

Committee:	Regulatory Planning and Highways Sub Committee
Date:	1 June 2005
Report By:	Director of Law and Performance Management and Director of Transport and Environment
Title of Report:	Wildlife And Countryside Act 1981: Claimed Public Footpaths over the Former Bayham Abbey Estate.
Purpose of Report:	To determine an application made under section 53(5) of the Wildlife and Countryside Act 1981 for an Order modifying the County Council's Definitive Map and Statement of Public Rights of Way.

RECOMMENDATION

That the applicant be informed that the Sub-Committee considers that the claimed public footpaths have not been shown to be public rights of way; and that the application for a Definitive Map Modification Order be refused.

Supporting Information

1. Introduction

1.1 An application has been made for the County Council to make an Order modifying its Definitive Map and Statement of Public Rights of Way for the Wealden District at the former Bayham Estate, Frant, by adding various public footpaths. The claimed public footpaths are shown on the attached plan. The application was submitted by Mr C W M Barrow on behalf of the Tunbridge Wells Ramblers Association, on 3 September 1998. There are nine paths being claimed; four are wholly within East Sussex, three in Kent with another two crossing the County boundary.

1.2 In 1990 a previous application was submitted by the Tunbridge Wells Ramblers Association which comprised a similar network of paths over the Bayham Estate. The claim was rejected by East Sussex County Council in 1993 and the decision was upheld by the Secretary of State in October 1994. A further application was submitted in 1996 and subsequently withdrawn by the Ramblers' Association.

1.3 The claimed footpaths were not shown on the 1953 Definitive Map and Statement, nor on the 1960 Definitive Revised Map and Statement nor the 1971 draft Revised Definitive Map and Statement, no claim having been received.

1.4 As set out in 1.1 above, three of the claimed public footpaths Orange 2, 3, 4 are in Kent and two (the Red route and Orange 1) cross the County boundary.

1.5 Kent County Council considered the application for the relevant routes on 5 April 2005. It recommended declining to make an Order to modify the Definitive Map and Statement by showing at footpath status, any of the claimed routes running through the Bayham Abbey Estate in Kent. A copy of the report can be found in the file of evidence available in the Members' Room.

2. Legal Position

2.1 Section 53(2) of the Wildlife and Countryside Act 1981 requires the County Council to modify its Definitive Map and Statement because of certain "events". In this case the relevant "events" are (a) the expiration of any period such that the use of a way by the public during that time raises a presumption that the way has been dedicated as a public footpath; and (b) the discovery by the authority of evidence which, when considered with all other relevant available evidence, shows that a right of way subsists or is reasonably alleged to subsist.

2.2 Section 31 of the Highways Act 1980 states that a way is deemed to have been dedicated as a public right of way if it has actually been enjoyed by the public as of right and without interruption for a full period of 20 years unless there is sufficient evidence that there was no intention to dedicate. The 20 year period is calculated retrospectively from the date when public use of the way is brought into question.

2.3 Alternatively, a public right of way may be established over a shorter period under common law. Dedication can be implied from evidence of public use and of acquiescence in that use by the landowner.

2.4 The legal position is clearly set out in Appendix 1.

2.5 It seems that this 1998 application was submitted as a direct result of the previous unsuccessful claim. Neither at the submittance of the 1990 claim nor the 1998 was a precise date given for when the use of the paths by the public was brought into question.

2.6 For ease of reference this report has summarised the historical and documentary evidence for all paths together, but as this application is based on "new user evidence" each path has been analysed individually with a "date of challenge" noted for each.

3. Description of the Claimed Public Footpaths

3.1 Site inspections were made by officers on 21 February 2003. The majority of the claimed paths run over well established woodland occupation tracks, agricultural tracks and access drives as shown on the plan. The full site inspection reports are in the Evidence file in the Members' Room.

4. Historical Research

Order of Sussex Quarter Sessions dated 10 October 1799

4.1 The green route between points J-Q was part of a public highway which was diverted by this Order onto a new highway, the road now known as B2169.

4.2 The Order also stopped up a public highway which ran through Stumlets Wood. This highway was a potential link connecting the green route with the B2169. The fact that it was stopped up suggest that at that time there was no intention for the green route J-Q to be used as a public footpath.

"Tunbridge Wells" by Amsinck, dated 1810

4.3 This was reported in the Country Life October 1943 detailing Bayham Abbey's history and records that the ride to Bayham Abbey was one of the favourite excursions from Tunbridge Wells. The Country Life article suggests that the ride followed the route of the present B2169 and states :

"This had been recently opened to the public by Lord Camden. The old road from Frant to Lamberhurst had lain through the Abbey grounds. This being inconvenient to the owner..., about 1800 he diverted it away from the ruins to the present straight

and more direct route through Bayham woods...This diversion was an undoubted improvement. It runs straight along a splendidly wooded ridge with view far to the southward and a glimpse of the ruins on the left where an approach was provided. The valley in which the ruins and the house stand was thus also relieved of through traffic,.....”

4.4 It appears from these details that the green route between points J to P was not intended for public use in 1810 and that the public made use of the B2169.

1846 Frant Tithe Map

4.5 Tithe maps identify land on which tax was to be paid. They do not provide definitive evidence about public rights of way but provide useful supporting evidence. Tithes were not payable on public highways.

4.6 Part of the Tithe Map in the vicinity of Bayham Abbey is missing

4.7 The red route section A-B is not shown as a track. It is not clear whether it forms part of a parcel of land which is non-titheable and described with the Dundle Road as being “Roads and Waste” with the same number as present day public roads.

4.8 The red route section C-D is shown as non-titheable. It is described as a “road” but carries a different number and description from present day public roads. According to the Schedule accompanying the Tithe Map, this section of the red route is owned by the Marquis of Camden. It is likely therefore that it was considered to be a private rather than a public road.

4.9 The red route continues northwards from point A into Kent where it is described on the 1849 Pembury Tithe Map as a “parish road”, i.e. a public highway. However, it does not automatically follow that the section of the red route in East Sussex between points A-B is also a public highway.

4.10 Most of the remaining claimed public footpaths are shown as tracks on tithable land.

Ordnance Survey County Series Maps

4.11 1909 – shows all the claimed public footpaths as tracks in 1909 except for orange route 6. The fact they were only shown as tracks in 1909 does not mean that they are public footpaths, only that there was a way on foot at that time which may have been private or public.

Finance Act 1910

4.12 The Finance Act 1910 required maps to be drawn up for the purpose of assessing the tax payable on land. Landowners could claim a reduction in their tax if their land was crossed by a public right of way.

4.13 The Valuers Field Book for Lamberhurst Parish dated 1913 contains an entry for a reduction of £200 in respect of a public right of way. This refers to Lamberhurst Parish and to the majority of the Bayham Estate. The Estate was valued at around £71,000.

4.14 Two Record Sheet Plans, deposited at the Public Records Office under the Finance Act 1910, only identify part of the survey area over which the public right of way crossed. They do not identify the location of the public right of way. The identified survey area not only includes land crossed by the red route and all the routes at the Bayham Abbey ruins, but it also includes areas of land in Kent.

4.15 There is therefore indisputable evidence that a public right of way did exist but there is no evidence to its location.

1934 - Oakfield Rural District Council Map

4.16 This map was produced under the Rights of Way Act 1932 by which local authorities deposited plans showing public rights of way which have been admitted by the landowners. None of the claimed footpaths are shown except for the section of green route P-Q which is described as "a footpath not admitted by the owner".

Bartholomew Map Series, Sussex, Sheet No. 6, dated 1918, 1929, 1934, 1946, 1962 and 1969

4.17 These maps produced a guide to travellers depicting highways most suited to their means of transport.

4.18 The maps appear to show red route E to J and orange 5 J to R as a dashed line signifying 'Footpaths and Bridle paths'. The red route is also annotated with the words "Public Path". However the maps carry the disclaimer that "the representation of a road or footpath is no evidence of a right of way".

"Footpaths of the Kent-Sussex Border" published 1947

4.19 This publication details a walk to the Abbey ruins which "are open to the public during the summer months (from Easter Monday to October 1)." It appears to be describing the continuation of the orange route 1 in Kent. It does not appear to refer to any of the claimed public footpaths in East Sussex.

Ramblers Association Survey dated 1952

4.20 Under 'General Remarks' this survey states "It is a little unfortunate that the extremely pleasant paths leading to Bayham Abbey should not be claimed as public.

4.21 Under the heading 'unclaimed paths' a track which includes orange 7 and section L to M of the green route then continues on orange 7 through Bayham Abbey Farm. This Survey refers to a 'Private' notice at Bayham Abbey Farm which suggest that the track was considered private. Also under this heading part of the red route and the green route is noted to be "especially recommended and is apparently permissive at the present time". This suggests that this route was used with permission and not as of right.

Frant Parish Survey dated 1953

4.22 This Survey describes a section of the green route between points Q to P as "path 17 having no obstruction" and used by the public for many years but not admitted by the owners as a public right of way. It also describes it as a private road, maintained by the owner. A note attached to the Survey states "Necessary evidence of use not available. Council do not wish to claim."

4.23 This Survey also describes a track which includes the part of orange 1 in East Sussex and a section of the green route J-K-L-M as "path 19" but which is "not admitted by the landowners" as being a public right of way. The track continues through orange 7 to the B2169 and the Survey states that this route is a "Private entrance to Bayham Abbey. The owner, for many years, has allowed the public the privilege of using this entrance as a means of access to Bayham Abbey Church." This suggests that the route was used with permission and not as of right.

1971 Definitive Map and Reviews

4.24 The claimed footpaths were not claimed in the subsequent review of the Definitive Map for East Sussex which occurred in 1971.

5. Other Documentary Evidence

R H & R W Clutton correspondence (copies in Evidence file)

5.1 Correspondence during the 1970's between R H & R W Clutton, land agents for Lord Camden, which the Association claim show Lord Camden's intention to dedicate a route through the Bayham Estate. In February 1976, Mr. and Mrs. Groves of the Ramblers' Association wrote to Lord Camden regarding access to the estate and thanking him for having allowed the Tunbridge Wells Rambling Club to walk through the estate in the past. The reply from the Bayham Estate Office stated that Lord Camden had agreed with the Council "as long ago as 1945... certain rides that could be used by the general public... permission for this was given some 30 years ago and has never been withdrawn". A subsequent letter from the Bayham Estate Office to Mr and Mrs Groves on 28 November 1977, asserts that the route has never been a Public Right of Way and that members of the public were known to have been challenged using the route.

