern fields but not in the Western fields. A legal order to modify the definitive map and statement should therefore be made for those in the Eastern fields.

OFFICER RECOMMENDATIONS

The Local Committee (Guildford) is asked to agree that:

- i. Eastern Fields: Public footpath rights are recognised over the routes A-B-C-D-E-F-G-H-J-K-L-M-N-O-P-Q-J, S-Q, R-T-G. In addition to the routes applied for in the Schedule 14 application an Order should be made for A-T, A-T1, T1-G and G-D as shown on drawing 3/1/74/H13 and that the application for a MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of the above footpaths is approved.
- ii. Western fields: No Public Footpath rights are recognised over the routes in the Western fields as shown on drawing 3/1/74/H13 and that the application for a MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement should not be approved.
- iii. Legal orders should be made and advertised to implement these changes. If objections are maintained to either or both of those orders, it/they will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

1. INTRODUCTION AND BACKGROUND

- 1.1 An application was submitted by Worplesdon Parish Council dated 29 July 2008 to add footpaths around Liddington Hall Farm fields (various points of entry) to public footpath 445 which runs along a track between the two fields. Please see **Annexes 1 & 2** for the plans showing the claimed routes.
- 1.2 Originally the land belonged to Surrey County Council who leased it to Mr Findlay who used the fields as a working farm. On the 1 April 1993, the site transferred to Merrist Wood Further Education Corporation when, following the enactment of the Further & Higher Education Act 1992, Surrey County Council, along with the other local education authorities ceased to be responsible for further education colleges (Title Number: SY 657255). Merrist Wood College uses the land for agricultural purposes. The fields have had different land uses ranging from being used for crops, cattle, grassland and hemp. In April 1997 the site was let to a commercial farmer, Richard Porter, who continued to farm it commercially for cash crops including flax until his tenancy expired on 29 September 2000 and was not renewed.
- 1.3 In the field to the east of Liddington Hall Farm is a fishing pond that Fairland's fishing club use. Fairland's fishing club have a licence to obtain access to the Waters. *In the following manner but by no other means namely to pass and repass on foot only to and from the Waters from and to the Car Park over and along the track shown coloured brown on the plan.*
- 1.4 In May 2000, according to a file note written by the Rights of Way Officer at the time; Mr Haigh from 4 Popular Cottage came into the office to enquire about proceeding with a Definitive Map Modification Order for a single footpath across the Eastern field. The route cut diagonally from Holly Farm's driveway to Liddington Hall Farm. As a result of the visit a letter was sent to Mr Haigh on the 24 May 2000 explaining how to submit a schedule 14 application and a site visit was conducted by officers on the 17 May 2000. However, no application was submitted at this time.
- 1.5 Members of the public continued to use the paths both in the Eastern and Western fields but their use was challenged by Merrist Wood in 2006 when they made a concerted effort to restrict entry by blocking entrances and placing signs at all the entrances.
- 1.6 On Thursday 20 March 2008, a Worplesdon parish Council informal meeting was held at Merrist Wood College. One of the items raised at the meeting was the Campaign to establish rights of way over the land at Liddington Hall Farm. A few of the points are included below:

Mr Croke advised that there were a number of reasons for the closure:

- a) Motorbikes using the land

- b) Dog owners not clearing up after their dogs- spoilt hay
- c) Anti-social Behaviour- complaints received from local residents
- d) Health and safety
- e) Damage to college property- damaged fences
- f) Encroachment issues- local residents
- g) The College did not have a problem with local residents walking on the fields providing residents follow specific routes and clear up after their dogs. (Permissive routes)
- h) The possibilities of fences field margins, together with a diagonal route across the field were discussed.
- i) The Clerk suggested that stiles be reintroduced in order that walkers could use the fields whilst preventing vehicular access and this was accepted by the college.

For legal background to this report please see Annexe 3

Historic evidence

- 1.7 An array of historical maps were investigated to see whether any of the routes were previously recorded or annotated on them.
- 1.8 Public Footpath 445 (Worplesdon) which lays between the two fields is recorded on the Finance Act Map 1910, but none of the claimed routes are included.
- 1.9 Other historical maps including J Senex (1729), Lindley Crosley (1773), Mudge (1816), Greenwood (1823), and Rocque have been checked and only show the track that Footpath 445 (Worplesdon) is on. Therefore, they are of no evidential value.
- 1.10 The Ordnance Survey maps show clear land use change surrounding the fields and the creation of nearby roads, but none of the maps show any specific footpaths within the fields.
- 1.11 None of the Definitive maps show public rights of way within either of the fields.

