

COMMONS AND RIGHTS OF WAY COMMITTEE

MINUTES of a meeting of the Commons and Rights of Way Committee held on Wednesday 13th April 2005 in Meeting Room 1, Shire Hall Gloucester.

Membership:

Ron Allen	P	Di Phillips	P
Peter Chamberlain	P	Gary Phipps	A
John Garwood	A	Stan Waddington	P
Anthony Lynch	P *	Will Windsor Clive	P
		Geoff Wheeler	S

P = Present: A = Apologies/Absence: S = Substitute: * = Chairperson

7. **MINUTES** - The minutes of the meeting held on 8 February 2005 were approved as a correct record and signed by the Chairperson.
8. **APOLOGIES FOR ABSENCE** – Apologies were received from Cllr Phipps.
9. **PUBLIC QUESTIONS** – 2 public oral questions were received.
 - (i) Agenda Item 6 (minute 12) – Mr R Eldridge asked why did the County Council erect the “No through road” sign.
Andrew Houldey said he would answer the question as part of his presentation of the report.
 - (ii) Agenda Item 6 (minute 12) - Mr J French asked what the appeal process was.
Janet Smith explained that if the application was refused the applicant had a right of appeal to the Secretary of State. If the application was agreed then the landowner/objector could take the decision to Public Inquiry. Both processes had to be lodged within 28 days of the decision being made and would be undertaken by independent bodies.
10. **MEMBERS' QUESTIONS** – None received.
11. **Application for Registration of land known as Frith Wood, Bussage as a Town or Village Green** – Councillor Waddington stated that although he could see the land contained in the application from his home across

the valley he felt he did not have a prejudicial interest and would take part in the debate and vote.

The panel considered a report of the Head of Legal and Democratic Services presented by June Moores. It was noted that the recommendation contained in the agenda should read “edged red” and not “hatched black”.

The Commons Registration Act 1965 established registers to be maintained by the County Council as registration Authority for common land or town/village greens which would contain information about the status of the land, any rights over it and ownership of the land in question. Under that legislation, any land which was not registered during the relevant registration period (which expired on 2 January 1970) would lose its status and any unregistered rights would be unenforceable. The area of land which was contained in the application was not registered at that time and was not shown on the Council’s registers as either town or village green or common land.

Section 13 of the Act permitted applications based on claimed usage for 20 years or more to be considered and, if appropriate, the land to be included in the registers thus protecting its status for the future. The procedure which had to be followed was set out in the relevant regulations which are the Commons Registration (New Land) Regulations 1969.

Mr Simon Green made two applications for the registration of an area of woodland known as Frith Wood, Bussage in the County of Gloucestershire as a town or village green pursuant to Section 13 of the Commons Registration Act 1965.

Robert Hitchins Ltd, a development company has owned the freehold interest of Frith Wood and surrounding land since 1979. Robert Hitchins Ltd who is the objector in this matter, has since the late 1970s carried out a significant house building programme on land near and adjacent to Frith Wood.

In response to the Notices given by the registration authority, an objection dated 30th January 2002 was lodged by Robert Hitchins Ltd. In a written statement dated 7th March 2002 Mr. Green responded to the objection by Robert Hitchins Ltd.

As the issue as to the nature of extent of the use of Frith Wood between the applicant and the owner was disputed, the applicant and the objector requested an oral hearing.

The hearing took place at the Parish Hall, Bussage on the 7th to 9th July 2004 and was chaired by a Barrister experienced in this area of law to listen to both parties and adjudicate on the evidence.

Members considered the Barristers report which set out a detailed analysis of the evidence put forward in support of the application, comments by the applicant, Robert Hitchins Ltd represented by his Barrister and other representations together with a number of legal submissions put forward by the parties.

The Barrister concluded that

- (a) Frith Wood (ie an area of woodland) was capable of being registered as a town or village green, if the Applicant demonstrated that the requirements of section 22 of the 1965 Act were satisfied.
- (b) There had been recreational use of Frith Wood from time to time since the 1930's and probably for a longer period. Until the forestry works that were carried out in 1993-4 most recreational walking or dog-walking would have been confined to walking whether as a complete traverse or to and from the public footpaths. Such activity off of the footpaths would have been confined to games for children, where hiding would have been part of the fun. He concluded that this did not amount to a sufficiently substantial portion of Frith Wood to justify registration of the areas sought to be registered in the two applications.
- (c) Since 1975 and the commencement of development of the surrounding land and then after the tree-thinning in 1993-4 the usage of the wood for recreation had significantly and progressively intensified.
- (d) The ceremony of "waking the trees" was both relatively recent and intermittent –once a year. It was insufficient to assist in the establishment of recreational user for the relevant period. Picking up rubbish could not itself amount to recreation, although it seemed likely that the necessity to collect such rubbish illustrated both the greater usage in recent years, and unwelcome aspects of society.

