

## **SUE RUMFITT ASSOCIATES**

For London Borough of Bromley

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### **Wildlife & Countryside Act 1981 – Section 53 Determination of an Application for Definitive Map Modification Order Alleged Bridleway – Clarence Road, Footpath 279, Avenue Road/The Avenue to The Grove**

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#### **Introduction**

1. This report seeks to assist the London Borough of Bromley, as Surveying Authority (“the Authority”) to determine an application for a Definitive Map Modification Order. The application seeks to record a public bridleway over Clarence Road, footpath No 279, The Avenue/Avenue Road to the Grove. The route is shown on Plan 1a (Annex 1).
2. During the investigation of the evidence it became apparent that a small part of the The Avenue/Avenue Road section of the claimed route (between B and C on Plan 1b, Annex 1) was in Surrey. At officer level it has been agreed between the two Authorities that the matter will be considered by London Borough of Bromley and should an Order need to be made a formal agreement will be entered into to delegate to the London Borough of Bromley the legal authority to make an Order that would modify the Definitive Map for the County Council of Surrey.
3. Copies of the application, supporting evidence forms and statements made by users on interview are held by the Council on file. The evidence in support of the application is largely that of alleged public use of the route on horse-back. If having considered all the relevant available evidence and on a balance of probabilities public bridleway rights are shown to exist over the route, the Authority will be obliged to make a Definitive Map Modification Order to “upgrade” the footpath to bridleway and to add a bridleway along The Avenue/Avenue Road.

#### **Legislative Background**

##### Legislative Framework

4. The application has been made under the Wildlife and Countryside Act 1981. Section 53 of the Act places a duty on the Authority to keep the Definitive Map under continuous review and to make any modifications to the Definitive Map as may be “requisite”. In determining the application the Authority is acting in a quasi-judicial manner and must weigh the evidence and apply the law accordingly.

##### Test to be Applied

5. When considering an application for a Definitive Map Modification Order to alter the status of a public right of way shown on the Definitive Map, or to include a public right of way on the Definitive Map over a route where no public rights are presently recorded, the burden of proof initially rests with the applicant to prove their case. If under Section 31 of the Highways Act 1980 a prima facie case in favour of the application is established, the burden then falls upon anyone opposing the application to provide evidence in rebuttal. The standard of proof to be applied to the evidence is the civil test of ‘on the balance of probability’.
6. In the case of the route presently recorded as Footpath 279, if the Authority is satisfied that, having taken into account all of the available relevant evidence, the alleged bridleway rights exist it has a duty to make a Definitive Map Modification

Order to “upgrade” the footpath to bridleway. In the case of the remainder of the application route, if the Authority is satisfied that bridleway rights can be reasonably alleged to subsist, it has a duty to make a Definitive Map Modification Order to record those rights on the Definitive Map

### Evidential Tests

#### Highways Act 1980, Section 31

7. Section 31 of the Highways Act 1980 states:

“(1) Where a way over 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 been actually enjoyed by the public as of right and without interruption for a full period of twenty years, 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.”

“The period of twenty 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 notice, such as is mentioned in subsection (3) below or otherwise.”

“Where the owner of the land, over which any such way as aforesaid passes has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and has maintained the notice after the first 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”

8. Section 31(1) has two ‘limbs’ the first provides that proof of twenty years continuous user “as of right” endorses a claim that a highway exists; the second (sometimes referred to as ‘the proviso’) provides that proof of a lack of intention (by the owner) to dedicate the way as a highway defeats the claim. In determining a claim based on public use of an alleged highway under Section 31 it is therefore necessary first to establish whether or not there has been use by the public “as of right” for twenty years prior to the right of the public to use the route being brought into question and secondly to determine whether or not there is sufficient evidence of a lack of intention by the landowner to dedicate the way to the public during the period which would have the legal effect of overturning the presumption that the highway legally exists.

9. Section 31 is supplemented by Section 32 of the Highways Act 1980, which states:

“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 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.”

10. It is therefore appropriate in determining applications for Definitive Map Modification Orders for the Authority to consider what, if any, relevant documentary evidence exists.

### Common Law

11. Highways may also be established under Common Law. At Common Law, a landowner must be shown to have intended to dedicate the right of way over his land. The question of dedication is purely one of fact and public user is no more than

evidence, which has to be considered in the light of all available evidence. Public use will not, therefore, raise the inference of dedication where the evidence in its totality shows that the public right of way status was not intended.

12. At Common Law, there is no specified period of user, which must have passed before an inference of dedication may be drawn. It is necessary to show, in order that there may be a right of way established, that the route 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 simple that the public were so using it as of right.
13. If the landowner has done exactly what would be expected from any owner who intended to dedicate a new highway, the time may be comparatively short. However, as a matter of proof at Common Law, the greater the length of user that can be demonstrated, the stronger the inference of dedication will (usually) be.

#### Legally irrelevant matters

14. Factors such as desirability, suitability, financial viability, need or public safety, whilst genuine concerns, cannot be taken into account by the Authority when making a decision. Therefore, whilst there may be some genuine concerns about the possible damage to the surface of the alleged bridleway by use of the route for horse-riding, and concerns about possible conflict between walkers and riders these concerns cannot be taken into account when determining the applications to modify the Definitive Map.

#### **Applications for a Definitive Map Modification Order**

15. The Council has received a duly made application for a Definitive Map Modification Order. The application was received on the 30 January 2006 from Mrs Ann Hayes, on behalf of the Tatsfield Bridleways Association.
16. An interview day was arranged on 2 March 2010 and witnesses who had completed user evidence forms were invited to attend to clarify and expand upon their evidence. The evidence collected is considered below.
17. The landowners, where known, were contacted and given the opportunity to submit evidence. A plan showing landownership (where this has been ascertained) is at Plan 2 (Annex 2). Comments and evidence submitted by landowners is summarised at Annex 7. Consultations with user groups and statutory undertakers were carried out in accordance with the Rights of Way Review Committee Practice Guidance notes. Evidence collected from this process is considered below and a summary of consultation responses is included at Annex 3.

#### **Consideration of Evidence**

##### Documentary Evidence

18. The documentary evidence considered in the investigation of this application is summarised at Annex 4.
19. It is not possible to list exhaustively the documents that may be relevant in the matter of a claimed public right of way, but there are documents and records that are commonly considered to be core documents. A starting point is any Inclosure Award, and tithe map and apportionment for the area. In this case, however, there is no Inclosure Award or tithe map and apportionment for the area.
20. Avenue Road/The Avenue is a physical feature of long-standing but its origins and ownership are unknown. Historically, there was vehicular access to a scrap-yard on

the section claimed to be a bridleway and a number of adjoining landowners have private rights of access along it.

