


**SURREY COUNTY COUNCIL**
**LOCAL COMMITTEE (REIGATE AND BANSTEAD)**

**DATE:** 4 DECEMBER 2017

**LEAD OFFICER:** CATHERINE VALIANT, COUNTRYSIDE ACCESS OFFICER

**SUBJECT:** ALLEGED PUBLIC RIGHTS OF WAY ACROSS LAND AT RECTORY LANE, WOODMANSTERNE.

**DIVISION:** BANSTEAD

**1. CROSS BORDER APPLICATION**

- 1.1 This case involves an application for the recording of public footpaths over land that is mostly in Surrey, but partially in the London Borough of Croydon (LBC). Permission was received from LBC to research the claim for the entire length of the claimed paths, including the section that runs over land in LBC.
- 1.2 Delegated power to make a Map Modification Order is currently being sought from the London Borough of Croydon, should the committee agree with the recommendation in this report, to enable Surrey County Council to make an Order on behalf of LBC to cover land in their area.
- 1.3 If delegated powers are not granted, it would still be possible for Surrey County Council to make an Order for a Map Modification Order for paths in their area, and for LBC to make their own Order for any path that fell in their area.

**2. SUMMARY OF ISSUE**

- 2.1 The County Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 (WCA1981) to modify the Definitive Map and Statement (DMS) if it discovers evidence which can be reasonably alleged to support a modification. An application has been received for a Map Modification Order (MMO) to add public footpaths on land to the east of Rectory Lane, Woodmansterne.
- 2.2 It is considered that the evidence is sufficient to allege that public footpaths subsist over the claimed routes. As such a legal order to modify the DMS should be made.

**3. RECOMMENDATIONS**

- 3.1 The Local Committee (Reigate and Banstead) is asked to agree that:
- 3.2 Public Footpath rights are recognised over the route A-B-C on Drawing No. 3/1/36/H46 (Annexe B) and that an MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 be made to modify the Definitive Map and Statement for Surrey. The route will be known as Public Footpath No. 643 (Banstead).
- 3.3 Using the delegated power granted by the London Borough of Croydon, Public

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Footpath rights are recognised over the route C-D-E on Drawing No 3/1/36/H46(Annexe B) and that an MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 be made to modify the Definitive Map and Statement for the London Borough of Croydon. The route will be known as Public Footpath No.966 (Croydon).

- 3.4 Public Footpath Rights are recognised over the route C-F-B on Drawing No. 3/1/36/H46 (Annexe B) and that an MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 be made to modify the Definitive Map and Statement for Surrey. The route will be known as Public Footpath No. 644 (Banstead).

### **4. REASONS FOR RECOMMENDATIONS**

- 4.1 The County Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 (WCA1981) to modify the Definitive Map and Statement (DMS) if it discovers evidence which on balance supports a modification.
- 4.2 In this instance the evidence submitted in support of the application is considered sufficient to establish that public footpath rights are reasonably alleged to subsist over the claimed routes, having been acquired by virtue of use by the public on foot both under statutory deemed dedication (under s.31(6) of the Highways Act 1980) and common law. Evidence suggests that landowners have not sufficiently challenged users or taken sufficient actions to demonstrate their lack of intention to dedicate during the relevant period.

### **5. INTRODUCTION AND BACKGROUND**

- 5.1 The County Council received an application, dated 28th August 2015, from Mrs Christine O'Brien under the provisions of the WCA 1981 for a Map Modification Order (MMO) to modify the DMS by the addition of public footpaths on the land to the east of Rectory Lane, Woodmansterne. The application was supported by 76 User Evidence Forms (UEF) and a number of pieces of documentary evidence. In April 2016 a further 9 UEFs were submitted bringing the total UEFs to 85.
- 5.2 The paths claimed in the application are shown on the plan at Annexe C. Photographs of the claimed paths as seen in 2015 are located at Annexe D. Since 2015 a portion of the field has been acquired by Sutton and East Surrey Water (SESW) and a lagoon has been constructed on site, together with a new access road. In addition fencing has been erected around the lagoon and field and there is a current planning application in process to add further fencing to the site. Photographs in Annexe E show the site during a site visit in July 2017. The plan at Annexe F shows the development that has happened on site, including the location of the access road.
- 5.3 The first path, as shown on the plan in Annexe B, (which for ease of reference in this report will be referred to as path 1) commences from the pavement adjacent to Rectory Lane at point A and proceeds in a north easterly direction uphill for 11 metres to point B where it joins the main field and continues in a northeasterly direction for 378 metres to point C. At point C the path turns to run in a south easterly direction for 36 metres to point D and then easterly direction for 40 metres to meet Lyndhurst Road at point E. The path is currently unfenced to the field on the northern

side and runs adjacent to a wide hedge/belt of overgrowth to the south for the section B-C. It is enclosed between fences from C-D. From D-E the path runs over a route that serves as vehicular access to allotments. At point C the path passes over the County Boundary and for the section C-D-E it is running in land in the jurisdiction of the London Borough of Croydon. There is an access point (marked X on the plan at Annexe C) into the Midday Sun Public House's car park and which serves as farm access to the site for the landowner/tenant. The car park is separated from the field by a metal field gate, which would stop unauthorised vehicular access. There is a small pedestrian gap to one side. There are additional locked gates (marked G on the plan at Annexe C) into a neighbouring plot of land which are not accessible to the general public.