Aerial photos

- 1.12 The 1948 aerial photo cannot be sourced but aerial photographs were obtained for the site covering the years 1971, 1988 and 1998 and more recent ones.

1971 photo

- 1.13 The 1971 photo shows the same physical characteristics that are on the ground today. It is difficult to distinguish whether there are field edge paths. But there appears to be a path that heads diagonally across the north section of the Eastern field to a gap in the hedge that

is still there now. The vast majority of both the Eastern and Western fields are grassland.

1988 photo

- 1.14 The 1988 map shows a different diagonal path again in the north section of the Eastern field. This time it cuts across from Footpath 445 south east to what is now a wider opening, used by farm machinery. Again it is difficult to distinguish the field paths, from the field boundary.

1995, 1999 & 2009 Aerial photos- Supplied by Merrist Wood

- 1.15 The 1995 photo shows crops growing in the Eastern field and the Western field as grassland. There are some very faint lines crossing the northern section of the Eastern field, but do not show clearly whether or not there is a path.
- 1.16 The 1999 photo shows crops in all the fields and there do not appear to be any routes crossing the crops. Again there is no way of distinguishing field edge paths from the natural field edge.
- 1.17 The 2009 photo shows all the fields as grassland. Within the top section of the Western field is a clear diagonal path. In the eastern fields there are clear paths cutting across the fields, but again it is difficult to distinguish the field edge paths, even though we know from the August site visit that the field edge routes were very clear on the ground.

The aerial photos 1998/1999- Surrey Interactive Map

- 1.18 These photos show the Eastern field before the southern section of the Eastern field had been harvested. Field edge paths are indistinguishable and there do not appear to be any cross-field paths.

Googlemap satellite images- retrieved November 2009

- 1.19 It is difficult to distinguish any footpaths in the western fields.
- 1.20 In the Eastern fields there are a few clear worn routes. Those include a route that crosses the southern section from the pond in a southeasterly direction to Ryde's Hill common (G-D). The field edge route is also clear along the western boundary, parallel to Liddington Hall Drive. The field edge paths around the majority of the eastern fields are difficult to distinguish from the natural field edge.

Bing Maps satellite images- retrieved May 2011

- 1.21 These images show the same routes as described above and are still clearly being used. In the Western fields there are a lot of vehicle tracks but no distinguishable footpaths.

Background to user evidence

- 1.22 78 users filled in evidence forms showing use of the claimed routes spanning a period of 50 years from 1958 until 2008 (see **Annexe 4** for a table showing the years of use by all 78 users). The public's use appears to have been challenged in 2006 by the owner of the land Merrist Wood.
- 1.23 On the 2nd August 2006, Mr & Mrs Gay wrote to Merrist Wood to register their disappointment in the closure of access to the fields around Finley's pond from Rydes Hill Road.

'I am writing to register my disappointment in the closure of access to the fields around Finley's pond from Rydes Hill Road. My Husband and I, and a number of our neighbours have been using the access from Rydes Hill and walking our dogs in the fields for years'.

'We understand that the fields are Merrist Wood property but have noted that they contain hay, which is something that can live side by side with dog walking activities without any impact. We understand that you may want to put more secure means of entry rather than hedge openings, have you considered a self closing gate.'

- 1.24 Martin Jones the Vice Principle, Finance and Resources responded on 3rd November 2006:

I regret that it has become necessary to completely restrict access to the College's land at Liddington Hall.

Unfortunately, the land which you enjoyed for walking has been abused by a few individuals in recent months with unlawful and dangerous activities which have caused disturbance and nuisance to local residents and led to complaints to the College and the Police.

- 1.25 It would appear that Merrist Wood took some action to stop use of the route in the summer of 2006. Mrs Woodgate states in her user evidence form 'since the route was blocked off by Merrist Wood in Dec 2006' and Mrs Bayton who used the routes from 1980 until 2006 stopped using the route 'when access was closed by owners'. These two users are the only ones that stopped using the routes in 2006, the majority of users carried on using the routes until 2007 and 2008. Mrs Mundell, Mr Bayton, Mr & Mrs Cook stopped using the route in 'approx 2005'.

