

Central Bedfordshire Council

Decision by the Assistant Director - Highways under Delegated Powers 20/07/2018

The determination of an application to add a footpath to the Definitive Map and Statement along Green Lane, Everton

Report Author: Adam Maciejewski – Senior Definitive Map Officer

Purpose of this report

1. To enable the Assistant Director for Highways to determine whether the evidence of public use of Green Lane, Everton is such that the Council, as the Highway and Surveying Authority, has a duty to make a definitive map modification order to record a public right of way.

RECOMMENDATIONS

The Assistant Director - Highways is asked to:

1. **Refuse** an application to modify the Definitive Map and Statement under Section 53(2) of the Wildlife and Countryside Act 1981 to record a public right of way along Green Lane, Everton between points A-B-C-D-E-F on the plan at Appendix A because during the relevant period (August 1989 – August 2009) the public's use of the claimed route was interrupted on at least one occasion for the purposes of preventing public enjoyment of the route and therefore the Council cannot deem that a highway has been dedicated under Section 31 of the Highways Act 1980.
2. Similarly **refuse** to make a definitive map modification order under Section 53(2) of the Wildlife and Countryside Act 1981 to record a public right of way along Green Lane as above based upon an inference of the dedication of a highway at common law due to the lack of evidence demonstrating there was a positive intention to dedicate such a highway by the owners of the land.

Issues

2. In mid-August 2009, the habitually used route along Green Lane in Everton was blocked by fencing. Prior to that time the main route of Green Lane had been gradually restricted and an alternative route created outside the western boundary hedge to the lane as shown on the plan at Appendix A.
3. Following the total obstruction of the northern section of Green Lane on c.15th August 2009, Everton Parish Council applied to Central Bedfordshire Council

on 31 August 2010 under Section 53 of the Wildlife and Countryside Act 1981 to record a public footpath along Green Lane. The parish council had asked the small number of residents living alongside Green Lane to complete and submit user evidence forms in support of its application.

4. In September 2010, Central Bedfordshire Council wrote to Everton Parish Council to suggest it provided a wider range of user evidence as it had only sought evidence from those abutting the lane. The parish council gave a blank user evidence form to all households in the village: 57 user evidence forms (some completed by couples) were ultimately submitted as part of the application. A further four people were identified at interview giving 63 witnesses in total.
5. Mr. Ben Seward, one of the owners of Green Lane, submitted several statements concerning permissive public use of Green Lane and has challenged the veracity of the user evidence submitted.

Description of the claimed route

6. Green Lane runs in a generally northwards direction from Potton Road (point F) for approximately 200 metres to its junction with the eastern extremity of Church Lane (point B). Green Lane varies in width, being approximately 10 metres wide at point F, narrowing to about 4.5 metres at point D and then widening again to about 8 metres between points C and B. Between points A and B the width varies between 3 and 6 metres. The surface between points F and C has grassed margins with a central metal strip which carries on to the east to provide a vehicular access to Glebe House (the old vicarage) (see photographs below).



Point F looking northwards



Point D looking northwards



Point C looking northwards

7. To the north of point C, the lane has historically been set to grass with a narrower central route for vehicles. More recently this has grassed over with a mown strip cut by the Seward family being left closer to the western hedge. However, since the lane was fenced off in August 2009 this land is turning to scrub.



Photograph looking southwards between points B-C of the mown strip situated towards the western hedge



Photograph looking westwards from points B towards point A showing the access to Park Farm



(photos: 15 March 2007)

Photograph showing the locked gate in the holly hedge at point B

8. Signs are present at either end of Green Lane; these were present during both the period 1960 – 1990 and then later in c.2010 to the present day – see Appendix D. The wording on these signs was prohibitive in nature – although many users considered the earlier signs to relate to motor vehicles rather than walkers.
9. Green Lane is locally famous for its ancient holly hedge which runs up either side of the lane between points B and E and continues along the eastern side to point F. In March 2007, the Seward family which owns the lane and the hedges cut through and cut back the western hedge to provide an alternative route between points B and C.
10. A gate on the alternative route has been locked by the Seward family periodically to prevent the establishment of any public rights along it.



Alternative route looking southwards from point B towards point C

(15 March 2007)

Legal and Policy Considerations

11. Central Bedfordshire Council, as the Surveying Authority, has a statutory duty under Section 53(3) of the Wildlife and Countryside Act 1981 (*"the 1981 Act"*) to maintain a public record of public rights of way. This is known as the Definitive Map and Statement. The Council also has a duty to make such modifications as are required to keep the Map and Statement up-to-date and accurate.
12. Section 53(5) of the 1981 Act allows any person to apply to Central Bedfordshire Council to modify the Definitive Map and Statement by order if they believe it to be wrong. Appendix B details an analysis of the user evidence against the criteria of Section 31 of the Highways Act 1980 along with an overview of the relevant legislation and case law.

13. When an application is submitted, the Council has a statutory duty to investigate the matter, taking into account all relevant evidence - not just that supplied by the applicant - when coming to its decision. If the evidence shows that it can reasonably be alleged that a public right of way ought to be recorded on the Definitive Map along Green Lane then the Council has a duty to make a definitive map modification order to do so. There is no right, or legal mechanism, for an applicant to withdraw an application once it has been submitted with evidence that the Definitive Map and Statement need modifying as the Council has an overriding duty to maintain the map and statement and modify it as required.
14. Before making any order, the Council must be satisfied that the public at large have used the claimed route "*as of right*" – that is without any stealth, force or permission. Additionally, public use cannot have been interrupted during the 20 years prior to the public's right to use the route being brought into question. The public's right to use the route was ultimately brought into question by Green Lane being completely blocked in mid-August 2009. The relevant period of use is therefore August 1989 – August 2009. No earlier 20-year period is apparent or has been identified through either user or historical records.
15. For the Council to deem that a public right of way has been dedicated by the owners of the land, the Seward family, there must be no contemporaneous evidence that they did not intend to dedicate the route as a public highway during the relevant period. Such evidence could consist of challenges to users or the erection of prohibitive signs or registering their non-intention to dedicate with the Surveying Authority.
16. Where the owner has erected signs these must be maintained and be consistent with a non-intention to dedicate a highway. Where challenges or signs are significantly overt to bring home to a significant sector of the public that the route is not public then this could bring into question the public's right to use the route with its own relevant 20-year period.

User evidence

17. The total blockage of the northern section of Green Lane in mid-August 2009 prevented public use of the lane and so called into question the public's right to use it at this time. Prior to that date, in c.1999-2005 fencing had been erected across most of the lane at point C with a gap left adjacent to the western hedge. As this did not prevent public use of Green Lane or precipitate any Section 53 application this did not call into question the public's right to use the lane. As a gap was left to the side to facilitate use, this also cannot be considered either an interruption or evidence of a non-intention to dedicate.
18. Mr. Ben Seward, the land owner, has stated that a set of earlier gates were situated just to the west of point A and were locked periodically (annually) prior to their removal in late February 1991. Three users have corroborated the locking of these gates. This would have been an interruption to public use of the claimed route within the relevant period.
19. Fifty-seven of the witnesses who submitted user evidence forms or who were subsequently interviewed have stated they have used the claimed route along Green Lane and into Church Lane. With a small number of exceptions, this use

appears to qualify as use “as of right” which is one of the criteria for being able to deem or infer that a highway has been dedicated.

20. Statements from those witnesses who submitted evidence forms or who were interviewed indicate that 50 people walked along Green Lane during the relevant period, with many recalling seeing other people using the route including the local school children. Thirteen witnesses stated they had cycled along the route and two of these also having ridden horses along it.
21. The Seward family, which bought the land in c.1907, erected a wooden sign at the Church Close end of the track (by the church). At some point later, in possibly the 1960s, the Seward family then erected round signs at either end of Green Lane. These signs lasted possibly until after c.1995. The various recollections of users (see Appendix D) suggest that these signs stated: “No dogs”, “Private”, “Private Road”, “Green Lane – Private Road” or something similar. Mr. Ben Seward, one of the lane’s owners has stated that the signs stated “Private Road Park Farm No Thoroughfare” and “Notice Private Road to Park Farm No Thoroughfare”.
22. Three of the 63 witnesses considered these signs indicated that there was no public access and deterred them from using the lane; conversely some users considered these applied to cars only. These earlier signs do not appear to have brought into question the public’s right to use the lane as many users used the route until it was physically blocked in mid-August 2009.
23. Whether the sign is an indication of a non-intention to dedicate Green Lane as a public right of way depends on the precise wording of the signs and the intention behind them. The recollection of the various users differs to the wording provided by the Seward family and photographs of the signs. The signs erected during the earlier part of the relevant period appear to have been interpreted as being prohibitive towards the use of Green Lane by vehicles. These signs appear ambiguous as to the intent with regard to walkers and riders.
24. None of the users of the claimed route report ever being challenged by the Seward family over their use of Green Lane despite a statement from the Seward family that they and their predecessors had “...*taken various steps over the years to maintain its status as a private route* ...”. Conversely, several users have reported meeting with and exchanging pleasantries with members of the Seward family whilst using lane. Consequently, and with the annual locking of the gates by the church yard, there does not seem to be any contemporaneous and overt evidence of non-intention to dedicate Green Lane as a public highway.



Historic evidence

25. There is a long history to Green Lane dating back to the mid-18th Century. The mapping evidence detailed in Appendix C shows that Green Lane was the original primary access to Everton House, running between the formal lawn to the west and the House’s kitchen gardens to the east. This situation continued until sometime after the House fell into ruin and burnt down in 1858. At around this time Church Lane was developed and a track formed connecting Church Lane to Green Lane.

26. An alternative footpath route was developed across the eastern edge of the old formal lawn and is depicted on the early large-scale 25":1 mile Ordnance Survey maps (see Appendix C). This route appears to have remained in existence for c.60 years (pre-1884 to probably c.1941) when the land was taken over by the War Office as the communal and domestic site for the WAAF personnel serving the nearby Tempsford Airbase. It is uncertain what the legal status of this path across The Lawns was. It has since been partly built over by a later housing development. Similarly, there is no clear documentary evidence to indicate that Green Lane was historically a public right of way and appears to have just served the old vicarage (now Glebe House) as its principal access after the demise of Everton House.

Consultations

27. Everton Parish Council applied for the claimed footpath to be added to the Definitive Map and Statement on 31st August 2010. In early 2011 Everton Parish Council requested that Central Bedfordshire Council supply c. 240 user evidence forms so that these could be distributed throughout the village of Everton which was done.
28. There has since been some dispute by the parish council as to whether the parish clerk was authorised to submit the application. In February 2016 one of the parish councillors requested that the application be returned. However, the Senior Definitive Map Officer refused to comply with the request as an investigation was ongoing into a claim based on evidence that had been received and which the Council had a duty to investigate.
29. In April 2016 Everton Parish Council wrote to Central Bedfordshire Council stating:
- Everton Parish Council has studied the correspondence relating to this matter that you sent to the Council on 17 February 2016. Having also checked all Everton Parish Council minutes and agendas, it is clear that the Council at no time either agreed to submit the application or confirmed knowledge that an application had been made.*
- The Council has subsequently held a Parish Council meeting at which the claimed footpath along Green Lane was discussed. Following this recent Parish Council Meeting, Everton Parish Council wish to make it clear that regarding the Green Lane application:*
- ‘A resolution was not made by the Council to submit an application or to engage in any correspondence relating thereto’.*
30. In response, Central Bedfordshire Council as the Surveying Authority for the Definitive Map and Statement has a duty to keep the Definitive Map under continuous review and to make any changes that are requisite upon the discovery of evidence that there is an error or omission on the map. The Council accepted the application from Everton Parish Council in good faith, including some 53 user evidence forms, and subsequently interviewed a number of people – most of which have stated that they considered Green Lane to be a public right of way. The fact that the parish council has reviewed its internal procedure in connection with the application and has subsequently resolved not to support the application does not detract from the evidence provided or the conclusions reached.

