

**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

ANNEX 3

- 1. Excerpts from Report of Mr R N D Hamilton on the Informal Hearing held on 6 May 1986 concerning the Status of Roads and Ways at Woldingham**
- 2. Roads in Woldingham – Whose Responsibility? (SCC)**

STATUS OF ROADS AND WAYS AT WOLDINGHAM

INFORMAL HEARING HELD AT WOLDINGHAM
COMMENCING TUESDAY 6 MAY 1986

REPORT OF R N D HAMILTON

TO THE SURREY COUNTY COUNCIL

1 INTRODUCTION

- 1 I was appointed by the Surrey County Council to hold an informal Hearing to enquire into and report, with any appropriate recommendations, on the status of the under-mentioned roads and ways at Woldingham:

Beulah Walk
Butler's Dene Road
Camp Road
Church Road
Croft Road
Dukes Hill Road
The Green
High Drive
Hilltop Walk
Long Hill
Nethern Court Road
Park Ley Road
Park View Road
Southdown Road
Southfields Road
Southview Road
Upland Road
Upper Court Road
The path from Camp Road to Long Hill
The path from public footpath No. 40 to Station Road and Church Road
The path from Nethern Court Road to Southfields Road
The paths claimed in Angell's Field and adjoining fields.

- 2 I accordingly opened such an informal Hearing at the Woldingham Village Hall at 10.30 a.m. on Tuesday 6 May 1986 and the Hearing continued on that day, on Wednesday, Thursday and Friday, 7, 8 and 9 May, and Monday and Tuesday, 12 and 13 May, on which last mentioned day I closed it at about 1 p.m. I attach in Appendix I to this Report lists of the persons present on the various days.
- 3 Prior to the opening of the Hearing, and so that residents would have some idea when roads or ways in which they were interested would be dealt with, a timetable was prepared, showing that, subject to any variations I might make at the opening, the programme would be as follows:

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| Day 1 (6 May) | Introduction, Opening Statements and Questions of Law Park View Road Southdown Road The Green Croft Road High Drive |
| Day 2 (7 May) | Long Hill Camp Road Path from Long Hill to Camp Road Hilltop Walk Beulah Walk Dukes Hill Road |
| Day 3 (8 May) | Church Road Park Ley Road Butlers Dene Road Upland Road |
| Day 4 (9 May) | Southfields Road Southview Road Upper Court Road Nethern Court Road Path from Nethern Court Road to Southfields Road |
| Day 5 (12 May) Evening Session | Claimed Path - footpath 40 to Station Road All roads and ways |
| Day 6 (13 May) | Claimed paths - Angells Field and adjoining fields |
| Day 7 (14 May) | Spare |

The timetable also provided for an evening session commencing at 6 p.m. on Monday 12 May, for the benefit of those who could not attend during the day, which would be open to representations on all roads and ways.

- 4 In opening the hearing, I emphasised that I had been appointed as a person independent of the County Council, that this hearing was not a formal public local inquiry but an informal meeting which I was anxious should encourage finding out all the relevant facts and arguments about the status of these roads and paths, consistent with the need to ensure a full hearing of all views, and those present should not allow me to overlook anyone.
- 5 I explained that my report would go to the Surrey County Council who would be quite free to adopt or reject or modify any recommendations I might make.

Macq 455, Att - Gen v Antrobus [1905] 2 Ch 633, Roberts v Webster (1967) 66 LGR 298, Cubitt v Lady Caroline Maxse (1873) LR 8 CP 704 and A G v Biphosphated Guano Co (1879) 11 Ch D 327. They all seem to endorse the principle that there must be public user of the cul-de-sac. I do not think in any of them were the facts exactly parallel to the case of Nethern Court Road where the road has been laid out for many years, the owners are saying it has been dedicated by implication and the highway authority must, if they pursued their intended action under s.30, at some stage have posted notices in the road among other things describing it as a public highway and informing any aggrieved person how he could appeal. It may be that in such circumstances a court today might hold the road to be a public highway non maintainable at the public expense without any evidence of actual public user, but with the law as it stands at present I do not feel that I would be justified in the absence of evidence of public user, in recommending the Surrey County Council to accept it as such a highway.

