

CODFORD FP15

BUNDLE OF EVIDENCE
submitted on behalf of the Objectors
30th September 2016

1. Summary of Evidence

2. Witness Statements of

Mr Mike Read
Mr David Williams
Mr Josh Stratton
Mrs Jennifer Stratton
Mrs Sally Oliver (plus photos attached)
Mr Graham Carter
Mrs Julie Barnard
Mr Alan Bennett

3. Report and aerial photographs of Airphoto Services

Mogers Drewett, Solicitors
Wells, Somerset

Ref: MJCC



**MOGERS
DREWETT**

Re: Codford FP 15

Summary of Evidence

submitted by the Objectors 30th September 2016

1. Documents attached.
 - Witness statements of
 - Mr Mike Read
 - Mr David Williams
 - Mr Josh Stratton
 - Mrs Jennifer Stratton
 - Mrs Sally Oliver (plus photos attached)
 - Mr Graham Carter
 - Mrs Julie Barnard
 - Mr Alan Bennett
 - Report and aerial photographs of Airphoto Services
2. The main points of this evidence are as follows.
3. All our witnesses go back a long way in their recollection of the farm, the route, and its use or non-use by the public. The evidence of Mr Read, Mr Williams, Mr Stratton, and Mr Carter all cover the whole of the claim period. The other four witnesses cover part of it.
4. A consistent picture emerges: of the route being practically impassable until the changing of the fencing and gating arrangements, which now seems to have been 1989/1990.
5. From then on, the sides of the route were fenced, the animals which had grazed freely until then were kept off the route, and the difficult-to-open Wiltshire gates at C and B exchanged for more easily openable gates.
6. The evidence suggests no, or minimal, public use of the claimed route until that change was made.
7. Even after the change was made, when it had become physically easier to walk C-B, the evidence is that there was hardly any public use until the late 1990s/early 2000s.
8. All of that time, the Private Road signs were in place.
9. Our aerial photographs and the report of Airphoto services show that a difference is apparent on the route when comparing the 1984 pictures with the 1998 pictures (sadly no photographs have been found between those dates). In 1984, the pre-existing position is apparent, with the edges of B-C not fenced and a gate structure at B. By 1998, by contrast, the boundary edges of B-C have become fenced. This does not help to fix the date of the change of the fencing arrangements, but it does confirm and substantiate our evidence that the change was made at some point after 1984.
10. There is further photographic evidence of a gate at 'B' and a lack of fencing in the 1980s (see the statement and exhibits of Sally Oliver). Overall, the photographic

evidence is clear in establishing a barrier at 'B', and a lack of fencing of the route for much of the relevant period. The natural conclusion is that, in an area where animals are grazed, there must have been a barrier at 'C', as asserted by the landowner's witnesses, inter alia to prevent escape of livestock.

11. Our witnesses have seen much public use of Church Lane, and the Beanis Path, but by contrast hardly any public use of the farm road, and certainly not until about sixteen years ago.
12. The evidence adduced by the original set of Claimants' witnesses was insufficient. The Claimants were then encouraged to see if any more witnesses could be found, and they came up with two more, one of whom Mr Cole has since died (and was never seen on the route anyway).
13. The other, Mrs R Wyeth, has according to our witnesses never been seen on the claimed route, by contrast with her observed use of the Beanis Path.
14. The evidence now submitted was not with the Council when the Order was made. For the Order to be confirmed, the test is that the case be made out on the balance of probabilities. In light of this new evidence, we believe that the existence of a public right of way cannot even be reasonably alleged and certainly not asserted on the balance of probabilities.
15. In summary:

- (i) The landowner witness evidence that gates existed across the way during the relevant period is cogent and powerful. It is consistent and supported by aerial and other photographs. A gate is visible in photos at 'B' during the relevant period. No fencing off of the route from the field is apparent in the early part of the period which strongly supports the existence of a gate at 'C'. This objective evidence confirms the landowner witness evidence of gates across the way that would have made the claimed use of the route very difficult if not impossible and also acted to bring into question any public rights/ evidence of a continuing lack of intention to dedicate.

In addition, the failure of any of the Claimant's witnesses to remember any structures across the route raises significant doubts as to the accuracy of their evidence. When the evidence is viewed objectively, it is likely that the memory of witnesses has been significantly coloured by use in recent years i.e. recent use has been assumed to have occurred in earlier years.

- (ii) The level of user evidence is simply insufficient. This was recognised originally by the Officer, it being two extra witnesses that tipped the balance in favour of making the Order on the basis of a reasonable allegation. For confirmation of the Order, the case must be made out to a higher evidence standard: the balance of probabilities. Given the number and quality of the evidence, satisfaction of this test does not seem likely or even possible, particularly as one of the 'new' witnesses has died.
- (iii) It does not appear to be disputed that Private Road signs have been in situ throughout the relevant period. The argument postulated at 12.18 of the Council Report that these were not necessarily visible to walkers is not sustainable; inter alia all the witnesses are local and would have had to pass these signs, which are clearly visible from the main road, on a regular basis in their normal everyday lives going in and out of the village.

