

**SURREY COUNTY COUNCIL****LOCAL COMMITTEE (WAVERLEY)****DATE: 25 SEPTEMBER 2015****LEAD OFFICER: DEBBIE PRISMALL, SENIOR COUNTRYSIDE ACCESS OFFICER****SUBJECT: ALLEGED PUBLIC FOOTPATH BETWEEN PETWORTH ROAD/LOWER STREET AND COLLEGE HILL, HASLEMERE****DIVISION: HASLEMERE****SUMMARY OF ISSUE:**

The County Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 (WCA 1981) to modify the Definitive Map and Statement (DMS) if it discovers evidence that can be reasonably alleged to support a modification. An application has been received for a Map Modification Order (MMO) to add a Public Footpath between Petworth Road/ Lower Street and College Hill, Haslemere to the Surrey County Council DMS as shown on the attached drawing of 3/1/20/H48 (**Annex A**). The path was blocked by the erection of a fence in February 2015.

It is considered the evidence is sufficient to support that public footpath (FP) rights can reasonably be alleged to subsist. As such a legal order to modify the DMS should be made.

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

- (i) Public Footpath rights are recognised over the route shown between points A – B – C – D - E on Drg. No. 3/1/20/H48 and that a MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 be made to modify the Definitive Map and Statement. The route will be known as Public Footpath No. 604, Haslemere.
- (ii) If objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for determination.

**REASONS FOR RECOMMENDATIONS:**

The evidence submitted in support of the application is considered sufficient to establish that public footpath rights are reasonably alleged to subsist, having been acquired under both statutory presumed dedication (under s.31(6) of the Highways Act 1980) and common law. It is considered that landowners have not taken sufficient actions to demonstrate their lack of intention to dedicate public footpath rights during the relevant period. A MMO to modify the DMS by the addition of a public footpath as described above should be made under s. 53 of the WCA 1981.

## **1. INTRODUCTION AND BACKGROUND:**

- 1.1 In March 2015, Robert Serman of the Haslemere Society, c/o 23 Courts Mount Road, Haslemere GU27 2PR submitted an application for a Map Modification Order (MMO) to add a Footpath between Petworth Road/ Lower Street and College Hill, Haslemere. The claimed route runs between points A – B – C – D - E as shown on Drg. No. 3/1/20 /H48 (**Annex A**).
- 1.2 The application was accompanied by 64 public way evidence forms showing use of the route between 1968 and 2015 on foot. For the legal background for map modification orders see **Annex B**. The relevant 20-year period for the claim is 1995 – 2015.
- 1.3 The claimed route runs from Petworth Road/ Lower Street, Haslemere shown as point A on **Annex A** through a gateway beside Lloyds Bank in a south westerly direction to a gateway at point B. To the rear of the Bank building the path goes up 2 steps and runs beside a former car parking area for staff and customers, separated from the car park by bollards. It then continues across a surfaced area through point C and D to join College Hill at point E. The total distance A – B – C – D - E is 52 metres. The path has a tarmac surface for the whole of its length.

## **2. ANALYSIS:**

### **PUBLIC USER EVIDENCE FOR THE ROUTE:**

- 2.1 Section 31 of the Highways Act 1980 provides that the claimant's evidence must show that the route has been enjoyed by the public for a 20-year period, calculated retrospectively from the point at which that use was first challenged. The use must have been without force, secrecy or permission. Public use can also lead to the acquisition of public rights at common law. In such cases the use must have been sufficient to raise a presumption that the landowner had intended to dedicate the route.
- 2.2 Section 31 provides no minimum level of user for the establishment of a public right of way. Instead a route must have been used by a "sufficient number of people who together may sensibly be taken to represent the people as a whole/the community in general". The House of Lords has ruled that the amount of user must be such as might have been reasonably expected if the route in dispute was an undoubted public highway. The necessary level of use must therefore be considered on a case by case basis.
- 2.3 There are 64 claimants, 50 of which have used the route on foot for the full 20-year period calculated from 1995 – 2015. Eight people have used the route for 40 years or more. One person (UEF 1) has also used the path on a bicycle. Two people (UEFs 3 and 4) say they also used it as access in a motorised vehicle, presumably to Lloyds Bank car park. The total number of journeys per year for all of the users ranges from 10 times a year to every day, with an average of 185 times a year.
- 2.4 The applicant and thirteen people, who completed user evidence forms, have been interviewed regarding their use of the path. All of those

