



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

**APPLICATION FOR A MAP MODIFICATION ORDER TO ADD A  
FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT FOR  
SURREY FROM THE JUNCTION OF NETHERN COURT ROAD  
WITH ULSTAN CLOSE TO SOUTHFIELDS ROAD,  
WOLDINGHAM**

**30 September 2011**

**KEY ISSUE**

The County Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 (WCA 1981) to maintain a definitive map and statement (DMS) of public rights of way within Surrey. It also has a duty to modify the DMS if it discovers evidence which, on balance, supports a modification, and where there arises under section 31(1) and (2) of the Highways Act 1980 (HA 1980), an unrebutted presumption of dedication of a way as a public footpath as a result of 20 years public use of a way as of right and without interruption.

**SUMMARY**

In November 2009, an application for a Map Modification Order (MMO) to add a public footpath from the junction of Nethern Court Road with Ulstan Close through to Southfields Road, Woldingham to the definitive map and statement for Surrey was received from Mrs Sandra O'Brien, Mrs Jane Torrance and the late Mr John Osborne.

Evidence can be documentary and /or user evidence. The evidence submitted in support of the application is considered sufficient on the balance of probability to establish that public rights subsist or are reasonably alleged to subsist and to warrant making a map modification order under s.53 WCA 1981.

**OFFICER RECOMMENDATIONS**

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

- i. A Map Modification Order be made to add a public footpath from the junction of Nethern Court Road with Ulstan Close through to Southfields Road, Woldingham to the definitive map and statement for Surrey. The route will be known as public footpath no. 160 (Woldingham).
- ii. In the event that one or more objection is received and maintained, that the order and supporting documentation be forwarded to the Secretary of State for the Environment, Food and Rural Affairs to decide the matter.

## 1. INTRODUCTION AND BACKGROUND

- 1.1 The claimed route (shown 'A' – 'B' – 'C' – 'D' on Drawing No. 3/1/535/H4 (see Annex 1)), commences at the junction of Nethern Court Road with Ulstan Close at grid reference 37307 east, 55858 north and proceeds in a generally north easterly direction to point 'B', opposite the property known as Hillcroft where it leaves the tarmacadamed surface of Nethern Court Road and proceeds in a generally north easterly direction through an area of scrub and trees to point 'C', the north western boundary of the property known as Holly Cottage. The alleged footpath then proceeds in an easterly direction to point 'D', its junction with Southfields Road, Woldingham. Southfields Road is a non-maintainable highway (i.e. a privately maintainable road over which highway rights exist for all purposes). That part of Nethern Court Road from Slines Oak Road to the eastern boundary of Ulstan Close is adopted. The remainder of Nethern Court Road is a private street.
- 1.2 Following the opening of the station in 1884, property developers purchased much of the land and developed Woldingham as a residential area. William Gilford purchased the largest area from the Ridge to the station and he built a network of access roads. Mr Gilford kept control by imposing covenants which applied not only to the plots but which also placed obligations on purchasers with regard to the roads opposite their plots. When Mr Gilford died, the roads, including Southfields Road and Nethern Court Road were granted by his executors to the Chelsham and Woldingham Association Ltd. A number of Mr Gilford's roads were later adopted but others remained private.
- 1.3 Part of the land running between points 'B' and 'D' was declared a Site of Special Scientific Interest (SSSI) in 1986. Section 28G of the Wildlife and Countryside Act 1981 (as amended) states that public bodies must 'take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of SSSIs'. Natural England has been consulted on the application and their view is that 'once the rights to the footpath have been established or discounted, Natural England will be in a better position to advise the SSSI landowner on the future management of the SSSI boundary etc. The presence of a regularly cleared footpath at the location shown, would not be detrimental to the SSSI, nor would having to shut it off'. (A plan showing the extent of the SSSI is included in Annex 1).

## 2. ANALYSIS

### Statutory Test

- 2.1 Dedication of public footpath rights may be presumed under the statutory test set out in section 31 Highways Act 1980 (HA 1980). Under this test the Council must be satisfied that the claimed route has been used by the public on foot as of right, that is, not by force, secretly or with revocable permission, actual or implied for a period of not less than 20 years ending on the date when the right to the public to use it was brought into question. The use must have been without interruption. If this test is satisfied, the Council must then decide whether deemed dedication is rebutted by sufficient evidence that there was no intention on the part of the landowner during the 20-year period that the route should be dedicated (that intention must be conveyed to the public at large).

### Documentary Evidence

- 2.2 The historic maps produced by Senex 1729, Rocque 1770, Col Mudge 1816 and Greenwoods 1823 and the Tithe Map of 1841 do not assist in this matter.

[www.surreycc.gov.uk/tandridge](http://www.surreycc.gov.uk/tandridge)

Southfields Road and Nethern Court Road are shown on the 1912 and 1934 Ordnance Survey maps. The 1934 OS map shows an area of land that corresponds to that part of the route marked 'C' – 'D' but does not record the claimed route as a public right of way. That part of the route running from point 'B' to 'C' is not shown as a path on either OS map. Similarly, the 1952 draft definitive map shows Nethern Court Road, Southfield Road and an area of land that corresponds to that part of the route marked 'C' – 'D' but does not record the claimed route as a public right of way (see Annex 1). OS maps 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.