Irrespective of the local parish council's views, the Surveying Authority has a duty to ensure any unrecorded public rights are recorded on the Definitive Map and Statement.

31. Messrs. Ben and Tim Seward are fully aware of the investigation and, barring some initial correspondence in 2011 have not supplied any information to support their contention that the claimed route is a permissive path and not a public right of way. Mr. Ben Seward has been repeatedly asked for evidence but he has failed to provide any. Mr. Seward's previous assertions need to be weighed in the light of his failure to provide any corroborating evidence. The Seward family have been supplied with a draft version of this report and have made further comments which are summarised below.
32. Mr Ben Seward submitted several letters in 2011 concerning aspects of the application and the evidence contained within it. Where pertinent, these have been incorporated in this report. Mr. Ben Seward then submitted a detailed response to a draft copy of this report in April 2017. Again, where relevant or pertinent to the evidence considered, those comments have been included within the report. The main thrust of Mr. Seward's representations is that the claimed route along Green Lane has always been maintained by his family as a permissive path and this is evidenced by the erection and maintenance of signs at either end of the lane and by the erection of fencing and various gates which have been locked at different times. Mr. Seward also critiques some of the user evidence and the actions of the various councils involved (Bedfordshire County Council, Central Bedfordshire Council and Everton Parish Council). Some of Mr. Seward's evidence has had a material effect on the recommendations of this report and this evidence is discussed in Appendices B and D.
33. Cllrs. Doreen Gurney and Adam Zerny, the local ward members, were consulted. Cllr. Gurney is supportive of the addition of a public right of way along Green Lane.
34. Mrs. Gina Inman, a parish councillor, e-mailed on 1 and 2 February 2017 to state a number of points against the addition of any right of way along Green Lane. These included:
 - i. *What I can deduce from my conversations with the locals is that there never has been and there never should be a public right of way along Green Lane. For as long as the local residents can remember people have been allowed to walk along Green Lane between Church End and Potton Road with the permission of the Land owners, the Seward family.*
 - ii. *There are also 4 houses behind the Lawns at the end of Church End, Before these houses were built people were allowed to walk across the field from the Church to the top of Green Lane and down Green Lane to Potton Road, but he remembers it was with the permission of Harry Seward... .. they were only allowed to walk on Sundays to get to Church for the service. There was a big gate at the Church end of the grassy land from Green Lane to the Church.*
 - iii. *When the houses were built opposite the church the path people were allowed to use was moved to a small pasture. People were still allowed to use this path but it has always been with the Swards' permission.*

- iv. *...There is no necessity for another footpath in the village.*
 - v. *The Seward family are kind enough to let people walk across their land and I believe it would be a terrible mistake to now declare this path a public footpath. It is private land and the Swards generosity should not be repaid by forcing a public footpath across their land.*
 - vi. *The Children from the village school use the path when it is not wet and puddly to get to the Church or the Village Hall. They have never been denied using it, so the School Secretary of 23 years informed me... .. they knew they were using a private path with the permission of the landowner. The path is closed once a year at Easter to ensure that everyone knows it not to be used 'as of right' and from which no RoW can be inferred. The school children would not have needed to use the path when it is closed at some point at Eastertime as they would have been on school holiday.*
 - vii. *The current owner of Glebe House on Green Lane says as far as she knows Green Lane is a private lane, with access to the Church by way a permissive path.*
 - viii. *There is no Council signage indicating a public footpath nor has there ever been, which by inference means the land is not common/council land but must be private or permissive. As at 1. there is signage saying the road is private and I understand from speaking to Mr. Seward that there was historically a gated entrance to the land. Further there was a notice board next to the pedestrian gate which read: "NOTICE Private Road to Park Farm No Thoroughfare".*
35. In response - many of these points have been addressed in the various appendices to this report. With regard to the issue of permission (point *i*), none of the users who submitted user evidence forms stated that they had been granted permission by the Seward family to use the route. The gate Mrs. Inman refers to in point *ii* above was the gate adjacent to the church yard and the locking of this gate (not mentioned by Mrs. Inman) is addressed in this report in the appendices. The “necessity” for a right of way (point *iv*) is immaterial to the question of whether one exists or not. As the claimed route is not recorded on the Definitive Map and Statement it would not be signposted, as commented upon in Mrs. Inman’s point *viii* – the comment about the Swards’ signs are addressed in detail in the report’s appendices.

Reasons for Decision

- 36. Following what appeared a genuine application from Everton Parish Council, the claim for a public footpath along Green Lane was investigated and historical documents researched and a large number of local residents were interviewed. The determination of the application – whatever its origin or veracity – is a duty of the Council under the 1981 Act following the discovery of evidence.
- 37. Whilst there is a long history to Green Lane, none of the historic evidence supports the subsistence of any public rights and so cannot be used to reasonably allege that the claimed public footpath subsists along the lane.

38. There is, however, a wide body of evidence which supports recent public use of Green Lane on foot as of right. A smaller body of user evidence similarly suggests that combined equestrian and cycle use could be used to reasonably allege that a bridleway subsists along Green Lane.
39. The owners of the land, the Seward family, have erected various signs along Green Lane and have stated that they have allowed public use on a permissive basis only. However, the signs erected are ambiguous, being more directed towards prohibiting vehicular use. None of the users have reported any interactions between themselves and members of the Seward family which would indicate that their use was by permission and not as of right.
40. Mr. Ben Seward has provided evidence to support his statement that a set of gates were installed by his family just to the west of point A. These were periodically locked on an annual basis until their removal in late February 1991. The locking of the gates was a valid act of interruption within the relevant period for the purposes of Section 31 of the 1980 Act. The gates appear to have been locked in this manner for many of the preceding years, although the start date for the locking is uncertain and so no earlier alternative relevant 20-year period can be identified. Consequently, as there were valid interruptions during the only identified relevant period, the Council cannot deem under Section 31 of the 1980 Act that the Seward family has dedicated Green Lane as a public highway of any description.
41. The Council has also considered whether the evidence of public use is sufficient to infer, at common law, that the Seward family has dedicated Green Lane as a public highway. The various acts of the Seward family over the years, whilst generally ambiguous for the purposes of Section 31 of the 1980 Act, does indicate that, on the balance of probability, there was no positive intention to dedicate Green Lane as a public highway. Consequently, the Council cannot infer that there was any dedication at common law.

Council Priorities

42. The proposal conflicts with the following Council priorities:

- Enhancing Central Bedfordshire
- Delivering great residents' services
- Protecting the vulnerable, promoting wellbeing
- Creating stronger communities

by not providing any additional public access or improvements to the local public rights of way network. However, the Council is constrained in what it can do by the evidential nature of the Wildlife and Countryside Act 1981 and the prescriptive approach to how user evidence is treated and the landowner's defence of a non-intention to dedicate or interrupting public use.

Corporate Implications:

Legal Implications

43. Section 31 of the Highways Act 1980 imposes a duty on the Council, as the Highway Authority, to deem that a way used by the public as of right and without interruption for 20 years has been dedicated as a highway if there is insufficient evidence of a non-intention to dedicate. Section 53 of the Wildlife and Countryside Act 1981 imposes a further duty on the Council to record any highway so dedicated on the Definitive Map and Statement by making a definitive map modification order.
44. The owners of the land, the Seward family, oppose any such modification order. The applicant, Everton Parish Council has stated that it wishes to withdraw the application. Consequently, it is unlikely to appeal a decision not to make an order. It is possible that any of the users or a third-party user-group could apply for Judicial Review of the Council's decision not to make an order based on a perceived error in law.

Financial Implications

45. Central Bedfordshire Council cannot charge for the costs of processing a definitive map modification order application and making or defending any ensuing order as it has a statutory duty to ensure the Definitive Map and Statement is kept under continuous review.
46. The cost of council administration already expended on consultation and research potentially exceeds £8000¹; this has already been paid out of the Rights of Way Team's revenue budgets. If the application is now refused and no legal challenge is forthcoming this will be the full extent of the Council's expenditure. However, if any challenge was successful and an order had to be made, this could entail a further expenditure – although I would consider in this unlikely situation the Council would take a neutral stance to the order (where it neither opposes nor supports any order made): thus limiting its expenditure to the costs of administration, advertising and venue hire if a public hearing or inquiry were required. All costs would be borne by the existing 18/19 Rights of Way General budget.

Equalities Implications

47. Section 6 of the Human Rights Act 1998 states it is unlawful of the Council to act in a way which is incompatible with a Convention right unless, as the result of one or more provisions of primary legislation, the authority could not have acted differently; or in the case of one or more provisions of primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting to give effect to or enforce those provisions.
48. It has been determined in court cases that modification order determinations have no Human Rights Act implications. When the Council determines a modification order application made under the primary legislation of the Wildlife and

¹ Based on the standard Council charging rate of £48/officer hour.

Countryside Act it is exempted from having to adhere to Section 6(1) of the Human Rights Act 1998 when coming to its decision. This is because the Council is only concerned in the evaluation of the evidence to show whether public rights do, or do not, exist. In coming to its decision based on the evidence at hand, the Council will have acted as required by the primary legislation and thus in accordance with the 1998 Act.

49. The recommendations in this report would not detrimentally affect the current status quo: with the Sewell family providing (for now) an alternative permissive pedestrian route along part of Green Lane.

Community Safety Implications

50. The Council has a statutory duty under the Crime and Disorder Act 1998 to consider the community safety implications that may result from making the decision set out in the report. The refusal of the parish council's application for the addition of a public footpath along Green Lane will mean that a relatively vehicle-free route between Potton Road and Church Lane would not be added to the Definitive Map. The maintenance and continuation of any permissive route would be subject to the continued good will of the Seward family but could be withdrawn at any time. The alternative to using Green Lane is to use the nearby St. Mary's Walk and Footpath No. 13, located approximately 170 metres to the west. As Green Lane is used (or was used) by the adjacent lower school for taking the pupils to the church, the use of the roadside pavements along the alternative route does have some road safety implications.