interviewed confirmed their use of the path until it was blocked off. The main use of the path has been for access to the town centre for shopping, access to the bank, train station, doctors, post office, school, entertainment and for business purposes. 20 claimants state they used the path to go to the Bank as well as for shopping.

- 2.5 A summary of the user evidence can be found at **Annex C**.
- 2.6 Mr J C S Mackie (UEF 25) was a Town Councillor for 20 years, including Town Mayor from 1993 – 94, and a Borough Councillor for 12 years. Whilst in office he does not recall any discussions regarding the path taking place. He has lived in Haslemere since 1959 and has always been aware of the path. He states “I never questioned its legal status. It was always a footpath and was never closed until recently. If it had been closed I would have heard about it through the Council.”
- 2.7 Mrs S J Farley (UEF 16) ran a nursery school on College Hill from 1970 until 1994 and lived there until 2006. She used the path all the time with the children and used to walk them through when going on outings to access the coach parked on the Petworth Road. She says the path has always been tarmaced and the Lloyds Bank gate was always open. Mrs Farley states “I remember a chain across occasionally to stop people parking but it didn’t stop people walking through. There was nothing to say we couldn’t use the path. There were no private signs. Loads of people used it – I thought it was common land/ no man’s land.”
- 2.8 Mr and Mrs Weston (UEFs 62 & 63) have used the path since 1984. They have stated “It is a very logical route and safer than using College Hill. The bottom of College Hill was never a good place to cross the road and then the railings were put up so you couldn’t cross there. The pavement is very narrow especially with a buggy. We always saw other people using the path. The gate has never been closed – we don’t think it can be closed. We have never seen any notices saying we couldn’t use it. There has always been a notice in the car park about parking for Lloyds Bank customers. In later years there have been notices about parking in 2 spaces just off College Hill. We remember the Bank putting a chain across the car park entrance occasionally but that didn’t prevent people walking through. We have used it so much and have never seen any attempt to block it off or anybody demanding people have permission. We have never been challenged whilst using it.”

#### LANDOWNERS EVIDENCE

- 2.8 The section between points A – B is owned by Lloyds Bank Plc. Ms D Dunkley, the Branch Manager for the last 4 years has confirmed that the green signs on site are Lloyds Bank ones and were already on site when she joined the Bank. She stated that the Premises department had asked her to shut the gate at point B for one day a year to preserve their rights. This had been done for the past 4 years during the Christmas/ New Year period. She does not know whether this was done before her time but confirmed that the gate was only shut and not locked and that in any case people could walk around it. Mrs Lockwood (UEF 24) is the only claimant who refers to the gate being “closed by Lloyds Bank once a year”. A licence dated 12 February 1988 granted Lloyds Bank a private pedestrian and vehicle right of access to their property across the land between points B –

## ITEM 7

C – D. In the licence it states that it could be terminated at any time after the giving of not less than 2 years notice to expire on 31 December in any year. It is understood that this notice was given before the erection of the fence. The licence refers to a Deed dated 31 July 1969 involving Lloyds. The Land Registry details also refer to a Deed dated 9 June 1958 being extinguished by the later Deed. This would imply that Lloyds Bank have owned the land since at least 1958. Mr Manville, who was the Bank Manager between 1969 and 1984 has been interviewed to clarify his use and knowledge of the route (UEF 29). He has confirmed that the pathway was open long before his time at the Bank and there were no signs up, it was just open. Mr Manville has stated “The Bank welcomed people using the path – it was a service you gave.” Furthermore he has confirmed that he has always seen people using the path.

