

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

**APPLICATION FOR A MAP MODIFICATION ORDER
To Modify The Definitive Map And Statement For Surrey By Upgrading Part
Of Footpath No. 55, Part Of Footpath No. 56 And The Entire Length Of
Footpath No. 61 Limpsfield To A Bridleway And To Add That Part Of
Tenchley's Lane Not Recorded As A Footpath To The Definitive Map And
Statement As A Bridleway**

14 December 2010

KEY ISSUE

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

SUMMARY

The British Horse Society submitted an application in March 2009 to modify the definitive map and statement for Surrey to upgrade that part of:

- Footpath No. 61 Limpsfield from its junction with Kent Hatch Road (point A) to its junction with Footpath No. 56 Limpsfield (point B); and
- Footpath No. 56 from its junction with Footpath No. 61 Limpsfield (point B) through point C to its junction with Footpath No. 55 Limpsfield (point D); and
- Footpath No. 55 from its junction with Footpath No. 56 Limpsfield (point D) to its junction with Bridleway No. 54 Limpsfield (point E)

and to add that part of Tenchley's Lane not recorded as a footpath (x-y) to the DMS as a bridleway as shown 'A' - 'B' - 'C' - 'D' - 'x' - 'y' - 'E' on drawing no 3/1/28/H40. The application was supported by documentary evidence.

The test for making a decision to add a path to the definitive map or to upgrade a path that is already recorded is contained in section 53 Wildlife and Countryside Act 1981 (WCA 1981), i.e. whether or not, on balance, public rights subsist or are reasonably alleged to subsist. It is considered in this case, that the evidence is insufficient to satisfy the test.

OFFICER RECOMMENDATIONS

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

- i. No bridleway rights are recognised over 'A' - 'B' - 'C' - 'D' - 'x' - 'y' - 'E' on drawing no. 3/1/28/H40, and the application to modify the definitive map and statement for Surrey to include a bridleway from Kent Hatch Road to the junction of Footpath No. 55 with Bridleway No. 54 (Tandridge) is not approved;
- ii. In the event of the County Council being directed to make a MMO by the Secretary of State for the Environment, Food and Rural Affairs following an appeal by the claimant, the County Council as surveying authority will adopt a neutral stance at any public inquiry, making all evidence available to help the inspector to determine the case.