- 327 I accordingly recommend that the Surrey County Council should regard Nethern Court Road, except such initial part as may have already been adopted as a public highway maintainable at the public expense, as a private road over which there is no public right of way.

(16) Claimed footpath from Nethern Court Road to Southfields Road

- 328 The claimed path from Nethern Court Road to Southfields Road was added to the agenda for the meeting only at a comparatively late stage before the meeting. At the meeting Mrs P Boonham, for the Woldingham Association, said that they had no evidence on the footpath, and in fact no-one appeared specifically at the meeting when it first came up to speak for it, but Mr C M F Kreiser of Hillslea Cottage, Southfields Road, volunteered some information and Mrs Torrance supported it later at the evening session on the fifth day.
- 329 Mr Kreiser said that he had been there 30 years and had used the footpath about 20 years himself, and his wife and daughter had used it, and a lot of children going to school and the bus stop, and mothers carrying shopping. No-one had ever been stopped. A number of people had taken it upon themselves to keep the nettles down and the bushes cut back. All the people who used it were living in Southfields Road. The land was scrub land never really used for anything since he had used the path. From Southfields Road it ran up a gap at the side of a property and through two building plots which had never got built on. The owners would know that people were using the path. He was now talking of the third generation as using it. It was shown in a map prepared in January 1979 for the Parish Magazine. Mrs J Torrance, of Hillcroft, Nethern Court Road, at the evening session on the fifth day of the meeting, said that hers was the last house and she had lived there just over 18 months, but she had lived in the village nearly 16 years in Butler's Dene Road. She just wanted to say that the footpath from Nethern Court Road to Southfields Road, though it had no public footpath sign, had been a right of way since she had lived there. She did not know anybody in Nethern Court Road who objected to its being used as such. The original owners of Hillcroft owned all that land. The people who lived in Hillcroft had friends in Southfield Road who

used the path and then other people used it. There were also five evidence forms submitted. One from Mr John Osborne and family spoke of use 50 times a year only from 1979 to 1986, though it did describe the path as a historic footpath traditionally used over many years for access to the Village and said that it was periodically overgrown but cut back by the villagers. Another from Mrs Annette Coombs, of Southview Road, said they had always known it as the Drainpipe, and I think she must be referring to FP36 from Southfields Road to Upper Court Road, reaching Nethern Court Road via the latter, particularly as she lives in Southview Road. Another was from Mr L Nenon who lived in Southfields Road in 1984 and 1985 and spoke only of use in those years. Another was from Mrs E M Herbert, of Croft Road, formerly of Park View Road, who spoke of occasional use from prewar to the present day, and another from Mr A Herbert of Croft Road, formerly of Lunghurst Road, who said he had never used it but it had been recognised as a public right of way and a recognised route to the Village for residents in Southfields Road.

- 330 This path provides a convenient short cut for various residents in the northern part of Southfields Road to reach the centre of the Village and the Village shops via Nethern Court Road and Slines Oak Road. It would not seem to be of use or interest to anyone else except as part of a round walk. There is a large building plot situated at the back of five houses in Southfields Road and it has a narrow strip access to Southfields Road adjoining Holly Cottage, the most northerly of these five properties. Starting from the Southfields Road end the path runs up the narrow access strip and then diagonally across the plot in a rather wiggly line through small trees and undergrowth, the plot being very much overgrown. The path then enters what appears to be another building plot having a frontage to Nethern Court Road (though it may possibly be part of a property fronting Southfields Road) and continues across this plot to a point in Nethern Court Road about opposite the southern boundary of the house known as Hillcroft. The path rises fairly steeply from Southfields Road to Nethern Court Road. It is well trodden through the plots though the ends are rather inconspicuous, particularly the Southfields Road end and I do not think a stranger would realise it was there.
- 331 Whatever the owner or owners of the plots may think on the subject is, of course, unknown to me. As things stand at the present time, the public use is doing no harm since the land is waste, but if planning permission were ever to be forthcoming for the development of the plots, the existence of a public footpath across them might diminish the value considerably. I would, therefore, expect the owners to object, and the situation is not one where they could readily be regarded as having willingly dedicated the path. There was no evidence of any notices or obstructions at the time I inspected it.
- 332 The question is, therefore, whether the public have used the path 'as of right' for 20 years. Has the user been open and not secret? Have the users used it believing themselves to be exercising a public right to pass from one highway to another, Hue v Whiteley [1929] 1Ch 440 at p. 445? I have already recommended that Southfields Road should be accepted as a public highway non-maintainable at the public expense, or at least as a bridleway. If the claim for the footpath were to go forward it would be necessary for the footpath to be extended

along Nethern Court Road, which I have found to be a private road for the greater part of its length, until it reaches the public part.

