



Order Decision

Inquiry opened on 6 March 2012

by **Heidi Cruickshank BSc (Hons), MSc, MIPROW**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 15 October 2012

Order Ref: **FPS/T0355/7/1**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Footpath 25 White Waltham in the Royal Borough of Windsor and Maidenhead Order 2010.
- The Order is dated 30 July 2010 and proposes to record a footpath to form a circuit with an existing restricted byway and footpath lying to the south-east of Littlewick Green in the Parish of White Waltham. Full details of the route are set out in the Order Plan and Schedule.
- There were four objections and eleven representations outstanding at the commencement of the Inquiry.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Preliminary Matters

The relevant tests

1. In the initial stages the Royal Borough of Windsor and Maidenhead, the order-making authority ("the OMA"), and the applicants for the Order, the Littlewick Green Society ("the LGS"), relied upon the statutory test set out in section 31 of the Highways Act 1980 ("the 1980 Act") to show that a public right of way could be presumed to have been dedicated.
2. A matter was raised by the objectors¹ suggesting that part of the Order route had once been a public footpath but that it had been stopped up. It was agreed between the parties that the relevant part of the route was the line running south-east from point A, then continuing, from a point commonly identified as 'X', prior to reaching point B².
3. Where a claim fails under the statute, guidance indicates that I should consider whether there is evidence to show common law dedication. Being aware that there was information that might be relevant to such considerations I asked for further clarification on the matters raised when I adjourned in March. On resumption in April the objectors presented information that they had altered their stance on this point; they no longer accepted that this part of the route had previously been a public right of way. Points relevant to this matter were presented to the resumed Inquiry in August, allowing the OMA and supporters the opportunity to comment on the evidence.
4. In closing the OMA argued that, whereas I would generally consider the case under the statute first, I should in this case look at the matter in relation to this

¹ The arguments for the objectors were presented together and I shall refer to this as the case for the objectors.

² Points A – C are as shown on the Order map. Points X and B1 have been added to the modified Order for clarity.

section under common law first. It was argued that if this route was shown to be a public right of way at common law, then the case under statute could not be made out for this section as the use would be 'by right' rather than 'as of right'. I consider that this is correct and so I shall consider that matter first.

5. I note the comments of the objectors that if I were to find that the section A – X should be recorded, but not the remainder, there would be a cul-de-sac path. I consider that if the evidence were to show that this was the legal situation then this would be appropriate. The possibility of further legal changes as a consequence is irrelevant to my decision.

The routes considered

6. The application included routes within the copse, which lies to the south-east of point B. In determining the application the OMA decided that the evidence did not support any claimed routes in the copse itself. That decision was not appealed and I have seen nothing in the evidence before me to suggest that the decision not to record such routes was incorrect.

Width

7. No objection had been raised to the width proposed to be recorded over the route. When the main objector gave evidence on the second day of the Inquiry he raised concerns that there needed to be an environmental protection zone along either side of the track and, if this width was recorded, he would then lose a significant area of farmland, as he would need further width again. I indicated that I was not sure whether the requirements to which he referred³ would necessitate this in relation to recording a footpath on the route but I was unable to take such concerns into account in any case. I suggested his legal representatives might be best placed to advise him.
8. A plan was submitted of the widths measured. I pointed out that on the basis of the statute I should record the width that had been in use. As this matter had not been in issue previously, no questions had been asked of the users during their evidence regarding the widths they had used and I considered this to be very unhelpful.
9. Due to lack of availability of certain parties the next day, to continue hearing evidence, it was agreed that I would carry out an accompanied site visit at that time, with measurements of the physical widths available on the route being taken. The objectors and the OMA submitted information in relation to the measurements before the resumption of the Inquiry in April.

Procedural Matters

10. I made an unaccompanied site inspection on 5 March and opened an Inquiry into the Order on 6 March 2012. An accompanied site visit was held on 8 March as part of the Inquiry, which then continued on 24 April.
11. Due to submissions received just prior to the resumption of the Inquiry, relating to the altered stance referred to under Preliminary Matters above, a request was made by the OMA for an adjournment to consider the matters

³ The statutory management requirements to keep land in Good Agricultural Environmental Condition (GAEC) in order to claim the Single Farm Payment under the Common Agricultural Policy. Council Regulation (EC) No. 1782/2003 and Commission Regulation (EC) No. 796/2004

raised. I agreed to this adjournment and resumed the Inquiry again on 22 August 2012, closing it on that day.

Costs

12. An application for a partial award of costs was made at the Inquiry on behalf of the OMA against Mr Westacott. My decision on the costs application will be issued separately.

Main issues

13. The Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") by reference to section 53(3)(c), which states that an Order should be made to modify the Definitive Map and Statement ("DMS") for an area on the discovery of evidence which, when considered with all other relevant evidence available, shows:

"(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies."

14. The OMA rely on the documentary evidence to show that section A – X is a public right of way at common law, the inference of dedication to be drawn from the evidence as a whole. The objectors argue that whilst there was a route here in the past, which was sometimes treated as if it was public, it was not in fact public. Whenever the matter was taken further, they argued, authorities did not accept the route as a public right of way.
15. In relation to the remainder of the route, X – B – C, the case relies on the statute. Section 31 of the 1980 Act sets out the main issues as:
- i. when the status of the claimed route was called into question;
 - ii. the extent and nature of the claimed use;
 - iii. whether there is evidence of a lack of intention to dedicate a public right of way.
16. Before a presumption of dedication can be inferred under statute, the 1980 Act requires that the relevant period of use be calculated retrospectively from the date on which the status of the way is 'called into question'. The use during that period must be shown to have been actually enjoyed by the public as of right and without interruption for a full period of twenty years.
17. The main argument between the parties was whether there had been use as of right or whether the use had been by permission such that it was not 'as of right' and so no presumption of dedication could arise.
18. If I am satisfied as to the existence of a route on the line A – X under common law I may turn to the statute in relation to the matter of width.
19. If the case for section X – B – C is not made out under the statute I shall revert to common law. In this I must consider whether the evidence of use of way by the public and the actions or inaction of landowners, together with all other relevant evidence, enables an inference of the dedication of public footpath rights to be drawn.

20. The objectors were concerned that the application to record the route was motivated by unease about possible use of their land rather than a genuine attempt to save a threatened right of way. Whilst taking care to avoid libellous or slanderous matters affecting the Inquiry process I am aware of these concerns and shall give them appropriate weight.
21. Whilst an Order can be made on the basis of a reasonable allegation of rights subsisting, in relation to confirmation of an Order at this stage, the decision in *Todd and Bradley v the Secretary of State for Environment, Food and Rural Affairs (2004)* means that only one test is to be applied by the Secretary of State, or Inspectors acting on his behalf. That is whether, on the balance of probabilities, a right of way which is not shown on the Definitive Map or Statement subsists. By reference to *Todd and Bradley*, this is the ordinary civil burden of proof, meaning that “...it is more probable than not on the evidence – and on all the evidence – that a right of way exists.” This is the test that I shall apply in determining this Order.

