

**OFFICER REPORT TO LOCAL COMMITTEE
(SURREY HEATH)**

**APPLICATION FOR A MAP MODIFICATION ORDER TO ADD A
FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT FOR
SURREY FROM THE HIGHWAY VERGE ON FORD ROAD TO
FOOTPATH NO. 45 (CHOBHAM)**

14 October 2010

ANNEX 1

DRAWING NO 3/1/81/H68

Shrubb's Farm

Ford Road

Deep Ford Cottage

Track

FP No. 45

FP No. 45

X

A

B

C

Claimed route - - - - -
Distance A - B - C 10 m

Footpath No. 45 (Chobham) shown _____

WILDLIFE AND COUNTRYSIDE ACT 1981

MAP MODIFICATION ORDER

BOROUGH OF SURREY HEATH

PARISH OF CHOBHAM



Date: 05/08/2010
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Drawing No.: 3/1/81/H68

O.S. Sheet : 96 SE
Grid ref at A : 96432 62491

Scale 1:500

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ANNEX 2

Letter from Mr Money to Mr Curwen dated 14 March 2000

Licence dated 2 June 1982

Deed of Grant dated 14 February 1979

Our Ref. EM/cmw

James Curwen, esq.,
Deep Ford Cottage
Ford Road
CHOBHAM
Surrey

14 March 2000

Dear James,

The Buckstone Estate

You will recall our recent telephone conversation about your tenant's car being parked permanently on the area of land subject to our 2nd June 1982 Licence Agreement. In the Licence it is quite clear that only vehicles belonging to you and your family and their visitors are permitted to park there. I do not believe and you have conceded that a tenant or lodger falls within this definition. You gave me your personal assurance that your tenant's own car would be moved immediately to your own land but that the tenant would be free to use the licensed land for occasional parking of his "company" car.

Seemingly your assurance to me has not been fulfilled at least on the two recent occasions when I looked. In the circumstances I have no alternative but to remind you of the clear and specific obligations you undertook in the Licence Agreement and my right to terminate it without further notice in the event of a breach. I had hoped the need to write this letter would never arise and I am disappointed. Please understand that I must and will maintain my property rights over this land which has been the focus of so much aggravation in the past. I believed we had reached a sensible and amicable settlement of this problem and I urge you to consider your position.

Yours sincerely,

THIS LICENCE is made the 2nd day of June 1982
BETWEEN James Edward de Bourbel Money of Biddles Farm
Chobham Surrey (hereinafter called "the Licensor") of the
one part and James Gilbert Curwen and Agnes Coral Curwen his
wife of Deep Ford Cottage Chobham Surrey (hereinafter called
"the Licensees") of the other part

WITNESSETH as follows:

1. The Licensor hereby grants to the Licensees licence to park private vehicles on the land (hereinafter called "the Land") shown coloured pink on the plan annexed to a Deed (hereinafter called the "said Deed") made the 14th day of February 1979 BETWEEN among others the Licensor and the Licensees a copy of which is deemed to be annexed hereto and made a part hereof.
2. The Licensees hereby covenant with the Licensor as follows:
 - a) not to use the Land for any purpose other than for the parking of private motor vehicles and one horse trailer belonging to the Licensees members of their family and their visitors apart from those purposes stipulated by the said Deed
 - b) not to do or suffer to be done on the Land anything which may be or become a nuisance or annoyance or cause inconvenience to the Licensor
 - c) not to permit any works of repair or service or maintenance to be carried out to any motor vehicle whilst parked on the Land

- d) not to do or permit or suffer any act matter or thing in or upon the Land or the access way from the public highway which may render any increased or extra premium to be payable for the insurance of the Land or any adjoining or adjacent properties of the Licensor or which may make void or voidable any policy for such insurance
- e) not at any time to obstruct or cause to be obstructed the access way to the Land and not to park or permit to be parked any motor vehicle of the Licensees its servants or agents or visitors in such a position as to prevent the free movement of motor vehicles belonging to the Licensor his servants or agents
- f) not in any way whatsoever to damage or obstruct the approaches to the Land or any part thereof and will indemnify and keep indemnified the Licensor against all claims costs expenses and damages whatsoever in relation to any damage or injury whatsoever caused by the Licensees or members of their family or visitors to any person or property whether of the Licensor or of any other person by its or their use of the Land hereunder
- g) not to use the Land for any purpose which constitutes a "business" within the meaning of Part II of the Landlord & Tenant Act 1954
- h) not to use the Land for the storage of any materials or things whatsoever
- i) not to bury or dump in or on the Land any rubbish or vehicles or parts of vehicles or any other articles or thing whether of the same or similar nature to the foregoing.