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- (e) The Inspector was not satisfied that prior to 1993 the recreational user was of such a degree, quality, nature or intensity that a reasonable landowner could have been inspected to conclude that a public right of recreation was being asserted. In the Inspectors view such a landowner would have concluded that the user of the wood would have been attributable to the exercise of the public rights of way over the wood, and to excessive user of some informal tracks through the wood.
 - (f) Therefore the relied upon user had not, after 31st July 1970 and prior to 1993 been “as of right”. The Applicant therefore failed to establish “twenty years” user of lawful sports and pastimes as of right.
 - (g) The taping off of the wood as part of the tree-thinning programme in 1993-4 would have been an offence under section 29 of the Commons Act 1976 had the wood then been a village green, and this would have interrupted the running of time.
 - (h) The user that has been established reflects usage from the inhabitants of Bussage Ward. He was of the view that Bussage Ward was a locality within Section 22 of the Act, but not a neighbourhood within section 22 (1A). In his view the extent of the user did not prove recreational user either by the inhabitants of the civil or the ecclesiastical parish.
 - (i) The user had related to (in the main) dog walking and children playing. These were lawful sports and pastimes within section 22 of the 1965 Act.

On the evidence that the applicant had not made out the necessary requirements to satisfy the County Council that the parcel of land known as Frith Wood and identified within the application ought not to be registered as a village green pursuant to the Commons Registration Act 1965, he recommended to the County that they did not grant the application.

A very thorough and comprehensive examination of all the evidence had taken place with regard to the application. As the legislation itself did not provide a right of appeal, it was felt that offering a non statutory hearing

was the most fair way of examining the evidence, especially in light of the recent case of Cheltenham Builders Limited –v- South Gloucestershire District Council 2003, before final determination by members and to minimise the chance of a challenge by means of a judicial review in the High Court.

The officers therefore recommended that for the reasons set out in the Inspector’s report that the application to register the Town or Village Green should not be granted.

In response to members questions it was confirmed that whatever the decision of the committee the public footpaths already in existence on the land would remain as public footpaths. Further public footpaths could be applied for. If anyone strayed from the public footpaths they would be trespassing. The footpaths were signposted and the landowner had no obligation to fence land for the safety of the public.

Having considered all the evidence it was unanimously

RESOLVED

THAT the application by Mr Simon Green for the registration of land at Frith Wood, Bussage (shown edged red on the map annexed to the report) as a town or village green pursuant to Section 13 of the Commons Registration Act 1965 be refused for the reasons set out in the Inspectors report received on 7 January 2005.

- 12. Application for a Modification Order for an Additional Byway and to Upgrade Part of Footpath BED 20 TO byway Open to all Traffic, Lower Waverley Farm to Closes Cottage, Parish of Edgeworth** - The Panel considered a joint report from the Executive Director: Environment and Head of Legal and Democratic Services and watched a video presentation from Andrew Houldey. He reported that Cllr Parsons, local county councillor had said that he supported the officers recommendation.

In response to a members question on the video it was confirmed that the section A – B had a tarmac surface from approximately 1996 to 1999.

In response to the public question the County Council had erected the “no through road “ sign post in response to the investigation on the status of the road, where it was found that it was neither a public right of way or a county maintained road. It was erected for safety reasons to deter the public from using it instead of the county maintained road 40889.

An application was made on 8 April 2004 by Mr John French of Closes Cottage, Edgeworth, Gloucestershire. His claim was for a length of byway to be added to the Definitive Map and for part of the existing footpath BED 20 to be reclassified as a byway open to all traffic. The claimed path ran from county road through Lower Waverley Farm yard through to Closes Cottage where it terminated. Notice was served on the landowners affected by the application.