5.2 In 1993 the East Sussex County Secretary's department had an office fire where documents relating to this area were destroyed. Kent County Council (KCC) has informed us of correspondence they hold in relation to the claimed routes in East Sussex and Kent. This is summarised below.

5.3 In a letter dated 10 June 1984 to the Borough Secretary at Tunbridge Wells Borough Council, Mr. Farmer of the Ramblers' Association noted that "when the then landowner, Lord Camden, gave permission for public use of the path over 40 years ago, this covered the whole route from Pembury to Hook Green" (Red route and orange 1 and 4).

5.4 It would therefore appear that the local Ramblers' Association representatives were aware that public use of the routes had been by way of an informal permissive agreement.

5.5 Correspondence between KCC and RH and RW Clutton in January 1983 also refers to a footpath proposal "to take the place of a permissive path which it is understood Lord Camden allowed walkers to use prior to the sale of the Estate in 1977".

5.6 There appear to be several items of correspondence between KCC officers and Mr A Barnes, the local County Member at that time, regarding the possibility of claiming Public Rights of Way through the estate. On 21 May 1984, the County Secretary advised that "the previous discussions which have taken place between my officers and Lord Camden's agents have always recognised that the routes being considered were permissive paths rather than rights of way". This was reiterated in June 1986, explaining that "Lord Camden did, however, permit members of the public to use certain specified routes in the grounds of the estate but this was 'permissive' usage and not in any way a usage "as of right".

5.7 This was further reaffirmed by another of KCC County Secretary's officers in a letter dated 29 March 1988 which read "it is a fact that Lord Camden permitted members of the public to use certain routes on the Estate but it is quite clear that this was a permissive use and not a use "freely and as of right" and because of this permission it is clear that Lord Camden had no intention to dedicate the routes as public highways".

5.8 Therefore, it also appears that even after Lord Camden's death in 1983, KCC officers, and indeed the local County Member, were aware that the public walking through the estate had been doing so on a permissive basis.

Tenancy Agreements (copies in Evidence file)

5.9 During the 1960s, 1970s and 1980s, there were a number of tenancy agreements that were signed in relation to farms on the estate. Mr. Hutchings, former Land Agent has stated in his Statutory Declaration, these agreements were in effect over the period 1959 to 1979 at Sunninglye Farm (affecting the Red Route south of Brown's Lodge); and from 1959

to 1991 at Bayham Home Farm (affecting the Green Route, Red Route and the western end of Orange Route 1); and from 1956-1979 at Nobles Gate Farm and Home Farm (Green Route).

5.10 Under the heading 'Game Trespass' (paragraph 13), it is stated that the tenant should "...do his best to prevent trespass over any part of the farm, to give notice to the Landlord of any continued acts of trespass and not to allow any footpaths to be created... To lay information and give evidence and sign if required notices to trespassers and others to keep off the farm...".

1977 Draft Public Path Creation Agreement (copy in Evidence file)

5.11 Although the creation of a public route through the estate was first suggested by Pembury Parish Council in the late 1960s, it would appear that in 1976 several requests were made to the Bayham Estate Office for the dedication of a Public Right of Way running through the estate from Pembury to Lamberhurst. These requests were made by Mr and Mrs Groves of the Ramblers' Association, Pembury Parish Council, the Pembury Society, Frant Parish Council, and the Frant Parish Footpath Society. As the proposed dedication crossed Kent and East Sussex, East Sussex County Council (ESCC) has assumed that the route would have been dedicated as a continuous through route although no records at East Sussex have been found to confirm this.

5.12 The following summarises the correspondence that KCC holds together with copies from the Respondents and Applicants Solicitors'.

5.13 Consultations took place with the affected tenants, and the Bayham Estate Office responded to each of these groups in March 1977 informing them that "we have been instructed by Lord Camden to proceed with negotiations for a Public Path Creation Agreement". A letter was also sent to Tunbridge Wells Borough Council advising of Lord Camden's wishes to proceed with negotiations to create the route.

5.14 In the summer of 1977, following various correspondence and meetings, a Draft Public Path Agreement was produced by Tunbridge Wells Borough Council, which was sent to the Bayham Estate Office and KCC for comment.

5.15 The agreement appears to make reference to the Red Route south of Brown's Lodge and then refers to an undefined route, possibly via the church (today known as Bayham L'Eglise), out towards Hook Green. However, the correspondence at this time is unclear as to the exact delineation of the route at this end and no detailed written account has been traced. Indeed, it would appear that the proposed new route was never formally finalised.

5.16 Negotiations appear to have stalled in autumn 1977, when the estate began to be sold off in sections and Lord Camden and his agents wished to consult with the prospective purchasers before entering into any binding agreement. Correspondence at this time indicates that it was still Lord Camden's intention to dedicate a route for public use; a letter to Mr and Mrs Groves in November 1977 states that "Lord Camden still wishes to create a Public Footpath" but that this would have to be held in abeyance until the sale of the estate was completed.

5.17 It does not appear that these discussions were ever formally resumed and it has not been possible to locate any further detailed correspondence regarding this matter. However, a letter dated 27 June 1984 from Kent County Council to Tunbridge Wells Borough Council states that although a draft Public Path Creation Agreement was prepared, it was never completed as "certain conditions which the Estate wished to include were such that the County Council was unable to accept them".

Positive Covenant (copy in Evidence file)

5.18 When Lord Camden sold land over which part of the Red Route lies in 1978, a clause was entered into the conveyance regarding the creation of a route through the Estate. This 'Positive Covenant' affects the Red Route from Brown's Lodge to the southern end of Baker's Bank Field.

5.19 This covenant still appears within the current Land Registry titles of the affected land. It reads "a conveyance of the land in this title and other land dated 24 February 1978 made between (1) The Most Honourable John Charles Henry Fifth Marquis Camden (Vendor) and (2) The Newcombe Estates Company Limited (Purchaser) contains a covenant by the Purchaser with the Vendor to join with him in dedicating to the public a footpath along the track of which the land hatched blue on the filed plan forms part".

Statutory Declarations (copies in Evidence file)

5.20 The Rights of Way Act 1932 enabled landowners to deposit a map showing admitted public rights of way on their land, followed by statutory declarations every six years stating that no further public rights of way had been dedicated. In the absence of proof to the contrary, this was sufficient evidence of their lack of intention to dedicate any additional ways as public highways.

5.21 A deposition was lodged in 1934 by Lord Camden, the Fourth Marquis, who owned all the land crossed by the claimed footpaths. He did not admit any of the claimed paths as public rights of way.

5.22 Further Statutory Declarations were lodged in 1942 and 1951 respectively by Lord Camden, the Fourth Marquis and his successor Lord Camden the Fifth Marquis. They did not admit any of the claimed routes as public rights of way. Whilst the Statutory Declarations were not lodged within the six year period required by the Rights of Way Act 1932, they nonetheless indicate a lack of intention by the landowners to dedicate any further public rights of way over the Bayham Estate at that time.

6. Consultations (copies in evidence file)

6.1 Wealden District Council has no evidence to either support or oppose these claimed footpaths.

6.2 The Open Spaces Society supports the claim but has no evidence to offer.

6.3 Frant Parish Council considered the application and offer no evidence in support of the claim or to change the decision made in 1993.

7. User Evidence in Support of the Application

7.1 Evidence forms and statutory declarations have been submitted in support of the application. It is claimed by the Ramblers Association that the use of the paths during 1950-1970 has been in excess of twenty years and "as of right" by the public at large. It is alleged that there has been no proof of any properly constituted permissive path agreements and indeed that none have ever existed. It is further alleged that whilst between 1950 and 1983 there was significant use by the public of the routes claimed there was a decline of use following the sale of the Estate at the death of the Fifth Marquis of Camden in 1983. The Ramblers Association further claim that there is no overt evidence to suggest that public use of the route was interrupted when the Estate was under the ownership of the Fifth Marquis as none of the witnesses were challenged, nor did the physical prevention of walkers occur during this period. In addition, it is said that there had been no notices displayed during the period of ownership of the Fifth Marquis to either deter use or indicate that the paths were permissive. Notices indicating that the claimed routes were private only appeared following the sale of the Estate.

7.2 A total of 63 sworn witness evidence forms have been received which focus mainly on the Red and Green routes and are denoted on the forms as red witness 1-63 (RW1etc) and green witness 1-23 (GW1etc). The evidence forms show different levels of frequency of use, some indicate knowledge of the path over many years but have only used the route occasionally whilst others have know the route for less years but have used it more frequently.

7.3 The Ramblers Association submission includes various items of documentary evidence, including local walking guides and cartographic sources. Particular emphasis is placed upon the Pembury Tithe Map of 1843, which appears to describe part of the Red Route as "Part Parish Road".

7.4 The Ramblers' Association concludes that the evidence clearly shows that rights of way existed and were used by the public without interruption for a period in excess of 20 years during the lifetime of the Fifth Marquis. Lord Camden never prevented public use and there is therefore a clear case of presumed dedication under section 31 of the Highways Act 1980.

The Table below summarises the use made by these signatories.

	Number of signatories claiming use
Green route	23
Red route	63
Orange 1	29
2	18
3	19
4	16
5	31
6	25
7	24

The Red Route

Date of challenge

7.5 Whilst there is a possibility that the gates at Browns Lodge may have been locked, the evidence is conflicting and no specific dates are recorded. It is necessary to consider other challenges to use. In 1978 Mr Parkman purchased Bayham Lake and it can be seen from evidence forms RW7, 11, 15, 20 and 60 that their use around the lake was challenged. This is further supported by the respondents R16, R31, R42 and R43 Statutory Declarations. Therefore the date of challenge is 1978 and the twenty year period investigated is 1958-1978.

Public use

7.6 Of the 65 witnesses 52 allege to have used the red route in its entirety, the earliest in the 1940s with 12 witnesses claiming use still in 1996/7.

Gates and obstructions

7.7 Many of the witness users recall gates along this route particularly at Browns Lodge with RW8 stating the gate was locked in around 1972. Other users recall a kissing gate at the side of the gate at Browns Lodge during 1940's 1950's and early 1960.

Signs and notices

7.8 From the submitted evidence forms 13 witnesses recall 'private' signs which appeared late 1970's, however there is little information relating to their exact location. The

applicants claim that from 1950 until the sale of various parts of the Estate, there were no notices displayed to either indicate that use was permissive or that the landowner had no intention to dedicate public rights of way. Some witnesses have recalled a "footpath only" sign at the junction of the red route and orange 7 near Bayham Lake.