3. This Licence is personal to the Licensees and the Licensees will not assign underlet or otherwise part with possession of the rights and benefits granted by this Licence or any part thereof.
4. This Licence shall be deemed to have taken effect as from the 14th day of February 1979 to have continued thereafter until the date hereof and shall continue evergreen unless or until terminated by the Licensor without cause at any time hereafter by one week's notice to the Licensees or either of them whereupon this Licence shall cease and determine with immediate effect. Provided that this Licence shall be deemed to be terminated by operation of law on the 1st day of January 1987 or in the event that the Licensees or either of them shall cease to own the said Deep Ford Cottage whichever shall last occur.
5. The Licensor shall be entitled to determine this Licence immediately and without notice in the event of any breach by the Licensees of any of the terms herein contained.
6. In consideration hereof the Licensees shall pay the Licensor one peppercorn per annum so long as this Licence shall be in force.

IN WITNESS whereof the hands of the parties the day and year first before written

SIGNED BY JAMES GILBERT CURWEN

SIGNED BY AGNES CORAL CURWEN

SIGNED BY THE LICENSOR

James Curwen.
Agnes Curwen.
V. E. de B. M...



50p
9
BA
15
2

T H I S D E E D is made the 14th day of February 1978
B E T W E E N JOHN KYRLE MONEY of 18 Pembroke Gardens
Close London W8 GEORGE GRAHAM ERNLE MONEY of Hippo Pools
Munstead View Road Bramley Surrey and JAMES EDWARD DE
BOURBEL MONEY of Biddles Farm Windlesham Road Chobham
Surrey (hereinafter together called "the Moneys") of the
one part and JAMES GILBERT CURWEN and AGNES CORAL PELHAM
CURWEN his wife of Deep Ford Cottage Ford Road Chobham
Surrey (hereinafter called "the Curwens") of the other
part

W H E R E A S

- A. The Moneys own as tenants in common in possession
free from incumbrances lands situate at Chobham
in the County of Surrey known as the Buckstone
Estate of which the land delineated by the lines
drawn between the points A B and C and shown
coloured pink on the plan annexed hereto forms
part (hereinafter called "the pink land")
- B. The Curwens own a house situate at Chobham aforesaid
known as Deep Ford Cottage together with land
adjacent thereto delineated and shown coloured
blue and green on the said plan (hereinafter
called "the blue land and the green land")

S 447296

7/11/78

- C. The Curwens desire access to and from the blue land and the green land across the pink land through an entrance into the pink land from the public highway known as Ford Road such entrance being at point A on the said plan
- D. The Moneys are willing to grant to the Curwens a right of way across the pink land to provide such access on the terms and conditions contained herein

N O W T H I S D E E D W I T N E S S E T H as follows:-

1. [THE Moneys hereby grant to the Curwens both jointly and individually so long as they or either of them shall own Deep Ford Cottage aforesaid the right to use the pink land for the purpose of access with or without vehicles and animals and for the grazing solely of domestic animals and the same right to any one or more of the Curwens' children until 1st January 1987 should Deep Ford Cottage have previously passed to any such child or children by inheritance on the death of either of the Curwens or during their lifetime by way of gift
2. THE foregoing rights shall be non- assignable
- Equal

and personal to the Curwens and their children as the case may be and shall terminate immediately on any sale of Deep Ford Cottage any purported assignment being null and void

3. IN consideration of the rights granted hereunder the Curwens shall erect and maintain a stockproof fence between the points A and B on the said plan with a kissing gate and field gate located as shown on the said plan provided that the obligation to maintain the fence the kissing gate and the field gate shall cease on the discontinuance of this Agreement
4. IN the event that either Deep Ford Cottage shall be sold or the Curwens' children or any of them take the benefit of this Agreement under Clause 1 hereof and retain ownership of Deep Ford Cottage after 1st January 1987 the following provisions shall apply:-

(a) The Moneys shall by Deed grant to the purchaser or the Curwen's children or child as the case may be a right of way over a strip of the pink land between the points B and C on the said plan such strip of land being 12 feet wide and hatched *blue* on the said plan