Reasons

Common law - the old path

22. Section A – X was previously part of a longer route continuing to the south-east, appearing to provide a link between Littlewick Green and White Waltham. Some people have referred to this as the ‘coffin path’ and I shall refer to it as the ‘old path’. I will consider the evidence to see whether this shows whether this route is, or was, a public right of way.

Ffiennes⁴ Farm map and schedule, 1813

23. This map of the farm shows a route as a dashed line crossing the fields on a very close alignment to the old path at the south-eastern end, where it joins into Cherrygarden Lane. The northern end seems to run further to the east, towards Ffiennes Farm itself rather than to Littlewick Green. It is annotated ‘Footpath from White Waltham’.
24. This was a private farm map and does not refer to the old path as a public footpath. It does not show that the old path was a public highway, or enjoyed a particular status at that time.

Tithe Map, 1846⁵

25. The Tithe Commutation Act 1836 (amended in 1837) converted tithes to a fixed money rent. Tithe documents are concerned with identifying titheable land and consist of the apportionment, the map and the file. Generally they can give no more than an indication as to whether any way is public or private, because a private right of way can also diminish the productiveness of the land for tithe assessment.
26. The tithe map does not show a route on the land crossed by the old path, however, I agree with the OMA that the absence of a route does not show that no route existed. The primary purpose of the process was to identify titheable

⁴ Also shown as ‘Feens’ or ‘Feenes’

⁵ The objectors date this to 1836 but it is more likely to have arisen after the 1836 Act and so I accept the date given by the OMA

land and a footpath would be unlikely, on the balance of probabilities, to affect value of the land in that respect. The OMA note that other footpaths, now recorded and shown on the Ordnance Survey ("OS") mapping relevant to this period were also not shown on the tithe map.

Railway information

27. The railway line runs to the south of the Order route and the line of the old path crosses it. Therefore, information relating to the planning, building and widening of the railway may provide relevant evidence regarding the route and/or status of the old path.
28. Individual railway schemes were promoted by Special Acts. A Parliamentary Standing Order covered Railway Schemes from 1810, with the requirements expanded in the Railways Clauses Consolidation Act 1845, which required public rights of way which crossed the route of a railway to be retained unless their closure has been duly authorised.
29. Although it was not the primary purpose of the deposited plans to record rights of way, they can provide good evidence in this context. Railway deposited documents were in the public domain. The statutory process required for the authorisation of railway schemes was exacting and the book of reference and deposited plans made in the course of the process needed to be of a high standard. Railway plans, which were normally specifically surveyed for the scheme, usually record topographical detail faithfully.
30. The authorisation of railway schemes provided for scrutiny of the plans by involved parties. Landowners would not have wished unnecessarily to cede ownership, Highway Authorities would not have wanted to take on unwarranted maintenance responsibilities and Parish Councils would not have wished their parishioners to lose rights. Therefore an entry in the book of reference that a way was in the ownership of the 'Surveyor of Highways' may be persuasive evidence of a public right.
31. Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain. Whilst they are likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process.
32. The first documentation relates to a Bill of 1834, which was not implemented. I agree with the objectors that there was no indication of a route in the vicinity of the old path on this mapping.
33. The 1835 Act, a copy of which was not provided, led to the existing railway. The plans associated with the 1835 do not identify a route which could equate to the old path. The OMA note that 'Weycock Bridge' which serves White Waltham Footpath 1, was also omitted from the plan and I agree with them that this demonstrates that the plans were not intended to show every route. I also agree that the inclusion of higher routes, such as roads, whether public or occupation, suggests that these plans concentrated on main crossings.
34. The objectors argued that an agreement with a neighbouring landowner to provide a bridge at a later date, should it be required, was significant in comparison to the lack of such agreement with the owners of the land crossed

- by the old path. However, this is indicative of a likely requirement to provide bridges for both public and private roads, in contrast to a lack of such requirement in relation to bridleways and footpaths. I do not consider that it provides evidence that no route existed. Any route that existed may simply have been unimportant in terms of the requirements of the 1835 Act. The earlier farm map tells us that there was a physical route on the ground in this area less than twenty years previously.
35. The correspondence in 1836 from the Great Western Railway Company ("the GWRC") to Rev Dr Vansittart says that "*...the directors will attend to your request by preserving the communication in the Church Paths adverted to in your letter in the most convenient mode which can be consistent with the construction of the Railway.*" There was further correspondence with other landowners and discussions of compensation payments in relation to bridges. A letter of 21 September 1837 sets out that "*...in the compensation agreed to be paid for the severance of land belonging to Mrs East, it was specially calculated upon the understanding that the access to her fields both north and south of the Railway should be from the adjoining Roads and that no Carriage Bridge should be provided by the Company. The Church Path in question may probably be conducted by steps across the Railway as in other similar cases but at all events you are very much misinformed as to the differences in the cost of a light timber Foot Bridge being very trifling as compared with a Bridge for the passage of wagons and carriages...*".
36. The objectors infer that as Mrs East was happy not to have a bridge on the church path referred to, which appears to be agreed to be the old path, it was not a public right of way. It has not been shown that it was necessary to provide a bridge for a footpath under this Act. The discussion regarding access for Mrs East was a separate matter relating to her need, or rather lack of need, for a private access to her land, which had been severed by the railway. The GWRC seem to have been content to allow the old path to cross the railway as a level crossing, with steps.
37. The correspondence as a whole shows that a route did still physically exist here, and was known to the parties, although it was not shown on the plans associated with the 1835 Act.
38. Part of a copy of the Great Western Railway Act, 1878 was provided, relating to various projects. In this area Clause 10 authorised the GWRC to "*...enter upon, take, use, and appropriate for the general purposes of their undertaking and works...all or any of the lands...on both sides of the Company's railway, and adjoining thereto, in the parishes of White Waltham and Shottesbrook in the county of Berks, and extending from near the post on the said railway indicating twenty-six miles from London to near the post thereon indicating twenty-eight miles from London.*"
39. The objectors, rightly in my view, accept that the deposited plan and book of reference identify the old path, numbers 16 and 17, as a public footpath, ownership being attributed to the Surveyor of Highways.
40. However, they argue that a mistake was made at that time as a copy of the Great Western Railway Act, 1890 ("the 1890 Act"), again relating to various projects, only references the route as a 'footpath', with the owner named as

George Dunn and no reference to the Surveyor of Highways. Whilst I might be inclined to agree this I consider that the building of a '*Footpath bridge*' at 27 miles and 5 chains, agreed to be on the line of the old path, in connection with the main line widening under the 1890 Act suggests, on the balance of probabilities, that the route was public. The OMA note that the works are the same as for other routes built to accommodate now recorded public rights of way and I note that the special instructions do not include this as an 'occupation road' bridge. No '*Special Instructions*' regarding this, or other similar bridges, were submitted.

41. The 1909 survey of the main line showed a footbridge No. 93A, with the connected route identified as '*Footpath*'. I agree with the objectors that this appears to relate to the old path.
42. No reason was given as to why the GWRC would provide a footpath bridge unless the route was public. They were under obligation to provide bridges for public roads and occupation roads but there is no indication from the evidence before me that they would need to provide a private footpath bridge. I consider that the evidence as a whole relating to the railway weighs towards the route being accepted as a public route rather than a private one.