- 1.26 The Countryside Access department received a reported problem from a member of the public who stated that they discovered the fields obstructed on the 7 January 2007.

Rights of way defect form

On 7 January 2007, Mr Kingsbury submitted an Esuite question:

There has been access to the land owned by Merrist Wood adjacent to Rydes Hill Common for a period in excess of 20 years according to local residents, and as such my understanding is that a Public Right of Way has deemed dedication. However, access to this land has recently been obstructed, and therefore the position needs clarification.

- 1.27 It appears that Merrist wood made some effort to restrict access in the summer of 2006 and then made a more concerted effort in January 2007.
- 1.28 The Countryside Access team conducted a Site Inspection on 17 May 2000. Facing away from the field down Holly Farm driveway next to the gateway was a sign, which still remains and states the following:

**Surrey County Council
PRIVATE LAND
Farmed by Merrist Wood
Agricultural College
NO PUBLIC ACCESS or
RIGHT OF WAY**

- 1.29 All those users that accessed the fields from Public Footpath 445 and Ryde's Hill Common, would not have seen this specific sign. Only Mrs and Miss Bew mention the sign above prior to 2007. Twenty users mention other signs going up in 2007, eight of those stating December specifically.

2. ANALYSIS

PUBLIC USER EVIDENCE FOR THE ROUTE:

- 2.1 Seventy-eight user evidence forms were submitted with the application, of those seventy-eight, fifteen claimed to use both the Eastern and the Western fields but the majority used only the Eastern fields.
- 2.2 All claimants gave evidence of use on foot, however two of the users claim they thought of the ways as both footpaths and bridleways, but do not provide any further evidence or indicate their years of equestrian/bicycle use. One user indicates that he used the route from 2000-2008 on horseback/bicycle but did not tick the way as a bridleway.

- 2.3 Four of those that filled in the user evidence forms specifically ticked that they sought permission.
- 2.4 Fifteen Claimants live in properties that back onto the eastern field and used their private gardens for access. Eleven claimants exercised their private right to reach the pond, to which they have private fishing rights.

User Evidence- Eastern Fields

- 2.5 Seventy-eight user evidence forms were submitted. Of those 78 users 9 used virtually all of the claimed routes. The remaining user evidence forms show use of an array of combinations of the claimed routes.
- 2.6 Some of the 78 are maybe non-qualifying users because they used the route exercising their private right to access the fishing pond and or specifically sought permission.
- 2.7 For example, Mr and Mrs Cook have both marked the private fishing footpath, as the route they use. Mr Cook found out about the footpath “by living at the above address (Clayton Drive) and previously being a member of the local fishing club” and he used the footpath to gain access to his garden.
- 2.8 Of the 78 users that filled in forms it would appear that 15 have accessed the claimed routes via their own private property. These users may have contributed to the public rights. However, those that accessed the claimed route parallel to their gardens as individuals or as families would have had to cross the field edge boundary not contributed to by the rest of the users. Once on the routes being claimed, they could be contributing towards public rights.
- 2.9 The question is whether the 15 above gained access by force. Force can include breaking locks or gates, cutting barbed wire or breaking through any form of resistance to secure a passage along the way¹. The gates and the gaps from the private gardens are well established. Some of them are clearly built into the structure of the fence. Unless those landowners have private rights essentially there was acquiesce on the part of the landowner by not taking any action to stop up these accesses. Opening a gate entering through a gap or stepping over a low fence are not considered to be evidence of force.
- 2.10 Within the 78 user evidence forms it became apparent that there were 11 users using the fields to gain access to the fishing pond. Those with fishing permits have the right to access via the private footpath.
- 2.11 Of those that use the fishing pond only Mr Cook drew the route set down as a private right, which would suggest he is only exercising his

¹ ‘Rights of Way, A guide to Law and Practice’ - 4th Ed, (2007) J, Riddall & J Trevelyan.

private right. Two users, Mrs Clayton and Mr Jibbald drew many of the routes being claimed but excluded the private fishing route. Their use of the routes being claimed contributes towards public rights. The remaining users with fishing permits have shown on their maps circular routes that include the private right but return via the routes being claimed. These users may be providing some additional evidence towards the sections being claimed with the exception of the private fishing route.