10/1/87

- (b) The right of way shall be permanent at all times and for all purposes with or without vehicles or animals and shall connect up with a new access drive to be constructed over the blue land as illustrated on the said plan
- (c) Such grant shall be effected without monetary consideration provided that the Curwens or their children shall be liable for the normal legal expenses of preparing and completing the Deed of Grant and further provided that the Curwens or their children shall erect a stockproof fence between the points X and Y on the said plan with a stile to be erected at the point the public right of way crosses the said strip of land
- (d) In the event that these provisions take effect due to a sale of Deep Ford Cottage or on a sale of Deep Ford Cottage by the Curwen's children the Curwens hereby undertake for themselves and their children that any purchaser of Deep Ford Cottage shall agree as a condition of the contract of sale to accept liability for the future maintenance of the new fence and stile

to the intent that such liability shall be thenceforth a burden on the proprietor for the time being of Deep Ford Cottage

5. FOR the avoidance of doubt it is understood and agreed by the parties hereto that the rights of grazing referred to in Clause 1 hereof shall be deemed gratuitous and shall not give rise to any rights whatsoever under Common Law or under any legislation present or future relating to agricultural holdings

6, THIS Agreement shall be binding on the assignees and successors in title of the Moneys or any of them in respect of the pink land

IN WITNESS WHEREOF the parties hereto have duly executed this deed the day and year first above written

Signed Sealed and Delivered
by the said JOHN KYRLE MONEY
in the presence of:-

N.H. Vint


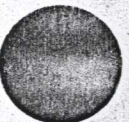
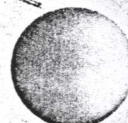
12 LOCKWOOD ROAD, ILFORD, ESSEX

Signed Sealed and Delivered
by the said GEORGE GRAHAM
ERNLE MONEY in the presence
of:-

G.H. Beckett
87, STATION ROAD
CHELTSEY, SURREY.

Signed Sealed and Delivered
by the said JAMES EDWARD DE
BOURBEL MONEY in the
presence of:-

James De Bourbel
67 WARDENAR AVENUE
LONDON SW2

) *[Signature]* 
) *[Signature]* 
) *[Signature]* 

Signed Sealed and Delivered)
by the said JAMES GILBERT)
CURWEN in the presence of:-)

James Gilbert

James sign

address Elizabeth J. Birmingham
description Handwork

Signed Sealed and Delivered)
by the said AGNES CORAL)
PELHAM CURWEN in the)
presence of:-)

