

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER FOR AN
ADDITIONAL LENGTH OF PUBLIC FOOTPATH
BETWEEN ROAD 50522 AND PUBLIC FOOTPATH AWB 52
MILL FARM, GREET, PARISH OF WINCHCOMBE

REPORT OF THE ASSISTANT DIRECTOR: TRAFFIC AND TRANSPORT

1. PURPOSE OF REPORT

To consider the following application:

Nature of Application:	Additional length of footpath
Parish:	Winchcombe
Name of Applicant:	Cleeve Group of Ramblers' Association
Date of Application:	4 November 2008

2. RECOMMENDATION

That an order be made to add a length of public footpath to the Definitive Map of public rights of way between points A and B (as shown on map 1B)

3. RESOURCE IMPLICATIONS

Cost of advertising Order in the local press, which has to be done twice, is approximately £500 per notice.

In addition, the County Council is responsible for meeting the costs of any Public Inquiry associated with the application.

If the application were successful, the path would become maintainable at the public expense.

4. SUSTAINABILITY & EQUALITY IMPLICATIONS

No sustainability implications have been identified.

5. STATUTORY AUTHORITY

Section 53 of the Wildlife and Countryside Act 1981 imposes a duty on the County Council, as surveying authority, to keep the Definitive Map and Statement under continuous review and to modify it in consequence of the occurrence of an 'event' specified in sub section [3]. Any person may make an application to the authority for a Definitive Map Modification Order on the occurrence of an 'event' under section 53 [3] [b] or [c]. The County Council is obliged to determine any such

application that satisfies the required submission criteria in accordance with schedule 14 of the Act.

6. DEPARTMENTAL CONTACT

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REPORT

7. DESCRIPTION OF PATH

- 7.1 A location map at scale 1: 10,000 is attached (numbered **1A**) showing the position of the claimed path at Mill Farm, Greet. A more detailed plan at the scale of 1: 2,500 is attached (numbered **1B**). This map shows the claimed path by a solid black line between point A and point B. Reference is made to the points shown on map 1B throughout the report.
- 7.2 The claimed path is approximately 1½ miles north north-east of the town of Winchcombe and lies within the parish of Winchcombe. The area of interest is within Ordnance Survey Grid Square SP 0330.
- 7.3 The claimed path runs through the farmyard at Mill Farm, Greet, in a south-easterly direction from the end of county maintainable road number 50522 (Greet to Mill Farm) which terminates at point A (the western entrance to Mill Farm farmyard) to the start of the public footpath AWB 52 at point B (the eastern end of Mill Farm farmyard).
- 7.4 The Mill Race for Greet Mill runs underground, directly under the farmyard, between the end of Public Road 50522 and the start of public footpath AWB 52, i.e. between points A and B.
- 7.5 A photograph taken c.1953 deposited in the Gloucestershire Archives (**1T**) shows a wooden farm gate at point B; a gate at point B is also shown in a photograph dated to 1978 supplied by the current landowners. There was a gate approximately 60 metres to the south-east of point B when the path was first inspected in February 2003, but no gate at either point A or B. Photographs taken in 2003 can be seen at **appendix 1T**.
- 7.6 Footpath AWB 52 runs from point B in a south-easterly and then easterly direction, to connect with the main Cheltenham to Stratford Road, the B 4632, formerly the A46. Approximately 60 metres to the south-east of point B, the path passes through a metal farm gate, and some 40 metres further to the south-east crosses the River Isbourne by a bridge.
- 7.7 There were signs in place in 2003 at point A which read “Dead End Public Footpath” and “Private Road to Mill Farm only”. The “Private Road” sign is also in place at the eastern end of public footpath AWB 52 (close to the Stratford

road) and the “Dead End” sign is in position to the east of point B. These signs replace earlier signs that were in place during the 1990s.

- 7.7 There is a stone slab over the ditch immediately to the north of point C, which formed a footbridge for the path ASY 23. Path ASY 23 was deleted as the result of a judgement in the Court of Quarter Sessions on 2 August 1965 following an objection by A L Shaw to the Provisional Map of Rights of Way.
- 7.8 The claimed route is some 30 metres in length. The width of the claimed section of path is undefined where it runs through the farmyard.

8. BACKGROUND

- 8.1 On 19 February 2003 an application was made by the then-landowner Mr Cecil John Pearce of Mill Farm, Greet to delete the entire length of public footpath AWB 52. Path AWB 52 runs east from Mill Farm (point B) to the main Cheltenham to Stratford road (B4632.)
- 8.2 Mr Pearce asserted that the footpath AWB 52 had never been a right of way and that the length of path B to C was only claimed once the path ASY 23 had been removed from the Definitive Map. This is not correct as AWB 52 featured on the initial Parish Submission made by Winchcombe Parish Council c.1952, and ASY 23 was not deleted until 1965.
- 8.3 Mr Pearce stated that he had been born in 1934 and had always lived at Mill Farm. His father had previously bought the farm in 1928. He said that the farm had formerly been a mill, known as Greet Mill, and was sold as part of the Manor Farm Estate in 1904. The farm was bought by a Birmingham firm, Cattel Brothers, later Wathes & Cattel Gurden Limited, possibly in 1904, and operated as a creamery, collecting milk from the adjoining farms and then sending it on the railway. The creamery closed in 1926 after the General Strike, and the farm was operated as a pig farm between 1926 and 1928 when it was purchased by Mr Pearce’s father.
- 8.4 Mr Pearce pointed out that both he and his father had consistently stopped people walking along the track at point B, making it clear to them that there is no right of way between points A and B across the farmyard.
- 8.5 Mr Pearce supplied copies of the sale particulars for Manor Farm Estate, 15 August 1904, and of the Greet and Sudeley Tenements Map 1815 in support of his application. These documents are considered in more detail in section 11 Documentary Evidence.
- 8.6 The application to delete public footpath AWB 52 was refused by the County Council’s Commons and Rights of Way Panel on 30 March 2004. The applicant appealed to the Secretary of State against the decision to refuse the application to delete the footpath. The Secretary of State upheld the County Council’s decision by letter dated 22 November 2005.

- 8.7 The Definitive Map and Statement are at variance as the Statement describes public footpath AWB 52 as commencing from County Road 50522, implying that either the footpath AWB 52 runs through the farmyard and makes a connection with the road at point A, or alternatively that the road continued through the farmyard to point B.
- 8.8 This report makes reference to, and includes the evidence from, both the Commons and Rights of Way Panel report of 30 March 2004 and the Secretary of State's decision letter of 22 November 2005.

9. APPLICATION

- 9.1 On 3 November 2008 an application was made by D A Cooknell of 23 The Hyde, Winchcombe on behalf of the Cleeve Group of the Ramblers' Association to add a length of public footpath. The application was received on 4 November 2008. Notice was served on the landowner and the applicant advised the County Council of this and submitted the Form 3 (Certificate of Notice).
- 9.2 It was considered by the County Council, as surveying authority, that the application was fully compliant with both schedule 14(1) and 14(2) of the 1981 Wildlife and Countryside Act.
- 9.3 In a letter accompanying the application, Mr Cooknell wrote: "I enclose herewith the required application forms relating to the above matter. We are relying largely on documentary evidence for the claim, but I enclose some Evidence Forms in addition."
- 9.4 "The documentary evidence, to which we refer, was discovered when the owner of Mill Farm, Mr Pearce, made an application for the deletion of footpath AWB 52, linking the farm with the B4632. In connection with that application a report, dated 30 March 2004, was presented to the Commons and Rights of Way Panel. We have a copy of this report, and could forward it if necessary in support of our claim, but I assume that you will have a copy in your files."
- 9.5 A total of six public path user evidence forms, completed by six named individuals, were submitted in support of the application. A summary of these evidence forms is provided at **appendix 1C**.

10. USER EVIDENCE

- 10.1 The application was supported by 6 public path user evidence forms, completed by 6 individuals.
- 10.2 Use dates back to 1965 (witness 5, Mr F Wood), who is the only witness to have used the path for the full statutory period of 20 years (1965 to 2008) although he states that he was stopped by the landowner and also his son-in-law in 2006 and told that the section through the farmyard was not a right of way.