21. The 1910 Finance Act final record plan (held at the National Archive at Kew) shows that The Avenue/Avenue Road was excluded from the adjoining hereditaments. This suggests public vehicular rights were considered to have existed. But in the absence of other supporting evidence is not considered strong enough to record this part of the claimer route as a byway or restricted byway, especially since ownership of The Avenue/Avenue Road is unknown (and the exclusion from adjoining hereditaments may reflect uncertainty about ownership).
22. Other documents such as deeds, estate plans, quarter session records and highway maintenance records may also be relevant in any particular case, however a search of the online catalogues of the National Archive and of local repositories has not indicated any documents that appear to be relevant to this case.

#### Evidence of Use

23. The evidence of use from witnesses is analysed in Annex 5 and Annex 6 to this report. Each user is given a user reference number, which is used to identify them in the body of the report.
24. Twenty-nine user evidence forms were received in support of the Definitive Map Modification Order application. All witnesses were invited for interview, and nine attended for interview, one witness was unable to attend and was interviewed on the telephone.
25. After interviewing witnesses in March it became apparent that use of The Avenue/Avenue Road section of the claimed route differed markedly from use of the other sections of the claimed route. Eighteen witnesses who had not attended for interview (these being those whose forms were not clear as to whether or not the whole claimed route had in fact been used) were contacted to ask for clarification. Four of these witnesses responded with clarification of use.
26. As the user evidence varies in respect of different sections of the claimed route these are considered separately below.

#### The Avenue/Avenue Road (Z-Y on Plan 1a)

27. From user evidence forms and from those witnesses who were interviewed it is clear that the route from The Grove to Bridleway 639 (in Surrey) has been used by horse riders for a considerable length of time. User 6 first started using the route in 1949 and Users 12, 16, 17 and 26 started to use the route in the 1950s. Users 1, 8, 10 14 and 28 started to use the route in the 1960s, with Users 2, 4, 5, 7, 11, 18, 27 and 29 starting to use the route in the 1970s. Users 15, 20 and 22 started to use the route in the 1980s with the remaining users starting to use the route in the 1990s.
28. Many users continue to use the route and it remains open and available for use. No users report being turned back or challenged on this route and none report seeing any signs. This is consistent with the evidence of adjoining landowners, none of whom have raised any serious evidential objection to the status of the route as a bridleway. Although the application was only for the section Z-Y on Plan 1a it is clear that users have in fact used the whole route from A-B-C-D on Plan 1b.
29. Although rails and steps existed (as evidenced in the Council's records) at the junction of The Avenue/Avenue Road and The Grove they do not appear to have impeded horse riders and the rails appear to have been removed at some point.

Date of bringing into question for The Avenue/Avenue Road

30. In order to make out a case under Section 31 of the Highways Act 1980 it is first necessary to establish a date when the right of the public to use the route have been brought into question. In respect of The Avenue/Avenue Road there has been no physical interruption of use and no challenge to users by way of personal challenge or a sign. Section 69 of the Natural Environment and Rural Communities Act 2006 provides that an application for a Definitive Map Modification Order may be an action that brings into question the right of the public to use the way. The Definitive Map Modification Order application was made in 2006, so it is considered that the relevant twenty-year period for the purposes of Section 31 of the Highways Act 1980 is 2006 – 1986. User evidence for that period is analysed at Annex 6.1.

Clarence Road and Footpath 279 (V-X and Y-X-W on Plan 1a)

31. Although there is a prima facie case that Users have ridden Footpath 279 and Clarence Road, users themselves report that stiles were erected on Footpath 279. Users 1, 3, 4, 5, 8, 12, 14, 15, 18, 19, 20, 21, 24, 25 and 26 report stiles being erected at various points and at various times. Stiles and adjoining fencing are reported by Users to have been broken at various times. Some Users report 'getting around' stiles, stiles being broken and getting through broken fencing (Users 3, 18, and 25). There is no suggestion that any of the users themselves broke or damaged stiles or fencing.
32. It is not always clear from user evidence forms which part of the claimed route has been used and during which periods. It has been possible to establish from interview and through written clarification with some witnesses that there has been less use of the Clarence Road and Footpath 279 section of the claimed route than of The Avenue/Avenue Road. Users 4 and 16 used this section of route until the 1970s when a stile was erected. User 12 used this section of route until 1990 when a stile was erected. Users 5, 6, 9, 11, 22, and 23 mostly used The Avenue/Avenue Road. User 10 never rode this section of route. Additionally few users rode the top section of Footpath 279 between the end of Clarence Road and Main Road, use of this section was minimal; it is very narrow and barriers are known to have existed at the Main Road.
33. It has not been possible to clarify the user evidence in all cases. In some cases user evidence forms appear to have been circulated with the claimed route already completed, where this is the case and where it has not been possible to clarify further that Footpath 279 and Clarence Road as well as The Avenue/Avenue Road have been used by the user, then it is not possible to place great reliance on the evidence.
34. Of the users where evidence has been clarified by interview or written clarification: User 11 used the Footpath 279 and Clarence Road as a young woman and Users 12 and 24 have used the route regularly and frequently and have not been prevented from using it by stiles or fencing until the 1990s.
35. It has not been possible to identify who owns the majority of the land crossed by Footpath 279 or who owns Clarence Road. Mr Rudd owns some land crossed by Footpath 279 but other owners or suspected owners have not responded to consultation. Mr Rudd states that the footpath has always had stiles on it. Mr Williams erected stiles in 1966. Stiles and repairs to stiles are recorded in the Council's maintenance records in the period 1981 – 2003. Stiles and barriers are recorded on the Footpath in the original survey carried out for the Definitive Map and Statement under the National Parks and Access to the Countryside Act 1949. Mr Burridge, Mr D Reeks, Mr R S Reeks and Mr Parfitt all recall stiles, with Mr R S Reeks stating that stiles have always been in place in two sites on the footpath.