1. INTRODUCTION AND BACKGROUND

- 1.1 The applicant asserts that Trenchley's Lane is an ancient highway 'of some description (higher than footpath) that runs between Itchingwood and Little Heath (Limpsfield) commons and beyond' and relies on the maxim 'once a highway, always a highway' (*Dawes v Hawkins* (1860) 8 C.B. (N.S.) 848).
- 1.2 'The first documentary reference to Limpsfield is not until the Domesday Book in 1086 so early history is necessarily largely archaeological in nature'. (*Limpsfield Ancient & Modern: Limpsfield History Group 1997 pg. 7*). No pre-Roman settlement sites are known. 'The Roman London-Lewes Road passes through the eastern side of the parish' (as above). There are no known remains of Roman settlement in the parish but there is a Roman villa in Titsey Park. The Historic Environment Record (a record of all the archaeological finds, features, sites and monuments etc known within the county) was examined. The record indicates that the London – Lewes Roman Road ran a short distance to the east of Trenchley's Lane and is the only Roman road recorded in the vicinity.
- 1.3 Apart from the Roman road, the only other early route is the trackway from the Thames in the north, via Worms Heath in Chelsham, to the Iron Age fort at Dry Hill in Lingfield (Graham J; 'A pre-Roman trackway to the Sussex iron field' in *Surrey Archaeological Society Collection, Vol XLIX*). The Chart Newsletter dated Spring 2009 also refers to a track. Mr Graham asserts that Trenchley's Lane is part of this route and he compares Trenchley's Lane and Champions Lane as being possible descents to the Weald. On page 33 of his article Mr Graham states that the evidence is 'by no means conclusive' and on page 34 he says that tracks were 'constantly changing and shifting their positions'. An overlay of the position of the track as shown in *Limpsfield Ancient and Modern* by Peter Gray suggests that the 'Iron Age track' is not Trenchley's Lane. St Peter's church is believed to have at least medieval origins. There was a quarry in the Trenchley's estate and there are sand/gravel pits near Broomlands Lane to the north. It is possible that gravel from these pits was used to make the lanes in the vicinity of Trenchley's Farm (*Surrey History Centre: Letter from Norman Hudson to Mrs Sonnenchein dd 11.10.1909*). Trenchley's Lane is recorded as a 'private road' in the Ordnance Survey Book of Reference dated 1869 and in the council's list of streets. The reservoir at Paines Hill is believed to have been constructed before 1895.
- 1.4 Under King Edward I's Trench Act 1285, all roads through woods were to be 60 feet wide on either side of the King's way and the Statute of Winchester required all highways from one market town to another to be enlarged so that there was no dyke or bush within 200 feet on either side (a bow shot). No evidence has been found to indicate whether these widths were applicable and/or enforced in the area. The changing demands of traffic required works of widening and improvement beyond mere repair. Inclosure Acts often sought to ensure that highways should be of a stated and standard width but no Inclosure Act was found for the area. Powers to widen highways were eventually given to the parish surveyors in a number of general Acts of Parliament including the Highway Act 1773 and 1835. Both acts require every 'publick cartway leading to any market town' to be 20 feet at least and every 'publick horseway or driftway' to be 8 feet wide at the least. By 1821 there were over 18,000 miles (29,000km) of turnpike roads in England ('a turnpike being a toll road set up by a group of merchants to keep the road clear from one market town to another). Red Lane and Grants Lane appear on the list of Turnpikes and Highways dated 1850/03/25 as being parish highways for carriages but Trenchley's Lane is not included. Pains Hill is shown as being part of Grants Lane. Red Lane and Grants Lane are also shown on the Godstone Rural District Handover map dated 01/04/1929 (see Annex 1).

- 1.5 The Tenchley's estate lay on the east of the Parish of Limpsfield. A sketch map dated 1781 shows it as an inverted triangle of land stretching from Limpsfield Common in the north to Itchingwood Common in the south. Tenchley's Lane formed the western border. At its peak the estate totalled some 88 acres. Until Thomas Teulon inherited the estate the dwelling house was situated at its south end. Part of the house dates from the sixteenth century & and it is known today as Tenchley's Manor. Thomas Harrison was the last owner to live in the house (approx 1690) and it was leased out to a succession of local farmers. Thomas Teulon (approx 1806) built a new house called Tenchleys Park, in the northern half of the estate. The tithe map of 1841 shows that Thomas Teulon was holding 41 acres in his own hands, including the new house, the wood and some unnamed plots of arable and meadow adjoining the latter. The remaining 72 acres including the Park Slupe purchased in 1838 were leased out to William Boys, a farmer.
- 1.6 Tenchley's Lane runs from its junction with Itchingwood Common Road in a northerly direction turning to a north westerly direction to its junction with Pastens Road where it bifurcates, one part continuing in a south westerly direction for approximately 182 metres and the other part proceeding in a north-easterly direction for approximately 193 metres. The applicant is claiming that bridleway rights exist over that part of Tenchley's Lane marked 'E' - 'y' - 'x' - 'D' on drawing no. 3/1/28/H40 and that bridleway rights exist over part of Footpath No 56 (Limpsfield) (marked 'D' – 'C') and over Footpath No. 61 (Limpsfield) (marked 'C' – 'B' – 'A'), (see Annex 2).