- 10.3 Other use is minimal. Witness 1 (Derek Cooknell) used the path for two years only, 1995-96, on average once or twice a year. Witness 2 (James Edward) used the path in 1980, once, while witness 3 (T Petchey) used the path once in 1978. Witness 4 (Ernest Ottewell) used the path for six years between 1984 and 1990, four times a year on average, while witness 6 (Gerald Stewart) used the path only three times, between 1989 and 1992.
- 10.4 Mr F Wood (witness 5) states that the previous landowner Raymond Pearce, who bought the property in 1903, never stopped anyone using the path. He notes that there were gates against the Broadway Road and another past the old mill, but that they were never closed. Mr Cecil Pearce, father of the present landowner, stated that his father bought the property in 1928.
- 10.5 There is no statutory minimum level of user required to show sufficient use to raise a presumption of dedication. Use should have been by a sufficient number of people to show that it was use by 'the public' and this may vary from case to case. Often the quantity of user evidence is less important in meeting these sufficiency tests than the quality (i.e., its cogency, honesty, accuracy, credibility and consistency with other evidence, etc.)
- 10.6 It was held in *Mann v Brodie* 1885 that the number of users must be such as might reasonably have been expected, if the way had been unquestionably a public highway. It is generally applicable that in remote areas the amount of use of a way may be less than a way in an urban area. Lord Watson said: "If twenty witnesses had merely repeated the statements made by the six old men who gave evidence that would not have strengthened the respondents' case. On the other hand the testimony of a smaller number of witnesses each speaking to persons using and occasions of user other than those observed by these six witnesses, might have been a very material addition to the evidence.
- 10.7 Arguably, therefore, the evidence contained in a few forms may be as cogent - or more cogent – evidence than that in many. *R. v. SSETR (ex p. Dorset)* [1999] accepted that, although the evidence within five user evidence forms was truthful, it was insufficient to satisfy the statutory test. The finding did not consider whether use by five witnesses would satisfy the test.
- 10.8 Only two of the six users have used the path for more than three years, and two of the six have only used the path once. Clearly there is insufficient use to raise a presumption of dedication.

11. DOCUMENTARY EVIDENCE

The County Archivist has examined sources in the Gloucestershire County Record Office to see if this footpath is marked in any way and identified other sources which might be useful in establishing the existence of a footpath along this route. These sources have then been checked by the Modification Orders Officer. For ease of identification, reference is made to points A, B and C, as shown on the attached map **1B**.

11.1 Winchcombe (Greet and Sudeley) Inclosure Award and Map, 1815 (Q/RI 159) (1D)

Map entitled Greet and Sudeley Tenements Map, shows open and common fields, common pastures and other commonable lands, including old inclosures. Covers the whole of the areas inclosed, including the area of interest. Fields and buildings are marked with plot numbers, which are identified in the schedule. The names of the landowners are marked on the map. A coloured outline is used to show the boundaries of individual holdings. Roads are marked by a double continuous line and footways are shown by a single dashed line. Those roads and footways to be either stopped up or created in the Award are indicated on the map by the addition of Roman numerals. These are then identified in the accompanying schedule.

A road (the present Mill Lane) is shown running along its present course, and then continuing right up to the Mill Race which at that time was not culverted, before continuing as a path in a north-easterly direction, past a building roughly on the site of the current farmhouse, to "Monks Bridge" where it crosses the River Isbourne. The path is unnumbered. The section of the current path AWB 52 from point B to C to the Stratford road is not depicted and no bridge is shown over either the Mill Race (then unculverted) between points A and B or over the River Isbourne between what are now points B and C.

Mill Lane is bordered on the north and south side by a line of symbols presumably representing trees or hedges and a pink coloured line that together divide the road from property in the ownership of Thomas Wells (to the south) and that in the ownership of Misses Freeman (to the north). Pink property boundary lines have been deployed elsewhere on the map across roads to show that their continuation is private (for example across road No.V) but this notation has not been used across Mill Lane. No boundary feature is depicted across Mill Lane.

11.2 Tithe Map, 1848 (GDR/T1/174)

Only covers the Sudeley area of the parish. Searched, not relevant.

11.3 Ordnance Survey Surveyor's Drawing (OSD 172, surveyed 1811) (1E)

Maps are coloured, with agricultural land in yellow, woodlands in green and masonry buildings in red. 'Roads' show up as uncoloured against the coloured background; major roads are tinted yellow. Field boundaries are shown. "Mill" marked but no roads shown leading to it.

11.4 Ordnance Survey 1" to 1 mile map, 1830 (appendix 1H)

Through route shown by two full lines running from Greet along Mill Lane and then continuing through points A to B to C to the main road from Cheltenham to Stratford, south of Ireley Farm. Status undefined. Greet Mill is named on the map, and a building appears to be shown on either side of the route, in the present position of Mill Farm.

11.5 Ordnance Survey 25" to 1 mile, 1884 edition, sheet Glos 20.3 (1I)

Coloured edition. Route shown coloured brown running along Mill Lane and then continuing from point A through to the main road, indicating that the whole route

was metalled. The section B to D is depicted by double pecked lines. Mill Race is shown culverted under the farmyard and the River Isbourne is shown bridged between points B and C. Boundary feature marked at point B, path marked "F.P." shown running northwards from point C. The status of the route B to Stratford Road is undefined.

11.6 Ordnance Survey 25" to 1 mile, 1902 edition, sheet Glos 20.3 (1J)

Route shown between points B and C and east to the main road by double pecked lines. Boundary feature shown at point B, none at point A.

11.7 Ordnance Survey 25" to 1 mile, 1923 edition, sheet Glos 20.3 (1O)

Route shown between points B and C by a solid and a dashed line as far as the River Isbourne, and then continuing eastwards as a double pecked line to Stratford road. A path is shown running northwards from point C marked "F.P." The route B to the main road runs across plot numbers 709 and 712. Mill Lane is depicted by two solid lines and given the plot number 705; the section A to B across the farmyard is part of plot 708. A boundary feature is marked at point B. No indication is given as to status.

11.8 Bryant Map of Gloucestershire, 1824 (1G)

A route is shown by two full lines running along Mill Lane and then continuing eastwards, immediately to the south of the parish boundary with Hailes, along the course B to C to the main road. Greet Mill is also marked. Bryant's key and colouring scheme suggests that he regarded this as a lane or bridleway.

11.9 Greenwood's Map of Gloucestershire, 1824 (1F)

Route shown as a continuous road through Mill Farm by two full lines running between buildings at Mill Farm east to the Stratford road. The mill race and the River Isbourne are both shown. The Greenwood Map of 1824 was drawn from an original survey. Its depiction is much more accurate (like an Ordnance Survey Map). This may be due to survey equipment (theodolites) becoming commercially available in the 1790s. Greenwood's map was sold to members of the public. The commercial nature of the map means that the routes shown are usually public and publicly maintainable unless there is strong contemporary evidence which shows the route is private. Greenwood identifies two types of road in the key: turnpike roads; roads which could only be used upon payment of a toll, and cross roads. According to the key, the claimed path is shown as a cross road; it is shown connecting to the wider road network.

11.10 Ordnance Survey 1" to 1 mile map, 3rd edition, Gloucester and Cheltenham, revised 1903-4, published 1906 (1K)

Outline map, roads coloured in brown. Mill Lane and a continuation eastward from point A to the main Cheltenham to Stratford road is shown coloured in brown. The key identifies this as a Metalled Road, Second Class. The key classifies routes thus: Metalled Roads, First Class; Metalled Roads, Second Class; Metalled Roads, Third Class; Unmetalled Roads; Footpaths.

11.11 Bartholomew's Revised Half Inch to 1 Mile Map [1:126,720] c.1924 (1P)

Sheet 24 Oxfordshire Coloured for Motorists and Cyclists. Whole route along Mill Lane continuing easterly to the main Cheltenham to Stratford road shown by a red and white dashed line. The key indicates that this marking denotes "Motoring Road, Secondary". A lower category is styled in the key as "Indifferent Road (Passable for Cyclists)". Key includes symbol of Cyclists' Touring Club and notes "Roads Revised by the Cyclists' Touring Club".

11.12 Ordnance Survey National Grid 1: 2,500 SP 0330 (1976) (1S)

Boundary feature at point B, none at point A. Section B to C and to the main road shown by a mixture of double pecked lines and a pecked and a solid line west of the bridge over the River Isbourne. Path north from point C shown as a physical feature by double pecked lines.

11.13 Inland Revenue, maps compiled under the Finance Act, 1910 (D2428) (1N)

Based on Ordnance Survey 25" to 1 mile c.1902 edition, marked up by Inland Revenue c.1915, and reference books or files. Mill Lane is shown uncoloured up to point A. Western section of route from A to B through plot 709 is coloured and included within hereditament number 1514, as is the eastern section from B to the main road. Hereditament 1514 (Greet Mill, 19 acres and 2 perches) comprises the plots 648, 707, 708, 709, 712, 713, 714 and 715. The provisional valuation for number 1514 shows a £50 deduction for a Public Right of Way. The current footpath AWB 53 also crosses this hereditament.

11.14 Maps deposited with County Planning Officer under Rights of Way Act 1932 S1, 3 (CP/D)

Nothing relevant.

11.15 Parish Council file, Rights of Way Act, 1932

Winchcombe Parish Council minutes (P368a PC 1/2 and 1/3)

Searched from 1949 to 1956 for references to parish rights of way survey and any representations or objections, in response to National Parks and Access to the Countryside Act 1949

3 May 1950

"Correspondence which had been received from the County Council and the Rural District Council regarding the survey of Public Rights of Way under the National Parks and Access to Countryside Act 1949 was placed before the Council. The clerk explained that the Parish Council was entrusted with the duty of ascertaining all the Public Rights of Way within the Parish, which opinion would in due course be submitted via the Rural District Council to the County Council. After due consideration it was unanimously agreed to appoint a Committee with the project of making the preliminary survey and the following persons were nominated to serve thereon: Mr C Forty [Chairman of the Parish Council]; Mr L Mason [Vice Chairman of the Parish Council]; Mr A V W Smith; Mr C P G Lewis; Mr R Greenhalf. Such committee had power to co-opt any persons who they considered would be likely to gain any useful information and they were also given further discussion as to the mode in which such preliminary survey should be carried out. It was agreed that the first meeting of this committee

should take place at the Clerk's office on Saturday the 6th May at 7.30 in the evening".