36. Although it is not clear who has erected the stiles (with the exception of the two Mr Williams erected in 1966 and those erected in replacement by the Council) it is likely that the stiles were not erected by the landowner. However, irrespective of this, stiles undoubtedly restrict or prevent use by horse riders.
37. The evidence about the stiles is in conflict. The Survey records stiles in 1950 and Mr R S Reeks recalls stiles always being present, but user witnesses from that period do not recall encountering stiles. Mr Williams recalls erecting two stiles in 1966, but user witnesses recall no stiles until the 1970s. Council maintenance records only date back to 1981, but these record erection/replacement and maintenance of stiles from that date. Other than the Survey and the Council records no written contemporary evidence seems to exist regarding the stiles.

### **Legal Considerations**

#### The Avenue/Avenue Road

38. This route is not at present shown on the Definitive Map and Statement so consideration of the Definitive Map Modification Order application comes under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. This provides that an Order should be made by the Authority on *“the discovery of evidence which (when considered with all other available evidence to them) shows 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....”*

These two separate tests were considered in R v Secretary of State for the Environment ex parte Bagshaw [1994] 68 P & CR 402 and R v Secretary of State for Wales ex parte Emery [1996] 4 All ER 1:

Test A: Does a right of way subsist?

The Authority must be satisfied on the balance of probabilities that there is clear evidence of public rights over the way, and no credible evidence to the contrary.

Test B: Is it reasonable to allege that a public right of way subsists?

If there is a conflict of credible evidence but no incontrovertible documentary evidence that a right of way cannot be reasonably alleged to subsist, then the Authority can find that a public right of way has been “reasonably alleged” and make an Order on that basis.

39. In this case it is the view of the Consultant that there is clear evidence of public rights over The Avenue/Avenue Road and that evidence suggests that rights of at least bridleway status subsist. There is no credible evidence that public bridleway rights do not subsist. There is some evidence that public vehicular rights may exist, but on balance, the evidence supports a public bridleway.
40. If an Order is made to add The Avenue/Avenue Road to the Definitive Map and Statement it will have to include a width for the route. There is no documentary evidence of width. The route is bounded by trees on both sides with some fencing. User evidence suggests that the width available for use has not changed and was always as it is now. The Authority’s attention is drawn to Advice Note 16 and the related letter of advice from Defra and should an Order be made it is recommended that survey measurements be taken to establish the present physical width of the route and that these should form the basis for any width included in any Order.

#### Clarence Road and Footpath 279

41. In respect of Clarence Road, this route is also not presently shown on the Definitive Map and Statement and therefore falls to be considered under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (as above). However, in practice use of this

route cannot be divorced from use of Footpath 279 and any inference of dedication as bridleway has to be considered for the route as a whole.

42. Footpath 279 is already recorded on the Definitive Map and Statement as a public footpath. Therefore this section of the claimed route falls to be considered under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981. This provides that an Order should be made by the Authority on *"the discovery of evidence which (when considered with all other available evidence to them) shows that a highway shown in the map and statement ought to be there shown as a highway of a different description"*.
43. In cases where no right of way at all is shown in the Definitive Map and Statement Section 53(3)(c)(i) provides for a slightly lower test i.e. "Test B" to enable an Order to be made. There is no such provision in Section 53(3)(c)(ii).
44. Some riders have spoken of 'getting around' the stiles by using a slightly different route to access junction with The Avenue/Avenue Road. The use by riders of a variant of a route to get around obstacles (in this case gates) was considered in R v Secretary of State ex parte Blake 1984 JPL 101 the Court held that the gates were clearly physical interruptions to use and that it was not possible to add the user of two variant routes together to make out a claim of use for twenty years. Other riders have spoken of using the route when fencing next to the stiles was broken or the stiles themselves were broken. There is no suggestion that the riders themselves broke the fencing, but use when fencing or stiles were broken amounts to use by force and cannot be taken as use as of right, either at common law or under Section 31 of the Highways Act 1980.

#### **Consultant's Comments**

45. Applications for Definitive Map Modification Orders do not seek to create or extinguish public rights of way; they simply seek to record, on the Definitive Map, those routes, which already exist, at their correct status. In determining this application, the Authority can only take into account evidence relating to the existence, or otherwise, of public rights. Factors such as: desirability, suitability, privacy, private rights, financial viability, need or public safety; whilst genuine concerns, cannot lawfully be taken into account when making a decision.

#### **Consultant's conclusions**

##### The Avenue/Avenue Road

46. There is clear evidence of public use of this route as a bridleway for at least twenty years from the date of bringing into question in 2006 to 1986. There is no evidence that any landowner has taken actions that would amount to a lack of intention to dedicate the route during that period of time. Further use of the route by the public on horseback is evidenced from at least the 1950s, which is evidence of the public reputation of the route as a bridleway. There is no evidence that suggests that public bridleway rights do not exist. Use has been over the whole route as shown A-B-C-D on Plan 1b.

##### Footpath 279

47. Although this route has been used by the public on horseback, at times use has been despite the existence of stiles in various places. Stiles are documented to have existed in 1950, stated to have been erected and kept in place in 1966 and documented in the Council's records from 1981 onwards. There is evidence that some use of the route was prevented by the stiles in the 1970s and that some riders at least got around stiles or fencing clearly erected to prevent access.

48. Mr Williams challenged users in 1965.

49. Evidence of use is unclear from the user evidence forms, but there appears to be a limited amount of user of the route by users who have not been prevented by stiles and fencing or have 'got around' or 'got through' stiles or fencing. Although the evidence is not completely clear or consistent, it is the Consultant's view that use in such circumstances does not amount to enjoyment by the public as of right.

### **Decision Required**

50. The Authority is required to determine the Definitive Map Modification Order application. It may:
- a) Refuse to make any Order at all.
  - b) Make the Order as applied for in which case it should resolve to make an Order under Section 53(3)(c)(i) to add a bridleway to the Definitive Map and Statement for the routes shown from Z to Y and from V to X and make an Order under Section 53(3)(c)(ii) for the route shown from Y to X to W on Plan 1a.
  - c) Make an Order under Section 53(3)(c)(i) to add a bridleway to the Definitive Map and Statement for the route shown from A-B-C-D on Plan 1b and refuse to make an Order for the sections Y to X to W and X to V on Plan 1a.
51. Where an Order is made it does not come into effect unless and until it is confirmed. Orders have to be published and advertised and the public may object to them, where objections or representations are received the Authority may not itself confirm the Order but must refer the Order together with the objections and representations to the Secretary of State for determination.
52. Where an application, or part of an application, for an Order is refused the applicant has a right of appeal to the Secretary of State who will review the evidence and may direct the Authority to make an Order.