Ordnance Survey maps

43. The formation of the OS was in response to a military need for accurate maps. Over the years, OS developed a variety of maps to meet the growing need for accurate and up-to-date maps of the UK and the production of maps for sale to the public became an activity of increasing importance to OS from the early twentieth century. Since 1888 OS maps have carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way. Later OS surveys and maps, especially the larger scale plans, provide an accurate representation of routes on the ground at the time of the survey. However, the depiction of a way on an OS map is not, of itself, evidence of a highway.
44. The earliest OS map was apparently surveyed in the period 1843 – 1898 and shows a route crossing the railway. I agree with the OMA that this is depicted as a level crossing, with steps to the railway. The line north-west from the railway runs towards point B, rather than point X and routes can be seen running north and west from B on similar lines to the Order route, although their continuations were not shown on this extract. The bridge referred to above was not constructed until after the survey for this mapping series.
45. The 1891 – 1912 and 1904 – 1939, County series maps show that the bridge had been built, identified as a footbridge on the earlier map. The routes formerly seen from point B are no longer present and the route north-west now follows the line to X, beyond which the parties agree it runs to point A. The 1912 map in the OMA statement of case, shows the routes recorded as Footpaths 9 and 11 ("FPs 9 and 11"), identified as '*F.P.*', and restricted byway 4 ("RB4"), now part of the national cycle network ("the NCN").
46. The same situation is seen in the 1932 OS map, however, by the time of the survey for the 1960 OS map only the footbridge was shown, with no connecting routes either north or south of the railway. The bridge to the south-west,

which had provided a vehicular link into Cherrygarden Lane, was no longer present and no route was shown on the line of FP 11 or the route A - X.

47. The 1972 OS shows a 'Track' corresponding generally to the alignment of the Order route A – X – B. No route was shown south-east from X corresponding to the old path. No route was shown alongside the hedge line between points B and C relating to that continuation of the claimed route. The OS base mapping used in the Order map shows a physical route on the ground.
48. I am satisfied that the OS maps show that the southern section existed as a physical feature over a long period. The route to the north altered in the late nineteenth or early twentieth century but remained consistent thereafter. There was clearly a route on the ground which was used sufficiently that it was identified by the surveyors and annotated 'F.P.'.

Finance (1909 - 1910) Act

49. The Finance (1909 - 1910) Act ("the 1910 Act") provided for the levying of tax on the increase in site value of land between its valuation as at 30 April 1909 and its subsequent sale or transfer. There was a complex system for calculating the 'assessable site value' of land, which allowed for deductions for, among other things, the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user and to the right of common and to any easements affecting the land.
50. Each area of land, or hereditament, was identified on a map and information recorded in a Field Book. Ffiennes Farm was recorded as hereditament number 28 and the Field Book entry shows it as having a deduction of £100 for 3 footpaths. I agree with the OMA that the most probable routes for which the deductions were made were those identified on the OS base mapping, which corresponded to FPs 9 and 11 and the old path.
51. I consider that the 1910 Act information suggests, on the balance of probabilities, that the old path was known and accepted as a public right of way by the relevant authorities and the landowner and occupier.

White Waltham Parish Council Minutes

52. In 1918 a Mrs Hill wrote to White Waltham Parish Council asking "*...if they have given permission to the owners of the fields through which runs the ancient footpath between this village and White Waltham, to plough and sow over it, and to destroy the footpath, knowing that this footpath was of such importance that the Great Western Railway had to throw a special bridge across their line in order to preserve it...*". The Parish Council did not deny that this was a public route, simply noting that "*Ancient custom has been followed.*" I am satisfied that this entry relates to the old path and consider that footpaths may be ploughed by 'ancient custom' although obviously should be reinstated.
53. In July 1922 the Parish Council were again discussing "*...the footpath from Littlewick to White Waltham, and the Deputy Clerk was instructed to write to the Clerk to the Rural District Council and obtain information as to whether:*
- (a) *A farmer, owner, or occupier has a right to plough the footpath across a field where there is a right of way,*

and

(b) Whether there is any restriction safeguarding the minimum and maximum width of a footpath."

54. A copy of the letter and reply were recorded in the Minute Book. The Clerk to Cookham Rural District Council ("the RDC") wrote *"It is no part of the duty of a Clerk of a Rural District Council to give gratuitous advice to Clerks to other bodies. As a matter of courtesy however, I will try to reply to your two questions.*

(a) The owner may have such a right as you suggest by long continued usage.

(b) If the Footpath has never had defined bounds the owner must allow a reasonable width, (probably in analogy with the provisions of the Highway Act with regard to the width of a footpath at the side of a road), 3 feet."

55. The Minutes showed *"With regard to the question of the Footpath, nothing further was done in the matter"* and the objectors suggested that this was because they accepted that it was not public. However, having been advised that the owner may have the right to plough the route, and taking account that the letter was written in September, with the decision signed off in December, relating to a matter raised in July, the problem would not then have been current. I consider that taking the action they did in raising the issue with the RDC, and the reference to it as a right of way, is a clear indication of the understanding of the Parish Council as to the status of the old path.

56. In January 1925 the Minutes referred to *"...the state of the footpath from Littlewick to White Waltham, in particular that part of the path which passes through Mr Bowden's land. It was eventually decided...to interview Mr Bowden with a view to persuading him not to plough the path"*. The new Parish Council meeting in April agreed to write to Mr Bowden requesting him *"...not to make the "coffin"-path across his field more impassable than he can possibly help."*

57. October of that year saw an agreement that *"...the question of the footpath...be held over for the next meeting...in order that, if in the meantime Mr Bowden made no effort to comply with the Council's requirements, steps might be taken to call a Parish meeting..."*. A later entry showed *"...the proposed Parish meeting to discuss the question of the footpath...be abandoned."* It seems likely that Mr Bowden had complied with the 'Council's requirements' and so a Parish meeting was no longer required

58. Minutes from 1933 and 1934 refer to marking footpaths for the area onto an OS base map, with the final Schedule and Plans of Footpaths and Rights of Way being lodged with the RDC. Given the dates this seems likely to relate to the Rights of Way Act 1932 ("the 1932 Act"), discussed shortly.

59. Minutes apparently dating from 1946, or potentially 1950, resolved that the Parish Council *"...approved Mr W W Westacott's proposal to close Public Rights of Way Nos 94 and 94A...and to remake and maintain Public Right of Way No 95"*. It had originally been argued that these closures related to the old path, however, number 94 seems to be a route running towards Coldharbour, west of the old path, as shown on the 1949 Act information, and 94A has not been

identified on any of the schedules or plans. As referred to below the old path was identified as number 51 by the RDC and the parties now agree that there is no indication that the old path was being discussed at the time.