- 2.9 The section of path between points B – C is owned by Dove Properties. They own No. 14 High Street, Haslemere and attendant land to the rear. ‘The Entertainer’ shop in No. 14 is one of their tenants. Mr T Warrell, Consultant Property and Development Director for Dove Properties, has stated that they fully support the initiative to establish a pedestrian right of way, which they believe touches their ownership to the rear of Lloyds car park. They bought the land in April 2011 from a developer and before that say it was owned and occupied by Woolworths for many years until their insolvency. Since Dove Properties ownership they have freely used the pedestrian access route and noted that the general public do as well. They have not taken any action to prevent public use to the extent that it affects their land.
- 2.10 It is understood that during Woolworths’ ownership, of the land between points B – C, they ran a garden centre from the back entrance and the public would access it from College Hill via the alleged path.
- 2.11 Mr P Warner and Mr H Robbie own the section of path between points C – D. They purchased the land in June 2014. They strongly dispute that public footpath rights have been established over the alleged path. They have submitted four statutory declarations all dated 29 April 2015 from themselves, Peter John Spooner and Alan Perry as evidence that the land has been clearly signed as Private Property. It is their opinion and their lawyers that the notices provide sufficient evidence to dismiss the claim.
- 2.12 Mr Spooner states that he purchased the land on 29 February 2008 and sold it to Mr Warner and Mr Robbie on 2 April 2014. “Up to and including 31 December 2013 Lloyds Bank plc had the benefit of a licence to use the land (in common with other users) for the purpose of obtaining access to the car park at the rear of the Bank’s premises. At some time before I owned the Land, and at all times during the period I owned the Land, the Bank displayed various notices on its premises.....”
- 2.13 Mr Perry states that he is familiar with the land and “For a period during the late 1980’s and early 1990’s I was in partnership with Graham Turner and we bought the land that is now Clock House Court and the access to it which included the area serving the rear of the Lloyds Bank building....During the time I was involved with the property I was aware of notices displayed by Lloyds Bank specifying that its land was private and any access did not constitute a right of way or right to park.”

2.14 Mr Robbie states “I have lived in the Waverley Borough Council area since 1989 and during that time have regularly parked on the Land. Up to and including 31 December 2013 Lloyds Bank plc had the benefit of a licence to use the land (in common with other users) for the purpose of obtaining access to the car park at the rear of the bank’s premises. Since 1989 the bank has displayed various notices on its premises....”

2.15 Mr Warner states “I have lived in Haslemere since March 1995 and during that time have regularly parked on the Land. Up to and including 31 December 2013 Lloyds Bank plc had the benefit of a licence to use the land (in common with other users) for the purpose of obtaining access to the car park at the rear of the bank’s premises. Since 1989 the bank has displayed various notices on its premises....”

2.16 All of the Declarations refer to the plan attached at **Annex D** and the photographs of notices attached at **Annex E**.

2.17 The section between D – E is unregistered.

## OBJECTIONS

2.18 Mr Warner and Mr Robbie have objected on the following grounds:

- That the serving of notice on them was not done correctly;
- the existence of notices on site provide sufficient evidence to dismiss the claim;
- they claim the intention of a Deed dated 1988 was to prevent the acquisition of public rights;
- that unsubstantiated safety reasons have been given for keeping the path open;
- that much of what the Haslemere Society presents is not accurate.

## Serving of Notice

2.19 Mr Serman served notice on the landowners as required by the regulations. This included Mr Warner and Mr Robbie, who own the section of land between points C – D. Notice was served at their company address. Although Mr Warner and Robbie have confirmed that they received the notice at the time they do not consider that the notice was served correctly as they own the land as individuals at their home addresses rather than their company. The legislation (Schedule 14 of the Wildlife and Countryside 1981) states that the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates. Although officers consider that the legal requirement had been met, Mr Serman served notice again on 24 June. Mr Warner claimed again it was invalid as it was personally delivered on 26 June and therefore another Notice was sent dated 15 July.