Verbal challenges to use

7.9 Several witnesses state their use was challenged around Bayham Lake when the fishing began in the late 1970's. RW7, RW11, RW60 recall being challenged and RW60 remembers being told that the routes were privately owned and that permission was needed for their use. Other users noted being challenged were RW2, RW14, RW19, RW20, RW31, RW60.

The Green Route

Date of challenge

7.10 It is noted that Lord Camden erected "Private road-no public right of way" notices at the western end of the green route – Middle Road - in 1975 due to squatters in 4-5 Middle Road. These were subsequently replaced by Mr R Holland on his purchase of the land in 1979. GW11 also wrote to Lord Camden in May 1975 questioning the erection of a gate at Bells Yew Green which challenged her use of the green route. Therefore this report will use 1975 as the date of challenge for the green route and the twenty years period of investigation is therefore 1955-1975.

Public use

7.11 19 people have used the route at some point during the years 1955-1975 with 4 for the full 20 year period. User GW5 had family working on the Estate during 1940's. Some of the users were visiting tenants and/or workers on the Estate.

Gates and obstructions

7.12 Nine users acknowledge gates along the route, four of which state locked gates at Bells Yew Green end in 1959, 1970/3 and late 1970's. GW 11 refers to the ploughing of fields known as 'The Terraces' which interrupted use early 1970's.

Signs and Notices

7.13 Two users recall Private signs but do not specify exact position or wording.

Verbal challenges

7.14 Several users' state they were challenged. GW6, GW7, stopped using all the routes when challenged in 1980's, GW11 was challenged during the 1970's.

Orange Routes

7.15 The evidence of public use for the Orange routes is extremely vague and therefore inconclusive. There are no separate evidence forms for the orange routes. The penultimate question on both the green and red route forms (no. 12 out of 13) asks whether respondents have used any other paths shown on an attached map. Detailed answers were not supplied and no dates or frequency of use are given nor details of any challenges to use by the users.

Orange 1

Date of Challenge

7.16 In 1982 a neighbouring landowner erected a 'Strictly Private' sign at the junction of Orange 1 at Clay Hill Road in Kent. Therefore the twenty year period of use would be 1962-1982.

Public Use

7.17 29 people have claimed to use the route. See note 7.15 above.

Orange Routes 5 and 6

7.18 Orange routes 5 and 6 form one continuous route from the B2169 past Winbridge Lodge, northwards to the Old Abbey ruins and then forming a junction with the Red and Green routes at their eastern end. The Old Abbey ruins came under the guardianship of the Ministry of Works (now English Heritage) in 1961.

Dates of Challenge

7.19 Orange 5: Paul Martin, (R23) states that he was challenged in the late 1960s by the tenant of the Old Abbey. Adrian Pratt was challenged at some point in the 1960s. Therefore any 20 year period of use would have to be between the 1940s and 1960s.

7.20 Orange 6: The gates at Winbridge Lodge appear to have been locked since the mid 1970's by English Heritage. Therefore any 20 year period of use would have to be between the mid 1950s and mid 1970s.

Public Use

7.21 The user evidence forms submitted in support of the application are either headed 'Red Route' or 'Green Route'. There are no evidence forms available specifically for the Orange Routes, therefore there is no clear indication of use of the paths as noted in 7.15 above.

Orange Route 7

7.22 Orange 7 is in two sections, being intersected by the green route. The southern section forms the access for Bayham Abbey Farm. The route in its entirety formed part of the post-war drive to Bayham Abbey.

Date of Challenge

7.23 Many of those who made statutory declarations mention the presence of unlocked gates at the junction with the B2169. Only Pamela Mephram (R25), states that they may have been locked but she does not give dates.

7.24 From approx 1959 when Mr John Vernon, (R43), became tenant at Bayham Home Farm, there was a sign next to the gate onto the B2169 stating 'Private Road to Bayham Abbey and Bayham Farm Only'. The Ramblers' Survey of 1952 also mentioned a 'Private' notice at Bayham Abbey Farm. Any 20 year period of use for this route would have to be taken between the 1930s and the 1950s.

Public Use

7.25 22 people state that they have used the route, but there is a lack of detail in their evidence as set out in 7.15 above.

NB: For the application for Orange 7 to be successful, the applications concerning the green and red routes would also have to be allowed, as otherwise Orange 7 would not run from one public highway to another.

The table below shows user evidence of the routes.

Name	Period Of Use	User Frequency	Path (s) Used	Remarks
RW1 Mrs J E Avery	1945-1962	Regularly	Red	For walking
RW2 Mrs S G Backhurst	1983-1991	Six/seven times a year	Red and Orange 1	Leisure, not challenged but friend was in 1993. locked gates in 1994. 'private land' sign at southern end
RW3 W E Bailey – deceased	1950s	Twice a year	Red and Orange 4 & 7	Rambling
RW4 D E Beckett	1952-1964	Once a month	Red. Orange 3 5 6 7	Rambling, visit Abbey ruins and church
RW5 P M Beddoe	1967 onwards	Excess of 100	Red. Orange 1 5 6	In 1969 map reading with Pembury cub scouts used red route. "In 1972 Lady Camden let us fish in stream but not the lake." Private no fishing sign near Bayham
RW6 Mrs M E Brown	1970	Three	Red and Orange 5	Walking
RW7 A H Burton	1960-1976	4/5 times a year	Red and Orange 1 5 6 7	Recreation. Stopped when fishing at lake started
RW8 Mrs M Buss	1965-1996	Variable/almost daily	Red	Recreation, dogwalking. 1972 gate at Browns Lodge locked
RW9 Ms S E Buss	1967-1996	Several times a year	Red	Recreation on foot, horseback, bike. Gate at picnic area near Dundle Lane
RW10 & GW5 J S Cane	1940-1960	Many times	Red. Green. All orange routes	Grandparents worked on Estate until around 1946. used for recreation
RW11 J M D Carmichael	1970-1985	Four times	Red. Orange 2 3 5 6 7	Leisure walking. Gates at junction with Dundle Road. No obstructions until 1975. gates erected in 1975 locked on occasions. 'Private' sign after 1975.
RW12 Mrs V M Catt	1957-1961	Six times	Red. Orange 5 7	Leisure, blackberrying. B2169 Little Bayham to Kiping Cross. Gates at junction of red and green route and at Browns Lodge

RW13 Miss M R Cloke	1966-1986	Occasional weekends	Red.	Recreational from Pembury to Bayham Abbey
RW14 Mrs A Coulstock	During 1940's, 1950's, 1960's & 1980's	Red route 1950's & 1960's orange 1, 2, 3	Red. Orange 1 2 3	Leisure, cycling, walking. gates at crossing of Dundle Lane, not locked during 1940-early 1960's
RW15 W J Coulstock	As above	As above	As above	As above. Challenged and escorted from Bayham Lake mid 1980's
RW16 Mr W E Coultrup RW17 Mrs J Coultrup & RW18 Mr B Coultrup	1971-1973	At least twice	Red. Orange 1 & 3	Recreational. Gates at Browns Lodge
RW19 A R Cox GW6	1944-1985 1955-1985	Dozens hundred	Red. Orange 1-7 Green	Recreation. Used as part of round walk. Gates at Browns Lodge and each side of driveway to Bayham Abbey House Gates at Bells View Green, Forest Lodge Bayham Abbey driveway
RW20 Mrs K M Cox GW7	1950-1982 1950-1985	Once a month Twice a month	Red. Orange 1 2 4 5 6 Green.	Recreation. Gates at Browns Lodge, eastern end of Bayham Lake, & at bridge at red and green route junction. Remembers gates at all entrances of Bayham Estate during 1940' & 1950's. once fishing lake opened gate always locked at east end of Bayham Lake. Gates east of Forest Lodge, Old Home Farm to Bayham Lake
RW21 Mrs W E CoxonTaylor	From 1967	About 16	Red.	Recreation on foot occasionally on horseback only to Dundle Road When bypass being built path was impassable.
RW22 Mrs H A Cresswell	1955-1964	Three/four times a week	Red and others cannot remember specifically which ones	Pleasure, on foot and horse. Gates at Browns Lodge not locked. Some kind of barriers beyond lake the horses/ponies jumped.
RW23 Mrs D M Curd	1960-1970's	Four – six times	Red. Orange 1 2 3	School holiday walks. Acknowledges gates does not specify location
RW24 Mrs V Diamond	1952-1970	Numerous	Red.	Enjoying countryside, recalls gates but cannot remember location

RW25 Mrs P M Farley	1950's	Two to three	Red.	Pleasure. Recalls gates but cannot remember location Tired to walk again in 1980 but unable to have access
RW26 Miss E Gouldson GW8	1940-1962 1940-1959	Three or four occasionally	Red. Green. Orange 5 6 7	Walking. Previous to 1958 walked whole red route through Lake and Abbey Last walked green route in 1959 gate locked at Bells Yew Green
RW27 Mrs M A Hall	1956/7 – 1970	Approx twenty	Red. Orange 3	Countrywalking
RW28 Miss L Hart	1976-1989	Very approx. fifty times	Red.	Walking towards Bayham Abbey. Recalls gates near Kippings Cross Road
RW29 Mrs K Houch	1971-1987	Nine times	Red.	Visiting Miles Farm & Sunninglye Farm. Gate at Pembury Church, stiles further on
RW30 Mrs M I Huckings GW 10	1956-1970 1956-1970	Thirty plus Three/four	Red. Orange 1 2 3 5 Green.	Country walking and picnic. Gate at Browns Lodge Saw 'Land Agent' at Tollsye no challenge made
RW31 Mrs R J Hull GW11	1974 onwards	Variable – many times by Lake	Red. Orange 1 4 5 6 7 Green	Gates in recent years near Browns Lodge and Tollsye. States previous owner of Little Bayham Lodge, Mrs Baldock saw many people walking by the Lake. Recreation and visits
RW32 Mrs P M Izzard GW12	1957-1969	Often	Red. Orange 1 6 Green	Picnic
RW33 G E Jury	1941-1951	Unspecified	Red. All Orange	With the scouts
RW34 & GW14 G King RW35 & GW13 Mrs B R King	1961 onwards 1961-1980	Twice a year At least five times	All Green	Rambling and as members of rambling groups 1970 walked green as part of ramble
RW36 Mrs D A Knight	1958-1960	Ten or twelve times	Red	Picnic near ruins. Pembury Bible Group organised walks
RW 37 M Lee	1960-1969	Once a year	Red	Leisurely walk. Gates at Browns Lodge. Rumours in 1960's southwards from Browns Lodge no longer walkable

