



Order Decision

Inquiry opened on 28 June 2011

by **Alan Beckett BA, MSc, MIPROW**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 20 September 2011

Order Ref: **FPS/Q1770/7/70R**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Hampshire (East Hampshire District No. 27) (Parish of Headley) Definitive Map Modification Order 2008.
- The Order is dated 8 October 2008 and proposes to modify the Definitive Map and Statement for the area by adding two bridleways as shown in the Order plan and described in the Order Schedule.
- There were seven objections outstanding at the commencement of the inquiry.
- This decision supersedes that issued on 11 December 2009. That decision on the Order was quashed by order of the High Court.

Summary of Decision: The Order is not confirmed.

Application for costs

1. At the Inquiry applications for costs were made on behalf of Hampshire County Council and on behalf of Lithuanian House Ltd against Mrs Comber. These applications are the subject of a separate Decision.

Procedural Matters

2. I opened the inquiry at the Kingsley Village Centre, Forge Road, Kingsley, on Tuesday 28 June 2011 having viewed the claimed bridleways from public vantage points the previous evening. Although it had been possible to hear the oral evidence called by the parties by mid-afternoon on the fourth day, there was insufficient time available for the preparation and delivery of closing submissions on that day. Accordingly, the inquiry adjourned on 1st July 2011 and resumed on 14 July 2011, when matters were completed and I was able to close the inquiry.
3. In order to make the best use of the available time, I undertook an accompanied inspection of the claimed route within Baigent's Hill on the afternoon of Friday 1 July 2011. An accompanied inspection of the claimed routes to the south of Picketts Hill was undertaken following the close of the inquiry on 14 July 2011.
4. Hampshire County Council ('the Council') made the Order at the direction of the Secretary of State following a successful schedule 14 appeal by the applicant for the Order, Mrs M Comber. Seven objections were outstanding at the commencement of the inquiry, including one made by the Council.
5. The inquiry was a re-determination of the Order. An inquiry into the Order had been held in September 2009, and the Inspector's decision which resulted from the previous inquiry had been quashed by Order of the High Court. At the inquiry, the case for the confirmation of the Order was put on behalf of Mrs

Comber by Mr Simpson; Mr Grant appeared on behalf of Lithuanian House Ltd ('LHL'), Mr S H Porter appeared on behalf of Mr Whitfield (the owner of Headley Wood Farm), and the Council was represented by Mr Austin. I am grateful to all four individuals for the helpful and courteous way in which they endeavoured to assist me in the course of the Inquiry.

The Main Issues

6. The Order was made in consequence of an event specified in section 53 (3) (c) (i) of the 1981 Act which provides that the Definitive Map and Statement ('DM&S') should be modified where evidence has been discovered which shows that, when considered with all other relevant evidence available, a public right of way which is not currently shown in the DM&S subsists or is reasonably alleged to subsist over the land in question.
7. As noted above, the Council was directed to make the order following Mrs Comber's successful schedule 14 appeal. That direction was made on the basis that it was reasonable of Mrs Comber to allege that the claimed bridleways subsisted. However, for the Order to be confirmed, I must be satisfied that the evidence discovered demonstrates, on a balance of probabilities, that the claimed rights of way subsist (*Todd & Bradley v the Secretary of State for Environment, Food and Rural Affairs* [2004] EWHC 1450 Admin).
8. Mrs Comber's case relied primarily on evidence of use on horseback of the claimed routes, although some reliance was also placed on historic documents. In a case where there is evidence of claimed use of a way by the public over a prolonged period of time, the provisions of section 31 of the Highways Act 1980 (the 1980 Act) are relevant. Section 31 provides that where a way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question, either by a notice or otherwise.
9. In addition to considering the user evidence with regard to the provisions of section 31 of the 1980 Act, I am also required to consider whether dedication of the claimed routes has taken place at common law. The evidential test to be applied, at common law or under the statutory provisions, is the civil standard of proof; that is, the balance of probabilities.