31 May 1950

The following were elected to serve on various committees: Rights of Way: Mr C Forty; Mr L Mason; Mr A V W Smith; Mr C P G Lewis and Mr R R Greenhalf.

6 December 1950

"It was arranged to hold the next meeting of the Footpaths & Rights of Way Committee on Friday the 15 December 1950 at 7 pm".

3 January 1951

"The Footpaths & Rights of Way Committee informed the Council that they had completed the preliminary survey and that the matter was now ready for presentation to the Council. After considering the matter it was unanimously agreed that before the plans were put before the Parish Council the Committee should meet once again for the purpose of obtaining evidence from certain of the older inhabitants regarding the footpaths already marked or noting those which may have been omitted. The following persons it was agreed should be invited to attend this meeting, Mr Alfred Bennett, Mr William Parker, Mr Harold Greening, Mr George Greening, Mrs Grist and Mr Edward Mathews. It was agreed to hold this Meeting on Wednesday the 17th January at 7.30 pm".

7 February 1951

The Clerk produced the Plan upon which had been marked the footpaths and rights of way in the Winchcombe area as drawn up and prepared by the Committee approved for that purpose. It was decided to call a special Parish Meeting on the 14th of March next at 7pm for the purpose of hearing any amendments or objections and it was decided that this meeting should be advertised in the [Gloucestershire] Echo".

4 April 1951

"A letter received from the Clerk to the County Council pointing out that an objection had been received by that Council in connection with one of the rights of way marked on the Parish Council Plan of public rights of way in the District was placed before the Meeting. After due consideration it was unanimously agreed to advise the County Council that the objector in question was invited to attend the next meeting of the Parish Council for the purpose of formally submitting his objection. If the council agreed that such objection was in order then it was decided to place the matter before a Parish Meeting for confirmation".

2 May 1951

"Mr J Walford as agent for an on behalf of the Sudeley Castle Estate made a formal objection to footpaths numbered 33 & 51 appearing on the plan of rights of way which had been prepared by Winchcombe Parish Council, the former being the footpath running from Rushley Lane to Stancombe Cottage & the latter the footpath running from the Sudeley Road, at a point opposite Boiling Well Farm through Stancombe Wood. It was pointed out to Mr Walford that a formal objection had been lodged in respect of footpath no.33 at the Parish Meeting convened for the purpose of hearing objections, & that upon being put to the vote it was decided by the Parish Meeting that this footpath should remain on the plan. With regard to footpath no.21 [sic] after having heard the evidence put forward in a statement made by Mr W W Smith-Wood it was proposed by Mr Mason & seconded by Mr Smith that in view of the evidence put forward the matter should be placed before another Parish Meeting duly convened for this purpose. This was carried unanimously. It was agreed to invite the Secretary of the Local

Ramblers Association to attend this meeting. It was agreed to hold the Parish Meeting referred to above at 7.30 on Wednesday June the 6th.

21 May 1952

Following elected to the Rights of Way Committee for 1952-53: Mr L Mason; A V W Smith; C P G Lewis; R R Greenhalf; and L A Smith

2 June 1954

Footpaths Committee re-elected

1 December 1954

"Mention was made of a public right of way which should traverse the Corndean Farm property that had been inadvertently omitted from the Footpath Map. The clerk was instructed to ensure that all footpaths that had been omitted should at once be included in this map."

2 February 1955

"The Clerk reported that he had been in touch with the County Council with regard to Footpath No 47 in the Parish Council's original schedule of footpaths. It was understood that the instructions of the Winchcombe Parish Council was that this footpath be deleted. After carefully considering the matter it was proposed by Mr A V W Smith and seconded by Mr Gillett that the Clerk contact the District Council with a view to having this particular footpath reinstated on the map."

2 March 1955

"The Clerk placed before the Council a letter which had been received from the County Surveyor regarding the Corndean Footpath, and it was agreed to inform the Surveyor that the Council based its claim that this Footpath was a Public Right of Way on its having been used uninterruptedly for a period of at least 20 years.

The Clerk also placed before the Council a further letter which had been received from the County Surveyor, with regard to Footpaths numbered 23 and 32. The Clerk was instructed to obtain from persons who knew of the existence of this Footpath, the necessary evidence to enable the Surveyor's Forms of Questionnaire to be completed and returned. In this connection it was suggested that Mr George Greening, Mr Bennett or Mr Edward Mathews might be able to assist."

6 April 1955

"With regard to the public footpaths in Winchcombe, the Clerk placed before the Council a letter received from the Ramblers' Association with regard to the footpath north of Humblebee Wood, leading up to Belas Knap. Upon the proposition of Mrs Sharpey-Schafer, seconded by Mr Gillett, it was unanimously agreed that this footpath should be included in the map. A letter received from the County Surveyor was also placed before the Council, in which the writer asked whether the Council was willing to included in the footpaths map an extension of the footpath numbered 21 (that is to say past Woodbine Cottage) and also the small portion of the footpath from the Warren Lodge extending South West to the Council's boundary at Stanley Mount. It was unanimously agreed that both these footpaths should be included in the map."

1 June 1955

Rights of Way Committee elected- C Forty, R R Greenhalf, C P G Lewis and A V W Smith

"Mr Forty reported that he had attended at the Rural District Council offices for the purpose of meeting Mr Hobbs' Solicitors in connection with the objection made to the footpaths passing over the Corndean Farm property. After

discussing the matter of the footpaths generally, it was unanimously decided to call an emergency meeting, after the Council had been advised by the County Surveyor of the precise objections that were to be made at the forthcoming Footpaths Tribunal. The object of this meeting would be to decide which, if any, of the objections the Council would resist.”

15 June 1955

“The Clerk reported that the Footpaths Tribunal was meeting in the Town Hall on Thursday the 23rd June for the purpose of considering objections to Footpaths numbered 51, 31, 32 and 23. With regard to footpath number 51, it was unanimously agreed that this had always been a footpath and therefore any objection to this being included in the footpaths map should be resisted. With regard to footpath number 31 Mr Forty informed the meeting that Mr Hobbs had agreed to raise no objections to the two main footpaths traversing this Farm, provided that the Council would agree to delete the footpath entering his property via the cricket field. After discussing the matter, at some length Mrs Sharpey Schafer proposed that all the footpaths on the Corndean Farm property should remain, as marked, on the map and that any objections thereto should be resisted. This was seconded by Mr Partington; by way of amendment Mr Hitch proposed that the Council should forego the footpath meeting the cricket field and this was seconded by Mr Forty. On being put to the meeting the proposal defeated the amendment, with a result that the Council decided to resist the objections made to all or any of the footpaths.

With regard to footpath number 32 it was unanimously decided to resist objections made, and it was also decided not to oppose any objections made to footpath number 23.

It was understood that the Ramblers’ Association were keen to obtain the support of the Council with regard to the Belas Knapp footpath running to the north of Humblebee Wood. After carefully considering the matter, the Council came to the unanimous conclusion that they were unable to take an active part in supporting this contention, because this footpath was situate outside their boundary.”

6 July 1955

“The Clerk advised the Council that the Footpaths Tribunal had now been arranged to take place at the Municipal Offices Cheltenham on Thursday 14th of July. The Council were of the opinion that the date of this Tribunal was provisionally fixed the 25th or 27th of July and had been advised that it would sit in Winchcombe. Under the circumstances the Clerk was instructed to send a complaint to the County Council pointing out that in view of the fact that one half day had already been wasted at this Tribunal, the Council considered that it should meet in Winchcombe in order to avoid further unnecessary delay and waste of time to those attending.”

3 August 1955

“A letter received from the County Surveyor was placed before the Council in which the writer suggested that Public Footpath Number AWB 23 should be reinstated in the Rights of Way Map instead of AWB 32. Upon the proposition of Mr Forty seconded by Mr Greenhalf, it was unanimously agreed to include the former footpath in place of the latter.”

11.16 Private Estate Maps

D1302/8/15 Sale particulars of the Manor Farm Estate, 1904 (1L, 1M)

Lot 2 is Greet Mill [the present Mill Farm], which included the house, a corn mill containing a bakehouse and almost 20 acres of land listed in a schedule and identifiable on an accompanying map. The particulars note that “a large grinding and baking business was carried on here for many years”. Greet Mill is described as “Approached by drive from Greet and a private drive from Irely Road.” The sale particulars in the County Record Office do not include a map. The map kindly supplied by the present landowner Mr Pearce shows Lot 2 Greet Mill coloured in blue. Mill Lane is shown uncoloured by two solid lines running from Greet to point B. The section of AWB 52 from point B through point C to the main Cheltenham to Stratford road is shown by double pecked lines and is coloured blue in the same manner as the fields that it crosses. A solid boundary feature is depicted at point B. The route from B to the main road divides the parcels 713 and 709 before crossing the River Isbourne and then continuing across plot 712. Lot 713 is identified in the schedule as “Road Paddock”.