- 2.3 Aerial photographs taken in 1948, 1971 and 1988 show Southfields Road and Nethern Court Road and an area of woodland in between. The claimed route is visible, in part, on the 1971 aerial photograph (see Annex 5).
- 2.4 Land in the vicinity of the claimed route was offered for sale by auction in May 1925. The plan attached to the offer for sale, shows the properties known as The Oaks, Woodlands, Beechwood House and Hillcroft on Nethern Court Road. The claimed path runs through what is shown as an area of scrub and trees to the north of Beechwood House at the end of Nethern Court Road and Lot 11, described as an excellent site for a small poultry farm. No public rights of way are marked on this plan. The sale plan deals with private rights of property and does not call into question any rights that may have been acquired by the public.
- 2.5 The claimed route is shown as a footpath on the plan on page 60 of the Woldingham Millenium Booklet and on the plan drawn in 1960 for the Rector of Woldingham. The claimed route is shown on the plan dated January 2000 produced by the Woldingham Magazine and on the plan on pages ii and iii of the Woldingham Village Design Statement. The Woldingham Village Design Statement was compiled on behalf of Woldingham residents by the Village Design Statement Committee to describe the village and qualities most valued by local people. The design statement was adopted by Tandridge District Council as a supplementary planning document in September 2005 to support the Local Plan.
- 2.6 In May 1986, an informal hearing was held to enquire into and report on the status of a number of roads and ways in Woldingham. Surrey County Council (the Council), appointed Mr R N D Hamilton as Inspector. It was not a formal public inquiry and had no binding legal force as to the status of any road or path. The Council was 'free to adopt or reject or modify any recommendations' made. The status of Nethern Court Road, Southfields Road and the claimed footpath from Nethern Court Road to Southfields Road were amongst those roads and ways examined. 'The claimed path from Nethern Court Road to Southfields Road was added to the agenda for the meeting' .. at a 'comparatively late stage'. 'No-one appeared specifically at the meeting when it first came up to speak for it, but Mr Krieser of Hillsea Cottage, Southfields Road volunteered some information and Mrs Torrance supported it later at the evening session on the fifth day'. Mr Hamilton describes the path as 'well trodden ... though the ends are rather inconspicuous'. He goes on to say that there 'was no evidence of any notices or obstructions at the time' he 'inspected it'. Mr Hamilton considered whether 'the user had been open in view of the heavily overgrown state of the land and it is not shown on any Ordnance Survey map' and concluded that although the 'people who have actually used it are confined to a fairly narrow class, namely some of the frontages of part of Southfields Road', 'they are "public" for this purpose'. Mr Hamilton also said that

'if the owner or owners inspected the land from time to time they must have realised that people were walking through'.

- 2.7 The Inspector recommended that the Council should investigate the claim. He added that the investigation need not have 'a high priority at least unless and until the public use is challenged'. This suggests that the Inspector considered that the informal hearing did not challenge the public's right to use the route and that there had not been any evidence of challenge up to that date. The public continued to use the route for another 20 years or more after the hearing. A copy of his recommendations and a document published by SCC prior to the inquiry is included in Annex 3. The Tandridge Area Highways Sub-Committee accepted his recommendations at their meeting on 11 February 1987.

## 2.8 Landowners' Evidence

- 2.8.1 The land concerned has changed ownership between 1950 (the date of the earliest user evidence form) and 2009 (the date the double gate facing Southfields Road was installed and the date of the application). The land coloured green is currently owned by The Lord Christopher CBE (see Annex 2). The Woldingham Association Limited of Hermitage, Park View, Woldingham own the area of land coloured blue. The Woldingham Association are also the legal freeholders of the road and verges to Nethern Court Road and Southfields Road. The area of land coloured pink is subject to a caution entered by the Woldingham Association Limited. The area of land between Nethern Court Road and Southfields Road, coloured yellow, is currently owned by Ms Dodie Carter of 134 Thoday Street, Cambridge, Mr Andrew Hutchison and Mrs Jacqueline Hutchison of 15 High Street, Great Bedwyn, Marlborough, Wiltshire.
- 2.8.2 The Lord Christopher CBE rejects 'the indication that the alleged path exits on to Nethern Court Road over' his land. He says that when he purchased Beechwood House in May 1981 it was 'largely unfenced and such fencing as there was, was in poor condition'. At the end of 1989 he obtained his first dog and then fully fenced the whole plot. He says 'there was no indication of the alleged exit from' his property and over the past 21 years he has not received any complaints or suggestions that he should restore or provide one'. He goes on to say that 'there was a somewhat rudimentary boundary wire fence on the Nethern Court Road boundary; this had been broken down at the end of the alleged public footpath' and 'the whole frontage is now fenced with a locked hunting gate and the previous owner, now deceased, had a sign post affirming the point, which ...disappeared' (see Annex 2.1.1 – 2.1.2).
- 2.8.3 The Woldingham Association state that 'at no time has permission been sought from the Association or given for access to cross the verges to Southfields Road or to Nethern Court Road to facilitate a footpath or access for any other reason to the land lying between the two roads' (see Annex 2.2.1). The Woldingham Association also state that the double gate facing Southfields Road was erected in 2009 and the single gate facing Nethern Court Road was erected in July 2008. They say they have photographs to substantiate this evidence (Annex 2.2.2).
- 2.8.4 Mr Roger Hutchison recalls his grandfather telling him that he had given permission to 'a very few people to cross his land between the points concerned, though he never saw anyone doing so'. Mr Roger Hutchison says that his father and uncles put up notices stating 'Private Land No Public Right of Way Highways Act 1980' by the end of May 1988. Mr Roger Hutchison, his wife Pamela, and his three cousins visited the land in April 1997 and decided that new notices should be put up to make it clear that the land was private and

that there were no rights of way over it'. He understands that his cousin Andrew Hutchison put up the new notices after a site visit in April 1997 (see Annex 2.3.1 – 2.3.2). Evidence submitted by other landowners, objectors and users (see below) does not support the wording on the sign as suggested by Mr Roger Hutchison. Similarly, the evidence does not support the suggestion that permission was given to 'a very few people' to cross the land. If use of the path is to be held as not 'as of right' on the footing that it is *precario*, then it must be communicated to users that their use is by permission. Further, use of the claimed route by a few with 'permission' does not necessarily prevent use by the public in general from being without permission<sup>1</sup>. There is no indication that other use was with permission. It must be made clear to everyone who used the route that they only used it by tolerance of the landowner. The users say they did not ask for permission to use the path.