A total of 15 public path evidence forms had been submitted in support of the application. Mr French's application was also accompanied by a statement which supplied background information to the claim. He felt that the right of way had existed for as long as Lower Waverley Farm had been in existence. It had been used by the farm workers in the cottages going to work, to the then existing Village Shop, the Church and the Village Hall and to the local villages and towns. In addition it had been used by all and sundry, on foot, in cars, on tractor drawn farm vehicles, horse boxes and lorries, by all who required access not only to the barn but to the seven stables and tack room, cattle yard, sheds and three cottages as well as the surrounding fields. The owner of Closes House also claimed these rights. There was in addition a bridle path continuing from the end of the Carriage Way, across Lower Waverley Farm Yard and continuing across the adjoining paddock and on to the next farm (Lady Hollenden). For full access to Lower Waverley Farm there could have been no alternative to the disputed Carriage Way and this had always been the case, even from the time of farm horses. The very steep slope dropping down to the road, not only crumbled continuously, but was unsuitable for any vehicle without four wheel drive, a recent development, and not even for these during times of frost and snow and this difficulty had always applied.

A submission was also made by Thring Townsend Solicitors, acting for the landowner Mrs B L R Lindemann on 14 January 2005, they felt that bearing in mind what the Applicant had to prove in order to succeed in this case and the required standard of proof it would be seen that there was no (or no sufficient) evidence to support the claim, and it was submitted that the claim must fail in respect of the whole Route.

The County Archivist and the Modification Orders Officer had examined sources in the Gloucestershire County Record Office to see if this path was marked in any way and to identify other sources which might have been useful in establishing the status of any right of way along the route.

Other observations from interested parties were also considered.

Section 53 [3] [c] [i] of the Wildlife and Countryside Act, 1981 related to the discovery by the Authority of evidence that showed that a right of way that was not

shown on the map and statement subsisted, or was reasonably alleged to subsist, over land in the area to which the map related.

Section 31(1) of the Highways Act 1980 stated that where a way over any land, other than a way of such character that use of it by the public could not give rise at Common Law to any presumption of dedication, had been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way was deemed to have been dedicated as a highway unless there was sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years in sub-section (1) was to be calculated retrospectively from the date when the right of the public to use the way was brought into question through an overt act by the landowner which made it clear to the public that their right was being challenged. The twenty years usage must furthermore have been “without interruption” and the requirements of Section 31 would not be met if “there was sufficient evidence that there was no intention during that period to dedicate it”.

Section 31 (9) of the Highways Act 1980 said that nothing in this Section operated to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years. Paragraph 12 of Annex B of the Department of Environment Circular 2/93 stated that before making an order the surveying authority must be satisfied that the evidence showed on the balance of probability that a right of way of a particular description existed. To fulfil the requirements of Section 31 of the Highways Act, it needed to be seen whether there had been a full 20 years use by the public and, in order to do this, the date of challenge needed to be ascertained, that was there had to have been some overt act on the part of the landowner to bring it home to users that their right was being challenged. There was no fixed method by which the public’s right was brought into question, though one (the erection of a notice) was expressly referred to in Section 31. The words “or otherwise” in Section 31(2) left the matter at large. The methods could range from a notice on site denying the public the existence of a right of way, the locking of a gate or seeking a declaration that there was no highway over the land in question. Whatever means were employed, it should have been sufficient “to make it likely that some of the users were made aware that the owner had challenged their right to use the way as a highway...” The persons to whom the challenge had to be brought home were the users of the way.

There was a discrepancy between the Definitive Map and Statement as to the extent and southern termination point of footpaths BED 17 and BED 20. The Map showed both public footpaths terminating at the edge of Lower Waverley Farm yard but the Statement made it clear that the paths connected with each other in the footpath and that BED 20 then continued south through the farmyard to the road. However, there was no evidence from the Parish Submission or Ordnance

Survey Maps as to which route out of the farmyard was intended to be used (i.e. A to B or B to Y). The path was signposted from the road at point Y.

The claimed route would form a cul de sac byway open to all traffic, terminating at the gate to the east of Closes Cottage (point C). There was no car park or turning point at point C and there was no evidence for any higher rights existing to the north of point C (other than one witness alleging bridleway use). In normal circumstances a public path should begin and end at another public highway thereby providing a link between the two. It was possible to have a cul-de-sac public right of way if it served the purpose of reaching a point that the public may legitimately wish to reach; for example, the foreshore, or a particular view point, or a structure or building of interest, or houses at the end of a street that formed a cul-de-sac. In this case the terminus point of the claimed route was at a farm gate overlooking fields. This gate could not be considered as a viewpoint or a point that the public might legitimately wish to reach.

Much of the evidence that had been submitted in support of the application was private in nature (in order to access properties in and around Lower Waverley Farm Yard and The Closes). Also, use that has been at the invitation of the people occupying those properties, for example making deliveries or visiting was essentially at the invitation of the occupiers, and was permissive and not as of right.

