

MUNICIPAL YEAR 2008/2009 REPORT NO. 92

PLANNING COMMITTEE
25.09.08

REPORT OF:

Director of Environment
and Street Scene

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Agenda – Part: 1

**Subject: WILDLIFE AND COUNTRYSIDE ACT 1981 -
FOOTPATHS – FROM WOODS AT REAR OF
FAIRVIEW ROAD TO TRENT PARK AND TWO
FEEDER PATHS FROM CAMP ROAD OFF ENFIELD
ROAD TO FORMER GUN SITE AND TRENTWOOD
SIDE FROM FARM TRACK BRIDGE BY
MERRYHILLS BROOK: REVIEW OF EVIDENCE OF
CLAIMED PATH & DECISION THEREON**

Wards: Highlands

1. EXECUTIVE SUMMARY

The report sets out a formal third party Claim that three footpaths should be added to the Definitive Map and Statement, and advises Members how the matter should be considered. It reviews the supporting and contrary evidence for the Claim, and recommends acceptance of the Claim.

2. RECOMMENDATIONS

- 2.1 For the reasons set out in para 9.2, the Council does make an Order under s 53 of the Wildlife and Countryside Act 1981 to add the Claimed Footpaths to the Definitive Map and Statement for the area, in respect of:
- a. Path 1, from its western end at Trent Park, to join public highway at the western end of Fairview Road;
 - b. Path 2 from public highway at Enfield Road northwards and past the ex gun site to join Path 1; and
 - c. Path 3 from the end of public highway at Trentwood Side, to join Path 1.
- 2.2 That the applicant and others served with notice of the application be notified in accordance with paragraph 3(3) of schedule 14 to the Wildlife and Countryside Act 1981 of the Council's decision

3 Background

- 3.1 The Council, as Surveying Authority, is under a statutory duty under the Wildlife & Countryside Act 1981 – “the 81 Act” - to keep the Definitive Map and Statement of Public Rights of Way under continuous review. An Order to modify the Map and Statement may be made if the Council is satisfied with the evidence that they should be modified.

3.2 Anyone may apply to the Council for an Order to modify the Map and Statement, and such applications must be strictly determined in accordance with the provisions of schedule 14 of the 81 Act. The Council must also make an Order on its own initiative if it discovers evidence that shows that a right of way that is not shown on the Map and Statement subsists, or is reasonably alleged to subsist.

3.3 Legal Parameters for Considering the Claim

There are very strict criteria for considering such claims. All claims must be evaluated against submitted evidence plus further evidence as available. The merits, suitability or desirability of the Path or the effect of its acceptance onto the Definitive Map and the implications thereof, are wholly irrelevant.

4 The Application

4.1 On 8 January 2008 a formal application for a Modification Order was received from Mr D Cockle on behalf of the Western Enfield Residents Association (“the Applicant”) (and a copy has been placed in the Members’ Library – item 1) claiming a total of three footpaths:

- one Path from the woods at the rear of Fairview Road to Trent Park(‘blue’, Path 1 on the attached map);

and two feeder paths:

- from Camp Road off Slades Hill to the former gun site (‘green’, Path 2), where it meets the Path 1; and
- Trentwood Side to the farm track bridge by Merryhills Brook (‘orange’ Path 3), where it joins Path 1.

4.2 The Application was accompanied by a map, a covering letter dated 8 January 2008, two land registry searches, a committee report dated 10.03.1997 (Report Number 1574 with associated plan), two Google aerial photograph maps, a letter dated 25 January 2008 detailing additional information, thirteen site photographs, a plan dated December 1977 delineating land ownership of the woods and 51 forms (9 of which were added subsequently) completed by persons who claim to have used the ‘Claimed Footpaths’,

4.3 The Claimed Footpaths are shown on the attached Plan, Appendix 1 – i.e.

Path 1, from point D (on Appended plan) on the ‘permissive’ path alongside Trent Park Golf Course, broadly eastwards before turning north, and then east. The Path then follows the perimeter of the former anti- aircraft gun site down to Salmons Brook, crossing over the bridge and turning NW along the bottom of the field, entering the next field and swinging NE along the field boundary to its northern limit. It then turns almost north along the edge of the woodland before entering it and proceeding on a ‘defined’ but meandering easterly path through to Fairview Road. At all times when the path is on the farmland it follows the perimeter of the fields close to hedge lines.

- 4.4 Path 2, goes north from next to no. 17 Enfield Road along a private concrete roadway, past a gate and the rifle club immediately to the east, then around a redundant 'gate', back onto the concrete roadway and on until deviating right/east onto a grass track, swinging north around the old gun emplacement into farmland where it meets Path 1.
- 4.5 Path 3 leaves the end of Trentwood Side and enters a meadow, crossing diagonally NW moving close to Merryhills Brook. Keeping to the south of the brook, but generally to its course, it then joins Path 1 by a footbridge.
- 4.6 To accept a claim the paths should not be cul-de-sacs, they would need to be complete and on a specific Path and would not just be general roaming over land. To be accepted therefore, Paths 2 and 3 depend on Path 1 (or part/s thereof) being accepted. The three Paths are coloured differently for ease of identification, but are not 3 isolated Paths. The linkages between them equally establish complete Paths, which could have been coloured differently on the plan.
- 4.7 The Claimed Footpaths cross land owned by: -
- Lindentree Properties Limited;
 - A. C. Nicholas Ltd;
 - The London Diocesan Fund;
- A section of land remains unregistered.
- 4.9 The Application has been made because the applicant, in effect, alleges that by virtue of the public having walked the Claimed Footpaths, it should be presumed that the current landowners (or previous landowners) have dedicated the Claimed Footpaths as a public footpath, and hence this should be formally incorporated into the Definitive Map through the making of a Modification Order.
- 4.10 The actual process of designating a new footpath is under s.53 of the '81 Act, but the (prior) test of whether it should be dedicated is under the Highways Act 1980, or under common law. (A summarised approach to applying these is given in Appendix 2 & 3.
- 4.12 For presumed dedication to have occurred under s31 of the 1980 Act, a way is deemed to have been dedicated as a highway after 20 years use, unless there is evidence of a contrary intention. Under s31 of the 1980 Act it is for the landowner to rebut the statutory presumption of dedication. In order to establish a presumed dedication under this section, each element of the wording in s31 needs to be proved. This is on the balance of probabilities i.e. whether it is more likely than not that 20 years use has occurred.
- 4.13 At common law, in contrast to the requirements of s31 of the 1980 Act, there is no stipulation of the length of use where there has been an act of dedication – it depends on the circumstances in each case. The