11.17 Footpath or highway diversion orders deposited with Clerk of the Peace (Q/SRh)

1823Ep, 1835E, 1875, 1915Ep, 1922T, 1949T
Q/SR 1809A, 1813D, 1814A, 1815A, 1875D
Checked, not relevant.

11.18 Plan of Public Schemes deposited with Clerk of Peace (Q/Rum)

Not checked

11.19 District Council Clerk’s correspondence

Nothing appears relevant.

11.20 County Council Solicitor’s correspondence (K 596)

(i) Copies of London Gazette containing notices of deposit of draft footpath maps (K 596/26)

London Gazette, 23 December 1952 includes notice by Gloucestershire County Council under the National Parks and Access to the Countryside Act: “Notice is hereby given that the Gloucestershire County Council has prepared a Draft Map showing the public paths and roads used as public paths in the Rural District of Cheltenham and Statement, by Parishes, and that the places where copies may be inspected at all reasonable hours are as follows: (i) County Surveyor’s Office, Quay Street, Gloucester; (ii) Cheltenham R.D.C., 14, Imperial Square, Cheltenham; (iii) So much of the map as relates to the following parishes; with the Clerk of the Parish Council: [list does not include Winchcombe]... Any objection or representation with respect to the Draft Map or Statement may be sent in writing to the undersigned before the 30th day of April, 1953, and any such objection or representation should state the grounds on which it is made. Dated the 15th day of December, 1952...”

(ii) Public hearings for determination of objections to the draft footpath maps (K 596/27/1)

Solicitor’s correspondence and papers concerning public hearings for the determination of objections to the 1949 Act submissions.
Checked for Cheltenham Rural District (1954), not relevant.

11.21 County Surveyor: papers relating to survey of footpaths under National Parks and Access to Countryside Act, 1949 (K687)

(i) Original Submission Map and Papers (K687/1/2/35) (1Q)

Base map marked up with roads in brown and claimed paths in red. Road numbers are added in pencil. Road numbered 50522 shown running from Greet through point A to point B. Route shown in red from point B to the main road, with 52 written in pencil and enclosed in a square beneath it and an arrow pointing to the route linking it to a number 59 enclosed by a circle. A further footpath is shown running north from point C in red and numbered 60: the path number and the red line are partly erased and "ASY" written beside the path, indicating that the path was in Stanway parish.

A list of footpaths submitted by Winchcombe Parish Council describes 59 as "From the Ireley Road (opposite the allotment Garden) due west towards Greet Mill and then due north to meet footpath no.43". However, the submission schedule describes AWB 52 as "FP" running westwards from the A46 south-west of Ireley Farm West to County Road 50522 at Greet Mill Creamery via Ordnance Survey Parcel numbers 712 and 709. It is described as "Submitted by PC, not shown as FP on Glos Ordnance Survey No.20 1924 edition".

The Stanway Parish Council Submission statement includes path ASY 24 which is described as running from the A46 south-west of Ireley Farm running west to footpath AWB at the Parish boundary SE of Greet Mill Creamery via Ordnance Survey Parcel numbers 98, 97 and 95. It is described as "Submitted by PC, not shown as FP on Glos Ordnance Survey No.20 1924 edition." This whole entry is crossed out. Parcel numbers 98, 97 and 95 are the fields to the north of point C in Stanway Parish, adjacent to the River Isbourne.

(ii) Draft and Modified Draft Map (1R)

AWB 52 shown by solid purple line running east from point B, numbered 52. Another footpath shown running north from point C, numbered 23. Key denotes this is a public footpath.

(iii) Provisional Map (K687/3/13)

Route shown numbered 52. The comment in the Provisional schedule is as above in the original Winchcombe Parish Submission.

(iv) Objections to Draft Map (K687/2/1)

Cheltenham Rural District 1951-57. 42 objections were made in the District, and six that were concerned with Winchcombe:

2/1/1 R Halkett (Ivens, Thompson & Green) Winchcombe

2/1/3 Sudeley Castle Estate (J T Walford) Sudeley

2/1/5 Postlip Hall Estate (J T Walford) Winchcombe

2/1/35 Winchcombe Parish Council Winchcombe [Corndean Farm]

2/1/36 C H Hobbs Winchcombe [Corndean Farm]

2/1/41 Claims for the inclusion of additional tracks by the Ramblers' Association

11.22 County Road Records

Road number 50522 (Mill Lane) is recorded in the Cotswold Division Highways Register and described as commencing at [road number] 40558 Manor Farm Greet. Under "Name or Description of Route" is written "The Villa" and the Termination is described as "Greet Mill Creamery". Total mileage is given as 0.42 miles. If the distance is measured off the 1923 25" to 1 mile map, then the total length of Mill Lane to point A is 2140 feet (or 0.405 miles); Mill Lane to point B is 2260 feet (or 0.428 miles).

On the County Road Records map, road 50522 is shown as terminating at the western gateway to Mill Farm, point A. An earlier copy of the road records map shows the same termination point. Neither map shows the length of road maintained extending across the farmyard to point B.

11.23 British Newspaper Archive (British Library, online) (1U)

Cheltenham Examiner, 8 May 1889

Report on Winchcombe Highways Board

Board indicted for non-repair of a road on the Roel estate. The debate referred to roads that had limited public use and no through roads. A Mr Brain was reported as saying: "I should like to know how much it cost to repair the road which leads only to Greet mill. We want our roads done as well as that...."

Indicates that Greet Mill Lane was a publicly-maintainable road in 1889, but not as a through-road.

Gloucestershire Echo, 21 January 1907

Winchcombe Guardians and District Council

"The Surveyor [of Highways] said Mr. F. J. Peacey refused to clean out a ditch in Greet Mill-lane, contending that as two houses drained into it it became a sewer and he was not liable. Mr. Peacey's predecessor, the late Mr. Brain, always saw to this ditch, but then the whole of the property belonged to Mr. Brain, whereas it does not to Mr. Peacey. The consensus of opinion seemed to be that Mr. Peacey was liable, and it was decided to send him a written notice calling upon him to clean out the ditch."

Indicates that Greet Mill Lane was publicly-maintainable in 1907.

Gloucestershire Echo, 8 September 1927

Hints to Winchcombe District Council

To the Editor of the Echo

....recently I have walked along the footpath leading from Greet Mill to Toddington, and this path runs through what should be a small coppice, but to-day is very little short of a small jungle. The footboards also are in an extremely deplorable condition, and unless they receive attention shortly there might possibly arise a claim against the Council for a broken limb or other injury....

Refers to the public footpath that ran north from AWB 52 to Toddington, deleted at the Provisional Stage under the 1949 National Parks and Access to the Countryside Act

Cheltenham Chronicle and Gloucestershire Graphic, 26 November 1932

Winchcombe and Town Planning

Cheltenham Scheme Effect [relates to a proposal to expand Winchcombe as overflow for Cheltenham]

“Public rights of way were preserved from: Littleworth via Greet Mill to Broadway-road”

Littleworth is in Greet due west of Greet Mill- this path could be either Mill Lane Greet, the claimed route and then footpath AWB 52, or the footpath AWB 53 that connects Mill Lane to the Broadway road, north of Mill Farm.

Tewkesbury Register, 15 October 1938

A Winchcombe Footpath

“The Finance and General Purposes Committee reported that its attention had been drawn to the fact that a notice had been erected by the side of the road leading to Greet Mill containing the wording ‘Private Road to Greet Mill only.’ Whereas in fact this was part of a public footpath leading to Toddington. The committee recommended that steps be taken with a view to the correction of this notice. The council agreed.”

Evidence of the landowner’s lack of intention to dedicate, but wording of sign and amendment (below) indicate that it was directed towards vehicles, and could be argued not to bring into question use on foot.

Tewkesbury Register, 10 December 1938

Footpath to Toddington

“Concerning the notice erected by Messrs. Pearce Bros., alongside the road leading to Greet Mill from Winchcombe, the Finance and General Purposes Committee reported that a letter had been received from Mr. R. Pearce, stating that they would add to the existing notice the words, “Public Footpath only,” as desired by the Council.”

12. CONSULTATIONS

12.1 Winchcombe Town Council

Mr W R M Taylor, Clerk of Winchcombe Town Council replied by letter dated 5 June 2003: “At a meeting of Winchcombe Town Council, held on 4 June 2003, Members gave consideration to the notice of application for a Modification Order to delete Public Footpath AWB 52 at Mill Farm, Greet. The Chairman, Mr T Petchley, produced to the meeting four Ordnance Survey Maps dated 1859, 1893, 1903 and 1919 which all show there to be a road (County Second Class Road) from Greet through Mill Farm and joining what is now the B4632. Accepting this evidence and in the absence of evidence to the contrary, Members were of the opinion that the route from Greet through Mill Farm to the B4632 has been a public right of way since 1859 and would wish to object to any application to have it deleted.”

The Town Council were consulted regarding the current application on 1 July 2016.