2. ANALYSIS

- 2.1 Evidence was received from the applicant and several local residents. This is considered below:

Applicant's Evidence

- 2.2 The applicant supplied the commercial maps prepared by J. Senex 1729, Roques 1768, Lindley Crosley 1793, Greenwoods 1823, the Tithe Map 1841, documents 642/6/9 – 10 from the Surrey History Centre, documents relating to the sale of Tenchleys Park and Woods, the Chart Newsletter Spring 2009, an excerpt from Vol XLIX Surrey Archaeological Collections entitled 'A Pre-Roman Trackway to the Sussex Iron Field' by James Graham CBE, some pages from 'Limpsfield Ancient and Modern' by Peter Gray in 1946, a copy of the Name Book held at the Public Record Office at Kew and other material, in evidence. The applicant feels that the width of Tenchley's Lane is 'considerably wider than one might expect' for a footpath, the fact that the route is shown on the historical maps and is named, the reference to a 'Bridle Path' in the sale documents and the correspondence concerning private rights over Tenchley's Lane support her view that the route is of bridleway status (a copy of this material is available on request).

Landowners' evidence

- 2.3 A search at the Land Registry revealed that part of the claimed route is unregistered. A plan summarising the Land Registry details is available on request. That part of the claimed route marked A – B is owned by The National Trust for Places of Historic Interest. Parts of the claimed route marked D – E are owned by Mr and Mrs Bellringer and Mr and Mrs Foster whilst the remainder of the route is unregistered. A number of properties may have private rights of access over Tenchley's Lane.
- 2.4 Representations have been received from the Parish Council, the Ramblers, Mr & Mrs Mackay, Mr Edser of Chartcroft Cottage, Mrs Player of The Hollies, Mr and Mrs

Martin, Mrs Simmons, Ms Rebbeck, and Mr O'Donovan. A copy of these representations is available on request.

- 2.5 The Parish Council objects strongly to the application. In their view the path is steep and unsuitable for horses. They do not believe Tenchley's Lane was ever a 'highway'. They say that maps produced prior to the Ordnance Survey Maps were 'notoriously inaccurate'. They say that Thomas Teulon's evidence is not conclusive. They refer to their map of 1904 when the Parish Council marked Tenchley's Lane as a footpath. They note that the 1946 conveyance described part of Tenchley's Lane as a 'bridlepath' in error.
- 2.6 The Ramblers acknowledge the existence of the track but reject the application for bridleway status. They assert that the historical maps, including the Tithe Map do not confirm its status. They state that the Parish Council record shows Tenchley's Lane marked as a footpath on the OS map 1898. They say that Tenchley's Lane does not connect with any settlement & is unlikely therefore to have been used for through traffic. In their view traffic would have used Red Lane or Grants Lane/Pains Hill or Caxton Lane in preference to the narrow, steep sided track. They say that the gates to Grants Farm and Sales Farm suggest it was a private lane rather than a public bridleway and the Teulon memorandum (642/6/10) states the lane was a church path. They point to the inconsistencies in the Teulon memoranda and state they should not be relied upon. They say that much of the evidence submitted relates principally to the route that is now Footpaths Nos 56 and 61 and there is little substantive evidence that Footpath No. 55 was ever a bridleway.
- 2.7 Mr & Mrs Mackay say that they 'have never known over the past 44 years this track to be designated as a Bridleway or have Bridleway status'.
- 2.8 Mr Edser has lived at Chartcroft Cottage for nearly 12 years. To the best of his knowledge 'this footpath has never been a bridleway nor' has he 'ever seen horses using this route'. Mr Edser goes on to say that the two previous owners who lived at the cottage for a combined total of 26 years 'never referred to this footpath as a bridleway'. Taken together the evidence of the owners of Chartcroft Cottage spans a period of approximately 38 years during which they say there 'has been no evidence of this path ever being used as a bridleway'.
- 2.9 Mrs Player has lived at The Hollies for the past 25 years. She states that 'the track between Kent Hatch Road and the historic gate on the boundary of the National Trust property has never been used by horses only a public footpath'. Mrs Player states that the commercial maps are unreliable as they were drawn up with 'specific estates interest in mind'. In her view the hedges were kept trimmed to allow farm workers to use the footpaths. She refers to two gates on Tenchley's Lane in addition to the locked cattle gate at The Hollies. Mrs Player also refers to the steep gradient and the wet areas on Tenchley's Lane. In her view it would have been 'impossible' for 'a carriage with 2 or 4 passengers inside and a Horse-man (Driver) sitting on top with Baggage strapped to the back or on the roof, 4 Large Wooden Wheels with Iron Rims' to travel 'up this very steep slope with a couple of very wet patches'. Mrs Player also supplied a copy of Ordnance Survey Maps 1912-1917 and 1934 – 1937 on which Tenchley's Lane is marked as a footpath.
- 2.10 Mr and Mrs Martin say that the path is narrow and horses would churn up the surface making it difficult to use on foot.
- 2.11 Mrs Simmons comments on the route being narrow with steep banks on either side with insufficient width for horses and pedestrians to pass safely.
- 2.12 Ms Rebbeck has the same concerns as Mrs Simmons.