more intensive and open the use, the more compelling the evidence of dedication and acceptance by the public of the right of way and therefore the shorter the period that will be necessary. In the absence of an act of dedication by the landowner the claimant will need to show 20 years use. Further, there is no need to establish whether or not the right of the public to use the way has been brought into question. At common law the evidential burden is upon the claimant to show that the landowner intended or could be presumed to have intended to dedicate the public right of way. Each case depends on whether the facts indicate an intention to dedicate.

5. Evidence in support of the Application

5.1 51 adults have completed public user evidence forms. Collectively this shows use mainly from 1963 to 2008 (45 years), although one claimant refers to 50 years use. A simple summary of the information contained in those user evidence forms is provided at Appendix 4. The Claimed Footpaths are stated to have been used for pleasure (dog walking, exercise, leisure etc), scouting, walking to and from home to Trent Park, as a short cut, access to Trent Park, 'Beating the Bounds' (walking the Parish boundaries) and enjoying the flora and fauna of the area.

5.2 The key points arising from the user evidence forms are: -

5.2.1 Only 2 people acknowledge the presence of obstructions on the line of the Claimed Footpath 1 – one relating to a closure at Fairview Road some while ago and another when EDF (the electricity utility company) was undertaking works by Fairview Road.

5.2.2 A total of nine people note seeing other walkers on the Path and a total of six people note acknowledging the farmer.

5.2.3 None of the walkers had sought permission from the landowners to use the Paths.

5.3 All confirm that there have been no signs or notices advising against the right of access.

5.4 In respect of reference to 'gates & stiles', a total of five people make reference to an unlocked gate/open by bridge over Salmons Brook (not evident now), and three users refer to a gate on Path 2.

6. The Landowners' Position and Other Evidence

6.1 Landowners have been contacted and the key points set out in the their submissions, and in particular what needs to be considered in determining this application, is whether there is evidence of acts on the part of landowners that demonstrate a lack of intention to dedicate.

- 6.2 Lindentree Properties Ltd land - Vicarage Farm - is involved in all 3 Paths;
- 6.3 A. C. Nicholas Ltd at the eastern end of Path1;
- 6.4 The London Diocesan Fund – Path 2 (part) only; plus
- 6.5 Land in unknown ownership (Path 1, part).
- 6.5 Lindentree Properties Ltd
Its agent confirms that the property was purchased in 2005, but it previously acted for the previous owner - CP Holdings. The agent has therefore had responsibility for the land for 15 years.
- 6.6 Footpath 1 – fields 12 and 13 these have been to grass for over 25 years, but it is said “*occasionally this field would be shut for haymaking in the spring*”. Reference is made to “*incessant damage caused by trespassers seeking to gain access*”.
- 6.7 13 farm diary extracts have been submitted to seek to verify that trespass has resulted in the need to repair fences to some fields. The dates on these copies are random (generally spring or late autumn) between May 1994 and April 1997 A recent letter from the farm’s agent does refer to an ex employee who verifies that regular fence repairs were needed in field 12, location ‘A’ (although no dates are cited) and a temporary barrier in the form of a pallet was used to try prevent access.
- 6.9 Fields 4 and 14 are stated to have been used for silage or arable cropping, with occasional winter sheep grazing, which will have involved enclosing with electric fencing. The submission goes on to state that fencing round these fields was ‘largely non existent’ and a log barrier was placed at point ‘D’. In view of the size of field 4 it was regarded as uneconomic to consider fencing. Many other general comments are made by the current landowner’s agent, but none are pertinent to the assessment of the footpath claim. The claimant rebuts the agent’s points. In particular that there has never been fencing to prevent access along Path 2, there has always been access from Trentwood Side, and reference to the ‘log barrier’ is referring to a different location not related to the claimed Path.
- 6.10 Previous Landowner
C.P. Holdings Ltd (owner 1982 – 2005)
Its letter confirms ‘unlawful trespass’ and the need to repair fences. It also attaches the farm diary entries from the 1990’s. One does comment ‘*ramblers had cut wires and pulled fence down*’, but this mentions field 11, which is not affected by the claimed Path.
- 6.11 In respect of the evidence form returned and replies to the standard questions, this includes:
- No s31 plan & statement has been deposited;
 - Walkers have been stopped/turned away;

- Signs have been erected saying 'private property', & these have been defaced;
- Gates have been in place.

6.12 A.C. Nicholas Ltd.

Its interest covers the link between Vicarage Farm field 12 and Fairview Road. In respect of the evidence form returned and replies to the standard questions, this includes:

- No s31 plan & statement has been deposited;
- Walkers have been stopped/turn away;
- Signs have been erected, & these have been defaced;
- Fences have been erected.

6.13 Other separate points are made including reference to the earlier Council report (to which I will return to as a separate consideration in para 6.22). Some of the other points made are not relevant, but it is stated that:

- trespassers have been challenged;
- there is not nor ever has been any through path to any destination;
- signs saying 'Private Property' or 'Trespassers will be prosecuted' have been erected;
- a fence was erected in 1993, plus a gate and padlock, which was forcibly removed on several occasions;
- a more substantial lock was installed in 1996 and there was subsequently a petition to the Council to acquire the land, but this was not acted upon;
- no other claims have been made;
- concluding: access has never been uninterrupted and there is no pathway to any specified destination.

6.14 Footpath 2 (Lindentree Properties)

The agent states trespass has been difficult to control and the gun club has a legal right of access through the padlocked vehicular barrier and pedestrian access has been effected around the barrier and past the gun club enclosure. However this part of the Path is not within the ownership of Lindentree Properties for it to speak definitively of its status.

