

Wayside

Chittoe Heath

Bromham

Wiltshire

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Sally Madgwick
Rights of Way Officer
Wiltshire Council
County Hall
Trowbridge
Wiltshire BA14 8JN

17 February 2010

Dear Ms Madgwick,

Statement of Objection to the Application for an Order to add public footpaths to the Definitive Map and Statement at Chittoe Plantation, Chittoe Heath, Bromham

Thank you for your letter of 2 December and also for the visit of 16 November 2009.

On 11 December 2008 we registered our title to the 999 year leasehold for the land in question (granted in 1954) of which the freehold is owned by the Blue Haze Corporation. We strongly object to the application and we contest the witness statements that are in support of this application. In summary our objections are:

- That the public have entered the land concerned without permission knowing that the land is private, that there are and were no Rights of Way accrued or otherwise and most of the witnesses are unable to claim to have done so over a period of twenty years or more.
- That there is clear and explicit evidence that a sign reading "PRIVATE WOODLAND – KEEP OUT" was put up in approximately September 2002. That sign was followed by about three others which were put up early the following year. Signs advertising the sale of the private woodland were also periodically erected.
- That even where access has been effected there is no definitive path or paths. The Application makes clear that it is an application for a single footpath and it makes no mention of multiple or alternate paths.
- Between 1954 and 1992 the leasehold of the land was owned by the Ministry of Agriculture Fisheries and Food and the witnesses cannot show any provision for public access over the land during this period and thus a Right of Way could not be claimed against the Crown for that period. This means that none of the witnesses can claim any rights prior to 1992 and thus cannot show any accrued rights for a 20 year period or more.
- That some of the witnesses have since written to us and accepted that there is no Right of Way and thus we suggest that their original witness statement is negated (copies of letters attached).

The public entered the land without permission by force and in secret knowing the land to be private.

The land concerned has been properly fenced for many years and photographs of the demonstrably old but effective fencing are attached. The fencing and perimeter plan attached show where the private entrances may have been and these do not match any of the witness statements for the application. In December 2008 we erected a wooden gate and some PRIVATE LAND KEEP OUT signs. We did not renew the perimeter fence as it was, and is, perfectly serviceable for delineating land ownership. In February 2009 we placed wooden rails over the existing fence at two points.

We also enclose witness statements signed by locals who support our contention that the land was properly fenced and it is of note that many of the witnesses for the application acknowledge the existence of a fence around the property. These are also supported by a proforma letter signed by others. Letters of objection to the Right of Way are enclosed.

The locals also recall a black and white sign stating that the woods were private and the location of this sign is shown on the attached plan. The woodland has also been sold twice since 1992 and on each occasion was advertised by John Clegg and Sons with signs at the woods as PRIVATE WOODLAND FOR SALE. We also understand that some of the witnesses (including and in particular John Benham) asked for sales particulars at the time and thus knew perfectly well that the woodland was private property and had no Rights of Way across them. Sales particulars from these sales and a photograph of the signs erected are enclosed as supporting evidence.

It is of note that all those objecting to the Right of Way and supplying supportive evidence are local (including residents of Chittoe Heath, the Parish Council, the Wiltshire Council and the local Ramblers Group) whereas none of the witnesses for the application live within walking distance of the woods and thus are clearly not local. The only local resident of Chittoe who claims a Right of Way (Sarah Collins) states in her statement that she first accessed the woods by seeking permission of the Spicer Family of Spye Park (the owners of the land until 2005) and thus her access was permissive and thus she cannot claim a Right of Way until after the Spicer family sold their ownership of the land in 2005.

The erection of notices

BCH (UK) Limited bought the long lease of the Plantation in August 2002 and retained it until it was sold to me in December 2008. I understand that Philip Kerry, the Managing Director of that company, Peter Yates, an architect who worked for the company, and Roger Townend who worked for Mr Kerry have all written to you. I enclose copies of their letters for ease of reference. Mr Kerry and Mr Yates both say quite clearly that they put up signs reading "PRIVATE WOODLAND – KEEP OUT" in about September 2002 – and Mr Yates returned to put up more signs early the following year. Mr Townend confirms that the signs were still there when he started working for Mr Kerry in January 2005 although they disappeared some time after that. There is also evidence from a number of others (including Edward Heard and Patricia Bryant) of the existence of signs in the Plantation.