- 5.4 The other claimed path runs around the perimeter of the field and for reference in this report has been split into two sections (path 2 & 3). Path 2 leaves path 1 at point C on the map in Annexe B, and runs in a northerly direction up the eastern boundary of the field for 330 metres to point F, while path 3 continues from point F and runs in a south westerly and then south easterly direction along the western boundary of the field for 735 metres to join path 1 at point B.
- 5.5 Path 2 is currently separated from the field along part of its length by a fence, leaving a wide path of some 2-3 metres in width. The path is bounded on the other side by a wide hedge/ strip of overgrowth. For a portion of its length the properties of Lyndhurst Road lie adjacent, and for a portion there is land referred to on maps as Prospect Plantation. There are access points from this path into Prospect Plantation. When this path was walked in 2015 the field was cropped to the field edge, leaving no apparent path to walk. A recent site visit discovered that the lower half of the field where a lagoon is now located was uncropped, while the upper field was cropped but that a path has been left between the new fence and the hedge.
- 5.6 Path 3 continues around the perimeter of the field from the northern corner. Currently it is not possible to walk the full perimeter along the claimed route as a large access road has been cut into the field creating steep banks either side. It is also currently fenced off to prevent access. Photos in Annexe E show the extent of the change. When this path was walked in 2015 the field was cropped to the field edge leaving no apparent path to walk. A recent site visit discovered that the field though cropped had a strip to the edge that was uncropped.
- 5.7 From path 3 there are a number of access points through the woodland perimeter. These are paths that have been created by foot fall through the wood and down the steep bank and out onto Rectory Road. Where the new fence cuts across these access points the wire has been cut and sections removed to allow access.
- 5.8 At point F there is a gap through which walkers can pass onto adjoining land. When the site was visited in 2016 this was blocked off and impassable. The 2017 site visit noted that it was now open and appeared to be used.
- 5.9 Nowhere on site are there notices to say the public should not be there, or that there are no public rights of way over the land. The accesses onto the land at A, E and F, at the gate onto the Public House car park and the

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various accesses along path 2 and 3 into adjoining land or down onto Rectory Lane are all open and available for use. There is no evidence of gates or stiles at the current time. The only evidence on site of a lack of intention to dedicate is the fence line which circumnavigates the field (through which access has been gained by the cutting and removal of sections of fence), and the construction of the access road which provides a somewhat impenetrable barrier to the average walker. Both of these obstructions post date the claim.

- 5.10 In investigating the claim and analysing the UEFs it became clear that there were a number of other routes claimed by users both across this field and some of the neighbouring ones. These will also be considered in the analysis below.
- 5.11 There is no record of the routes ever having been put forward for inclusion on the DMS since it was first published in 1952.
- 5.12 The paths from A to E (path 1) and C to F (path 2) are currently open and available to use. The other paths including path 3 (F to B) are affected by fencing, landscaping, earthworks and development associated with the construction of a lagoon by the landowners/occupiers – Sutton and East Surrey Water Ltd (SESW), see Annexe F. They are currently only available in part for use. It is clear that since the lagoon, access road and fences have been erected other paths have been created over the land. In particular there are some mown paths across the land joining up the claimed paths. It is unclear who has mowed these paths and therefore why they have been provided.

## 6. ANALYSIS

- 6.1 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. For a public right of way to become established at common law it is necessary for there to have been a dedication by the landowner and acceptance by the public. A dedication may be inferred if either: a) landowners show acquiescence by knowing about and ignoring use by the public or b) the use is so great that the landowners (whoever they are) must have known and taken no action. There is no minimum time period over which use must have occurred for rights to be established at common law. Alternatively, documentary or historical sources may be sufficient evidence to show that the map should be modified. The background to Map Modification Orders is attached at Annexe G.
- 6.2 PUBLIC USER EVIDENCE FOR THE ROUTE
- 6.3 As indicated above in section 5.1, user evidence forms covering the use of the routes by a total of 85 people were submitted during the course of the application. Some of the UEFs referred to the routes claimed in the application but a proportion also showed a variety of different routes over the field, and into neighbouring land.
- 6.4 User evidence will be discussed more fully in the following sections, but before

analysing it, it is necessary to establish the point at which the public's right to use the routes were first challenged. The application was made as a result of a planning application that had been submitted by the occupiers of part of the land, SESW. It would seem that local residents saw the plans, realised that the routes that they believed were rights of way were not in fact recorded as such and that they would be affected by the development. Their right to use those routes was therefore challenged and as a result the schedule 14 application was made. The evidence on file suggests that the first concerns about the impact the SESW development would have on what were thought to be public rights of way were raised in 2014 when Mr Morgan contacted the County Council and an Officer visited the site and took photographs. However, attention was not drawn to the wider public until the following year when the plans were more widely disseminated and the current applicant, Mrs O'Brien was minded to make a schedule 14 application. It is therefore appropriate to take 2015 as the date of challenge. With the date of challenge being 2015, the relevant 20 year period for user evidence would be 1995-2015.

- 6.5 Routes Used: Annexes B & C show the three main paths claimed in this application. In addition there were a number of other paths claimed and Annex H shows these routes, together with the number of users that claimed to have used them. The fact that users have walked more than a single linear route means that their evidence needs to be treated with a certain amount of care. If, for example, a user has completed the written part of the UEF to say that they have used 'a route' three times a month over a period of time, but have drawn three different routes on the plan it may be that they have only actually walked each individual route once a month, or each route with a differing frequency. A relatively frequent level of claimed use may apply to all of the paths collectively whereas their use of a single, linear route claimed in the application may be much less frequent. This sort of situation would have a significant impact on the total amount of use each individual path has received.
- 6.6 Problems with routes shown on the maps: There were a number of problems with the routes that users drew on the maps. This is likely due to the fact that users are unaware of the importance of accuracy when drawing their routes walked, and the fact that some people are not very experienced in map reading and interpretation.
- 6.7 Most notably there is a lack of precision taken when drawing on an alleged route. The routes claimed (paths 1, 2, & 3) follow the edge of the field, but do not necessarily run against the field boundary (in some places the hedge/overgrowth is significantly wide which places the path some way into the field). Yet many users have arbitrarily drawn a line on the map that is notionally in the location of the claimed path but, if plotted accurately on the ground would not correspond to the walked route and might even, for example, cut the corners off (UEF 7, 17 or 24 for example). When analysing the evidence therefore the assumption has been that the users are trying to show that they have walked the actual route of the claimed paths 1, 2 & 3 if the route is substantially in that location.
- 6.8 A common mistake for some users was to draw a route that cuts across the middle of the field, but to refer to having walked around the entire field, i.e. path 2 & 3 (for example, UEF 2 and 3). This is likely to be a mis-reading of the map, interpreting the horizontal line that bisects the field as the northern field boundary rather than a mid-field boundary that is actually no longer present on the ground. When analysing the evidence therefore the assumption has been that the users are trying to show that they have walked path 2 & 3, unless there is specific evidence on the form to the contrary.