- 2.13 Mr O'Donovan feels there is insufficient evidence to substantiate bridleway status. He says that the commercial maps are evidence of a visible track but not of their status and believes that it was a private lane to the estate. Mr O'Donovan comments on the inconsistencies in the Teulon memoranda, the lack of signature and the date they were written. He notes Tenchley's Lane was 'impassable for heavy carriages at all times of year and only passable for light carriages in dry season', the lack of detail on the type of carriage, the narrow width of the track, the gates to Grant's and Sale's farms and it being referred to as a church path (i.e. 'a right of way on foot for the purpose of attending church'). In his view the word 'anyone' in Thomas Teulon's memoranda should be interpreted as 'anyone who is mad enough to try to use the lane' and not to imply 'any member of the public'. Mr O'Donovan refers to Mrs Sonnenschein padlocking the gate at The Hollies and providing keys to certain residents, correspondence from the Parish Council referring to the lane as a footpath, and the lack of assertion in Thomas Edwards' statutory declaration (1903), that the lane was used by the public at large as evidence that the lane was considered private. Mr O'Donovan states that the 1946 conveyance 'should be rejected' as evidence and that Mr Graham's article is 'fairly speculative'.
- 2.14 The National Trust for Places of Historic Interest has not responded formally with comments.

Documentary Evidence

- 2.15 The claimed route is visible on J Senex Map 1729, Roques Map 1768, Lindley and Crossley's Map 1793, and Greenwood's Map 1823 (Annex 3). The maps show a route from Itchingwood Common to Little Heath but the route shown is not identical. The applicant asserts that these maps were 'sold to travellers' and used to determine the main routes for public passage. In Riddall and Trevelyan's¹ view these maps were notoriously inaccurate and 'evidence of no more than the existence of a belief by the cartographer that a road existed on the line shown' and 'if it is accepted that a road depicted on an old map did in fact exist on the ground on the line shown on the map, its depiction is no indication as to whether there was any form of public right over it', (page 154). Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. They can however be used in support of other evidence when considering the balance of probability.
- 2.16 Tithe Map of 1841 (Annex 3), also shows the claimed route running from Itchingwood Common to Little Heath. Tithe documents are statutory documents concerned solely with identifying titheable or productive land. The route is shown as untitheable but this in itself is not sufficient to establish the existence of a public right of way and its status. Tithe maps can, however, provide supporting evidence and assist in determining the existence and status of routes.
- 2.17 The Ordnance Survey Maps of 1869, 1891, 1897, 1912 and 1934 (Annex 3), show the route and the Ordnance Survey Maps of 1912 and 1934 annotate the route as a footpath. The OS maps dated 1869, 1891, 1897, 1912 and 1934 show a barrier (or gate) at 'C', a barrier (or gate) above Arden Cottage and a barrier (or gate) near the pond and farm buildings at Tenchleys Farm. Tenchley's Lane is recorded as a 'private road' in the Ordnance Survey Book of Reference dated 1869. The Object Names Book from OS 35 6863 sheet xxviii.14 (dated approximately 1880), describes it as 'a lane extending from Limpsfield Common to Itchingwood Common' and revised the description in 1910 to read 'an old lane and footpath'. OS maps

¹ John Riddall and John Trevelyan: Rights of Way A guide to Law and Practice Fourth edition (2007) www.surreycc.gov.uk/tandridge

provide good evidence of what existed on the ground at the time of the survey. They are not however, indicative of the status of the route.