Reasons

Background

10. The Order plan shows two routes which are independent of each other but which it is claimed provided a means of access on horseback between Cradle Lane (at point F) and Bridleway 54 (at either point D or A) and which avoided having to ride a horse along the blind bends on that part of Picketts Hill adjacent to Headley Park. The Order route is in fact two separate bridleways, each having a terminal point on the public carriageway known as Picketts Hill (C102).
11. It is convenient to deal with the two parts of the Order route separately as the nature of the evidence relied upon by Mrs Comber differs slightly between the route over Baigent's Hill (to the north of Picketts Hill) and over part of Broxhead Common (to the south of Picketts Hill). With regard to the Baigent's

Hill claim, greater reliance is placed upon evidence of use, whereas for the route over part of Broxhead Common, reliance was placed on both documentary evidence and evidence of use.

12. In addition, the land crossed by the claimed route either side of Picketts Hill is in different ownerships; the majority of the claimed bridleway north of Picketts Hill runs over land which is the property of LHL with a small section being owned by Mr Hadfield. To the south of Picketts Hill the majority of the land crossed by the claimed bridleway is owned by Mr Whitfield. The current owner of approximately 190m of the claimed route south-west from C has not been identified, although some of the documentary evidence considered demonstrates that the land has historically been in private ownership and this may still be the case.
13. At the inquiry, the Order was considered as two separate routes and I intend to follow that convention. I refer to the route north of Picketts Hill as the Baigent's Hill section and the route to the south of Picketts Hill as Broxhead Common.

Broxhead Common

Documentary evidence

14. It was accepted by the Council that the 1787 survey map of Alice Holt Forest and the surrounding area was the strongest piece of documentary evidence submitted in support of Mrs Comber's claim that C – B may have been part of an historic public road. It was also the Council's view that the remaining documentary evidence provided no additional weight or support to the 1787 map. Although the 1787 map shows C – D as part of a route across Broxhead Common there is no indication of the status (public or otherwise) of any route shown on it. Similarly, the other eighteenth century small scale maps submitted (Taylor 1759; Milne 1791) show a route on the boundary of Headley Park running towards Common Cottage, but provide no evidence of the status of the route shown.
15. Early nineteenth century Ordnance Survey maps also show the existence of a route which approximates to C – B, however the continuation of that route is shown to run south from B and not south-west to D or A. Ordnance Survey maps do not provide evidence of the status of any way shown, although they provide evidence of the physical existence of a way at the time of the survey. These maps do not provide any evidence of the historic existence of a route B-D or B - A.
16. The Headley Tithe Map of 1847 does not show a track or way of any description on the claimed route, whereas Cradle Lane and Picketts Hill are clearly shown. The Binstead Inclosure plan of 1857 does not show any highway on the alignment of the Order route; this suggests that there was no highway of any description over the Order route at the time of inclosure which the Commissioners were required to make provision for in the post-inclosure landscape.
17. The OS 25" to 1 mile map of 1869 does not show the existence of B – A or B – D at that date. There is no indication of the status of the track shown running on the C – B alignment by double peck lines. This track forms part of plot 210 (identified as 'rough pasture, furze etc' in the Book of Reference) and is clearly separated from Picketts Hill (plot 170 'Public Road') by peck lines parallel to Picketts Hill at C.