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- 6.9 A similar error is to draw a path around the whole area, implying that the user has walked to the west and south of the Midday Sun Public House and through the allotment gardens where there is no path available on the ground. In the case of UEFs 64, 70 & 71 this inaccuracy in recording the route walked implies that the users have been walking a route that is through the public house itself. It is assumed based on the description on the form that this is again a misreading of the map and that the user actually intended to show the route of path 2 and 3.
- 6.10 Another problem can be seen on a total of 30 of the forms where users have drawn a path running from A to B, but not continuing to E to join Lyndhurst Road. Reading the forms, however, it is clear that most of the users had continued all the way through and had not stopped and turned around at point B. When analysing the evidence therefore the assumption has been that the users are trying to show that they have walked path 1 in its entirety.
- 6.11 It is necessary therefore to use some element of interpretation and assumption when deciding on the route that people are attempting to claim, if it has not been possible to verify through interview. As indicated above where routes shown on UEFs are similar in location or description to those claimed in the application, they have been taken as showing the claimed route. Where there is substantial difference or the forms have referred to a different route, these have been recorded as additional routes.
- 6.12 Method of use: The majority of users have claimed use on foot only. The exceptions are UEF 4 & 33 (foot and horseback), UEF 8 (foot, horseback and bike), UEF 22 & 35 (foot and bike). With only 3 users claiming use on either horseback or bike it is not considered that this is sufficient to reasonably allege any rights other than footpath. Therefore only use on foot will be considered in this investigation.
- 6.13 Annexe I contains a graph showing path walked, length and frequency of use.
- 6.14 **Footpath 1**
- 6.15 Number of users: 84 of the 85 UEFs refer to having used path 1, from Rectory Lane to Lyndhurst Road. The only person not to have walked this path is Miss Kray (UEF 78), and the route that she has drawn onto the map is significantly different from any other route drawn by any other user. Although 30 of the users, as mentioned above in section 6.10, have not drawn the link through to Lyndhurst Road, it is assumed from the text on their forms that they have actually walked all the way through. The only exception being Mr & Mrs Dorian (UEF 24) who have not included the link through to Lyndhurst Road and have only mentioned that they walked around the field from Rectory Lane, and Mrs Farrelly (UEF 26) who accessed the path from the rear of her property on Lyndhurst Road, and therefore did not use the link through to the road (B-E).
- 6.16 Years of use: As mentioned above, section 6.4, the relevant period is to be considered as being 1995 – 2015. Even if we discount the users mentioned above (an over-reaction, as they have used the majority of the path), then during the relevant period 48 of the users have been using the path for the whole of the 20 years. In addition a further 22 users have used the path for more than 50% of the 20 years. At the start of the 20 year period, there were 49 users walking the path, and by the end of the 20 year period there were 77 users.
- 6.17 Frequency of use: Four of the users did not mention how frequently they used the path. Of the remaining users 24 claimed to have used it extremely frequently

(i.e. 300 or more times a year – that is in the region of once a day or more frequently). The frequency of the remaining users are also very high, with 17 using it between 100 and 299 times (i.e. more than once a week), and 22 using it 25-99 times a year (i.e. once or twice a week). If we take just the users that have claimed use for the full 20 year period, and add up their claimed usage, we can see that there were approximately 8047 trips per year over the full 20 year period. This works out to an average of 154 trips per week, or 22 trips per day for the full 20 year period. In addition to this there are all the users that have walked for only part of the 20 year period, resulting in a figure of trips per day of considerably higher.

#### 6.18 **Footpath 2 & 3**

6.19 Number of users: 50 of the 85 UEFs refer to having used paths 2 & 3, with an additional 8 having used just path 2.

6.20 Years of use: 25 of the 50 users that have claimed use of paths 2&3 have done so for the full 20 years or longer. At the start of the 20 year period there were 26 people using path 2 & 3 plus an additional 6 that were using just part of the route. At the end of the 20 year period there were 43 users of the paths with an additional 9 just using part of the route.

6.21 Frequency of use: Four of the users did not mention how frequently they used the path. Of the remaining users 19 of those that had used paths 2 & 3 claimed to have used it extremely frequently (i.e. 300 or more times a year – that is in the region of once a day or more frequently), with an additional 4 using part of the claimed route that frequently. The frequency of the remaining users are also very high, with 12 using it between 100 and 299 times (i.e. more than once a week), and 9 using it 25-99 times a year (i.e. once or twice a week). If just the users that have claimed use for the full 20 year period are taken into account, and those that have only used part of the claimed route are discounted, and their claimed usage is totaled, it can be seen that there were approximately 5907 trips per year over the full 20 year period. This works out to an average of 113 trips per week, or 16 trips per day for the full 20 year period. In addition to this there are all the users that have walked for only part of the 20 year period, or part of the route, resulting in a figure of trips per day of considerably higher.

#### 6.22 **Footpath 1, 2 & 3:**

6.23 Reason for use: A number of different reasons for use were given by users, with 32 mentioning walking dogs, 27 for their own exercise/recreation, 21 visiting the local shops or pub, 20 visiting friends, and 14 getting access to the railway station via the path. Use indicates a variety of recreational and utilitarian reasons, as would be expected of footpaths in this location linking as it does two communities, having shops/pub at one end and with impressive views along the way. None of the users suggested that they worked for the owner of the land at any point or were accessing the land for work purposes.

6.23 Limitations: The evidence from the UEFs indicates that the claimed paths were without limitations (gates, stiles etc) throughout the relevant 20 year period. Footpath 1 & 2 remain without limitations, they are open and available throughout their length. Footpath 3 has been affected by the construction of the access road into the new lagoon area and specifically the land that it used to run over has been excavated. To reinstate this path would require steps or a re-profiling of the bank to allow access, and potentially a diversion to move it onto a

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route that could actually now be walked. Any structures installed to assist in the walking of the path would then become a limitation on the path; however they could not be recorded through this process as the legislation only allows us to record limitations that were present during the years of actual use of the route.