2.8.5 Mr Andrew Hutchison has three main points (officer comment is in italics):

2.8.5.1 a 'wide variety of routes were allegedly taken through' his 'land and through the neighbouring gardens' (see Annex 2.4.1). He refers to the user evidence forms completed by the O'Brien family and says that Mr O'Brien entered the woodland '49 metres away from' point 'B'. He states that Mrs O'Brien took a different route through his land and says that this confirms his contention 'that, although some local people may occasionally have walked in' his 'woods, and even made their way between Nethern Court Road and Southfields Road, they did not all follow the same route' (Annex 2.4.3-2.4.4). He denies 'that there was ever a single defined footpath from Nethern Court Road to Southfields Road' (Annex 2.4.1) and says the 'woods have a multiplicity of interconnected pathways, mainly used by animals, (one of these pathways leads to the corner of Beau Coin meadow , another to Slines Oak Road)' (Annex 2.4.4). He claims that the user evidence forms 'have been altered' to include Nethern Court Road and 'every effort' has been made 'to facilitate the pro footpath case' (Annex 2.4.4).

2.8.5.2 notices stating "Private Land" 'were erected at both Nethern Court Road and Southfields Road entrances' to their land 'in 1988, 1997 and 2006'. He says 'some of these were subsequently removed' (Annex 2.4.3). Mr Hutchison has submitted letters written by his uncle Denis and his father Geoffrey Hutchison concerning the making and erection of notices (Annex 2.9.1 – 2.9.2). In May 1988, Mr Andrew Hutchison's father, Mr Geoffrey Hutchison wrote to his brother Denis stating that he had finished his 'signwriting on the 2 notices and it only remains to gloss varnish them and go and put them up'. Mr Andrew Hutchison says that this was in response to Denis' request to get "Private, No Public Right of Way" signs made and erected at the Nethern Court Road and Southfields Road entrances to their land. He says that 'Mrs Torrance has admitted that she saw' his 'father go up a ladder to erect the "Private Land" signs he had prepared and varnished in 1988'. He adds that his mother must have helped his father 'put up the "Private Land" signs in 1988' (Annex 2.4.1). *Mr Hutchison does not have any photographic evidence that the notices were, in fact, erected in 1988 and the majority of users do not recall seeing any signs on the route until 2006.*

2.8.5.3 gates and/or fences at the Southfield Road entrance: Mr Hutchison refers to a probate survey by Strutt & Parker dated 1997 (Annex 2.11.1 – 2.11.3), which mentions a gate at Southfields Road, that 'woodland and

<sup>1</sup> Beresford Trustees v Secretary of State for the Environment and Cumbria County Council (1995) (unreported)



undergrowth have re-established themselves' and 'there does not seem to be any significant trespass because entering the land is difficult'. The letter from Mr Hutchison to Mrs Torrance dated 21 October 2008 (Annex 2.8.1), refers to a gate installed recently. He says that he was unaware of the application when his mother, the late Mrs Jean Hutchison died in January 2008 and says that she would have had 'indisputable evidence about the fence at the Southfields Road entrance in 1979' (Annex 2.4.1). He says that his late mother used to visit the land regularly from the 1970s onwards.

2.8.6 Mr Hutchison has also offered the following in evidence:

2.8.6.1 Notes recording that eleven members of the Hutchison family visited the site on 27 April 1997 (Annex 2.10.1– 2.10.2). The notes record that 'the former "footpath" which starts opposite the Hillcroft drive and follows the fence to the southern boundary of the wood has become overgrown with nettles and briars and fallen into desuetude' and that Mr Hutchison agreed to make 3 – 4 "PRIVATE LAND" notices. He says the notices were printed and laminated at Newbury College and then tacked to pieces of wood which he nailed to tree trunks at the Nethern Court Road and Southfields Road entrances on his next visit (*no date specified*).

2.8.6.2 A letter from Mr Hutchison's solicitors to Dr Torrance (dated 4 July 2001), alleging that Dr Torrance has entered Mr Hutchison's land without permission. The letter states that permission must be obtained from Mr Hutchison before entering his land (Annex 2.7.1) and that the owners of the land (the clients) 'will be visiting the land regularly to monitor the position'. A letter to Mrs Torrance dated 21 October 2008 stating that 'there is not and never has been a right of way over the land, and "Private Land No Public Right of way" notices have been in place at both access points' (Annex 2.8.1). *The letters to Dr and Mrs Torrance are private letters and not a communication to the public at large. Consequently, it is considered that the letters did not make the public aware that their use of the path was being challenged.*

2.8.6.3 Mr Hutchison says that in September 2008, Mrs Piper of Holly Cottage advised him that 'she had seen two people.. walking on our land and trimming plants in order to create a definable footpath' (Annex 2.4.1).

2.8.6.4 Photographs taken in March 2010 showing the wooden gate at the Southfields Road end and a notice stating "Private Land No Public Right of Way", in the tree. Mr Hutchison also submitted photographs of a pathway to the west of Holly Cottage, and a pathway leading in a northerly direction through the wood and emerging at the corner of Beau Coin meadow (see Annex 5). *These photographs were taken after the receipt of the application but show a path leading in a westerly direction from the gate at Southfields Road along the northern boundary of Holly Cottage.*

2.8.6.5 A letter dated 7 August 2008 to the late Mr Osborne stating 'there is not, and never has been a right of way over the land, and "Private Land No Public Right of Way" notices have been in place at both access points' on the advice of his solicitor 'for some 10 years now' (Annex 2.5.1). A letter dated 23 May 2010, (Annex 2.5.1) over the names of Ms Dodie Carter, Mr Andrew Hutchison and Mrs Jacky Hutchison, addressed to Mr Osborne, states that they 'do not give permission for anyone to use our land as a thoroughfare between Nethern Court and Southfields Road'. *The letter dated 23 May 2010 was sent after the receipt of the application and falls outside the relevant period.*