6.15 The claim's validity is questioned because the fields ("gun site east & west") have been on an annual horse grazing licence. The fencing would have precluded access. The claimant points out that this fencing did not block the Path, but was either side of the track.

6.16 The London Diocesan Fund
No response received.

6.17 Footpath 3 (Lindentree Properties)

Reference is made in its submission to an unspecified period when it was grazed and that after 1998 it reverted to set-aside and was topped

on an annual basis. The farm diary extracts make general reference to fence repairs. It is suggested that these refer to around access point 'C'.

6.18 Other Evidence

There is no specific evidence of any right of way/footpath on current Ordnance Survey maps, nor on the historic maps of 1870, 1897, 1914, 1935 or 1947.

6.19 No reference is included to any such right of way on the statutory Definitive Maps of 1974 (31st Dec.), 2001 (30th June) or 2006 (22nd Sept).

6.20 Aerial photographs of 1946, 1971 (3rd May), 1981 (10th Aug.), 1991 (6th July), 1998, 2001, 2003, and 2006. There is some indication that there may be paths along the claimed Paths (or parts), particularly on the later editions. More important would be any evidence from the intermediate dates, which may help establish the position at the early period of path use. There is some indication that sections of the Claimed Footpaths have been used. However it is not sufficiently conclusive to assert that these are from walkers rather than from agricultural activity. Some fields at some times are seen to be cropped, but generally not so close to the hedges to have conflicted with possible paths. Most fields most of the time seem to be used for grazing. In some places the claimed paths follow farm tracks, hence it is not a definitive guide to the presence of footpaths. However there is the firm suggestion in a range of photographs that the woodland off the rear of Fairview Road does have paths present.

6.21 Enfield Preservation Society (now Enfield Society), which as been in existence since 1936, has produced a local footpath map since the 1973, with revisions in 1980/89/99 and 2001. This map has not indicated the claimed Paths.

6.22 'The Previous Council Report'

Both the claimant and landowner A. C. Nicholas (It only affects this one owner in respect of this claim, eastern end of Path 1) cite an earlier Council report to support their opposing contentions. This is a report of the then Borough Planning Officer to the Environment Committee, 10.3.1997, concerning land off the western end Fairview Road. In brief it advised Committee of a petition (from an unspecified number of signatories) received (December 1996), summarised then as –

- Lodging strong objection to prevention of access to the land by the installation of a locked gate (i.e. as specified in statement by A. C. Nicholas referred to in para 6.12/13 above);
- Stating a right of way can be claimed;
- Requesting the Council to purchase the land to ensure public access to it; and
- The fence and locked gate are steps towards a greater plan to develop the area.

- 6.23 Salient information provided within the report is:
- “There has been no bar to access for many years and there are well trodden paths, mainly facilitating a circular walk, within the site”;
 - Land ownership is fragmented & not demarcated;
 - Committee resolved in 1977 to purchase the land, by CPO if necessary, & the intention was shown on the 1983 Proposals Map (but negotiations were never concluded and finance was not available to proceed);
 - In 1993 a fence & gate were erected, but the gate left unlocked allowing access)& it was only then (i.e. 1996) that it was locked (by A. C. Nicholas) and a warning sign erected;
 - One of the owners (not associated with this Claim) of the (wider) woodland area advised that it would take legal action to prevent unauthorised obstruction to the right of way she claims to land in her ownership;
 - “Petitioners consider that they have evidence of unhindered public use of the path for more than 20 years”; and
 - It is debateable if a circuitous Path could become a public right of way.

6.23 The wooded area in question covered around 2.5 ha.

6.24 In respect of the issues, it seems that the funding position did not change to allow the Council to acquire the land and the right of way claim did not then proceed, probably because access was not denied.

6.25 Fairview Road was adopted in 1938, and works beyond this length were carried out, which suggests that access to the eastern end of Path 1 may well have been available since that time.

7. Consultations

7.1 The Council is only obliged to consult every local authority whose land is affected by a claimed right of way prior to making an Order. However, it is common practice for surveying authorities to consult various organisations and persons likely to have an interest in such applications, to give them an opportunity to make submissions that they feel could assist in helping to reach a decision as to whether or not to make an order.

7.2 Appendix 5 gives the full list of bodies consulted by the Council as the Surveying Authority.

7.3 No further evidence has been received to assist further. Any additional comments received from any party will be reported to you at the committee.

7.4 Environment Agency (EA) – Salmon’s Brook Flood Relief Scheme

7.4.1 The issue of the footpath claim is more complex in the light of the EA bringing forward its Salmons Brook Flood Relief Scheme in

the locality. A revised proposal will be brought forward by the EA to supersede the one that received planning permission a while ago. The scheme will involve constructing an impounding reservoir across Salmons Brook at Hog Hill, west of Fairview Road. The effect of the works will conflict with the eastern section of claimed Path 1.

7.4.2 If the Claim is accepted for this section of Path 1, then the EA would need to promote a diversion of the footpath, both for the temporary construction period and to establish a permanent revised alignment. This will be subject of continuing negotiations and **must not** affect the determination of the current Claim. Any diversion will obviously have some alternative impact on the land holdings crossed and the owner will still have the right to make representations to seek to protect its interests.

8. Evaluation of Evidence

8.1 Members are reminded of the legal position set out in para. 3.3, and para.s 4.9 – 4.13 of this report that presumed dedication can arise either under s 31 of the 1980 Act or at common law.

8.2 The 1980 Act Tests

For deemed dedication to have occurred under s31 of the 1980 Act, a way is deemed to have been dedicated where it “*has actually been enjoyed by the public as of right and without interruption for a full period of 20 years ...unless there is sufficient evidence that there was no intention during that period to dedicate it*”. In order to establish a presumed dedication under this section, **each** of the 5 tests in s31 needs to be satisfied.