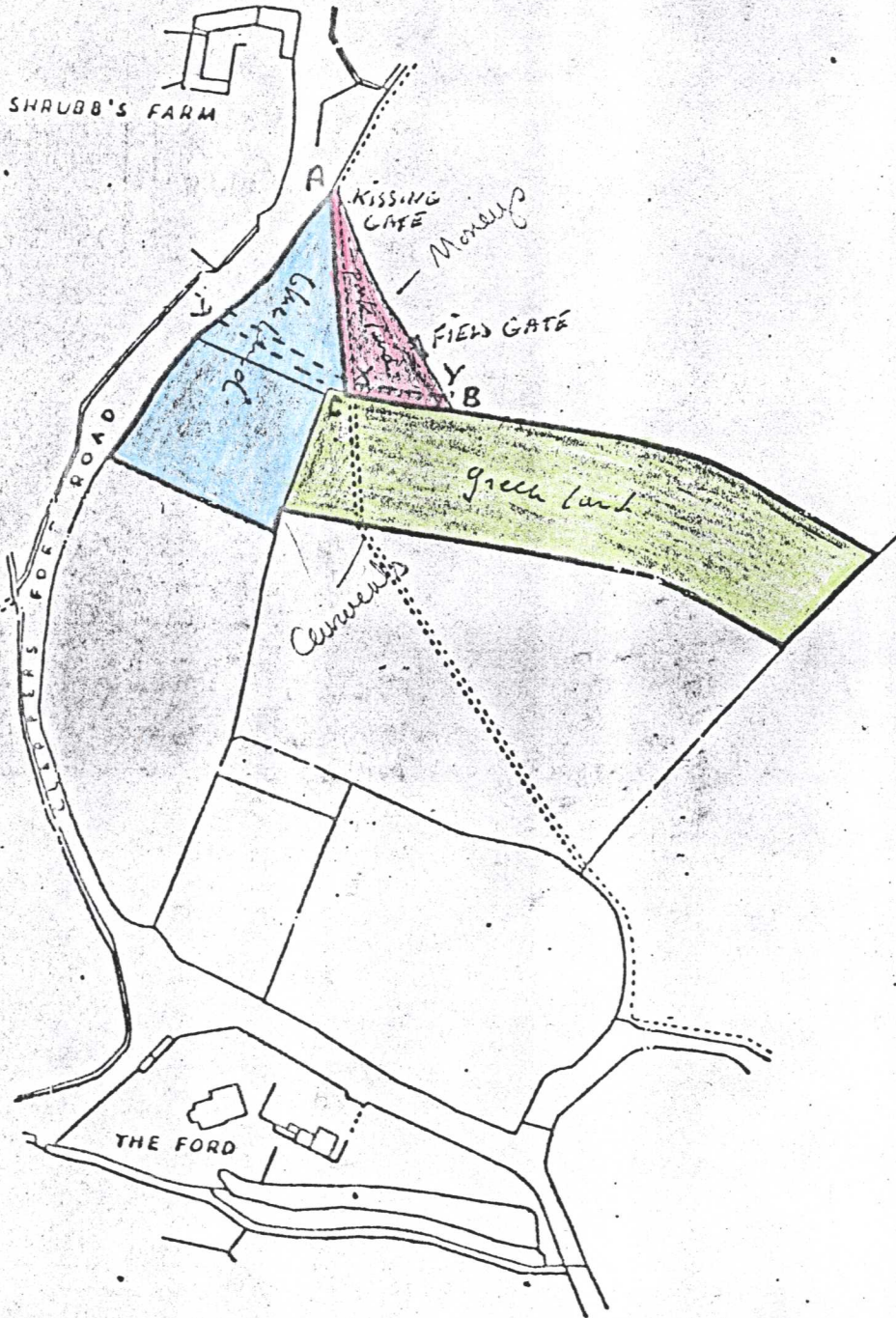
Agnes Coral



Elizabeth J. Birmingham
45 Westcombe Park Rd
London SE3.

H. M. LAND REGISTRY

Scale 1/2500



Point A to point B	-	286 feet
Point B to point C	-	117 feet
Point C to point A	-	226 feet

DATED

14th Feb

1978

J. K. Money Esq
G. G. E. Money Esq
J. E. de B. Money Esq

and

J. G. Curwen Esq and Mrs.
A. C. P. Curwen

DEED

The Buckstone Estate
and
Deep Ford Cottage

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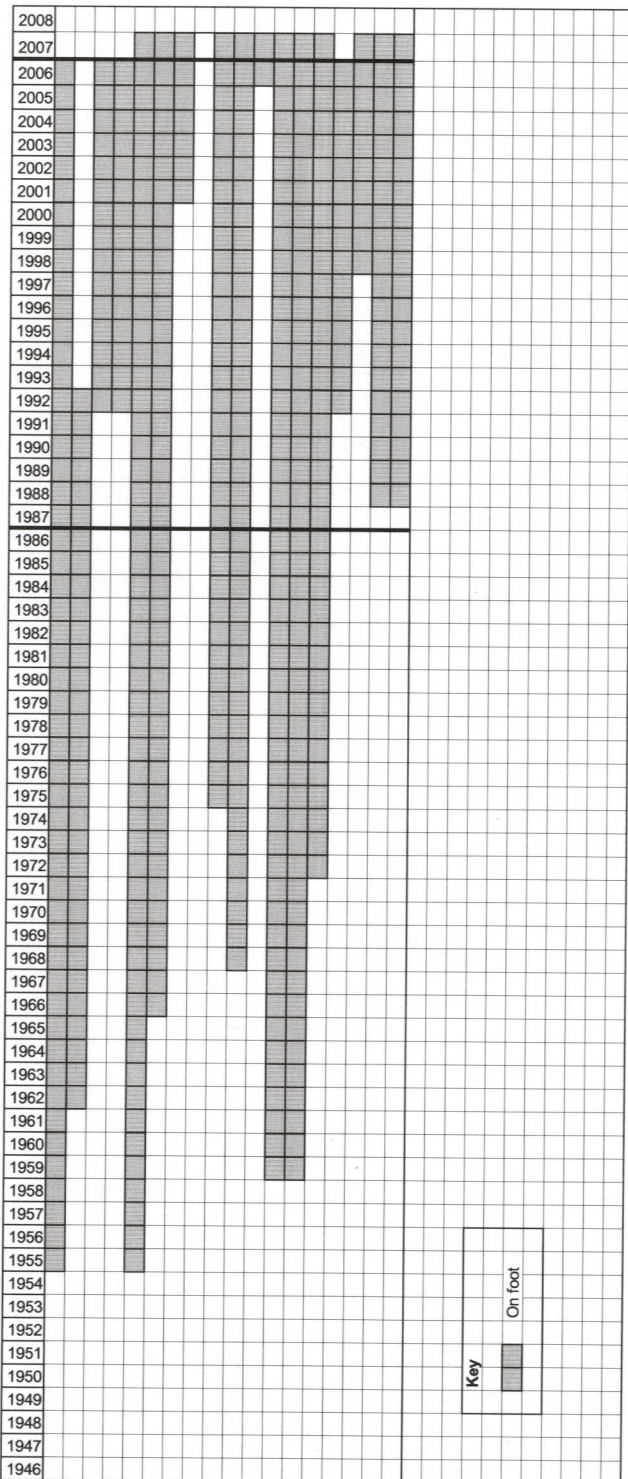
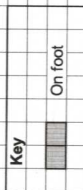
ANNEX 3