- 2.8.7 Mr Hutchison says that he has not been 'treated fairly and have, as a consequence, been placed at a disadvantage' (2.4.1 – 2.4.2). He says that 'the four year delay in SCC contacting us the landowners robbed us of the potential to get evidence from .. Jean Hutchison, who knew the land from the 1930s'. Mr Hutchison has made a complaint to the Chief Executive, Surrey County Council. The letter of complaint and the Council's reply in included in Annex 2.14.
- 2.8.8 Mrs Jacqueline Hutchison says in her letter dated 23 March 2010 that there was 'a white sign with black lettering nailed to a tree (some 6 foot from the ground) at the entrance to the woods at Southfield Road saying PRIVATE LAND' (Annex 2.12.1 - 2.12.2). She goes on to say that her 'husband later supplemented this with some signs made at Newbury College, one of which was placed at both entrances'. She says it was 'difficult to get into the wood because there was no defined path from Southfields Road. The narrow strip of land accessed from the highway was overgrown with holly, brambles, ivy and honeysuckle' and she thinks there was a broken down gate and fence at the Southfields Road entrance as well as the sign (but no dates are given). She says there was no obvious path and in her view the route 'was not being used by anyone at this time'.
- 2.8.9 In September 2010, Mr and Mrs Hutchison and Ms Carter deposited three statements and a plan under s.31(6) Highways Act 1980 in respect of land between Southfields Road and Oak Road, Woldingham (registered at the Land Registry under title number SY 731891) with the council. This was followed by a statutory declaration in December 2010.
- 2.8.10 Ms Carter (in her letter dated 20 November 2010) says she was a regular visitor to the land throughout her childhood and adolescence. She says 'there has never been a public right of way over the land'. She also say that she does not know if her grandfather 'ever gave permission for anyone to have access to the land' and she has 'no recollection of ever seeing anyone walking across it. There was no clear path other than one that looked as if it had been made by animals. It changed course over time, and there were numerous paths across the land and through the undergrowth'. She goes on to say that in April 1988, her uncle asked her father to erect two private notices, one for each end of the path. She refers to the letter dated '15 May 1988 saying that the notices were almost finished' (Annex 2.9.1) and that he had yet to put them up. She says her father was 'a true man of his word'. She remembers the notice at the top of the land but not the one at the bottom and adds that she 'didn't go down there for a long period'. She refers to the report for probate (dated 1997), and the surveyor's comments that 'there does not seem to be any significant trespass because entering the land is difficult' (see 2.13.1).

## **2.9 Objectors' Evidence**

- 2.9.1 Forty-two people filled in forms objecting to the application and three of these have been withdrawn. Some of the forms refer to fencing, signs and gates but dates and location are not specified on most of the forms and plans. All those submitting forms were sent a letter asking them so clarify the information given and the officer's telephone, e-mail and office address was supplied. One objector was interviewed in person and has signed an additional statement. Two objectors were interviewed on the phone and one of these has submitted a statement. Only 16 of those objecting have knowledge of the claimed route throughout the relevant period 1986-2006. A number of people have written

letters of objection and presented other material to refute the claim. This is summarised below:

- 2.9.2 Mr and Mrs Piper (adjacent landowner who purchased Holly Cottage in 1985) say that 'the land is and always has been fenced/gated off with clearly and unambiguously marked signs defining the private nature of the land'. They say that between 1986 and 2010 there were three lots of wooden signs nailed to a tree, stating "Private, No Public Entry" and a wooden sign on a wooden stake in the ground stating "Private". They say that various types of wire fencing has been secured by posts and refer to a five bar gate with chain and padlock. They also refer to the informal hearing conducted by Mr Hamilton and his decision that 'he was not satisfied that there was a public right of way'. They refer to the public footpath at the southern end of Southfields Road (FP No. 36 (Woldingham)) and say that the application is 'contrary to present day Health and Safety Regulations and hence could hardly be defined as a public benefit'.
- 2.9.3 In his letter dated 25 February 2010, Mr Piper says he has lived in Holly Cottage for approximately 25 years and when they moved in there was 'absolutely no indication of the land being anything other than naturally overgrown, inhabited by wildlife and a variety of trees and natural vegetation'. He says that during his occupation, 'there have always been signs indicating that this land is private. There were originally two signs at the Southfields Road end. One was on a free standing pole, just inside the boundary to the left and stated "private". This sign disappeared and was not replaced. The other sign was rectangular, wooden and stated "private, no entry". This was attached by a nail to a substantial tree at about 7 feet above ground level. This remained from 1985 until replaced in 1998 with another wooden sign which stated "private, no public right of way". The current sign, nailed on the same tree in approximately 2005 states, "private, no public right of way". Over a period of time there was a variety of fencing, consisting of crisscrossed wire attached to metal and wooden posts, barbed wire, stock fencing and single strands of wire. All of which suffered damage to some degree or disappearance, but was either repaired or replaced accordingly. More recently the current wooden five bar gate, secured by chain and padlock, with stock fencing affixed to the boundary posts of Holly Cottage and the field of Beau Coin House, was installed by the owners'.
- 2.9.4 Mrs Piper (e-mail dated 30 August 2011) says that in June 2008, she challenged Mrs Torrance as she cut a path through the woods. She also says that Mrs Torrance gave people permission to walk through the woods. She refers to a letter from the vendor's solicitor dated 21 November 1985 (when they were in the process of purchasing Holly Cottage), stating that the land 'is thickly wooded copse...not used for any purpose except for the benefit of the local wildlife'. In her letter dated 24 February 2010, Mrs Piper reports two signs 'near to the entrance of the woods, in Southfields Road. One .. on a wooden stake, in the ground, about four feet in height, and placed just inside the woods to the left, approximately two feet from' her boundary fence. She says the sign was 'made of wood and stated "private". At some stage this completely disappeared. The other sign, nailed to a tree, about 3 feet into the wood from the verge, equidistant from the boundaries of Holly Cottage and field of Beau Coin House. This was also wooden, and stated "private, no entry". This remained until replaced in approximately 1998 with a sign stating "private, no public right of way". In 2005, the sign, which is still in place today, was erected, using the same tree, but nailed slightly higher, which states "private, no public right of way" '. Mrs Piper goes on to say that when she moved into Holly Cottage 'the fence was wire, crisscrossed, and strengthened by a single wire across the top and supported every few feet by metal 'L' shaped posts. This



stretched across the width of the woods from our gate post to the boundary of the field belonging to Beau Coin House. Various materials such as wire and plastic coated metal crisscrossed fence, chicken wire, small stock fencing and single strand wire were used over the years to repair or replace the fencing. The penultimate barrier was erected by the owners which consisted of new wooden posts, with single strands of wire wound and stapled to each post, stretching across from boundary to boundary. This was persistently cut, damaged and repaired, so the owners replaced this with the present five bar gate, stock fencing to the side, and straight wires across the top. The gate is secured with a chain and padlock'. Mrs Piper says that 'the land has been in the same family for many years', and that 'they make regular inspection trips and every effort to secure their land'. She refers to Footpath No. 36 as an alternative route to the village.