RW38 Mrs R J Lennon	"All my life"	Pre 1968 = many times. One/two times a year since	Red. Orange 1-6	Pleasure. Gates at Browns Lodge. On foot and horseback
RW39 C G Marshall	Early 1970's	Twice	Red. Orange 56	Pleasure, to reach Elephants Head. gate at Browns Lodge
RW40 Miss A Nicholls & RW41 N Gray-Jones	1964-1995	Several	Red. Orange 56	Pleasure from Pembury to Bayham abbey and return
RW42 Mrs E E Reeve	1956-1993	Dozens	Red. Orange 7	Pleasure
RW43 & GW16 Mrs Rendall	From 1937	Many times	Red. Orange 1-7 Green	Recreational. Remembers father talking to Lord Camden
RW44 Mrs E M Rhodes	1956-1970	Thirty times	Red.	Leisurely walks. Gates crossing over small lane.
RW45 & GW717 Mrs J M Richmond	1945-1965	Frequently	Red. Orange 1-7 Green	Recreation and visiting. Once met Lord Camden in 1944 who said "good afternoon". Private sign on bridge to Abbey grounds. Gate at Bells Yew Green and on path 7 by farm track, not locked
RW46 L H Roberts	From 1943	Unspecified	Red. Orange 1-7	Walking. Worked for Marquis Camden as Housekeeper 1944-1980
RW47 Mrs S A Rogers	Late 1950's-early 1960's	Several	Red. Orange 15	Visiting employees of estate. Orange 1 & 5 only occasionally overgrown in high summer
RW 48 Mr and RW49 Mrs Rowley	1970-1980	Once a year	Red. Orange 567	Rambling. Gate sat Browns Lodge. Private sign once Estate sold
RW50 Mrs B J Short	1940 – 1996	Two/three times a year	Red.	Recreation
RW51 Miss A F Sweetman	1958/9	Once	Red.	For a walk
RW52 & GW19 N Tapp	1975-1985	Twenty-five/thirty	Red. Orange 7	Pleasure and recreation
RW 53 Miss R Toms (deceased)	1970-1980 1976-1980	Ten Ten/fifteen	Red. Green. Orange 7	Recreation and walk. Open gates at Bells Yew Green and beginning of drive

RW54 Mr and RW55 Mrs J Underdown	1950's, 1960's mid- 1980's & 1993	Numerous	Red. Orange 1 2	Recreation. Gates at Pembury end
RW56 E J Wallis	1967- 1977	Approx. six times a year	Red.	Pembury to Dundle Lane, family walks
RW57 Mrs L A Welch	1960's	Several	Red.	Went abroad and returned 1980's when route was restricted beyond pond.
RW58 B N Weston	1975- 1987	Four	Red.	Various church rambles, Pembury to Bayham Abbey. Gate at Browns Lodge, obstructions at Browns Lodge when 'logging'
RW 59 & GW20 Miss H E Whatmore	Since 1954	Frequently	Red. Orange 1 2 5 Green	On foot and horseback. Gates at Browns Lodge and either side of field before reaching lake. Warning notices when estate was sold Horseback through Bayham woods, visiting various owners
RW60 P Mulholland	1973- 1995	Regularly	Red Orange 1 4 5	Challenged in 1980's. padlocked gate 1996/7. 1980's sought permission from fishery to walk
RW61 Dr J E Backhurst	From 1975	About 7	Red. Orange 1 5 6	Recreation. 1993 gates and private signs Browns Lodge.
GW1 J A Anstead	1967- 1971	Ten-twenty	Green. Orange 6	Round entrance to ruins and back for pleasure and dog walking. Late 1970's gate and notice, no longer used it
GW 2 Mr(deceased) and Mrs W E Bailey	1950's & 1960's	Frequently	Green. Orange 4 7	Pleasure. Stile to right after passing over bridge.
GW3 E G Boorman	1953- 1971	Hundred plus	Green. Orange 1 5 6 7	Pleasure. Gates
GW4 P W Blackwell	1956- 1977	Infrequently	Green. Orange 5 6	Used green route for recreation. To get to and from work at Sunninglye and Rushlye Farm 1959-1960 and 1961-1965 as a GPO technician. Open gate at Bells Yew Green end.
RW	1956-64	Three occasions	Red	From Browns lodge to lake looking for butterflies did not see anyone else at the Lake
GW21 K Burton	1960- 1972	Four a year	Green. Orange 12 4 5 7	Leisure. Gates at Bells Yew Green locked 1978-barbed wire across it & swing gate at pond. FP2 had private sign in 1978

GW9 S C Grenville	1950- 1955	Three	Green. Orange 1 5 7	Pleasure walking
GW 15 Mrs C E Patel	1970- 1982	Once a month	Green. Orange 5 6 7	Pleasure. Gates at Forest Lodge, field opposite Bayham Abbey House
GW 18 Mrs M A Speedy	1956- 1960	Unspecified	Green. Orange 5	recreational
RW62 & GW22Mrs J S Ingram	1958- 1970	Weekly	Red Green Orange 1 4 5 6	Pleasure. Bike foot & horseback gates at Bells Yew Green
RW63 G F Brook	1961- 1966	Three	Red.	Pleasure

Interviews

7.26 Interviews with some of the user witnesses were carried out by officers from Kent County Council and copies were submitted to this County Council. The relevant interviews are summarised as follows:

7.27 Mrs. Backhurst (RW2) first used the Red Route in the mid-1980s from Pembury, travelling south towards Tollslye and deviating from the claimed route to follow a track towards Bayham Abbey House. She has used the route occasionally and was challenged only recently at Brown's Lodge. She is also aware of other people having been challenged whilst using the route. When Mrs. Backhurst first used the Red Route she does not recall any gates at Brown's Lodge, however during her most recent visit, the gate at Brown's Lodge was locked and there were 'private' notices.

7.28 Mrs. Buss (RW8 and GW3) has used the entire Red Route from Pembury to its junction with the Green Route. She first used the route as a child during the 1950s and walked once or twice a year to the ruins up until the 1970s. During the period 1970 to 1990 Mrs Buss states she walked the Red Route from Pembury to Brown's Lodge four to five times each year, and now walks there approximately once a year. Mrs. Buss recalls gates on both sides of Dundle Road at Brown's Lodge and states that these were normally propped open, although in later years (probably during the 1980s) the gate immediately adjacent to Brown's Lodge had a padlock and chain on it. This deterred her from using the route.

7.29 Mr. Coulstock (RW14) began using the Red Route in the early 1950s when he saw it shown on the Bartholomew Map (Nov 1945 edition) as a "public path". He recalls using the entire length of the Red Route then continuing in the direction of Lamberhurst along Orange Route 3. His use continued until he was challenged during the 1980s at Bayham Lake and told that the route was not a footpath. Mr. Coulstock remembers there being a double gate and single gate beside Brown's Lodge on the Red Route, but does not recall whether it was locked.

7.30 Mr. Cox (RW19 and GW6) has used all of the claimed routes except the section of the Red Route between Pembury and Brown's Lodge. He first used a section of the Red Route in 1944 and used sections of the Green Route quite regularly during the 1950s. He stopped using the routes on the Estate in the mid 1980s when challenged by the owners of the trout fishery. On average, he recalls using various sections of the claimed routes approximately 20 times per year, and walked on the Estate frequently with his children during the late 1950s to the early 1970s. He frequently recalls seeing other people using the routes. In approximately 1986, Mr Cox was challenged by the owner or an employee of the

trout fishery who made it clear that there was no public access at that time. He has also heard of other people being challenged, probably around the same time.

7.31 Mrs. Cox (RW20 and GW7) has knowledge of all the claimed routes. As a child, she lived in Hook Green then Little Bayham and played in and around the estate. She recalls frequently meeting people walking through the estate on the claimed routes who would often ask if they were still on the footpath and also remembers seeing Lord and Lady Camden who appeared to be aware of people walking but did not seem to object to this. She began using the routes more seriously as a teenager in the early 1950s and continued until she was challenged in the mid-1980s. Mrs. Cox's father was employed as a carpenter on the estate and she recalls that some of the gates on the routes were made by her father and had pedestrian gates beside them if the main gates were kept locked. Mrs. Cox has very detailed knowledge of all the gates on the estate. She recalls finding the gate on Orange Route 1 at Clay Hill Road chained shut in the late 1980s. Mrs. Cox has provided a number of photographs taken during the 1950s, 1960s and early 1970s showing people using the routes on the Estate.

7.32 Miss. Hart (RW28) has used the Red Route between Pembury and Dundle Lane. She has known the route for 28 years and first began using it in 1976 and then on walking on a weekly basis until 1989. During this period, she frequently saw other people using the route. Miss Hart was never challenged using the route, nor did she seek permission or recall any prohibitive notices. However, she does recall a barrier across the path, possibly barbed wire, at its junction with Dundle Road.

7.33 Mrs. Hull (RW31 and GW11) has knowledge of the Red Route from Brown's Lodge to Bayham as well as Orange Routes 1 and 4 in Kent. She used these routes between 1972 and 1981 when living in Bells Yew Green, and also states that she used other unclaimed tracks through the estate whilst exploring the estate. She recalls being challenged by Mr. Harris (no date or location given) and Mr. Holland on the Green Route during the 1970s. She further adds that her daughter was challenged by Mr. Vernon, although she is unsure of the location, and states that Mr. Vernon was known locally to have challenged people. Mrs. Hull states that she has never sought permission to use any of the claimed routes and recall a 'footpath only' sign at the junction of Bayham Lake with Orange Route 7. She also recalls a large gate to prevent access on the Red Route near the lake which appeared after Mr. Harris purchased the land, as well as a missing bridge south of the church on Orange Route 4.

7.34 Mr. and Mrs. King (RW34 and 35 and GW 13 and 14) have used the entire length of the Red Route, as well as Orange Routes 1, 3 and 4. They first used the routes in 1961 and continued to do so after joining the Tunbridge Wells group of the Ramblers' Association in 1972. They stopped walking on the estate when it was fragmented and sold off as it was felt that the new landowners did not want to admit the public. They recall using the routes approximately once every 18 months and often saw others using the routes, especially in the eastern area of the estate. They state that it was well known amongst their Rambling club that Lord Camden was quite happy for these routes to be recorded as Public Rights of Way, but that this was never done due to legal issues and the death of Lord Camden's wife.