- 6.24 Width: Where a public right of way is to be determined by virtue of deemed dedication width can be established either by reference to physical features on the ground (i.e. if the path is a track between fences or hedges), or by the evidence of width given by the users. Where evidence of width is unclear it is usual to presume that the landowner has dedicated the minimal right to the public, i.e. the amount of land over which the public have been dedicated a right is the smallest amount a reasonable walker would require.
- 6.25 In this instance, the width of the paths is described in various different ways on the user evidence forms, whether in metres, feet or in relation to how many people can walk abreast. As mentioned in section 6.5 above, the fact that users have completed a form in relation to more than one path has an impact on the rest of the information in the form. The width is a classic example of where this is the case. In the majority of cases users have stated one width only, despite the fact that the different paths may have differing widths.
- 6.26 Looking at the specific widths mentioned in the UEFs, 19 gave a width of between 1 and 2 metres, and 23 between 3 and 4 ft. Others referred to the width as narrower (some as narrow as 1ft, and much wider – up to 10ft). The majority of the paths are unrestricted along the field edge and so it is appropriate to record a width that reflects what people have been walking as recorded in their UEFs, taking into consideration that a reasonable walker is generally accepted to require 4.0' (1.2 metres) for a footpath<sup>1</sup>. In this instance, because of the number of users that have recorded a width of slightly wider than this, it is thought appropriate to reflect this and that to record a width of 1.5 metres is reasonable.
- 6.27 User interviews  
Users that had completed UEFs were contacted and offered the opportunity to take part in an interview to learn more about their use of the claimed paths. 8 of those that had completed UEF responded, together with the wife of one of those that had completed a UEF. Evidence from the 8 users that had also completed UEFs corroborated the information in their forms and elaborated on some aspects:
- 6.28 Ms Bassett: “I have seen lots of people using the path on foot – it is a very popular place to walk”
- 6.29 Mrs Martins: “I can’t remember ever being told about the paths – we all just knew about them. I remember walking them when I was a child with my family”
- 6.30 Mrs Thorpe: “You see regulars using the path, depending what time you go out. It is not unusual to see people on the paths”
- 6.31 Users that were interviewed also had informative comments to make about their interactions with farmers over the years:
- 6.32 Mr & Mrs Poore have seen men in the field ploughing or harrowing – they have

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<sup>1</sup> For further discussion on this point see “Widths of public rights of way in orders and on the definitive map and statement” by Alan Kind, in Byways and Bridleway Extra, 11.09.2006

always cheerily waved and never stopped them or suggested they shouldn't be there.

- 6.33 Mr Kidman and Ms Gately regularly see other people using the field especially with dogs. They have seen farmers and tractors on the field. One time, about 2 years ago, Mr Kidman was told he couldn't walk around the field, he stopped and moved down to the path at the bottom and the farmer seemed happy with that. There were tractors in the field at the time so Mr Kidman thinks that is may have had something to do with wanting to keep him safe at that point from the tractors, rather than stop them using the path at all.
- 6.34 Mrs O'Brien: "I have seen people working in the field and have also seen and spoken to Old Mr Drake a few times. There was one time when gypsies got into the field and after they had gone, and Mr Drake had cleaned up the mess I met him on the field and he told me it was ok to return there again. No one ever said we shouldn't be there or couldn't walk there".
- 6.35 Additional information
- 6.36 Land Profile: Mrs O'Brien and Mr Morgan both referred to the profile of the land, particularly at the bottom of the field at the boundary of the field and the neighbouring land (allotments and land owned by Mr Morgan), and the relevance that they felt this has to the evidence for the public right of way. The field slopes relatively steeply down to path 1 which is then level for a width of 2-3 metres. From the boundary the ground then continues to slope relatively steeply. Mrs O'Brien recalls that when she first moved to the area there was no boundary fence between the two areas of land and so this flat path was the easiest and most obvious place to walk. Mr Morgan commented that: "The profile of the land over which path 1 runs and of my land suggests that the path was possibly constructed as a path, perhaps when the land was bought from the Council for allotments in the 1950s. The field slopes down towards my fence line and then levels out for the path before sloping down again more steeply onto my land".
- 6.37 Mrs O'Brien's recollection of Council's maintenance: "The gate at the back of the Midday Sun Pub car park was used for access by the Council who used to get onto the field that way in order to cut the grass of the Rectory Lane – St Andrews Road path. In my lifetime Banstead Urban District Council would go in and keep the path cleared. They also cut a little way up the hill on both sides of the field. This would have been between at least the 1950s and the 1970s". Mrs O'Brien also recalls that her grandfather was the Highways Superintendent for Banstead Urban Council, she states that she can remember walking with him as walked around the field next to Rectory Lane. Mrs O'Brien believes that this indicates the public nature of the paths claimed in the application.
- 6.38 The allotments: Mr Morgan referred also to the land that is now the allotments and indicated that on Land Registry Plans prior to the selling of the land to the council for allotments there was a track shown running through the middle of the plot. However following the sale to the Council the track is no longer shown, but there is a 10 foot strip left between the plot and the properties on St Andrews Road. Mr Morgan believes that this suggests that the track was being diverted around the land and then recreated running along the boundary, in the large field. An officer from Croydon District Council has confirmed "that there is a note attached to our old highway record map which states 'The Council purchased a part of the allotment land from a George William Drake. Part of the purchase included a right of way to pass along the access way adjoining the southern boundary of No 1 Lyndhurst Road'". This document is mentioned below in

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section 6.79 regarding documentary evidence. Evidence from the Urban District Council for Couldson and Purley dated during the 1950s indicates that a path that had been walked across what was to become the allotments was investigated and found not to be a right of way. This document is mentioned below in section 6.77.

- 6.39 Other claimed paths: 31 of the 85 UEFs referred also to another route of some description. All of these additional paths, together with the UEF numbers of those claiming them are indicated in Annexe H. It is clear that members of the public have been walking over the whole area over the years, although most of the forms indicate that the paths around the edge (1,2 & 3) are the more frequently used paths and the ones across the field are maybe only seasonal (when there is no crop), or occasional use to cut short a walk in inclement weather. Some of the paths are clearly better used than others, and there are indications that members of the public are continuing off the main field, onto land adjacent. Most notably here are the paths that run through Prospect Plantation which have been claimed by 19 users. However, there are a number of paths on the ground here, and it is not possible to determine from the UEFs the exact path that has been walked. It seems likely that people have walked up Path 2 and entered Prospect Plantation in at least three different locations, and then wandered through the trees on one of the many paths.
- 6.40 Other paths that have more than a couple of users claiming use are a path from the northern corner of the field, over the adjacent field which has been claimed by 12 users, and a path through the pub car park at the south of the field which has been claimed by 14 users.
- 6.41 The user statements give extra clarification on the other paths that have been used, for example;
- 6.42 Mrs O'Brien: "I would take the dog out once a week and would walk all the way around the field. Occasionally, if the weather was not so good, I would cut across the middle of the field to make a shorter walk"
- 6.43 Mrs Thorpe: "I walk circuits of the field; around the edge, with my dog. Sometimes, if the field wasn't cropped I would walk across the middle of the field. There were times when the field was cropped and times when it was fallow"
- 6.44 Mr Morgan: "I think there is the possibility that people regularly use a path across the car park of the Midday Sun from Path 1 to the road which would form an important link"
- 6.45 In comparison to the evidence for paths 1, 2 and 3, the evidence for the other paths is not as strong. The high number of paths walked and the relatively low numbers using each one point to wide use of the whole field as a place to walk, and there is insufficient evidence for each individual path to be able to reasonably allege that any of them are public rights of way. The exception being the claimed paths; 1, 2 and 3 which are clearly the most well used.
- 6.46 **LANDOWNERS' EVIDENCE**  
The plan in Annexe J shows the areas of land owned by each party. The main landowners are The Drake Family, and Sutton and East Surrey Water (PLC).