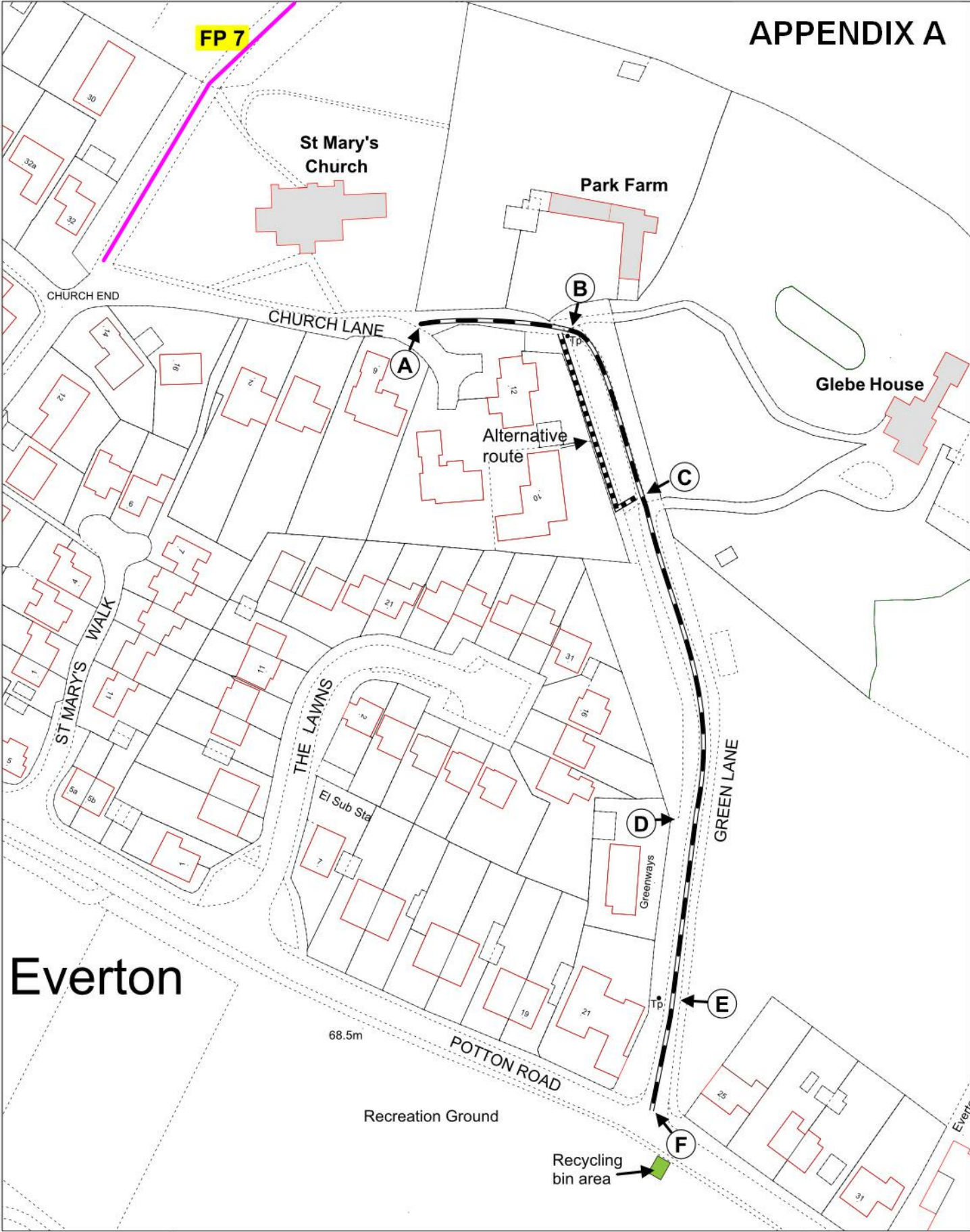
Conclusion and Next Steps

51. Following the obstruction of the northern section of Green Lane, an application by the local parish council saw 56 user evidence statements being submitted to support the claim that a public right of way subsisted along the lane.
52. There is no evidence to suggest that any public rights were historically created along Green Lane. Similarly, there is no evidence for any statutory creation of a nearby "footpath" leaving the lane and cutting the corner to Church Lane that is shown on some of the maps.
53. User statements and interviews show that local villagers have used Green Lane as of right and without interruption on foot, on horseback and with bicycles during the relevant 20-year period: mid-August 1989 – mid-August 2009. Although the owners of the lane, the Seward family, maintain that they have always allowed public use on a permissive basis, their interactions with the public are inconsistent with this assertion. Furthermore, prohibitory signs erected by the Seward family during this period, whilst clearer on the issue of whether motor vehicles were allowed, were ambiguous as to whether pedestrian and equestrian/cycling use was either permitted or prohibited.
54. However, statements provided by the Seward family and corroborated by three witnesses indicate that public use of the claimed route at the beginning of the 20-year relevant period was interrupted by the locking of a set of gates adjacent to the church yard. Consequently, the Council cannot deem that the Seward family has

dedicated a public highway along Green Lane. Furthermore, the actions of the Seward family are inconsistent with a positive intention to dedicate a public highway and thus this cannot be inferred from their actions at common law. As a consequence, Everton Parish Council's application to record a public right of way along Green Lane must fail.

Appendices:

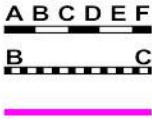
- Appendix A – Plan of the claimed footpath
- Appendix B – Legal and policy considerations
- Appendix C – Historic evidence
- Appendix D – User evidence



Countryside Access Team

Claimed Public Right of Way along Green Lane, Everton

Route of claimed footpath and proposed bridleway
Alternative "permissive" route
Unaffected public footpath



Scale: 1:1250@A4
Date: 12 December 2016
Drafted by: AM
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Appendix B

Legal and Policy Considerations

- B.1. Section 53(5) of the Wildlife and Countryside Act 1981 (*“the 1981 Act”*) permits any person to apply to Central Bedfordshire Council, as the Surveying Authority for the Definitive Map and Statement, for an order to modify the Definitive Map and Statement under subsection 53(2) of the 1981 Act if they consider these are in error and need correcting.
- B.2. Everton Parish Council applied under Section 53(5) of the 1981 Act to add a public footpath to the Definitive Map and Statement along Green Lane between Potton Road and Church Lane, Everton on the ground that it subsists or is reasonably alleged to subsist, having been a way used on foot by members of the public for many years.
- B.3. Section 53(2) of the 1981 Act places a duty on the Council, as the Surveying Authority, to modify the Definitive Map and Statement upon the occurrence of certain events detailed in Section 53(3) of the Act. Section 53(3)(c) gives details of some of the events which require the Council to modify the Definitive Map and Statement:
- 53(3)(c) *The discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-*
- (i) *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 the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.*
- B.4. Section 53(3)(c)(i) of the 1981 Act enables the Surveying Authority to make a definitive map modification order to add a public right of way on a *“reasonable allegation”* which is a relatively lenient test of the evidence in civil procedures. However, where an order so made is objected to the Secretary of State for Environment, Food and Rural Affairs must re-evaluate the evidence at the stricter standard civil procedure weighting of *“balance of probability”*. This can mean that an order justifiably made on a reasonable allegation is subsequently not confirmed on the balance of probability as the weight and merits of the evidence falls between the levels of the two tests.
- B.5. Where the Council has evidence that the map and statement require modification, such as where an applicant has supplied user evidence, the Council is duty-bound to investigate and make such modifications as are requisite under section 53(2) of the 1981 Act – even if the applicant decides to withdraw their support for the application. This has been confirmed by an officer from the Rights of Way Section at the Planning Inspectorate, who has stated *“...I have checked Sch14 of the WCA and Circular 1/09 and both are silent on the possibility of withdrawal. As Sch14 states, the [Council], once it has received a certificate under para 2(3), has a duty to determine the application.*

And once you have investigated and found the supporting evidence it cannot be ignored...”.

B.6. Section 31 of the Highways Act 1980 (“the 1980 Act”) describes how a highway may be deemed to have been dedicated by the landowner - as indicated by long use of the way by the public. It states:

1) *Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*

1A (Omitted)

2) *The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question...*

3) *Where the owner of the land...*

(a) has erected... ..a notice inconsistent with the dedication of the way as a highway...

(b) has maintained the notice...

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

4) *In the case of land in possession of a tenant... ..[the owner] shall, notwithstanding the existence of the tenancy, have a right to place and maintain such a notice...*

5) *Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.*

6) *An owner of land may at any time deposit with the appropriate council...a map... .. and... ..statement indicating what ways (if any) over the land he admits to having been dedicated as highways... ..to the effect that no additional way... ..has been dedicated as a highway since the date of the deposit... ..[and is] sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway...*

7) *...’owner’, in relation to the land, means a person who is for the time being entitled to dispose of the fee simple in the land...*

7A) *Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the*

Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.

7B) *The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.*

8) *Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over land as a highway if the existence of a highway would be incompatible with those purposes...*

9) *Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less than 20 years..."*

B.7. The user evidence discussed in Appendix D is tested against each of the Section 31 criteria as set out below:

The character of the land

B.8. Green Lane is a wide avenue surfaced with unbound aggregate and bounded to either side by hedges or buildings and set with grass verges along its southern two-thirds. Its northern third is currently grassed across but used to have a central trackway. The lane is used as vehicular access to the old vicarage, one bungalow and the Seward's allotment. The lane is neither owned nor used by any statutory undertaker for a statutory purpose incompatible with use as a highway nor by a religious order as consecrated ground. Consequently, the route is of such a character that could give rise to a dedication at common law.

Has been used by the public

B.9. There is no statutory legal definition of "*public*". However, a number of cases in the 19th and early 20th centuries have addressed the issue. In *Poole v Huskinson* (1843) 11 M&W 827, Parke stated that "... *There may be a dedication to the public for a limited purpose, as for a footway, horse-way, or drift-way; but there cannot be a dedication to a limited part of the public...*" highlighting that any dedication must encompass all the public and not a select group. Later, in *R v Inhabitants of Southampton* [1887] 19QB 590, Coleridge C.J. said that:

"...user by the public must not be taken in its widest sense ... for it is common knowledge that in many cases only the local residents ever use a particular road or bridge..."

As such, use wholly or largely by local people or from the local community may therefore constitute use by the public but this depends on the particular circumstances of each case. This was reinforced in *Leckhampton Quarries Co Ltd v Ballinger and Cheltenham RDC* (1904) 68 JP 464 where it was held that a

route used by quarry workers to gain access to various quarries was not use by the public as the users were from too narrow a section of the public.

- B.10. It appears from the evidence given by user surveys and statements that during the relevant period many of the inhabitants of Everton used the claimed route as a cut-through between the Church to the north and the school, recycling bins and recreation ground to the south. Those people that have submitted user evidence forms and have been interviewed represent a varied cross-section of the village of Everton. In addition, pupils of the local school and visiting friends and relatives of local residents also contribute to the number of users but do not necessarily widen the range of public users due to their points of origin. However, the range of users is sufficient for the claimed route to be considered used by the *public at large*.

Has been enjoyed as of right

- B.11. It is important to determine that use of a way by the public has been “*as of right*”, which has been defined, as in the judgment of Pill J. in *O’Keefe v. Secretary of State for the Environment (1996)*, as being “...*nec vi, nec clam, nec precario...*” which equates to “...*without force, without stealth, and without permission or licence...*”. The Council must be satisfied that the public at large have used the claimed route *as of right* to qualify as evidence from which the Council can either deem or infer that a public right of way has been dedicated.

Stealth

- B.12. Residents of Everton and their families and friend appear to have regularly used Everton Green Lane openly for many years on foot or, occasionally, on horseback or bicycle. None of the users has stated that they have ever asked permission to use the lane. Mr. Ben Seward has stated that he has told users that Green Lane is not a public right of way. Users have also recalled meeting members of the Seward family in the lane. Consequently, public use has not been *stealthy*.

Force

- B.13. No force (physical or otherwise) has been reported as being used either by the users or by the owners of the land.

Permission

- B.14. Mr. Ben Seward stated, in a letter dated 31st August 2011, “...*Green Lane has never been a public right of way and I and my predecessors have taken various steps over the years to maintain its status as a private route. Villagers and others have been permitted to use this route -on a permissive basis only to gain access between Potton Road and Church Lane...*” However, the granting of a permissive right to such a wide cross-section of the public is problematic in that it is difficult to grant permission to each and every user in a manner the precludes their use of the route as of right. Mrs Inman, a member of Everton Parish Council, has also stated that the Seward family had permitted the public

to use the claimed route – although none of those users who submitted evidence considered their use was by permission.