7.35 Mr. Mulholland (RW60) used the Red Route from its junction with Orange Route 7 (which he accessed by car) to Brown's Lodge between 1973 and the late 1980s. He recalls using the Red Route approximately 2 to 3 times a month between Bayham Lake and Furnace Wood, but only occasionally walked further to Brown's Lodge. Mr. Mulholland first recalls being challenged in the 1980s by the trout fishery owner. He was told that it was private property and that he didn't want people walking there disturbing the fish. Mr. Mulholland explained that it was a footpath and that they had been using it as such for some time, so the owner agreed to allow him to continue using it provided Mr Mulholland notify him of his presence. The only gate was beside the lake at the junction of the Red Route and Orange Route 7. When Mr Mulholland first began using the route, this gate was always open and there was a pedestrian gate beside it. Mr. Mulholland has a vague recollection that there was a 'footpath' sign at the junction of the Red Route and Orange Route 7, but this was removed when the trout fishery owners moved it. Mr. Mulholland stopped using the routes in

the late 1980s when the fish farm was sold and the new owners challenged him using it. He recalls that prohibitive notices also appeared at that time.

7.36 Mr. Wallis (RW56) used the Red Route from Pembury to Dundle Lane several times a year between the mid-1970s and the late 1980s. He does not recall any notices or obstructions and frequently saw other people using the route on foot.

7.37 The applicant submission states that the paths were regarded as public rights of ways and used both by those connected with Estate and general public and that use was with the full acquiescence of the Fifth Marquis. It further states that Lord Camden never acted in anyway with the intent to prevent public use on foot.

8. Other Supporting Documents

8.1 The documentary evidence has been referred to in historical research Section 4 and 5 above.

8.2 Four additional user evidence forms from Messrs Huggett, Whitehead, Young & Cole lodged in the previous claim but not submitted with this application are mentioned in the submission claiming the four were not challenged, none saw private notices, all thought they were walking public paths.

9. Response of the Landowners & Occupiers

9.1 Evidence in rebuttal has been submitted by Knights Solicitors on behalf of the landowners who oppose the application. Sworn statements and witness evidence forms have been received from past and present landowners and tenants, former land agents, those who lived on or local to the Estate and those who worked on/for the Estate, a summary of the information is outlined below. The original submissions are comprehensive with each declaration clearly stating knowledge of each path and are available in four files in the Members' Room.

NAME / RESPONDENT No. (R)	LIVED/WORKED IN AREA	PATH	REMARKS
R1 G Assinder	Manager of Dundale Farm, lived Browns Lodge 1968 -1972, 1972→ The Granary, Dundale Farm	Red - known as Coach Road	Walked north of Browns Lodge, but knew trespassing on Mr Bowman's land who cleared the track. Saw one woman riding horse. Saw users on Coach road near Browns Lodge, gate was sometimes locked. Was challenged 1971 by Jack Underwood, Lord Camden's keeper when walking on red route over Bayham Estate.
R2 A F Appleton	Local 1986 onwards	Orange	Gates locked and told by custodians of ruins private land. Gates were locked
R3 J Barrow	Under R H & R W Clutton -Land agent until 1983. 1975-77 sub-agent for Bayham, involved in the sale of Bayham Abbey, Manor and leasing of lake	Red Green Orange 4 & 7	Spent Mondays & Thursday with Lord Camden on the Estate. Remembers only family, visitors, tenants and estate workers on the land. Recollects only walkers used paths with permission. Many private signs on Estate. Walked green route on estate business. Acknowledges orange 4 as Estate path but no knowledge of use. Orange 7 was the main drive to the Abbey and policed.

R4 G R Boorman	1949-1980 fourth generation tenant farmer of Fifth Marquis Camden at Hoathly Farm. Former Lamberhurst Parish Councillor	Red Green Orange 1-7	In 1949 Remembers substantial gates at Browns Lodge on red route always locked, all estate workers had keys, when rotted another put in place. Other gates at various points some locked. Tim Hutchings Estates agent informed that there were no public footpaths on estate. Keepers were instructed to remove anyone on estate. Asked permission - granted -to continue use of red route when various parts of estate sold off. Has ridden green route but encountered various gates some locked. Private notice sign at Bells Yew Green
R5 D C Boorman	Born in 1932 in Bayham Old Abbey worked in Forge	All	Some gates were locked. I asked permission to use routes. Lord and Lady Camden allowed residents of Estate to use tracks.
R6 B Bowman	Lived at/around Little Bayhall since 1938. father tenant of Fourth and Fifth Marquess	Red green	Gates were only opened on Hunt days by the Estates keepers. Was challenged by tenants in Browns Lodge when tried to use red route. Green route has been fairly passable and used very occasionally never believed it to be public
R7 G Brooks	Lived at Bell Yew Green since 1948	Red Green Orange 1 4 6 7	Used green route to extract timber off the Estate, was a patrolled route by J Underwood - estate keeper. Recalls gates. Used red route for hauling timber
R8 D G E H Pratt, Sixth Marquis Camden	Never lived on Bayham Estate, many visits and had dealings	All	Never been aware of any public footpaths. Use was by permission and workers of estate
R9 B J I Carver	Under R H & R W Clutten - 1967-72 sub-agent for Bayham. Met with Lord Camden every Monday	All	Recall the Marquis granting permission for use of paths for fishing, bird watching, scouts, Eridge Foxhounds. Gates were unlocked by Jack Underwood estate keeper. Orange 7 was to access to Abbey. Recalls broken padlocks from gates on red route. Green route legitimate access track for dwellings
R10 J C Chapman	Lived at 3 Camden Cottage since 1927, worked on estate for Fourth Marquis, father was a night watchmen on estate	Red Green Orange 4 6 7	Do not recall any public using routes. Was used by estate workers only and for permitted Hunts
R11 J E Collins	Postman for Bayham 1972-1993	Red Green Orange 1 4 6 7	Not public paths, they are drives, tracks and logging tracks. Only recalls people living or working on estate

R 12 J A Evans-Freke	Under R H & R W Clutten – 1972-75 sub-agent for Bayham,	Red Green Orange 1 4 6 7	Recalls reports on challenge of use on average three times a year. Gave permission for scouts Eridge Foxhounds.
R13 E J Fenton	Owner and lives at Dundale Farm	Red	Owns part of the red route through Furnace Wood. Has always challenged any walker and horserider called Police in 1980s to remove motorcyclists. Furnace Wood clear felled 1970-80 gates replaced. Private property signs
R14 A J Fleet	1961-83 worked at Bayham Abbey Farm, lived at Bayham Cottages	Red Green Orange 1 6 7	Challenged by Lady Camden when driving to sow Lord Camden's fields. Red and green routes used an agricultural track. Small track across terraces ploughed over
R15 R M Gentry	Postman for the area	Red Green Orange 1 3 6 7	Mid 1980s fished on red route access by climbing over locked field gate. Orange 7 had private sign up. Green route very overgrown
R16 Mrs S M Guerra	Lives at Garden Lodge since 1978	All	On walking south of red route saw J Parkman who leased lake turn back walkers. Various locked gates. Spoke to Lord Camden who informed there were no public rights of way but he did give permission to those who sought it e.g. Weald walkers. In 1988 had annual licence to walk on estate, green route private track Mr R Harris has granted permission to walk parts he now owns.
R17 W G Gutsell	Worked on Bayham Home Farm 1983-1989.	Red Green Orange 6 7	All estate tracks
R18 R Harris	Landowner	All	Red route is a track not passable in its entirety. Various gates some locked. Challenged users in 1986. sought permission for myself from Tim Hutchings Estate agent to access property. Various gates on green route some locked, large quarry in Abbots Wood. Have replaced gates on routes when needed
R19 B M Hartley	Lives Shepherds Lodge on Bayham Estate 1976-1996	All	When purchased property dealt with Tim Hutchings Estate agent who confirmed no public paths. Acknowledges Lord Camden at one point consider permissive path but chose not to dedicate. Large gate post on 'private' drive at route 7. Locked gate on green route at Bayham Manor. Various gates on red route
R20 R S Hay	Director of Hoathly Farm	Orange 1 2 3 4 6	On purchase was assured that no public footpaths on land

R21 R C Holland	Lived at Nobles Gate Farm, now at Sandydane since 1970. Owns Middle Road	Red Green	Green route always been agricultural. Father had a key to locked gates. Saw tenants and workers of Estate using route. Wife and I walked route for recreation as we were part of the estate and it was permissible. Gates and signs on the routes. from 1979 have challenged users of Middle Road – green-
R22 T J B Hutchings	Partner at R H & R W Clutton. Involved in Bayham Estate since 1974	All	There was some permissive use of the Estate I was responsible for granting this in licence in the form of a letter to those concerned. Orange 7 is the only access track to the Abbey and is maintained by Bayham Abbey Residents Association Ltd
R23 P St. John Martin	Residential tenant 1954-1967 at Tollslye	Red Green Orange 1 2 5 6 7	My sister and I had permission to ride ponies on the Estate and fish with Lord Camden's butler's sons, acknowledges many gates some locked on all routes. Was challenged when using green route.
R24 D R Mackintosh	1980 1990 knowledge of routes as agent and land manager	All	Responsible for replacing many gates 1980-1990. stopped users in 1980s and 1985
R25 Pamela M Mepham	Worked at Estate Laundry in 1943. Mother worked on estate as Caretaker of Dower House. Rented cottage from Fifth Marquis, then bought freehold c1980	All	Estate staff and tenants used paths. Lodges had bells to ring for the keepers who had keys to unlock as necessary. Only users I met were known to me from Estate
R26 F L H J Meynell	Lives in Lamberhurst member of Parish Council	Orange 1 2 3 6 7	Through general knowledge of area have never learnt of any acceptance of public access through the Estate as of right.
R27 G J Miles	Tenant 1964 1979 freeholder 1979 onwards	Red Green Orange 6 7	My parents organised local rambles on Estate but sought permission from Estate Office. Had permissive use of Red until I bought an access strip in 1979 then Estate revoked my permission to use red route. Many gates some locked. As instructed by Estate as a tenant I would challenge users. As landowners wife and I have challenged users.
R28 R G Miles	Adjoining landowner at Fletchers Farm from 1964	Red	Coach road was not a public path, saw local people occasional use.
R29 J R Pavey	Solicitor for respondents	All	Submitted copies of Lamberhurst History Society talks, Camden Archive, Lamberhurst Parish Council minutes, all documents in respondents bundle in