### **Recommendation**

It is recommended that the Authority:

Seeks delegated authority from Surrey County Council and on receipt of that authority:

Makes an Order under Section 53(3)(c)(i) to add a bridleway to the Definitive Map and Statement for the route shown from A-B-C-D on Plan 1b (which incorporates Z-Y on Plan 1a) and refuses to make an Order for the sections V-X and W-X-Y on Plan 1a.

That if no objections are received to the Order made, or any objections that are received are subsequently withdrawn, the Order be confirmed

That if any objections to the Order made are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for determination.

In the event of an appeal being successfully lodged against refusal of part of the application, and the Secretary of State directing the Authority to make the Order requested, a further report be presented to enable the Authority to decide how to proceed throughout the Order process.





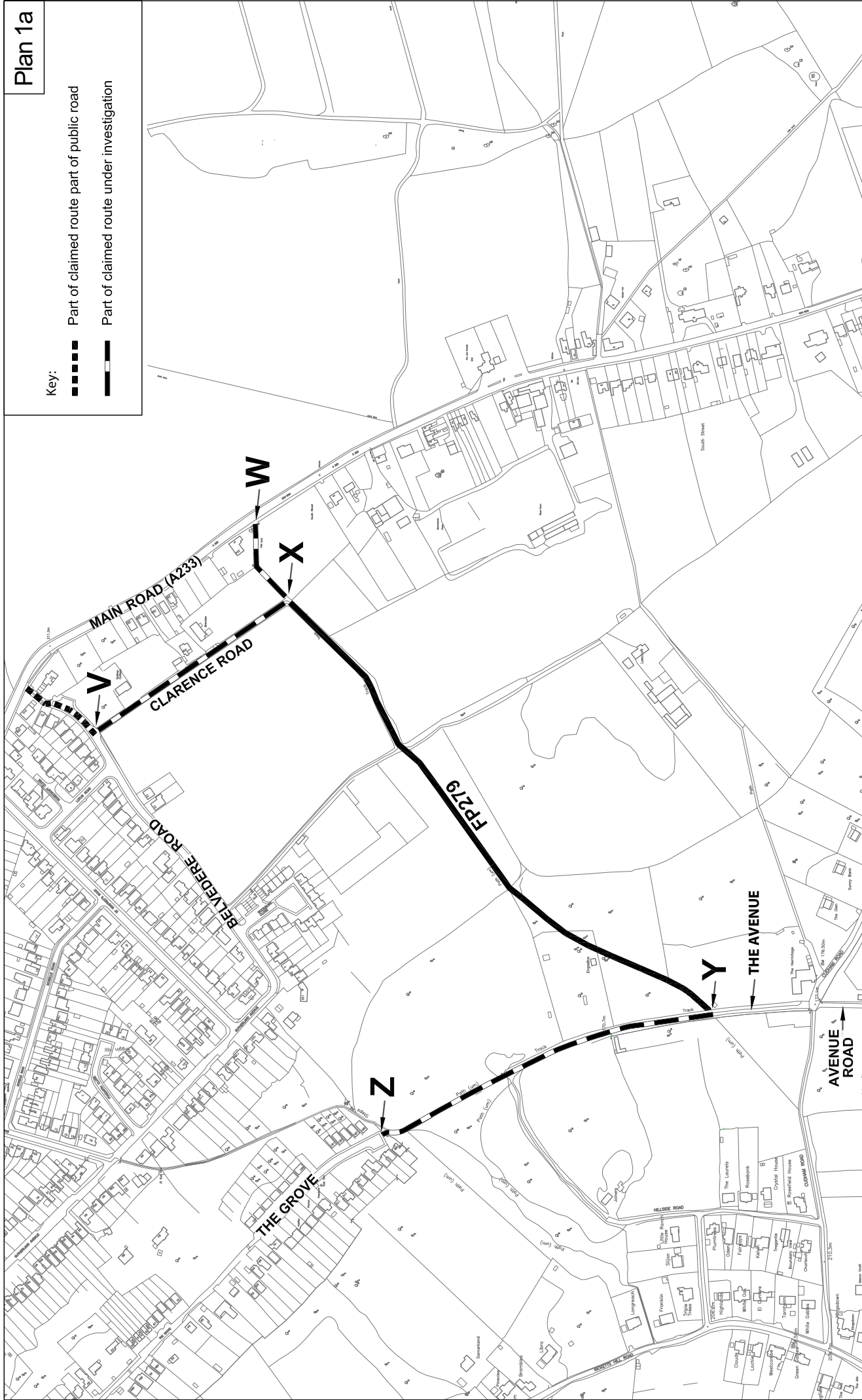
**List of Annexes to the report:**

- Annex 1 – Plans: Plan 1a showing the route of the claimed public bridleway  
Plan 1b showing The Avenue/Avenue Road relative to authority boundaries
- Annex 2 – Plan 2 showing landownership
- Annex 3 – Consultation responses
- Annex 4 – Summary of map evidence
- Annex 5 – Summary of user evidence
- Annex 6 – Graph of user evidence
- Annex 7 – Summary of landowner evidence

**Other background papers**

The applications with accompanying documents, additional user evidence forms and statements are held by the Council on file.

Key:  
 Part of claimed route part of public road  
 Part of claimed route under investigation



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Dwg. No.:	ESD/10693/1/a
Drawn By:	ST