- B.15. In the case of *Regina v. City of Sunderland (Respondents) ex parte Beresford (FC) (Appellant)* [2003] UKHL 60 Lord Bingham of Cornhill quoted an extract of an earlier case, stating at [6]:

“...It does however appear that the Scots approach to prescription, as applied to public rights of way, is close to the English. As the Lord President (Hope) put it in Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd 1992 SLT 1035, 1041, in a passage expressly approved by the House of Lords (1993 SC (HL) 44, 47),

‘... where the user is of such amount and in such manner as would reasonably be regarded as being the assertion of a public right, the owner cannot stand by and ask that his inaction be ascribed to his good nature or to tolerance. If his position is to be that the user is by his leave and licence, he must do something to make the public aware of that fact so that they know that the route is being used by them only with his permission and not as of right.’ [my emphasis added]

- B.16. The issue of any such permission being granted for a whole parish is best addressed by the judgment of McMahon J. in *Walsh & Cassidy v Sligo County Council* [2010] IEHC 437, [2009 No 262P].

[105] *“...In relation to these activities, since the plaintiffs have not shown that these entrants were covered by specific permission, they attempt to argue in a general fashion that all of these occasions, given that many entrants were from the locality, were known to the Gore-Booths and had relatives or ancestors who previously worked on the estate, could be explained away as being consistent with permission. I am not impressed by this argument as many of the defendant's witnesses as to user were not contaminated by such familiarities, and further, the argument is based on an assumption that there can be some kind of permission which is general in nature covering all the activities described by the defendant's witnesses and which is extended to a broad, unidentified and unidentifiable class of entrant. In the present context, I am of the view that the precario required to undermine ‘user as of right’ must be more specific than that, it must relate to a particular activity and be confined to a limited and identified group of people. Apart from some vague suggestions that the familiarities referred to above might in some cases suggest that there was permission, the plaintiffs have not made out this argument to my satisfaction...”*
[emphasis added]

Whilst this is an Irish judgment, it is persuasive in nature and includes many English law cases in its *juris prudencia*.

- B.17. The Supreme Court case of *R. (oao Barkas) v North Yorkshire County Council & anor.* [2014] UKSC 31 is directly relevant to Mr. Ben Seward's assertion that the route was used on a permissive basis. In his judgment, Lord Neuberger PSC stated at paragraph 17:

In relation to the acquisition of easements by prescription, the law is correctly stated in Gale on easements (19th Ed. 2012), para. 4-115; 'the law draws a distinction between acquiescence by the owner on the one hand and licence or permission from the owner on the other hand. In some circumstances, the distinction may not matter but in law of prescription, the distinction is fundamental. This is because user which is acquiesced by the owner is "as of right"; acquiescence is the foundation of prescription. However, user which is with the licence or permission of the owner is not "as of right". Permission involves some positive act or acts on the part of the owner, whereas passive toleration is all that is required for acquiescence.' [my emphasis added]

- B.18. Lord Neuberger's approval of the statement that permission requires some positive act or acts – by which the permission is conveyed to the user to disabuse him of any notion his user is "as of right" highlights the apparent absence of any such actions by the Seward family. None of the users reported any conveyance to them of the permissive nature of their use. Consequently, any passive toleration of that use must have been acquiescence from which the dedication of the way can ultimately be deemed.
- B.19. Mr. Ben Seward commented in April 2017 on a draft copy of this report. He stated "...I kept this strip of grass [along part of the claimed route] mown to **permit** [his emphasis] the users to use it otherwise they would have to walk through knee-high grass and undergrowth...". In the *Beresford* case cited above, Lord Scott of Foscote stated, "...the mowing of the grass were, in my opinion, not indicative of a precatory permission but of a public authority, mindful of its public responsibilities and function, desirous of providing recreational facilities to the inhabitants of the locality..." Similarly, the Seward family's act of mowing a route was an ambiguous act that encouraged public use without signifying whether that use was permissive or otherwise.
- B.20. A very small number of users have reported interactions between themselves and the Seward family. Two members of one family (Westergreen-Thorne) challenged by Mr. Seward after the alternative route had been blocked in 2009 and were informed that the route was not a public right of way but permissive. Whilst this dialogue may preclude the Westergreen-Thorne family's use of the alternative and currently used route being as of right, this discussion has no bearing on the manner in which the claimed route was used.
- B.21. On two occasions, other users (Safford) were stopped from straying out of the lane and playing in the adjoining field but this is different from being challenged for walking *along* the lane. Additionally, a number of the users reported meeting the landowners whilst walking along Green Lane and have instead "exchanged pleasantries" or similar without being challenged.

- B.22. The actions of the Seward family thus appear inconsistent with Mr. Seward's statement that he and his family "...*have taken various steps over the years to maintain its status as a private route. Villagers and others have been permitted to use this route on a permissive basis ...*". However, this precarious nature of the claimed route does not appear to have been brought home to the many local residents who have attested to their use of the route.
- B.23. A small number of users (Cook, Gurney and Warwick) have stated that some (but not all) of their use was in visiting some of the premises along Green Lane. This particular use would not count as the user is acting as a guest and thus is using the route by a private right.
- B.24. Although use by a very small number of the identified users can, for some of the relevant period, potentially be discounted, there is sufficient use by the remainder of the 49 users *as of right* within the relevant period.

Has been used without interruption

- B.25. Public use of the claimed route must not have been interrupted – that is stopped or prevented by some physical act – with the interruption being the intention to prevent public use rather than for an alternative reason, e.g. stock control or disease prevention.
- B.26. The total blockage of Green Lane in mid-August 2009 prevented public use of the lane. This called into question the public's right to use the claimed route and set the relevant 20-year period. Prior to that date, in c.1999-2005 fencing had been erected across much of the width of the lane at point C (see Appendix A) with a gap left adjacent to the western hedge. As a gap was left to the side to facilitate use, the initial erection of the fencing did not constitute an interruption.
- B.27. However, statements by the owner, Mr Ben Seward, and three other witnesses received in April /May 2017 indicate that up to February 1991 a set of gates by the church ground just to the west of point A were locked on an annual basis – although the details are very vague. The interruption on an annual basis of this route "...*for the purpose of preventing the creation of public rights...*" is sufficient for the purposes of Section 31(1) to negate a presumption of dedication.

Has been used for the full period of 20 years

- B.28. The total blockage of Green Lane in mid-August 2009 called into question the public's right to use the route. The relevant 20-year period is thus August 1989 – August 2009. The earlier erection of fencing, in c.1999-2005 left a gap adjacent to the western hedge and did not prevent public use of Green Lane or call into question the public's right to use the lane. The documented use by the 56 people who submitted user evidence forms show that 49 people used the route during relevant period, with public use, as a whole, spanning the full 20-year period.

- B.29. The earlier periodic/annual locking of the set of gates by the church ground (removed in late February 1991) does not seem to have brought the public's use of the route into question in the years preceding their removal. The lack of an earlier calling into question has meant that no alternative 20-year period has been identified as the relevant period for the purposes of Section 31 of the 1980 Act.

No sufficient evidence of a non-intention to dedicate

- B.30. During the relevant period (August 1989 – August 2009) Green Lane has been owned in part by Mr. Tim Seward and in part by Mr. Ben Seward. Any non-intention to dedicate must be attributable to at least one of the Swards rather than any third party unless acting expressly with the Swards' authorisation.
- B.31. For the Council to be able to deem that a public right of way has been dedicated by the owners of the land, the Seward brothers, there must be no contemporaneous evidence that they did not intend to dedicate the route as a public highway during the relevant period. Such evidence could consist of challenges to users or the erection of prohibitive signs or registering their non-intention to dedicate with the Surveying Authority (the former Bedfordshire County Council until April 2009 and then the succeeding Central Bedfordshire Council).

Signs

- B.32. User evidence forms and follow-up witness interviews (see Appendix D) have identified prohibitory signs on the claimed route (at points B and E on the plan at Appendix A).
- B.33. Section 31(3) of the Highways Act 1980 provides a means for the owner to erect a notice as evidence of their non-intention to dedicate a highway. However, whether the sign is an indication of a non-intention to dedicate Green Lane as a public right of way depends on the precise wording of the signs and the intention behind them.
- B.34. Where the owner has erected signs these must be maintained and be consistent with a non-intention to dedicate a highway. If the signs are significantly overt to bring home to a significant sector of the public that the route is not public then this could itself bring into question the public's right to use the route with its own relevant 20-period – otherwise these will be evidence of the landowners' non-intention to dedicate the route as a highway.
- B.35. At some point, possibly in the 1960s, the Seward family erected round signs at either end of Green Lane. These signs lasted possibly until after c.1995. Mr. Ben Seward, one of the lane's owners has stated that the original signs erected by his family read "*Private Road Park Farm No Thoroughfare*" (at point E) and "*Notice Private Road to Park Farm No Thoroughfare*" (at point B).



Mr. Seward has provided a photograph of one of the old signs that had been taken down and replaced.

- B.36. Four of the 56 people who submitted user evidence forms considered these signs indicated that there was no public access along Green Lane and thus were deterred from using the lane. However, these earlier signs do not appear to have brought into question the public's right to use the lane as the many users have continued to use the route until it was physically blocked.
- B.37. The new replacement sign, erected in c.2009-10 signs have similar wording, reading "*Green Lane Private Road No Thoroughfare*" at point E and "*Private Land Park Farm No Thoroughfare*" at point B and appear to have been erected after the relevant period. The fact that the older signs were not present for the full 20 years of the relevant period is immaterial; their presence for a significant portion of that time would suffice as evidence of a non-intention to dedicate (as per *R v Secretary of State for the Environment Ex parte Cowell* [1993] JPL 851) providing the wording on the signs was incompatible with any dedication.
- B.38. The wording on the old signs provided by Mr. Seward does not accord with the recollections of users who submitted evidence or who were interviewed; and stated that the signs read: "*No dogs*", "*Private*", "*Private Road*", "*Green Lane – Private Road*" or something similar (see Appendix D). It is possible that it may have related to additional signage no longer present.
- B.39. The wording "*Private Road – Park Farm*" identifies Green Lane as the private access road to Park Farm; as opposed to being a vehicular through-route; this wording on its own would be ambiguous as to the landowners' intent with regards to walkers and riders.
- B.40. The current definition of a "*Street*" is contained within Section 48 of the New Roads and Street Works Act 1991, which states:
- "...the whole or any part of the following, irrespective of whether it is a thoroughfare—*
- (a) Any highway and any road, lane, footway, alley or passage*
- (b) Any square or court, and*
- (c) Any land laid out as a way whether it is for the time being formed as a way or not..."*
- B.41. There is no legal definition of thoroughfare in the Statute, but the Oxford English Dictionary provides the following:
- "...A road, street, lane, or path forming a communication between two other roads or streets, or between two places; a public way unobstructed and open at both ends; esp. a main road or street, a highway..."*
- B.42. The Swards' use of the additional words "*No Thoroughfare*" suggests that they did not consider that the lane was a public through-route between Potton Lane and Church End. However, when used in conjunction with the wording "*Private Road*", this would appear to qualify the status of the private road as not being a

thoroughfare – i.e. a through-route for public vehicles – rather than indicating whether any minor public highway rights existed or not.