There is also a small section at Rectory Lane which is owned by Surrey County Council.

- 6.47 The land over which the majority of the claimed paths run has been in the ownership of the Drake family for many decades. In recent years a portion of the field (the lower field) has been acquired by Sutton and East Surrey Water PLC (SESW). The Drake family are represented in this matter by Batcheller Monkhouse and they have submitted their own statement regarding their recollection of the land and how they have managed it over the years. SESW have given a statement regarding their knowledge of the land. Surrey County Council Property Services & Highways Services were also contacted in August 2017 for comment.
- 6.48 **The Drake Family**  
The evidence supplied on behalf of the Drake Family indicates their long association with the land, the family having bought it in 1925. They have stated that between 1952 and 1989 the land was tenanted by a Mr Kent, that there was then a gap in tenancies between 1989 and 1999 when the Drakes managed the land themselves (through an agent), and then in 1999 the current tenant, Mr Colebrook, took over his tenancy of the land.
- 6.49 The evidence refers to a number of incidents and occurrences which they believe go to show that there is insufficient evidence to reasonably allege that the claimed routes are rights of way, and that in addition there is evidence of a lack of intention to dedicate.
- 6.50 Reference is made to the tenancy agreements of Mr Kent and Mr Colebrook in which it is stated that there are clauses to not allow trespassers on the land.
- 6.51 The evidence refers also to the incursions of travelers that have occurred on the field in both 1993 and 2006 and to the actions that were taken as a result. It indicates that in 2006 a letter was sent to the Woodmansterne Green Belt Residents Association stating that there were no footpaths on the field. Unfortunately this letter is not attached to the report and cannot now be located. All that we have to prove that this occurred is a letter to the Agent asking them to write to the WGBRA on those terms. We can only assume that they did as they were asked, and that therefore in 2006 the WGBRA were told that there were no public rights of way over the field.
- 6.52 The Drakes' evidence brings to the attention the farming practices that have been carried out on site over the years, referring to clay pigeon shoots and ploughing that have occurred on site. Attention is drawn to a letter from the Drakes to the tenant advising him to farm the whole field as there were no public rights of way.
- 6.53 Evidence has been supplied of correspondence between the Drakes and Mr Morgan, the adjacent landowner. This correspondence clearly states to Mr Morgan that he has no right of way over the field and is referencing in particular the accesses from Mr Morgan's land onto the Drake's land.
- 6.54 The report goes on to consider specific requirements of the legislation and in particular:
- 6.55 Actual Enjoyment: the report considers that the evidence of use is substantially less than might reasonably be expected in such a residential area if the route were unquestionably a highway. It also considers that the use made of the land by the tenant both in ploughing and in holding a clay pigeon shoot is evidence

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that no right of way exists.

- 6.56 The Public at Large: the report considers that the users giving evidence to the investigation are primarily members of the local community, and that this is not, therefore evidence of the use by the public at large.
- 6.57 As of Right: the report refers to numerous occasions where individuals have been asked to stop walking on the land and that land has been cultivated all the way to the boundary meaning there is nowhere for members of the public to walk without encroaching on the crop.
- 6.58 Without Interruption: the report refers to individuals having been stopped and informed that there was no right of way and to the continuous farming of the field which it is inferred is an interruption to the use. Reference is also made to notices erected at the entrances to the field since 2006 which it is claimed were regularly removed by third parties.
- 6.59 Offer of Dedication: the landowners have, without prejudice to the case, offered to dedicate a public footpath along the line of path 1 & 2. It is noted that this would in some way offer the public the access that the applicant has sought through this application however under the terms of the current legislation the County Council is unable to take this offer in place of a full investigation of the schedule 14 application as the outcome would not achieve all the routes claimed in the application.
- 6.60 **Sutton and East Surrey Water PLC**  
Mr Isherwood and Mr Stanbridge gave a statement on behalf of SESW, explaining their interest in the land and their recollections. They have stated that they have known the field for the last 18 months (since 2015) as a wheat field, and that their contact has been with the tenant, Mr Colebrook, whenever they needed access. Mr Isherwood and Mr Stanbridge indicated that they have seen people using path 1, but that they have seen very little evidence of people walking any of the other paths. They stated that although they have never seen any signs regarding access, they are aware that the Drakes have tried to stop access. They pointed out that they were on site very regularly during the construction of the soakaway but hardly saw anyone use the paths, and have never seen school children. They gave no evidence to indicate that they had turned people away themselves, or that they had erected notices telling people not to be there. Their construction has, however, included the erection of fences and the access road which has clearly prevented use by the public of path 3 and of some of the other paths claimed in the user evidence.
- 6.61 **Tenant – Mr Colebrook**  
Mr Colebrook was interviewed over the telephone and talked about his experience farming the land over which the claimed paths run. He stated that the land is arable, and always has been. Although he farms out of Chaldon, Surrey he states he is on the land fortnightly to carry out regular farming practice and to check the land. His access has historically been via the gates from the Midday Sun Pub Car Park, but more recently is via the new SESW access road from Rectory Lane. Mr Colebrook stated that he is aware that it is part of his obligation as a tenant to stop members of the public on the land and to advise them that there is no public right of way. He indicated that he has seen people on occasion walking the bottom path (Path 1), but that he has always approached them to tell them that they shouldn't be there. Mr Colebrook added that he had rarely, if ever, seen people walking around the perimeter of the field.