18. The pattern of tracks over the section of Broxhead Common at issue is shown by successive OS maps to change during the course of the twentieth century. None of the maps show C – B – A although some show a route which approximates with C – B – D. Whereas I accept that some of these twentieth century maps show a continuation of a track over the common to the west of D, none of the maps are indicative of the status of the tracks shown and do not provide evidence of the existence through the twentieth century of a public bridleway on the route claimed. The 1971 National Grid survey map is the first OS map to show both B – A and B – D as physical features visible in the landscape; however there is no indication of any track on the ground over C – B at that date. These maps provide no evidence of the status of the routes shown.
19. The land crossed by C – B – D and C – B – A are shown in the Finance Act 1910 records as lying within hereditament 1359 which at that date was part of Headley Farm. A reduction in site value of £635 was granted to this hereditament in compensation for the land being encumbered by public rights of way or user, but there is nothing in the valuation book or field book entries to demonstrate to which routes the deduction might refer. Although Mrs Comber contended that C – B formed a continuation of the 'accommodation road' recorded in the field book entry for the adjacent hereditament of Headley Park, the term 'accommodation road' suggests the route was for private access, although I acknowledge that it would have been possible for a public right of way to exist over it. The Finance Act records do not provide evidence of the status of the claimed route over Broxhead Common.
20. Mrs Comber's case regarding the documentary evidence was based on the proposition that the land to the west of A and D¹ had historically formed part of Broxhead Common and as such was a place to which the public would have had resort. It was argued that the claimed route would have provided a means by which the public could have accessed that part of the common prior to it being fenced. This argument relied upon the 1974 findings of the Chief Commons Commissioner ('the CCC') as part of his determination as to whether rights of common existed over land to the west of A and D.
21. The CCC found that rights of common did exist on the land west of A and D and were attached to two nearby properties. The remaining claims to common rights on the land were not upheld, the CCC noting that *'The evidence ranged far and wide. It was not confined to what had been done by the applicants, but covered the actions of a large number of other persons, some named and some described in such vague terms as 'people from the village of Lindford', 'all the cottagers', 'plenty of people', 'dozens of people in the village', 'local people', and 'anybody'.*" The CCC held that what had been proved was that there had been *'intermittent, sporadic and promiscuous use by the general body of inhabitants which does not support the individual claims at all'*.
22. It was submitted that this was of great significance as it demonstrated that the 1974 evidence of use of the land to the west of A and D was too general in nature to give rise to rights of common but was the kind of use that was required to establish a claim for a public right of way so long as it was confined to linear routes. It was Mrs Comber's case that the body of map evidence considered above, combined with the evidence of use of the common in 1974 heard by the CCC was sufficient to establish the public status of C – B and from

¹ A parcel of 80 acres which had been fenced in or around 1963

- B – D and B – A, the claimed routes providing a means of access to the common.
23. I am not persuaded by this line of argument. Although the CCC heard evidence of use by '*the general body of inhabitants*' there is no indication in the CCC's report that those inhabitants were engaged in the exercise of linear access along defined routes on the common or over the claimed route. In addition, there is no evidence within the report that the activities described to the CCC took place on horseback. The CCC report is not evidence that in 1974 or prior to that date the '*general body of inhabitants*' were engaging in linear access on horseback over the common to link with the Order route or vice versa.
24. Furthermore, the geographic location of those '*local people*' identified by the CCC as having engaged in activities on the common are more likely than not to be residents of Lindford, as that village is not only specifically mentioned in the CCC report, but is also the only settlement of any size in the immediate vicinity of the common. There is nothing in the CCC report to suggest that those residents accessed the common from the east on horseback over the claimed route. In my view, the CCC report is of little or no assistance in determining whether public equestrian rights had come into being over C – B – D or C – B – A prior to 1974.
25. Although the claimed route is shown in its entirety on some maps, and parts of the claimed route or a route approximating to parts of it are shown on others, none of the maps submitted provide evidence of the status of the route. At best, the maps demonstrate the physical existence of parts of the claimed route at specific points in time. None of the maps submitted in this case provides the required quality of evidence from which it could be concluded, on a balance of probabilities, that public equestrian rights had been dedicated over the Order route at some point in the past. If a public bridleway subsists over the Order route, then it would have come into existence through a period of recent use by the public on horseback. It is to the user evidence that I now turn.

User evidence

The date on which the right of the public to use the way was brought into question

26. Two dates (1989 and 1997) were put forward on behalf of Mrs Comber as contenders for the date on which use of the Broxhead Common route was called into question.
27. The earlier B date was the date when the field gate on the western side of bridleway 54 opposite D was locked. It was submitted that the locking of the gate prevented access to the land west of D from the Broxhead Common route and as bridleway 54 was at that date only a footpath (bridleway rights being created by Order following a public inquiry in 1997), the locking of the gate left horseriders with nowhere lawful to go. It was submitted that the locking of the gate in 1989 was a clear indication of the rights of equestrians over C – B – D and C – B – A being called into question.
28. With regard to the second date, it was common ground that in 1997 East Hampshire District Council had erected 'No horses' notices on the access track leading to Common Cottage and along the route B – A in response to a request for such notices having been made to the District Council by Mr Whitfield. As an

alternative to the locking of the gate opposite D, Mr Simpson submitted that these notices had called use of the Broxhead Common routes into question.