- (iv) In interpreting the meaning of the signs and whether they challenged any use, a normal objective test is applied, as to what a reasonable person would think they meant. It does not matter what individual users may have thought the signs meant (see for example R (Burrows) v RBWM and others [2014] EWHC 389 (Admin)).
 - (v) Applying that test, it is unlawful simply to assume that the use of the term 'PRIVATE ROAD' can only apply to vehicular rights because of the use of such signs in other areas (as appears to be the approach in para. 12.18 of the Report). As a further simple point, in contrast to the Stockton Park Private Road, cited in para. 12.18 and to the situation in Burrows v SSEFRA [2004] EWHC 132 (Admin) (often cited, incorrectly, as supporting private road signs only applying to vehicular rights), in the current setting there are no pre-existing public footpath rights on the route. There is nothing in this case, therefore, which would prevent the ordinary user from interpreting the PRIVATE ROAD sign as referring to **all** public rights.
 - (vi) Indeed, in a recent village green case that turned on the interpretation of signs, highly experienced leading counsel Vivian Chapman QC was of the view that normally PRIVATE PROPERTY means, to the ordinary person, that the public have no right to be on the land. His interpretation was approved in the High Court (see para. 8 and 22 in R (Burrows) v RBWM).
 - (vii) In this case the track is physically a road and so when referring to the private nature of the land it is not surprising that 'Private Road' is the term used. There are no pre-existing public rights which would limit the possible application of the word PRIVATE; in short, there is nothing upon which one could argue objectively that a member of the public would reasonably assume the private nature of the land only applied to vehicular rights.
 - (viii) This is exemplified by the rather strange claim that the PRIVATE ROAD sign could just apply to maintenance (see para. 12.18 of the Report); why would a landowner pay to erect a sign just to tell the public that a route is privately maintained when it is of no import to the public. Objectively a landowner erects signs to protect his rights by informing the public that the land, whether or not it is a road, is private.
 - (ix) Overall, when viewed objectively there is no basis to assume that the signs were limited in their application. The legal effect of the signs was to prevent any rights being acquired by the public throughout the relevant period and before, by challenging any user and by showing a continuing lack of intention to dedicate.
16. Given the new evidence, it is to be hoped that the officer's recommendation to the committee will now be that the Council should not support confirmation of the Order, and that PINS be informed accordingly. Any one of the points above leads to this conclusion. In combination the argument against supporting the Order is particularly powerful.
17. If the Council does propose to support the Order, it should make clear the basis upon which it does so in light of the 'new' evidence and submissions now submitted by the landowner.

Statement of Mr Mike Read
(of 4 Ox Yard, Codford)

1. I was born in 1942 and we first moved to Codford in 1952. I went to school in the village. My father was a Policeman.
2. I have a long recollection of East Farm, Codford. As a boy I used to go up to the farm because I knew some of the farm workers there.
3. I started working for the Strattons in 1958 full time, and have carried on doing so until retirement (although I still do some work for them from time to time even now).
4. My clear recollection of the part of the farm through which the claimed route runs is of a field of huts. It was a former army camp, going back to World War II and maybe even World War I. The claimed route was just the road through the camp. It had no name as far as I was concerned.
5. The general public did not walk along the camp road. The locals would not have had any need to walk along it, anyway. This is because the farm is on the eastern side of the village and if anyone in the village wanted to go to the church they would have walked up Church Lane or along the Beanis Path. These two routes approach the farm and church from the village side. It would have been out of the way for any of the villagers to have gone beyond Church Lane and then up the camp road to go to church. In those days the road through the village was the main A36 road as there was no bypass. If you were walking to the church you would want to get off that road as soon as you could, and go either along the Beanis Path or up Church Lane. You would not have wanted to walk on to the southern end of the camp road.
6. When I started work at the Strattons in 1958 I was a general farm worker and tractor driver but by the mid 1980s I had become Foreman. This was a senior and responsible position and it is true to say that not a lot happened on the farm without me knowing it.
7. That is why I feel confident in saying that there was no public access in those days apart from people walking to church which as I say was up Church Lane, or along the Beanis Path.
8. Anyway, the camp road was fenced off at the top and bottom (by which I mean near point B and at point C). This is because the camp field itself (through which the camp road runs) was open to stock, and the cattle ran freely over all parts of the old camp ground. You would not normally have wanted to walk along the camp road through the cattle especially when other routes were available. The fencing was secured at both sides, and in the middle of the road, by fence posts being anchored in a concrete base.
9. It is the case that at a later date the fencing at the top and bottom was removed, and the camp road was fenced either side, thus penning the stock into the fields on either side of the camp road. It is difficult to be precise when that happened. I know that that side-fencing job was done by David Williams and Alan Bennett. I would estimate that the time when the side-fencing was done was at some time in the mid 1980s or perhaps a bit later. When the fencing across the camp road was removed (at the same time that the side-fencing was done) the fence across the road was replaced by a gate. It was a black metal gate and the post for the gate is still there.
10. The Submission which the Strattons put in suggested it was in the 1970s that the fencing was changed. I do not think that is right, and I wish to clarify it. My evidence is that it was not in the 1970s. I know this from my own recollection as Foreman, and also

because I know that David Williams helped do the fencing work, and he didn't start work with the Strattons until later (1980, I believe). It was definitely the mid 1980s that the fencing was changed, and perhaps even later than that.

11. By that time there had long been in existence Private Road signs at the south end of the camp road, so anybody wanting to walk northwards from the area of the Lodge, up the camp road would have been aware of the Private Road signs. I believe the purpose of those signs was to stop the public coming in.

12. Those private road signs would also have been a familiar sight to any of the villagers driving past. That is the route to Salisbury and the A303. The private road signs have been in place at the south end of the camp road since the 1970s. They were put in at the same time as the private road signs put in at the western entrance to the farm, off the Chitterne Road. So anybody driving on the Chitterne Road past the western entrance, or driving on the old A36 past the entrance to camp road, would since the 1970s have been aware that both entrances were private roads.

13. The surface of the camp road has always in my recollection been tarmacked. It was originally put in I believe for army use so it will have been a heavy road. I presume that the army put in the original tarmac but I know that the farm has maintained it from time to time since by repair, and filling of potholes.

14. From my observation I would say that there was a noticeable increase in the amount of public walking on the camp road, in the very late 1990s/early 2000s. Before then there was hardly any use of it and certainly before the camp road was fenced either side I would have said there was very little if any public walking on the camp road.

15. As to use for Armistice Day and ANZAC Day services at the church and at the cemetery, I would say that people have always approached from Church Lane and/or the Beanis Path. The forming up for the service and parade would have been either in Church Lane or in the lane running between Church Lane and the camp road immediately outside the church. Any marching would certainly have been up Church Lane. I don't recall ever having seen the British Legion marching or even walking on the camp road. They just did not march up from the Lodge, and anyway the pattern of services in our group of parishes is such that the Armistice Day services take place on a rota basis, with the service being at Codford only every four or five years, so the use was intermittent. In respect of the ANZAC Day commemoration in the cemetery which is on the side of the Beanis Path, those visiting that cemetery would invariably have used the Beanis Path or Church Lane and not the camp road.