- 333 I have had some doubt as to whether the user has been open in view of the heavily overgrown state of the land and it is not shown on any Ordnance Survey Map, but I think that if the owner or owners inspected the land from time to time they must have realised that people were walking through. The people who have actually used it are confined to a fairly narrow class, namely some of the frontagers of part of Southfields Road but I think they are 'public' for this purpose as the claim is not confined to them as a class. I have every confidence in what Mr Kreiser said and he would, I think, be a good witness. But I really feel that before I could make a positive recommendation for steps to be taken for inclusion of the path in the definitive map I would require to have more supporting information. It is not very satisfactory when no-one appears in support of a claim and I only hear from people who just happen to be present, particularly as the claim may have serious financial consequences for the owners. Nor do I think the evidence forms add much of substance in proving actual use for the required period. I do not feel that in the circumstances I should go beyond saying that what Mr Kreiser told me, and he is, of course, supported by Mrs Torrance who, however, does not seem to have used the path herself, raises a case for some more detailed investigation of the merits of this claim, and particularly to find out who has been using it and for how long and how many people would be prepared to come forward in support of the claim, which I would expect to be contested. I do not feel that this work need have a high priority at least unless and until the public use is challenged.
- 334 I accordingly recommend that the Surrey County Council should investigate the claim to the footpath from Southfields Road to and along Nethern Court Road, perhaps with the assistance of the Woldingham Association.

(17) Claimed footpaths - Footpath 40 to Station Road and Church Road

- 335 Footpath 40 in the definitive map of rights of way runs from the western end of the loop section of Park View Road in a westerly direction to the eastern boundary of the wood opposite Woldingham Station. It then turns north and runs along the eastern boundary of the wood and outside the wood by a long and fairly steep flight of steps to Station Road. There is a concrete public footpath notice at the Station Road end. The claimed footpath continues into the wood from the point where FP40 turns to run down the steps and after a short distance it divides one branch continuing in a rather wiggly fashion in a westerly direction to the South-Eastern Electricity Board's Sub-Station in Church Road opposite the station; it is claimed to run down the steps of the sub-station. The other branch runs in a north-westerly direction, again in rather wiggly fashion, to emerge in Station Road rather more than half way down to the station from the point where the FP40 steps emerge. According to the report of Mr A V Wild for the Surrey County Council FP40 is shown on the 1896 edition of the Ordnance Survey Map, which shows the wood as having defined boundaries to the south and east and no paths through it. Then the report says the 1912 edition shows FP40 and the steps.

had regard to the argument advanced by Miss Fishwick as recorded in paragraph 387 of this report. It seems to me that the public have been enjoying walking in this field as recreation land and in so doing have sensibly used a route round the outside so as not to spoil the centre of the field for agricultural purposes. This is something which has suited the public and the Council and their agricultural tenant. But I do not think such a continuous recreational walk constitutes a public right of way.

- 412 It seems to me therefore that for continued recreational use of field 3 the public must look to Tandridge District Council, and I would observe that in the Conveyance to the Council they appear to have the right to open up a right of way from field 3 to High Drive through field 1, if not through part of Mr Sinclair's garden, which they could permit the public to use. Whether or not this right has since been extinguished or released I do not know. I would add that it is also referred to in the 1962 licence of field 1 which is granted subject 'to the twelve foot right of way from High Drive to the open space belonging to the Caterham and Warlingham Urban District Council such right of way to be used only for their officers, workman or other persons directed by them'.