29. It is difficult to see how the locking of a gate which does not stand on the claimed route can have any impact upon the use of that route. There is no evidence before me which suggests horseriders were prevented from travelling between D and A as a result of the gate opposite D being locked in 1989. The 1997 inquiry into a modification order to upgrade footpath 54 to bridleway heard evidence of the use of the whole of footpath 54 as a means of access to the common. Although the evidence of use considered at the 1997 inquiry was insufficient for the confirmation of the modification order² then being considered, the 1997 inquiry demonstrates that use of footpath 54 by equestrians had taken place for some considerable period of time prior to that date.
30. Given that the gate to the south of A had been locked in 1975 and a permissive route via the gate opposite D had been available until that gate was locked in 1989, it is highly likely that anyone riding B – A between 1975 and 1989 would have used the A – D section of footpath 54 to reach the permissive route. It is also more likely than not that following the closure of the permissive route in 1989, any rider travelling along B – D or B – A would have made a loop involving D – A (as Miss Burr recalled having done). I consider it inherently unlikely that following the locking of the gate opposite D in 1989 riders would have turned around at either D or A and retraced their steps, particularly given that some of the witnesses who gave evidence of use of the claimed route at this inquiry had also given evidence of use of footpath 54 on horseback at the 1997 inquiry.
31. To my mind, the locking of the gate on the western side of bridleway 54 in 1989 had no impact upon the ability of local equestrians to use the Order route south of Picketts Hill, and I am not persuaded that 1989 can be taken as the date upon which use of the Order route was brought into question.
32. It was common ground between the parties that the erection of prohibitory notices by East Hampshire District Council (the Highway Authority's agents at the time) in response to a request for such notices by the owner of the land, brought into question use of the Broxhead Common section of the Order route. For the purposes of section 31 (2) of the 1980 Act, I conclude that the relevant 20-year period is from 1977 – 1997.

Whether there has been use by the public for the required period of 20 years.

33. I heard that the storms of 1987 and 1990 resulted in significant damage to the woodland through which the claimed route passes and that the wind-throw of trees arising from the storm obstructed C – B and prevented use of it. There was some variance in the oral evidence as to whether the storm of 1987 effectively blocked the route or whether that did not occur until the storm of 1990. It was clear from the oral evidence given that from 1990 onwards the use of B – C was prevented by the trees that blocked the way.
34. The oral evidence given to the inquiry does not support the claim that riders continued to make their way through the difficult section after 1990. Although Miss Burr said that she jumped over the trees following the storm of 1987, she

² Footpath 54 was upgraded to bridleway by means of a creation order considered at the same inquiry as the unconfirmed modification order

made her way around the obstructions via a different route following the 1990 storm. Mrs Williams described the route as 'not in a good state' following the 1990 storm and Mrs Comber stated that the 1990 storm had made the route so bad that she had stopped bothering to try and make her way through.