16. I have recently seen a statement put in by Mrs Wyeth and I have the following comments to make. I have known her ever since she came to live in Codford, which was about thirty years ago. She and we live opposite each other. I have never seen her walking on the camp road, whether with or without a party of people. I have seen her walking along the Beanis Path from time to time but not along any part of the claimed route. As to Mr Cole, I have never seen him walking any part of the claimed route, or indeed anywhere.

17. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed

Dated ..

Statement of Mr David Williams
(of 2 Bridge House Codford)

1. I was born in Chitterne in 1957 and came to Codford and started work with the Strattons in about 1980. I was a tractor driver and dealing with the dairy herd.
2. In the old days one never encountered a member of the public on the farm.
3. The farm road or camp road was always fenced at the south end. In the 1980s there was no fencing on either side of the farm road which is why we had to keep it secure at top and bottom, otherwise the cattle would have got out on to the A36. Codford did not have a bypass then.
4. In those days, we always used Church Lane with vehicles and tractors, because of the cattle which roamed freely across the camp fields.
5. Then, at some point in or about the mid/late 1980s, we fenced off either side of the camp road to keep the cattle in. I remember being involved in that fencing job, together with Alan Bennett.
6. Before those fences went up either side of the camp road, the fence at the road end was always across the road even during the day time, and also by the church near point B. After the re-fencing was done, the fence across the road at point C was replaced by a gate, and that tended to be kept shut too.
7. I have noticed an increase in the amount of dog walking on the camp road in the last fifteen years or so. This is by contrast with the position in the 1990s when I never noticed any public use. I was there and around on the farm on a daily basis.
8. There were also signs at the Lodge end of the camp road saying Private Road. Those signs were always there from the 1970s. I always thought it meant that there should be no access for the public up the camp road.
9. I don't remember ever having seen Mrs Wyeth or Mr Cole walking the route. Nor do I ever remember seeing any cyclists or horse riders.

10. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed ..

Dated

Statement of Mr Josh Stratton
(of East Farm, Codford)

1. My family owns and runs East Farm Codford and Manor Farm Stockton. I was born in Stockton in 1968, and I have lived my whole life in these two villages. Apart from the time when I was away at boarding school and university, I have been around these two villages all my life. Throughout school holidays, I went to the farm at Codford most days, where I rode ponies and horses, and worked on the farm. I took on full time running of the farm in 1991, and I moved from Stockton to East Farm House, in Church Lane, in 1994.

2. I remember all through my childhood accessing the farm yard up Church Lane. My father's office was on the corner of the lane by the stables. I never accessed the farm through the current farm road, up the Camp field, because this was gated.

3. When I took on the farm in 1991, the main farm access was along the Camp road, which was newly fenced off from the surrounding fields.

4. I remember occasional walkers along this road after this time, all of whom were people I knew well from the village. Usage of the road by walkers increased over time, and there came a time when many of the walkers were unknown to me. Litter dropping and dog mess became prevalent, and, with the increase in farm and business traffic, there were near misses between vehicles and people.

5. As a result, in 2012, I decided to stop all pedestrian access along the private farm roads, and I did this by means of signage on the three access points (off Church Lane by Beanis Path, by Codford Lodge, and off the Chitterne road). Virtually all walkers immediately stopped using it, and there was a general understanding of the reasons behind this.

6. The original Private Road signs, which have been in place since the early 1970s, at point C at the south end of the farm road, and also on the west side of the farm at the dairy entrance off the Chitterne Road, were put in by my father to make it plain that these routes were private. We didn't want the public using the farm road or the road in to the back of the farmyard, at all. We didn't want public rights arising on any part of our farm. I understand that it is now being suggested that the Private Road signs were only aimed at preventing vehicles. That would be incorrect: they were aimed at preventing any type of public use.

7. I make the following comments on the Claimants' witness evidence:

- 10.3. Bob Richardson-Aitken I have always lived in and around the area, and I have used the farmyard all my life. I know considerably more about the area than R-A. The closure of our private road to local walkers has gone largely unnoticed by most of the village, except for a small minority who do not understand the wishes of a private landowner. R-A does not understand that the increasing intensity of use of the road as result of the success of our business enterprises is a significant factor in the road closure to walkers – the risk is very real, particularly where increasing numbers of walkers are unknown to us, and where the blame culture (no win, no fee etc) would result in an immediate claim against us in the event of an accident, irrespective of the cause.
- 10.4 Mrs Lorimer's comments show that we have developed a sensible and amicable arrangement with St Mary's Church. Increasingly people drive to church rather than walking, and they had developed a habit of spreading out down our farm road, often blocking it. This is now sensibly managed, and works well for the community as a whole. We have been asked to permit parking at the church, which we have readily granted (but verbally only: there is nothing in writing).
- 10.5 Rev Morley's comments echo Mrs Lorimer's, and show the good relationship we have with the church

- 10.6 Mr Neville You will see that as landowners, when required we give permission for village and community gatherings
- 10.8 Bob Richardson-Aitken He has clearly stated that we helped with his daughter's wedding. We will always help where possible, e.g. a large funeral in the summer of 2016. He also comments on the volume of traffic as a result of the success of our business operations. I'm sure he is delighted that we took the forward thinking step of creating a new farm access in 1990 in order to divert traffic away from Church Lane, where he lives, thereby considerably increasing his quality of life and property price. This was not done because of a development to our garden – the dates don't fit.
- 10.9 Mrs Wyeth Mrs Wyeth is well known in the community, and has an excellent knowledge of local history. However in this case her memory lets her down. The farm road was not opened to farm traffic until 1990, and she has never been seen on it by any of the people who work in this area. Mrs Wyeth is not a church goer, and would not have seen the church parking arrangements. I have never seen her walking on the farm road, whether on her own or taking groups of walkers.
- 10.10 Mr Cole He has accessed the church in his car. This has nothing to do with walking along the route on non-church business
- 10.11 Bob Richardson-Aitken His comments regarding church permissions are clearly wrong. For instance, on Armistice Day 2015 the church asked for permission to line up on the farm road, this permission was granted.
- 10.12 David Richardson-Aitken He is obviously unaware that we give permission on occasions for church use of this area
- 10.13 Ms Butcher I have seen her, but I've never seen her with ponies and bikes
- 10.14 Codford Residents Group It is highly unlikely that my employees or tenants do not wish to show their support for the opening of a footpath. When approached in order to negate the footpath, many have given statements which they will back up in an appeal. They are unlikely to be perjuring themselves.
- 12.6 Deposit of Statement. These were made by me on 2003 and 2011. The intention of these was and is to show exactly where the rights of way on our land are located, and what sort of rights of way they are. The council filed our 2011 deposit in Stockton parish, understandably because the land in question covers this parish as well as Codford and Chitterne.
- 12.14 The council understand my point in 12.6 above – my intention with the deposit is to show clearly our rights of way, and it clearly shows that the farm road is not a right of way. See also 19.3
- 16.3 This is incorrect. Up until 1989, the farm road was not accessible – it was gated off, and part of a large field

8. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed ...

Dated

Statement of Mrs Jennifer Stratton
(of East Farm House, Codford)

1. I moved to East Farm House, Codford in March 1998 where I have lived permanently since.
2. When I first lived at East Farm all traffic except for the heavy farm machinery used Church Lane and accessed the farm yard directly from there. A few years after when our children were babies, we made a decision because of the volume of vans, lorries and cars using Church Lane to close this access to the farm yard and to put this traffic along the farm road, hence making Church Lane both safer and more peaceful.
3. I have only ever used the farm road in a vehicle, we never allowed our children to use it on bikes, walking or ponies for their own safety due to usage of the farm road by farm machinery and other such vehicles.
4. During that time (say in the late 90s/early 2000s) I used to see one or two familiar faces from the village walking the farm road. Visitors to the church always used Church Lane either walking or driving. I have not seen anyone using the farm road with their ponies; nor did I see the general public walking the farm road.
5. In the last, say, ten years the use of the farm road has become more frequent by people unknown to us. We have experienced strangers watching our children when they are in the fields along the farm road, taking photos of them, leaving mess, verbal abuse, intentional dangerous driving, etc. On more than one occasion our ponies have been let out of the field and have had to be rescued. We have also had continuous feeding of our animals, even though we have tried using signs to stop this and on one occasion such significant overfeeding of apples that we nearly lost a pony due to illness.

Comments on statements

10.3 Mr Richardson-Aitken states that the busiest time for the farm road is during November and December and during the period when grain is collected. The farm road is unfortunately busy all year round, from September through to January there are shoot lorries and vehicles passing several times a day, during harvest from July through to September, which is actually our busiest time, tractors and trailers move quickly along the drive all day until sometimes 11pm at night hauling grain from the combine. There is of course the general running of the farm and other business here which bring with them traffic of large vehicles, vans and cars seven days a week. The Christmas business generates significant traffic of cars during November and December.

We do not employ anyone who is on the staff of the Village Hall and actually only employ 10 people who live in the village. I suggest that the statement is very much assumed.

It is not true to say that Josh Stratton requested no vehicles to be parked in Church Lane, our request was that the vehicles do not block the road therefore making it impossible for us to leave our home, as has happened in the past.

The closure of this road contrary to Mr Richard-Aitken's statement does not stop anyone from using this road for farm business and the church is still very much accessible for worship from Church Lane as it always has been.

10.6 Mr Hastings Neville

In the past permission was granted on occasion to use the farm yard for parking, however as this was not managed correctly and regularly resulted in the yard and farm drive being blocked for use by tractors and farm machinery (usually during harvest time)

it was not possible to continue with this. It should be remembered that the this is a busy commercial farm.

10.8 Mr Richardson-Aitken

A1. As stated by Mr Richardson-Aitken, permission was granted for his daughter to using parking and to hold her wedding in one our barns at Stockton.

10.9 Romy Wyeth

In all my years at East Farm I can say without doubt that I have never seen Romy Wyeth use the farm road or even visit the church.

10.11 Mr Richardson-Aitken

Mr Richardson-Aitken knows very well that Church Lane was blocked from being used as access to the farm by any vehicle some 13 years ago when a business called West Country Fine Foods was at the height of its trading period. I can recall that in a conversation with both Mr & Mrs Richardson-Aitken they thanked me for taking the action to close the access as it had made this road much more peaceful for them.

It is incorrect of Mr Richardson-Aitken to state that he has lived here for longer than my husband Josh Stratton, who was born in the farm house at Stockton in 1968 and visited the yard at East Farm nearly every day of his life, having worked there since the age of 13.

10.13 Tabitha Butcher, I have never seen any children being taught to ride bikes and certainly not to ride ponies along this road.

11. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed

Dated 20.1.16

Statement of Sally Oliver
Of 64 Shrewton Road, Chitterne, Warminster

1. I worked at East Farm, Codford as groom, between 1980 and approximately 1988.
2. I do not recall that the farm road was fenced along the sides of it (as it is now), at least not in the years 1980-88. There were cows and other livestock kept in the field on the east side of the farm road. Because it was not fenced in, the animals could be on the farm road. There was I believe a barrier at either end to stop the stock getting out.
3. I have found some old photographs, copies of which are attached. The first two pictures show a girl (Karen) with a Boxer dog, and another smaller girl (who was Cerys Jones) with a Lurcher dog. Those two pictures were taken approximately 1986. It will be seen that there was then no post-and-rail fencing on either side of the farm road as there is now.
4. The third photograph is of me on my horse Duncan taken in approximately 1988. It will be seen that the gate at B was in place but open and that there was no post-and-rail fence in view. I believe that this was taken in approximately 1988, so the post-and-rail fencing that is there now cannot have been put up by then.
5. The fourth photograph is of me with another horse called Abba in about 1990 and it will be seen that the post-and-rail fence was then in place. It looks pretty well new at that time.
6. It appears to me that the present post-and-rail fencing was put up in 1989/90.
7. I recall an annual BHS event, which was held for several consecutive years, on the right hand side of the farm road. I recall that visitors to that event used to drive in and park on the right hand side. They could not have done this had there been a fence there.
8. I moved house in 1988 and I am certain that the fencing along either side of the farm road was not then in place.
9. I never ever saw anybody walking on the farm road in the years 1980-1988. I have never seen any groups of walkers.
10. During those years that I worked there, I was frequently in the church paddock with the horses and ponies. We set up some jumps in that paddock which the children used to use. In my experience, whenever you have jumps and horses in a field in this way, people tend to stop and look as they are walking by. I cannot remember a single person walking the farm road in that time. I believe that I would have remembered, had there been any use by the public of the farm road.

11. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed

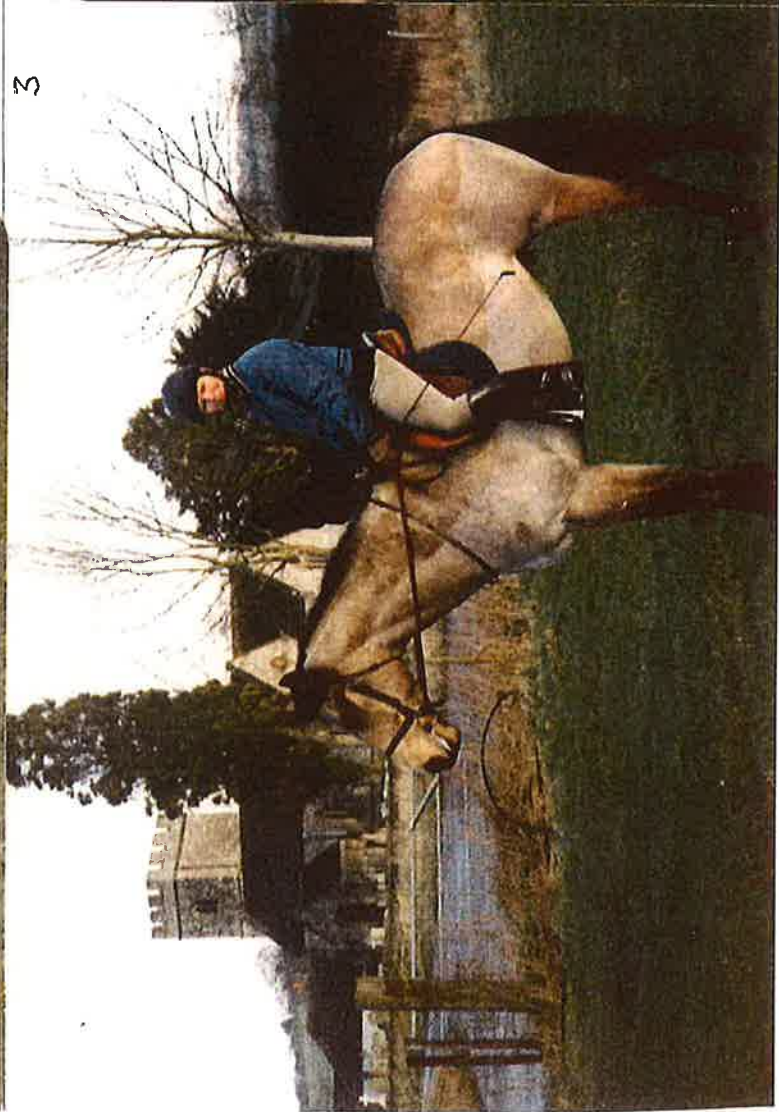
Dated 20 September 2016



1



2



3



4

Statement of Mr Graham Carter
(of Junipers, Hillside, Codford)

1. My employment at East Farm, Codford goes back to 1970, when I started working for the Stratton family on the farm. I was then 16 years old. I was born in 1954. My father had worked there before me as a herdsman, and I have worked on the farm all of my life ever since and I am still working there now.
2. My parents lived at Ox Yard. I know Mrs Wyeth and have known her for many years. I have never seen her walk on the farm road although I have seen her walking on the Beanis path.
3. I was based at East Farm, living with my parents until the age of 22 (1976) when I got married and moved in to my own house within the village.
4. Because of my work on the farm I have been on or around the claimed route on a daily basis from the 1970s until now.
5. At point C, that is at the entrance on to the farm road from the old A36, I have a clear recollection of what I call a Hampshire gate (some people call it a Wiltshire gate), chained at each end and with a concrete block in the middle. It was a real hassle to open and close it. The only time it was ever opened was to accommodate combine harvesters at harvest time or when we were moving stock across the A36.
6. It was practically impossible to walk up the farm road north of C while the Hampshire gate was in place. There was another similar gate at B. The effect of these two barriers was to allow livestock to be free in the fields either side of the farm road and sometimes on the farm road itself.
7. I never saw anybody walk the claimed route in those days.
8. Things changed in the late 1980s. I would have said it was in 1988 when the post-and-rail fence was put along the sides of the farm road, and the gate at both ends put in in substitution for the Hampshire gate. I cannot say exactly when this happened but it would have been in the region of 1988/89.
9. I have hardly ever seen anybody walking the claimed route although I have been there on a daily basis for over forty years. I have seen lots of people walking the Beanis path and of course on Church Lane, but only rarely on this route. Perhaps over the last ten years or so some dog-walkers have come through, but I can definitely say that in the years before the fencing and gating changes in 1988/89 nobody did.
10. As to the Private Road sign at the south end, I recall this being put in in or about ~~[please insert date]~~. 1975

11. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed .

Dated *20/1/2015*

Statement of Mrs Julie Barnard
(of St Mary's Cottage, East Farm, Codford)

1. I first came to East Farm in 1988. I am married to Kevin Barnard who is the gamekeeper on the farm. We first moved into a bungalow in the farmyard and then in 1994 we moved to St Mary's Cottage which is just by point A on the Order plan. Our main access would have been up Church Lane and never on the farm road.

2. The sign at the south end of farm road at point C saying private road has been there all the time I remember it.

3. I know Mrs Wyeth but I have never seen her on this claimed route, whether alone or with a group.

4. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed ..