8.3 Those 5 tests are: -

8.3.1 the nature of the way is such that dedication could be presumed at common law;

8.3.2 actually been enjoyed by the public as of right

8.3.3 without interruption;

8.3.4 for a full period of twenty years;

8.3.5 the landowner must not be able to prove that he had no intention to dedicate the way

The Common Law Tests

8.4 Under common law there is no stipulation as to the length of use where there has been an act of, or intention to, dedicate. The more intensive and open the user, the more compelling the evidence of knowledge and acquiescence, then the shorter the time period of use is necessary.

- 8.5 The Council does not need to be satisfied on the balance of probabilities that the evidence suggests that, as a matter of law, the Claimed Footpath has been dedicated. It will be enough for the Council to be satisfied that the allegation that the Claimed Footpath exists is reasonably alleged.

The 5 Tests

- 8.6 Test 1 – Nature of Path Clearly the Claimed Footpaths 1 – 3 are of a type that could be dedicated at common law in that they are linear Paths over land, albeit there are further branches or additional/alternative ways. The first element of s31 is considered to have been satisfied.
- 8.7 Test 2 – Use by Public as of right Those persons who submitted user evidence forms are mainly resident in the immediate vicinity of the Claimed Footpaths. Local residents will usually use paths. There is no evidence to suggest that, those who claim to have used the Claimed Footpath, should not be regarded as members of the public rather than a limited class of people
- 8.8 A total of four people state in their witness forms that the previous farmer was aware or 'happy' for local residents to use his land.
- 8.9 With over 50 forms submitted (albeit not for all 3 Paths in every case), for the purpose of presumed dedication, this second element of s31 is considered to have been satisfied.
- 8.10 The 'Use' is one of right meaning that those claiming to have used the Claimed Footpath must have done so (a) without permission (b) openly and (c) without force.
- 8.10.1 Those submitting user evidence forms claim to have seen other members of the public on the Claimed Footpaths. None state that they received permission to walk the Claimed Footpaths, and they all appear to have walked the area openly and not secretly or at night.
- 8.10.2 It is not necessary that all users are challenged all of the time. However it is difficult to imagine how the unoccupied woodland off Fairview Road could have been regularly or meaningfully monitored and walkers challenged to any degree (as opposed to the farmland, which tends to be more managed and capable of being monitored).
- 8.11 Damage to property to access the Claimed Footpath? There is general reference regarding Vicarage Farm, to fences being regularly repaired. The farm diary entries do not state what caused the damage and there is no additional corroboration to confirm matters. There is no record or submitted evidence regarding any damage to crops or disturbance, or any livestock being chased or escaping, arising from broken fences

caused by unlawful public access. Most of the entries seem to confirm that fences are being repaired because stock is going into the fields. Neither do the diary entries confirm that the points of repair have been at the field boundary locations where the Paths enter/leave the farm. The farm diary extracts make no reference to 'trespassers' or having to warn walkers to keep off the farm because there is no public right of way across it.

- 8.12 The issue at the rear of Fairview Road is somewhat different. The landowner does state that a locked gate was placed across the entrance. This is what triggered the petition to the Council in 1996, (as there appears to be no locked access previously). There is another landowner's counter contention that the addition of this locked gate was an unlawful action. Furthermore, this seemed to have occurred after this section of the Path had already enjoyed 20 + years of public use.
- 8.13 There is a gate across the concrete surfaced section of Path 2 leading to the gun site from Enfield Road. This is readily passable by pedestrians. Importantly however it was referred to the "*vehicular barrier*". The inference is therefore that it was not designed to obstruct or prevent access to pedestrians. The second 'gate' on the Path along by field 16 appears to have been unused for an extremely long period and the fencing alongside to the east specifically deviates around it by a good margin, sufficient to allow vehicles to pass it. It cannot therefore be considered that walkers have 'forced' a way along here.
- 8.14 Test 3 – Without interruption. The consideration of the public's continued use of the Claimed Footpath 1,2 and 3 is the actual application for the modification order. The evidence from the Claimant as a whole reveals nothing to suggest that public use has been interrupted during the last 20 years, except for the 1996 issue of when the locked gate was added. There is no evidence that the Paths' use have been blocked or deviated from by obstruction due to crops. No other evidence is presented by the landowners to substantiate an interruption. The reference in 6.6 to fields 12 and 13 and these have been to grass for over 25 years, but it is said "*occasionally this field would be shut for haymaking in the spring*" may imply therefore that the field/s were always open other than for a very temporary operation?
- 8.15 However it is evident from the 1991 aerial photograph that the central section of Path 1 skirting around the gun site was unlikely to have been available to users at that time. The photograph (which will be displayed at the meeting) clearly shows the tipping of material/soil that took place to try to bury the residual structures that remained. The gun site covered a substantial area and grading material across it to seek to hide the blockhouses and former gun emplacements encompassed an even greater area. This would have obstructed the Path (and earlier and later air photographs both confirm this position, before and afterwards). The 'interruption' is likely to have been for an unknown

temporary period. Such activity, by what would have been by substantial heavy plant, must have precluded public access. The scale of the work suggests that this must have been over quite a number of weeks. Such an act, by the previous owner, seems to have been done to prevent public access to the site buildings (rather than any 'landscape enhancement' motives).