The user evidence on foot was then considered to see whether there was sufficient user that was as of right to make an order to add a public footpath.

Twelve of the fifteen witnesses stated that they had walked the claimed route, but seven of these used the route solely for purposes that were considered permissive in the same way as their vehicular use (for example deliveries, social visits or because they were occupiers of properties accessed by the claimed route). Three of the witnesses stated that they had walked the claimed route for purposes in addition to visiting or making deliveries. Two further witnesses stated that they had used the path solely on foot, as part of a walk from their home to Miserden village and Valley Farm. A further witness, stated that she had ridden the route on horseback as part of a circular ride between 1973 and 1988.

One witness claimed using the route on horseback. Another stated that she had used the way on horseback on a circular route for hacking. Two other witnesses, also referred to using the claimed route from point A to C on horseback. However, both of these witnesses were resident at The Closes and hence such use was private in nature and did not establish a public right. Tony Frenkel, the former landowner stated "There was in addition a bridle path continuing from the end of

this Carriage Way, across Lower Waverley Farm Yard and continuing across the adjoining paddock and on to the next farm (Lady Hollenden)”.

There was no evidence of any intention to prevent dedication on the part of the landowners. It was not disputed that use had been open and without challenge or interruption. The previous owner of Lower Waverley Farm between 1946 and 1986, Mr Frenkel, wrote in support of the application, stating that he believed the way to be public and hence presumably did not challenge any use. Contrary to the assertion made by Thring Townsend on behalf of the landowner there was a person with capacity to dedicate.

Much evidence had been supplied of use, although the majority of this evidence was in connection with accessing the properties around the Closes and Lower Waverley Farm, including visiting and deliveries, which were deemed to be with consent and thus did not constitute public use. However, some of the use was recreational in nature and although relatively infrequent had taken place over a long period without any action being taken by the landowner to prevent dedication of the route as a public right of way. Edgeworth was a small rural community, with no shop or school and it was the view of the officers that the tests of sufficiency were met to make an order to add the claimed route to the Definitive Map of Public Rights of Way as a public footpath. It was considered that there was insufficient use on horseback to establish bridleway rights.

In response to members questions it was confirmed that expressly dedicated roads could end at cul de sacs, but for Modification Order claims based on user evidence, then any claimed public right of way must serve the purpose of reaching a point that the public might legitimately wish to reach.

Having considered all the information it was unanimously

RESOLVED

- (1) THAT no Modification Order be made to upgrade the existing footpath BED 20 to byway open to all traffic due to insufficient evidence between points C and X**
- (2) THAT no Modification Order be made to add a length of byway open to all traffic due to insufficient evidence between points A, B and X**
- (3) THAT a Modification Order be made to add a length of public footpath between existing footpath BED 20 and county road 40889 (between points A, B and X.**

- 13. Application for a Modification Order for an Additional Footpath between Monmouth Road and Hope Wood, Parish of Longhope - The Panel considered**

a joint report from the Executive Director: Environment and Head of Legal and Democratic Services and watched a video presentation from Andrew Houldey.

In response to members questions it was explained that although the Forestry Commission do not dedicate paths within the Statutory Forest, this area was outside the Statutory Forest. The use of kissing gates were encouraged as opposed to stiles but it was up to the landowner to provide suitable access to public footpaths.

Although the path was agreed by the landowners in 1981 to be included on the Definitive Map of Public Rights of Way it was never formally dedicated. The National Parks and Access to the Countryside Act 1949 made provision for revision of the Definitive Map to take place through five yearly or quinquennial reviews. As the Definitive Map for the County of Gloucestershire was not completed before the Wildlife and Countryside Act 1981 came into force, no such review was ever carried out. Thus many investigations were undertaken into correcting perceived anomalies or adding paths to the Definitive Map prior to 1983 but no alterations were made to the map. Mrs C Howse owned the property until 2001 when it was sold to Mr E R C Duberley.

The path was shown on the Longhope Parish Bridleway and Footpath Map on earlier copies of the Network Map (the working copy of the Definitive Map held by the County Council) as a public footpath until it was realised that this was in error. Current network maps did not show the claimed route as a public footpath. The path was not recorded on the Definitive Map and Statement.

An application was made on 1 October 2003 on behalf of the Ramblers' Association. The claim was for a length of footpath to be added to the Definitive Map to connect Hope Wood and the existing public footpath DLH 95 with the main Gloucester to Monmouth Road. Notice was served on the landowner affected by the application, the application was received and acknowledged as duly made.

