

PARISH OF WINDLESHAM: CLAIMED PUBLIC FOOTPATH FROM HIGHVIEW ROAD TO LIGHTWATER COUNTRY PARK

Notice has been given by the local branch of the Ramblers' Association of a claim that a right of way, not shown on the County Council's Definitive Map, subsists over the above-mentioned land.

BACKGROUND

The legal basis on which a highway comes into existence at common law is dedication - a land-owner grants or dedicates a right of passage for the public over his land. Dedication may be implied or presumed where use of a way by the public is consistent with such a right having been granted by the land-owner.

There are two ways of establishing a right of way by presumed dedication:

- (1) Sub-sections (1) and (2) of Section 31 of the Highways Act 1980 state that a way may be presumed to have been dedicated as a highway if it has been actually enjoyed by the public as of right and without interruption for a full period of twenty years before any date on which the right of the public to use the way is brought into question.
- (2) Sub-section 31(9) of the Highways Act 1980 preserves the common law method of proving dedication for cases where the statutory method does not apply or is unnecessary, for example, where there is evidence of user for a period shorter than twenty years.

EVIDENCE IN SUPPORT OF THE CLAIM

The Council are in receipt of ten public way evidence forms submitted in 1981/82, eight of which claim at least twenty years regular and uninterrupted use of the path. The claimants state that they have used the path both for pleasure and as an access to Bagshot.

The Windlesham Parish Council has stated in writing their confirmation of twenty years uninterrupted use of the footpath but have not been able to supply any supporting information.

Two residents of Highview Road have also written to support the claim for twenty years uninterrupted use.

In addition to the user evidence listed above, documentary evidence has also been submitted to support the claim.

The Ramblers' Association in submitting their application provided a copy of the current Ordnance survey 1:2500 map to support their case, showing a "path" from Highview Road towards the boundary of the Lightwater Country Park. Following a request for further map evidence the Council has received copies from the Revised Ordnance Survey sheets for Surrey (1934) and Berkshire (1909), certified as originally surveyed in 1869 to 1870. Revisions of the Count boundaries have of course taken place in the meantime but the maps show a footpath at the location which is the subject of this claim.

#### FURTHER EVIDENCE

One of the public evidence forms submitted states that when the fence to the Country Park was built it originally prevented access along the claimed path. However, the Council shortly afterwards replaced the fence by a stile along the line of the path. The Ramblers' Association has also asserted that the Council, in providing a footbridge across the M3 motorway to Bagshot and in erecting the stile at the Park boundary fence referred to above, have shown recognition of the existence of a public right of way linking Highview Road to Bagshot.

#### EVIDENCE IN DISPUTE OF THE CLAIM

The land to which this claim relates is owned by Shepperton Builders Limited. On submitting the claim the Ramblers' Association served notice on Shepperton Builders who responded by stating that some ten years before the submission, no footpath was in existence over the land to which the claim relates and they therefore disputed continuous and uninterrupted use of the path for twenty years. However, they did acknowledge that there was a "very old track where horses had been making a trace across the site after they had broken down the fences that were there at the time". It would appear that this statement, dated 9th August, 1985 was the first occasion on which the land-owner had called into question the public's right of way over the land by notice or otherwise (as prescribed in Section 31 of the Highways Act 1980). However, details of when and where the fencing was erected to which the letter refers and where it was broken down in relation to the claimed path have not been provided. In the meantime, Sheppertons have consulted their architects Broadway and Malyan. The latter have stated that a local resident, Mr. Miller, the Warden of the Country Park area, recalled that the land across which the claimed path runs had been fenced off for rough grazing on all sides some twenty-eight years beforehand. Evidence of the fencing is still alleged to exist and Broadway and Malyan have stated that access to the land could only be obtained in the past and now by climbing through the fences, and furthermore that no path had been in existence across the site.

Further approaches have been made to Broadway and Malyan and to Mr. Miller to obtain confirmation of the information given on his behalf.



After protracted delays, copies of the revised Surrey (1934) and Berkshire (1909) Ordnance Survey sheets (referred to above) have been submitted which were given to Mr. Miller when he became Warden of the area. The sheet shows the "official" paths and bridleways in the Parish, which appear to be based on the Surrey Definitive Map. Broadway and Malyan acknowledge that "a footpath is shown across Shepperton Builders site" (which is the path in question), but "this is not coloured" and they conclude that this was a private path. Although this map evidence was submitted against the claim, it would, in fact, support the case made by the Ramblers Association, in that the Ordnance Survey sheet does show a path from Highview Road to Lightwater Country Park, which is not marked as an officially recognised public path. The essence of the Ramblers Association claim is that the path subsisting across the land should be recognised for the purposes of the Definitive Map and Statement.