12.2 Tewkesbury Borough Council

Toby Clempson, Planning Officer, Local Planning and Regeneration, replied by letter dated 5 June 2003. “In response to your consultation I can inform you that the Borough Council objects to the proposed deletion of this public footpath. The route of public footpath AWB 53 also shown on your attached plan is not

considered to offer a convenient walking alternative to AWB 52. In addition, I am given to understand that the path proposed for deletion is accessible to those in wheelchairs whilst AWB 53 is not." Mr Clempson added on the 19 June 2003 "Further to my letter dated 5th June I am e-mailing to let you know that it has been suggested by one of our local members that the length of footpath proposed for deletion may have the status of a public road. Reference to the 1923 Ordnance Survey for the area has been put forward in support of this suggestion...it is suggested that this makes a stronger case against allowing the deletion of this length of public right of way."

Tewkesbury Borough Council were consulted regarding the current application on 1 July 2016

12.3 County Councillor

Councillor Ron Allen, the County Councillor for Winchcombe was contacted on 22 May 2003. No reply was forthcoming.

Councillor Roger Wilson was consulted about the current application on 1 July 2016.

12.4 Ramblers' Association

The Cleeve Group Footpath Secretary Mrs Margaret Davies replied by letter dated 29 May 2003. She made the following comments: "We sent a letter to your department on 2 February 2003 complaining about the notice which has appeared at the junction of public footpath AWB 52 and the B4632 to say that this footpath is a dead end. We are still of the opinion that there is sufficient evidence that this public right of way extends through to Mill Lane, Greet. Further research by one of our members has in fact shown the route in question as a 2nd Class County Road marked on a 1 inch / 1 mile map (1905/6?). It is also shown as such on ½ inch / mile Bartholomews maps in 1910 and 1920. I believe this information has been given to Andrew Houldey. In the absence of any convincing evidence that this road ceased to be public, we would oppose any Modification Order to delete it on the Definitive Map. We would also suggest that the County Council should be protecting the right of the public to use this route *through* Mill Farm..."

Cleeve Group of the Ramblers' Association are the applicants.

12.5 Divisional Highway Surveyors

Deborah Jones, Divisional Supervisor and Bob Skillern, Senior Technician at Northern Division confirmed on 10 March 2004 that the road 50522 terminated at point A and that they had no records that suggested that the road had been maintained as far as point B.

13. LANDOWNER'S COMMENTS

The former landowner Mr Pearce made the following comments, by letter dated 28 February 2004, concerning the application to delete public footpath AWB 52:

- 13.1 “I have lived and worked all my life at Mill Farm, Greet, Winchcombe and I am 70 years old on 28th May this year. My father bought Mill Farm in 1930 and always told me to lock the gate at point B to keep the private drive private. This was done until the gate was moved to its present position which is half way between point B and C and is still locked in times of necessity and always every night without exception.
- 13.2 The property was bought in good faith and according to the Deeds and official searches done on 28th October 1930 and 20th October 1969 there has been no reference to a Foot Path from the old A46 now the B4632 through Mill Farm. The Sale Catalogue “Greet Estate Sale 1904” states “Private Drive to A46”.
- 13.3 All Maps and correspondence from you do not suggest footpath from A to C. We have never been consulted or informed of a suggestion of right of way that has been included on Maps used by walkers of which I never saw until a few years ago. I have always prevented walkers walking through the Farm, as I believe it is my exclusive right to control my property and who uses it. The Map encourages walkers to walk to a dead end with great frustration on all sides...”

The present landowner Pamela Pearce-May made the following comments by email dated 23 February 2022:

- 13.4 I have spent my whole life living at Mill Farm, and there has never been a footpath through the aforementioned area highlighted on your map.
- 13.5 On occasion people have followed the route down Mill Lane, and realised that they do not have right of way through the yard itself. At that point we take a moment to decide what to do, and as reasonable people we have on occasion allowed people to cross through the yard to regain the route out onto the road.
- 13.6 More often than not, people are lost and are meaning to be on the footpath that crosses one of our nearby fields.
- 13.7 This has always been a working farm. In the time of my father, it was a dairy farm, and then later became equine. Due to the nature of the farm, there have always been gates at each entry and exit of the farm for the safety of the animals and to prevent any injury or road traffic collision. Over the years the gates have needed replacing or renewing, but gates have always been in place. I will attach a picture from 1978 where gates are shown.
- 13.8 We work closely with the council for licensing and business rates with the riding school. We also have a huge duty of care to everyone at Mill farm, be it staff, animals, guests, and customers, and to simply allow a footpath to be added at the random request of a neighbour is going to put health and safety at risk, along with risking our licence, insurance and the ability to continue to run a business here.
- 13.9 I can categorically tell you the information you have been provided with is not correct. Firstly, dates are incorrect, Mr F Wood refers to Raymond Pearce, (my grandfather) bought the property in 1903. This is incorrect as he was not born

until 1900. Secondly the gates have always been present and there has never been a public right of way through the property. Thirdly at the time of me becoming the proprietor of Mill Farm there was extensive documentation and solicitor involvement, no footpath was noted in the deeds, in fact it was specifically highlighted as not being a footpath.

14. LEGAL COMMENTS AND CONCLUSIONS

- 14.1 Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 relates to the discovery of evidence by the Surveying Authority which (when considered with all other relevant evidence available to them) shows 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 such that land over which the right subsists is a public path, a restricted byway, or... a byway open to all traffic.
- 14.2 As made clear by the High Court in *Bagshaw and Norton*¹ s.53(3)(c)(i) involves consideration of two tests;
- (a) Test A: Does a right of way subsist? Test A requires clear evidence in favour of the applicant and no credible evidence to the contrary.
 - (b) Test B: Is it reasonable to allege that a right of way subsists? For this possibility to arise it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege that a right of way to subsists. If there is a conflict of credible evidence, but no incontrovertible evidence that a right of way could not be reasonably alleged to subsist, then it is reasonable to allege that one does.
- 14.3 In relation to Test B, the Court of Appeal recognised in the *Emery* case that there may be instances where conflicting evidence was presented at the schedule 14 stage. In *Emery*², Roche LJ held that "... *The problem arises where there is conflicting evidence...In approaching such cases, the authority and the Secretary of State must bear in mind that an order...made following a Schedule 14 procedure still leaves both the applicant and objectors with the ability to object to the order under Schedule 15 when conflicting evidence can be heard and those issues determined following a public inquiry.*"
- 14.4 Roche L J also held that "*Where the applicant for a modification order produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, and there is a conflict of apparently credible evidence in relation to one of the other issues which arises under s.31, then the allegation that the right of way subsists is reasonable and the Secretary of State should so find, unless there is documentary evidence which must inevitably defeat the claim for example by establishing incontrovertibly that the landowner had no intention to dedicate or that the way was of such a character that use of it could not give rise at common law to any presumption of dedication*".

¹ (*R v Secretary of State for the Environment ex parte Bagshaw and Norton* (QBD) [1994] 68 P & CR 402, [1995] JPL 1019

² *R v Secretary of State for Wales ex parte Emery* [1996] 4 All ER 367

- 14.5 There is insufficient evidence to infer dedication on the basis of use; we need to consider the documentary evidence for adding the section of path A to B.
- 14.6 Under Section 32 of the Highways Act 1980, when determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified in the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
- 14.7 On the 1815 Greet and Sudeley Inclosure Map, Mill Lane is shown by two full lines running along its present course. It is then shown continuing into the farmyard right up to the Mill Race (i.e. roughly halfway between points B and C) which at that time was not culverted, before continuing as a path in a north-easterly direction, past a building roughly on the site of the current farm house, across plot number 20 ("Mill and Monkbridge Mead") to "Monks Bridge" where it crosses the River Isbourne. The path is unnumbered. The section of the current path AWB 52 from point B to C to the Stratford Road is not depicted and no bridge is shown over either the Mill Race (then unculverted) between points A and B or over the River Isbourne between what are now points B and C.
- 14.8 Ordnance Survey maps carry a disclaimer that any representation of a road, track or path is no evidence of the existence of a right of way over it. However they do provide evidence of the physical existence and extent of a way, suggesting (but not proving) that the path had been in use for a longer period than that for which user evidence is available.
- 14.9 Mill Farm is shown as "Mill" on the 2" to 1 mile Ordnance Survey Surveyor's Drawing but no road, track or path is shown connecting it to other ways shown on the map.
- 14.10 The Ordnance Survey First Edition 1" to 1 mile map (1830) shows a through route, depicted by two full lines, running from Greet along Mill Lane and then continuing through points A to B to C and then east to the main road from Cheltenham to Stratford, south of Ireley Farm. Greet Mill is named on the map, and a building appears to be shown on either side of the route, in the present position of Mill Farm. Some attempt to distinguish private roads by continuing a line across the entrance as if it were gated appears to have been made throughout the nineteenth century. However, the consistency of this practice has not been comprehensively tested and it therefore cannot be relied on as an invariable rule.
- 14.11 Bryant's Map of Gloucestershire for 1824 shows the route by two full lines, running along Mill Lane and then continuing eastwards, immediately to the south of the parish boundary with Hailes, along the course B to C and then east to the main Cheltenham to Stratford road. Greet Mill is also marked. Bryant identified the following categories of route in the key to his maps: Turnpike and Mail Roads;

Good Cross or Driving Roads; Lanes and Bridleways. Bryant's key and colouring scheme suggests that he regarded this as a lane or bridleway. Both maps indicate that the River Isbourne had been bridged and the Mill Race culverted sometime between 1809 and 1824. It was during this period that the route in question presumably came into being.