- 6.62 Mr Colebrook stated that he has tried to maintain a boundary fence along Rectory Lane however he had found that it persistently gets cut. Similarly he has in the past obstructed the gap that now exists at the top of the field into the neighbouring field. His ability to keep these gaps closed has got harder since the waterboard (SESW) bought the land and started their work there.
- 6.63 As part of his obligations under the arable payments scheme Mr Colebrook is allowed to plough right to the field edge where the field edge is marked by a shaw, such as is the case on three sides of the field. At the bottom where there is a hedge rather than a shaw he is obligated under the arable payment scheme to leave a strip of at least 2m, and not to plough to the edge. Mr Colebrook has stated that this is something he has always done, and explains the unploughed strip at the bottom of the field.
- 6.64 Mr Colebrook has never been instructed to put up any 'no footpath' signs nor has he done so. He stated that it has never been necessary to do so.
- 6.65 DOCUMENTARY EVIDENCE
- 6.66 *Definitive Map*: No public rights appear on the Definitive Map or in the Definitive Statement. It does not appear on any earlier versions of the Definitive Map dating back to 1952 nor has it ever been put forward for inclusion on any of these maps.
- 6.67 *Ordnance Survey County Series Map 1:2500 dated 1881, 1896, 1913 & 1949 (sheet XIX:12)*: There is no indication of a path in the area of the claimed route on any of these maps.
- 6.68 *Ordnance Survey 6 inch Maps dated 1897, 1914 & 1933, (sheet XIX.SE)*: There is no indication of a path in the area of the claimed route on any of these maps.
- 6.69 *Ordnance Survey 1:10,560 dated 1962 (Sheet TQ25NE)*: There is no indication of a path in the area of the claimed route on this map.
- 6.70 *Ordnance Survey 1:25,000 dated 1966, 1988 (sheet TQ25/Pathfinder 1207)*: There is no indication of a path in the area of the claimed route on any of these maps.
- 6.71 *John Senex Map of Surrey dated 1729*: There is no indication of a path in the area of the claimed route on this map.
- 6.72 *Woodmansterne Tithe Map 1842*: There is no indication of a path in the area of the claimed route on this map. The main plots of land over which the claimed paths would run are fields numbered 258, 261 and 263. There are also strips of land separated from the fields by dashed lines numbered 206, 262 and 264 over which some of the claimed paths might run through or adjacent. The apportionment indicates that all the land was owned and occupied at this time by a George Reid and that the fields were put to arable. The linear strips between fields and running alongside the road are referred to as shaw. A shaw is an archaic term for a small wood, thicket or copse.
- 6.73 *Map of Woodmansterne dated 1842 (SHC ref 6120/5/1)(appears to be a copy of tithe)*: There is no indication of a path in the area of the claimed route on this map. The plots of land over which the claimed paths would run are numbered 258, 264, 253. There is an area that looks like it might be a pond in the bottom

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left corner of the field, numbered 256. This map appears to be a more colourful version of the tithe map with the shaws drawn in as belts of trees and greenery.

- 6.74 *Tithe Apportionment (SHC ref 863/1/104)*: The numbered plots are described as arable (258 & 261) or pasture (253). Plot number 256 is described as a Gravel Pit and Waste. No rights of way are described in the apportionment over these plots.
- 6.75 *Banstead Urban District Council Records. Highways, General Purpose & Parliamentary Committee Minute Book (1933/34)(SHC ref 6062/2/8)*: There are a number of entries into this minute book referring to the need to widen Rectory Lane in order to accommodate increased traffic due to the two 'new' schools (Chipstead Valley Road and Rectory Lane). It includes a plan indicating the areas to be widened; there is no reference to the claimed paths on this map. However, in the entry dated 27<sup>th</sup> December 1934 the minutes record that "immediately adjoining the Railway Bridge and up to Rectory Lane is a large field which is lying waste and on which at present no development has taken place. We asked the Surveyor to consider whether the corner improvement proposed in the scheme of the Epsom Rural District Council could not be amended on this land at the junction of Rectory Lane and the Surveyor will prepare a plan in the matter". There are no further minutes referring to this plan.
- 6.76 *Epsom Rural District Council, Banstead and Woodmansterne Town Planning Scheme (SHC ref 6070/4/41 & CC54/75)*: The plans in these documents show the whole area with different areas coloured in different shades to denote how densely each area should be built up in a proposed development of the area. The plans show the field over which the claimed paths run being shaded yellow to indicate that the houses should be at a density of 6 houses to 1 acre. Areas of road widening are also shown on the plans in red. They include sections along Rectory Lane, on both sides. The documents are undated however the plan which has been used is an Ordnance Survey map that predates the allotments. Accompanying the plans is a book of reference which gives more information regarding the widening of Rectory Lane, and indicates that the widened road will now be 50ft in part and 25ft in part. There is no reference on the maps or in the reference book regarding the claimed footpaths.
- 6.77 *Urban District Council of Coulsdon & Purley Minutes & Reports, volume XXXVI dated 1950-51 (Croydon Record Office)*: Minutes refer to the purchasing of land for the purpose of a permanent allotment site at the Midday Sun public house. Minutes of 4<sup>th</sup> September 1950 refer to the retaining by the landowner of a strip of land at the rear of houses in Lyndhurst Road, Coulsdon to ensure that he would be able to continue to access his land to the north. Minutes from 4<sup>th</sup> December 1950 refer to a letter received from a resident of St Andrews Road, Coulsdon. In this letter the writer complains that with the creation of the allotments a track currently used by inhabitants of Coulsdon to access the Midday Sun Pub and the shops on Rectory Lane would be prevented from being used. The Committee looked into the claim and decided that the track had not been claimed or recorded as a Public Footpath and neither was there any information regarding the acquisition of rights. They referred to the existence of a sign stating a gate was closed specifically to prevent the public from acquiring rights and concluded that they did not want the track through the allotments to be a public path.
- 6.78 *Aerial photography dated 1948, 1971, 1988, 1998, 2006, 2012*: The earlier photographs are not clear enough to show paths across the field. However, a path can just be made out in the location of path1 in the 1988 photo. The 1998

photo shows what appears to be a path diagonally across the middle of the field from point F as well as a circular feature at the northern end. The 2006 photo shows all the paths (1,2 & 3) as well as some others across the field.