## CLAIMED BRIDLEWAY

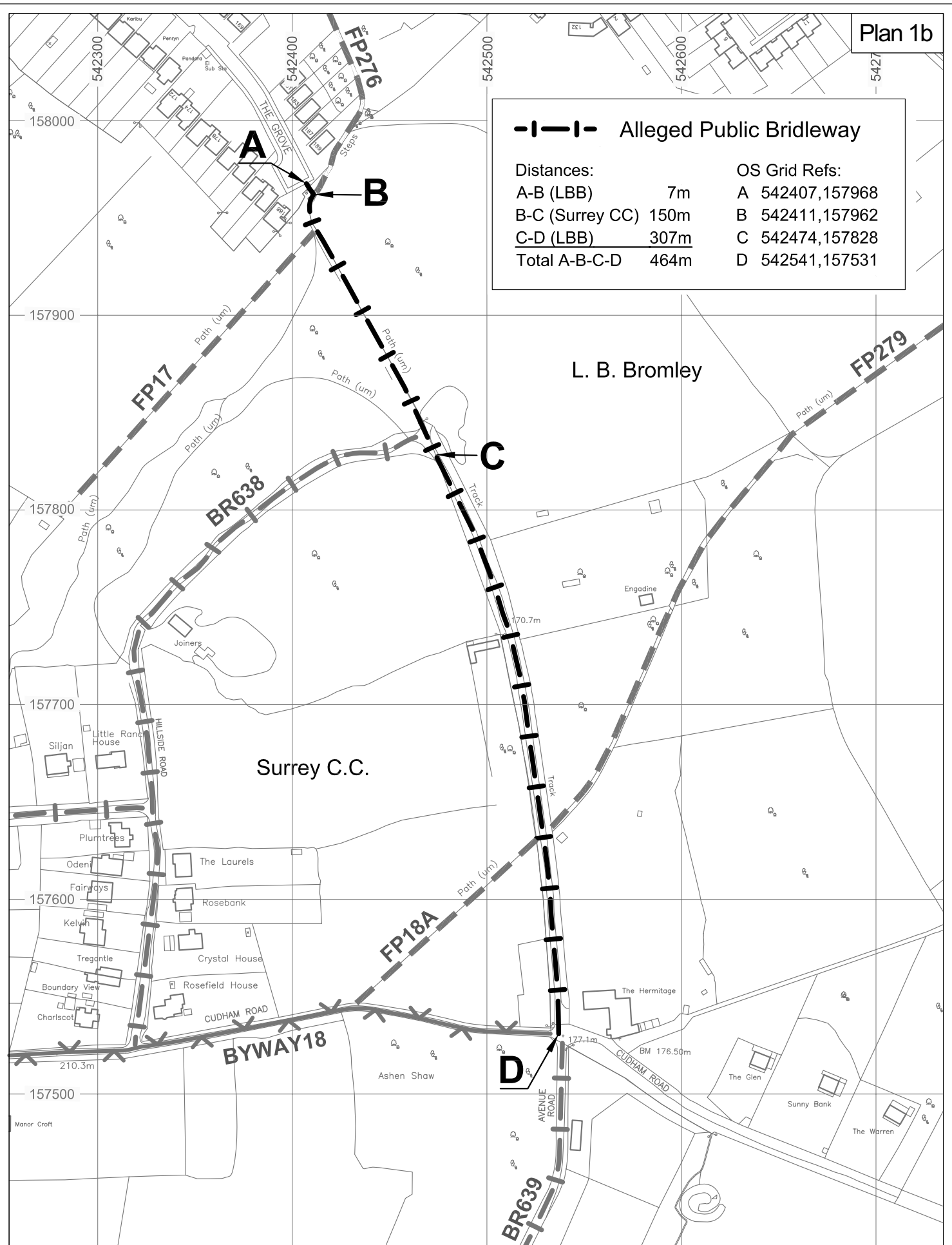
### Clarence Road, FP279, The Avenue/Avenue Road to The Grove, Biggin Hill

Nigel Davies  
 Director of Environmental Services

Environmental Services  
 Civic Centre, Stockwell Close,  
 Bromley, Kent, BR1 3UH  
 Tel : (020) 8464 - 3333



<b>- - - Alleged Public Bridleway</b>			
Distances:		OS Grid Refs:	
A-B (LBB)	7m	A	542407,157968
B-C (Surrey CC)	150m	B	542411,157962
C-D (LBB)	307m	C	542474,157828
Total A-B-C-D	464m	D	542541,157531



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Nigel Davies  
 Director of Environmental Services











Environmental Services  
 Civic Centre, Stockwell Close,  
 Bromley, Kent, BR1 3UH  
 Tel : (020) 8464 - 3333