- 2.18 The 1910 Finance Act shows Tenchley's Farm in hereditament 90 (Annex 3). The accompanying field book records a deduction of £100 for a footpath and Tenchley's Lane is clearly marked as a footpath on the 1910 Finance Act plan.
- 2.19 In 1930, Granville Charles Gresham Leveson Gower (the Squire), by Deed under section 193 of the Law of Property Act 1925, made Little Heath Common available to the public for air and exercise², subject to the Bylaws prescribed therein. From 1934 onwards a committee of local residents controlled the common under a Deed of Management entered into with the Squire. The National Trust acquired the common in 1972 and owns that part of the route marked 'A' – 'B' on Little Heath. It is established that other than on existing public rights of way, the public are admitted to National Trust property by permission of the Trust and consequently, may not acquire rights by deemed dedication, however, any public rights of way which existed before the land was acquired by the National Trust will be unaffected. The Order of the Minister of Agriculture & Fisheries imposing limitations on & conditions as to the exercise of public rights of access to Limpsfield Common, Moorhouse Bank Common, LittleHeath, Watts Hill and Itchingwood Common was officially approved in 1938 but not made until 1948. The order prohibits, without lawful authority, 'anyone to draw or drive any carriage, cart, caravan, truck or other vehicle otherwise than on a public carriageway'. In 1989 the County Engineer wrote to the then owner of Chartcroft Cottage that the National Trust had 'no intention of giving unreserved access to the public other than that already stated on the existing Definitive Map i.e. public footpath'. The county engineer also referred to a wicket gate and a field gate at 'C'.
- 2.20 The memoranda by Thomas Teulon (Surrey History Centre Document 642/6/9 and 10) contain a number of anomalies. In paragraph 1 he refers to Tenchley Hill Lane as 'the only public communication to Tenchley House' but in paragraph 3, Thomas Teulon says he thought it was 'a private lane belonging to his house'. Then Peters says it is a 'public way' and the butcher says he used it to carry meat to his master's customers. (The delivery of meat to customers implies that the butcher had a licence to use Tenchley Hill Lane for the purpose of the delivery and not necessarily that Tenchley Hill Lane was open to the public at large). In paragraph 6, the lane is referred to as the 'road to the Manor House'. Paragraph 9 says that the lane is 'absolutely impassable' for carriages 'in wet season'. Paragraph 13 states the lane is between 6 and 8 feet wide. Paragraph 17 states that the lane was 'the private lane through the western boundary of Tenchley Park down to Tenchley House' and that Sales Farm and Grants Farm had their gates in it. Paragraph 18 states 'every one who has dared has unmolestedly travelled up and down it with carriages and with horses'. (This sentence is ambiguous and it is not clear as to whether these persons were licencees or members of the public. On its own this statement is not conclusive as to the status of the track). Thomas Teulon also states that the tenants have repaired the lane and Richard Sandiland, the Miller had 'threatened to indite it and compel the Parish to repair it'. Following the passing of the 1555 Highway Act, the responsibility for repairing the roads passed from the church to the local parish. The Parish Council records for the years 1894 to 1925 revealed that Tenchley's Lane was reported to be in a poor state of repair in 1901, 1904, 1905, and 1909. The Chairman's report for the year ending 31 March 1905 notes that the damage to Tenchley's Lane was repaired 'by the generosity of Mrs Sonnenschein'. The fact that any maintenance to Tenchley's Lane appears to have been paid for by tenants or the landowner supports the view that the lane was private.