2.20 It is considered that there has been no obvious prejudice caused by any anomalies in serving notice and the statutory requirement for the applicant to serve notice on the registered landowners has been met. The County

## ITEM 7

Council has a statutory duty to make an Order if presented with evidence that the Definitive Map and Statement require modification.

### Notices

2.21 The notices that are currently on site at or near **Point B** are shown below taken from left to right when looking at them on site from College Hill:



PRIVATE PROPERTY  
PARKING NOTICE  
TERMS AND CONDITIONS FOR CAR PARK USE  
PERMIT HOLDERS  
Parking in this car park is free of charge if vehicle displays a valid permit in the windscreen  
NON PERMIT HOLDERS  
£60 fine per visit. Payment to be made within 14 days of issue of a parking charge notice.  
By parking in this car park the user/ registered keeper contractually agrees with these terms and conditions.



**PRIVATE PROPERTY**

Unauthorised parking or parking a vehicle in an area or space that has not been designated to you may result in your vehicle receiving a parking charge notice

**ENFORCEMENT IN OPERATION 24HRS**

Permits must be clearly displayed in windscreen at all times

**TERMS OF PARKING WITHOUT PERMISSION**

You do so at your own risk to property and personal injury and you are contractually agreeing to pay a parking charge fee

**THE FOLLOWING FEES APPLY**

**PARKING CHARGE NOTICE £90 per day**

Or the reduced sum of £60 if payment is made within 14 days

You will incur additional charges resulting from further action being taken against you if the fee remains unpaid

**0845 463 5050**

**UK CAR PARK MANAGEMENT LTD**

(part of parking control management)

**ALL APPEALS IN WRITING TO**

**P O BOX 4760 WORTHING BN11 9NR**

ITEM 7

Gate and Notices at point B



**PRIVATE CAR PARK**

When you use this car park, you do so at your own risk. Lloyds Bank cannot accept responsibility for any loss or damage to your vehicle, its contents or accessories.





This is a private forecourt access prohibited to prevent acquisition of rights of way.

PRIVATE CAR PARK FOR LLOYDS BANK CUSTOMERS ONLY  
WHILST ON BANKING BUSINESS, MAXIMUM STAY 20 MINUTES

The Notice above is located on the right hand side of the pillar facing away from the gate at point B and would not have been seen by people walking through the gateway. For any notice to have legal effect it must be '*visible by persons using the way*'. This has been taken to mean that it must be sited so that it clearly relates to the use of the land that it seeks to protect. The wording directly underneath it relates to car parking so it could be interpreted that the preventing of the acquisition of rights of way relates to vehicular access and car parking. It is not known when this was erected or whether there were earlier signs at this location.

2.22 The Private Car Park signs relate to car parking at your own risk and loss or damage to your vehicle. The "Private Car Park for Lloyds Bank customers only whilst on banking business maximum stay 20 minutes" clearly does not relate to people walking through. In such circumstances an Inspector determining the matter has to consider what a reasonable person would reasonably interpret that the notice meant and would be quite likely to decide that the notice was not effective for the purposes of Section 31(3) because it was not sufficiently unambiguous. None of the claimants have stated that they did not consider them to be relevant to them walking

## ITEM 7

through. For example, Mr Bond (UEF 7) when interviewed stated that “The Private Parking signs didn’t affect us.” Of the 64 claimants only 7 mention seeing notices in their claim forms. Mr and Mrs Chevis (UEFs 9 & 11) state there was a private footpath/ right of way notice. When Mr Chevis was interviewed he clarified this by saying “There have been notices put up by the Bank saying private car park – park at your own risk.” The others say the notices relate to car parking.

