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Chief Executive and Town Clerk  
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Your reference  
C/APR/JAP/23/12/0017  
Our reference  
FPS/5391/7/3  
Date  
26 FEB 91

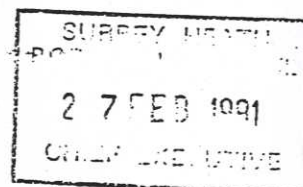
Sir

WILDLIFE AND COUNTRYSIDE ACT 1981, SECTION 53 AND SCHEDULE 15  
THE BOROUGH OF SURREY HEATH ( SURREY COUNTY COUNCIL DEFINITIVE  
MAP AND STATEMENT) DEFINITIVE MAP MODIFICATION ORDER  
PUBLIC FOOTPATH 185, LIGHTWATER 1990

1. I refer to the above named Order, submitted by your Council to the Secretary of State for the Environment for confirmation, which I have been appointed to determine in accordance with the provisions of Paragraph 10(1) of Schedule 15 to the Wildlife and Countryside Act 1981. I held a public local inquiry into the Order at All Saints Church Hall, Broadway, Lightwater, Surrey, on 22 January 1991 and inspected the line of the claimed path on the same day.
2. The effect of the Order if confirmed without modification would be to modify the Definitive Map and Statement for the area by adding thereto the Public Footpath 185 running from High View Road, Lightwater, at a point opposite the property named 'Burgh Lodge House', to a point on the existing boundary of Lightwater Country Park.
3. Objections to the Order were made by the owner of land crossed by the claimed path who was represented at the inquiry, and by three other persons in writing. In my determination of this case, I have taken into consideration all objections and representations.

DESCRIPTION OF RIGHT OF WAY CONCERNED AND SURROUNDING AREA

4. From the undeveloped frontage on the north side of High View Road, the claimed path traverses heathland and terminates at a stile in the boundary fence of the Lightwater Country Park. The heathland comprises relatively high heather and a scattering of mature and semi-mature trees. The path dips from High View Road and then rises towards the Country Park. The path is worn and it takes an indirect course.



## SUBMISSIONS OF THE PARTIES

The case for the Surrey Heath Borough Council

5.1 The Ramblers Association claims that a right of way subsists over land between High View Road and the Country Park, Lightwater. In support of the Association's claim, the Council has received evidence forms from ten persons, eight of whom claim to have walked the path regularly and without interruption before 1981/1982, each for periods of at least twenty years duration.

5.2 When the boundary fence of Lightwater Country Park was constructed by the District Council in 1979/80, it crossed the line of the claimed path and accordingly obstructed the path. A stile was placed in the fence by the Council shortly thereafter.

5.3 Thirteen residents from High View Road and its vicinity have written to express their support for the continued existence of a path that many have always understood to be a public right of way.

5.4 The Ramblers Association asserts that the claimed path is part of an old route connecting Lightwater to Bagshot which has been recognised by the provision of a footbridge over the M3 motorway and the stile on the boundary of Lightwater Country Park.

5.5 Maps prepared by the Ordnance Survey, 1915 and 1934 editions, show a footpath in the proximity of the claimed path heading in a similar direction from High View Road over Bagshot Heath.

Cases presented by supporters of the Order

6.1 Mr Cook pointed out that by proposing a development that incorporates the route of the claimed path, the landowner accepts that the path exists.

6.2 Mrs Walker, a frequent user of the claimed path as part of a circular route, presented a petition from forty persons in attendance at the inquiry expressing support for the path's continued existence.

6.3 Mr Frazier, who has used the claimed path for over thirty years, pointed out that the claimed path shows physical signs of having been regularly used. The path does not affect adjoining property and provides a route to Bagshot avoiding trafficked roads.



The cases for objectors to the Order

The case for Shepperton Builders Ltd.

7.1 Shepperton Builders Ltd. own the land crossed by the claimed path. High View Road is a cul-de-sac with little space for the parking of cars. Local residents have a choice of other footpaths between High View Road and the Country Park, both to the west and from Cranwell Grove. A number of recent thefts have been reported. It follows that any need for the path can be satisfied by using other routes and that continued use of the claimed path would be a risk to the security of adjacent premises.

7.2 The footpath routes shown on the Ordnance Survey sheets, 1915 and 1934 editions, do not coincide with that of the claimed path; the routes shown cross properties west of the land owned by Shepperton Builders Ltd.

7.3 The land traversed by the claimed path was fenced off for grazing purposes some 28 years ago. Evidence of such fencing remains.