A total of nine public path evidence forms completed by eleven named individuals were submitted in support of the application.

Work was delayed on this application as firstly it was believed that the claimed route might carry higher rights than that of public footpath and also while the possibility of dedicating the path as part of the diversion order affecting existing public footpath DLH 39 was investigated. There does not appear to be any evidence that the route carried higher rights; the Public Path Order that would divert public footpath DLH 39 was published on 10 February 2005.

Peter Tufnell of Tufnell Town and Country Planning wrote on behalf of his client, the landowner on 6 April 2004: "...I have had a further discussion with my clients and turned up the enclosed extract from the Deeds to the property. It would seem that the way has come about as a result of a conveyance in 1926, between the then owner of the property and the Forestry Commissioners for the Crown. This document would appear to confirm that the way is private, subject of course to other relevant historic documentation and user evidence...."

The County Archivist and the Modification Orders Officer had examined sources in the Gloucestershire County Record Office to see if this path was marked in any way and to identify other sources which might have been useful in establishing the status of any right of way along the route.

Section 53 [3] [c] [i] of the Wildlife and Countryside Act, 1981 related to the discovery by the Authority of evidence that showed that a right of way that was not shown on the map and statement subsisted, or was reasonably alleged to subsist, over land in the area to which the map related.

Section 31(1) of the Highways Act 1980 stated that where a way over any land, other than a way of such character that use of it by the public could not give rise at Common Law to any presumption of dedication, had been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way was deemed to have been dedicated as a highway unless there was sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years in sub-section (1) was to be calculated retrospectively from the date when the right of the public to use the way was brought into question through an overt act by the landowner which made it clear to the public that their right was being challenged. The twenty years usage must furthermore be "without interruption" and the requirements of Section 31 would not be met if "there was sufficient evidence that there was no intention during that period to dedicate it".

Section 31 (9) of the Highways Act 1980 said that nothing in this Section operated to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years. Paragraph 12 of Annex B of the Department of Environment Circular 2/93 stated that before making an order the surveying authority must be satisfied that the evidence showed on the balance of probability that a right of way of a particular description existed.

To fulfil the requirements of Section 31 of the Highways Act, there needed to be a full 20 years use by the public and, in order to do this, a date of challenge needed to be ascertained, that is there has to have been some overt act on the part of the landowner to bring it home to users that their right was being challenged. There was no fixed method by which the public's right was brought into question, though

one (the erection of a notice) is expressly referred to in Section 31. The words “or otherwise” in Section 31(2) left the matter at large.

For a way to be lawfully claimed, a landowner must have shown to have intended to dedicate the right of way over his land.

However at common law the question of dedication was purely one of fact and public user was not more than evidence, which had to be considered in the light of all available evidence. Public use would not therefore, raise the inference of dedication where the evidence in its totality showed that the public right of way status was not intended.

The crucial difference between common law and the statutory position under Section 31 of the Highways Act was that, to show common law dedication, the claimant must have proved that it could be inferred from the landowner’s conduct that he had actually dedicated the route as a public right of way.

To prove statutory deemed dedication it was only material to show 20 years’ continuous user. As a matter of proof at common law, the greater the length of user that could be demonstrated, the stronger the inference of dedication would (usually) be.

Considered together, the documentary evidence did not indicate that the claimed route had any public status but it did indicate that the way had been in existence as a physical feature since at least 1879, albeit with a different termination point at the northern end, and that it had run along its present route since c.1925. Furthermore, it was stressed that the conveyance which granted a private right of way over the claimed route was a private document and the form of its wording in this instance did not prevent public rights from coming into being through long user. It was not incompatible for a private road or way to carry additional public rights.

There was no evidence of any intention to prevent dedication on the part of the landowners; the previous owner stated in 1981 that she believed the way to be public and wished it to be added to the Definitive Map. Presumably she did not thus challenge use by the public or take any steps to prevent dedication. The way had been signposted for some years, and although this was not evidence of an intention on the part of the landowner to dedicate, there had been no complaint about the sign. Stiles had been in position at either end of the claimed route throughout most of the claim period, although it would appear from the user evidence that there had previously been gates at each end of the path. It was the view of the Officers that an Order be made under Common Law (Section 31(9) of the 1980 Highways Act) to add the path to the Definitive Map as a public footpath.