- 14.12 Greenwood's Map of 1824 also shows the route by two full lines, as a continuous road running between two buildings at what is now Mill Farm continuing east to the Stratford road. It is identified in the key as a "cross road."
- 14.13 In *Fortune v Wiltshire Council Court of Appeal (2012)* [para. 54], it was noted that at that time "*the expression "cross road" did not have its modern meaning of a point at which two roads cross. Rather in "old maps and documents, a 'cross road' included a highway running between, and joining other, regional centres". Indeed that is the first meaning given to the expression in the Oxford English Dictionary ("A road crossing another, or running across between two main roads; a by-road").*"
- 14.14 The Planning Inspectorate's Advice Note No.4 (Advice on the Definition of Cross Road) states that on old maps and documents the term cross road would mean "*a highway running between, and joining, other highways, a byway and a road that joined regional centres*". In the case of *Hollins v Oldham* (October 1995) quoted in Advice Note 4, Judge Howarth concluded that the category known as "cross road"... "*must mean a public road in respect of which no toll is payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they were produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use*".
- 14.15 The appeal court decision of *Fortune & Others v Wiltshire County Council*, March 2012 stated that "the judge concluded that Greenwood's map supported the emerging picture of an established thoroughfare. In our judgement the label "cross road" added further support."
- 14.16 The First Edition 25" to 1 mile Ordnance Survey map Gloucestershire 20.3 (1884), which covers the route in question, is a coloured edition. Water is depicted in blue, masonry structures in pink, wood and iron structures in black and metalled roads in burnt sienna. Mill Lane is shown coloured sienna, as is the farmyard of Greet Mill (between points A and B) and also the whole length of what is now public footpath AWB 52, from point B to the main Cheltenham to Stratford road. This indicates that the whole route was metalled and it can be inferred that it was considered to be a through route, although a boundary feature is marked across the road at point B. The map does not distinguish between private and public roads. A boundary feature is shown at point B on both the 1902 and 1923 editions; no boundary feature is depicted at point A on either map. A wooden farm gate at point B is clearly visible in a photograph dated c.1953 that is held at the Gloucestershire Archives.

- 14.17 The possible inference from the colouring on the 1884 OS Map that Greet Mill Lane was publicly maintainable through the farmyard as far as the Stratford road is contradicted by an 1889 newspaper report of Winchcombe Highway Board, which makes it clear that Greet Mill Lane was then a publicly-maintainable no-through road. It is unclear from this report as to whether the public road terminated at point A or B or whether it continued east to the Stratford road as a highway of lesser status, for example a public footpath.
- 14.18 The Ordnance Survey 3rd edition 1" to 1 mile map, revised in 1903/4 and published in 1906 is an outline map with roads coloured in brown. Mill Lane and a continuation eastward from point A to the main Cheltenham to Stratford road is shown coloured in brown. The key identifies this as a Metalled Road, Second Class. The key classifies routes thus: Metalled Roads, First Class; Metalled Roads, Second Class; Metalled Roads, Third Class; Unmetalled Roads; Footpaths. The Revised New Series one-inch map (1895-1904) did not rely on the large-scale map for its road classification. The instructions to the revisers give the following definition: Second Class Roads are metalled roads in good repair, and fit for fast traffic at all seasons i.e. it should be possible to drive carriages and light cars over them at a trot. They are inferior to first class roads in width, but should be sufficiently wide, in all parts, to allow two carts to pass each other without difficulty. Roads were classed according to their general character, and not with reference to their best or worst sections.
- 14.19 What exactly was meant by first- and second-class roads was explained in an 1897 instruction which makes it clear that they were classed "according as they are returned by the Surveyor to each Rural District Council as Main or District Roads" [Circular O.S. Clifton 2:12:96 Classification of Roads]. The reviser was to colour these roads on a one-inch map of the area covered by the Rural District Council according to the directions of the District Surveyor, who was to be asked to verify the map by signing and dating it. A clarification of the classification practice was issued in a circular of 31 May 1897 [Circular O.S.O. 31.5.97 Roads] which specifies that all first-class roads were main roads, but that second class roads...were other good roads whether public district roads or not that were metalled and kept in good repair. Up to this point, the depiction of roads on the large- and small-scale maps was inconsistent. Such variabilities ought not to have applied to the first class and public second-class roads, because these should have been attested by the district surveyor.
- 14.20 The Revised New Series first began to be printed in colour in 1897. First and second-class roads were both printed in the same colour, but they were differentiated by width and the presence of shading on one or both sides of the casing. It is noticeable that on most sheets it is possible to find examples where the second-class casing has not been coloured in. For the most part, these uncoloured second-class roads appear to run through what seem to be private estates. The evidence of this map series suggests that it may have been the policy not to colour what had been perceived by the revisers as private roads, and conversely, therefore, that the coloured roads were public. As yet however, no documentary evidence has been found to confirm this hypothesis.

- 14.21 The 1904 sale particulars for the Manor Farm Estate, Greet includes Greet Mill. Greet Mill is described as “Approached by drive from Greet and a private drive from Irely Road” indicating that the route east from Greet Mill was considered to be a private road, but this is not incompatible with the existence of lesser public rights over the same route. The map shows Lot 2 Greet Mill coloured in blue. Mill Lane is shown uncoloured by two solid lines running from Greet and then interestingly across the farmyard beyond point A to point B. The section of AWB 52 from point B east to the Stratford road is shown by double pecked lines and is coloured blue in the same manner as the fields that it crosses. A solid boundary feature is depicted at point B.
- 14.22 A 1907 newspaper report on a Winchcombe District Council meeting concerns landowner liability for clearing out ditches alongside Greet Mill Lane, which makes it clear that the way was then publicly maintainable, but it gives no assistance as to whether the road terminated at Greet Mill or continued to the Broadway road.
- 14.23 The whole route is shown on the Bartholomew’s Half Inch to One Mile map (1924) along Mill Lane and then continuing easterly through the farmyard and then east to the main Cheltenham to Stratford road. It is depicted by a red and white dashed line: the key indicates that this marking denotes “Motoring Road, Secondary”. The Bartholomew Motorists’ and Cyclists’ maps have been quoted as evidence that the route was possibly used by vehicles prior to the date when the Road Traffic Act 1930 made the use of vehicles on bridleways and footpaths illegal. There is evidence that from 1898 the Cyclists Touring Club corresponded with Bartholomew regarding routes used by their members. The collaboration with the Cyclists Touring Club seemed to continue for around 40 years, although the regular updating reflecting changes and current states/status appears to have been at its peak between 1900 and the late 1920s.
- 14.24 However, current evidence indicates that although Bartholomew were highly regarded as map producers, they did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and status of the roads on their maps. Moreover, they do not appear to have examined the legal status of the routes on their Cyclists’ Maps before colouring them for use as suitable for cyclists. Neither do they appear to have assessed the legal status of the roads on their Motorists’ Maps prior to publication. Commercial maps are rarely conclusive evidence of the existence of a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour of such status.
- 14.25 The system eventually developed into the five-fold classification shown on the top key, namely:
- First Class Roads
 - Secondary Roads
 - Indifferent
 - Inferior
 - Footpaths and Bridlepaths

14.26 In *Commissioner for New Towns v J J Gallagher Ltd* [2002] EWHC 2668 (Ch); [2003] 2 P. & C.R. 3. The judge said:

Bartholomew's Maps of England, 1901 and 1911 editions has three categories of coloured roads. They are "first class roads", "secondary roads (good)", and "indifferent roads (passable)". There are two other categories, namely uncoloured roads and "footpaths & bridlepaths". Beoley Lane is marked in each of the two editions as uncoloured road. The legend to each of the Bartholomew maps states that "the uncoloured roads are inferior and not to be recommended to cyclists". The implication of the demarcation of Beoley Lane on these maps appears to me to be that they are public carriageways. First, each of the other four categories is a public highway. Secondly, in a somewhat paradoxical way, the indication in the description of the uncoloured road is that they can lawfully be used by cyclists, which, as at 1901 and 1911, would have meant that they were public carriageways. However, it is important to mention that there is a note to the effect that "the representation of a road or footpath is not evidence of the existence of a right of way". I do not consider that this means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's maps, or indeed any map which does not have the positive function of identifying public carriageways.

14.27 The Finance Act of 1910 imposed a tax on the incremental value of land when it changed hands. In order to levy the tax, the Board of Inland Revenue was required to ascertain the site value of all land in the United Kingdom, which meant plotting and recording every piece of land, and resulted in the most comprehensive record of land ever prepared. All private land including private roads was assigned an assessment number. Valuers would have been extremely reluctant to show any land as a public road if it could be assessed for duty. Indeed they would have been negligent to do so.