- B.43. The use of the “*Private Land Park Farm No Thoroughfare*” sign at the northern end of Green Lane (at point B) is more ambiguous in that it does not relate to vehicles or a roadway but land. The private land part of the sign does not necessarily preclude or negate the subsistence of a public right of way. Indeed, the contrary was indicated in the case of *Director of Public Prosecutions v. Jones and Another (On Appeal from a Divisional Court of the Queen's Bench Division)* HL [1999] in which Lord Irvine of Lairg L.C. said:

“...Further, there can be no basis for distinguishing highways on publicly owned land and privately owned land. The nature of the public's right of use of the highway cannot depend upon whether the owner of the sub-soil is a private landowner or a public authority. Any fear, however, that the rights of private landowners might be prejudiced by the right as defined are unfounded. The law of trespass will continue to protect private landowners against unreasonably large, unreasonably prolonged or unreasonably obstructive assemblies upon these highways...”

- B.44. This view on private land is also supported by Sales J. in *Patterson v Secretary of State for Environment, Food and Rural Affairs and Others* [2010] EWHC 394 QBD (Admin) who said with regard to a “private” sign (at paragraph 32):

“...A sign saying only ‘Private’ could simply have been indicating that the land a short way further down the footpath (which was open fields) was private so that people should stick to the footpath. In that regard, the inspector was entitled to accept the submission by Mr Ramm that virtually all rights of way are over private land so that a simple sign saying ‘Private’ does not clearly indicate that there is no public right of way along a marked footpath. Similarly, the inspector was entitled to conclude that a sign saying ‘Private, No Tipping’ did not clearly indicate that there was no public right of way over the footpath (it might more naturally be taken to refer to what should not be done on the fields at the end of the path). Moreover, I consider that the inspector was entitled to take into account the evidence of users that they did not understand any signs erected before Mr Paterson came on the scene in 1996 to challenge the public use of the footpath (paragraph 29 of the decision). How a range of members of the public have in fact understood signs in a particular context may well be a helpful indicator how a reasonable person would interpret a sign in that context...”

- B.45. In the earlier case of, *R (on the application of Godmanchester Town Council (Appellants) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent) and one other action R (on the application of Drain) (Appellant) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent) and other action* [2007] UKHL 28, Lord Hoffman had considered the evidence required to indicate a non-intention to dedicate and had stated (at paragraph 33) that:

“...It should first be noted that section 31(1) does not require the tribunal of fact simply to be satisfied that there was no intention to dedicate. As I have said, there would seldom be any difficulty in satisfying such a requirement without any evidence at all. It requires ‘sufficient evidence’ that there was no such intention. In other words, the evidence must be inconsistent with an intention to dedicate. That seems to me to contemplate evidence of objective acts, existing and perceptible outside the landowner’s consciousness, rather than simply proof of a state of mind. And once one introduces that element of objectivity (which was the position favoured by Sullivan J in Billson’s case) it is an easy step to say that, in the context, the objective acts must be perceptible by the relevant audience...”

- B.46. Independent Inspectors appointed by the Welsh Government and the Secretary of State for Environment, Food and Rural Affairs have considered signs with ambiguous wording such as *“Private No through Road”* (Case A6835/W/2015/516056) or *“Private Road”* (case FPS/G4240/14A/2) respectively and found these not to have been sufficient evidence of a non-intention to dedicate.
- B.47. The ambiguity of the signs erected by the Seward family do not seem to have brought home to the majority of the pedestrian users of Green Lane that their use was either precarious or prohibited: only four of the 56 people who completed forms (Endersby, Burgess, Colier, and Rebbeck) reported that the signs dissuaded them from using the route. Given the fact that signs were erected, the inclusion of suitable wording e.g. *“no public right of way”* would have unambiguously indicated the status of the lane: but this did not happen. Consequently, I do not consider that either the earlier signs nor their replacements are specific enough with regard to prohibiting pedestrian/equestrian use to constitute a contemporaneous and overt non-intention to dedicate the claimed route as a highway by the owners.

Challenges

- B.48. Mr Seward’s assertion that *“...I and my predecessors have taken various steps over the years to maintain its status as a private route...”* is at odds with the recollections of the 49 local residents who have used the route during the relevant 20-year period. None have stated that they were challenged by the Seward family whilst using the route and a number exchanged pleasantries when meeting members of the Seward family. The witnessed behaviour of the Swards does not suggest a non-intention to dedicate the claimed route as a highway.

Deposited statement of non-intention

- B.49. No record exists of the Seward family registering their non-intention to dedicate Green lane as a highway with either the current or previous Council under Section 31(6) of the 1980 Act.

Public Status of Green Lane under Section 31

- B.50. Everton Parish Council submitted its application to have a public footpath added to the Definitive Map and Statement. However, user evidence suggests that public use was not only on foot but also by bicycle and on horseback; with 13 and 2 users respectively during the relevant period.
- B.51. The case of *Whitworth and Others v Secretary of State for Environment, Food and Rural Affairs* [2010] EWCA Civ 1468, raised the issue of what status a way should have if public use was established on a bicycle. In that case Carnwath L.J. stated:

(42) “...Since section 30 [s.30(1) of the Countryside Act 1968 permitting cycle use on bridleways] involves a statutory interference with private property rights, it is appropriate in my view, other things being equal, to infer the form of dedication by the owner which is least burdensome to him...”.

Consequently, any deemed dedication permitting the public to cycle over the claimed route should be of the lowest class of highway that permits the public to lawfully cycle – i.e. a public bridleway.

- B.52. The 13 cyclists who have used Green Lane have generally each done so for only a short number of years but together their aggregated use fully spans the relevant 20-year period and does not include use by some of the witnesses’ children. The frequency of cycle use ranges from daily to monthly depending on the witness.
- B.53. A small number of users have referred to cars being driven along Green Lane. Green Lane is currently neither recorded on the Definitive Map and Statement nor on the Council’s List of Streets. Consequently, the lane is not exempted from the effects of Section 67 of the Natural Environment and Rural Communities Act 2006 which extinguished any unrecorded public mechanically-propelled vehicular rights over the lane. The highest status that could be claimed is thus a restricted byway but there is no documented use to support this status.
- B.54. Public use of the lane over the relevant 20-year period (August 1989 – August 2009) has been without stealth or force. Moreover, whilst the Seward family have maintained that public use of the route is permissive, they have never actively brought the precarious nature of the use to the public. Consequently, the public’s use should be considered as of right – rather than on a permissive basis. However, the periodic (annual) locking of the gates on Church Lane up until February 1991 does count as an interruption to public use during the relevant period. As no earlier relevant period has been identified without similar interruptions, the Council cannot deem that the claimed route has been dedicated under Section 31 of the 1980 Act.

Common law dedication

- B.55. Dedication of a right of way at common law requires that there was an intention to dedicate. This can either be by: an act of express dedication when there is a formal deed, or other significant document, from the legal owner of the land to the highway authority granting public rights; or, more often, a matter of inference brought about by regular public use of the route in question. For dedication to be inferred the landowner must also have the legal capacity to dedicate a route as a highway.
- B.56. At common law, the burden of proof is upon the person claiming the right to show both that the owner of the land intended to dedicate over it a public right of way and that the public accepted the right of way. Dedication is usually implied from the use of the way by the public. In the absence of some overt act on the part of the landowner, it may be that use by the public has gone on openly for so long that, in the circumstances of the case, dedication can reasonably be inferred from it. Buckley J. in *Att-Gen v Esher Linoleum Co Ltd* [1901] 1 Ch 647 stated that:
- “...In all these cases of rights of way it is necessary to remember that the thing to be established is dedication not user. A highway is not acquired by user.....But user is the evidence to prove dedication; it is not user, but dedication, which constitutes the highway...”*
- B.57. For a common law claim of dedication to succeed, it has to be proven on the balance of probabilities - whether expressly or by inference - that the landowner dedicated, or had an intention to dedicate, the route as a highway. The landowner does not need to show that they had no intention to dedicate to refute any claim, as the onus is on the Council to show that they did intend to dedicate the path as a public highway.
- B.58. The actions by the Seward family over the many years that they have owned the land (since c.1907) – in particular, the erection of a succession of signs and gates at various locations demonstrates that there has been no positive intention to dedicate the claimed route as a public right of way. Although any period could be used to infer dedication at common law, there has been no period during which such a dedication as a result of a positive intention can be determined from the actions of the Seward family. Consequently, a claim that the Seward family has dedicated the claimed route as a public right of way at common law must also fail.

Appendix C

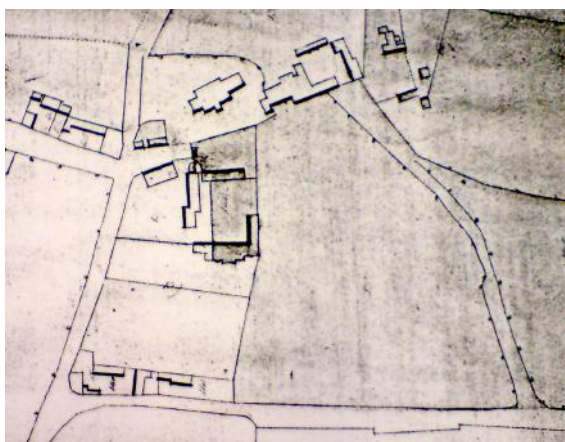
Historic Evidence

C.1. Everton's Green Lane has been a prominent physical feature since before 1800 as evidenced by the plans described below. Whilst initially the principal access to the now demolished Everton House, Green Lane has since been made into and used as a through-route. This though was blocked in 2009. The following paragraphs describe the historical context of Green Lane.

C.2. The Reverend John Berridge (1716 - 1793) was probably the most famous vicar of Everton Church and has been referred to by several of those residents who submitted UEFs. Internet sources suggest that his sermons were very popular and the church was packed for his sermons. Access to the church by parishioners over land owned by Clare College would be "by right" in the same manner as somebody visiting the old rectory today as a guest – rather than by the exercise of a public right to pass and re-pass along Green Lane. Additionally, the Astell estate plan and picture at C.3 below shows there to be no direct connection between Green Lane and the church at the time of John Berridge's sermons without passing either through the courtyard of Everton House or across the ornamental garden and lawn known as "The Lawns". A more probable route was to access the church via Church Road. The vagueness of any potential route for worshipers via Green Lane prevents this historical evidence being used to establish a specific route for the purposes of the Wildlife and Countryside Act 1981.



C.3. A c.1780 map of Everton belonging to William Thornton-Astell Esq. shows Green Lane as a prominent lane leading up to and into the Everton House. No through-route is depicted on the plan, with access to the church being via Church Road instead. The accompanying picture (in Everton Church) shows the ornamental arrangement of the gardens and lawn situated to the south of Everton House and west of Green Lane.



c.1780 Estate Plan



Photograph of a watercolour painting of Everton House c.1765 with the area known as “the Lawns” to the fore. Everton Church is depicted on the left.

- C.4. A tracing of the *Plan of the Township or Hamlet of Everton within the parish of Everton-cum-Tetworth* used as part of the c.1804 Parliamentary Inclosure Award shows Green Lane shaded yellow in a similar manner to the other roads currently considered public and is similarly devoid of land parcel numbers. Green Lane and the other village streets are not mentioned specifically in the Award and so were excluded from the creation of any specific public rights. Moreover, no public footpaths were included in the Award. Green Lane is shown leading up to and terminating at the eastern corner of Everton House. The land to the east of Green Lane is annotated garden whilst the land to the west is annotated “The Lawn” and was the main formal lawn to Everton House. It is unclear from the Award whether any public rights subsist over Green Lane as this land was previously enclosed and thus excluded from the Award.