4 SUMMARY OF RECOMMENDATIONS AND CONCLUSIONS

- 413 (1) I have recommended that the Surrey County Council should accept that the following roads are public highways in the full sense not maintainable at the public expense, but that if they were not disposed to accept this recommendation, they should take the necessary steps to include them in the definitive map of rights of way as public footpaths -

Park View Road
Southdown Road

- (2) I have recommended that the Surrey County Council should accept that the following roads are public highways in the full sense not maintainable at the public expense, but that, if they were not disposed to accept this recommendation, they should take the necessary steps to include them in the definitive map of rights of way as public bridleways -

Croft Road
Long Hill
Camp Road
Hilltop Walk
Beulah Walk
Church Road (as far as not already accepted as a full public highway maintainable at the public expense)
Butlers Dene Road
Southfields Road
Upper Court Road
Upland Road from Butlers Dene Road to Slines Oak Road

(3) I have recommended that the Surrey County Council should accept that the following roads are public highways in the full sense not maintainable at the public expense -

The Green

(4) I am not satisfied that the following roads are public highways in the full sense but I have recommended that the Surrey County Council should take the necessary steps to include them in the definitive map of rights of way as public bridleways -

Wood Walk

Dukes Hill Road from its junction with Wood Walk down to its junction with Slines New Road

Upland Road across Warren Barn Farm from Slines Oak Road to the Croydon-Limpsfield Road B269

Southview Road

(5) I am not satisfied that the following roads are public highways and I have recommended that the Surrey County Council should regard them as private roads over which there is no public right of way -

High Drive (save for the existing FP38 on the definitive map)

Dukes Hill Road south of its junction with Wood Walk

Park Ley Road (subject, however, to steps being taken to amend the definitive map of rights of way to continue public footpath FP44A along it to Slines New Road)

Nethern Court Road (except such initial part of it as may already have been adopted as a public highway maintainable at the public expense)

(6) I have recommended that the Surrey County Council should take steps to add the claimed footpath from Long Hill to Camp Road to the definitive map of rights of way.

(7) I have not felt that the rather scanty information put before me in relation to the claimed footpath from Nethern Court Road to Southfields Road has been sufficient to do more than raise a case for some more detailed investigation of the merits of this claim, and I have recommended that the Surrey County Council should investigate the claim.

(8) I am not satisfied that the undermentioned claimed footpaths are public footpaths and accordingly make no recommendations for steps to be taken for their inclusion in the definitive map of rights of way -

Claimed footpaths from FP40 to Station Road and Church Road (but I draw the Surrey County Council's attention to the desirability of making the steps on FP40 safe and restoring the handrail down them, matters of some urgency).

Claimed footpaths through Angell's Field and adjoining fields.

414 In paragraph 6 of this report I explained in effect that any acceptance by Surrey County Council of roads as public roads not maintainable

at the public expense as a result of any recommendations I might make would not have any binding legal force, only a court of law could give a binding decision, but that I hoped that the result would become generally accepted. Woldingham's roads have now been laid out and in use for very many years. It was probably the expectation of the developers that it would not be long before they were made up and adopted as public highways. But for most of the roads that has not happened. In many cases the whole or part of a road is vested in the Woldingham Association's company, in other cases the owners are now unknown or have no further concern. The system of private rights over the roads seems always to have been partial and incomplete. With the passage of time and changes of plots the position has, I believe, become more unsatisfactory and it is now difficult in some cases to know who has rights over what. I think many people in Woldingham would be very surprised to find, if reliance were placed on private rights, that there were many places in the villages to which they could not go along the roads as of right for an afternoon walk or ride or, where the road surface is sufficiently inviting from time to time, drive. Most residents seem to believe that they have a public right to go along all the roads. But the Woldingham Association and most residents are anxious that this should not lead to the making up and adoption of these roads by the County Council under the private street works procedure (consider, eg, paragraphs 39, 41 and 65 of this report). The statutory powers relating to the making up and adoption of roads under the private street works procedure (now in Part XI of the Highways Act 1980) apply equally whether the street is a private road over which there are no public rights or whether it is a public highway not maintainable at the public expense. It would, I think, be unusual for a highway authority to seek to apply this procedure against the wishes of the majority of the frontagers to a street (save perhaps where the street was important as a through route to residents in other streets), particularly where there are long undeveloped frontages as in the case of, eg, Church Road, Long Hill and the part of Southfields Road south of the Riding School. In the circumstances I would not expect the acceptance of these roads as public highways to lead to a greater likelihood of their being made up and adopted under this procedure. It is further development of frontages, if green belt restrictions are released, which could bring this likelihood about whether a road is private or public. There has for many years been legislation under which a highway authority may carry out urgent repairs to private streets at the expense of the frontagers (now in s.230 of the Highways Act 1980). These apply whether the street is a private road over which the public have no rights or whether it is an unadopted public highway and they have been applied in the past both by the old Caterham and Warlingham Urban District Council and by the Surrey County Council (see paragraphs 47 and 53 of this report). It may be that, if the roads are public highways not maintainable at the public expense (ie unadopted) the Surrey County Council, where possibly dangerous situations are brought to their notice, will feel more responsibility, and therefore be more inclined, to use these powers than if the streets were private roads. If a road is a public highway, adopted or unadopted, then it is the duty of the County Council to assert and protect the rights of the public to its use and enjoyment and to prevent, as far as possible, its stopping up and obstruction (s.130 of the Highways Act 1980), the main object, it seems to me, that the Woldingham