- 8.16 An interruption is itself a "calling into question" of the public's right to use the claimed path. However it is clear that this was a one-off exercise for a temporary period only. It did not break the continuity of the route and there is no evidence to confirm the extent of excluding the public's use of Path 1. Although 'use' needs to run for the 20-year period, such use need not be continuous.
- 8.17 Test 4 - The full 20-year use test Those submitting user evidence forms claim to have used all or some of the Claimed Footpaths for periods of up to 50 years, many well in excess of the 20 year threshold. It is use by the public collectively for more than 20 years that is important rather than individuals. The use appears to have been for more than 20 years and the fifth element of s31 is considered to have been satisfied, although the issue of the temporary work on the central section of Path 1 referred to above requires consideration.
- 8.18 Test 5 – Landowners' intention to dedicate. Claims based on user evidence, however strong, will fail where there is clear evidence to demonstrate that the landowner had no intention to dedicate during the relevant 20-year period, **but** case law is now quite strong that any intention must be express, overt and communicated to users of any claimed footpath. It is apparent from the statements provided on behalf of the landowners that they did not/do not want public access, but there is no corroboration evidence - of signage or any signs having been maintained; the Fairview Road blockage was verified by the Council in 1997 as being post 20 years use, with no indication that the then challenged/removed blockage was ever reinstated, and there has been no deposited plan or declaration of owners' intentions (which is specifically identified within the '80 Act as a formal way of notification of not to dedicate) or any other written evidence to this affect.
- 8.19 Common Law Position: As mentioned in 4.13, the onus of proving that a right of way exists at common law rests with the Claimant. The evidence must show that at some point it is reasonable to suggest that a landowner has intended to dedicate the Claimed Footpath. The evidence suggests that during the past decades that there was no intention to dedicate at common law, and the claimant has not proved intention to dedicate.
- 8.20 CONCLUSION: It is considered that the Claimed Footpath is reasonably alleged to subsist under the 81 Act tests, notwithstanding the issue of the works on part of Path 1, as highlighted in the 1991 air photograph.

9. Determination the Claim

9.1 The Committee must decide, solely based on the evidence, whether the Claimed Paths can be accepted or rejected. A walk of the Paths of the paths has been arranged. Photographs of features and points of detail along the Path will be displayed at your meeting. Of particular note from the photographs is

- largely well worn paths;
- no signs to dissuade users;
- no obstructions – but see references to the ‘vehicular gate’ and redundant gate (8.13);
- the path access off Trentwood Side seems to have posts designed for a pedestrian gate (which is evident on an inspection of the site).

9.2 The recommendation in para. 2.1 arises from the conclusion that the Claim substantially succeeds primarily because the 5 tests of the 1980 Act being met (para 8.19) and codifying -

- a. the landowners’ lack of firm intentions to control and limit access and prevent the establishment of a right of way or provision of signs;
- b. the landowners’ lack of action to deposit a plan or any formal declaration of owners’ intentions action to take action under the ‘81 Act, including the London Diocesan Fund not responding/objecting;
- c. evidence of claimant and the many witness statements; and
- d. the Council’s previous position on the Fairview Road woodland.

9.3 If the Committee resolves to not to make an Order, then notice of that decision will be served on the Claimant. He then may serve notice of appeal on the Secretary of State for the Department of the Environment, Food and Rural Affairs and on the Council. If the Secretary of State ultimately allows the appeal the Council will be directed to make an Order and it will be advertised and representations/objections invited.

9.4 Alternatively if the Committee resolves to authorise an Order to modify the definitive map and statement by including the Paths as a footpaths, a notice of making of the Order will be served on all affected owners/occupiers, various interested organisations, advertised in the local press and displayed on site. The notice will indicate a period within which objections/representations can be made. If any representations/ objections are received, they will be reported back to the Committee together with an indication of whether officers have been able to secure their withdrawal. If any representations/objections remain the Council will be unable to confirm the order but will need to send it to the Secretary of State for confirmation.

10. Legal implications

- 10.1 Definitive map Modification Orders are made under the 1981 Act. As such, the criteria are strictly limited (the legal test is set out at paragraphs 4.10 to 4.13, and section 8, of the report), and do not allow for personal considerations, such as the effect of making an order on a landowner, to be taken into account. In each case the Council has to make a judgement on the sufficiency of the evidence of use of the footpath against the evidence of the landowner's intentions.

Background Papers

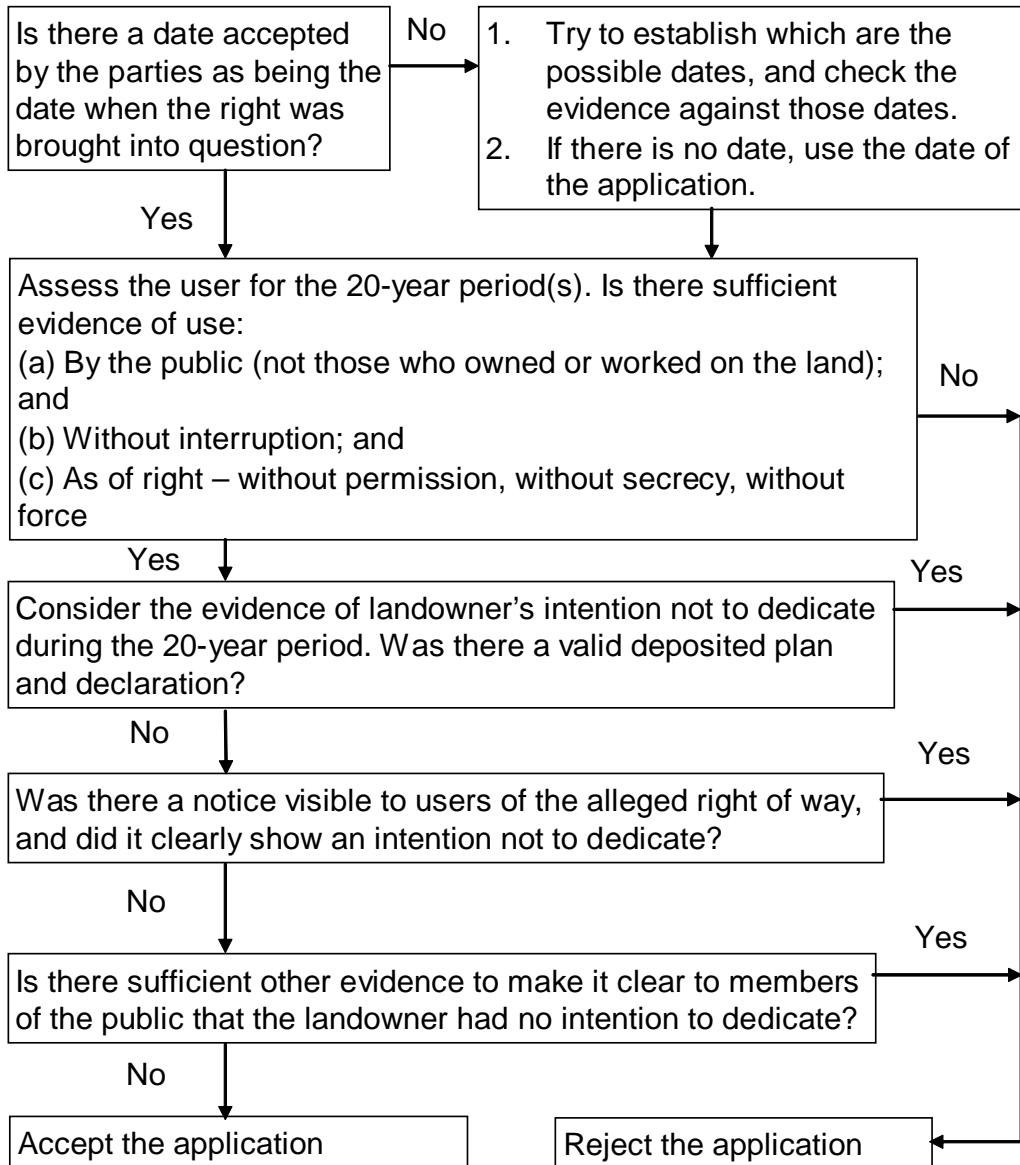
1. Application for modification order
2. Evidence submitted in support of application and Claimant's submissions
3. Landowners' evidence and submissions
4. Landownership details
5. Letters of representation and copy correspondence relating to the claim
6. Landowners' submission and statements of.
7. Submissions from Claimant