60. Minutes from January 1962 referred to the stopping up of rights of way over other bridges and at this time Mr Westacott asked for closure of the bridlepath leading to one of the two bridges to be demolished. No mention was made of the old path.
61. Public rights of way in the Parish were signposted in 1965, although certain routes were left unsigned where they were *"...obviously in constant use and need no signposting..."*. The old path was not identified on the list of routes, as it was not recorded on the DMS.
62. The Minutes are a public record of the perception of the Parish Council at that time and therefore probably also represent the perception of parishioners. I consider that the earlier Minutes provide evidence of the understanding of the Parish Council, and parishioners, that this was a public right of way, with changes in treatment of it only arising once it was physically compromised by the closure of the southern part, referred to shortly.

The Cookham District Schedule of Rights of Way 1932

63. The 1932 Act encouraged local authorities were to draw up registers of rights of way in their areas, although not all did so. The RDC drew up a list of routes, with input from the Parish Council as referred to in their Minutes. No map seems to have survived and this makes it difficult to be clear which routes were which. However, comparison of the numbers given by the Parish Council in relation to the National Parks and Access to the Countryside Act, 1949 ("the 1949 Act") survey assists in showing that the RDC number 51, number 10 for the Parish Council in that survey, is the relevant route.
64. Whilst there was no legal force in relation to the recording of routes under the 1932 Act, there being no public process as there was under the 1949 Act, this again shows the understanding of the Parish Council that this was a public footpath. I note that other routes recorded on this map were not subsequently recorded on the DMS, but am satisfied that I have placed appropriate weight on this mapping in relation to this route, when considered with all the other evidence.

War Works Commission File, 1940 - 1958

65. The Emergency Powers (Defence) Act 1939 ("the 1939 Act") continued in force throughout the whole of the Second World War, providing for the making of Defence (General) Regulations for a wide variety of topics, including the temporary stopping up or diversion of highways. Land to the south of the railway, including that crossed by the southern section of the old path, was requisitioned during the war for use as an airfield.
66. An Order of 30 June 1943 under the 1939 Act closed *"All Public highways (other than carriage roads) which pass through White Waltham Royal Air Force Station"*. Later references show this was a road and three footpaths. A further footpath was added for closure later in the process. This included the southern section of the old path.

67. After the war, the Requisitioned Land and War Works Act of 1945 (“the 1945 Act”) provided for orders to be made for the permanent stopping up or diversion of highways which had been temporarily stopped up or diverted under the 1939 Act. Information in the Schedule indicated that the affected land was to be purchased and the routes to be permanently stopped up. This included “...*So much of the public footpath commencing at the southern boundary of the Great Western Railway and running in a South-easterly direction for a distance of approximately 180 yards to its junction with Cherry Garden Lane*”, identified as number 2 on the plan.
68. Discussions were lengthy, particularly regarding the closure of Cherrygarden Lane, and whether an alternative should be provided. An objection to the draft order of August 1956 was made by the Parish Council and the RDC. The objections to the closures of the footpaths were shortly thereafter withdrawn, although discussions continued regarding Cherrygarden Lane.
69. A local Inquiry was held in June 1957 and it was reported that there was no objection to the closure of the footpaths. The order was then made, subject to certain agreed matters. The Stopping up of Highways (County of Berks) (No. 4) Order, 1958, Statutory Instrument, 1958, No, 972, made with reference to the provisions of The Requisitioned Land and War Works Act, 1948, and the 1945 Act, permanently stopped up the routes, which had remained temporarily closed under the 1939 Act Order. This included the old path.
70. Whilst I accept that the Ministry may initially have been overly cautious in making their closure orders and included any physical route, the old path being annotated ‘F.P.’ on the OS base map, I consider it highly unlikely that matters would have continued over fifteen years without someone raising the issue, if this was not a right of way. I consider that this provides strong evidence that the old path was accepted as a public footpath, with the section south of the railway being temporarily closed in the period 1943 – 1958 and then permanently stopped up. The section north of the railway would not have been affected by this but would have become a cul-de-sac route for the public, although there was some suggestion of use by people coming from the airfield.

The Definitive Map and Statement

71. Parish Councils were asked to supply information regarding the routes which they considered to be public rights of way to be recorded on the DMS under the 1949 Act. The Parish Council identified the northern section of the old path, as far as the footbridge, as number 10, colouring it as other footpaths.
72. The Schedule Sheets formed the basis of the Definitive Statements and the old path was described as running “*By way of second stile in school lane (stile out of repair) across grass path for about a quarter of a mile and then over arable land to footbridge over railway and again over arable land to ?? Castle Cherry Garden Lane*”. This is almost exactly the same as the description in the 1932 Act information. The additional comment is “*All on south of Railway closed by Air Ministry. North of Railway Redundant.*” The Schedule is crossed through.
73. I agree with the OMA that the survey suggests that the Parish Council did consider this to be a right of way. The old path was not subsequently recorded on the DMS. However, given that it had been a cul-de-sac route for 7 years

due to the 1939 Act order, and discussions were already underway regarding permanent closure under the 1945 Act, it appears there seemed little point in including it. For the same reason I do not attach any significance to the lack of objection to its omission from the DMS by any individual, user group, village, parish or rural council.

74. I note that the route was described as *Littlewick to Waltham Church (Coffin Path)* and the objectors reminded me that a church path may not always be a public right of way, but rather a customary way. I take this point on board, and accept that there continues to be a local memory of this as a 'coffin' path, with the view of White Waltham Church to the south-east being referred to me from the relevant part of the Order route A – X. However, as pointed out in the objectors own statement of case, function as a burial path, if indeed it was such, appears to have ceased when Littlewick Green Church was opened in 1893. The route does not lead directly to the church but rather onto another public highway, which was then closed by the Orders referred to above.
75. I do not consider there is significant evidence arising to suggest this was other than a general public footpath, notwithstanding that it may also have once been used as an access to church. It does not seem that use was sporadic when the OS surveyors clearly found a route on the ground over a long period, despite the ploughing out identified on at least three occasions by the Parish Council minutes, some years after the provision of a church in Littlewick Green.

Removal of the Footbridge

76. Correspondence from 1959 between the British Transport Commission ("the BTC") and the Air Ministry shows that the BTC wished to demolish the footbridge, at 27m. 5c., associated with the old path. The Ministry advised that the closure of the highways had been completed by May 1959. In July of the year Berkshire County Council, then the relevant highway authority, advised that in their view "*...no public right of way exists on the north side of the railway at...Ft.B. 27m. 5c...*", however, I agree with the OMA that by this time it is likely that reference would be made to the DMS, which did not identify this as a public right of way, simply because it appeared to the Parish Council that there was no point in doing so.
77. Minutes of the Berkshire County Council Highways and Bridges Committee, November 1960, referred to the provision of bridges by the GWRC in relation to rights of way. Whilst I accept the argument of the objectors that the bridge for the old path was not required at the time the railway was originally built, the evidence shows that the bridge was provided when the line was widened. I do not consider this discrepancy significant in terms of the potential recognition of the rights of way over this bridge, which the BTC were seeking to have formally extinguished at that time.
78. However, when the matter was referred to the East District Joint Advisory Committee for further consideration, once the future of the airfield had been established, the footbridge and route of the old path was not mentioned. It seems to have been accepted that there was no right of way over the footbridge and so the subsequent orders, stopping up the rights over the other two bridges under discussion, did not include the old path. It seems that the footbridge was removed shortly after this.