### **1988 Deed**

2.23 Mr Warner and Mr Robbie claim that the Deed’s intention was to prevent public rights being acquired over the land and that Surrey County Council were a party to it. The Lloyds Bank Land Registry Property Register refers to the Licence dated 12 February 1988 made between Hunter Simmonds Properties Limited (HSP) (who owned the land to the west of the bank including the section of land between C – D on the plan), Woolworths PLC and Lloyds Bank PLC. It granted a licence to Woolworths and Lloyds who “may use and enjoy a right of access at all times and for all purposes on foot and with or without vehicles” across HSP’s land. Surrey County Council were not a party to this Deed. The plan contained in the licence was produced by the Council, prepared on 14 February 1986, for an earlier agreement that they were party to.

### **Safety**

2.24 Mr Warner and Mr Robbie do not accept that there is an increased hazard in using College Hill instead of the alleged footpath and that SCC were not in a position to make such a claim as no formal assessment has been made. Although safety issues are not a relevant consideration under the provisions of WCA, as to whether public rights have been acquired or not, a number of claimants have mentioned they used the route as a safer alternative to walking down College Hill. Mrs Bond (UEF 8) when interviewed stated that the footpath is not a short cut; it is a preferable route because it is safer. John Hilder, SCC Highways Area Team (SW) Manager has commented that “Using College Hill as the alternative route, pedestrians are likely to cross the road at the junction with The High Street to use the narrow footway on the western side, then cross again at the bend where this footway ends. Some may elect to walk in the carriageway on the eastern side of the road instead. So there is potential conflict with vehicles, where there is none using the ‘alleyway’”.

### **Haslemere Society**

2.25 Mr Serman has applied on behalf of the Haslemere Society. A number of the claimants have been interviewed about their use of the path and no discrepancies have been found in any of the evidence presented. The County Council has no control over what the Society publish.

### **MAP EVIDENCE**

2.26 The route does not appear on any editions of the Definitive Map or in the Definitive Statement. The early Ordnance Survey maps show the buildings with a gap beside the Bank but it is not possible to tell whether there is a path available for use. The 1912 map labels the building as a Bank.

- 2.27 In the absence of any conclusive documentary evidence showing public rights the claim must rely on user evidence either by statute or common law.

### **3. OPTIONS:**

- 3.1 The Committee may agree or disagree with the officer's recommendation that footpath rights have been acquired. Alternatively, they may decide that the evidence submitted shows that the routes should be of a different status to that recommended. Decisions can only be made on the basis of the evidence available. The recommendation is based upon the evidence submitted and interpreted under the current legislation. Matters such as convenience, amenity, security or safety are irrelevant (see **Annexe B**)
- 3.2 Where the County Council decides not to make an order, the decision can be appealed to the Secretary of State. If such an appeal resulted in a Public Inquiry the County Council would normally take a neutral stance.

### **4. CONSULTATIONS:**

- 4.1 Waverley Borough Council, Haslemere Town Council and The Ramblers have all been consulted. Waverley Borough Council's Greenspaces Manager is not aware of any documents relating to the status of the path or any information of how it has been used historically. Haslemere Town Council discussed the application at their Planning and Highways Committee meeting on 20 August 2015. They have checked their archives and confirmed that they do not hold any documentation relating to the status of the path. A number of town councillors stated that they had been using the alleged footpath in excess of 40 years. No response from the Ramblers has been received to date.
- 4.2 Legal Services have been consulted and approved this report.

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

- 5.1 The cost of advertising a Map Modification Order would be approximately £1200, which would be met from the County Council's Countryside Access budget. If objections are received and a Public Inquiry held, additional costs of around £4000 will also be met from the same budget. Most costs are fixed by our duties under Schedule 15 of the WCA 1981.

### **6. EQUALITIES AND DIVERSITY IMPLICATIONS:**

- 6.1 There are no equalities and diversity implications. In any event these are irrelevant factors under the current legislation.