Tracing of the 1804 Inclosure map

- C.5. Bryant's 1826 *Map of the County of Bedfordshire* clearly depicts Green Lane running from Potton Road to Everton House. No through-route is shown connecting to Church Lane at this time.



Extract from Bryant's 1826 map

- C.6. Everton House fell into disrepair in the mid 19th century. The owner of the house, John Harvey Astell, had recently married and instead of restoring Everton House he bought nearby Woodbury Hall. Everton House was finally demolished, save for a few outbuildings, following a fire in 1858. It was probably at around this time that Green Lane and Church Lane were connected as a through-route.
- C.7. Green Lane is recorded on the Ordnance Survey's 1865 1 inch: 1 mile (Rev. Ed.) map. This depicts the lane running along its current route and Church Lane: although it is unclear whether the two lanes connect owing to the small scale of the map. The lane is shown bounded by either fences or hedges and in a similar manner to other lanes in the area.



Extract from the Ordnance Survey's 1865 1":1 mile map

- C.8. The later, larger scale, 25": 1 mile Ordnance Survey maps show Green Lane as a distinct feature leading to Church Farm (now called Park Farm). On the 1884 First edition 25":1 mile map, a path (arrowed below) is depicted coming off Green Lane at point D and heads north-north-westwards across the site of the old Everton House to connect to what will eventually become Church Lane. This track is annotated with "F.P." for "footpath". Ordnance Survey Surveyors used the annotation "F.P." to indicate that a route was of a permanent nature and was suitable for use on foot – rather than by a horse or carriage. The current route of this annotated track would pass through what is now the allotment garden of the Seward family and through the houses of Nos. 10 and 12 Church Lane. It should be noted that whilst the annotation "F.P." gives an indication of the character of the route it does not identify whether that route

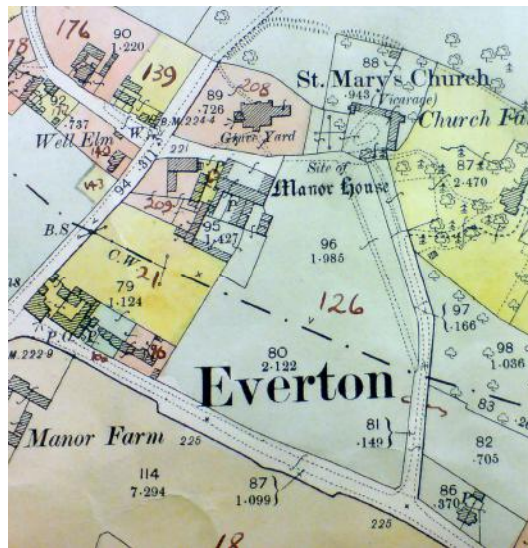
carried any public right of way. This route's alignment is reflected on 1946 RAF aerial photograph of the WAAF station and on the c.1954 photograph taken from the church tower (see Paragraphs C.14 and C.20 below).



Extract from the 1884 Ordnance Survey '25": 1 mile map (1st Ed.)

- C.9. The enactment of the 1910 Finance Act required that all lands be surveyed for tax purposes. The tax assessors recorded land valuations in a Valuation Book referenced to an accompanying map. The map and Valuation Book were statutory documents produced to ensure that taxation on the land could be fairly, and accurately, apportioned. These documents were available for public scrutiny and appeal and misrepresentation of land holdings was a criminal offence. Public roads were not taxable and hence were not included in the survey. To this end public roads usually are shown as uncoloured. However, private roads where no value could be accrued were also sometimes shown uncoloured. Consequently, a lack of colouration is not indicative of a public road.
- C.10. Green Lane is shown uncoloured on the valuation map (below) between Potton Road and the turning for the vicarage (now Glebe House) (points F and C respectively). The lane here is excluded from the ownership of the lands to either side (Assessment Nos. 126 and 159) as indicated by the broken brackets ("[" and "])" (the black bracketing "j" relates to the Ordnance Survey base mapping and was not part of the valuation survey). Between points B and C, the lane is shaded pale green and is incorporated into the adjoining field No.

126 which was owned by Clare College, Cambridge and which did not have any rights of way deduction.



1910 Finance Act map

- C.11. The 1925 Valuation Act similarly assessed the value of land for rating purposes. The 1926 Valuation Survey map for Bedfordshire only surveyed the southern half of the lane. The broken brackets (“[” and “]”) exclude the lane from the adjoining property. On both the 1910 and 1925 valuation maps the lane is excluded from the valuation in a similar manner to other public roads.



1926 Valuation Act map

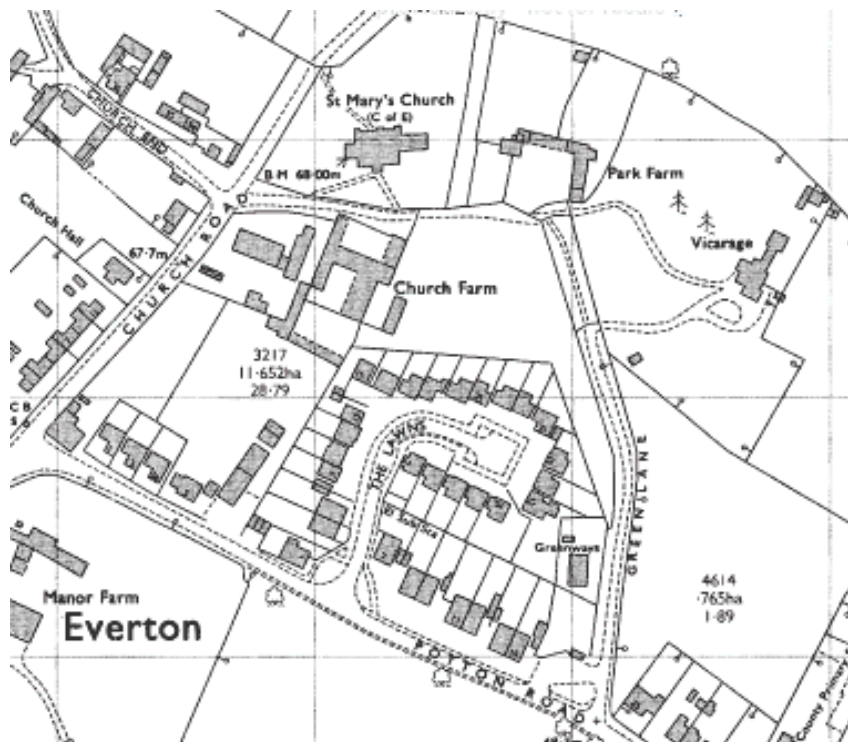
- C.12. The annotated cross-field path depicted on the 1901 25":1 mile is also shown on the later 1938 and 1960 Ordnance Survey 6":1 mile maps of Bedfordshire. On the 1950 6":1 mile map of Cambridge and the Isle of Ely the path is mainly

absent; instead the post-World War 2 WAAF camp layout is shown with the military buildings aligned alongside the old route of the path (see below).



1950 Ordnance Survey 6": 1 mile map of Cambridge and the Isle of Ely

C.13. On the 1973 Ordnance Survey 1:2,500 map the annotated path is no longer shown following the development of The Lawns estate – although the eastern boundary of the estate abuts the old line of the path. Green Lane is labelled as “*Green Lane*” on the map and is shown connecting through to Church Lane which is still undeveloped at its eastern end.



Extract from the 1973 Ordnance Survey 1:2,500 map (4th Ed.)

Aerial photography

C.14. Central Bedfordshire Council has a range of aerial photographs taken over the last 70 years. Extracts from five of these are shown below for: 1946, 1976, 1969, 1986 and 1996.



9 July 1946



8 April 1969



25 June 1976



4 September 1986

C.15. The 1946 aerial photograph shows the RAF's WAAF camp with its surfaced paths including the footpath annotated on the early Ordnance Survey maps. The connection of a building to this footpath strongly suggests it was incorporated within the camp and thus not publicly unavailable. Green Lane is

shown surfaced (but possibly overgrown) up until the driveway to the vicarage (now Glebe House at point C) with a grassed area to the north of this up to and connecting with Church Lane at point A.

- C.16. The 1969 aerial photograph shows the new Lawns development and the small field to the north which still has the scars from the old RAF buildings. The line of the surfaced footpath is still visible in places and Green Lane is shown being surfaced throughout its length, though to the north of the driveway to the vicarage (point C) grass appears to be growing along the centre of the track which passes through the holly hedge to merge into the grass of the small field at point A. At point C, the lane is blocked on its eastern side by what might be a hedge with a gap (or possibly a gate) to the western side.
- C.17. The 1976 aerial photograph does not show any of the old footpath past the WAAF site. Green Lane is clearly surfaced up to point C at the entrance to the vicarage at which point the lane is blocked by a gate on the western side and by what might be a hedge on the eastern side. To the north of point C Green Lane appears grassed for its full width to point B. Between points A and B the claimed route is fenced out of the small field and comprises part of the access to Park Farm.
- C.18. The 1986 aerial photograph shows Green Lane being surfaced at least as far as the vicarage's driveway at point C. Tree cover and deep shade make it too difficult to determine the lane's surface between points B and C. Between points A and B the route appears to pass through an area of brush, with a surfaced track passing slightly further to the south.



*Aerial photograph
(18 September 1996)*

- C.19. The 1996 aerial photograph was taken 7 years into the relevant period. It shows Green Lane as being surfaced for almost the full width of the lane

between Potton Road and the driveway to the vicarage. North of point C there is a clear track leading along the centre of the lane, through the holly hedge at point B: this appears either to be very short (mown) grass or possibly earth/aggregate. Between points A-B there is a clearly accessible route which connects to the access to Park Farm.

- C.20. The photograph below, taken from the tower of the nearby St. Mary's church in c.1954 shows Park Farm, the holly hedges (arrowed) and the remnants of the NNW-SSE oriented track shown on the 1946 aerial photograph above.



A c.1954 view from St Mary's church showing Park Farm (centre left) and old WAAF track to the main road (lower right). The well-cut holly hedges are arrowed.

- C.21. The aerial photography for the period 1946 – 1996 shows that Green Lane has been accessible during this period. In the early part of the relevant period the route was surfaced south of point C and appears to potentially have been surfaced or at least possessed a wide mown strip located centrally within the lane.

Clare College Cambridge records

- C.22. The Clare College Archive was contacted as historically some of the land around Green Lane had been owned by the College. In June 2016, the College Archivist and Records Manager responded, stating:

"... Yes, the College owned the rectory of Everton and its lands, comprising of 260 acres, from 1543-1920. I've searched our catalogue and I haven't been able to find anything relating specifically to Green Lane in Everton, however I did find some old archive enquiries from the 1980s regarding property disputes and rights of way in Everton. It appears this is actually a very complicated matter, one which it's unclear if the Clare College Archives actually has the definitive answer to.

Apparently there was a lawsuit in the 1980s about this. The dispute was between the vicar of Everton and the family of the person who bought

Park Farm from Clare College in 1920 over Green Lane. It was alleged by the vicar that a right of way was granted to one of his predecessors in the 18th century by William Astell for use Green Lane to access the rectory. However, William Astell was leasing property from Clare College at the time and there was a question of whether or not the path was on the land owned by Clare College and if he had the authority to grant the right of way. It's unclear from the correspondence if our Everton property records actually settled the matter though..."