- 2.9.5 Mr and Mrs Piper say that 'approximately three years ago they had a new fence erected to clearly define the boundary' to their property. They say that workmen entered the land to carry fencing materials to the rear of their property and that this led to 'the unintentional creation of a track which appears to have been taken advantage of'. A statement made by Tomasz Mirasiewski, (who built the fence for Mr & Mrs Piper) dated 6 September 2010 says that the 'footpath was there' prior to the works. There are discrepancies between the dates the landowners say fences & signs were erected, the dates the Pipers say fences and signs were erected, and the evidence presented by users of the path.
- 2.9.6 Mrs Phelps of 68 Nightingale Road, Selsdon says she has been a regular visitor to Woldingham since 1986. She reports seeing two wooden signs visible from Southfields Road, one on a post near the boundary of Holly Cottage stating "Private" and the other on a tree stating "PRIVATE, NO ENTRY". She cannot recall when the sign on the pole disappeared. Mrs Phelps reports 'crisscrossed wire fencing' stretching 'from the boundary of Holly Cottage to the boundary of the fields of Beau Coin House, at the verge' (no date recorded).
- 2.9.7 Ms Mandy Talbert of 2 Clare Court says that as a child she 'went into the woods through a cut in the fence' and saw 'a white wooden sign with black writing' saying "Private No Entry" concealed by brambles. She says she returned a few weeks later and noticed that the fence had been 'repaired with barbed wire and the sign had been staked into the ground, up against a fence'. Ms Talbert has not indicated in which year she made these observations. She reports seeing a 'sign on a tree behind metal fencing which said "Private, No Public Right of Way" '. She says there is now a newer sign on the same tree and a 'strong, wooden, five bar gate, secured by a chain and padlock was erected a few months ago replacing the old fencing'. Her statement is dated 1 March 2010.
- 2.9.8 Ms Kara Barker in her letter of 1 June 2011 states that in 1986 she used to walk or cycle regularly with her family and friends along Southfields Road and remembers 'seeing a sign on a tree, in the centre of the woods between Holly Cottage and Beau Coin fields which stated "Private No Entry". In 1998 a replacement sign was nailed to the same tree stating "Private No Public Right of Way"'. She also remembers 'wire fencing, attached to wooden posts', and in front of the fencing 'wild roses, nettles and brambles, or debris'. She goes on to say that 'In recent times a new five bar gate, which is padlocked and chained has been erected'.
- 2.9.9 In her letter of 13 March 2010, Mrs Jenny Baldock-Apps says she has been a frequent visitor to Woldingham for over 20 years. She says there were two signs in the wood, one stating "Private" and the other "No Entry". She also

refers to fencing and wire and suggests that this has been vandalised in order to gain access (No dates given).

- 2.9.10 Miss Gemma Baldock-Apps in her letter dated 8 March 2010, says she has visited Holly Cottage for approximately 25 years. She says that there have always been signs 'stating that the land is private property and there is no public entry to this land'. She also refers to 'high fencing and barbed wire' at Southfields Road (No date given).
- 2.9.11 Mr and Mrs Park of Hillsea Cottage, Southfields Road say they moved to Woldingham in 1996 and noticed a sign on a tree saying 'private no entry'. They say that 'in 1998' it was replaced by 'another sign stating' private no public right of way". They say that from 1996 there was 'fencing between 3 and 4 feet in height, ranging from wire, criss cross, stock etc to prevent access to the land'. They also say that it was 'impossible to walk through because of the undergrowth of nettles, brambles and weeds which also grew through the fencing'.
- 2.9.12 Dr Maureen Heath says she has lived in Windlestraws, Southfields Road since 1981 (letter dated 28 May 2011) and has known the area since 1979. She says that in 1979, there was a wooden fence 2.5 feet high, at the entrance to the path at the Southfields Road end but there were no signs.
- 2.9.13 Photographs taken in April 2007 and (summer) 2008 show a wooden post and two lengths of wire with space between at the Southfields Road end of the claimed route. A sign stating 'Private Land No Public Right of Way' is shown nailed to a tree facing Southfields Road. The path is clearly visible on the ground. There is also a sign at the junction of Nethern Court Road and Ulstan Close stating "Please Drive Slowly, Access Only, No Through Road' (see Annex 5).

## 2.10 Variations in the route as claimed

Mr Hutchison says there are 'several pathways' on his land and 'not one definable footpath' (see letter dated 7 April 2010 (Annex 2.6.1)). Whilst the O'Brien family have used a different entry point to point 'B', the majority of users have indicated an entry point opposite Hillcroft. Where a route from one point to another goes across open land, case law has established that the route need not follow a precise path<sup>2</sup>. Dr and Mrs Torrance say 'the exact route has changed slightly with the falling of trees' (letter dated 24 May 2010) and 'the entrances to the path have always been in the same place'. Other users report slight variations due to trees falling down in the storms of 1987 and 1991 (Mrs Austin User Form 1). If one discounts the four forms submitted by the O'Brien family there are still 71 forms remaining, the majority of which indicate use of the path shown 'A'- 'B' – 'C' – 'D'. The users describe the path as well defined and it is considered that the route across the land was sufficiently defined within the relevant twenty year period, albeit it may have varied slightly from time to time. Any variation in the route is considered to be *de minimis* and not sufficient to defeat a claim.