			members room
R30 J C Peate	Lives local has known Fifth Marquis, his brother and their children	Red Green Orange1 4 6 7	Lord Roderick Pratt - Fifth Marquis brother 'told me there were no public paths'. Red route carriage drive use by Camden family. Had permission from Lord Camden to exercise my racehorses on estate save for within ¼ mile of Bayham Manor. Various gates many locked
R31 J Pezare	Tenant at Tollslye since 1954	Red Green Orange 1 4 6 7	Seen people infrequently on route. Gates on routes shut and many locked. Had permission to ride on estate except main drive.
R32 A J C Pratt	Nephew of Fifth Marquis	All	Used to ride hunt and walk with uncle's permission. I challenged horseriders in 1970-1980's. Many locked gates that Jack Underwood would unlock. I was challenged late 1970's on green route by Mr Holland
R33 J E Read	Worked for Fifth Marquis 1946-53. have lived at Little Bayham Cottages since 1953	Red Green Orange 1 3 4 6 7	Known that permission was granted for use if applied to Estate Office. Various gates not all locked. Private signs on trees and gateposts
R34 M F Robards	Four generations have lived in and around Bayham	All	Red route had hardcore laid in 1970's to help with felling, always believed no public footpaths. No path in frequent use. Day tickets sold 1950-1970 for coarse fishing. Various gates some locked
R35 Mrs M P Schicht	Hunted with Eridge Foxhounds from 1950. Master 1971-1980	Red Green orange 6 7	Permission sought for every hunt from Lord Camden, locked gates were opened for us by his keeper
R36 J H C Skinner	Lives in Bells Yew Green	Red Green	Known locally that estate workers and tenants could use paths on the Estate. I did walk green route but didn't believe I was allowed to. Last walked red route as an estate path in 1950s, various gates and private signs
R37 R I F Stuart-Pennink	Owned and farmed Nobles Gate Farm 1979-1995	Green Orange	Well known that permission was needed to use paths on estate, various gates some locked. 1980 notices on Middle Road "Private Road-No public Access"
R38 Mrs K M Sullivan	1982 bought Bayham L'Eglise	Orange	Lord Camden informed us there were no public footpaths
R39 G P Tanne	Worked on Estate during war as a POW. Permanent estate worker 1948-1951. lives locally	Red Green Orange 1 4 5 6 7	Permission from Lord Camden to ferret. Brother in law worked for Lord Camden. Lived at Little Bayham Cottages 1948-1952. Do not believe public paths existed they were all private.

R40 J E Underwood	Son of Jack Underwood, Estate's gamekeeper 1930-1960	Red Green Orange 1 6 7	As children of Lord Camden's Keeper we were allowed free range on the Estate. Part of my father's job was to turn people off the estate. He had keys to all the locked gates and continued to help on the estate after his retirement c1960 till his death in 1976. use of the red route trailed off after war
R41 B J Uren	Lives local, friend of Caretakers of Dower House on Estate	Orange 1 3 4 5 6	Use of the paths to get to church. Played on estate 1963-1968. Did not believe paths were public
R42 C H Vernon	Lived at Bayham Home Farm 1959-1971, 1972-1979. worked on farm 1959-1988	All	Never believed any paths were public. I and father challenged the odd user we saw. Various gates some locked, notices saying private road. In middle green route 1972 we drilled across, therefore no track across terraces since this time.
R43 Mrs H J Vernon	Lived in rented Wickhurst Farm with parents, 1959-1991 farmed Abbey Bayham Farm as tenant, freeholder of Sandhurst Fm	Red Green Orange 1 2 3 5 6 7	1959 told by Lord Camden did not want people on estate who had no connection with it. Trespassers were always asked to leave. Estate was 'policed' by keepers. Various gates some locked. My husband held keys for some. Green just access no paths across terraces for last 30 years. 1970's husband confronted parties of ramblers led by Mrs R Hull who wrote to say they would be walking it. 1980's usage increased due to fishing in lake
R44 B M Walter	Local	Red Green	1951-53 played in area never entered estate unless visiting workers of estate as knew it was private

Summary of use by respondents

9.2 Out of the 44 sworn statements, seven worked on Estate, six worked for Lord Camden, six were tenants, 22 recall locked gates, four were challenged, and six challenged other users, two relatives of the Fifth Marquis and 11 recall asking permission from Lord Camden's Estate.

Green route

9.3 The respondents correctly state the green route was a highway diverted by 1799 Quarter Session onto the B2169 main road after which, it is claimed, was used on a permissive basis as a thoroughfare for Estate workers and tenants, for exercising racehorses, recreational riding hunting walking, agricultural access, timber extraction and postal delivery.

9.4 The route crosses the green at Bells Yew Green along Middle Road, through Abbots Down, fields known as Diamonds, along northern edge of Upper Sluice Wood through fields known as 'The Terraces' past Bayham Abbey Farm-Bayham Manor- to the main Abbey drive. In 1973 Bayham Abbey Farm was demolished to allow construction of Bayham Manor where the Fifth Marquis moved into in 1975. Here the green route becomes the rear drive to Bayham Manor for 100 yards before joining the main drive -Orange 7- and passes within 10

metres of Bayham Manor and its outbuildings. It then continues north-easterly to meet the crossroads of the claimed paths, red and orange 1 and 5.

9.5 The Respondents state that the exact route of the claimed green route is questionable. They state that the ploughing over, without reinstating, of the track at the 'Terraces' in 1972 and the landscaping in 1970's around the building of the new Bayham Manor would have made the route claimed impassable at times. User GW7 also acknowledges with the new building, that her route used may have changed. They submit the omission of such a track in Ordnance Survey plans 1961 to 1980 help to support this.

9.6 It is further submitted that Noble's Gate/Lodge, shown on the plan, was the more likely entrance/exit point to the central part of the Estate for the majority of users rather than Middle Road through to Abbots Wood. This is supported by Respondents 9 10 12 14 21 22 32 33 34 36 37 and 42. The previous claim application included this route. The Respondents submit that use of the claimed path was mainly permissive, by Estate workers and tenants, as a thoroughfare for the Estate and as means of access to Estate Cottages.

Red Route (also referred to as part of 'The Old Coach Road')

9.7 This starts in Kent from its junction with Kent Public Footpath WT239 to the County boundary at point A and where it crosses back into Kent at point D through Furnace Wood to where it re-enters East Sussex at point E in a generally south-easterly direction to point J.

9.8 The respondents individually recall locked gates across some of the claimed route, verbal challenges that were made against those found on the estate without due reason and obstructions and interruptions such as overgrowth and missing bridges which, in their view, would not have enabled uninterrupted use of the claimed routes as the applicants suggest within their evidence. Collectively, they provide a valuable insight into the general management of the estate over a significant period of time.

9.9 A series of interviews were undertaken by the Kent Officers with copies submitted to this Council. The relevant interviewees and their comments are summarised below:

9.10 Mr. Fenton purchased Dundale Farm in 1981 and owns a considerable section of the Red Route north of Brown's Lodge. Since 1981, he has only infrequently seen people using the Red Route and has always challenged people whom he found using the route. He stated that during the early 1980s, when felling was taking place at Furnace Wood, there were no gates adjacent to Brown's Lodge, but they were replaced when the felling had finished. He emphasised that since that time a locked wooden gate has been in situ adjacent to Brown's Lodge with a notice stating that the land was private. He recalled giving permission to use the route on several occasions to the same person.

9.11 Mr. and Mrs. Holland have been landowners of Middle Lane since 1979. Mr Holland had previously lived at Nobles Gate since 1959. The Hollands have been aware of infrequent public use and have challenged such use. They state that permission has been granted for certain people to use the route. Notices 'Private Road – no public right of way' originally erected by the Bayham Estate were replaced by Mr Holland in the 1980's. Mr Holland's parents were tenants of the Fifth Marquis and were notified of Hunt days by Jack Underwood (gamekeeper) in order to unlock the gates in their tenancy. The Estate gates were always locked and tenants had keys.

9.12 Mr. Hutchings was the land agent for the Estate from 1975 and became a trustee of the Camden Trust following the death of the Fifth Marquis in 1983. He wasn't aware of public use of any of the claimed routes and believes that the estate gates were there to keep the public out and assert that the estate was the private home of Lord Camden. According to Mr. Hutchings, the whole estate was, in general, allowed to deteriorate from the post war era until the selling off of properties due to the adverse financial situation. The tenants would have been responsible for the upkeep of the fences and gates to keep the estate stock-

proof. The main estate gates were generally allowed to deteriorate and only very occasionally maintained. There is a possibility that the gates were not locked; some may have been wedged shut due to their dilapidated state or locked for a particular purpose, but in the main they were certainly closed. Mr Hutchings recalls negotiations regarding the possible dedication of a route and explained that in 1978 prospective purchasers would have been made aware of a proposal for a Public Path Creation Agreement. A positive covenant was included in the conveyances to make the purchasers aware of this and to provide a legal basis for Lord Camden to create a route should he so wish. He further stated that there was a standard clause in the tenancy agreements instructing tenants to prevent trespass on the land. Mr. Hutchings recalls that John Parkman (who bought the land around Bayham lake in approximately 1979) was very protective of his land and very vigilant at all times. He certainly would have stopped and warned anyone he found walking on the Red Route south of Bayham Lake. Likewise, Mr. Vernon (tenant at Bayham Home Farm) and Mr. Boorman (tenant at Hoathly Farm) would also have challenged people. Mr Hutchings emphasised that Lord Camden was very protective of his privacy and although he was happy to allow permissive use of the claimed routes, he did not like to see people walking near the Abbey and always requested that people did not walk across the southerly view from the Abbey.

9.13 Mr. Miles has farmed as a tenant at Sunninglye Farm since 1964 and purchased the farm in 1979. He confirmed that his only knowledge of the claimed routes was in respect of the Red Route and had only witnessed use of this route by the public on rare occasions. He disputed that there were any public rights because the gates on the Red Route at Brown's Lodge were always locked. Furthermore, his father and mother-in-law, Mr and Mrs Groves, were the former joint local footpath secretaries for the Tunbridge Wells Rambling Club and he was aware that they had always written to the Bayham Estate seeking permission to walk in that area. On one occasion, they walked through his fields to avoid locked gates on the Red Route. In his view, the Red Route was impassable during the mid-1980s due to forestry works. As a tenant, it was his duty to turn users back, although he stated that he had never challenged anyone using the route. He recalls once being asked by Lord Camden if he would agree to the creation of a right of way for the public, but never heard any more about this.