Dated *Julie Barnard*

Statement of Mr Alan Bennett
of 22 Stockton, Warminster

1. I first came to work at East Farm, Codford in 1942 at the age of 14. I worked on the farm full time uninterrupted from then until 1993.

2. I remember the changes that were made to the farm road in the late 1980s. In particular I was involved in putting in a new gate just to the south of point B on the Order plan. I have been to the site and have checked that the original footings of the gate posts are still there and visible, and they are. There is also an obvious place in the middle of the road where the bolt-hole for the middle division of the gate has since been tarmacked over.

3. This gate had been put in by me in the late 1980s in place of the barrier that had been there until then, for many years, which had been a barbed wire Wiltshire gate. By this I mean one of those ones which you could roll back with some difficulty but which when closed would be rolled out and fixed with a chain at both ends, and with the middle pole secured in to a concrete block in the middle of the road. The purpose of that Wiltshire gate at B (I believe that there must also have been one at point C) was to keep the animals penned in.

4. Because there had been no fencing along each side of the farm road until that time, the livestock were roaming free on both sides of the farm road and on the road itself. It had been necessary to put barriers at B to prevent the animals going further north from B and also to put a barrier at C to prevent them getting out on to the old A36.

5. I remember that about that time in the late 1980s we also put in the post-and-rail fence along the edge of the farm road.

6. I can't remember seeing the public walking along the farm road. There may have been the very occasional dog walker but I cannot say who or when. I remember Mr Norman Bennett who lived at the Lodge and had a poodle. He used to walk along there quite a lot but that was late on after the road had been fenced in by which time the cows were not on the track. There may have been others about the same period but I cannot remember their names. I am told that Mrs Wyeth and Mr Cole have said that they were on this path but I never saw them there.

7. STATEMENT OF TRUTH:

I believe that the facts and matters contained in this Statement are true.

Signed

Dated

1984 2 nd April	ADA/177	229 & 230	Historic England stereo pair
----------------------------	---------	--------------	---------------------------------



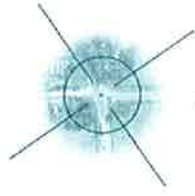
1984 21 st April	OS/84035	5 & 6	Historic England stereo pair
-----------------------------	----------	-------	---------------------------------



1998 16th May

OS/98574

391 &
392Historic England
stereo pair



AIRPHOTO
SERVICES

Archaeology ▪ Research ▪ Law ▪ Environment ▪ Planning

EAST FARM, CODFORD ST MARY, WILTSHIRE

Assessment of aerial photographs in regard to a boundary at the site, in 1984 and 1998

EVIDENCE PRESENTED BY CHRISTINE DIANE COX MA MCIFA FSA

[Document 2, 216 07 02 - 2, ANNEXE with original aerial photographs, presented separately]

September 2016

Air Photo Services Ltd

The Shaftesbury Centre Percy Street Swindon SN2 2AZ +44 (0) 7827 810361 info@airphotoservices.co.uk
www.airphotoservices.co.uk
Directors Chris Cox and Rog Palmer, Associate David W Lang. Company No. 5248188 Registered Office The Shaftesbury Centre SN2 2AZ

East Farm, Codford St Mary, Wiltshire

Assessment of aerial photographs in regard to fenced boundaries at the site

Client: Mogers Drewett Solicitors

Document Reference: 216 07 02 – 2

Project Number: APS 216 07 02

Issue 2.2	Date 28 th September 2016
Prepared by Chris Cox MCIfA FSA	Signed CC
Checked by PJ Griffiths	PJG

Disclaimer

This report has been prepared by Air Photo Services Ltd with all reasonable skill, care and diligence within the terms of the contract with the client, incorporation of our General Terms and Condition of Business and taking account of the resources devoted to us by agreement with the client. We disclaim any responsibility to the client and others in respect of any matters outside the scope of the above.

East Farm, Codford, Wiltshire © Air Photo Services Ltd 2016



Chris Cox MA MCIfA FSA 27th September 2016

1 INTRODUCTION

- 1.1 I am Christine Diane Cox, and am a professional aerial photographic interpreter. My qualifications comprise a BA (Honours) degree in Archaeology from the University of Liverpool (1983), an MA in Aerial Photographic Interpretation from the University of Sheffield (1984, Department of Archaeology and Prehistory) and membership of the Chartered Institute for Archaeologists (CIfA, membership number 947, elected 1990, original area of competence Air Photo Interpretation). I am a fellow of the Society of Antiquaries of London, elected October 2014.
- 1.2 In addition to my main occupation, I have previously taught aerial photographic interpretation for landscape applications to undergraduate, postgraduate and professional development levels at the Universities of Sheffield, Bristol and Oxford on an annual basis and undertake ongoing professional mentoring and work experience for students and colleagues presently at Air Photo Services Ltd.
- 1.3 My professional experience in aerial photographic interpretation extends over 30 years and includes assessment of and advice on land use, legal, boundary, adverse possession, environmental and heritage issues in planning, development and research contexts. I am experienced in deducing positions of features from aerial imagery and accounting for the effects of ground height and perspective when determining the shapes positions and direction of features viewed from the air and on comparative ground based images.
- 1.4 I have full stereoscopic vision which enables me to use a magnifying mirror stereoscope to fully interpret magnified vertical aerial photographs as stereo pairs. I am also experienced in making deductions from stereo pairs of vertical aerial photographs and single vertical or oblique aerial photographs and remotely sensed aerial imagery as digital files.
- 1.5 I undertake ortho rectification of aerial images to match them to surveyed map bases and digital comparison of land and individual landscape features on separate images.
- 1.6 To interpret aerial photographs in this case I have used a Lietz Sökkisha magnifying mirror stereoscope which allowed me to view the vertical aerial photographs under magnification and in three dimensions where stereoscopic pairs of vertical aerial photographs were available. I have also used a hand held magnifying stereoscope to examine the photographs at 2x and 4x magnification. I have also used single frames of oblique and vertical aerial photographs which I have examined carefully either as magnified prints or high quality digital files.
- 1.7 The Technical Appendix to this report details what these photographs are, how they were taken and their properties.