Appendices

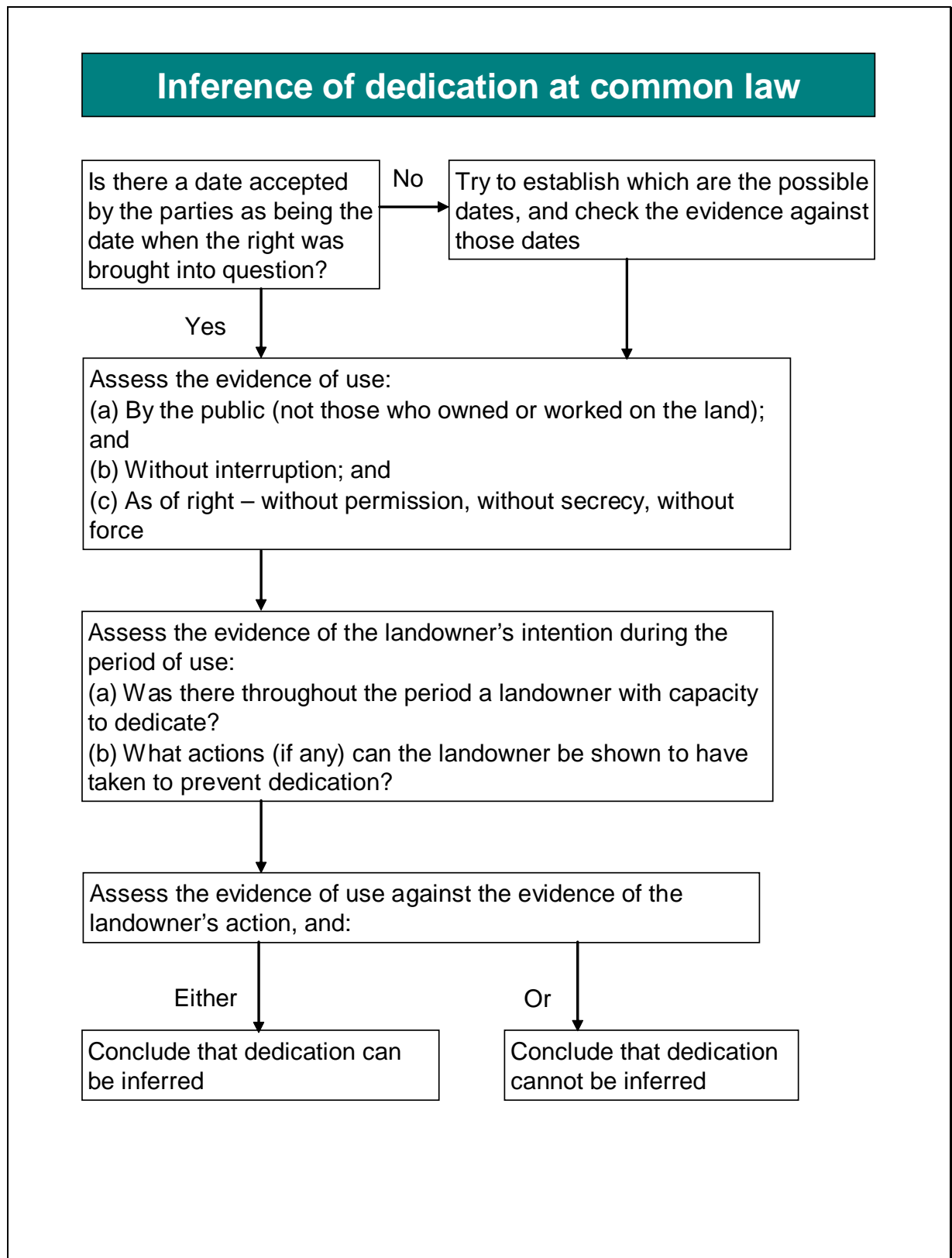
1. Plan of the Claimed Footpath & Land Ownership
2. S31 Evaluation Process
3. Common Law Evaluation Process
4. Table Summarising User Evidence
5. Consultations by the Council