² In R v SSE exp Billson (1998) it was established that the right included horseriding.
www.surreycc.gov.uk/tandridge

- 2.21 The document titled 'Agreement for sale of Tenchleys Park' refers to the sale being subject to 'a covenant as to the construction of a roadway'. The roadway is to the south of the property and is not on the claimed route. The western boundary as shown on the plan is annotated 'Boundary the foot of the bank having not less than 10 feet Bridle Path'. Tenchley's Lane is annotated on the Parish Council map dated 1904 and the OS maps dated 1912 and 1934 as a footpath but the sale document (dated 1935), refers to the western boundary (Tenchley's Lane) as a bridle path and does not admit any rights of way over the land. The sale document is not conclusive as to the status of the route.
- 2.22 Documents at the Surrey History Centre Reference Number: 642 section 6 make it clear that battles over private rights and the status of Tenchley's Lane were frequent. This correspondence seems to refer, in the main to that part of Tenchley's Lane marked 'C' – 'D' and includes:
- letters from Herbert Rix. Headlands Cottage, dated 30 October 1892 to William Teulon requesting permission to use the lane to have fruit trees delivered and dated 28 January 1893 for permission for 'building materials for cot to be taken down the lane past Edward's cottage and through his fence'.
 - a letter dated 3 March 1899 from Morisons and Nightingale Solicitors to the Titsey Estate to William Teulon thanking him on behalf of Mr Leveson Gower for a key to Tenchley's Lane and a letter from Morisons & Nightingale to Mr Teulon dated 20 April 1903 referring to a locked gate on Tenchley's Lane.
 - a letter from Mr Johnson to Mrs Sonnenchein dated 25 July 1909 thanking her for the key to the gate to Tenchley's Lane and promising to use the lane 'only very occasionally'. The letter goes on to say that the key will be returned if Mrs Sonnenchein finds her permission has been abused.
 - a letter from Mrs S Sonnenchein to Mr Levenson Gower, dated 28 August 1925 asking him to point out to Mr Jones, his tenant, that 'Tenchley's Lane is private property and that he has no right to use it except as a footpath to Tenchley's, and that you yourself have a key to the gate at the head of the lane only as a matter of courtesy'. She refers to a letter from him to her father the late Wm Teulon thanking him for the loan of the key to the gate.
 - Letters dated 1925, referring to signs at the entrance to Tenchley's Lane stating that it is 'private with public footpath only'.
- 2.23 Also in the Surrey History Centre (642), are a number of letters from the Parish Council complaining about the state of Tenchley's Lane, in particular about the overflow from the pond and manure. A letter from Limpsfield Parish Council dated October 1909 asks Mr Hudson to improve the drainage and to 'convey the manure water to a suitable outlet'.
- 2.24 A statutory declaration by Thomas Edwards dated 1903 refers to the northern end of Tenchley's Lane and states that prior to the construction of Pastens Road, all delivery vehicles accessed his cottage via Tenchley's Lane. He also says that the materials for the reservoir on Paines Hill, north of Tenchley's Lane were carted down Tenchley's Lane. He goes on to say that persons occupying land adjoining Tenchley's Lane used the lane for the 'proper cultivation of the said land'. Mr Edwards complains of a gate being occasionally locked. The declaration is not signed and appears to be referring to that part of Tenchley's Lane running from The Hollies to Highstead (C - D).
- 2.25 A letter from Mrs E A Player of The Hollies, Kent Hatch Road dated 6 June 2009 refers to 2 gates on Tenchley's Lane and a historic cattle gate outside 'The Hollies' (formerly Tenchley's Park Cottage).
- 2.26 In 1987 local horseriders claimed bridleway rights over that part of Footpath No. 56 Limpsfield marked 'C' – 'D' and over part of Footpath No. 64 Limpsfield. This claim

was strongly resisted by Limpsfield Parish Council. Twenty six public evidence forms alleging bridleway use between the years 1925 and 1986 supported the claim. One of the users enjoyed an easement (not over FP No. 56) and only 4 people claimed to have ridden the route in excess of 20 years. Landowners produced evidence that steps had been taken to prevent equestrian use of the route. The council considered that there was insufficient evidence to support the claim and it was rejected.

2.27 The Ramblers' Association made surveys of the Limpsfield paths in June and July 1949 and designated the route as a footpath.