### **7. LOCALISM:**

- 7.1 Although not a relevant consideration, the recording of public footpath rights on the DMS would clarify the status and safeguard the route for the future providing a useful cut through between Haslemere town centre and College Hill.

**8. OTHER IMPLICATIONS:**

Area assessed:	Direct Implications:
Crime and Disorder	None of these are relevant considerations under the current legislation
Sustainability (including Climate Change and Carbon Emissions)	
Corporate Parenting/Looked After Children	
Safeguarding responsibilities for vulnerable children and adults	
Public Health	

**9. HUMAN RIGHTS ACT 1988:**

9.1 Local Authorities are required to act to uphold European Convention rights which are now enforceable in British courts as a result of the Human Rights Act 1988. Primary legislation, of which the WCA 1981 is an example, may require the County Council to act in a different way. While the Council must interpret primary legislation in a way that is compatible with Convention rights that duty does not apply if the County Council could not have acted differently. In this instance it is first necessary to consider whether the action recommended to members touches on a Convention right. The making of this order may affect the rights of the landowner/ occupier under Article 8 of the Convention, the right to a peaceful enjoyment of one's possessions. The Act makes it clear that such rights may only be interfered with in a way that is in accordance with the law. Here the action by the County Council as surveying authority is prescribed by law as described in **Annexe B** of this report. As such the recommendation to Members is not considered to be in breach of the Act.

**10. CONCLUSION AND RECOMMENDATIONS:**

- 10.1 Any decision must be made on the legal basis set out in **Annexe B** to this report. The only relevant consideration is whether the evidence is sufficient to raise a presumption that a public right of way exists. Other issues such as security, privacy, safety or convenience are irrelevant.
- 10.2 Under Section 53 of the WCA 1981, "the authority shall make such modifications to the Definitive Map and Statement as appear to them to be requisite in consequence of the discovery of evidence which (when considered with all other relevant evidence available to them) shows that a right of way not shown on the DMS subsists or is reasonably alleged to subsist over land in the area to which the map relates".

## STATUTORY TEST

10.3 Section 31 of the Highways Act 1980 states that:

1) *“Where a way over any land other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

2) *The period of 20 years referred to in sub-section (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question whether by a notice...or otherwise.*

3) *Where the owner of the land over which any such way as aforesaid passes – (a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and (b) has maintained the notice after 1<sup>st</sup> January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.”*

10.4 As discussed above in section 2.22 the notices on site are not considered sufficient to indicate a lack of intention to dedicate public footpath rights. No claimant has said that they considered the notices were relevant to them walking through. Although Lloyds Bank closed the gate once a year for the past 4 years, it was not locked and could still be easily opened. It is therefore considered that this action did not show a clear lack of intention to dedicate the way. There do not appear to have been any other actions by either current or previous landowners to prevent public use until the erection of the fence in February 2015.

### **Calling into question**

10.5 It is necessary to establish under Section 31 when the public’s use was first brought into question and whether sufficient time has passed (20 years) since any previous challenge. The erection of a metal fence on 8 February 2015 had the effect of preventing public pedestrian access to the alleged footpath. This has been taken as the date the public’s use was first challenged and the relevant 20 year period therefore runs between 1995 – 2015.

10.6 Sixteen of the claimants mention gates on the path. There are currently gates located at points A and B. All of the claimants refer to them always being left open apart from Ms Patricia Lockwood (UEF 24) who refers to a gate being closed by Lloyds Bank once a year. As discussed in 10.4 above this is not considered to have been sufficient to be a calling into question to the public at large.

10.7 The objectors allege that the notices on site referring to the land over which the path crosses as Private Property are sufficient to prevent public rights being acquired. However, Mr Manville (UEF 29) who was the Lloyds Bank Manager between 1969 and 1984 has stated there were no signs during that period and the path was open. Since then, as discussed above none of the claimants considered the notices referred to them walking through.

