



Environmental Services Dept.			
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Ms Barbara Talbott  
 Rights of Way Section  
 Environmental Services Department  
 Wiltshire County Council  
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Our Ref GP/RJD/12466/27522  
 Your Ref  
 Date 06 May 2003  
 Email gparkinson@boyesturner.com

Dear Sirs

**FOOTPATH CLAIM – MANOR FARM WEST GRIMSTEAD**

Thank you for your letters of 10 and 19 of March.

Malcolm Read and Graham Read were Tenants of Manor Farm pursuant to a Tenancy Agreement dated 29 September 1977. Their landlord was originally Barclays Bank but later it was a Dutch company until 1998 when Graham Read and his wife bought the freehold.

It has been established since R v East Mark Inhabitants (1848) that a tenant can not dedicate land as a public highway without the consent of the landlord.

There is no evidence that the freeholder of the land gave permission for anyone to walk over Manor Farm and we therefore do not see how it is alleged a right of way over the land has been established.

In your letter of 10 March you enclosed a letter from Malcolm Read which states that although he observed people walking over the footpath he did not attempt to stop them from doing so. Indeed he felt that people should be able to walk over the farm without having to ask his permission. At the time that Malcolm Read observed these people walking over the land he was merely the tenant of the farm and not the owner of the freehold. The Reads were not therefore in a position to give their permission for people to walk over the land, even if they wanted to.

Some of the witness statements supporting the establishment of a footpath also state that the walkers were given permission by Malcolm and Graham Read to walk over the farm land. Other witness statements state that it was common knowledge in the village that the Reads were happy

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for people to walk on the land. Once again, the Reads were merely the tenants of the farm and as such could not consent to people walking over the farm or the establishment of a footpath over the farm land.

R v East Mark Inhabitants (1848) 11 QB states that a leaseholder cannot give permission for the establishment of a right of way over the land that would bind the freeholder. Only the freeholder of the land can give permission to people to walk over the land and a right of way to be established over the land.

The requisite permission for people to walk over the land was not given in this case. Indeed the freeholder was not aware that anyone was walking over the land during their ownership.

Whether Malcolm Read observed people walking over the land with or without his permission is not therefore relevant to whether a public footpath has been established over the farm and should be discounted.

R v East Mark Inhabitants is binding authority and we therefore question whether it is a correct use of council funds to refer this matter to committee. There is no evidence that the freeholder permitted people to walk over the land or intended a public footpath to be established over the land. For this reason the outcome of any enquiry cannot be in doubt and we question whether it would be a suitable use of council funds for the committee to refer the matter to enquiry at all.

Please confirm that you will notify the committee of our concerns by sending them a copy of this letter.

We look forward to hearing from you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Boyes Turner', written over a horizontal line.

Boyes Turner