2.28 In 1904 the Parish Council's map of footpaths was displayed for inspection in the Mill House, Limpsfield Chart. The map showed Tenchley's Lane as a footpath. The Chairman's report for the year ending 31 March 1905 states that the map was examined by 'various owners and occupiers' and the 'only protest lodged' was from Mr Leveson Gower declining to accept it. Mr Leveson Gower did not however respond to the Parish Council's request for particulars of the 'alleged inaccuracies'. In Surrey, the preparation of the draft definitive map was carried out between 1952 and 1957. The first review of the Definitive Map and Statement was carried out in 1959 and the second review in 1966. It was open to the general public to comment on the draft definitive map and to the owners and occupiers on the provisional map. No objections to footpath status on the claimed route were received during this process. The consolidated map and statement for Surrey was published on 1 March 1996. The map is conclusive that there is a public footpath over the route but does not preclude the possibility that a greater public right may exist.

User Evidence

2.29 The applicant has not submitted any user evidence.

3 OPTIONS

3.1 The committee may agree or disagree with the officers' recommendations that rights higher than footpath rights have not been acquired. Decisions can only be made on the basis of the evidence submitted and interpreted under current legislation. Matters such as convenience, amenity or safety cannot be taken into account. (See Annex 4).

4 CONSULTATIONS

4.1 The Tandridge District Council had no comments to make on the status of the route.

4.2 No response was received from LARA, the British Driving Society, the Byways and Bridleways Trust, the Auto Cycle Union, the Cyclists Touring Club, the Tandridge Access Group and the Open Spaces Society.

5 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

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

6 EQUALITIES AND DIVERSITY IMPLICATIONS

- 6.1 The Council must act within current legislation and there are no equalities and diversity implications.

7 CRIME AND DISORDER IMPLICATIONS

- 7.1 The public has used the route as a footpath for a substantial period of time. It is unlikely that any change in status will have any impact on crime and disorder. Such issues cannot be taken into account when making a decision whether the public have acquired rights or not.

8 THE HUMAN RIGHTS ACT 1998

- 8.1 The Map Modification Order process is concerned with keeping the Definitive Map up to date. This might involve formalising rights, which already exist but have not been recorded or deleting rights included on the definitive map in error. Whilst the impact of this process on the above issues is usually negligible it is recognised that Human Rights legislation must be considered.
- 8.2 The Human Rights Act 1998 does not incorporate the European Convention on Human Rights into English law. It does, however, impose an obligation on public authorities not to act incompatibly with those Convention rights specified in Schedule 1 of that Act. As such, those persons directly affected by the adverse effects of decisions of public authorities may be able to claim a breach of their human rights.
- 8.3 The most commonly relied upon Articles of the European Convention are Articles 6, 8 and Article 1 of Protocol 1. These are specified in Schedule 1 of the Act.
- 8.4 Article 6 provides the right to a fair and public hearing. Officers must be satisfied that the application had been subject to a proper public consultation and that the public have had an opportunity to make representations in a normal way and that any representations received have been properly covered in the report.
- 8.5 Article 8 of the Convention provides the right to respect for private and family life and the home. This has been interpreted as the right to live one's personal life without unjustified interference. Officers must consider whether the recommendation will constitute such interference and thus engage Article 8.
- 8.6 Article 1 of Protocol 1 provides that a person is entitled to the peaceful enjoyment of their possessions and that no one shall be deprived of their possessions except in the public interest. Possessions will include material possessions, such as property and also user rights. Officers must consider whether the recommendation will affect the peaceful enjoyment of such possessions.
- 8.7 These are qualified rights, which means that interference with them may be justified if deemed necessary in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Any interference with a convention right must be proportionate to the intended objective. This means that such interference should be carefully designed to meet the objective in question and not be arbitrary, unfair or overly severe.
- 8.8 The recommendation in this case is not considered to engage Article 8 or Article 1 of Protocol 1 of the Convention. As such, the recommendation is not in breach of the 1998 Act and does not have any Human Rights implications.