79. I consider that the lack of an order to remove rights over this bridge might well be indicative of an understanding at this time that there was no public right of way over the bridge, or associated with the old path. However, this is tempered by the fact that, by this time, the DMS recorded no rights.

Aerial Photographs

80. Aerial photographs may confirm the existence of a route at the time the photographs were taken but issues such as scale and the time of day a photograph was taken can be significant, as shadows can hide or distort features. Oblique photographs may also hide a number of features. Aerial photographs cannot provide evidence of what rights might exist over a route, only that a route might be discernible on the ground on that date.
81. An oblique aerial photograph dated to 1948 shows the track A – X – B and the footbridge at 27m 5c, but with no link visible back to point X. The aerial photograph of 1976 again shows the track. Despite the order to stop up the public rights over the south-western bridge, at 27m 13c, fourteen years earlier it appears not to have been removed at this time. The footbridge associated with the old path was no longer present and so clearly removed at some point in that period.

Conclusion at common law in relation to the old path

82. There is no single document showing that public rights exist over the old path, and I accept there is a little evidence which suggests that it was not seen as a public right of way. However, I consider that the balance of the evidence is supportive of there having historically been a public right of way on foot over the old path. I accept that the surviving reputation suggests it was historically used as an access to the church, however, I consider the evidence as a whole supports there having been general public access.
83. I consider that the GWRC did recognise public rights, which were initially accommodated by a level crossing, with a bridge being provided once the line was widened, and frequency and speed of trains presumably increasing, in the late nineteenth century. The Parish Council were keen to preserve the physical access in the early twentieth century, despite repeated ploughing up of the route and even approached the RDC to clarify the point.
84. I agree that there was a change in the route to the north after the surveys for earliest OS mapping series, with the railway crossing and the route to the south remaining unchanged. However, the route identified by the 1891 – 1912 surveys remained in place until at least the middle of the twentieth century, with the railway bridge providing access to the south. I am satisfied that the OS surveys identified a physical route on the ground which must have been in use at that time.
85. However, once the southern part of the route was closed during the war, and later stopped up permanently, there appeared to be no point in recording the route on the DMS. Subsequent queries as to the existence, or otherwise, of public rights led to a negative response, such that by the time that bridges were removed from the railway line in the 1960s it appears to have been accepted that there was no need for an order to stop up any rights in relation to this particular bridge.

86. Although the objectors altered their stance by the time of the resumption of the Inquiry, the landowner, a local man with his own local knowledge and 'folk' memory, initially accepted that there had once been public rights on this route, albeit that he believed that they had been stopped up. I agree that this is the case in relation to the land south of the railway but I do not consider it to be so in relation to the northern section.
87. I agree with the OMA that the reference to of *Trevelyan v Secretary of State for the Environment, Transport and the Regions (2001)* ("*Trevelyan*") is not appropriate in this case. *Trevelyan*, and the need for 'evidence of some substance', relates to the removal of rights from the DMS, not, as in this case, the addition of rights. The evidence relating to the lack of recording of the old path on the DMS does not show there to have been any legal consideration as to whether or not public rights existed at that time. The OMA are correct that the test I must apply is the balance of probabilities; the DMS provides conclusive evidence of what it does show, not what it does not show.
88. I asked for submissions on the action I should take in relation to this section if I was satisfied that there were public rights here. I agree that I would not be able to add a map to the Order as made to show the continuation to the railway. I also accept that it would be unhelpful to show rights extending simply to the edge of the Order map. I consider that, even if not satisfied as to the claim in relation to Order route as a whole I should record the section A – X as a public footpath.
89. The matter of the width of that route is more difficult as, although a physical track was in existence by the time of the survey for the 1972 OS map, there was no apparent continuation of use to the south-east at that time. The track physically existed in connection with agricultural activity. The only evidence of width is that given by the RDC in response to the query raised in 1922: the width should be 3 feet or 0.9 metres. However, this assumes no public rights have been subsequently acquired, or dedicated, over a greater width. I am satisfied under common law that a public right of way on foot subsists, on the balance of probabilities, over the section A – X, with a width of 0.9 metres.

Section 31 of the Highways Act 1980

90. It seems appropriate to me to revert to the tests under the statute in relation to the remaining section X – B – C, also looking at the possibility of dedication of a greater width of public rights over section A - X. If the matter fails under the statute I will revert to common law in relation to this section.

Calling into question

91. The application to record this route was made by individuals representing the LGS Footpaths Group in 2008. In initially determining to make an Order in response to the application the OMA decided that the appropriate date of calling into question of the use was 1997, giving a twenty-year period 1977 - 1997. However, the objectors argued that that this date was not correct and 2001 should be used. In closing all parties indicated that they considered 2001 to be the correct date.
92. I am satisfied that in February 2001 the objectors erected notices at or near points A and C, which were sufficient to have called the use of the claimed

route into question. I understand that these signs were replaced on at least two occasions, each time with signs to indicate that there was no public right of way over the route. It was said that the signs had been erected due to increased public access in the area, following the agreement for FP9 and RB4 to be used as part of the NCN.

93. The timing of the erection of the signs coincided with closure of recorded public rights of way in response to the Foot and Mouth disease ("FMD") outbreak. However, the objectors were clear that the erection of the signs had been with the intention of preventing unauthorised public access along the tracks and was not related to FMD.
94. Twelve of those submitting user evidence forms ("UEFs") showing that they had used the route in the period after 2001 indicated that there were no notices on the route. Ten others suggested that there had been no notices until 2006 – 2009. It is possible that they may have happened to use the route at time when notices had been vandalised, and were in the process of being replaced, however, this gives me some concern as to the reliability of that evidence.
95. Nonetheless I consider that there is sufficient evidence that the notices were in place, the wording was clearly intended to prevent use, and so called the use into question. I am also satisfied that the public using the route were aware of the signs and able to respond, even if not making an application to record the route as a public right of way at that time.
96. I am satisfied, on the balance of probabilities, that the effective challenge to public use was through the erection of signs in 2001 and therefore the relevant twenty-year period is February 1981 – February 2001.

User evidence

97. Taking the user evidence at face value is supportive of a case being made for sufficient use by a number of individuals within the relevant twenty-year period at a volume that would give rise to a presumption of dedication of public rights over the Order route.
98. However, in these matters the quantity of use is not as important as the quality. The objectors made a strong case that the motivation for the application was in connection with a wish on the part of some members of LGS to prevent what they saw as undesirable use of the copse, in relation to the clay pigeon shooting and potential waste disposal. Given that the covering letter to the application stated that "*...the Littlewick Green Footpaths Group...[has been created]...to address a perceived potential threat to the status of the copse which is the destination of the claimed footpath...*" I cannot help but give weight to this matter. There is other evidence indicative that some perceive a threat to the village, or to the value of their own properties, and that one way to neutralise that threat is to place restrictions on the use of the land, for example with Tree Preservation Orders and objections to the Certificate of Lawful Use sought and obtained in relation to the shoot.
99. As the decision-maker I must be aware of the risk of potentially exaggerated information, consciously or unconsciously, put forward. However, equally I must not allow concerns put before me that evidence might not be what it

seems to lead me to dismiss it lightly. The motivation for submitting evidence cannot automatically lead to assumptions regarding that evidence.