35. The oral evidence was that in order to overcome the problems caused by the storms, witnesses made use of other routes within the area, utilising one or other of three tracks which commenced on Picketts Hill to the west of point C (identified at the inquiry as X, Y and Z). Although these tracks are shown on the Order plan by means of solid lines, of these three tracks, only X is now visible as it forms the access to Common Cottage and other properties on Mr Whitfield's estate; I saw some evidence of the former line of Y on site but all trace of Z has been subsumed into the woodland once again.
36. Mr Simpson submitted that in diverting from the Order route the users were lawfully deviating around the obstruction on the right of way; it was suggested that use in such circumstances was capable of leading to the acquisition of prescriptive rights along the obstructed part of the route. I do not agree with this proposition. Had C – B already been recorded in the DM&S at the time of the storms of 1987 and 1990 as a public right of way, then a minor deviation away from the definitive line would have been legally permissible to overcome the obstruction of the route by fallen trees. However, C – B was not, and is not recorded in the DM&S as a public right of way of any description; there is therefore no lawful right of deviation around the obstructions on C - B.
37. The burden of proof in this case lies initially with the applicant to demonstrate that public use on horseback of the route has occurred for at least 20 years prior to use being brought into question. The cessation of use of the route in the middle of the qualifying period (at or around 1990) and the substitution of that route by one or more alternatives cannot give rise to a claim that the Order route has been used for a full period of 20 years when it is clear that it has not. Had the alternative routes of X, Y or Z been in use for a sufficient period of time, it may be possible for a case to be made for the dedication of public rights over those routes, but the use of the alternative routes after 1990 cannot be aggregated together with the use of C – B prior to 1990 to provide evidence of 20 years use of C – B, which on the witnesses own evidence has not occurred.
38. What the storms of 1987 and 1990 did was to cause the users to effectively abandon part of the Order route, and that cessation of use before the end of the relevant 20-year period is fatal to the claim that the Order route south of Picketts Hill can be deemed to have been dedicated.
39. Given that part of the claimed route between C and B was obstructed and unused on horseback for 7 years prior to the prohibitory notice being erected in 1997, the conclusion that the claimed routes south of Picketts Hill have not been used by the public for the full period of 20 years is unavoidable. The application to add to the DM&S the Broxhead Common route cannot succeed because there has not been 20 years qualifying use prior to 1997.
40. As I have concluded that the user evidence is insufficient to demonstrate that use of the claimed bridleway had occurred for a period of not less than 20 years prior to that use being called into question, it is not necessary for me to consider whether the claimed use was as of right or without interruption. Similarly there is no need for me to consider whether there is sufficient

evidence of a lack of intention to dedicate as no presumption of dedication arises which the landowner is required to rebut.

Baigent's Hill

Documentary evidence

41. With the exception of the 1971 OS National Grid map, none of the documents submitted in this case demonstrate the existence of a track or way within Baigent's Hill on the line shown in the Order plan. The 1971 map shows the physical existence of a track from Picketts Hill to a point roughly half way along the claimed route which ends in what was described as a 'turning circle'. Beyond that point the map does not show the existence of any track or way through the woodland to point F.
42. The documentary and oral evidence submitted on behalf of LHL demonstrates that the land north of Pickett's Hill has been used since the 1950s by the Lithuanian Association of Great Britain as the venue for its annual Scout and Guide camp. It is highly likely therefore that the feature recorded on the 1971 OS map was that which resulted from the provision of a means of access for vehicles to facilitate activities at the Scout and Guide camp.
43. No documentary evidence has been submitted from which it would be possible to conclude that the Order route had been dedicated as a public bridleway at some indeterminate point in the past. The case for dedication being deemed to have occurred over the Order route therefore relies upon the evidence of use submitted in support of the application. It is to this evidence that I now turn.

User evidence

The date on which the right of the public to use the way was brought into question

44. The user evidence forms completed in support of Mrs Comber's application were in the main generated in 1998, which suggests that the evidence gathering process commenced in response to the erection of prohibitory notices at or around point A in 1997. I heard that the access to Baigent's Hill at point F was fenced in 1999 which effectively prevented access to the land from Cradle Lane. It seems to me that the erection of prohibitory notices at A on behalf of Mr Whitfield would not call into question use of a route over Baigent's Hill as the Baigent's Hill route could be used independently of the route over Broxhead Common, the two parts of the overall claimed route being separated from each other by Picketts Hill.
45. Irrespective of what had happened on the Broxhead Common route prior to 1999, it is likely that users could have made their way over the Baigent's Hill section of the claimed route until the fencing was erected around LHL's land, and more particularly on Mr Hadfield's land at point F. Accordingly, I consider that as 1999 is the date on which all parties agree that access to Baigent's Hill was effectively prevented, that date should serve as the date of bringing into question public equestrian use of the route north of Pickett's Hill.
46. It follows that for the purposes of section 31 (2) of the 1980 Act, the relevant 20-year period of use runs from 1979 to 1999.

Whether there has been use by the public for the required period of 20 years.