- C.23. Any alleged grant of a right of way to the Vicar of Everton by William Astell would be a grant of a private easement – not a public right of way – but would not have had any legal validity if the Astells were not the owners of the land.

Cambridgeshire County Council – Huntingdonshire Archives records

- C.24. The Huntingdonshire Archives hold a number of index records relating to Green Lane. One records the 15 May 1737 Agreement between William Astell and the Reverend Ferrer, Vicar of Everton:

1. William Astell, Esq. 2. The Rev. John Ferrar, Vicar of Everton That (2) shall have small tithes and 1a. of land lying partly in Dairy Close. That the Vicar and parishioners shall have right to use a footway from the Vicarage through (1)'s courtyard to the churchyard, and two carriageways. That (1) shall pay £35 p.a. in composition for small tithes due from his estates.

- C.25. This was later modified by a further index record:

Copy of Articles of Agreement that carriages are not to be used on the footway from the Vicarage, Hannah Pownell and Rev. John Berridge, 1784.

- C.26. As described above by the Clare College Archivist, William Astell appears not to have had the legal authority as a tenant to grant any public right over land owned by Clare College. Furthermore, whilst a public right can be granted to the public at large for a limited purpose, such a right cannot be granted to a limited section of the public: thus any such grant would have been a private right at best.

Definitive Map records.

- C.27. Everton – or to give it its historic title, Everton cum Tetworth, was historically bisected by the Bedfordshire-Huntingdonshire county boundary until the county boundary was moved in 1974 following a local government reorganisation. Consequently, none of the former Bedfordshire County Council records relating to the Definitive Map for the period 1952 – 1974 apply to land north of point E and the plan at Appendix A.



1952 Everton-cum-Tetworth-Parish Survey Map of rights of way

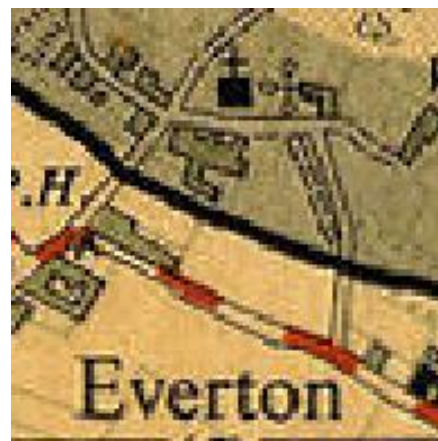


1961 Huntingdonshire Definitive Map

- C.28. No records indicating the presence of a public right of way to the north of point E in the former County of Huntingdonshire were transferred into Bedfordshire in 1974.
- C.29. Those County Council maps that do apply to the land to the south of point E within the historic county of Bedfordshire do not depict any public rights of way.



1952 Parish survey map



1953 Draft Map of Public Rights of Way

C.30. The evidence detailed above suggests that Green Lane was the original primary access to Everton House, running between the formal lawn to the west and the House's gardens to the east. This situation continued until some time shortly after the House fell into ruin and burnt down in 1858. At around this time Church Lane was developed and a track formed connecting Church Lane to Green Lane. An alternative footpath (or possibly cart track) was developed across the eastern edge of the old formal lawn which remained in existence for c.60 years (pre-1884 to probably c.1941) when the land was taken over by the War Office as the communal and domestic site for the WAAF personnel at the nearby Tempsford Airbase at which point it appears to have been incorporated into the WAAF site. It is uncertain what the legal status of this footpath across the Lawn was. Similarly, there is no clear indication of the legal status of Green Lane – beyond serving a number of local properties as their access.

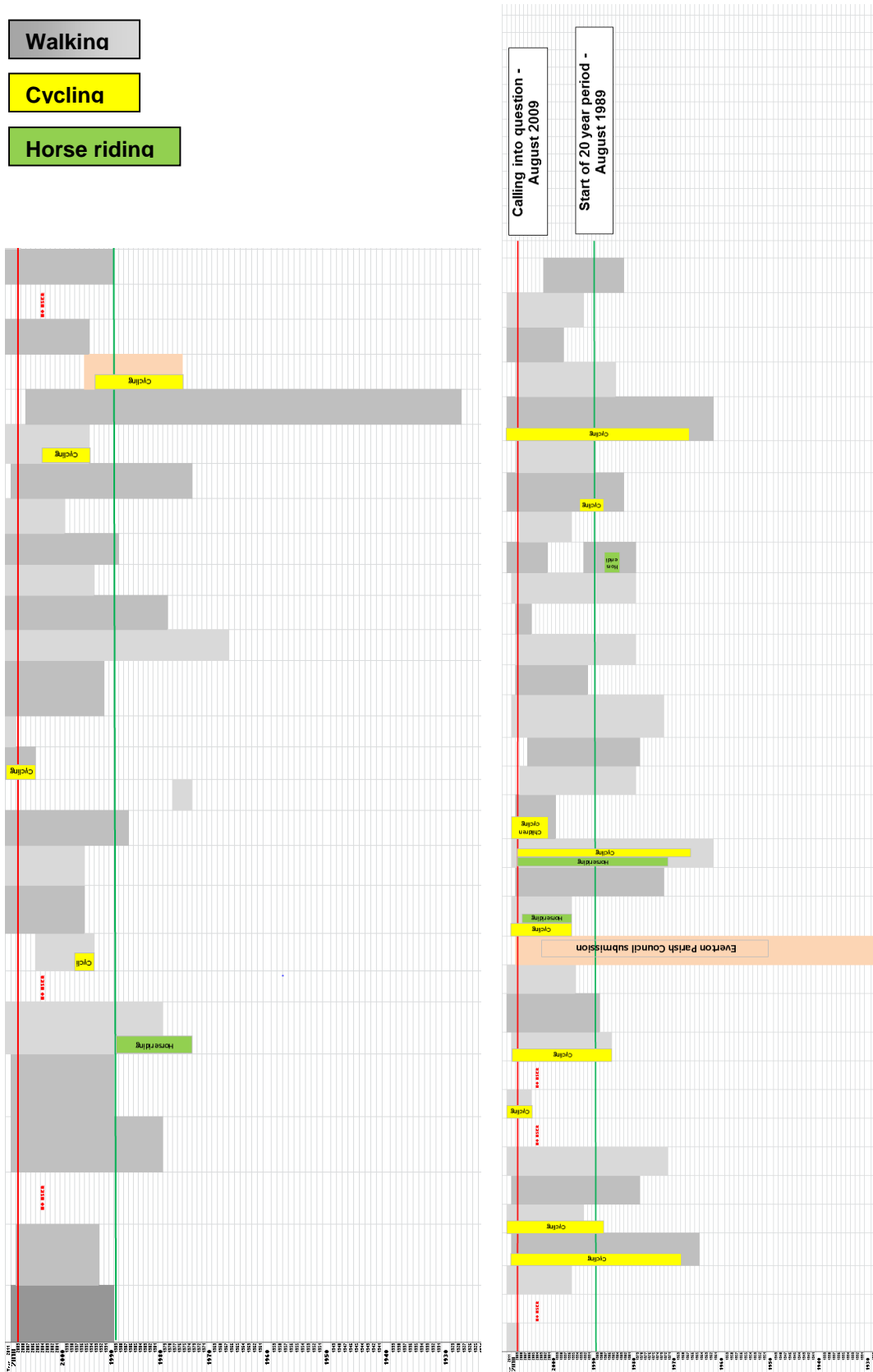
Appendix D

User Evidence

- D.1. Fifty-six user evidence forms (hereafter “UEFs”) were submitted to the Council (including four jointly submitted by couples) by residents of Everton. A separate form was also submitted by the local Everton Parish Council but this has been discounted as a corporate submission. A further four people were identified at interview giving 63 witnesses in total. Six of the witnesses stated that they have never used the route.
- D.2. The relevant 20-year period is considered to date back from when the public's right to use the route was called into question by the route being completely blocked off. Although recollections of this vary, the evidence suggests that the gap in the post and rail fence was blocked on or around 15th August 2009. There is the potential for an earlier relevant period: prior to March 1991 a gate across what is now Church Lane adjacent to the church yard was periodically locked. There is no firm date for when this first happened, but the gate was present in the 1940s as evidenced by a photograph from this period and is alleged to have been annually locked since c.1907 when the Seward family bought the land. This report considers the most recent relevant period to be mid-August 1989 – mid-August 2009: this is the period to which most of the user evidence relates.
- D.3. Public use during the relevant 20-year period can be broken down into the following:

Duration of use during the relevant period	Number of walkers	Number of cyclists
Never used	6	6
People who used it for 5 or less years	10	4
People who used in for between 6-10 years	4	2
People who used it for 11-15 years	11	2
People who used in for between 16 - 19 years	11	0
People who used it for the full period of 20 years	21	5

D.4. The chart below illustrates the spread of user data.



- D.5. The bar chart above shows that public use of the route has predominantly been on foot, but use of the route on bicycle, on horseback and in cars has also been recorded during the relevant period as shown below:

Type of use	Number of persons using during the relevant period
On foot	50
By bicycle	13
On horse-back	2
By car	1

- D.6. Many of the people who submitted UEFs, and were subsequently interviewed, stated that they many other people in the village had used the route as had their friends and relatives. Most of this additional use was either for dog-walking, church-goers or by parents taking children to and from Everton Lower School. Additionally, Everton Lower School has used Green Lane for many years – since before 1982 – as a safe walking route for children going to the Church for Christmas and Easter celebrations.
- D.7. A small number of the users (Cook, Gurney and Warwick) used to visit the old vicarage (now Glebe House). This property has its own private right of access over Green Lane under title No. BD193912 and consequently any use of the lane for visiting this property was exercising a private right rather than a public right and so needs to be discounted for the purposes of this application. This use is excluded from the bar chart above.

Structures

- D.8. A number of users recall that between the 1960s and mid-1980s an old tatty 5-barred gate existed at that northern end of Green Lane (point B on the plan at Appendix A). This gate was normally left open. This gate was later replaced by a new metal gate in c.2002–2004. A site visit in March 2007 showed that this metal gate had been padlocked and that a gap existed between it and the holly hedge. A second site visit in October 2010 showed that the gap had been blocked by wooden rails and the metal gate had been overgrown with holly from the adjoining holly hedge, blocking the northern end of Green Lane.
- D.9. Several users have report the claimed route being blocked by a gate at point B. Whether this gate was installed at some time after the observed wooden rails or whether the gate referred to was on the alternative route is unclear.
- D.10. Three users recollect that a gate was installed across part of Green Lane in c.1994 just north of the entrance to Glebe House (close to point C). This gate

was usually left open. The gate was replaced with post and rail fencing which was erected across the majority of the width of Green Lane at some point between c.1999 and 2005 according to the recollections of those who submitted UEFs. A gap in the fencing was left immediately adjacent to the western holly hedge. This gap was closed in c.August 2009 (more specifically c.15th August 2009) and called into question the public's right to use the lane at this time.