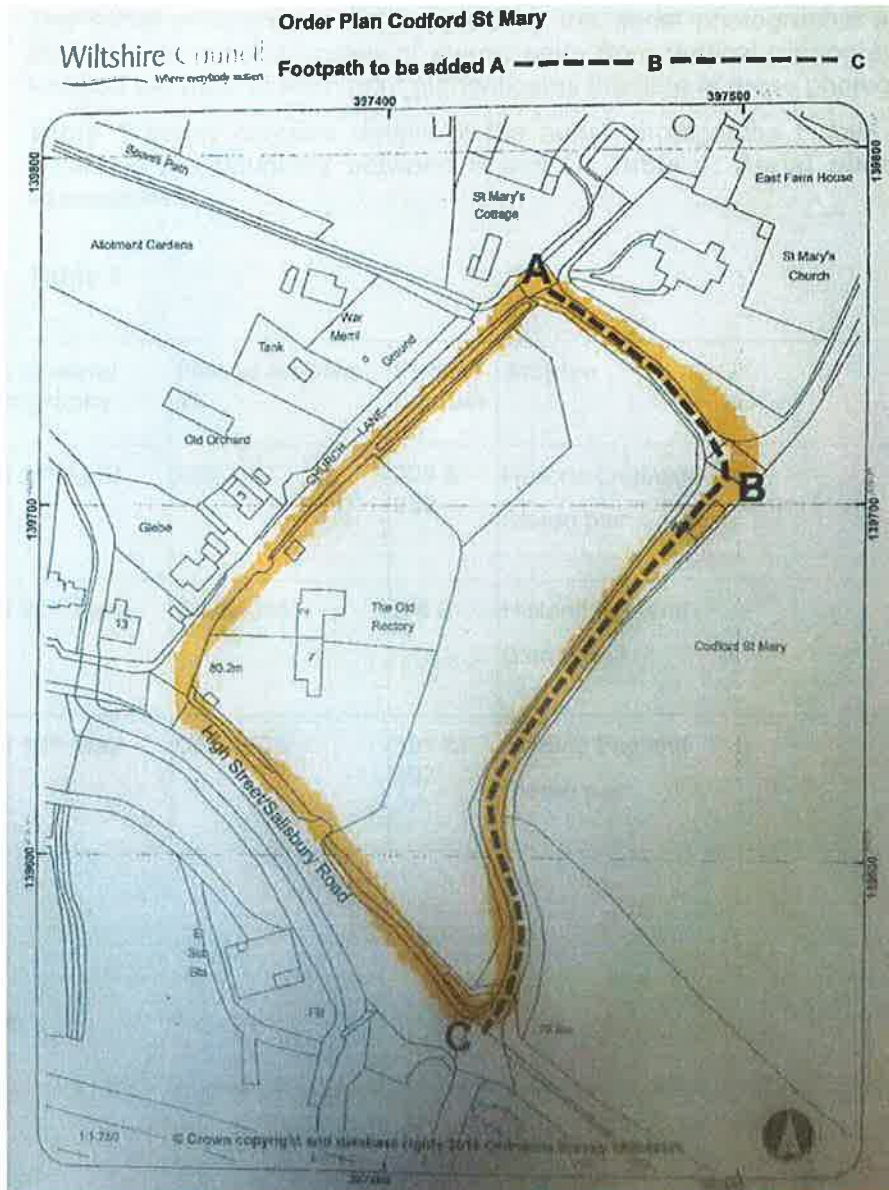
2 REMIT OF THIS ASSESSMENT

- 2.1 I am instructed by Mr Jonathan Cheal of Mogers Drewett Solicitors, on behalf of their client, to examine, and provide expert opinion from, aerial photographs regarding the boundaries to the land at the site at Codford St Mary, Wiltshire.
- 2.2 I am instructed initially to carefully examine aerial photographs held in the Historic England Archive of Aerial Photographs, and provide evidence on any boundary features which may be present and visible.
- 2.3 These aerial photographs were taken in 1984 and 1998.

Figure 1 over the page shows the location of the site and boundary in question, which is marked as B - C.



FIGURE 1: Location of the site



3 AERIAL PHOTOGRAPHS

- 3.1 I examined three stereoscopic pairs of vertical aerial images taken in 1984 and 1998.
- 3.2 Authenticated copies of the aerial photographs have been annexed to this report.
- 3.3 The aerial photographs are supplied by the aerial photographic archive at Historic England in Swindon, as printed copies of stereo pairs from vertical photographic negatives. The archive's label on the back of each print authenticates the date of these photographs.
- 3.4 **Table 1** below contains details of the aerial photographs I have used to derive my evidence regarding the boundary between B and C. **Table 1: Aerial photographs examined for this assessment**

Table 1

Date of aerial photography	Film or archive ID	Frame number (s)	Archive
1984 2 nd April	ADA/177	229 & 230	Historic England Stereo pair
1984 21 st April	OS/84035	5 & 6	Historic England Stereo pair
1998 16 th May	OS/98574	391 & 392	Historic England Stereo pair



4 EVIDENCE FROM AERIAL PHOTOGRAPHS

April 1984

- 4.1 Photos taken in April 1984 show the whole field on a stereo pair on the 21st and the southern part of the field only on a stereo pair on the 2nd.
- 4.2 There is a possible gate structure across the route just south of B.
- 4.3 There are no traces of fencing or other boundary materials along the sides of the route between B and C in April 1984.
- 4.4 In 1984 the route was not fenced along its sides between B and C.
- 4.5 I was unable to see a gate across the route at C in 1984, due to the resolution in the photo.

May 1998

- 4.6 In 1998 there is evidence for a linear fence along the route between B and C.
- 4.7 I cannot see any gate structure at C, due to vegetation.

5 CONCLUSION

- 5.1 In 1984 the route was not securely bounded or fenced between B and C.
- 5.2 In 1998 there is evidence for a linear fence along the route between B and C.

DECLARATION

I understand that my overriding impartial duty as an expert witness is to a Court, adjudication or inquiry and I have complied with that duty under the requirements of Ministry of Justice Civil Procedure Rules (CPR) Practice Direction 35 for experts and assessors.