- 2.12 As well as those with private fishing rights, there are those who claimed in their user evidence forms to have sought permission from the landowner or the tenant at the time and specifically ticked sought permission. They include Mrs Gibben, Mr & Mrs Smith and Mr Spence.
- 2.13 Taking into account the four that sought permission and Mr Cook who solely exercised his private right to the pond there are in total five non-qualifying users. These users would not have been using the route 'as of right' because they were exercising their private right and sought or were given permission.
- 2.14 This leaves 73 users who provide evidence of qualifying public use of the claimed routes.

Eastern fields

- 2.15 The Eastern fields have been used by 73 qualifying users. Nine of them used all the routes (see below) covering the period 1960-2008, a total of 48 years.

Table 3

User form	Title	Surname	Years of use
1	Mrs	Annan	1970-2008
13	Mrs	Breatcliffe	1998-2007
14	Mr	Cater	1960-2008
15	Mrs	Cater	1970-2008
28	Mr	Bower-Wood	1989-2007
49	Mr	O'Rourke	1999-2008
56	Mrs	Russell	1995-2007
67	Mr	White	1993-2008
68	Mrs	Gaynor White	1993-2008

- 2.16 The 9 users above cover a period of 48 years and cover all the claimed routes. In addition to the 9 above there are 29 users that used an array of the claimed routes covering the full 20-year period from 1986 until 2006 and in some cases longer. If one also takes into account the remaining 35 qualifying users who use an array of the claimed routes

for parts of the 20-year period (1986-2006) there is a substantial amount of use.

- 2.17 The routes S-Q, Q-P-O-N-M-L-K-J-Q, and Q-J-I-H-G-F-E-D-C-B-A-R-Q are all field edge routes. The field edge paths are clearly drawn by the users on their forms and all the interviewees clarified that when the fields were ploughed or had crops grown within them, the perimeter was used and there was always room left for them to do so. One of the users Mr Gerrard states the following: "The field has had crops growing and cows grazing but people have still been able to traverse it." This shows the public were using the fields when it was used for agricultural purposes. They state that the tenant farmer and his employees never challenged their use and the majority of them knew of a stile opposite the farm into the Eastern fields.
- 2.18 The 73 qualifying users all contribute towards the claimed sections. When accumulated together there is use of the routes from 1986 until 2006, at which point Merrist Wood, made a concerted effort to restrict access. Use was not restricted to that 20 year period but goes back to 1960. The frequency of use varies from user to user, from as few as 10 times per year to daily use. When the user evidence is presented together, there is enough to reasonably allege public rights exist over S-Q, Q-P-O-N-M-L-K-J-Q, and Q-J-I-H-G-F-E-D-C-B-A-R-Q.
- 2.19 One of the Schedule 14 application routes is shown on the map as R-T-G and is slightly different to the rest as it crosses the field before running along the edge of one of the middle hedge lines on the north side. It is used by 12 qualifying users over the period 1960 until 2008, with four of those using it for 20 + years. Their frequency of use ranges from 10 times to 300+ times per year. The level of user evidence for the section R-T-G meets the test to reasonably allege public rights.

Additional routes

- 2.20 The discovery by the authority of evidence, which shows a Right of Way, which is not shown in the map and statement, subsists or is reasonably alleged to subsist should be included. In this case it became clear that there were an additional three routes drawn on the users' forms that were not included in the Schedule 14 application. They include A-T, A-T1, T1-G and G-D.
- 2.21 Similar to the route R-T-G mentioned above the users have indicated on their forms that they have used the south side of the hedge line (A-T1-G/ R-T1-G). Ten qualifying users used this route for a period covering 1960-2008, with six of those users using the route for the full 20-year period and more. The frequency of use ranges from 10 times per year to twice daily. Like the northern route the level and period of use would suggest that public rights can be reasonably alleged.

2.22 Another route that appeared popular on the forms but was not on the initial application map is a route from G-D. There were 26 users who drew this particular route on their user forms. Ten of those users used this particular route for the full 20 year period and more, with the other users contributing for some of the period. The frequency of use ranges from 12 times per year to daily and in some cases twice daily. This would suggest this particular route has had quite substantial use and that public rights can be reasonably alleged.

User evidence-Western fields

2.23 All those that showed on their user evidence forms routes within the Western fields are qualifying users.

2.24 There are 15 qualifying users that claimed to use the Western fields. Of which five used the fields for the full 20-year period, the 20-year period being the same of that of the Eastern fields from 1986- 2006. If the remaining users evidence was solely used, accumulated together their evidence would cover a period from 1989 and so do not cover the 20 year period in question. Therefore, the routes in the Western fields not used by those that cover the full 20 year do not initially hold the same amount of weight of evidence and are only contributed to in part.