100. Whilst well aware of the difficulties which can arise from trying to put detailed information onto a UEF, discrepancies appear to have arisen in the initial submission of evidence, which have later been altered. One person corrected an issue relating to the date of death of his dog, which he claimed to have walked on the route for either 12 or 15 years, depending upon the evidence relied upon. This altered the dates of use from potentially 1996 – 2008 to 1985 – 2000. Another brought the start of his use forward from 1968 to 1975.
101. One user, who was interested in viewing the aerodrome from 1970, referred to a sign off School Lane and admitted in cross-examination that he couldn't be sure whether he had been using FP11 or the claimed route. Given the evidence that the only sign was pointing along FP11, and taking account of the indication in the 1972 sketch map that at the southern end of FP11 the "*Boundary between fields...acts as a narrow footpath*" I consider, on the balance of probabilities, that he was not using the Order route. This party had originally indicated his use continued to 2006 but in his proof of evidence altered this '*on reflection*' to 1983.
102. I cannot accept the claim by the objectors that the route C – B was not physically available prior to being made-up in the mid-1970s, and so anyone claiming use of this section prior to this must be treated with caution. Whilst I understand that the physical situation on the ground has altered, with the track made up for vehicular use at this time, I consider the users would not be prevented from walking along the former tree line. I agree with the OMA that there appears to be some sort of route in the 1948 aerial photograph. I also note that the 1972 sketch map, referred to above, along with double-pecked lines on A – B, shows a double line on the alignment C – B. The contemporaneous OS map does not show there to be a physical route but the person who drew this said that it showed "*...paths and tracks on the ground*".
103. The evidence that the landowners, or their employees and tenants, did not see many people is tempered by other evidence that people did see the landowners and were not stopped by them, although it is argued that this was on other routes. However, the fact that some people were not seen cannot be taken to mean that they were not actually using the route, simply that their use did not coincide with times when they might be noticed.
104. The alterations made to evidence by three of the eight users who had previously submitted written information raises concerns in my mind about the reliability I can safely place on other untested evidence. I also have reservations about the users who do not appear to have seen signs on the route and whether they had in fact used it. However, with this frequency of reported use, including through statutory declarations, I consider that, on the balance of probabilities, there is sufficient evidence, of sufficient quality, to support the presumption of dedication.

Use as of right

105. In order for the user evidence to support a presumption of dedication it must be shown to have been '*as of right*', that is without force, without secrecy and without permission. There has been no suggestion that the use has been

either by force or in secret, however, the objectors argued that the majority of the use was permissive.

106. Evidence was given from people supporting the objectors of specific instances where they had been given permission to use the route. However, I agree with the OMA that the majority of this was for uses other than walking, for example shooting, cycling, horse-riding or hunting. The evidence of express permission for walking is slight and the majority of those submitting evidence indicated that they neither sought nor were given permission to use the route.
107. I agree with the LGS that there is no clear picture of how evidence was given to walkers, or how they were to know that their use was permissive. I also agree that even where some people appear to have been given permission at a later date, this would not prevent their earlier use being 'as of right' and that permission given to one family member cannot be automatically assumed to relate to the rest of the family, where they themselves do not recognise this.
108. In *Beresford v Secretary of State for the Environment (2002)* ("*Beresford*") it was stated that a licence to use land could not be implied from mere inaction of a landowner with knowledge of the use to which his land was being put. It was said "*It is clear enough that merely standing by, with knowledge of the use, and doing nothing about it, i.e. toleration or acquiescence, is consistent with the use being "as of right".*"
109. Permission may be implied from the conduct of a landowner in the absence of express words and "*a landowner may so conduct himself as to make clear, even in the absence of any express statement, notice, record, that the inhabitants' use of the land is pursuant to his permission.*" However, this requires overt acts on the part of the landowner, such as charging for admission, or closing the land for his own purposes. This would have an impact on members of the public, demonstrating that their access, when they had it, was dependant on the landowner's permission. "*If the landowner found that his land was being used as a footpath...by the whole village...and he suffered in silence, he would be treated as having acquiesced in what was going on.*"
110. There was reference by the operator of Flightline Targets to a couple whom he understood to have permission; however, on their UEFs they said that they had no permission. Similarly one lady, whom the landowner said he had challenged and later permitted, indicated by way of her UEF and a statutory declaration that she had not been stopped in her use or used it by permission. Whilst the owners may have believed people were using the route by their permission this does not appear to have effectively communicated that to those using the route. They do not appear to have understood that their use was not seen as being 'as of right'.
111. I recognize that there were some who spoke for the objectors and accepted that they used the routes on this land with permission, even if not necessarily spelt out to them in such terms. However, I agree with the OMA that even if some people had permission this would not prevent there having been use by the general public without permission. I also note that Mr W Westacott, who was the owner for the first ten years of the relevant period, commented on unhindered use of the farm tracks by villagers in the early 1970s. I agree with

the LGS that nothing seems to have been done to 'remind' them that they were trespassing since that time.

112. The difficulty in a small village such as this is that people tend to know each other, at least by sight. People may, as a result, be relaxed about the need to specify where others can and cannot walk, or make assumptions that, as they know the owner, they are allowed to do as they wish. Things may not be spelt out simply in an effort to be polite and neighbourly and, as mentioned by one party, people may take advantage of that kindness. Unfortunately, I consider that in order to show that use is not as of right, but with permission, more needed to be done.
113. It appears to me that the family, past and present, have been strong community figures, operating with a fairness to others which has now acted against their interests. Sadly, reliance on the goodwill of neighbours, and those clearly thought to be friends, to accept that their use of land was not something to be taken for granted, has been misplaced.
114. I consider, on the balance of probabilities, that the evidence shows that the landowners, and tenants or employees, were aware of use of the Order route. They appear to have generally thought this use to be by friends and acquaintances, whom they would allow to use it in any case. However, I agree with the OMA that the lack of overt action on the part of the landowner to show that the use was only with permission demonstrated acquiescence.

Interruption to use

115. Following shoots carried out on a trial basis in 1996 Flightline Targets set up a commercial clay shoot in 1997 in the copse. The shoot has gradually expanded in terms of number of shooting days and participants. On 4 February 2009 a certificate of lawful use was granted in relation to the shoot.
116. This tenant indicated that when shooting he would place cones and barriers at about point A, with "*Private – no admittance*" or "*No unauthorised access*" and at C indicating "*Shooting in progress*" and directing those attending the shoot. These were generally only in place during the shoot and removed afterwards, unless forgotten, as occasionally happened. I agree with the OMA that these notices do not appear to have been sufficient to have prevented, and therefore, interrupted, use. They were at most to avoid an insurance claim, or for health and safety reasons, but not intended, nor sufficient, to challenge use. One person indicated that he was told by the tenant the signs were to discourage vandalism and not aimed at local walkers.
117. In relation to the shoot it was indicated that the tenant knew some people as friends of the landowners, who he believed were allowed to walk on the land, whereas he rarely saw others. He recalled advising some people, who had confused the route with FP11, leading to the Bootle Lane Railway Bridge, however, there is no indication that he was turning these people away. He recalled challenging one named person but this was in 2006, long after the signs were erected, and having established who he was, allowed him to continue. Whilst he indicated that he had stopped some people in the copse, he does not seem to have prevented use of the Order route.

