

## SUBMISSION ON BEHALF OF MR. &amp; MRS. MORGAN

TO: Wiltshire County Council  
 ATTN OF: Mrs B Mills – Senior Solicitor – Litigation Corp. Services Dept.  
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 DATE: 5 July 2001  
 NO. PAGES: Two

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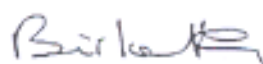
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Dear Sirs

Mr & Mrs H Morgan – Land at Red Lion House, West Dean

We enclose some written submissions for your Committee meeting. We understand that Mr Morgan is submitting some submissions of his own.

Yours faithfully



BIRKETTS

#### User Evidence

1. In order to raise the statutory presumption of deemed dedication user must immediately precede the date when the right of way was brought into question.
2. Illegal user cannot give rise to a claim. Any driving of a motorised vehicle on common land has been illegal since the Road Traffic Act 1930. Part of the claimed route is registered common land. Even before the land was registered it would have been common land.

#### Documentary Evidence

1. There is no clear documentary evidence showing the claimed route is a public highway. The documents are at best ambiguous. The Tithe Map is consistent with an estate road. Ordnance Survey maps merely show physical tracks and are not indicative of public right of way. Neither the Railway Maps nor the Inland Revenue Maps were produced for the purposes of showing highways. They can provide supporting evidence but are not sufficient on their own.

## SUBMISSION ON BEHALF OF WEST DEAN PARISH COUNCIL



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Our ref: AW/EB  
Your ref: BHM/PMN/01804

5<sup>th</sup> July 2001

Dear Mrs Mills

Re: Land to the Front of the Former Red Lion Public House, West Dean

Thank you for your letter of 3<sup>rd</sup> July 2001. As I told you, I shall be attending on behalf of the West Dean Parish Council briefly to address the members of the Environmental Services Sub-Committee during their site visit on Monday, 9<sup>th</sup> July 2001.

The following are the matters that I am instructed to place before the Sub-Committee by way of written representations.

1. The Sub-Committee should bear in mind that the application for a Definitive Map Modification Order was made by the West Dean Parish Council, which is of course itself a local authority. At all times the purpose of the application has been to secure for the use of the residents of West Dean rights over the route of the proposed highway and over the area on each side of it. Those rights are for recreation and leisure purposes and have subsisted for a considerable length of time. They were never the subject of any controversy until the present owners of the former Red Lion Public House bought that property and the land in question.
2. My clients have produced a lot of evidence about the history of this area of land which is referred to in the report to the Sub-Committee. By and large, that evidence was accepted in the report. As noted above, the purpose of bringing forward that evidence was to establish that all the land in question (not merely the proposed highway) carried public rights whatever those rights might be.
3. My clients were concerned that the report to the Sub-Committee sought to restrict the width of the proposed byway to 15 ft. This appeared to go in the face of the

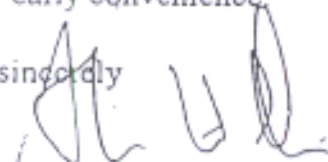


evidence that they had put forward and which had not been seriously doubted or questioned.

4. However having re-considered the position and bearing in mind their objective in applying for a modification order in the first place, my clients now accept that it might be appropriate not to oppose the recommendation of a highway of a limited width. This will leave the way open for them to apply for the registration of the rest of the land as a village green. The Committee should be aware that that application is now being pursued as vigorously as possible. As previously noted, I have in my possession documentary and written evidence suggesting that the claim for registration as a village green is an extremely strong one and, even if opposed, is likely to succeed.
5. My clients wish consideration of the application for a Modification Order to be postponed until the question of the designation of the land as a village green has been dealt with. Indeed I would suggest that any other course would be improper. As noted above, the extra evidence that I have been able to see over the last few weeks is just as cogent as to the overall area of land being a village green as it is that the whole of the land or any part of it is a highway. The duty under S53 of the 1981 Act to keep the Definitive Map under continuous review follows (amongst other events) "*the discovery by the authority of evidence which (when considered with all other relevant evidence available to them)*" [emphasis supplied]..... shows that a right of way subsists, that the description of a highway should be altered, etc. If a postponement of the Definitive Map Modification application is not granted, I would respectfully suggest that the authority will have failed to consider "*all other relevant evidence*". That would call into question the lawfulness of any Order. I am very happy to make that evidence available to the Council in relation to this Modification Order application, as well as the village green application. No prejudice to anyone can flow from a postponement, whereas substantial prejudice to the local community will result if an inappropriate Order is made.

It would not be appropriate for this evidence to be considered at the site visit on Monday. However if you feel able to advise the Sub-Committee that a delay in their formal deliberations would be appropriate, I should be happy to meet you to present the evidence at your early convenience.

Yours sincerely

  
ALAN WILLIS