User Evidence Bar Chart

ALLEGED PUBLIC FOOTPATH BETWEEN FORD LANE AND FP45 (CHOBHAM), CHOBHAM CP531

ANNEX 3

No.	Title	Name	Dates
1	Miss	Kay Alexander	1955-2007
2	Mrs	Alison Starns	1962-1993
3	Mrs	Joyce Anderson	1992-2007
4	Mr	William Anderson	1992-2007
5	Mr	M J Beavis	1955-2008
6	Mrs	P M Beavis	1966-2008
7	Mr	D J Bowerin	2001-2008
8	Mrs	V A Bowerin	2008
9	Mrs	Marion Farley	1975-2008
10	Mr	Frank James	1966-2008
11	Miss	Susan King	2006-2008
12	Mr	Gerald F. Mann	1959-2008
13	Mrs	Janet L. Mann	1959-2008
14	Ms	Davina Smiley	1972-2008
15	Mrs	Claire Stevens	1992-2007
16	Mr	Nell Stevens	1966-2008
17	Mrs	Julia Thomas	1966-2008
18	Mr	Julian Thomas	1966-2008



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ANNEX 4

Map Modification Orders – General Guidance

Map Modification Orders - General

The National Parks and Access to the Countryside Act 1949 placed a duty on all Surveying Authorities in England and Wales to produce a definitive map and statement, indicating and describing public rights of way within their areas.

The '49 Act also required Surveying Authorities i.e. County Councils, to keep their definitive map and statement under periodic revision. The Wildlife and Countryside Act 1981 completely changed the way in which the definitive map and statement is updated. Under this Act Surveying Authorities have a duty to keep their map and statement under continuous review.

Certain specified events can trigger that process and one of these is an application under Section 53 of the Act for a map modification order (MMO). Section 53(5) enables any landowner, occupier or user to apply for a Map Modification Order to modify the definitive map. Landowners and occupiers may believe for example that a right of way should never have been shown on the definitive map at all, or is shown on the wrong line or that its status is incorrectly shown, for example, as a bridleway instead of a footpath.

Claims may also be made for routes to be added on the basis of evidence from historical documents or of evidence of public use, either for a continuous period of 20 years, as provided for by the Highways Act 1980 (s31) or for a shorter period under Common Law.

Both at common law and under Section 31 of the Highways Act 1980 the public's enjoyment of the way must have been "as of right" in order to form the basis of implied dedication. "As of right" was interpreted in Merstham Manor v Coulsdon and Purley UDC (1937) as acts done openly, not secretly, not by force and not by permission from time to time given. The House of Lords has held in R v Oxfordshire CC ex p Sunningwell Parish Council (1999) that subjective state of mind of the user does not have to be proved. Users over a long period may have been "subjectively indifferent as to whether a right existed".