## Definitive Map Modification Order

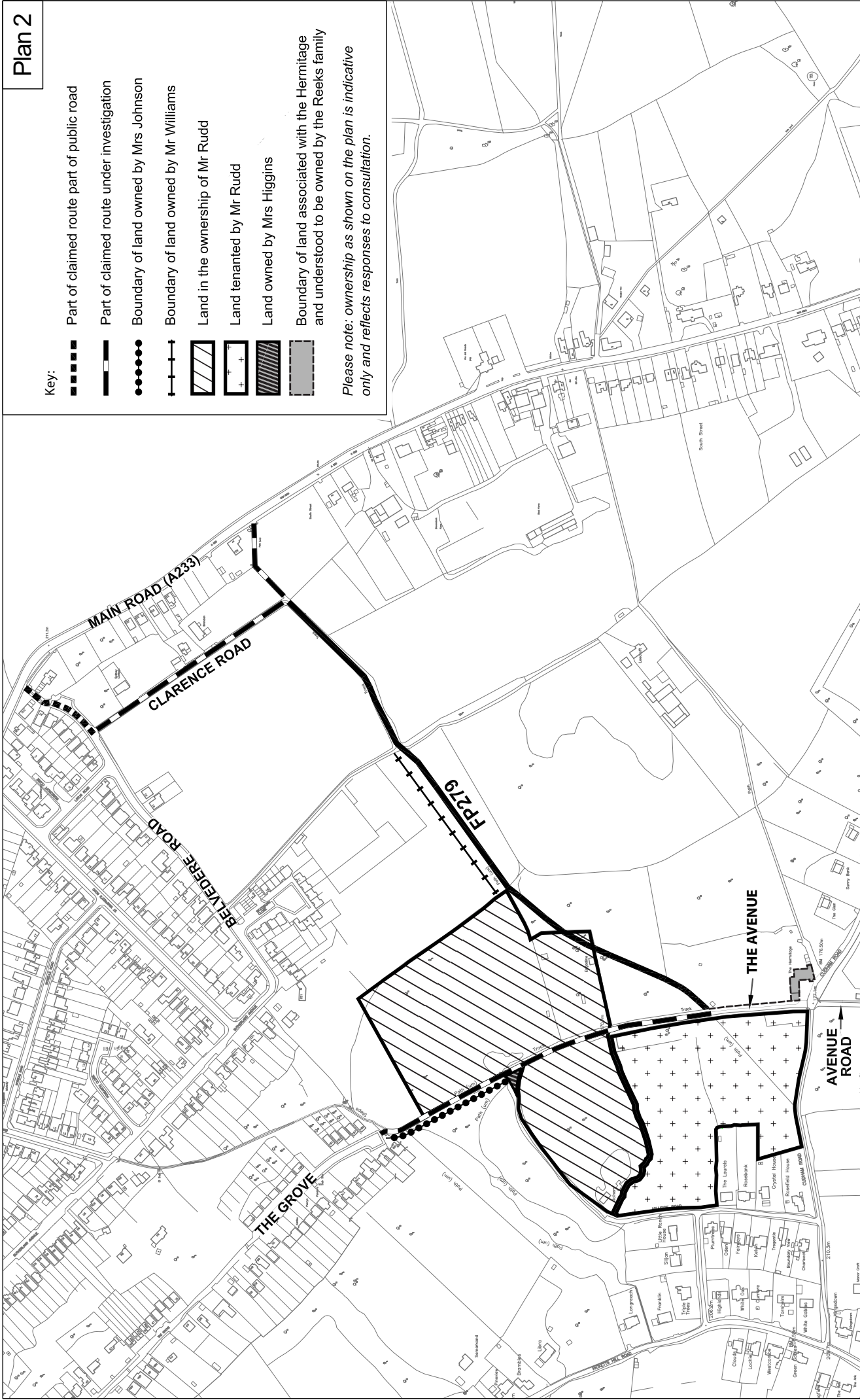
### AVENUE ROAD/THE GROVE, BIGGIN HILL

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	Date:	22/06/10
	Dwg. No.:	ESD/10623/1c
	Drawn By:	ST

# Plan 2

- Key:
-  Part of claimed route part of public road
  -  Part of claimed route under investigation
  -  Boundary of land owned by Mrs Johnson
  -  Boundary of land owned by Mr Williams
  -  Land in the ownership of Mr Rudd
  -  Land tenanted by Mr Rudd
  -  Land owned by Mrs Higgins
  -  Boundary of land associated with the Hermitage and understood to be owned by the Reeks family

Please note: ownership as shown on the plan is indicative only and reflects responses to consultation.



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	Scale: 1:5000 @ A4
	Date: 13/08/10
	Dwg. No.: ESD/10693/1/2
	Drawn By: ST
<h2>CLAIMED BRIDLEWAY</h2> <h3>Clarence Road, FP279, The Avenue/Avenue Road to The Grove, Biggin Hill</h3>	
	<p>Nigel Davies Director of Environmental Services</p> <p>Environmental Services Civic Centre, Stockwell Close, Bromley, Kent. BR1 3UH Tel : (020) 8464 - 3333</p>

**Annex 3**

**Summary of Consultation responses**

<b>Consultee</b>	<b>Response</b>	<b>Comments</b>
Councillor Bloomfield	Is concerned that if the FP route is recognised as a bridleway this would intensify use to the detriment of the existing path surface and the Authority would need to provide a better surface.	Whilst this is a concern, this is not a factor the Authority can lawfully take into account when considering the DMMO application
Open Spaces Society	No objection	
Biggin Hill Riders Group	Supports the application, the route has been used by riders for many years without mishap	
British Horse Society	Supports the application	
Bromley Bridleways Access Group	Supports the application, the route has been used by riders for many years and is established	
BT	Apparatus not affected	
Virgin Media	Plant in Clarence Road	Plant will not be affected should an Order be made
Southern Gas	Apparatus not affected	
Thames Water	Apparatus not affected	
Tandridge District Council (Surrey)	The Council's officer level response to consultation is that there is no objection is raised providing that there is no resulting conflict between users of the route	
Tatsfield Parish Council (Surrey)	No objection	

Wildlife & Countryside Act 1981  
Application for a Definitive Map Modification Order  
Alleged bridleway Clarence Road, FP 279, Avenue Road/The Avenue to The Grove

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British Driving Society	Would prefer the route (Avenue Road) to be recorded as a restricted byway but are unable to provide evidence in support of this at this time	
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Responses were not received from the Ramblers, Byways and Bridleways Trust, CTC, ACU or from any other statutory utility.

**Annex 4**

**Summary of Documentary Evidence**

Document	Evidence	Comments
LBB non statutory records	Clarence Road is considered to be a highway for all traffic	These are non statutory records and the evidence therein is of little weight.
LBB List of streets	SE end of The Grove is an adopted highway, maintainable at public expense. Belvedere Road is an adopted highway, maintainable at public expense, but subject to a traffic regulation order restricting its use to pedestrian use only.	This is good evidence that the routes are all purpose highway, as such The Grove and Belvedere Road are not included in the recommendation to make an Order
LBB Definitive Map records	Records Footpath 279 as a public footpath	Recording of rights on the definitive map and statement is without prejudice to other public rights existing over the same route.
LBB Rights of Way Records	<p>Survey carried out by Orpington UDC under National Parks and Access to the Countryside Act 1949</p> <p>The survey includes FP 248 (now LBB's FP 279) which describes the route as having a stile not far from its junction with Main Road and one at the point where the path meets the OUDC boundary - which was on the section of the route described previously as Avenue Road.</p> <p>The annotation associated with the FP survey text includes 4 'S' symbols, which were intended to indicate the presence of stiles, even though only 2 are referred to in the text.</p> <p>There is a Map associated with the survey that indicates a stile near the junction with Main Road and half way along its length, but not at the 'Avenue Road' junction.</p>	This is evidence that stiles existed on what is now FP 279, even if it is not completely clear where these were.

Document	Evidence	Comments
LBB Rights of Way inspection Record for FP 279	<p>This contains references to barriers/rails at the junction with the main road in 1981, 1987 (specifically to stop horse riders, reported to be broken), 1989, (horses squeezing past barriers). A stile constructed by Mr Williams (in 1985), stiles in 1987, 1989 (Stile at Cudham Road in need of repair), 1990 (new stile erected), 1991 (stile replaced with additional step), 1998 (stile in need of repair, subsequently repaired by Council), 2002 (3 stiles inspected).</p> <p>The log also notes a complaint by Mr Williams in 1979 that horses were using the footpath to the rear of his property and that notices had been displayed to say that the permission of the owner has been given for horse riding use</p>	
Surrey County Council Definitive Map and Statement	<p>The southern extent of Avenue Road (south of point D on Plan 1b) was the subject of a DMMO to add the route as a bridleway, this was confirmed in October 2004.</p>	<p>This route, plus other linking highways in Surrey, is shown on Plan 1b</p>
Aperfield Estate Records		<p>The estate did not extend to include the claimed route.</p>
Valuation records prepared under the Finance Act (1909-1910) 1910	<p>Avenue Road/The Avenue is shown unshaded and external to adjacent hereditaments on the final record plan.</p>	<p>PINS Consistency Guidelines at Section 11, gives the following advice regarding unshaded routes, "...if a route in dispute is external to any numbered hereditaments, there is a strong indication that is was considered to be 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 inclosure awards (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 spell out all the circumstances in which such an exclusion would apply."</p> <p>In this case, there is no inclosure award, so this evidence is suggestive that public rights, probably public vehicular rights, were considered to have existed at the date of the valuation survey.</p>