#### CONCLUSION

The public evidence forms supporting the claim for the footpath suggest that presumed dedication has taken place. The alleged path would appear to have been used by the public for at least twenty years prior to the submission of the claim and the right of way does not appear to have been called into question, by notice or otherwise, until August 1985.

The maps provided show a footpath running approximately along the line of the claim submitted. The presence of a stile and footbridge across the M3 to Bagshot would lend credence to the claim.

In disputing the alleged public footpath the land-owners concerned and their architects have referred to fencing having been broken down on the land and to Mr. Miller's dispute of the claim. However, as mentioned above the Ordnance Survey maps submitted would appear to support the Ramblers' Claim.

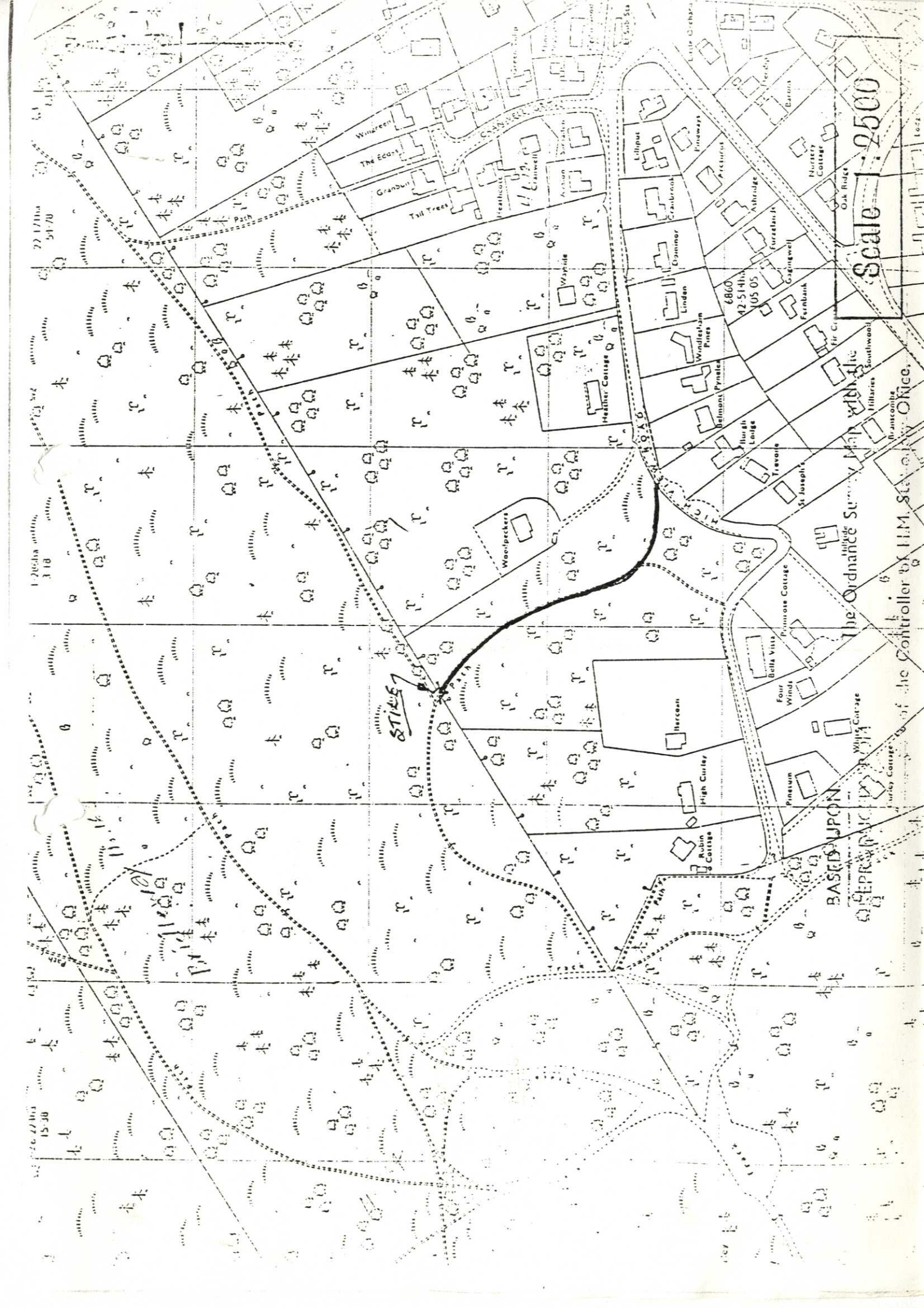
The Committee is also requested to bear in mind, when making a recommendation, that there is a current planning appeal by Shepperton Builders, the landowners concerned, for the erection of five detached dwellings with a shared private drive, on land immediately adjacent to the claimed path, for which Broadway and Malyan are acting as architects.