## 2.11 Notices on the claimed route

- 2.11.1 Whilst a notice, erected in such a manner as to be visible to persons using the way, inconsistent with the dedication of the way and maintained thereafter may,

<sup>2</sup> Fernlee Estates Limited v City & County of Swansea and the National Assembly for Wales [2001] EWHC Admin 360

in the absence of any further contrary intention, be sufficient to rebut the presumption of deemed dedication, the notice must be clear and unambiguous. No particular words are laid down in the HA 1980, but notices saying "Private Land" (as purportedly erected in 1988 and 1997) are, in general, not considered to be sufficient to communicate to the public that they have no right to use a recognised path<sup>3</sup>. Whilst, in general, the user evidence and the evidence submitted by landowners and objectors is agreed that notices saying "Private Land No Public Right of Way" were in place from 2006 at points 'B' and 'D', there are inconsistencies in the evidence concerning the wording, the location and the date of erection of notices prior to that date. The notices purportedly erected in 1988 and 1997 were, in any event not sufficient to convey a lack of intention to dedicate a public right of way on foot as the user evidence demonstrates. Further, user of the path say they were not challenged. In 2006 notices stating "Private Land No Public Right of Way" were posted at the Nethern Court Road and Southfield Road entrances. A number of users say they stopped using the route after these notices were erected. Prior to 2006, users report that there were no signs (or fencing) to suggest that the public were not permitted to use the route.

- 2.11.2 The late Mrs Hutchison visited the site regularly from the 1970s onwards and members of the Hutchison family visited the site in 1988, 1997 and 2006 and possibly at other times. The family may have been aware that the public were using the route. Section 31 (3) provides that where notices are torn down or defaced, the landowner may send a notice to the Council (s.31(5)) or make a statutory declaration (s.31(6)). No notice was received by the Council and a statement and plan was not deposited with the Council until September 2010.

## 2.12 Removal of Fencing and Vegetation

A number of objectors say that there was fencing at the Southfields Road end from at least 1998. This is not corroborated by the user evidence which says there was no fencing until 2006 (see Annex 4 Mr Osborne's letter & statement). For use to be 'as of right', that use must be without force, without secrecy and without permission. The evidence suggests that use of the claimed route prior to 2006 was use as of right.

## 2.13 Statutory Declarations under section 31(6) Highways Act 1980

A statutory declaration made under s.31 (6) HA 1980 is sufficient evidence to prove that a landowner has no intention to dedicate a route on his land as a public right of way. In September 2010, Mr and Mrs Hutchison and Ms Carter deposited three statements and a plan under s.31(6) HA 1980 with the Council, in respect of land between Southfields Road and Oak Road, Woldingham (registered at the Land Registry under title number SY 731891). This was followed by a statutory declaration in December 2010. No statement, plan or statutory declaration has been received from the Lord Christopher or The Woldingham Association. Deposits under s.31(6) HA 1980 cannot act retrospectively so as to take away any claim based on past user or overcome any claims based on documentary evidence.

## Conclusion regarding Documentary Evidence

- 2.14 The Woldingham 2000, the Woldingham Village Design Statement, the Woldingham Village Road Map January 2000, the booklet entitled 'The History of Woldingham and Marden Park and a map drawn in 1960 at the request of the

<sup>3</sup> Burrows v Secretary of State for Environment, Food and Rural Affairs [2004] EWHC 132  
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Rector of Woldingham shows that the route has been recognised as a local path since at least 1960 and enjoyed a reputation as such. Although the claimed route seems to have been of sufficient importance to the village to include it in several of its publications, maps produced by the Ordnance Survey do not show the route in its entirety (see 2.2 above). Mr Hamilton describes the route as 'well trodden ... though the ends are rather inconspicuous' and goes on to say that there 'was no evidence of any notices or obstructions at the time' he 'inspected it' (i.e.1986).

- 2.15 The current owners say that the late Mrs Hutchison attended the site regularly in the 1970s and eleven members of the Hutchison family visited in 1997. They also say that notices were erected in 1988, 1997 and 2006. Letters submitted allege that Mr Geoffrey Hutchison attended the site in 1988 to put up notices saying "Private Land" but the majority of users do not recall seeing any notices until 2006. Similarly, users do not recall a gate at the Nethern Court Road end until 2008 (not on the claimed route) and at the Southfields Road end until 2009. In his letter dated 9 June 2010 (Annex 4), Mr Osborne says 'there never has been a gate in the Southfields Road boundary fence'. He suggests that Strutt & Parker may be referring to the 'five bar gate in the adjacent Beau Coin field'. A statement, plan and statutory declaration was not submitted to the Council until 2010.
- 2.16 The documentary evidence is not, on its own, conclusive but when combined with the user evidence, may assist in deciding whether the claim meets the statutory and/or the common law tests. A copy of the documentary evidence referred to above is available on request<sup>7</sup>.

### Date of Calling into Question

- 2.17 Before a presumption of dedication can be inferred under statute, Section 31 of the 1980 Act requires that the relevant period of use be calculated retrospectively from the date on which the status of the way is brought into question. The use during that period must be shown to have been enjoyed by the public as of right for a full period of twenty years. Case law has established, that whatever means are employed to bring a claimed right of way into question, they must be sufficient, at least to make it likely, that some of the users are made aware that there has been a challenge to their right to use the way as a highway.<sup>4</sup> Case law has also suggested that there must be an actual and physical interruption.<sup>5</sup>
- 2.18 In 1987, a 'big tree came down in the hurricane and people had to walk around it' (Mrs Osborne's statement dated 21.04.11). For an interruption to be effective it must be for the specific purpose of interrupting the use of the way rather than for some other reason and must prevent use. An accidental interruption such as a fallen tree, is generally considered insufficient to constitute an interruption, particularly where it did not stop public use to any significant extent.
- 2.19 The informal hearing in May 1986, was not a formal public inquiry and had no binding legal force as to the status of any road or path. The Council was 'free to adopt or reject or modify any recommendations' made. Although the Inspector recommended that the Council should investigate the claim he added

<sup>7</sup> There may be a charge for photocopies of documents

<sup>4</sup> R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs: R (on the application of Drain) v Secretary of State for the Environment, Food and Rural Affairs, 2007

<sup>5</sup> [1937] 2KB 77 KBD

that the investigation need not have ‘a high priority at least **unless and until** the public use is challenged’. In the Inspector’s view, the informal hearing did not challenge the public’s right to use the route. The public continued to use the route for another 20 years or more after the hearing and consequently, the hearing itself is not considered to be the date of calling into question.