118. In addition to the shooting, reference was made to activities associated with farming the land, which it was thought might have interrupted the use, such as the presence of machinery, irrigation pipes, harvest boxes and ploughing of headlands. In 1988 – 1989 there was apparently a nine month period when FP9 was closed during the construction of Westacott Way, which lies to the east of the Order route and is shown just on the north-eastern corner of the Order map, which is likely to have prevented use by people living to the east of the route, however, there was no indication this would have prevented walkers from Littlewick Green itself.
119. For about four months in 1995 the route would apparently have been closed at point C in connection with pipeline works in relation to the mains drainage and at other times in the mid-1990s the route was used to store hardcore and road planings for the repair of farm tracks. Mention was also made of potholes and puddles in the route.
120. It does not seem that these matters prevented use, for example, I heard evidence that some people did use the route even when shooting was occurring. It appears there may have been occasions when use was physically interrupted, however, there is no evidence that any of the obstructions referred to were for the purpose of preventing public rights. In *Fernlee Estates Ltd v City of Swansea and the National Assembly for Wales [2001]* (“*Fernlee*”) Scott-Baker J concluded that, in order to constitute an interruption for the purposes of Section 31 of the 1980 Act there must be some physical and actual interruption which prevents enjoyment of the way and intends to do so as a challenge to the use. In that case builders’ rubble had been deposited on a footpath, causing people to deviate for up to 20 metres. Here the lack of hedges or fences alongside the route would allow users to step off the route to avoid such obstructions, which were not, on the balance of probabilities, intended to prevent their use in any event.
121. I am satisfied, on the balance of probabilities, that the use in the relevant twenty-year period has been uninterrupted.

Lack of intention to dedicate

122. The presumption of dedication, which I am satisfied has been met by the evidence discussed above, can be overturned by evidence that, within the relevant twenty-year period, the landowners demonstrated sufficient lack of intention to dedicate a public right of way.
123. It was argued that *R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs, 2007* (“*Godmanchester*”) allows that matters satisfying the proviso to show a lack of intention to dedicate, or even an interruption, may not always call use into question. However, I agree with the OMA that if I was satisfied that any actions in relation to the shoot were sufficient to have interrupted use, or demonstrated a lack of intention, then as noted in *Godmanchester*, as “...acts negating an intention to dedicate [they] would also, by calling the right into question, throw the inquiry back into an earlier period.” If these notices were insufficient to have called use into question, on which all parties are agreed, then they were also insufficient, on the balance of probabilities, to have interrupted use or to demonstrate a lack of intention to dedicate.

124. The objectors argued that use of the land for their own purposes throughout the twenty-year period was demonstrative of a lack of intention to dedicate a public right of way over the land in question. However, *Godmanchester* sets out that "...upon the true construction of section 31(1), "intention" means what the relevant audience, namely the users of the way, would reasonably have understood the landowner's intention to be. The test is...objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending...to "disabuse [him]" of the notion that the way was a public highway...section 31(1) does not require the tribunal of fact simply to be satisfied that there was no intention to dedicate...there would seldom be any difficulty in satisfying such a requirement without any evidence at all. It requires "sufficient evidence" that there was no such intention. In other words, the evidence must be inconsistent with an intention to dedicate."
125. I do not consider that the granting of permission to some people in relation to specific uses, such as the hunt, or farming the land, would be incompatible with an intention to dedicate a public right of way on foot, or seen by the public to be intended to demonstrate that. Similarly it does not seem that the use of part of the land for access to the copse to shoot, or even shooting over that land, would be taken by a reasonable person to show that the landowner did not intend to dedicate a public right.
126. I agree with the OMA that there is evidence that employees had been told to challenge people not using recorded public rights of way, and so by implication this route. However, it seems that those who were seen as friends of the family were allowed to walk on the land and so any effective challenges seem to have been to 'strangers', given that the user evidence does not demonstrate challenges to them within the relevant period, except for within the copse. Concern about use by people from outside the area was evidenced in relation to the erection of the 2001 signs, which were said to be in relation to increased use by people from out of the area in connection with the NCN. In order to demonstrate a lack of intention to dedicate it is necessary for the owners to inform those using the route, in this case, the local people.
127. I do not consider, on the balance of probabilities, that there is sufficient evidence that the landowners have indicated a lack of intention to dedicate a public footpath over the Order route in the relevant period 1981 - 2001.

Width

128. The remaining matter is that of the width to be recorded. I have already set out that I am satisfied that the section A – X should have a width of 0.9m at common law. Being satisfied that there has been use of the route that would otherwise have given rise to a presumption of dedication under the statute I consider that the evidence supports dedication of a greater width. Concerns that the footpath would be wider than the NCN are not relevant to my decision.
129. The Order seeks to record a width of 3.7 metres. This appears to have been based upon the UEFs, with the vast majority of the users referred to the width as 12 foot, or 3.7m. I have already noted that those users giving evidence to the Inquiry were not challenged on this matter. Measurements taken during

the accompanied site visit identified that the majority of the Order route, taking the track and 'verge' into account had a width greater than this.

130. I agree with the LGS that the Order should not be modified in absence of evidence from objectors that widths proposed were not physically available for such use. The objectors have argued that the 'verge' would not have been present throughout the relevant twenty-year period as it was introduced in relation to farm management changes as mentioned in the Preliminary Matters. Whilst I agree that the width to be recorded should be that which has been available the evidence on what has been is limited.
131. I accept that it is more likely that people will have chosen to walk on the farm track when it was available, although there is limited evidence from the users themselves on this point. The lack of boundary features over the vast majority of the route would allow deviation as necessary should there be obstructions such as potato boxes or farm machinery. In the absence of clear evidence of the physical width throughout the twenty-year period the best evidence available to me is the measured width of the track; I note the claim of the objectors that the section C – B has widened since 1997 due to use by the shoot but they have not provided sufficient evidence to enable me to determine the earlier widths. The photographs from 1994/95 show that there was a track but also that people were not prevented from stepping off that track.
132. It seems to me that a reasonable width, taking account of the availability of the verge is 2.2m from A – B. This is generally less than the widths submitted by the landowner on this point⁶. From B to the northern edge of the copse, noted as point B1 on the plan attached to the OMA's letter dated 11 April 2012⁷, the generally available width is 2.6m. From point B1 the northern edge of the copse to point C although widths up to 3.77m were measured I consider, on the balance of probabilities, that the available width throughout is 3.2m.
133. I am satisfied that it is appropriate for me to modify the Order to show these widths. It is not necessary for these changes to be advertised.

Other matters

134. Concerns regarding the effect on the shoot as a direct result of the existence of a right of way in this location are, unfortunately, not relevant to my decision and I have not been able to take them into account.
135. Similarly, I have not taken account of concerns raised regarding access for poaching or hare coursing, the effect on the farm income or whether there are sufficient footpaths in the area already.