### **Public use**

10.8 Section 31 provides no minimum level of user for the establishment of a public right of way. Instead a route must have been used by a sufficient *“number of people who together may sensibly be taken to represent the people as a whole/ the community in general”*<sup>1</sup>. It is not necessary for all, or indeed any, of the claimants to have used the route for the whole 20 year period but the cumulative effect must be considered. In this instance 50 claimants used the route for the whole of the 20 year period. This level of use during this 20 year period meets the statutory test, therefore raising the presumption that the routes had been dedicated as public footpaths.

### **Common law**

10.9 An inference that a way has been dedicated for public use may also be drawn at common law where the actions (or lack of) by the landowner indicate they intended a way to be dedicated as a highway and where the public have accepted it. Dedication may be express or implied from evidence of use by the public and of acquiescence to that use by the landowner. The period of use required to give rise to dedication at common law has never been defined and will depend upon its own facts.

10.10 The earliest recollection of any notices is by Mr Perry in the 1980’s in his Statutory Declaration. It is not known whether these are the same notices as are currently up on site or if there were different notices and what they said. However, as discussed none of the claimants considered that the notices related to them walking through. Certainly during Mr Manville’s (UEF 29) time as Bank Manager he has stated that the Bank took no steps to prevent use. Therefore, notwithstanding the view that rights have been acquired under section 31 of the Highways Act 1980, the County Council would also submit that, taken together, the facts imply that the landowners have been willing to dedicate the route as a public right of way.

### **Use ‘As of Right’ or ‘By Right’**

10.10 Under the legislation use of the way must have been ‘as of right’, which means without force, secrecy or licence. It is not necessary for the user to have a belief that their use is ‘as of right’

10.11 Although those accessing the garden centre and the Bank’s car park may have been exercising a private right, there are still a considerable number of people who used the path to access the town centre services. Forty-four of the claimants do not mention accessing the Bank as a reason for using the path.

10.12 It is concluded that there is insufficient evidence for use on bicycle or in vehicles to give rise to any higher rights. The use in a vehicle was presumably to gain access to the Bank’s car park and therefore they would have been exercising a private right. It is considered that public footpath rights have been acquired by virtue of section 31 of the HA 1980 and at common law. A legal order should be made to add the route shown on drawing no. 3/1/20 /H48 to the DMS.

---

<sup>1</sup> Paragraph 5.12 Planning Inspectorate’s Definitive Map Orders: Consistency Guidelines. April 2003.

**Lack of intention to dedicate**

10.13 There is no evidence that any landowner prevented pedestrian use during the relevant period 1995 – 2015.

**CONCLUSIONS**

10.14 In light of the above, it is the Officer's view that pedestrian rights have been acquired over the route under section 31 of the Highways Act 1980. Notwithstanding this it is also argued that rights have also been acquired at common law.

10.15 This being the case officers submit that it can be reasonably alleged that rights have been acquired and that the route should be recorded on the Definitive Map and Statement for Surrey as a public footpath.

**11. WHAT HAPPENS NEXT:**

11.1 If Committee decide that an Order should be made and objections are maintained to that Order, it will be submitted to the Secretary of State for confirmation.

11.2 If Committee decides that no Order be made, the applicant will have opportunity to appeal to the Secretary of State for Environment, Food and Rural Affairs against this decision.

11.3 If the Committee resolution is different to the officer's recommendation the reasons and evidence for the decision should be recorded. This will explain the Council's actions should the matter proceed to Public Inquiry or appeal.

11.4 All interested parties will be informed about the decision.

**Lead & Contact Officer:**

Debbie Prismall, Senior Countryside Access Officer Tel. 020 8541 9343

**Consulted:**

See Section 4.

**Annexes:**

- A Drawing No. 3/1/20/H48
- B Legal background
- C User evidence summary
- D Statutory declarations plan
- E Statutory declarations photographs of notices

**Sources/background papers:**

File 'CP567' including all relevant correspondence and documents can be viewed by appointment at Surrey County Council Meroo Offices.

This page is intentionally left blank