Members considered all the evidence and unanimously

RESOLVED

THAT a Modification Order be made to add a length of Public Footpath between Public Road 4136 and Footpath DLH 95 subject to confirmation of Gloucestershire County Council (Public Footpath DLH 39)(Parish of Longhope) Diversion Order 2004 being made.

- 12. Application for a Modification Order to Upgrade Parts of Footpaths HBW 11 and HBW 8 to Bridleways Salmonsbury Meadows, Parish of Bourton on the Water** - The Panel considered a joint report from the Executive Director: Environment and Head of Legal and Democratic Services and watched a video presentation from Andrew Houldey. It was reported that Cllr Gillams, local county councillor had stated he felt the officers recommendation should be supported.

An application was made on 23 September 2004. The claim was for existing footpaths HBW 11 (part) and HBW 8 (part) to be reclassified as public bridleways. The claimed path runs from RUPP HBW 9 (Moor Lane) to connect with public bridleway HBW 10. Notice was served on the landowners affected by the application: Gloucestershire Wildlife Trust, Conservation Centre, Dulverton Building, Robinswood Hill Country Park, Gloucester and the tenant of the land, Mr A Firth of Clark Hill Farm, Little Rissington, Gloucestershire.

A total of twenty public path evidence forms completed by twenty named persons were submitted in support of the application.

A subsequent Land Registry search indicated that the length of track A to B (footpath HBW 11) and its continuation southwards was unregistered and it is believed that no one claims ownership of this parcel of land. The remainder of the affected land from point B to point E was confirmed to be in the ownership of the Gloucestershire Wildlife Trust.

The Gloucestershire Wildlife Trust offered the introduction of a riding permit system with permissive bridleways to the applicant but as a permissive path could be withdrawn by the landowner at any time and that such permissive use would not establish any public right over the path, she believed that the interests of horse riders would be best served if she went ahead with her Modification Order claim to establish a public bridleway.

The County Archivist and the Modification Orders Officer have examined sources in the Gloucestershire County Record Office to see if this path was marked in any way and to identify other sources which might be useful in establishing the status of any right of way along this route.

The Gloucestershire County Archivist comments “For HBW 11, there is evidence that Bryant viewed the route as having the status of a lane or bridleway in 1824, although more recently it has been viewed as a footpath. The evidence of the original submission map is that the Parish Council considered the status of HBW 8, given that it connected with a bridle road in Rissington parish, but decided to submit it as a footpath”.

Section 53 [3] [c] [i] of the Wildlife and Countryside Act, 1981 related to the discovery by the Authority of evidence that showed that a right of way that was not shown on the map and statement subsisted, or was reasonably alleged to subsist, over land in the area to which the map related.

To fulfil the requirements of Section 31 of the Highways Act, there needed to have been a full 20 years use by the public and, in order to do this, a date of challenge needed to be ascertained, that was there had to have been some overt act on the part of the landowner to bring it home to users that their right was being challenged. The relevant 20-year period for this application was 1984 to 2004.

The twenty public path evidence forms were completed by twenty witnesses. Of these, seventeen stated that they had used the route on horseback, three on foot. Use on horse went back to 1950, with three other witnesses claiming use since 1960. Two of the witnesses had used the path on horseback for more than 40 years. Five more witnesses had used the path for a period of 20-39 years; ten more witnesses had used the path for less than 20 years. Eleven of the seventeen witnesses claimed to have used the path up until the time when their right to use the way was brought into question in 2004. Frequency of use was relatively high, with four of the witnesses claiming to have used the path more than a hundred times a year and three more claiming use more than 50 times a year.

For long usage to give rise to a presumption of dedication, user had to be without force, without secrecy and without permission. Landowners did not seem to have prevented horse riders from using the path until Summer 2004. No evidence had been found that use was with permission.

The historical evidence was inconclusive in determining the status of the claimed route, but it did determine that the route had been in existence throughout the period (and longer) for which use had been claimed. Seventeen evidence forms alleging bridleway use, over a long period of time and with a high frequency of use would seem to comfortably meet all of the tests of sufficiency mentioned above. It was the conclusion of the officers that the section A-B-C-D should be re-classified as a bridleway, on the basis of user evidence.

Subject to acceptance as a
correct record at the next meeting

**Commons & Rights of Way
Committee
22 September 2005
AGENDA ITEM**

Members discussed the user and conflicting documentary evidence and by 6 votes for and 1 abstention it was

RESOLVED

**THAT a Modification Order be made to upgrade the existing footpaths to
bridleways.**

CHAIRPERSON

Meeting ended 12. 45pm.