- 2.20 Mr Andrew Hutchison, in his letter dated 7 April 2010 (see 2.8.6.2 above), states that his solicitor wrote to Dr Torrance in July 2001 and asked him to obtain permission before entering the land. Mr Hutchison considers this to be a challenge to the use of the footpath. This is a private letter between the parties concerned and officers do not consider that this was communicated to the public at large and did not make it clear to them that their use of the claimed route was in question.
- 2.21 Although the deposit of a statement and plan under s.31(6) HA 1980 may, following *Godmanchester*<sup>4</sup>, be considered a calling into question, the deposit was made in September 2010 and cannot act retrospectively so as to take away any claim based on past user, nor defeat a claim based on documentary evidence.
- 2.22 The Woldingham Association say that the ‘double gate facing Southfields Road was erected in 2009’ and the ‘single gate facing Nethern Court Road was erected in July 2008’. The single gate facing Nethern Court Road is not on the claimed route. From the evidence forms it is clear that public use of the path reduced in 2009, after the gate at the Southfields Road end was installed. Four people claim to have used the route throughout the period 1989 to 2009 and another 48 persons have used the route for part of that period, eleven of whom stopped using the route in 2008.
- 2.23 Signs stating “Private Land No Public Right of Way” and fencing were erected at the Nethern Court and Southfields Road entrances in 2006. The wording of the signs is considered sufficient to constitute a challenge to the public and three people have said that they stopped using the route when the signs went up. Another 17 users stopped using the route at around this time although not necessarily as a result of the signs. The date of calling into question is therefore considered to be 2006 and the relevant period will be 1986 to 2006.

## **2.24 Evidence of Users**

- 2.24.1 In total, seventy-five user evidence forms were submitted to support the application (or 71 discounting those forms submitted by the O’Brien family). Taken collectively, the user evidence forms show use of the claimed route from 1950 to 2009, (i.e. 59 years), and twenty two persons used the route throughout the whole of the relevant period. The frequency of use varies from once or twice a year to 200 times a year. Five persons have used the route in excess of 50 years. Three people claim use of the route on a bicycle in the 1960s and 1970s. Prior to the notices erected in 2006 and the installation of the gates at the Nethern Court Road end and the Southfields Road end in 2008 and 2009 respectively, in general, the users do not recall seeing any signs, fencing or other obstruction on the claimed route. Access to the path was through a gap in the hedging between two hawthorn trees at the Southfields Road end, and through a snowberry hedge at the Nethern Court Road end. Not one of the 75 users report being stopped or challenged by the landowners on the claimed route.



- 2.24.2 Twenty-five persons were interviewed and statements taken. Those interviewed affirmed that the route was used openly and without interruption for a period of at least 20 years prior to 2006, the date of challenge.
- 2.24.3 Dr and Mrs Torrance (in their letter dated 24 May 2010), say that fences were erected at either end of the path in 2006. They go on to say that they have 'on many occasions seen people use the path, and since the erection of the fencing have seen people come to the path and turn back'. They say that they have 'lived at Hillcroft since 1984 and there has always been a path in existence, although its exact route has changed slightly with the falling of trees. The entrances to the path have always been in the same place. There has never been any fencing of gates at either end of the path until the fences erected in 2006'.
- 2.24.4 In his e-mail dated 19 April 2011, Dr Torrance says he has lived in Woldingham since 1970 and that when he lived in Butlers Dene Road, he and his children used the path regularly to access the village. He says that the present owners of the land placed fences at both ends of the path 2 – 3 years ago and, as a result, the path has become overgrown. In his letter dated 27 April 2010, Dr Torrance states that 'the previous owner of the land in question fixed a homemade 'private' notice on a tree immediately at the side of the path within the land, close to the point at which the footpath exits on to Nethern Court Road'. He says it was not in the position indicated on the plan supplied by Dr Heath'. He goes on to say that 'the sign disappeared shortly after it had been placed'. He says he 'did not remove the sign'.
- 2.24.5 Mr Clive Harris-Ross says that before June 2004, the route was part of the village patrolling routine for Police Community Support Officers. Several houses in Southfields Road (e.g. Underhill), had a pathway running from their back garden to the claimed path.
- 2.24.6 Several users refer using the route with children during the "Golden Boot Award" (when children are encouraged to walk to school), which runs for a month every year, usually in June. The Girl Guides used it to go to Weetwood to do their Cooks Badge and the Brownies were taken on nature trails on the route. The claimed route was also used for dogwalking, recreation and to access the tennis club, Woodlea School, the village and other facilities. Some users refer to seeing the route in a number of parish publications (see 2.5 above). Users say Slines Oak Road is narrow, has no pavements and is dangerous and the claimed route is a safe alternative means of accessing the village. They say it was always there and they assumed it was a public right of way. All users say they were never challenged.
- 2.24.7 Although the route appears to have been used in the main by local residents it is well established that use by local residents is sufficient<sup>6</sup> (see also Inspector Hamilton's view at 2.6 above).

### **Conclusions regarding User Evidence**

- 2.25 The users are consistent in their description of the claimed route, the lack of signing, and the lack of challenge. Apart from Mrs Torrance and Mr Osborne (who appear to have discussed a key to the gate installed in 2006 with Mr Hutchison), none of the users asked for permission to use the route and all used the route openly. The user evidence meets the statutory test and, in the officer's view, the claimed route was used by the public during the period from

<sup>6</sup> R v Residents of Southampton [1887]

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1986 to 2006 in such a manner as to raise a presumption that it had been dedicated as a public footpath, unless there is sufficient evidence that there was no intention to dedicate it. Whilst the landowners say signs were erected in 1988, 1997 and 2006, signs were not generally reported by users until 2006 and, in any event do not appear to have deterred users from use of the claimed route. In the officer's view there is insufficient evidence for the current owners of the land to be able to take advantage of the proviso in section 31 (1) HA 1980 and rebut the presumption of dedication raised by the user evidence to establish that the landowners had no intention to dedicate the route during the relevant period.