- 6.79 *London Borough Croydon Council annotated plan:* This document, from LBC's highways archive relates to the land over which the claimed path runs from C-D. The annotation reads: "Council purchased allotment land from a George William Drake. Part of the purchase included a right of way to pass along the access way leading to the Allotments 10'-0" wide adjoining the southern boundary of No.1 Lyndhurst Road" There is a portion of this land that is hatched on the map relating to the section over which there is a right of access to the allotments. This confirms the minute from 4<sup>th</sup> September 1950 (see above).

## **7. OPTIONS**

- 7.1 The committee may agree or disagree with the officer's recommendation.
- 7.2 Alternatively, they may decide that the evidence submitted shows that the route should be of a different status to that recommended or along a different line. Decisions can only be made on the basis of the evidence available. The recommendation is based upon the evidence discovered and interpreted under the current legislation. Matters such as convenience, amenity, security or safety are irrelevant (see Annexe G)
- 7.3 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.

## **8. CONSULTATIONS**

- 8.1 Woodmansterne Green Belt and Residents' Association responded to consultation to say that there is plenty of evidence to suggest that the route is a footpath and that they would like to see it recorded as a footpath.
- 8.2 Cllr Clancy (Croydon BC) responded to say that he supports the application by Mrs O'Brien to establish the right of way between Rectory Lane and Lyndhurst Road.
- 8.3 No responses were received from The Ramblers, The BHS, The Open Spaces Society, or any other Borough, Parish or County Councillors.

## **9. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS**

- 9.1 The cost of making an order is not a relevant factor in this decision. The County Council is under a duty to make a MMO to add a route to the DMS where evidence is discovered which, taken as a whole, is sufficient to reasonably allege the existence of a right of way.
- 9.2 Having said this, 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.

## **10. EQUALITIES AND DIVERSITY IMPLICATIONS**

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- 10.1 There are no equalities and diversity implications. In any event these are factors that cannot be taken into account

### 11. LOCALISM

- 11.1 This issue is not relevant and cannot be considered under the current legislation.

### 12. 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	

### 13. HUMAN RIGHTS ACT 1988

- 13.1 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 G of this report. As such the recommendation to Members is not considered to be in breach of the Act.

### 14. DISCUSSION, CONCLUSION AND RECOMMENDATIONS

#### 14.1 DISCUSSION

Any decision must be made on the legal basis set out in Annexe G 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.

- 14.2 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".

- 14.3 Section 31 of the Highways Act 1980 states that “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.
- 14.4 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”.
- 14.5 Calling into question: 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. In this instance the 20 year period has been taken to be the planning application that was submitted by the occupiers of part of the land, SESW in 2015. The period in question is therefore 1995 – 2015.
- 14.6 Public Use: 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”. It is not necessary for all, or indeed any, of the claimants to have used the route for the whole 20year period but the cumulative effect must be considered. In this instance the 85 people that have completed UEFs and given evidence are residents from the local area, some from the Woodmansterne side of the field, others from the Croydon side of the field. It is appropriate therefore to consider that they represent the people as a whole/the community in general.
- 14.7 Use ‘As of Right’: Under the legislation use of the way must have been ‘as of right’, which means without force, secrecy or permission. It is not necessary for the user to have a belief that their use is ‘as of right’. There is no evidence from the users to suggest that the use of the claimed paths was with force, secrecy or permission. Users have talked about having used the path openly and very frequently. Mr Colebrook referred to his inability to maintain a fence line along Rectory Lane as it is persistently being cut, however there is no evidence from users to indicate that fences were habitually cut to reinstate the path or that there were notices that were routinely replaced and ignored. The only evidence to suggest that people were using a route with any kind of force was the fact that use continued even when the field was cropped and people had to walk through the crop – beating a route through. The need to do this is not unusual even on existing rights of way and so need not have alerted the public to a lack of intention to dedicate. No further steps were taken to show to the public that the cropped field was not to be walked.
- 14.8 Lack of intention to dedicate: The majority landowner (The Drakes) has supplied a report detailing their evidence in relation to this case:
- 14.9 They refer to the tenancy agreements which allegedly refer to a requirement not to allow trespass on the land. This is a standard clause in most tenancy agreements. If this clause is in a tenancy agreement it speaks somewhat to the intention of the landowner. However, in order for this to act as compelling evidence of a lack of intention to dedicate this would have had to have been brought home to the users of the path through some overt action (erection of

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notices, fencing of the land, verbal communication for example). The tenant, Mr Colebrook, confirmed that he understood that this was a part of his obligation and that he had approached people when on the land to advise them of the situation. None of the users referred to having ever been told that this was not a right of way, however.

- 14.10 The incursions of travelers which resulted in a letter to the WRGBA about the lack of public footpaths over the land, potentially introduces an earlier date of challenge of 2006. This could mean that the relevant 20 year period would extend from 1996 – 2006. However, it is clear that use continued with the same regularity and volume as prior to this possible challenge date and that unless other actions were taken the intention of the landowner at this point was not clearly brought home to the users of the routes.
- 14.11 The letter between landowner and tenant regarding the need to farm the field without leaving a footpath was private between landowner and tenant so in itself is insufficient to negative the use that has been made; actions taken by the tenant to disabuse the public of their rights would serve this purpose. Some users have referred to the fact that at times the field was ploughed, and the tenant confirmed that he habitually ploughed up to the edge of 3 sides of the field, but the users indicated that they continued to walk the paths and reestablish the path over the ploughed field edge.
- 14.12 The letters between the Drakes and Mr Morgan are between the two parties only, and do not refer to use of the claimed route by the general public as a public right of way. These letters make it clear to Mr Morgan that he had no right of way, and so his use should be removed from the evidence, but unless other members of the public were also informed of the non-existence of a public right of way, the letters would not serve as evidence of a lack of intention to dedicate to the general public.
- 14.13 Although the landowner may consider the evidence of use to be substantially less than might reasonably be expected in such a residential area if the route were unquestionably a highway, it has been shown in section 6.14 – 6.26 that there were 85 users in relation to path 1 and 56 users in relation to path 2&3. In addition it is likely that there would have been additional users that were not captured by this investigation. This is considered to be a substantial amount of evidence and sufficient to raise a presumption that the route is a public right of way.
- 14.14 Use made of the land by the tenant both in ploughing and in holding a clay pigeon shoot do not mean that public rights do not exist, as users gave evidence to indicate that they continued to use the field edge path when it had been ploughed. No user referred to having their use interrupted by a clay pigeon shoot
- 14.15 Users giving evidence to this investigation represented the communities at either end of the path. It is considered that this does, in fact, represent the public at large.
- 14.16 Although the tenant indicated that he had stopped people on Path 1, none of the users referred to being stopped when walking, and although some admitted that the field was ploughed to the edge they were clear that this did not stop them from walking the paths.
- 14.17 No evidence has been supplied to show where the notices were placed, what they said or how frequently they were erected, and none of the users referred to

having ever seen a notice on site. The tenant stated that he had never been instructed to post notices, and had never done so.