**Annex 5**

**Summary of User Evidence**

Ref	Name	User Evidence Form	Witness Interviewed	Statement	No of Years	Period of Use (Years)	User "As of Right"	Additional Information	Comments
1	Eileen Andrews	✓			20	1960-1980	✓	Stiles on FP 279 mentioned as appearing in the 1970s	
2	Harry Bull	✓			5	1975-1980	✓		
3	Mandy Chapman	✓			34	unclear	✓	Stiles - two in early 70s and one in early 90s but these are broken down at intervals. Stile at the end of the Grove and on FP 279	
4	Catherine Clayton	✓			unclear	1970s - 1988	✓	Used FP 279 until the 1970s when a stile was erected	
5	Michaela Cook	✓	✓	✓	24	1976-present	✓	Stiles - two in early 70s and one in early 90s. Mostly used The Avenue	

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Ref	Name	User Evidence Form	Witness Interviewed	Statement	No of Years	Period of Use (Years)	User "As of Right"	Additional Information	Comments
6	Patricia Crothers	✓	✓		33	1949-1981	✓	Mostly used The Avenue	
7	Caroline DeVivo	✓			4	1976-1980	✓		
8	Mrs J Garnham	✓			12	1968-1980		Stile on FP 279 erected in the 1970s	
9	Jennifer Gibbs	✓	✓			1972-2004	✓	Use part but not whole of FP 279. Period of none use 1969-1973 and for a year when each child born (25 and 28 years ago) Used The Avenue only	
10	Marian Godfrey	✓	✓	✓	c30	1960s-2008	✓	The Avenue used from at least 30 years ago till stopper riding in 2008 Never rode FP 279/Clarence Road, accompanied daughter whilst she rode	
11	Maisie Hart	✓			20	1975-2005		Mainly used The Avenue, used FP279 as a young woman	Additional form re use completed

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Ref	Name	User Evidence Form	Witness Interviewed	Statement	No of Years	Period of Use (Years)	User "As of Right"	Additional Information	Comments
12	Ann Hayes	✓	✓	✓	c45	1950s-2005	✓	Does not recall stiles on FP279 in the 50s. Last used FP279 in 1990s when a stile was erected. Last used The Avenue in 2005. Has used all of the route regularly and frequently, varying over time slightly	
13	Mrs K Jones	✓			7	1997-2005	✓		
14	Mrs J King	✓			c30	1960s - 1990s	✓	Stile halfway up FP279 c 1980s	
15	Ms K King	✓			10	1980 - 1990	✓	Stile halfway up FP279 erected in 1980	
16	Elizabeth Leslie-Smith	✓	✓*	✓	30	1958 - 1988	✓	Used The Avenue from 1958-1988, used FP 279 from 1962 to late 1970s, when a stile was erected. Used Clarence Road very occasionally.	* Telephone interview
17	T J W Lyle	✓			3	1959-1961	✓		
18	Kirsteen Mathews	✓			30	1978 - 2008	✓	Stiles on FP279, stiles broken, stiles put up on 1980s and 1990s	

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Ref	Name	User Evidence Form	Witness Interviewed	Statement	No of Years	Period of Use (Years)	User "As of Right"	Additional Information	Comments
19	Ross MacAdam	✓			20	1985-2005	✓	Stiles erected in late 1980s	
20	Sharon MacAdam	✓			20	1985-2005	✓	Stiles erected in late 1980s on Fp279 about halfway up	
21	Mrs C E Mortimer	✓			25	1980 - 2005	✓	Stile erected recently	
22	Christine Orchard	✓	✓	✓	14	1989-2003	✓	Did not use final section of footpath, used FP only on a few occasions, mainly used The Avenue. Did not use for a period about 13 years ago following riding accident	
23	Paul Orchard	✓	✓	✓	13	1990-2003	✓	Did not use final section of footpath, used FP only on a few occasions, mainly used The Avenue	
24	Gayna Phillips	✓			44	1956-2008	✓	FP 279 stiles put up periodically about from 1970	Additional form re use completed
25	Marion Randall	✓	✓	✓	2 and 8	1985-1987 1992-2010	✓	First used FP279 on horse in 1985 till 1987, then stopped riding. Started riding generally again in 1992. Found way around barbed wire onto footpath in about 1998. Recalls stile in middle of the footpath, but got around this. Has ridden The Avenue regularly in period 85-87 and in 92-2010	Additional form re use completed

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Ref	Name	User Evidence Form	Witness Interviewed	Statement	No of Years	Period of Use (Years)	User "As of Right"	Additional Information	Comments
26	Mrs R Savery	✓	✓	✓		1955-2010	✓	Used FP 279 from around 1959 or so. Wire and stiles across FP279 from time to time from 1970s onwards. Fencing across the footpath at junction with the Avenue in 1970. Did not use Clarence Road after 1968	
27	Lyndsay Squires	✓			?	1979-2003	✓		Additional form re use completed. Evidence of use is confused. It appears that only the Avenue was used
28	Margaret Wickham	✓			25	1960-1985	✓		
29	Anna Wooleen	✓			20	1977-1997	✓	Used Clarence Road and did not use top section of FP 279	