Association have sought to achieve in their long pursuance of the case that these roads are unadopted public highways (see paragraph 84 of this report). And, so far as obstructions are concerned, status as a public highway will, I think, in practice, preclude the construction of sleeping policemen, or road humps as the statutory provisions call them, as the necessary conditions, eg, a speed limit and street lighting at the relevant part may not be present on a Woldingham road (see paragraphs 73 and 246 of this report). Acceptance of roads as unadopted public highways, where I have recommended this will, it seems to me, reflect the situation for those roads as most local residents seem long to have believed it to be and will achieve the main object of the residents' Association. I do therefore indeed hope that, if these recommendations are accepted by the Surrey County Council, the result, as mentioned at the start of this paragraph, will become generally accepted.

- 415 Where my recommendation is for adding a public bridleway or footpath to the definitive map of rights of way there is as explained in paragraph 6 of this report a procedure to be followed if such recommendation is adopted by the Surrey County Council, and indeed where I have reached the conclusion that it is not appropriate for me to recommend the Surrey County Council to take steps to add a claimed path to the map there is a method of appealing to the Secretary of State for the Environment against any decision of the Surrey County Council to adopt such a recommendation. The statutory procedure for adding a way to the map under Part III of the Wildlife and Countryside Act 1981 involves the making by the County Council of an order to this effect, and public advertisement of the order and service of notice of it on the owners and occupiers of the land affected, giving opportunity for objections or representations. If there are no outstanding objections or representations the County Council may confirm the order. If there are objections or representations which are not withdrawn, the County Council must submit the order to the Secretary of State, a local inquiry or hearing will be held by an inspector appointed by the Secretary of State, and the Secretary of State will decide whether or not to confirm the order in the light of the inspector's report. Notice of confirmation by the County Council or the Secretary of State will be advertised, and served on owners and occupiers. An order takes effect on confirmation subject to any person aggrieved by it having the right to apply to the High Court within 42 days of the advertisement of its confirmation for it to be quashed on the ground that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by non-compliance with its statutory provisions. When a way has been so added to the map, the map is conclusive evidence of its existence (s.56 of the 1981 Act). By s.53(5) of the 1981 Act any person may apply to the highway authority for the making of an order adding a way to the map, and, if the authority decide not to make an order, the applicant may within 28 days after service of notice on him of the decision serve notice of appeal on the Secretary of State and the authority. If on such an appeal the Secretary of State considers an order should be made he will give appropriate directions to the authority, and the order procedure described above will take place. If, therefore, the Surrey County Council, as a result of my conclusions, decide not to make an order for any of the claimed paths, it may be open to a resident to make a formal application to them under s.53 and then, if that application is rejected, to

appeal to the Secretary of State. I would, however, emphasise that any such formal application must be in a form prescribed under the Act and the statutory procedure as laid down by s.53 and Schedule 14 to the Act, including giving notice of the application to every owner and occupier of the relevant land, must be followed carefully.