47. Fifteen user evidence forms ('UEFs') were submitted in support of Mrs Comber's application. Of these fifteen forms, two appear to provide no

- evidence of use of the route over Baigent's Hill. One form describes the route used as running from Picketts Hill to bridleway 4, and the plan which accompanies the second form shows the route used as being limited to that running over Broxhead Common. At most, thirteen of the fifteen UEFs can be said to describe use of the Baigent's Hill route.
48. All of these thirteen respondents claim to have used the Baigent's Hill route at some point during the relevant 20-year period, although only three users claim to have used the route for the full period of 20 years. Four of these thirteen individuals had ceased used of the route by the mid 1980s, with only nine using the route by 1990 and only seven using the route by 1998 or 1999.
49. Four individuals claimed to have used the route on a weekly basis with one claiming to have ridden over Baigent's Hill on a daily basis. Of the remainder, six individuals claimed use on a monthly basis, one claimed use of the route 6 times per year, and one failed to specify the frequency of use. At the beginning of the 20-year period there would have been on average four riders per week on site. The average rises to six in the middle of the period and rises to around eleven per week towards the end, principally due to one respondent claiming to have ridden over Baigent's Hill on a daily basis between 1989 and 1999.
50. That is an analysis of the user evidence submitted on paper. It has not been possible to subject much of the user evidence to further examination as a number of the respondents who initially completed UEFs have either left the area or have died. On behalf of LHL, Mr Grant submitted that the impression given by the paper evidence was potentially misleading and that the untested evidence should be treated with some degree of caution. The oral evidence given by some of those witnesses who completed user evidence forms provides support for Mr Grant's submission. Mrs McBeath, for example, claimed in her UEF that she had ridden the Order route around 40 times per year for 40 years; her oral evidence however revealed that the extent of use was somewhat different, and the only period during which use at such frequency had occurred had been between 1980 and 1985. Similarly, Mrs Comber's UEF evidence regarding frequency of use (208 times per year) was exaggerated. Her oral evidence in chief and under cross-examination was that she had ridden the route twice per week; that is, only 104 times per year.
51. Mrs McBeath, Mrs Comber and Miss Burr all said that they did not use the claimed route when camping activities were taking place on Baigent's Hill. They would not go through the camping ground and continued their journey via other routes. The oral evidence of Mrs McBeath, Mrs Comber and Miss Burr is not reflected in the written evidence submitted, which on first reading would give an inaccurate picture of the nature, duration and extent of use; Mrs McBeath accepted that her form was misleading. I heard from some of the witnesses called on behalf of LHL that other horse riders did attempt to ride through the site when the Scout and Guide camp was in residence and that those riders were challenged and told to leave.
52. Mrs Cooper's UEF stated that she had ridden over Baigent's Hill between 30 and 40 times per year from 1973 to 1998. Her oral evidence revealed that her use of Baigent's Hill occurred between 1983 and ceased when LHL erected a metal gate at E, which Mrs Cooper estimated to have been around 1996. Furthermore, her estimate of use between 30-50 times per year related primarily to the Broxhead Common route with much less use having been made of the route over Baigent's Hill.