- 14.18 The other landowner, SESW, have taken steps to show a lack of intention to dedicate a route over path 3 by constructing an access road and erecting fencing across the route of the path. This has been done since the end of the relevant 20 year period, so does not affect the claim for historic rights.
- 14.19 Despite the evidence supplied by the landowners and tenant in the report, it is not thought that they have demonstrated a sufficient lack of intention to dedicate to negate the use made by the public of the claimed paths over the relevant 20 year period.
- 14.20 The evidence from the Coulsdon and Purley UDC minute books, together with the evidence from the London Borough of Croydon suggests that there had been a path running across the land which is now used as allotments, which members of the public used to get between Coulsdon and the Midday Sun Public House and shops on Rectory Lane. It would appear that there had been a sign at this stage indicating that a gate would be locked annually to prevent public rights from being acquired. Following the creation of the allotments this path was no longer available. However, an access created to enable the landowner to continue to access his land was created from Lyndhurst Road. It would appear that this path was then utilized by the public to gain access to the field and to resume walking a path to the pub and the shops. There is no evidence to suggest that this sign was moved onto the new path.
- 14.21 Sufficiency of use, path 1 2 & 3, – statutory deemed dedication: Volume and frequency of use of the claimed routes (1, 2 and 3) has been discussed in section 6.15 – 6.21. It is considered that there is sufficient evidence of use during the relevant 20 year period to reasonably allege that there has been a deemed dedication of the 3 routes as a footpath, having been used by a significant number of people on foot during the relevant 20 year period
- 14.22 Sufficiency of use, additional paths – statutory deemed dedication: Volume and frequency of use of the additional routes has been discussed in section 6.39. It is considered that there is insufficient evidence of use during the relevant 20 year period to reasonably allege that there has been a deemed dedication of any of them during the relevant 20 year period.
- 14.23 Sufficiency of use, path 1, 2 & 3 - Common law: 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. In this instance use of paths 1,2 and 3 has been ongoing by members of the public for a considerable time, in high numbers and with high frequency, as set out in section 6 above. The use of the route is so high that it is thought that the landowner & tenant must have been aware of the use. The fact that they did not do anything to stop use could be construed as acquiescence to the public use and therefore the use may be such that it could be claimed at Common Law.
- 14.24 Sufficiency of use, additional paths - Common Law: In this instance, regardless of actions taken or not taken by the landowner it is not thought that use of the additional paths is sufficient to raise a presumption of dedication at Common Law.

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- 14.25 Width: As described in section 6.24-6.26 above, it is thought appropriate to record the routes as 1.5m throughout.

### 15. CONCLUSION

- 15.1 In light of the above, it is the Officer's view that, by virtue of the use by the public on foot, public footpath rights have been acquired over the routes described as paths 1, 2 & 3 from A-E, C-F and F-B under section 31 of the Highways Act 1980. Notwithstanding the view that rights have been acquired under section 31 of the Highways Act 1980, it is also submitted that, taken together, the facts imply that the landowners have been willing to dedicate the route as a public right of way and that rights exist under Common Law.
- 15.2 It is further the Officer's view that there is insufficient evidence of use of any of the other paths described in the UEFs for rights to have been acquired.

### 16. RECOMMENDATION

- 16.1 This being the case the Officer would submit that:
- 16.2 The route between A-B-C, as shown on drawing number 3/1/36/H46, should be recorded on the Definitive Map and Statement for Surrey as Public Footpath No.643 Banstead with a width of 2m,
- 16.3 The route between C-D- E, as shown on drawing number 3/1/36/H46, on the Definitive Map and Statement for Croydon as Public Footpath No.966 Croydon, with a width of 1.5 metres, subject to LBC granting delegated powers for Surrey County Council to make the Order.
- 16.3 The route between C-F- B, as shown on drawing number 3/1/36/H46, should be recorded on the Definitive Map and Statement for Surrey as Public Footpath No.644 Banstead, with a width of 1.5 metres.

### 17. WHAT HAPPENS NEXT?

- 17.1 Committee can agree with the officer recommendation, in which case an order would be made to add Public Footpath No. 643 Banstead and No.644 Banstead to the Definitive Map and Statement for Surrey and an order would be made on behalf of Croydon Borough Council to add Public Footpath No.966 Croydon to the Definitive Map and Statement for Croydon (subject to delegated powers being received). If objections to the order were received the County Council would submit the case to the Secretary of State for determination.
- 17.2 If delegated powers are not received Surrey County Council can still make the Orders as they relate to land in Surrey, and LBC can make the Order as it relates to their land.
- 17.3 In addition, Committee may be of the opinion that rights have been acquired over any of the additional routes and could direct the Officer to make an order to record any of those as public rights of way. If objections to any of these orders were received the County Council would submit the case to the Secretary of State for determination.
- 17.4 Alternatively, if committee is of the view that there is insufficient evidence to

reasonably allege that public rights exist over any of the routes, it may disagree with the officer recommendation and direct that no order be made.

- 17.5 Where the County Council decides not to make an order, the decision may 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.
- 17.6 The decision can only be made on the basis of the evidence submitted as interpreted under the current legislation. Matters such as security, privacy, safety or convenience are not relevant (see Annexe G).
- 17.7 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.
- 17.8 All interested parties will be informed about the decision.

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### Lead Officer/Contact

Catherine Valiant, Countryside Access Officer, Tel. 020 8541 9342

### Consulted:

See Section 8.

### Annexes:

- A London Borough of Croydon, delegated powers
- B Order Plan
- C Application Plan
- D Photographs 2015
- E Photographs 2017
- F Map of SESW development
- G DMMO Background information
- H Additional paths claimed in the UEFs
- I UEF Graph
- J Land Ownership Plan

### Sources/background papers:

File 'CP570' including all relevant correspondence and documents can be viewed by appointment at our Merrow Offices.