#### RECOMMENDATION

It is RECOMMENDED that the claimants be advised that, on the basis of the evidence of enjoyment by the public as of right and without interruption for a full period of twenty years, presumed dedication of the public footpath running from Highview Road to Lightwater Country Park has taken place, and that a Map Modification Order be made.

Background Papers:- Chief Executive & Town Clerk -  
Correspondence and evidence on file:Footpath Claim no.196





Scale 1:2500

STILES

BASED UPON  
REPRESENTATIVE

The Ordnance Survey Map with the Office of the Controller of H.M. Stationery Office.

22 17 1/2  
51 70

1 2 3/4  
3 10

26 27 1/2  
15 30

6860  
42 51 1/4  
105 05

Pinetum

Woolpeckers

Woolpeckers

Heather Cottage

Heron

High Curlew

Robin Cottage

Pinetum

Four Winds

Bella Vista

Primrose Cottage

St. Joseph's

Flurah Lodge

Belmont Pyntles

Windfasham Pines

Linden

Dunmor

Cranbrook

Lilliput

Pineways

Arctura

Ahrudge

Furzebank

Fernbank

Oxgongwell

Barons

Nursery Cottage

Oak Ridge

The Ordnance Survey Map with the Office of the Controller of H.M. Stationery Office.

The Ordnance Survey Map with the Office of the Controller of H.M. Stationery Office.

The Ordnance Survey Map with the Office of the Controller of H.M. Stationery Office.

The Ordnance Survey Map with the Office of the Controller of H.M. Stationery Office.

The Ordnance Survey Map with the Office of the Controller of H.M. Stationery Office.

The Ordnance Survey Map with the Office of the Controller of H.M. Stationery Office.

The Ordnance Survey Map with the Office of the Controller of H.M. Stationery Office.

The Ordnance Survey Map with the Office of the Controller of H.M. Stationery Office.

The Ordnance Survey Map with the Office of the Controller of H.M. Stationery Office.



RECOMMEND, That subject to an amendment being made in respect of the proposed exit of Footpath 45 onto Windlesham Road, Public Path Diversion Orders be made and advertised in accordance with the submitted applications for Public Footpaths Nos. 45 and 47 pursuant to the provisions of Section 119 of the Highways Act 1980 and in the event of objections being received, the Orders be submitted to the Secretary of State for the Environment for determination.

6. PARISH OF WINDLESHAM - CLAIMED PUBLIC FOOTPATH FROM HIGHVIEW ROAD TO LIGHTWATER COUNTRY PARK.

It was reported that the Ramblers' Association had submitted evidence to show that a right of way, which was not included on the County Council's Definitive Map, subsisted over land between Highview Road, Lightwater and the Country Park.

The Committee was advised that the Ramblers' Association and local residents had submitted evidence claiming footpath rights for at least twenty years prior to submission of the claim, and maps had been provided which showed that a footpath had subsisted in the area concerned as early as 1869.

From the documentary evidence available, it appeared that footpath rights had not been called into question until 1985 and the Committee was informed that insufficient evidence had been submitted to dispute the Ramblers' claim.

Members were advised that, with sufficient evidence, a Map Modification Order could be made under the Wildlife and Countryside Act 1981 to include the footpath on the Definitive Map. The Committee therefore

RECOMMEND, That the claimants be advised that, on the basis of the evidence of enjoyment by the public as of right and without interruption for a full period of twenty years, presumed dedication of the footpath running from Highview Road to Lightwater Country Park, Lightwater has taken place and that a Map Modification Order is to be made in accordance with the provisions of the Wildlife and Countryside Act 1981.

PART B  
(For Information)

7. STREET CLEANSING

Further to paragraph 5, page 674, of the minutes of the meeting held on 12th March, 1986 it was reported that four firms had been selected to tender and three tenders were subsequently submitted for the street cleansing contract for the period ending 31st March, 1991.