14.28 In view of the financial implications, many landowners and occupiers would have been anxious to ensure that public highways were correctly recorded on the plans and all rights of way were properly recorded in the Field Book. It was an offence to knowingly make any false statement of representation, punishable by up to six months imprisonment. The threat of criminal sanction and the fact that the survey was carried out by a public body under statutory powers are relevant in giving the survey documents weight.

14.29 On the Increment Value Duty Plan, the route of the way runs over land that forms part of hereditament 1514, identified on the valuation as Greet Mill. A £50 deduction for public rights of way is recorded in the field book against Greet Mill. It is not possible to say that this deduction necessarily relates to the route in question as another right of way runs over the hereditament, to the north of Greet Mill (the present footpath AWB 53). The deduction merely indicates that a right of way existed across part of the property.

14.30 It should be noted that the section A to B is shown coloured as part of the hereditament to which Greet Mill belongs rather than as a continuation of the uncoloured Greet Mill Lane. This is in contrast to the map accompanying the

1904 Sales Particulars which seem to show A to B as part of the road and exclude it from the land designated as forming part of the sale.

14.31 In 1938, the then-landowners Messrs Pearce Brothers erected a sign alongside the road leading to Greet Mill from Winchcombe, containing the wording "Private Road to Greet Mill only." The Council took exception to this, noting that the way formed part of a public footpath leading to Toddington, and recommended that steps be taken with a view to correcting the notice. Mr Pearce reported back that the existing notice had been amended with the words "Public Footpath only" added. It is unclear from this as to whether the footpath also ran to Greet (i.e. through the farmyard). The wording of the sign is a clear indication of a lack of intention to dedicate the way to vehicles, but does not bring into question any use on foot.

14.32 We need to look at the process by which the definitive map was drawn up and to ascertain whether the proper procedures were followed in the rights of way review under the 1949 Act and also whether representations were made at the time. The National Parks and Access to the Countryside Act 1949 laid upon county councils the duty of compiling maps of footpaths and bridleways in their areas. A procedure for the compilation of these maps was laid down which enjoined upon county councils consultation with district and parish councils before the production of a draft map. In fulfilment of its obligation to other local authorities, the County Council invited parish councils to submit plans of footpaths in their areas, and collected certain other information from district councils. On the basis of these reports, the draft maps were compiled. Draft Maps had to be advertised in the local press and the London Gazette. The notices stated where the map and statement could be inspected and that objections or representations could be made. The maps and statements were made available for inspection for a period of four months, and members of the public given the opportunity to object to the draft map. There was no provision in the legislation for notification of individual owners and occupiers.

14.33 County Councils were empowered to determine objections to the Draft Map and held hearings or tribunals at which objections were heard and then the findings reported to the then Highways Committee. Unsatisfied objectors were given the right to appeal to the Minister of Housing and Local Government. Gloucestershire in effect completed a further stage and published Modified Draft maps which contained the information from the Draft Maps as modified by the results of the hearings into the objections. Further objections were received. When such appeals had been determined, the County Council produced a Provisional Map, which had again to be made available for inspection. Appeals at this stage were to Quarter Sessions. Only owners, lessees and occupiers of affected land had the right to object. Thus landowners had a further opportunity which was not available to the general public. Objections could be made on the grounds that there was no right of way or that the way should be shown differently. Definitive Maps were finally prepared by the County Council after all applications to Quarter Sessions had been heard. Reviews of the definitive maps were intended to be held at least every five years.

- 14.34 The Parish Council appear to have performed all of the required actions under Section 28 of the 1949 Act. The Parish Council minutes show that on 3 May 1950 the Council reported that they had received correspondence regarding the survey of Public Rights of Way under the 1949 Act. The Council agreed to appoint a committee with the project of making the preliminary survey and nominated five parish councillors to form this committee. The committee was given the power to co-opt any persons whom they considered would be likely to possess useful information, and the way in which the preliminary survey was to be carried out was discussed at the same meeting. The first meeting of the Footpaths and Rights of Way Committee was arranged for 6 May 1950. A further meeting of the Committee was arranged for 6 December 1950 and they informed the full council on 3 January 1951 that they had completed the preliminary survey and that the matter was then ready for presentation to the Council. The Council decided at that meeting that the Committee should meet once again for the purpose of obtaining evidence from six named older residents regarding the footpaths already marked and to note those which may have been omitted. This meeting was to be held on 17 January 1951.
- 14.35 A special Parish Meeting was held on the 14 March 1951 for the purpose of hearing any amendments or objections and it was decided by the Parish Council that this meeting should be advertised in the Gloucestershire Echo. An objection was reported as being received on 4 April 1951 and the objector in question was invited to attend the next meeting of the Parish Council for the purpose of formally submitting his objection. The Council agreed that if such an objection was in order then it was decided to place the matter before a Parish Meeting for confirmation. A further objection was heard at the Parish Council meeting on 2 May 1951 and it was agreed that another Parish Meeting should be convened for this purpose.
- 14.36 The Draft Map (and the associated draft statement) of public paths for Cheltenham Rural District was advertised in the London Gazette of 23 December 1952 as completed. Copies were available for inspection at the County Surveyor's Office in Gloucester and at the Rural District Council offices in Cheltenham. The notice was dated 15 December 1952 and it was stated that any objections or representations should be made in writing before 30 April 1953. 42 objections were made in Cheltenham Rural District of which six related to Winchcombe. A footpaths tribunal to hear objections was scheduled to take place at the Municipal Offices in Cheltenham on 14 July 1955.
- 14.37 The minutes of the Parish Council make it clear that the required actions of Section 28 of the 1949 Act were undertaken by Winchcombe Parish Council. The steps taken to compile, undertake consultations and advertise the Parish Survey of Rights of Way detailed in these minutes indicate that inclusion of this path on the Parish Submission was as a result of inquiry and or consultation with the local people and the landowners affected rather than through an arbitrary and unsupported assertion by Winchcombe Parish Council. (re: Mayhew judgement). The number of objections within Cheltenham Rural District (42) and within Winchcombe Parish (6) make it clear that the Draft Map was available for inspection and objection and that this opportunity was taken.

- 14.38 The evidence is contradictory, but there appears to be evidence that the line of AWB 52 carried public rights when it was first recorded, although there is no record of what evidence was brought forward to show why the Winchcombe PC asked to add the path to the definitive map.
- 14.39 It has been suggested that an anomaly exists between the Definitive Map and the Definitive Statement concerning the footpath in question. The Wildlife and Countryside Act 1981 does not state whether the definitive map or the definitive statement has precedence. Section 56(1)(e) of the Act indicates, however, that the purpose of the two documents is different. It provides: "A definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent...the map is conclusive evidence, as at any date, as to a highway shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position and width thereof at that date, and any particulars so contained as to the limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions..."
- 14.40 The Planning Inspectorate Right of Way Section Advice Note No 5 summarises this as follows: the map is conclusive evidence as to the existence and status of any right of way shown, whilst the statement is conclusive evidence as to the position and width, and limitations or conditions. It seems reasonable to conclude, therefore, that the respective documents have precedence on the particulars to which the Act provides they are conclusive evidence.
- 14.41 The Department of the Environment advised in 1997 that "Information recorded in the definitive statement about the position or width or as limitations or conditions affecting a public right of way is conclusive evidence of position, width, limitations or conditions. Information may be recorded in the definitive statement which, in practice, restricts the use of the way by those whose rights to use it are recorded on the definitive map. Where such information is not about position or width or is not recorded as a limitation or condition, highway authorities should examine the evidence in each case in order to resolve the inconsistencies."
- 14.42 The Definitive Map shows footpath AWB 52 as running west from road B4632 to Mill Farm where it stops at point B, leaving a gap between the western end of the footpath and the eastern end of the road. However, the Statement, which is a document describing the paths on the Definitive Map, describes the footpath AWB 52 as running from the B4632 to connect to road number 50522. Although this appears to be an anomaly, this is not in itself evidence to show that the length of footpath shown on the map should be deleted. In fact, the Statement can be taken as evidence to show that the intention at the time when the Definitive Map was drawn up was to have a through route connecting from one highway to another. It is of course normally the case that a public footpath connects to another footpath or public highway.
- 14.43 Closer examination of the Definitive Statement shows that the entry for public footpath AWB 52 is *not* in conflict with the Definitive Map. The Definitive Map depicts the footpath as running eastwards from point B to the main Stratford road with a gap between the end of the county road 50522 at point A and the start of

the footpath at point B, i.e. over the farmyard at Mill Farm. The Statement entry describes AWB 52 as “FP” running westwards from the A46 south-west of Ireley Farm West to County Road 50522 at Greet Mill Creamery via Ordnance Survey Parcel numbers 712 and 709, as shown on the 1921/23 Edition. The farmyard between points A and B forms part of parcel 708. The map supplied by the County Council to Winchcombe Parish upon which the parish marked the ways they wished to be recorded as rights of way shows the County Road as running across the farmyard to point B. It would appear that the Parish Council have claimed the path to point B on this basis, and this is why the Definitive Statement shows the path as connecting with County Road 50522 but not apparently running across the farmyard (i.e. parcel 708).