9.14 Mr. Peate had been given permission to ride horses in the woodlands on the estate and was a member of the hunting committee there.

9.15 Mr. Pratt is the nephew of the Fifth Marquis and often visited the estate from the early 1960s until the late 1980s. He rarely saw anyone using the routes and states that there were several places around the estate where access was impossible due to locked gates. Mr. Pratt recalls locked gates all over the estate, notably at Brown's Lodge and at the bridge on Orange Route 1. He further states that the Bayham Estate was known to be private and it was a unique estate for the very reason that there was no public access. Lord Camden gave permission to a handful of people to walk across the estate but it was not open to the public.

9.16 Dr. Robards has lived on the Bayham Estate for the whole of his life and his father was the Head Gardener. He confirmed that it was Lord Camden's intention to have a private estate. Having been raised on the Estate, he knows the area well and was never aware of any public use of any of the claimed routes. He recalls several gates across the estate, the majority of which were kept locked, although one gate on the Red Route to the south of Bayham Lake had a kissing gate beside it.

9.17 Mrs. Vernon and her husband farmed at Bayham Home Farm between 1959 and 1994. Mrs Vernon disputes the application because it was a private estate and in her view there were no public footpaths. Lord Camden did not want the public walking through the estate. She recalls that gates were always locked at the request of Lord Camden and was aware of public use, having seen people on the odd occasion. The Red Route at the eastern end of Bayham Lake had a gate with a kissing gate beside it. She challenged people on many occasions at the eastern end of the Red Route in particular. In fact, it was in the tenancy agreement that tenants had to stop the creation of public footpaths and she believed that it was a private estate and therefore it never occurred to her that the public

might have access. In her view, Orange Route 1 was not passable on foot when she first arrived at the estate as both Shepherd's Lodge and the church were derelict.

10. Orange Routes Evidence in Rebuttal

Orange 1

10.1 In rebuttal this claimed route was the subject of an objection to the inclusion of it at the 1970 Review of the Definitive Map in Kent. Witness RW20 acknowledges chained gate in late 1980's. Respondent 19 owner of Shepherd Lodge from 1976 on the route and challenged users. R 43 state the route orange 1 was not passable of foot in 1959.

Orange 5 and 6

10.2 Statutory Declarations from the respondents are relevant to the Orange Routes 5 & 6.

10.3 R9, sub-agent for Bayham Estate 1968 – 1972. States that any member of the public allowed on estate was there with permission and that this was applied for in writing. believes that the gate at Winbridge Lodge was locked at night.

10.4 R11, former postman. Gates at Winbridge Lodge were not locked in 1950s but after the Abbey ruins were opened to public in 1970s he had a key for them.

10.5 R15, former postman from 1975. States that gate at Winbridge Lodge was locked (exact dates not given).

10.6 R23, lived on estate 1954-1967 as parents were tenants. Mentions in late 1960s being challenged on Orange Route 5 by a tenant of the Old Abbey. Sometime in 1960s Orange 6 became 'out of bounds'.

10.7 R25, family were tenants and employees of estate. Does not recall public use of orange routes, only use by estate workers. Orange 6 followed different route in 1940s.

10.8 R27, tenant farmer 1964 – 1979. Purchased some estate land in 1979. States that Orange 6 was gated at B2169 end and locked except when visitors using – but dates not given.

10.9 R32, Lord Camden's nephew. Challenged sometime in 1960s by caretaker of the Dower House.

10.10 R34, family lived on and around Bayham Estate for 4 generations. States that fencing around Abbey ruins would have prevented use of Orange Route 5. Gate on B2169 road has been locked since 1984 when English heritage took over ruins.

10.11 R42, family were farmers on estate. States there was a locked gate near ruins on Orange 5 (dates not given)

Orange 7 evidence in rebuttal

10.12 Statutory Declarations from the respondents below are relevant to the Orange Route 7.

10.13 R25, family were tenants and employees of estate. Believes gate on B2169 was kept shut and "probably locked". (dates not given).

10.14 R27, tenant farmer 1964 – 1979. Does not remember gate at B2169 but states that since at least 1964 there has been a sign indicating that route was an access road to private property.

10.15 R32, Lord Camden's nephew. Sign at B2169 indicating it was private property.

10.16 R42, – Lived next to Southern end of route by B2169. States route was much used by vehicular traffic but not pedestrians. There was a 'Private' sign since at least 1959.

10.17 Many of those who made statutory declarations mention the presence of unlocked gates at the junction with the B2169. Only Pamela Mephram states that they may have been locked and she does not give dates.

10.18 From approx 1959 when Mr John Vernon, R 42, became tenant at Bayham Home Farm, there was a sign next to the gate onto the B2169 stating 'Private Road to Bayham Abbey and Bayham Farm Only'. The Ramblers' Survey of 1952 also mentioned a 'Private' notice at Bayham Abbey Farm.

11. Rights of Appeal

11.1 If the County Council declines to grant the application, the applicant has a right of appeal to the Secretary of State. The applicant must serve notice of appeal within 28 days after service on her of the County Council's decision. If the County Council grants the application and makes an Order, public notice is given. If objections are received within a specified period the matter is referred to the Secretary of State for a decision.

12. Conclusion

Documentary evidence

12.1 There is no conclusive documentary/historical evidence that points to the existence of the claimed footpaths as public rights of way.

12.2 With reference to the Frant and Penbury Tithe Maps as noted in 4.5 it is important to take into account relevant case law. In *Merstham Manor Ltd. v. Coulsdon and Purley Urban District Council (1936)*, it was considered that the Tithe Map could not be relied upon to make any distinction between public and private roads. This was considered further in *Maltbridge Island Management Company v Secretary of State for the Environment and Hertfordshire County Council (1998)*, where Sullivan J concluded in that case that "the Tithe map and apportionment evidence is undoubtedly relevant as to both the existence, and physical extent, of a way at the relevant time... Because both public and private roads were not titheable, the mere fact that a road is shown on, or mentioned in a Tithe Map or Apportionment, is no indication as to whether it is public or private".

12.3 The Finance Act documents are also inconclusive. They show the Red Route north of Dundle Road uncoloured and excluded from valuation, which has led some to consider that a route shown in this manner has some form of Public Right of Way status.

12.4 The Red Route south of Brown's Lodge is again shown uncoloured to the county boundary, which also coincides with the edge of the map sheet. However, it continues on the next map sheet through Furnace Wood as a track included within the green colourwash corresponding to hereditament number 33. Therefore, it appears there are inconsistencies between the map sheets and counties, with an unaccountable change in the way the route is shown, even though the land concerned was all under the same ownership and therefore probably considered by the same valuer.

12.5 A great deal has been made by the applicants of the £200 deduction sought for a Public Right of Way in the Valuer's Field Book under hereditament number 33 (Bayham Estate). As noted in 4.14. above, no information is provided as to the possible location or

extent of this route. Furthermore, the Valuer's Field Book records a number of other hereditaments which are included within number 33 and therefore this deduction could also apply to any one of these references.

12.6 It is understood that the Red Route, or the "Old Coach Road" as it is known locally, was built in approximately 1815 as a private driveway between Bayham Abbey and Pembury Church. There is no conclusive or written evidence to suggest that the route was formally dedicated at this time.

12.7 On the available mapping evidence, it is possible to draw similarities with the case of *Maltbridge Island Management Company v Secretary of State for the Environment and Hertfordshire County Council (1998)*, where Sullivan J considered that "in view of the limited weight that could properly be attached to the Tithe map information for the purposes of deciding whether a way was public or private in 1838, and the "corroborative" role of material prepared under the Finance Act, the most that could reasonably have been concluded against the applicants was that the documentary material, when viewed as a whole, was neutral, with indications pointing both ways". In this case, there is not enough coherence between the different items of early mapping evidence to deduce that a Public Right of Way is reasonably alleged to subsist along this section of the Red Route.

12.8 The other early mapping evidence does not assist with the resolution of the other claimed routes.

12.9 The applicants assert that the Bartholomew Map Series provides strong evidence as to the existence of a Public Right of Way along the Red Route. Indeed, several witnesses recall using the route as a direct result of having seen the annotation 'Public Path' on the map. The applicants further assert that this is the only annotated path on the maps covering the county. It has not been possible to establish exactly how this came to be annotated in such a manner. The fact that the route is shown with this annotation on so many maps for such a long period of time without challenge allows some weight to be placed on the credence of this series of maps.

12.10 However, the disclaimer at the bottom of the November 1945 edition clearly informs readers that the representation of a road or footpath is no evidence of right of way. In *Commission for New Towns v. JJ Gallagher Ltd. (2002)*, Neuberger J concluded that "the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed on any map which does not have the positive function of identifying public carriageways".

User Evidence

12.11 It is evident that there was substantial evidence of public use of the Red Route. It is mentioned in local walking guides and witnesses have little recollection of notices or obstructions to deter use or show that their use was by permission. However on further examination the applicants witness forms show anomalies.

12.12 Some of the witnesses do not clarify their period of time, frequency of use or specify the end of their use. When the latter arises investigating officers assume that use is continuing. However discrepancies occur; for example RW46 stated use was from 1943 with no end date, but has stated that in 1996 she was housebound.

12.13 Other witnesses have had close connections with the Estate. RW38 played on the estate as a child whilst parents worked on the estate. RW40 had grandparents working on the Estate; RW46 was Lord Camden's housekeeper from 1944 and following her retirement in 1980 continued to live on the estate. RW47 used the routes 1940-1960 to visit friends living on the estate. This use could be seen to be tolerated use or use with implied permission.

12.14 From the witness evidence forms, certainly in respect of the whole length of the Red and Green Routes, that there is sworn unhindered use and enjoyment of this route by the public.

Use "as of right"

12.15 The definition of the phrase "as of right" has been considered in recent High Court case law. Following the judgement in *Sunningwell (2001)*, it is no longer necessary for a person to believe that they have the right to use the route before they set out. If a person uses a route for a required period of time without force, secrecy or permission (*nec vi, nec clam, nec precario*) and the landowner does not stop him or advertise the fact that he has no right to be there, then rights are acquired and further use becomes "as of right".