The case for Mr Trice

8.1 The land crossed by the claimed path is heathland and is a potential fire hazard. Without fire breaks and fire hydrants and with restricted access for fire fighting vehicles the threat of fire is a risk for residents in High View Road.

8.2 High View Road is unadopted and in its poor state it is unsuitable for the extra use associated with a new access point. When considering applications for development with access onto High View Road, the local planning authority conditions planning approvals 'in the interests of public safety'. It follows that High View Road is unsafe for further usage.

8.3 Since the stile was erected in the Country Park boundary, a significant number of ramblers have lost their way, as the claimed path is undefined. For this reason trespass is committed.

8.4 The claimed path is not needed; there is ample access for genuine ramblers to the Country Park, Bagshot, and beyond.

#### CONCLUSIONS

9.1 A number of those who have written to express opposition appear to be opposed to development of the land traversed by the claimed footpath and not to the Order which is directed towards establishing whether public rights of passage on foot have been created over the claimed route. It would be for the local planning authority to consider any proposed development

of land in its area having taken into consideration, inter alia, any public right of way that may exist over the land concerned.

9.2 Others who have written to express opposition are opposed to the closure of the claimed path; such representations are taken to be expressions of support for the Order.

9.3 The written evidence set out on the pro-formas completed by eight persons establishes that before 1980/81 the claimed route had been used by pedestrians for periods of at least twenty years without interruption, except when the path was obstructed for the period between the erection of the boundary fence to the Lightwater Country Park and provision of a stile in the fence. This period of interruption was attributable to actions of the Borough Council and was not, in my view, directed towards denying walkers passage along the claimed route and for this reason and as the period was not of long duration, the continuity of usage of the claimed route over the periods given in evidence was not thereby affected to a significant extent. ✕

9.4 The routes of the footpaths shown on the earlier plans prepared by the Ordnance Survey do not coincide with the claimed route as shown on the Order Plan which was prepared from a more recent edition of the Ordnance Map showing the route on its present line. I conclude that the earlier plans do no more than indicate that there was a footpath routed over open ground between High View Road and Bagshot Heath. The lack of coincidence between the routes shown on earlier plans and the present route does not invalidate the user evidence which refers to use made of the present route for periods exceeding twenty years.

9.5 Because other paths exist to the west and east of the claimed route, the need for the claimed path is questioned. Whilst I noted at the site inspection that a path to the west is currently open and available, that to the east from the cul-de-sac head at Cranwell Grove is physically obstructed. However, determination of this Order does not depend upon whether the claimed path is needed but whether it has been used as a public right of way.

9.6 The security of properties in the vicinity of a claimed public footpath and fire risk are not matters that affect the issue of determining whether the claimed route is a public right of way. It should be noted that, although signposting should assist users in keeping to the path, the effect of the Order itself would not be to increase usage of the claimed route.




DECISION

10. For the above reasons, and in exercise of the powers transferred to me, I have decided to confirm the Order. The confirmed Order is enclosed together with and explanatory memorandum.

11. A copy of this letter has been sent to the objectors and to other interested persons.

I am Sir,  
Your obedient Servant



A Welsby  
BSc Tech, FICE,  
Inspector

APPEARANCES

For Surrey Heath Borough Council:

Mr D Cary

Solicitor

He called:

Mr P Fishwick  
H.N.C. (Civil Engineering)

Senior Highway Engineer

Mr D Cook

Resident,  
High View Road  
Lightwater

Mr E Fielding

Resident,  
High View Road  
Lightwater

For those in support of the Order

Mr D Cook

Resident,  
High View Road  
Lightwater

Mrs S Walker

Resident,  
Cranwell Grove  
Lightwater

Mr D Frazier

Resident,  
High View Road  
Lightwater

For those objecting to the Order

Mr D Oakshett  
DipLA, ARICS, ARVA

Quantity Surveyor  
Representing owner of  
land traversed by  
claimed path.

## DOCUMENTS

### Attendance List

1. Correspondence from supporters of the Order - received at the inquiry.
2. Letter of objection - received at the inquiry
3. Photographs of claimed path - Surrey Heath B.C.
4. Plan showing route of claimed path - Surrey Heath B.C.
5. Plan and Letter referring to proposed development of land traversed by claimed path. - Surrey Heath B.C.
6. Correspondence from supporters of the Order - Surrey Heath B.C.
7. Extract from Ordnance Survey Sheet 1915 Edn - Mr D Cook
8. Extract from Ordnance Survey Sheet 1934 Edn - Mr D Cook
9. Petition in favour of Order - Mrs S Walker
10. Representations received after the inquiry.