- D.11. After receiving a draft copy of this report, Mr. Ben Seward stated in April 2017 that another set of gates had existed about 12 metres to the west of point A and blocked the lane at this location. One gate was a field gate and this and the church ground's wall was a small hand gate (see below). The gates were in line with the boundary fence of Nos. 4 and 6 Church Lane, with Nos. 6, 8, 10 and 12 being built between 1991 and 1993.



c.2017 showing modern road layout

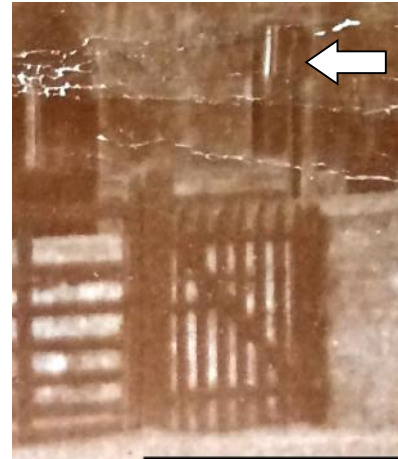


c.1976 showing set of gates (arrowed)

- D.12. According to Mr. Seward, both gates by the church were locked at least once a year, the last time being in late February 1991. The gates were then removed in late February 1991 by the Seward family prior to that section of the lane being sold to developers (Mossber Ltd). None of the original witnesses mentioned the gates by the church either in their original user evidence forms or in any follow up interviews. Those users who had used the route prior to 1991 were contacted to ask about any structures. Only two people (Mrs. Bircham and her son, and Mrs. Endersby) recalled the presence of a gate and that it had occasionally been locked.
- D.13. Mr. Ben Seward has stated in a letter, dated 13 September 2011, that when the “alternative route” (see below) was made available in August 2009 he blocked the gap at point C in the fencing across the main part of Green Lane. The gap between the locked metal field gate and the holly hedge at point C was potentially also blocked at the same time and by 1 October 2010.
- D.14. The “alternative” route (as shown on the plan at Appendix A) has been periodically gated (see below) but this is irrelevant for the purpose of this report as the public's right to use the route had already been called into question.

Signs

- D.15. Three sets of signs appear to have been erected on Green Lane in living memory. The first sign was painted on a wooden board – possibly in the 1940s. Mr. Seward states that the wording of this sign was *“Notice, Private Road to Park Farm, No thoroughfare”* but no photographic record of the wording exists, just its position next to the wooden gates which were positioned to the west of point A (and indicated by the arrow in the adjacent photograph).



- D.16. The second set of signs were painted on tin lid or wheel hub, according to the recollections of users and read *“No dogs”, “Private”, “Private Road”, “Green Lane – Private Road”*. However, Mr. Ben Seward has stated that these signs said, *“Private Road Park Farm No Thoroughfare”* at point E and *“Notice Private Road to Park Farm No Thoroughfare”* at point B. These signs were erected probably before 1971 (first recollection) and lasted until after 1995 (last recollection) and were located on the telegraph poles at points B and E on the plan at Appendix A.



Mr. Ben Seward's photograph of one of the old signs from Green Lane (point E) reading *“Private Road – Park Farm – No Thoroughfare”*.

- D.17. The third set of signs are round and were erected in c.2009 – 2010 (one user noted these were erected on 2 July 2010) and read *“Green Lane Private Road No Thoroughfare”* at point E and *“Private Land Park Farm No Thoroughfare”* at point B. These are erected on telegraph posts at points B and E and look as in the picture below.



c.2010 sign erected at point B (photo1-10-2010)

- D.18. Two members of one family (Westergreen-Thorne) challenged the erection of the c.2010 signs and a locked gate on the alternative route and were informed that Green Lane was private property and that it was not a public right of way. Mr. Seward then opened the gate on the alternative route to allow them to use it.
- D.19. Four people who filled in UEFs (Endersby, Burgess, Colier & Rebbeck) commented that they had seen signs saying “*private*” or “*Private – no thoroughfare*” during the relevant period and so did not use Green Lane (along with two others – Parkin and Denny).
- D.20. Two of the older residents recall when they were young there might have been a footpath sign on the lane. However, this recollection seems at odds with Council records and so may be a mistake. Similarly, a large number of users do not mention seeing any signs along the lane. Clearly, when read with the recollections of other users, these people’s recollections are incorrect.

Challenges

- D.21. Mr. Ben Seward, one of the owners of the lane, has stated that he has always told users that they could use the route but it was not a public right of way. However, only one of the 63 people who submitted statements or who were interviewed recalled being stopped by members of the Seward family. On two occasions this user (Safford family) were stopped from straying out of the lane and walking/playing in the adjoining field; this is very different from being challenged for walking *along* the lane however. Conversely, a number of the users reported meeting the landowners (Seward family) whilst walking along Green Lane and have instead “exchanged pleasantries” or similar without being challenged.

“Alternative” route

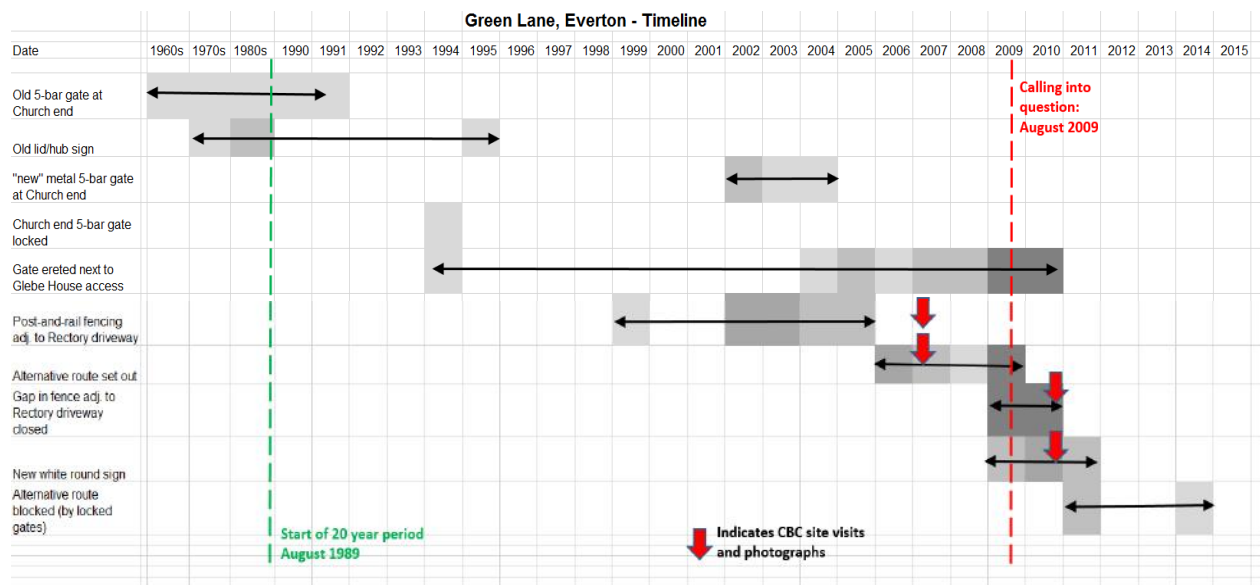
- D.22. The Seward family cut through the western holly hedge close to point C in January 2007 and cleared a route along the western side of the western holly hedge (between the hedge and the adjoining garden fencing) to create an

alternative route leading to point B. This was fully opened in August 2009 according to Mr. Seward – a date that matches the recollections of users.

- D.23. Mr. Ben Seward has stated in a letter, dated 13 September 2011, that this alternative route is permissive in nature and has been periodically closed with a locked gate at point C to prevent use by the public generating a public right. This has been corroborated by some users who recollect a gate being locked in April 2011 and also on Good Friday in 2014.
- D.24. The public use of this “alternative” route post-dates the calling into question of the public’s right to use the claimed route and so its use is irrelevant to the purpose of the report.

Timeline

- D.25. Users recall that the southern end of Green Lane has always had vehicular access to the Old Vicarage (now “Glebe House”). It was reported by a couple of witnesses that before c.1990 it was possible to drive all the way through from Potton Road to Church Lane. Between points C-D-E-F Green Lane has had a metalled stony central section for vehicular use. North of point C the lane had a grassed surface which is reported by one witness to have been mowed periodically by the Seward family which owns the land. A vehicular route existed towards the eastern side of the lane in c.1994 (recalled by Wilkinson family) which allowed onwards travel to Church Lane and, from about c.2002, a pedestrian route to Church Lane was established close to the western side of the lane. Vehicular access was probably restricted when a gate was installed sometime after c.1994 close to point C.
- D.26. The consensus of views from many users is that the open grassed area of Green Lane between points B and C was fenced off in c.2002 - 2006 with a gap left to the side. This view is at odds with the 1969 and 1986 aerial photography (see appendix C) but may pre-date the recollections of the users. A metal field gate was installed in c.2004 – 2009 with a gap left to the side at point B; photographs show this was in place in March 2007.
- D.27. The “alternative” route to the western side of the western hedge was set out and made available to the public in c.March-August 2009.
- D.28. The following timeline illustrates the broad spread of recollected dates for certain events or features. The breadth of recollections means that some events appear to occur in the wrong order but the spread is included for completeness. The darker shading indicates that more users thought that an event occurred at that point in time.



- D.29. The relevant 20-year period is considered to be August 1989 – August 2009. The oldest user evidence pre-dates this period, going back to c.1928 with ten other users having used the path before 1975. Some of the older residents have stated that during World War 2, the land currently occupied by The Lawns estate to the west of Green Lane and the properties at the eastern end of Church Lane were used by the War Office from c.1942 as the communal and domestic site for the WAAF personnel working on the nearby secret Special Operations Executive Tempsford Airbase at Gibraltar Farm. Interviews with some of the older users indicate that during this time Green Lane was a well-used route by both WAAFs and local residents – a fact reflected in the recorded number of WAAF weddings to local men during and after the war. However, whilst anecdotal evidence of public use stretches back some 70 years, only that use documented within the identified relevant period August 1989 – August 2009) can be considered under Section 31 of the Highways Act 1980.

Land owners' representations

- D.30. Mr. Ben Seward and his brother, Tim Seward, own Green Lane between them. Mr. Ben Seward has represented his brother in all communications on the issue of the claimed footpath.
- D.31. In addition to several e-mails sent to the Council, Mr. Ben Seward has also written three letters in 2011 (7 June, 31 August and 13 September). The June letter requested unredacted user evidence forms which was declined for data protection reasons. The August letter was in response to a letter sent out by this report's author, and includes the wording of the signs that have been erected on Green Lane (with pictures) as well as confirmation that the alternative route was completed in August 2009 and also commented on the evidence collection process. The September letter comments on the historical nature of the lane and reiterates that use of the lane by villagers has been on a

permissive basis and the permissive route had not been blocked but diverted contrary to the statements in multiple UEFs. Mr. Seward also points out inaccuracies in a number of the UEFs including the stated date of first use of the route by Mrs. Kirkham. Mrs Kirkham was subsequently contacted over the date she first used the route and clarified that this was a year later than stated due to a mix up in dates. Other points made by Mr. Seward were also incorporated into the draft report

- D.32. Over the course of 2016 Messrs. Ben and Tim Seward were repeatedly invited to provide evidence to support their contention that the claimed route is a permissive route and not a public right of way. Eventually, in April 2017, after receiving a draft copy of this report, Mr. Ben Seward produced a detailed rebuttal which addressed a variety of issues, some evidential, some procedural, and some which have no relevance or impact on this report. Pertinent points in Mr. Ben Seward's representations have been incorporated into this finalised report.
- D.33. Of material importance was Mr. Seward's statement about the periodic locking of a previously undisclosed set of gates located adjacent to the church ground (to the west of point A) as this would have interrupted public use. Mr. Seward has declined to provide details about when the gates were locked, beyond stating that they were locked at least once a year – which has been corroborated by three other witness. These gates are alleged to have been present since shortly after c.1907 when the Seward family purchased the land, and to *"have always been locked at least once a year for the purpose of preventing the creation of public rights"* according to Mr. Ben Seward.