2.25 None of the five that cover the 20-year period used sections C-I, H-B or E-F-G-H. Therefore, it cannot be reasonably alleged that public rights subsist over these sections.

2.26 The five that used the Western fields for the 20-year period used four different variations. Mrs Annan and Mrs Cater used a field edge route that incorporates sections A-B-C & D-E-I-H. Mrs White uses A-B-C-D; however there does not appear to be anywhere to exit the field at D. Mrs Woodgate used a route that is not included on the application plan. Mr Farley uses a route that goes diagonally from A to E across the fields and this is the route that is currently on the ground, however it was not included with the Schedule 14 application. Mr Noble is the only other user who drew the diagonal route on the map but his use was from 2005 onwards.

2.27 The fact that there is such variation amongst those long-term users and only sections of the claimed routes have actually been used, suggests that the western fields were actually used by the public to wander at will. It is the officer's view that there is not sufficient evidence to reasonably allege that public rights have been acquired from any one point to another, within the Western fields.

Width

2.28 46 users stated the width clearly on their user evidence forms in feet or cm. An additional 16 gave descriptive widths such as "wide enough for

people to walk side by side” and “wide enough to walk on”. The widths stated range from 30cm to 200cm.

- 2.29 There are no constraining physical features on any of the routes in question. 12 users specifically state widths over 120cm or roughly 4ft, up to a width of 200cm stated by four users. Descriptions used include “wide enough for two people to walk side by side”, “ample pathway” and “wide enough to walk on”.
- 2.30 The average of all the widths is 107cm. 14 users’ state lesser widths and 13 users’ state greater widths. The field edges are not bound by any physical feature and as such the width should reflect the practicalities of two people walking side by side. Schedule 12A of the Highways Act 1980, when used as a guide only, states that where a width is not recorded in the Definitive Statement that the minimum width in respect of field edge paths is 1.5 metres. As seven users state larger widths up to two metres, the probability is that the path has a width throughout of around 1.8 metres. This width would be enough for two people to comfortably walk side by side.

Landowner Evidence

- 2.31 The Applicant’s case is based on section 31 (1) of the Highways Act 1980, which states:

Where a way over 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.

- 2.32 The Owner’s case is that:

- Any use by the public has not been “as of right”;
- Any use by the public has not been for “a full period of 20 years” i.e. for a period of 20 years ending on the date of submission of the Definitive Map Modification Order application;
- There is sufficient evidence that there was no intention during the period of 20 years relied upon to dedicate a route or routes over the Site;
- Any use by the public was not extensive and the claimants have exaggerated the extent of any such use and the evidence form submitted offer conflicting evidence as to use.

- 2.33 In support of the owner’s case, the following facts and evidence are relied upon, as further detailed and supported by the witness statement of Mr Boulnois.

- 2.34 On the Gravetts Lane, Aldershot Road and Liddington Hall Drive boundaries of the Site there are mature hedgerows. Public access from the road would either not be possible, or if possible, it would be clear to any person that access to the Site was not permitted over or through those hedgerows.
- 2.35 As to the track which runs between the two halves of the Site to Liddington Hall Farmhouse, it is bounded by a fence on both sides and sections of hedgerow.
- 2.36 The remainder of the Site, is bordered by private land, including the gardens of residential properties.
- 2.37 Access onto the site through the gates in the boundary has been by lock and key.
- 2.38 Whilst cattle were in the Site (in the period 1988 to 1995), there was a barbed wire perimeter fence and all perimeter gates were kept securely locked in order to prevent escape as these animals require secure containment.
- 2.39 Anyone climbing over or breaking through a fence, gate, or hedgerow would be gaining access to the Site “by force”.
- 2.40 In the period between 1988 and 1995 when cattle were on the Site, the public would have been discouraged from entering onto the Site because of the presence of these animals. In particular, dairy cattle can be aggressive.
- 2.41 From 1997 onwards to 2000 the Site was used for commercial farming. Aerial photograph 6501 from September 1999 shows that crop growth on the Site goes right up to the Site boundaries.
- 2.42 From 2003 to 2008 and in 2011 the College grew a commercial hay crop on the whole of the Site, up to the boundaries. Whilst hay was growing, this would have prevented use of claimed ways. Accordingly, whilst it is acknowledged that there has been some unauthorised use of the claimed routes since 2003, there were periods of interruption in that period.
- 2.43 The Owner has obtained photographs from September 1971, 23 February 1989, 1995, 1999 and 2009. Whilst it is acknowledged that these are snapshots in time none of them indicates the existence of the tracks which the deponents say they are using. On the contrary tracks are very clear on adjacent fields and other areas if open land but they are conspicuous by their absence on the Site over which the routes are claimed. All photos show effective land use. It is clear that the Site is managed right up to boundary hedges and fences with no scrub encroachment at these boundaries. The latter would be the case in