Deciding who "the public" are can sometimes be difficult. In general it should be people other than those working for the landowner(s) concerned or who had the permission or licence of the landowner(s) to use the route. The period of 20 years is counted back from the date on which the public's right to use the way was first brought into question or from the date at which an application is made to modify the Definitive Map and Statement. In order to bring the public's right into question, the landowner must challenge it by some means sufficient to bring it home to the public, for example, through the erection of a fence or locking of a gate across the way, however long ago that date was.

Statute Law

“Section 31 of the Highways Act 1980 provides that the claimants’ evidence must show that the route has been actually enjoyed for a 20-year period. The use must be without force, without secrecy and without permission”.

Although 20 years uninterrupted use by the public establishes a presumption that the way has been dedicated to the public, this can be contradicted by evidence showing that the landowner did not intend to dedicate public rights during that time. Evidence of interruption of the public’s use of the way, would have to be shown to have been both effective in preventing public use and clearly known to the public. The turning back of the occasional stranger will not be a sufficiently positive act - at least where the way continues to be used by locals. Notices clearly displayed and maintained on the way, indicating that it was private, or plans deposited with the surveying authority or its predecessors can prove sufficient evidence of an intention by an owner not to dedicate. Section 31(6) of the Highways Act 1980 enables landowners to protect themselves against claims based solely on use by depositing a map, statement and statutory declaration with the surveying authority showing which rights of way they acknowledge to be public on their land.

It is not possible to claim a route by presumed dedication over Crown Land such land being exempt from the provisions of the Highways Act 1980. Byelaws for some National Trust Land and other open spaces may also prevent the acquisition of rights.

Under Section 53c (i-iii), documentary evidence alone, may be sufficient to establish the existence of public rights and however old the document, the rights recorded will still exist unless there is evidence of a subsequent legally authorised change.

In May 2006, the Natural Environment and Rural Communities Act was brought into commencement. The main effect of sections 66 and 67 of this act was to significantly curtail the scope for recording further public rights of way for mechanically propelled vehicles (MPVs) on the definitive map and statement. This was done in two ways. Firstly, any existing unrecorded public rights of way for MPVs (with certain exceptions) were extinguished, so that they cannot then be added to the definitive map and statement as byways open to all traffic (BOATs). Secondly, the act also ensures that no further public rights of way for MPVs can be acquired unless expressly created or constructed. Typically, where such rights had been acquired but were thereafter extinguished, this results in a restricted byway.

Common Law

A highway is created at Common Law by the dedication by the owner of a right of passage across his land for the use by the public at large coupled with acceptance and use by the public as of right. Dedication may also be inferred at Common Law where the acts of the owner conclusively point to an intention to dedicate. In Poole v Huskinson (1843) it was held that “2 things 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 length of user evidence is also important but there is no fixed minimum or maximum period of use which must be proved in Order to justify an

inference of dedication. Under Common Law it is possible to claim a route by presumed dedication over Crown Land.

Schedule 14 Applications For Definitive Map Orders

The procedures for the making and determination of an application are set out in Schedule 14 of the 1981 Act. Anyone making an application must serve notice on every owner and occupier of land affected by the application. In cases of difficulty in tracing the owner or occupier, the authority has the power to direct that a notice be placed on the land instead. The procedures include the right for applicants to appeal to the Secretary of State for the Environment against the surveying authority's refusal to make an Order. In such cases the Secretary of State can direct the authority to make the Order even when the authority considers the evidence does not support the making of the Order.

Once the authority has received the certificate of service of notice it has a duty to investigate the application and consult with every local authority concerned, i.e. District, Parish/Town Council. The authority should make a decision on the application as soon as reasonably practicable. Where the authority has not come to a decision within 12 months of receiving an application, the applicant can appeal to the Secretary of State for the Environment, Transport and the Regions who can direct the authority to determine it within a specified time.

An authority can act on evidence without a Schedule 14 application being made and should do so on discovery of relevant evidence. There is no requirement to investigate the claim within 12 months and no right of appeal to the Secretary of State for the Environment, Transport and the Regions in these cases.

Order-making procedure

If it is established that, on the balance of probabilities, public rights have been acquired, a MMO is published and advertised on site and in a local newspaper. If no objections are received the Order can be confirmed by the County Council. If there are unresolved objections it must be referred to the Secretary of State who will probably decide to hold a Public Inquiry to resolve the matter.

If the authority has been directed by the Secretary of State to make a MMO after it has decided not to do so and objections are made which result in a Public Inquiry being held, the authority may adopt a neutral stance or oppose the Order.