- 2.26 While the evidence is considered to meet the statutory test, for completeness the test at common law has also been considered. If the committee agrees that the statutory test has been met there is no need to consider the test at common law. Dedication at common law falls to be considered below.

### **Common Law**

- 2.27 An inference that a way has been dedicated for public use may be drawn at common law where the actions of the landowner (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it through use. The landowner must have capacity to dedicate.
- 2.28 Dedication may be express or implied from evidence of user by the public and of acquiescence in that user by the landowner. Unlike the statutory presumption of dedication contained in section 31 HA 1980, the period of user which is necessary at common law to establish or prove a dedication to the public has never been defined. Every case must depend on its own facts.
- 2.29 The land was held in trust from 1995 to 2006. The council does not have a copy of the trust and is not therefore able to comment on whether there was capacity to dedicate during this period. Prior to 1995 however, there is nothing to impede implied dedication under common law. Consequently, the lack of action by the landowner to prevent the public using the route, and the acceptance of the route by the public, by using it, may infer that the route has been dedicated for public use.

### **Letters/Forms in Support**

- 2.30 One hundred and twenty signed forms have been submitted in support of the application. The Craigmyle Glebe (the village's central recreation ground), the governors and staff of Woodlea School, two past chairmen and a vice - chairman of Woldingham Parish Council also support the application. The letters in support do not offer evidence of use and have not been taken into account when reaching the conclusions in this report. They may assist however when considering the reputation of the claimed route.

## **3 OPTIONS**

The committee may agree or disagree with the officer's recommendations that rights have been acquired. Decisions can only be made on the basis of the evidence submitted as interpreted under current legislation. Matters such as convenience, amenity or safety cannot be taken into account. (see Annex 6).

## **4 CONSULTATIONS**

Tandridge District Council has no evidence 'to help resolve any uncertainty over what rights already exist in this case'. No response was received from the Open Spaces Society. The Ramblers support the application and the former local footpath says he has used it personally and knows that other people used it as a short cut to the village. In their letter dated 29 July 2011, Woldingham Parish Council note that there are inconsistencies in the evidence, particularly 'whether signs prohibiting public access were visible and when'. They say that 'supporters and opponents' are agreed that 'notices prohibiting access were in place from 2006 at the Southfields Road end of the alleged path and at the point where it emerges from woodland to join the end of Nethern Court Road'. The Parish Council say that the map evidence is 'inconclusive' and that it has 'no evidence of its own on these points', and 'is not able to verify the accuracy of the evidence that has been submitted'. The Parish Council say that their 'summary view of the evidence does not claim to present a balance of the volume of evidence and views that have been submitted'. In their letter dated 20 July 2011, the Woldingham Association says the evidence 'justifies the formal consideration of the claim and asks that the matter be referred to an Inspector for a final decision'.

## **5 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS**

The cost of advertising a Map Modification Order is approximately £1,200, and will be met from the Council's Countryside Access budget. If objections are received and a public inquiry is held, additional costs of around £4,000 will also be met from the same budget. The Council's duties under Schedule 15 of the Wildlife and Countryside Act 1981 require that these costs be met.

## **6 EQUALITIES AND DIVERSITY IMPLICATIONS**

The Council must act within current legislation. The application is not considered to have any equalities and diversity implications.

## **7 CRIME AND DISORDER IMPLICATIONS**

The public claim they have used the route as a footpath in excess of 20 years and if the order, if made and confirmed, will formalise rights that already exist. A number of landowners living in the vicinity of the claimed route have expressed concern that a public footpath may result in increased crime in the area but have produced no evidence to substantiate this claim. Under section 53 WCA 1981 the Council may only consider the evidence. Crime and disorder 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.
- 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. When making a decision under s.53 WCA 1981, the only relevant consideration is whether the evidence is sufficient to raise a

presumption that footpath rights exist over the claimed route. Under the WCA 1981, other issues such as amenity, safety or convenience are not relevant.

- 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 has 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 and 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 AND RECOMMENDATIONS**

- 9.1 A decision on this application must be made on the legal basis and the guidance laid out in Annex 6. Under Section 53 of the Wildlife and Countryside Act 1981 the only relevant consideration is whether the evidence is sufficient to raise a presumption that footpath rights exist. Other issues such as amenity, security, safety or convenience may not be considered.
- 9.2 Any decision is made on the balance of probability,<sup>7</sup> that is, whether or not, on balance, public rights subsist or are reasonably alleged to subsist. If they are deemed to do so, the status, the width of the path and any limitations must also be determined.
- 9.3 The user evidence meets the statutory test and, in the officer's view there is insufficient evidence during the relevant period, for the current owners of the

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R. v Secretary of State for the Environment, ex parte Bagshaw and Norton [1994] and R. v Secretary of State for Wales, ex parte Gordon Emery [1997]

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land to be able to take advantage of the proviso in section 31 (1) HA 1980 and rebut the presumption of dedication raised by the user evidence.

- 9.4 Where there is conflicting evidence, as in this case, the council 'must bear in mind that an order made under s.53 (2) following a Schedule 14 procedure still leaves the applicant, the landowners and the objectors with the ability to object to the order under Schedule 15' and that 'conflicting evidence can be heard and those issues determined following a public inquiry'.<sup>8</sup>
- 9.5 Taking the evidence as a whole it is considered that there is sufficient evidence, on the balance of probability, to warrant making a map modification order (MMO), under s. 53 (2)(b) and (3)(b) and (c)(i) to establish that public rights subsist or are reasonably alleged to subsist over the claimed route and to add a public footpath to the definitive map and statement for Surrey.

## 10 WHAT HAPPENS NEXT

- 10.1 All interested parties will be informed about the decision. If the recommendations are agreed a MMO will be made. If objections to the order are made and maintained, the order will be submitted to the Secretary of State for Environment, Food and Rural Affairs for determination.

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

<sup>8</sup>

R v Isle of White CR v O'Keefe [1990] 59 P. & C.R. 283

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