unmanaged Site – trees and other scrubs would establish around field margins and in patches throughout the Site and this is not the case on these photos.

Landowner's concluding submission

- 2.44 Whilst the Owner acknowledges that some of the claimed activity has occurred in the 8 years ending on the date of submission of the Definitive Map Modification Order application, it has not occurred over the full period alleged by the Applicant and its deponents nor to the extent that they assert.
- 2.45 Surrey County Council should conclude that it has not been established that any of the suggested routes have been used continuously for 20 years and the application for a Map Modification Order to create a public right of way over any part of the Site should be rejected.

Evidence from Tenant Farmer

- 2.46 A letter was received from Mr Porter referring to the Flax/Hemp grown within the fields. The letter states the following and refers to the crops grown in 2000:
- 2.47 “With regard to the footpaths and sign at Worplesdon the sign was certainly not there as we ploughed all these fields, with regard to the footpaths from memory there were no footpaths, my reason for knowing this is because we grew Flax/Hemp in these fields which came under some form of drugs rules and regulations and the field were inspected by the then DEFRA to make sure the public has no right of way over the land.”
- 2.48 Whilst the Home Office does issue licences for such crops, none of the users state that their use was challenged at this time.

3 OPTIONS

- 3.1 The committee may agree or disagree with the officer's recommendations that rights have been acquired. Alternatively, they may decide that the evidence submitted shows that the routes should be of a different status to that recommended. Decisions can only be made on the basis of the evidence submitted. The recommendation is based upon that evidence and interpreted under the current legislation. Matters such as convenience, amenity or safety are irrelevant (see **Annex 3**).

4 CONSULTATIONS

- 4.1 A number of user groups have been consulted. The Ramblers supports the claim because of the benefits to the local community. None of the other user organisations responded to the consultation
- 4.2 Guildford Borough Council made no comment and the Parish Council are the applicants. The Landowner objects to the claims and those objections have already been included in the report.

5 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

- 5.1 The cost of advertising a Map Modification Order would be approximately £1,200, and would be met from the County Council's Countryside Access budget. If objections are received and a public inquiry is held, additional costs of around £1,000 will also be met from the same budget. Most costs are fixed by our duties under Schedule 15 of the Wildlife and Countryside Act 1981. The legal expenses budget will meet the cost of legal representation.

6 EQUALITIES AND DIVERSITY IMPLICATIONS

- 6.1 Local Authorities are required to act to uphold European Convention rights which are now enforceable in British courts as a result of the Human Rights Act 1998. Primary Legislation, of which the Wildlife and Countryside Act 1981 is an example, may require the County Council to act in a particular way. While the Council must interpret primary legislation in a way that is compatible with Convention rights that duty does not apply if the County Council could not have acted differently. In this instance it is first necessary to consider whether the action recommended to Members touches on a Convention right. The making of this order may affect the rights of the landowner/occupier (see paragraphs 2.31 - 2.48) under Article 8 of the Convention, the right to a private and family life and Article 1 of Protocol 1, the right to peaceful enjoyment of one's possessions. The Act makes it clear that such rights may only be interfered with in a way that is in accordance with the law. Here the action by the County Council as surveying authority is prescribed by law as detailed in paragraphs 8.1 and 8.3 of this report and **Annexe 3** of this report. As such the recommendation to the Members is not considered to be in breach of the 1998 Act

7 CRIME AND DISORDER IMPLICATIONS

- 7.1 These routes within the fields have been in use for a substantial period of time and are still being used today. It is unlikely that legally

recording them will have significant crime and disorder implications. Such issues cannot be taken into account when making a decision whether the public have acquired rights or not.