I would just add that according to page 55 of the Blue Book on Rights of Way (the Fourth Edition by John Riddall and John Trevelyan) the law does not require that only the landlord is capable of rebutting the presumption of dedication. "Action by the tenant sufficient to show an intention not to dedicate is capable of resulting in the presumption being rebutted".

Lack of definitive paths

It is clear from the witness statements that most of those who claim a Right of Way have accessed the land and taken their dogs for a walk. We suggest that all have done so with their dogs off the lead and have simply wandered anywhere in the woods following their dogs. There is no definitive path as attached photographs and the visit by Sally Madgwick on 16 November confirmed. Even the witness statements in support of the application confirm that there is such a significant variation in the routes claimed that the application must fail because of the lack of consistency in alleged routes claimed. Some admit in their statements that they walked different routes.

Forestry Commission Tenure up to 1992

Between 1954 and 1992 the leasehold of the land was owned by the Ministry of Agriculture Fisheries and Food and the witnesses cannot show any provision for public access over the land during this period and thus a Right of Way could not be claimed against the Crown for that period. The application was made in March 2009 and all refer to our clearly defining the woods again as private in December 2008. The Forestry Commission tenure means that none of the witnesses can claim any rights prior to 1992 and thus cannot show any accrued rights for a 20 year period or more.

Witness Statements

A summary of the witness statements, together with our comments is attached at Annex A. From this summary it is clear that there are 9 extant statements from witnesses claiming access for over twenty years.

We suggest that most of the Statements from those claiming the Right of Way and who claim over 20 years access in their statements contain both such inconsistencies with the routes claimed and the law that they are inadmissible or cannot support the application properly.

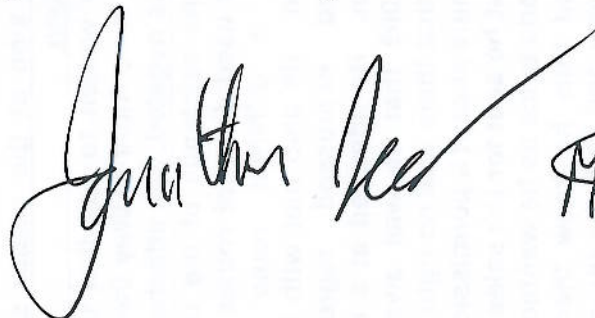

These include:

- people who state that they walked the woods by permission granted by the owners(Collins)
- people who walked with permission gained by employment or tenure from the owners (Thompson x3)
- people who have since recorded in writing their acceptance that a Right of Way does not exist (Stainer, Wiggins,x2, Beater) – statements attached.
- and one who accepts the existence of the old sign (which said PRIVATE WOODS) (Holt)
- Several who could not possibly have logically walked the route which they claim on a daily basis (Imrie, Wade, Kirk Duncan,du Boulay,Thompson, Hodsoll, Parkinson)
- Several admit not using the same route (Thomas, Micciche, Benham)
- Most witness statements contain maps with routes that vary from the application for the modification order.

Although not strictly relevant to this application we wish to emphasise that we have no objections to people walking our land with permissive access and have granted such a permission to 22 dog walkers to date.

Together with the locals of Chittoe Heath, the Parish Council, the Wiltshire Councillor and even the local rambling group we wish to object to this application for the reasons stated and request that you as the Rights of Way Officer refuse to issue the Order applied for.

Yours sincerely

Jonathan Peck  

Area A

Schedule of users

Name(s)	Address	Years of use/Period/Use	Comment
Freda Grace Mead	9 Dean Close, Melksham, Wiltshire, SN12 7EZ.	47 years/1962-2009 Dog walking/picnics/easter egg hunts!	Declares a different route from the application and admits there were obstructions to her entry
Keith Appleton	47 Churchill Avenue, Melksham, Wilts	36 years	Accepts used different routes and declares a different route from the application.
Peter Holt	8 Highfield, Bromham, Wilts	32 years	Accepts the existence of the perimeter fence and different route from the application plus he ' <u>recalls a sign at the corner stile by the road junction</u> '
Michael and Muriel Wiggins (separate evidence forms with same details)	30 Bryans Close Road, Calne, Wiltshire, SN1 1 9AB.	29 years/1980-2009 Dog walking	Have now written to say that they accept that there is no Right of Way therefore their evidence is negated. See attached.
Maurice John Benham	51 Highfield, Bromham, Chippenham, Wiltshire, SN15 2HS.	28 years/1981-2009 Dog/children walking	Accepts the existence of the barbed wire fence and used different routes as well as declaring a different route from the application. He also met with me several times and expressed regret at his application. He admitted at a meeting on 21 Feb 2009 that he was aware that he accepted that there was no right of way and that he would accept a permission. He also admits that he sent for the sales particulars of the woods twice as he wanted to buy the woods and thus he knew there were no rights of way and that the intention of the owners was to retain them as private and without footpaths.
Gary James Thompson	44 Yard Lane, Bromham, Wiltshire, SN15 2DT.	27 years/1982- Dog/children walking	Accepts the existence of the perimeter fence and different route from the application. Very importantly admits that he started and continued to use the woods when the Thompson family farmed the whole area on behalf of the Spicer family and thus did so with their permission up to the 2005 sale