Appendix 2 S31 Evaluation process

Section 31 – 20 years' use



Appendix 3 - Common Law Evaluation Process



SECTION 53 – WILDLIFE AND COUNTRYSIDE ACT 1981

FOOTPATH FAIRVIEW ROAD TO TRENT PARK ALSO FEEDER PATHS FROM SLADES HILL AND TRENTWOOD SIDE

SUMMARY OF USER EVIDENCE

USER	ADDRESS	TYPE	PERIOD	FREQUENCY	NOTICE S & SIGNS	GATES & STILES	OBST	PERMISS- ION	CLAIMED PATH	DIV
D. Shilling	101 The Ridgeway, EN2	Foot	1963 – present 45 years	Daily – except when holiday	No	Only when cattle using fields over 20 years ago	No	No	1 inc gun site to Fairview Rd. Not to Trent Park.	No
M. Shilling	101 The Ridgeway, EN2	Foot	1963 – present 45 years	Daily – except when on holiday	No	Only when cattle using fields over 25 years ago	No	No – Not known where to ask	1 inc gun site to Fairview Rd. Not to Trent Park.	No
J.. Smith	7 Trentwood Side	Foot	2003 – present 5 years	40 times a year	No	Not restricting pedestrians	No	No – because of frequent use of path, waved at and acknowledged by horse riders	1 inc gun site to Fairview Rd excludes gun site to Fairview Rd, 2,3	No
R. Pearce	13 Windmill Hill, EN2	Foot	1977 – present 30 years	1977-91: 50 times 1992 – 2007 daily	No	Only on path 2, not restricting pedestrians	No	No – mainly local people use path	1 inc gun site to Fairview Rd,2,3	No

A. Tricker	44 Old Park Rd	Foot	1987 – present 20 years	3 a year on average	No	No	No	No	1 inc gun site to Fairview Rd, 2,3	Walked on s side of Merry Hill Brook, now path blocked by riding school paddock
P. Pearce	13 Windmill Gardens, EN2	Foot	1975 – present 32 years	1975 – 1991 50 times 1992 – 2007 daily	No	Gate on path 2 which does not restrict pedestrians	No	No –so many local people walking paths at all times	1 inc gun site to Fairview Rd, 2,3	No
D. McDermott	82 Old Park View, EN2	Foot and mounta in bike	1998 - present 18-20 years	50 + times a year	No	No	No	No – met walkers along paths. Acknowledged by farmers	1 inc gun site to Fairview Rd, 2, 3	No
C. Gibbens	1d Uplands Park Rd, EN2	Foot	1997 – 2007 10 years	12	No	Yes – not locked	No	No	1 inc gun site to Fairview Rd, 2, 3	No
N. Davis	13 Trentwoodside, EN2	Foot	Over 15 or 20 years	Frequently	No	One on Hadley Road near Vicarage Farm recently erected – refers to annotations on plan	No	No	1 inc gun site to Fairview Rd, 2,3	No
G. Denney	81a Enfield Rd	Foot	1997 – present – 10 years	Trentwoodside to Trent park 4-5 times a week. Gun sites to	No	Unlocked and open gate by bridge over Salmons	No	Previous farmer Jack Mitchell aware and	1 inc gun site to Fairview Rd, 2,3	Blue Path diverted to north

				Fairview road 5 times per month		Brook		frequently stopped to talk 1998 - 2005		side from south side of Merryhills Brook
A. Cunningham	81a Enfield Rd	Foot	1997 – present 10 years	Trentwoodside to Trent Park 3 –4 times per week. Gun sites to Fairview rd 1-2 per month	No	Unlocked gate by bridge over Salmons Brook	No	Previous farmer Jack Mitchell aware and frequently stopped to talk 1998 - 2005	1 inc gun site to Fairview Rd, 2,3	Blue Path diverted to north side from south side of Merryhills Brook
K. Dalby	64 Cotswold Way	Foot	35 years	1972 – 1977 and 1985 – 2007 twice a week from 1972 – 1977 and then more frequently after 1985	No	No	No	No	1 inc gun site to Fairview Rd, ,2,3	No
D. Cockle	69 Millers Green Close EN2	Foot	More than 20 years. Path 1 from gun sites to Trent park and paths 2 and 3 from 1990 – 2008. Path 1 gun sites to Fairview Rd from 2005 –	From 1990 – 2005 10 times per year From 2005 onwards 30 times per year	No	Not restricting pedestrians	Excavations in the woods to the back of Fairview Road (electricity cables) but sign saying	No. Pretty obvious paths well trodden and occasionally few cans and bottles abandoned	1 inc gun site to Fairview Rd, 2,3	No

			2008.					use other path			
A. Bauer	36 Windmill Gdns	Foot	1977 – present 30 years	Weekly	No	No	No	No	No talked to the farmer often	1 inc gun site to Fairview Rd, 2,3	Yes
J. Savage	68 Enfield Rd	Foot	1980 – present 27 years	More than 300 times a year	No	No	No	No	No spoken to people on the Path	1, excluding gun site Fairview Rd, 2, 3.	No
C. Miles	68 Enfield Rd	Foot	1980 28 years	300 +	No	No	No	No	No have often waved to farmers	1, excluding gun site Fairview Rd, 2, 3.	No
S. Cockle	69 Millers Green Close EN2	Foot	1996 – present 11 years	4 times a year	No	No	No	No	No, obvious as grass beaten down by walkers/joggers	1 inc gun site to Fairview Rd, 2,3. From autumn 05 have also walked path 1 from Slades Hill gun site to Fairview Rd of The Ridgeway	No
D. Sulman	17 Trentwood side, EN2	Foot	1987 – 2007 20 years	Fortnightly	No	No	No	No	No – pathway well trodden and hard to miss	1 excluding gun site Fairview Rd, 3	No
K. Hayman	12 Trentwood Side	Foot	1976 – 2008. 30 years	Five +	No	No	No	No	No	1 excluding gun site Fairview Rd, 3 not to gun site.	No
M. Cunningham	17 Trentwood Side, EN2	Foot	25 years	52	No	No	No	No	No	1, excluding gun sites Fairview Rd 3.	No
B, Cunningham	17 Trentwood Side	Foot	25 or more years	Regular basis/often	No	No	No	No	No	1, excluding gun sites Fairview Rd 3.	No
J. Bathe	3 Vulcan Gate, EN2	Foot	Since mid 1990'2 –	Varies	No	No	No	No	No	1 excluding gun sites Fairview Rd 3 not to	No