**Summary of land owners Evidene**

Name	Evidene	Comments
Mr Fred Burridge	<p>Mr Burridge lives off Clarence Road. The ownership of Clarence Road itself is unknown. Mr Burridge has lived in Clarence Road for 40 years and lived locally before moving to Clarence Road. He fills in the potholes and is aware that its status is unadopted road. He sees horseriders using it very infrequently. There has been a long period where he has seen no riders at all, but more recently two riders have been using Clarence Road for about 3 months. A number of years ago Mr Harvey at Lincroft used to keep horses and he walked them along Clarence Road</p> <p>The footpath has been used by horses in the past, their use created a quagmire, particularly in the narrower sections. Post were put up at the junction of the footpath and Main Road about 10 years ago, these stopped the horseriders from using the route and may have been put up by the Council. Mr Burridge has never seen horse riders on the very narrow top section of the footpath leading up to the road. The stile at the end of the bank also prevents horse riders from using the footpath.</p> <p>There have been residential properties in Clarence Road for over 100 years. Mr Burridge has no formal easement over the road. Mr Burridge is concerned that the registration of bridleway rights will adversely affect his ability to access his property</p>	<p>Concerns about the effect on private access rights are not matters that can lawfully be taken into account in determining the DMMO application.</p>
Mr David Brown	<p>Mr Brown lives off Clarence Road. His property used to belong to the Hallum family and the original house on the site was constructed c1897. Mr Brown bought the property over 40 years ago and re-built what was a rather derelict property. At that time Mr Hallum was alive, though very old, he and his sons still kept the farm.</p> <p>Mr Brown has lived in the area since 1963 and has seen the occasional horse rider use Clarence Road</p> <p>The barriers at the Main Road were in place when Mr Brown's sons were small (they are now 40 and 45)</p>	
Mr and Mrs Iain Cowie	<p>Mr and Mrs Cowie own 334 Main Road and have lived there 3 years. During this time they have seen no horses use the top section of the footpath. They are concerned that the registration of bridleway rights over the footpath will adversely affect the privacy of rear garden. The top section of the footpath is too narrow for horses to safely use.</p>	<p>Concerns about privacy are not matters that can lawfully be taken into account in determining the DMMO application.</p>

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Name	Evidence	Comments
Mr David Rudd	<p>Mr Rudd owns some of the land crossed by the footpath. Stiles have been erected and repaired on the footpath and any gaps have been repeatedly blocked with barbed wire. This path has always been a footpath and is not a bridleway.</p> <p>Mr Rudd owns land either side of The Avenue and rents a further piece from an absentee landlord. He uses The Avenue to access his land and is concerned that recoding a bridleway over it will interfere with his access rights.</p>	<p>The evidence of repair to stiles and the blocking of gaps is discussed in the main report.</p> <p>The recording of a bridleway over The Avenue will not affect existing private access rights.</p>
Mr Don Reeks	<p>Mr D Reeks is executor for his late mother who owned The Hermitage. The deeds to The Hermitage date back to 1875. The Avenue was not called Avenue Road and is shown on old OS maps. The old county boundary ran along it to the extent that part of The Hermitage was in Surrey and part in Kent. The Avenue is a continuation of Hillside Road.</p> <p>Mr D Reeks has known The Hermitage since 1957 and has never seen horses riding on the footpath. Fencing adjacent to the stile at the junction of the footpath and The Avenue has been broken so horse riders may have taken advantage of this to use the footpath. He is concerned that horse use of the footpath would be dangerous to walkers.</p>	<p>Boundaries have been legally changed, this is discussed in the main report.</p>
Mr R S Reeks	<p>Mr R S Reeks presently lives in The Hermitage and has lived there since 1957. The footpath has always only been a footpath and there are three stiles presently in place on it, two of which have always been in place, additionally a metal chain was across the footpath.</p> <p>The section of route from Hillside Road to the Grove is also only a footpath. Part of the route is in Surrey.</p>	<p>The existence of stiles is discussed in the main report.</p>
Mr Malcolm MacLeod	<p>Mr MacLeod presently lives in The Hermitage. He was born there in 1966 and lived there until 1979, returning to live there in 2009. Between 1979 and 2009 he visited his grandmother who lived there regularly. He has never seen horseriders on the footpath.</p>	
Mr R A Parfitt	<p>Mr Parfitt owns 12A Woodbury Close, he does not own land crossed by or next to the footpath. Mr Parfitt has lived in Woodbury Close for 47 years in total and in that time the footpath has never been accessible for horseriders having two or three stiles on it. He has a 1975 Bromley and District Consumers Group map showing the footpath as a public footpath and is concerned that registration of bridleway rights over the footpath would cause problems for walkers.</p>	<p>Footpath 279 is registered as a public footpath on the LBB Definitive Map and Statement, however, this is without prejudice to other public rights. Concerns about the effect use by horseriders will have on walkers using the existing footpath are not matters that can lawfully be taken into account in determining the DMMO application.</p>
Mrs Beryl Higgins	<p>Mrs Higgins owns land adjacent to The Avenue and has private access rights over it. She considers that The Avenue is a public right of way and only has concerns that the recording of bridleway rights will adversely affect her private access rights. She has no comment to make about the Clarence Road or Footpath 279 section of the claimed route.</p>	<p>Concerns about the effect on private access rights are not matters that can lawfully be taken into account in determining the DMMO application, but in any case existing private rights will not be affected.</p>
Mr John Williams	<p>Mr Williams owns 132 Sutherland Avenue and his land abuts the footpath. He objects to the recording of bridleway rights over the</p>	<p>The stiles and challenges are discussed in the main report.</p>

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	<p>footpath. In 2006 on receiving the notice of the DMMO application he wrote to the Council, in summary he said: the footpath is too narrow to be used by horses and horse use would make it muddy and be dangerous for walkers. In 1965 horse riders would sometimes use the footpath, but this was prevented by an obstruction and in 1966 by the erection of two stiles. One of these stiles was photographed and registered with the Footpaths Officer at LBB. In clarification Mr Williams confirms that he built the two stiles mentioned in 1966, one at the junction of the Footpath with The Avenue and one near to the southwestern corner of his land. A further stile was built near to the northeastern corner of his land. Mr Williams states that although he does not own the land crossed by the footpath he challenged horse riders who sometimes used it in the 1960s and built the stiles to prevent their use. He recalls challenging two or three riders who then stopped using the footpath, these exchanges were always courteous. He has not been able to find out who owns the land so the stiles he built were not built with the agreement or permission of the landowner</p>
Mrs Peggy Johnson	Owns land adjacent to The Avenue. She has made no comment other than to confirm her landownership.
Mr Henry Speer	
Mr Thomas Evans	
Mrs I E Young c/o Knockner and Foskett, solicitors	Correspondence returned "not known at this address"
Mr Harvey	Correspondence returned "gone away"
Chevening Estate	No reply
	No reply
	Do not own land crossed by the claimed route