12.16 The witness evidence forms and interviews carried out substantiate that witnesses felt they were not using the routes with force, neither were they being secretive in their use and, despite Lord Camden, his agents and his tenants' assertion to the contrary, none of the users appeared to be aware of any permission having been granted during the material period.

Permissive use

12.17 Correspondence between Mr. and Mrs. Groves of The Tunbridge Wells Ramblers Association and Lord Camden show that the association was aware that certain routes on the estate were used with permission. It is clear that Mr. and Mrs. Groves had been applying on behalf of their walking group. However, it is unclear as to what parts of the estate and which routes the permission was being given for.

12.18 From correspondence dated during the 1980s, officers of the Kent County Council County Secretary's department had written to the Local Member informing him that in their view public use on the Bayham Estate was permissive. Correspondence generated by Tonbridge Rural District Council during the late 1960s at the time the Pembury Parish Council was looking to add a route across the estate also shows Lord Camden's denial at that time of any Public Rights of Way through the estate.

12.19 It could be argued that whilst Lord Camden may not have by these actions been bringing it home to the public that he did not wish to dedicate Public Rights of Way, he was however showing a lack of intention to dedicate. So even though the landowner may not have taken any overt actions, it would not appear that he kept it locked in his own mind that he had no intention to dedicate. However, it is unclear as to when (or indeed if) Lord Camden granted permission for people to walk on the estate, as it has not been possible to trace copies of any permissive agreements. In addition, there does not appear to be any clear information as to which routes this permission related to and therefore as there is no concrete evidence of any agreement, it is not considered that this supposed permissive use would be strong enough to defeat the claim.

Implied dedication

12.20 The question regarding implied dedication is now raised. Recent case law *R v. City of Sunderland ex parte Beresford (2003)*. Lord Scott presiding appears to indicate that if a landowner gives permission but does not let the world at large know the tenure of that permission by erecting notices or taking other overt acts and the public continue to use that route then they may well, despite the fact that the landowner thinks it is with his permission, be gaining a right by implied dedication. Lord Walker took the same view, stating that "implied permission could defeat a claim to user as of right... provided that the permission is implied by (or inferred from) overt conduct by the landowner, such as making a charge for admission, or asserting his title by the occasional closure of the land to all-comers. Such actions have an impact on members of the public and demonstrate that their access to the land, when they do have access, depends on the landowner's permission".

12.21 In the case of this claim, there appears to be from the sworn witness statements a conflict whereby the witnesses' state they have been walking on the basis that it was as of right and the landowners saying that they have been walking with permission, although clearly there is no real evidence that users were informed of this fact.

No intention to dedicate

12.22 Previous case law stipulated that it was necessary for the landowner to show, through the use of overt actions, that he had no intention to dedicate. In *Fairey v. Southampton County Council (1956)* Denning LJ was of the opinion that "a landowner cannot escape the effect of twenty years" prescription by saying that, locked in his own mind, he had no intention to dedicate... In order for there to be "sufficient evidence that there was no intention" to dedicate the way, there must be evidence of some overt acts on the part of the land owner such as to show the public at large – the public who used the path, in this case the villagers – that he had no intention to dedicate". This was reiterated by Walton J in *R v. Secretary of State for the Environment ex parte Blake (1984)* who advocated that the onus was on the landowner to establish no intention to dedicate. It was his view that "quite clearly, it was not sufficient for the landowner merely to come along and beat his breast and say that all was lost, because there was an intention never to dedicate. That intention had to be manifested by sufficient overt or notorious acts".

12.23 However in the recent case, of *R (Godmanchester Town Council and Dr Leslie Ernest Drain) v. Secretary of State for Environment, Food and Rural Affairs and others (2004)* it was held that whilst the landowner may not have taken any overt actions to inform the public he was not dedicating rights, if certain actions had been undertaken which showed that during the relevant period he had no intention to dedicate, then a Public Right of Way could not be alleged to subsist. This follows the earlier judgement of *R v. Secretary of State for the Environment ex parte Dorset County Council (1999)* in which Dyson LJ considered that "there is no reason in logic or policy why the only evidence that can be sufficient is of overt acts which are aimed at the users, but do not bring home to them the owner's objection".

12.24 Lord Camden had in the tenancy agreements a clause which indicated that tenants were not to allow any footpaths to be created. It also appears from several items of correspondence, including the Kent Draft Revised Map objections in 1971 that he may not have had any intention to dedicate. These actions, whilst not bringing the right of the public to use the route into question, serve to illustrate that Lord Camden had no intention to dedicate the routes across his estate.

12.25 Applying the law as it stands today, there is a conflict of evidence, but there is also evidence of Lord Camden's non-intention to dedicate. Although no overt actions appear to have been taken either by or on behalf of Lord Camden, the decision reached in the Godmanchester case would appear to indicate that there is no need for these and therefore it is possible to conclude that the landowner did show that he had no intention to dedicate during the requisite period.

12.26 In 1934, Lord Camden lodged a Statutory Deposit under the Rights of Way Act (1932) to register those routes which he considered at that time to have Public Rights of Way status. None of the claimed routes are shown on this plan. Further Statutory Declarations were made in 1943 and 1951.

12.27 Other examples of Lord Camden's lack of intention to dedicate the claimed routes include the tenancy agreements; the objection to the inclusion of the northern section of the Red Route(in Kent) on the Draft Map of Pembury in the early 1950s; the letter dated October 1968 from the clerk to the former Tonbridge Rural District Council, which, whilst referring specifically to the Red Route south of Brown's Lodge(in East Sussex and crossing into Kent), clearly shows Lord Camden had no intention to dedicate any public rights on the estate; and the objection to Kent County Council in 1971 to the inclusion of routes on the Bayham Estate on the Draft Revised Map prepared by the County Council.

12.28 Applying the law as it stands, there is indeed a conflict of evidence, but there is also overwhelming evidence of Lord Camden's non-intention to dedicate. Although no overt actions appear to have been taken either by or on behalf of Lord Camden, the decision reached in the *Godmanchester* case would appear to indicate that there is no need for these and therefore it is possible to conclude that the landowner did show that he had no intention to dedicate during the requisite period.

12.29 As set out in section 11.1 above, there is insufficient historical evidence to indicate that the claimed footpaths orange 1, 5, 6 and 7 are public highways.

12.30 The applicants have not submitted any detailed user evidence for the Orange routes. Although 29 people state they have used Orange 1, 31 people state that they have used Orange 5, 25 state that they have used Orange 6 and 24 state that they have used Orange 7, they have not supplied dates or frequency of use, nor details of any challenges when using the routes. It is therefore not possible to establish whether Orange Routes 1, 5, 6 and 7 have actually been enjoyed by the public for a full period of 20 years as stipulated by Section 31(1) of the Highways Act 1980. i.e. *"Where a way over any land...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"*.

12.31 On the balance of probability it is considered that there have been interruptions to the public's use of the claimed footpaths and that the landowners have shown sufficient intention not to dedicate them as a public right of way. It is considered that the criteria under section 31 of the Highways Act 1980 have not been met. For the application to succeed, the criteria under the common law must be satisfied.

Common Law

12.32 Under the common law the users must prove that the dedication has taken place during a period when the claimed footpaths were unobstructed and the landowners have acquiesced in such user. It is considered that the Positive Covenant and draft Public Path Creation Agreement are not enough to deduce dedication at Common Law.

12.33 There is without question some indication that Lord Camden may have wished to dedicate public rights across the estate, evidenced by the draft Public Path Creation Agreement and the Positive Covenant. However, the negotiations for the Creation Agreement were never formally concluded and the Positive Covenant was a conditional agreement whose conditions were never fulfilled. Even if these documents were considered strong evidence of intention to dedicate, they would not in any way be strong enough to constitute dedication at Common Law.

13. Formal Recommendations

13.1 It is **recommended** that :-

1. The applicant be informed that the Sub-Committee does not consider that the claimed public footpaths have been shown to be public rights of way; and
2. The application for a Definitive Map Modification Order be refused.

ANDREW OGDEN
Director of Law and Performance Management
26 May 2005
P&HSub-P1 June-FootpathClaim-Bayham Abbey Estate

BOB WILKINS
Director of Transport and Environment

Contact Officers: Natalie Gardiner - Tel: 01273 482628

Chloë Rowling - Tel: 01273 481748
Solicitor - Paula Slinn - Tel: 01273 481630

BACKGROUND DOCUMENTS

Statements and evidence forms submitted by the applicant, representations by the landowners and other interested parties, documentary evidence, historical research and site inspection reports.

Legal Position Relating To Claimed Public Rights of Way

1. The determination of the application for the claimed public footpath must be based on a consideration of all of the available evidence.
2. The application has been made under Section 53 of the Wildlife and Countryside Act 1981. Section 53 (3)b requires the County Council to modify the Definitive Map and Statement as a consequence of:

'the expiration in relation to any way in the area to which the map relates of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path'.

Section 53(3)c(i) requires a modification if the County Council discovers evidence which, when considered with all other available relevant evidence, shows:

'that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates',

3. Section 31 (1) of the Highways Act 1980 provides for the presumption of dedication of a public footpath following 20 years continuous public use. It states:

'Where a way over any land...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'.

4. It is therefore necessary to show that there has been uninterrupted public use for 20 years. The public must have used the path without hindrance or with the permission of the landowners. The 20 year period is calculated retrospectively from the time when the public use of the path was first brought into question.
5. The Sub-Committee must consider whether there is sufficient evidence to allege that the presumption is raised. The burden of proof is the civil one, that is, the balance of probabilities. Members must weigh up the evidence and if on balance it is reasonable to allege that there is a public footpath then the presumption is raised. The onus falls on the landowner to show any evidence that there was no intention on his part to dedicate the path as a public right of way. This would be by an overt act to show to the public that there was no such intention, e.g. notices, barriers, or locking a gate on one day a year.
6. Alternatively, a public right of way may be established over a shorter period of time under the common law i.e. the dedication of a way as a public right of way can be implied from evidence of user by the public and of acquiescence in that user by the landowner.
7. Rights of Appeal: If the County Council grants the application an Order will be made and public notice given. If any objections are made and not withdrawn the matter is referred to the Secretary of State for a decision. Otherwise the County Council confirms the Order as unopposed. If the application is refused the applicant has a right of appeal to the Secretary of State within 28 days of the serving on him of the notification of the County Council's decision.