416 I have only arrived at my recommendations and conclusions after very careful consideration of the information before me as set out in this report, and have endeavoured to set out fairly fully the reasons which have led me to them. While some of those who attended the meeting or otherwise gave information may be disappointed, I hope they may appreciate the reasons, and I would like to express my thanks to all those who attended the meeting for the kindness and consideration showed me in trying to find out fully the facts and the arguments involved.

P. N. D. Hamilton

6th December, 1986.

ROADS IN WOLDINGHAM – WHOSE RESPONSIBILITY?

The status of a number of roads and paths in Woldingham has been a long-standing problem and one which Surrey County Council are as anxious as local residents to settle.

In an attempt to resolve the situation the Council are holding an informal Hearing to inquire into the status of all these ways commencing on Tuesday 6 May 1986 at 10.30 a.m. in Woldingham Village Hall. The issue is whether or not they are considered to be public highways and therefore the responsibility of Surrey County Council. The ways in question are listed in Annexe 1 to this letter.

Mr R.N.D. Hamilton, former Deputy County Clerk of Buckinghamshire County Council and a specialist in planning and highway matters, has been appointed by the County Council as the Hearing's independent Chairman. His task will be to inquire into and report to the County Council with any appropriate recommendations on the status of the roads and paths listed. Decisions will then be taken by the Tandridge Area Highways Sub-Committee of the Council.

It is crucial to the success of this inquiry that the views of the residents of Woldingham are made known to the Chairman. The County Council will be participating at the Hearing and so will local residents', ramblers' and horseriding associations.

There may be organizations representing specific roads and also individuals living beside a disputed way, who will wish to attend. Some will doubtless support the view that the roads – or any one of them are highways. Others will be opposed to this view. Whatever your views we would like you to attend and make them known to the Chairman.

If you are unable to attend, written views and evidence on the attached questionnaires will be considered, but hopefully as many as possible will attend the Hearing. It would nevertheless be helpful to hear from you in advance on the questionnaire or with a letter or written statement also. This will enable us to make further inquiries before the Hearing if necessary. Your replies should therefore reach me before 21 March 1986.

What does it matter to you?

If you are by now wondering what is, or is not, a highway and why it should matter in any case see Annexe 2 for an explanation.

What can you do?

Study the attached list of roads and ways in Woldingham and consider with which of these roads you are familiar and how long you have known them.

consider which you have used and which you have known other people to use. Then, if you can, fill in as much as possible of the attached questionnaire (Annexe 3) and return it to the address given. Whether or not you fill in the questionnaire you are welcome to attend the informal Hearing and make your views known to the Chairman.

If you are a resident on any of the roads listed you may have views as to whether the roads are public highways. Again, we would like to hear from you both on the attached forms and in person at the Hearing. The forms are not intended to be a substitute for personal attendance so do make the effort to attend if you can.

If you are resident on any of the roads and if the Deeds to your property are readily available we would like you to examine these and advise us of any private rights of way you have and preferably to bring them along with you to the Hearing so that we may inspect them.

Finally, it is important that you use a separate form for each road or way. If you need more than the 3 forms attached you can obtain them from Mrs B. Boonham, Ridgeway Cottage, Southfield Road; Mrs S. Cristmas, 'High Spindle', Long Hill; or Mr George West, Crescent Hardware, The Crescent.

What will the Hearing Involve

After an initial statement on behalf of the County Council, the Hearing will be opened to a general discussion on any points of law, fact or principle involved. This might include comments on the history of Woldingham, the effect of private rights of way and Woldingham Association's ownership of certain of the roads. But it would not be limited to these topics and could include other such matters that you might wish to raise.

There will then be an inquiry into each of the roads and ways listed in turn. You will have an opportunity to give your views and any information relevant to the investigation on each of the roads you are interested in.

Don't forget, it will be an informal Hearing so the procedure will be as flexible as possible in order to be able to resolve the issues.

Thank you for your co-operation. If you have any questions please speak to Miss P. Fishwick
Tel: 01-541 9044.

F.A. Stone
Clerk and Chief Executive
County Hall, Kingston upon Thames