			present						gun site	
S. Pettifer	14 Links Side, EN2	Foot	35 years	Daily	No	Not restricting pedestrians	No	No	1 including gun site to Fairview Rd, 2.	No
A. Griggs	6 Windmill Gdns, EN2	Foot	1977 – present 30 years	Jolly Farmers to Trent Park approx 20 times a year. Gun site to The Ridgeway twice a year	No	No	No	No	1 including gun site to Fairview Rd, 2.	No
S. Wellington	11 Glenbrook South, EN2	Foot	1986 – present 21 Years	Daily	No	No	No	No	1 excluding gun site Fairview Rd, 2.	No
M. Tivnam	20 Colonels Walk	Foot	1986 – present 20 years	Five also walks blue path from Fairview Rd to bridge few times per week	No	Unlocked gate by bridge	No	No	1 including gun site to Fairview Rd, 2 not to Trent Park	No
M. Squires	75 Bincote Rd	Foot	1986 – present 21 years	Five times a year	No	Gate pass through	No	No	1 including gun site to Fairview Rd, 2 not to Trent Park	No
P. O'donnell	25 Old Park View	Foot	2001 – present	Fifty	No	No	No	No	1 excluding gun site Fairview Rd, 2.	No
K. O'donnell	25 Old Park View, EN2	Foot	Five years	Six	No	No	No	No	1 excluding gun site Fairview Rd, 2.	No
W. Merrit	10 Slades Rise	Foot	1985 – present 25 years	30 times	No	No	No	No	1 excluding gun site Fairview Rd, 2, not to Trent Park	No
T. Mcgee	20 Slades Close, EN2	Foot	50 years	6 or 7 times during school holidays and	No	No – not restricted for pedestrians	No	No	1 including gun site to Fairview Rd, 2 to Hadley Rd	No

				youth club rambles in the past						
M. Lee	22 Windmill Gdns	Foot	Path 2 24 years Path 1 (part) 10 years 1983 - present	100	No	No	No	No	1 excluding gun site Fairview Rd, 2, not to Trent Pk	No
E. Halstead	41 Manor Rd	Foot of bicycle	1982 – present 25 years	2 – 6 times	No	No	No	No	1 including gun site to Fairview Rd 2 not to Trent Park.	No
M. Appelby	61 Slades Hill	Foot	Over 40 years	1965 – 1980 and occasionally since perhaps 20 times	No	Not restricting pedestrians	No	No	1 excluding gun site Fairview Rd, 2. Not to Trent Park	No
M. Dixon	2 Chase Hill	Foot	Over three years	Twice	No	No	No	No	1 excluding gun site Fairview Rd, 2	No
R. Head	3 Florence Dr	Foot/ Scouting exercises	1976 – present 31 years	Monthly	No	Gate to restrict vehicles	No	No	2	No
M. Griggs	6 Windmill Gdns	Foot	32 years	20 times	No	No	No	No	2	No
A. Walker	9 Farmlands	Foot	31 years	Daily	No	No. In late 80's early 90's a fence appeared at end of Fairview Rd for a few weeks blocking	No	No	1 including gun site to Fairview Rd E of Salmons Brook	No

						entry to woods				
W. Parker	70 Graeme Rd, EN3	Foot	1967 – 1991 24 years	Daily/frequently with dog	Some years ago when entrance to Fairview	No	Some years ago when entrance from Fairview Rd was blocked	No	1 including gun site to Fairview Rd, not to Trent Park	No
C. Parker	70 Graeme Rd, EN1	Foot	Since 1978 – 1997 13 years	100 times per annum	No	No	No	No	1 including gun site to Fairview Rd, not to Trent Park	No
T. Jenkins	34 South Lodge Cres, EN2	Foot	Since 1996 – present 11 years	Everyday except when on holiday	No	No	No	No	1 excluding gun site Fairview Rd, not to gun site	No
V. Clark	22 Crofton Way, EN2	Foot	30 years	1978 1985 5/6 times a year	No	No	No	No	1 including gun site to Fairview Rd E of Salmon Brook	No
H. Samsami	106 Lowther Drive	Foot	First used 1975	Regularly from 1975 – 1982 and still used approx once a month	No	No	No	No	1 (part) and 2 complete	No
K. Wisham	4 Farmlands	Foot	1963 – 2005	Daily dog walking	12 years ago fence erected for duration of a week	No	No	No	1 (part)	No
C. Medcalf	14 Farmlands	Foot	30 years, late 1970's to date	Weekly	No	No	No	No	1 (part)	No
C.	22 Chase	Foot	Four years	3-5 times a week	Yes,	No	No	No	1 (part)	No

Parkinson	Green Ave				indicating private land August 2008					
M.Cotton	1 Jaycroft	Foot	18 months	2007/08 – daily	Sign affixed on 26/08/08 at entrance of wood stating 'private property	No	No	No	1 (part)	No
D. Bates	2 Farmlands	Foot	1963 to date – 45 years	1963 – 1973 10 times a year 1974 – 2000 4 times a year 2001 – 2007 200 times a year 2008 – 12 times a year	No	1996 temporary wire fence erected by Mr Nicholas, removed after public concern	No	No	1 (part)	No
J. Bates	2 Farmlands	Foot	48 years	From 1963 to current date. 1963 – 73 10 times a year 1974 – 2000 4 times a year 2000 – 2007 – 100 times a year	No	Gate erected in 1996 but removed after public concern	No	No	1 (part)	No
J. Reed	4 Slades Gdns	Foot	70 years	1938 to present day. Many times as a child less with age	No	No gate, vehicular barrier by rifle club	No	No	2	Yes restriction during the war and diverted along the

Consultation

Bodies Consulted by the Council, as Surveying Authority

- Peak and Northern Footpath Society
- Chiltern Society
- Welsh Trail Riders Assoc
- British Driving Society
- Cyclists Touring Club
- Auto Cycle Union
- British Horse Society
- Byways and Bridleway Trust
- Open Spaces Society
- Ramblers Assoc