8 CONCLUSION AND RECOMMENDATIONS

8.1 Section 53 of the Wildlife and Countryside Act 1981 places a duty on the County Council to make such modifications to the Definitive Map and Statement as appear to be requisite in consequence of a certain events. These events include the discovery of evidence which (when considered with all other relevant evidence available to them) shows either 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 (section 53(3)(c)(i));

8.2 Therefore, if rights on foot have been acquired over the claimed routes they must be added to the map under section 53(3)(c)(i). It need only be shown that those rights reasonably exist. 78 users filled in user evidence forms. Of those 78, 73 qualifying users used the routes in the Eastern fields, of which 38 have used the routes for the full 20 year period and an additional 35 contribute in part to that period. 15 used an array of routes in the Western fields of which 5 used for a full 20 yr period.

8.3 Section 31 of the Highways Act 1980 states that:

“Where a way over any land other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication has actually been enjoyed by the public as of right and without interruption for a full period of 20 year, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

8.4 *The period of 20 years referred to in sub-section (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 ...or otherwise.”*

8.5 An application under section 53 of the 1981 Act can itself be a calling into question². However the application in this case was preceded by the concerted effort to restrict access into the fields during the summer of 2006. Mr & Mrs Gay clearly state in their letters to Merrist Wood that the fields have been blocked, the Vice Principle Martin Jones acknowledges their use but explains due to the actions of a few they have had to restrict access to the fields.

² Section 7B of the Wildlife and Countryside Act 1981.

- 8.6 A couple of users make reference to access being restricted in 2006 but a large number of claimants make reference to the barriers and signs that went up during 2007 and 2008. It would seem reasonable to suggest that use on foot was called into question when barriers were erected in July/ August of 2006, after which the majority of users found other ways of gaining access. The relevant 20-year period is therefore 1986 to 2006.
- 8.7 The sign below was in existence when the Rights of Way Officers conducted a site inspection in 2000. Section 31 (3) of the Highways Act notes that:
- 8.8 Where the owner of the land over which any such way as aforesaid passes-
- (a) has erected in such a manner as to be visible by 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.

**PRIVATE LAND
Farmed by Merrist Wood
Agricultural College
NO PUBLIC ACCESS or
PUBLIC RIGHT OF WAY**

- 8.9 Considering that so many of the claimants do not mention the sign except for those erected in 2007, this suggests that it was not visible to those accessing the fields via Public Footpath 445 (Worplesdon) or Ryde's Hill Common. As discussed in paragraphs 15.3 to 15.5, there were 14 qualifying users who claim to use point E, where the sign would be visible to those entering the fields, seven of whom lived closer to other entry points and may not have seen the sign if exiting. Excluding those who may have seen the sign there are still enough qualifying users to reasonably allege that use was as of right.

Western field

- 8.10 Fifteen qualifying users claimed to use the Western field. There is a great variation of routes drawn on the user forms. One of the more consistently drawn routes is from A-B-C-D, however there is variation of use from C-D and only Mrs White uses this part and exits at D, where there is no gap in the hedge line for the years 1986 until 1989. There is no consistency in the use and the only route visible on the ground now and from aerial photos is a diagonal route from A-E, of

which only two people have claimed to use and is not on the Schedule 14 application.

- 8.11 It could be argued that people were entering through A and exiting at E using variations of the same route. Variations of the same route can provide evidence towards one specific route between two points for the purposes of Section 31 because of a decision made in the case of *Wimbledon and Putney Conservators v Dixon, 1875*. The Wimbledon case related to a right of way over a common, in it was held that:

“...If from one terminus to another, say from a gate here to the end of a road 200 yards off, persons have found their way from time immemorial across a common, although sometimes going by one track and sometimes by another; I am not prepared to say that a right of road across the common from one terminus to another may not be validly claimed...”