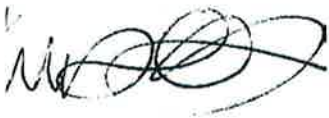
I confirm that, insofar as the facts stated in my report are within my own knowledge, I have made them clear and I believe them to be true and that the opinions I have expressed represent my true and complete professional opinion.

My report includes or reflects all relevant facts of which I am aware from the material which I have stated that I have examined. If there are material matters of which I am unaware or if the assumptions are incorrect or inappropriate for any reason of which I am currently unaware, it could have a material effect on my stated opinion.

STATEMENT OF TRUTH

I believe that the facts stated in this report are true and the opinions I have expressed are, to the best of my knowledge, correct.

Signed



Christine D Cox MA MCIFA FSA

28th September 2016



TECHNICAL APPENDIX

Aerial Photographic Interpretation and properties of vertical aerial photographs

Interpretation of Aerial Photographs provides a comprehensive overview of the land-use, vegetation and configuration of visible boundaries, objects and structures at specific and independently authenticated points in time.

It provides accurately dated information on the appearance and condition of land or property at a given point in time, and of the relationship of individual features. It also allows deduction of the nature of past and ongoing land-use such as the presence and possibly the type of objects and structures and changes to the type or position of the above over time.

Evidence based on aerial photographs may be admitted as evidence to a court, inquiry or appeal in support of land use issues, boundary disputes, adverse possession or other legal issues.

Vertical aerial photographs, which were used to deduce some evidence for this case, are taken for general-purpose survey using an automatic camera mounted inside a modified aircraft which takes photographs at pre-set intervals. The camera points straight down to the ground. The aircraft is flown on a pre-planned set of flight-lines which cover the survey area completely. The vertical viewpoint provides aerial photographic coverage from a fixed scale, dependent on ground and flying height straight to the ground surface at the centre of each frame. The overlap between the areas covered by each consecutive frame is usually 60%.

This overlap between frames enables the photo interpreter to study each pair of vertical photos under a magnifying stereoscope – a mechanical instrument which allows the interpreter to see a single three-dimensional image of the ground surface on the aerial photographs. This allows consideration of height differences in objects and topography and greatly enhances the level of information which may be derived from a single unmagnified two dimensional image.



9 CURRICULUM VITAE Chris Cox



PROFILE

Christine Diane Cox MA MCIFA FSA

Director

www.airphotoservices.co.uk

info@airphotoservices.co.uk

The Shaftesbury Centre, Swindon SN2 2AZ

+44 (0)1666 511646

+44 (0)7827 810361

Chris Cox is a professional archaeologist, specialist interpreter of aerial imagery and expert witness

Chris established Air Photo Services in Cambridge, UK in 1990 with Rog Palmer and has since worked on major infrastructure, legal expert witness and commercial development projects throughout the UK and Europe. She has over 30 years of experience as an interpreter of aerial imagery in the planning, heritage and engineering sectors, and experience in the provision of professional development training, recruitment and mentoring of graduate level staff.

Chris is a Member of and National Vocational Qualification (NVQ level 3) assessor for the Chartered Institute for Archaeologists (CIfA), a member of the Society of Expert Witnesses (SEW), the Aerial Archaeology Research Group (AARG) and a Fellow of the Society of Antiquaries of London.

SKILLS

- Legal expert witness opinion from aerial imagery
- Representation in Court and at Inquiry
- Air Photo, satellite and LiDAR Interpretation
- Teaching and training at undergraduate, graduate and professional development levels
- Integration of API data with GIS
- Ortho-rectification and accurate mapping from aerial images
- Heritage consultancy, project design and management

QUALIFICATIONS

BA (Hons.) University of Liverpool 1983. **Archaeology**
MA University of Sheffield 1984. **Air Photo Interpretation.**

EXAMPLE PROJECTS

Ash Lodge Drive, Ash and Tongham, Surrey, Expert Witness Services and representation at Public Inquiry regarding a Village Green issue.

Bewley Homes PLC Stereoscopic interpretation of authenticated aerial photographs to establish historic land use on the site and successfully defend a TVG application. Expert Witness report, liaison with Counsel and presentation of evidence in chief.

Speen WTW DO Replacement Water Pipeline, Berkshire.

Optimise Ltd. Interpretation, mapping and reporting from aerial photographs on buried heritage assets for environmental assessment over the route of a water pipeline, for Optimise Ltd.

Heritage Environment Record update 2010 – 2012 from Digital Aerial Imagery.

Hertfordshire County Council. Interpretation of digital False Colour Infra Red (FCIR) aerial imagery and input of results to HBSMR online database. For Hertfordshire County Council Environment Department, Heritage Environment Record, UK.

Mill Lane, Walton-on-the-Naze, Essex. Expert witness services and written representation at Public Inquiry.

Silverbrook Estates Ltd. Expert witness report to document the level of access over the site to successfully defend a Village Green application.

Vixen Tor, Devon. Expert witness services and representation at Public Inquiry regarding a Rights Of Way Issue on behalf of the landowner.

Mrs Mary Alford. Stereoscopic interpretation of authenticated aerial photographs to successfully refute a Right of Way claim over the site by The Ramblers using a 60 year time span of dated aerial photographs.

Ashton Vale, Bristol. Expert witness services for refutation of Town Green application.

Bristol City Football Club (BCFC) Ltd. Stereoscopic interpretation of authenticated aerial photographs to determine the land use to support a planning application for a new football stadium and defend a TVG application.

Woodlands Solar Farm, Calcott, Kent.

Lightsource Renewable Energy Ltd. Assessment of aerial photographs, mapping and report to inform heritage mitigation strategy.



ANNEXE: Presented separately

Aerial photographs used for this assessment presented separately as three stereo pairs stereo pairs.

216 07 02 East Farm Codford St Mary

END OF REPORT



**AIRPHOTO
SERVICES**



Archaeology ▪ Research ▪ Law ▪ Environment ▪ Planning

www.airphotoservices.co.uk +44 7827 810361