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Jeremy Howard Thompson	9 Ridgemead, Calne, Wiltshire.	27 years/1982-	Accepts the existence of the perimeter fence and different route from the application. Very importantly admits that he started and continued to use the woods when the Thompson family farmed the whole area on behalf of the Spicer family and thus did so with their permission up to th 2005 sale.
Marilyn Hodsoil	The Old Police House, Sandy Lane, Chippenham, SN15 2PZ.	23 years/1986-2009 Dog walking	Different route from the application, asked for and accepted verbal permission to use the woods and that there was no right of way at meeting on 16 Feb 09.
Carol Jean Thompson (Wife of Gary Thompson)	44 Yard Lane, Bromham, Wiltshire, SN15 2DT.	22 years/1986-2008 Walking/dog walking	Accepts the existence of the perimeter fence and different route from the application. also originally given permission when tenants of the Spye Estate therefore no accrued rights until 2005
Martin Neil Parkinson	27 Greystones, Bromham, Wiltshire, SN15 2JT.	21 years/1986-2007 2009- Dog walking	Accepts the existence of the perimeter fence and different route from the application.
THE FOLLOWING CANNOT SHOW TWENTY YEARS USE			
Mr and Mrs Du Boulay and family	Lower Lodge, 35 Bowden Hill, Lacock, SN15 2PP.	19 years/1989-2008 Dog walking	Declares a different route from the application.
Robert John Carver	5 The Gardens, Bromham, Wilts	?	Accepts the existence of the perimeter fence and different route from the application.
Sarah Collins	The Old Church, Chittoe, Chippenham, SN15 2EL.	19 years/1989-2008 Dog walking	Accepts the existence of the perimeter fence and different route from the application. Given permission by the owners of Spye Park (Spicers) therefore access by permission of the owners until 2005
Ann Wade	8 Dean Close, Melksham, SN12 7EZ.	16 years/1993-2009 Dog walking	Accepts the existence of the perimeter stiles and the access from the cross roads (but shown differently on her map) and different route from the application.

Schedule of users

Margaret Beater	3 Rosemary Close, Calne, SN11 0UL.	15 years/1991-2006 (when living at Greystones Broham) Last use 2007	Accepts perimeter fence and declares a different route from the application Have now written to say that they accept that there is no Right of Way therefore her evidence is negated.
Elizabeth Kirk Duncan	Meadow Cottage, 3 The Green, Marston, Devizes, SN10 5SW.	12 years/1996-2008 Dog walking	Accepts the existence of the perimeter fence and different routes used. Fails to answer the fence question
Louisa Thomas and family	Yew Tree House, 55 Horsepool, Bromham, Chippenham, SN15 2HD.	12 years/1997- Dog walking/walking	The applicant cannot demonstrate more than 20 years use.
NB. Notice of Application for modification order- Nigel Thomas dated 18.03.2009			
Major (retired) Gaetano David Micciché	34 Mintys Top, Bromham, SN15 2HB.	11 years/1998- Dog walking	Accepts the existence of the perimeter fence and different route from the application.
Hazel Imrie	Ashton House, St Ediths Marsh, Bromham, SN15 2DJ.	11 years/1998- Dog Walking/recreation	Accepts the existence of the perimeter fence and different route from the application.
Mrs J Stainer	3 Dean Close, Melksham.	7 years/2002-2009 Dog walking/recreation	Accepts the existence of the perimeter fence and different route from the application.
Mr and Mrs A T J Padwick	Linden House, London Road, Devizes, SN10 2DS.	No details-pages from evidence form missing	Accepts the existence of the perimeter fence and different route from the application.