9 CONCLUSIONS

- 9.1 A decision on this application must be made on the legal basis and the guidance laid out in Annex 4. The only relevant consideration is whether the evidence is sufficient to support higher rights over the claimed route. Under current legislation, other issues such as amenity, safety or convenience are not relevant.
- 9.2 Under Section 53 (3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981, *“the authority shall .. make such modifications to the map and statement as appear to them to be requisite in consequence of .. the discovery of evidence which (when considered with all other relevant evidence available 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..; and that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description”*.
- 9.3 The applicant has not submitted any user evidence and the application relies on documentary evidence to indicate the status over the claimed route.
- 9.4 The existence of the route is not in dispute. However, on the balance of probabilities the officers’ recommendation is that the evidence is not sufficient to show that public rights other than footpath rights exist over the claimed route. The application under s. 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1984 should therefore be rejected and no order should be made.

10 REASONS FOR RECOMMENDATIONS

- 10.1 ‘The only circumstance in which the depiction of a way on a map constitutes evidence that the way was (and so, unless extinguished, still is) public, is where the map is one of a kind that is capable in law of denoting a way as public (or as showing that the landowner accepted that a way was public, as in the case of Finance Act maps), for example an inclosure award, a ‘handover map’, or a record by a county highway surveyor of repairs’ (Riddall & Trevelyan). Trenchley’s Lane was not included in the list of turnpikes dated 1850 or on the Godstone Rural District handover map dated 1929. It is marked as a footpath on the 1910 Finance Act plan. The commercial maps prepared by J. Senex 1729, Roques 1768, Lindley Crosley 1793, and Greenwoods 1823 relied on by the applicant, and the Tithe Map 1841 are not conclusive as to the status of the route. The OS maps dated 1869, 1891, 1897, 1912 and 1933 show a barrier (or gate) at ‘C’, a barrier (or gate) above Arden Cottage and a barrier (or gate) near the pond and farm buildings at Trenchleys Farm and the Ordnance Survey maps of 1912 and 1934 annotate the route as a footpath. Several letters at the Surrey History Centre refer to a locked gate on Trenchley’s Lane. The letter to Mrs Sonnerchein dated 25 July 1909 (para 2.22), implies that use of the lane was permissive. Documents 642/6/9 – 10 at the Surrey History Centre contain information that suggests the route was a private road. Dispute over the status of the lane and its maintenance appear to have been frequent (para 2.22). Maintenance appears to have been paid for by the landowner and tenants. Whilst the documents relating to the sale of Trenchleys Park and Woods (2.21), refer to a ‘Bridle Path’, they are not conclusive as to the status of the route and despite Footpath No 55 (Limpsfield) being recorded on OS maps at that time, the documents do not admit to any rights of way over the land. Evidence submitted by local residents strongly disputes that the route has been used by horses or enjoyed bridleway status (paras 2.7 – 2.13). A claim for bridleway rights over part of the claimed route has been made previously and failed (para. 2.26). Thomas Teulon describes Trenchley’s Lane as between 6 – 8 foot wide. Today, the lane is approximately 4.5 metres (15 feet) wide between points ‘C’ and ‘D’ and is only 2 metres (6 feet 6 inches) wide for the first part of its descent to Trenchleys Wood. Although the width of a path is not conclusive as to its status, Trenchley’s Lane is not

wide enough to satisfy the requirements of the Highway Act 1773 or the Highway Act 1835. Taking the evidence as a whole it is considered that the applicant has not discharged the burden and has not established, on balance, that public rights higher than footpath rights exist on the claimed route.

- 10.2 When considered as a whole there is not sufficient evidence, on the balance of probabilities, to show that public bridleway rights can be reasonably alleged to subsist over the route 'A' – 'B' – 'C' – 'D' – 'x' – 'y' – 'E' on plan 3/1/28/H40. The application for an order under s.53 (2) of the Wildlife and Countryside Act 1984 should therefore be rejected and no order should be made.

11 WHAT HAPPENS NEXT

- 11.1 All interested parties will be informed about the decision. If the recommendations are agreed no legal order will be made. The claimant will be informed and will have opportunity to appeal to the Secretary of State. If an order is made and objections are maintained to that order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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