14.44 It would seem evident that the Parish Council did not intend to claim a cul de sac footpath leading only to Mill Farm, and that the intention was for the claimed footpath to connect with the road leading to Mill Farm from the west. The anomaly seems to have come about because the County Council supplied maps to the parish councils to allow them to mark the ways they wished to claim as public. On the maps supplied, the County Council had already marked the county road to Mill Farm as continuing to point B rather than terminating at point A, even though the contemporary maps accompanying the list of streets show it terminating at point A.

14.45 The termination point of County Road 50522 is shown as being at point A on both the current County Road Record map and also on an earlier draft. The Divisional Highway Surveyors have no record of maintenance continuing through the farmyard to point B, the start of Definitive footpath AWB 52. The road length quoted in the accompanying schedule does not assist us greatly as evidence. In considering a County Roads Map, the starting point should be that those who prepared the map intended it to be a record of all carriageways that were maintained by the public. As the council was the highway authority for these roads and the roads vested in them, those who prepared the maps should have had detailed knowledge of the extent and status of the roads in question, and thus, the maps should form cogent evidence as to the vehicular and other rights that exist. On the other hand, the maps were purely internal documents and the public had no mechanism of challenging what was shown on them. Thus they cannot be regarded as conclusive and there is always a possibility that a mistake might have been made. Nevertheless, it is submitted that the recording of a county road should be regarded as indicating a belief of the highway authority that vehicular rights existed.

15. SUMMARY

15.1 The user evidence supplied in support of this application is minimal, and insufficient to meet the tests of sufficiency set out above. Furthermore, it supports the landowner’s assertion that use through the farmyard had been challenged. There is a history of erecting signs stating that the footpath did not run through the farmyard since at least the 1990s, and the signs in place in 2003 were provided by the County Council following representations by the then-landowner. We are thus reliant on the documentary evidence.

- 15.2 The farm was formerly Greet Mill, and is marked as a mill on the OS Surveyor's Drawing of 1811. The present road 50522 leading from Greet to the mill is first shown on the 1815 Inclosure Map as a road terminating at point A but then continuing north through what is now the present farmyard as a footpath. No road or path is shown running east from the mill.
- 15.3 A continuous route through Mill Farm to the Stratford road is first shown on the 1824 Greenwood and Bryant maps and also on the OS 1" First Edition of 1830. It is shown as a 'road' without any boundary features running across it on all three maps and Greenwood denotes it as being a 'cross road'. The significance of this term is explained above, but these maps do indicate that the way was of the same character throughout, including the continuation east to the Stratford road, and that it was available for the public. However, as a mill would have been a place of resort within the local community, this road (or at least the section east of Mill Farm) may have been private and use by implied permission.
- 15.4 Documentary sources regarding the section A to B and the continuation east (now public footpath AWB 52) begin to conflict from this point onwards. The 1884 OS 25" coloured edition shows both section and A to B as coloured, indicating that it was metalled, but leaving open the question of whether it was a public or private road. An 1889 Winchcombe Highway Board meeting makes it clear that the road to Greet Mill was publicly maintainable and a no-through road, but leaves the possibility that it might have continued east as a highway of a lower status, for example a footpath. The OS 25" mapping for 1884, 1903 and 1923 all show the farmyard open to the highway at point A, but gated at point B, and the road east of a lesser width.
- 15.5 The 1904 Sale Particulars and the 1910 Finance Act valuation plan differ in their depiction of the extent of highway between points A and B. The 1904 particulars distinguish between a drive from Greet and a private drive from Irely Road, which supports the 1889 Highway Board evidence that only the present 50522 road was then public highway. However, the accompanying map shows the farmyard (A to B) outside of the land to be sold, uncoloured and seemingly forming part of the public Greet Mill Lane. In contrast, the Finance Act map shows the section A to B (and the continuation east to the Stratford road) as forming part of the hereditament. It should be noted that this record was produced by the Inland Revenue as part of a statutory process, based on information supplied by the landowner. Against this, there is a sizeable (£50) reduction for rights of way against Greet Mill, which could be argued to relate to another path (the present AWB 53 footpath) that runs across the property, but does seem to be a large reduction for a cross-field path away from the main farm buildings.
- 15.6 The Ordnance Survey 1" to 1 mile Third Series map (surveyed 1903/4) on the other hand shows the road through Greet Mill as continuous and is coloured to represent a Second Class Road. The instructions to the revisers give the following definition: Second Class Roads are metalled roads in good repair, and fit for fast traffic at all seasons i.e. it should be possible to drive carriages and light cars over them at a trot. They are inferior to first class roads in width, but should be sufficiently wide, in all parts, to allow two carts to pass each other without difficulty. There is some evidence that the OS used information from

highway authorities when showing ways as roads on their maps at this time, but this in turn is contradicted by the contemporary instructions to surveyors. This is discussed in more detail above.

- 15.7 Similarly the 1924 Bartholomew 1 inch to 2 miles map of 1924 depicts the way by a red and white dashed line: the key indicates that this marking denotes "Motoring Road, Secondary". The significance of this map is discussed above, but information seems to have been provided by the Cyclists Touring Club on which routes could be used, and does at least indicate that at this time use was perhaps not challenged in the same way that it is now.
- 15.8 Although the 1903/4 OS Map and the 1923 Bartholomew map could be taken to suggest that the way through Greet Mill was a continuous road, either suitable for vehicles or even a public highway, this is contradicted by the 1889 Highway Board meeting, the 1904 sale particulars and the 1910 Finance Act plan all of which indicate that the present class 5 road to Greet Mill Farm was a publicly maintained road and the section east of the mill was a private road.
- 15.9 In 1938 the then-landowners at Mill Farm erected a sign at the eastern end of the present AWB 52 (i.e. close to the Stratford road) stating "Private Road to Greet Mill only" and following pressure from the local council agreed to amend it to include the wording "Public Footpath only", as the way formed part of a public footpath to Toddington (the later-deleted path within Stanway parish). The wording is a clear bringing into question of its use by vehicles, but doesn't represent a lack of intention to dedicate the way as a footpath. There is no indication (either way) as to whether the footpath use that was being allowed included the section through the farmyard towards Greet.
- 15.10 The list of streets, although an internal document and not subject to public scrutiny or objection, shows the road terminating at point A. An earlier set of maps accompanying the list of streets dating to the early 1950s shows the same extent of highway. Despite this, it would seem that the maps supplied to Parish Councils by the County Council for marking up rights of way that they wished to claim, showed the road extending to point B. It is probably for this reason that Winchcombe Parish Council claimed what later became AWB 52 as from point B east to the Stratford road. It seems unlikely that they intended to claim a cul de sac path leading only to the farm gate and not connecting with the road through to Greet. Winchcombe Parish Council were thorough in the undertaking of their duties under the 1949 National Parks and Access to the Countryside as is set out above, and there is no cogent evidence that the path AWB 52 was included on the Definitive Map through error or through an arbitrary and unsupported assertion by the Parish Council.
- 15.11 Given that the user evidence is insubstantial and insufficient, it is a question of deciding whether the documentary evidence, conflicting as it is, supports the application to add a section of public footpath between A and B, linking footpath AWB 52 and the maintainable road 50522. The test for making an order to add a length of public path is set out above, that rights either subsist or are reasonably alleged to subsist. The recommendation is that given the conflicting nature of the evidence, only the lower test (reasonably alleged to subsist) has been met and

not the higher test and that an order be made to add the claimed section of path A to B (as shown on map 1B) to the Definitive Map and Statement as a public footpath.

16. APPENDICES

- A. Location Map, scale 1: 10,000
- B. Large scale map of Greet area, scale 1: 2,500
- C. Summary of Public Path Evidence Forms
- D. Inclosure Map for Greet & Sudeley Tenements, 1815
- E. Ordnance Survey Surveyor's Drawing
- F. Greenwood's Map of Gloucestershire, 1824
- G. Bryant Map of Gloucestershire, 1824
- H. Ordnance Survey 1" to 1 mile map, 1st edition, 1830
- I. Ordnance Survey 25" to 1 mile map, 1st edition Glos 20.3 (1884)
- J. Ordnance Survey 25" to 1 mile map, 2nd edition Glos 20.3 (1903)
- K. Ordnance Survey 1" to 1 mile map, 3rd edition (1903-04)
- L. Manor Farm Estate Sale Particulars, 1904, map
- M. Manor Farm Estate Sale Particulars, 1904, Greet Mill
- N. Inland Revenue, 1910 Finance Act draft valuation plan
- O. Ordnance Survey 25" to 1 mile map, 3rd edition Glos 20.3 (1923)
- P. Bartholomew's Half Inch to One Mile map, c.1924
- Q. Parish Submission map compiled under National Parks Act 1949
- R. Modified Draft Map compiled under National Parks Act 1949
- S. Ordnance Survey National Grid 1: 2.500 SP 0330 (1976)
- T. Photographs of Claimed Route, 2003 and 1953
- U. British Newspaper Archive extracts for Greet Mill Farm