Conclusions

136. Considering the evidence as a whole I am satisfied, on the balance of probabilities, that the Order route should be recorded as a public footpath, there being use by the public as of right over a twenty-year period from 1981 – 2001 and insufficient evidence of a lack of intention to dedicate a public right of way on the part of the landowner during that period.

⁶ Inquiry document 8

⁷ Inquiry document 9

137. I was satisfied as to the existence of rights over section A – X under common law and consider that the tests under the statute demonstrate the width that should now be recorded over that section, being greater than suggested at common law.
138. Having regard to these and all other matters raised at the Inquiry, and in the written representations, I conclude that the Order should be confirmed subject to alterations to the width.

Formal Decision

139. I confirm the Order subject to the following modifications:

- On the Order map:
 - add points 'X' and 'B1';
- In Part II of the Schedule to the Order:
 - replace text "*3.7 metres*" replace with text "*2.2 metres from A – B 2.6 metres from B – B1 3.2 metres from B1 – C*".

Heidi Cruickshank

Inspector

APPEARANCES

For the Order Making Authority:

Mr T Ward of Counsel, *instructed by* Wendi Batteson, Senior Planning & Litigation Lawyer, The Royal Borough of Windsor & Maidenhead

who called:

Mr A Fletcher Public Rights of Way Officer, The Royal Borough of Windsor & Maidenhead

Interested Parties in Support of the Order:

Mr M Wood ET Landnet Ltd, *on behalf of* The Littlewick Green Society

who called:

Mr D Button

Mr R Farrant

Mr D Gilbert

Mr M Hart

Mrs L Penfold

Mr P Ripley

Mr R Rowlin

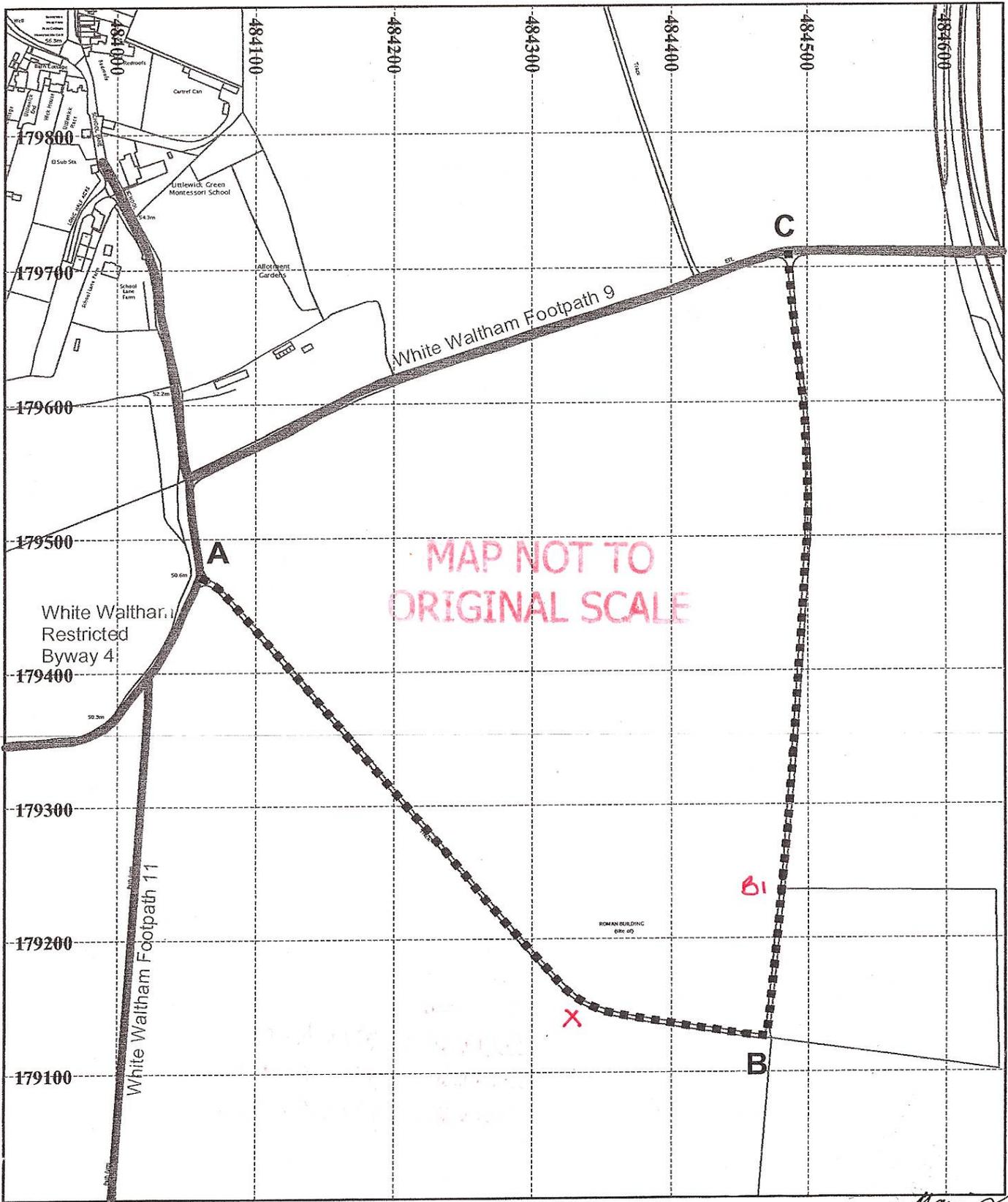
Mr M Tinkler

Mr D Woolford

INQUIRY DOCUMENTS

- 1 The Order
- 2 Supplementary proof of evidence of Andrew Fletcher & response to revised proof of evidence of Aaron Nelson
- 3 Map identifying point X
- 4 Closing submissions on behalf of the OMA
- 5 Proofs of evidence and statutory declarations of the Littlewick Green Society
- 6 Closing submissions on behalf of the Littlewick Green Society
- 7 Submitted caselaw
- 8 Widths measured by Mr Westacott
- 9 Information submitted in relation to width during adjournment
- 10 Photographs of track C - B
- 11 Additional information from Mr Potter
- 12 (Proposed) irrigation at Feens Farm
- 13 Map of distances from the wood (annotated)
- 14 Proof of evidence of Aaron Nelson
- 15 Correspondence between the parties
- 16 Revised proof of evidence of Aaron Nelson
- 17 Rebuttal proof
- 18 Correspondence
- 19 Closing submissions on behalf of Christopher Westacott

- 20 Costs application on behalf of the OMA



Drawing No: RBWM027/1
 Date: 9th July 2010
 Scale: 1:4,000
 Drawn: AF / Checked: AH



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**Wildlife and Countryside Act 1981
 Definitive Map Modification Order
 RBWM027**

Footpath 25 White Waltham



Footpath to be added to the Definitive Map



Other Public Rights of Way Unaffected by the Order

The Royal Borough



Windsor & Maidenhead

Maria Linton