- 8.12 The Wimbledon case above does not rule out the acquisition of a public right between two points where it has taken place over multiple routes. Officers believe there is not sufficient evidence to reasonably allege that public rights have been acquired from any one point to another, within the Western fields.
- 8.13 **Therefore, orders should not be made for any section within the Western fields as applied for in the schedule 14 application.**

Eastern field

- 8.14 There is clear repetition and consistency of use for over 20 years of those routes that are being claimed particularly along the field edges. Evidence of additional routes has been brought to light from within the user evidence forms showing a few cross field routes including R-T1-G, A-T1-G & G-D.
- 8.15 As is evident from the 1995 aerial photos, the Eastern fields have been in agricultural use, which would suggest that if the landowner had an issue with people using the field they would have made a concerted effort to restrict access during that time. The only routes being claimed in the Eastern field are those that cross the open field rather than going along the field edge are A-T, A-T1, T1-G and G-D. Considering the amount of user evidence for these cross field sections and the lack of action on the part of the landowner, this suggest the public have acquired rights over them.
- 8.16 The Owner of the fields argues that from 2003 to 2008 and in 2011 the College grew a commercial hay crop on the whole of the Site, up to the boundaries. The July 2005 map submitted with the Owner’s bundle of evidence clearly shows field margins that people could have walked on. Members of Fairland’s fishing club would have also required

access along the field edge. The majority of routes being claimed go around the field edge and would not have been interrupted by crop growth.

- 8.17 Whilst cattle in the field will deter some, it is not uncommon for footpaths to go across fields with cattle or fields with crops. Again Fairland's fishing club have a licence to obtain access to the pond. Therefore, the Owner would have knowingly placed cattle in a field, which is regularly used by fisherman to access the pond.
- 8.18 Merrist Wood took the land over in 1995; prior to this the fields were farmed by a tenant farmer (Mr Findlay) who appeared to be ware of people using the fields, as mentioned in table 2. However, it would appear that no action was taken by Mr Findlay or subsequently by Merrist Wood to restrict access to users until 2006.
- 8.19 The most recent site inspection shows that even though the fields are grass, clear used paths are still being used, rather than an array of less used paths that cross the fields.
- 8.20 Given the level of user evidence for those field edge routes in the Eastern fields and the apparent lack of acts on behalf of any of the Landowners to discourage this use over the 20 year period, public footpaths rights can be reasonably alleged to exist.

Common Law

- 8.21 An inference that a way has been dedicated for public use may be drawn at common law where the actions of the landowner (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
- 8.22 Dedication may be express or implied from evidence of user by the public and of acquiescence in that user by the landowner. Unlike the statutory presumption of dedication contained in section 31 HA 1980, the period of user which is necessary at common law to establish or prove a dedication to the public has never been defined. Every case must depend on its own facts.
- 8.23 Under common law, dedication may be implied, given the lack of action by Merrist Wood Enterprises Limited to prevent the public using the routes in the Eastern fields. Merrist Wood acknowledge that some of the claimed activity has occurred in the 8 years ending in the date of submission of the Definitive Map Modification Order. Martin Jones the Vice Principle at the time of calling into question refers to the routes as 'the land, which you enjoyed for walking'. Whilst Merrist Wood did not undertake any overt acts indicating an intention to dedicate it can be argued that there was clear acquiescence by the landowner and the acceptance of the routes by the public, by using it, to infer that the routes has been dedicated for public use. This would not apply to the

period from 2000 until 2006. Up until 2006 a tenant farmer was using the fields and as such Merrist Wood as the owner may not have been notified of any use by the public and so during that period rights could not have arisen under common law.

- 8.24 There is not a sufficient strength of user evidence within the Western fields to claim rights under Common Law.
- 8.25 **In light of the above it is suggested that there has been sufficient use on foot for sections A-B-C-D-E-F-G-H-J-K-L-M-N-O-P-Q-J, S-Q, R-T-G. In addition to the routes applied for in the Schedule 14 application it is suggested that there has been sufficient use on foot for sections A-T, A-T1, T1-G and G-D to have been acquired. Furthermore, there is little evidence that the landowners expressed a lack of intention to dedicate such rights, prior to 2006. If Members agree that, on the balance of probabilities, the routes have become public footpath orders must be made to add them to the DMS.**

9 WHAT HAPPENS NEXT

- 9.1 All interested parties will be informed about the decision. If the recommendations are agreed legal orders will be made and advertised to implement the changes. If objections are maintained to the orders, they will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation. If no orders are to be made the claimant will be informed and will have opportunity to appeal to the Secretary of State.

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BACKGROUND PAPERS: All documents quoted in the report. File may be viewed upon request.

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Annexe 1: Eastern fields plan- 3/1/74/H13
Annexe 2: Western fields plan- 3/1/74/H14
Annexe 3: Legal Background
Annexe 4: Table showing years of use by those that filled in user evidence forms