53. I can place little weight upon Mrs Williams' written evidence. Mrs Williams had submitted a statement in advance of the inquiry which bore an uncanny similarity to the statement submitted by a Mrs Mortley. Mrs Williams' oral evidence (delivered before reading her prepared statement) was also at variance with the contents of that statement. Mrs Williams' oral evidence was that 90% of her riding in the area involved use of Cradle Lane and not the claimed route over Baigent's Hill. On the basis of her oral evidence, Mrs Williams would only have crossed Baigent's Hill once per year.
54. Mrs Childs' evidence was of use once or twice a month between 1983 and 1993 but she could not remember which route she had taken over Baigent's Hill. Mrs Booton's evidence was of use between 1980 and 1995 and took place outside school holiday periods when she had ridden a circular route around once per month between Alice Holt Forest and Broxhead Common. The frequency of her use had reduced after 1987 when a bridleway near her home had been improved and provided her with a good route to Frensham; following the improvement of that bridleway, Mrs Booton's use of the Order route became 'occasional'.
55. The oral evidence given is evidence of use of the claimed route by members of the public on horseback. That some members of the public had been using or attempting to use the path is corroborated by the evidence of some of the witnesses called on behalf of LHL who spoke of delivering personal challenges when they encountered horseriders within Baigent's Hill. I am prepared to conclude, on a balance of probabilities, that there was use of a route through Baigent's Hill by the public on horseback during the relevant period.
56. However, the oral evidence given and the examination of that evidence suggests that the actual level of use of the Order route was lower than that which an initial study of the UEFs suggests. On the basis of the clarification of their UEF evidence by witnesses at the inquiry, it is likely that the use of the Order route was less than one rider per day and toward the end of the 20-year period probably only two riders per week. I have not had the opportunity to investigate further the claim of one respondent to have ridden the Order route on a daily basis, but on the basis of the discrepancies between the written and oral evidence given at the inquiry, I cannot attach great weight to the untested claim of this individual.
57. On the occasions when that limited use did come to the attention of the owner of the land, the evidence given on behalf of LHL demonstrates that challenges to that use were made. I heard from Ms Gasperas that she had attended every Scout camp since 1971 and had only seen horseriders on Baigent's Hill on two occasions (1996 and 1999) during that period; on both occasions she had challenged the riders' presence on the land. Mr Podvoiskis had been the manager of Headley Park between 1985 and 1989 whose duties involved a weekly visit to Baigent's Hill. On those occasions when he found horseriders in the woodland, he would stop them and ask them to leave; he considered that such incidents were 'fairly rare' in the context of his weekly visits.
58. Mr Gedmintas only recalled one incident in 1990 when horses were present during the Scout and Guide camp; like Ms Gasperas and Mr Podvoiskis, Mr Gedmintas recalled making a direct challenge to those on horseback. The other written evidence submitted on behalf of LHL demonstrates that 13 individuals had made challenges to horseriders during the summer camps and a further 14

- individuals knew that such challenges had been issued. Of the LHL written evidence 39 individuals do not recall having seen horses on Baigent's Hill.
59. The oral evidence given by members of the management of, and shareholders in, LHL regarding personal challenges being made to horseriders is reflected in the written evidence of Mr Jeroslavas Alkis³ who was a Director of the Company throughout the relevant period. From both the oral and the written evidence submitted, I am satisfied that those who made personal challenges to horseriders found in Baigent's Hill were following a policy formulated by those within LHL with the authority to instigate such a policy and that the challenges made accurately reflected the wishes of the landowner.
60. Mr Grant submitted that the test to be applied with regard to the user evidence was whether the level of use was sufficient to bring to the attention of a reasonable landowner that a continuous right to engage in such use was being asserted. This test was that outlined by Hoffman LJ in *R v Oxfordshire County Council ex parte Sunningwell PC* [2000] 1 AC, which in turn reflected the findings of the court in *Hollins v Verney* [1884]. That this was the correct test was not disputed.
61. The level of use of the Order route is on any view quite low, with occasional and intermittent use being demonstrated by many of the witnesses. There is no suggestion within the oral evidence that use was on a daily basis by a large number of people. Even allowing for the predominantly rural nature of the area and the scattered pattern of dwellings within it, use by the public of less than once per day is use that can only be described as sporadic.
62. I consider it to be significant that some of the supporters of the claim avoided riding over Baigent's Hill when the annual Scout camp was taking place; if those individuals were asserting a right to ride over LHL land, then the obvious time to demonstrate that assertion was during the time when the Scout camp was in progress. That some of the witnesses chose not to ride through Baigent's Hill when the Scout and Guide camp was active suggests that they were aware that their claimed right to do so was likely to be challenged. This leads me to the view that their use can be regarded as opportunistic if not somewhat secretive.
63. Miss Burr estimated that it would take her between 5 and 10 minutes to ride from F – E. Given that the extent and frequency of use is likely to have been less than one user per day, and given the separation of Baigent's Hill from the main part of LHL's land, it would be likely that such infrequent use of very short duration would go unnoticed by the owner of the land. The evidence before me is that the limited use which the owner became aware of was met by a proportionate response to intermittent and opportunistic trespass; those horseriders found on the land were stopped and told to leave.
64. In my view the extent and frequency of claimed use is insufficient to have brought to the attention of a reasonable landowner that a continuous right to enjoyment of the way was being asserted; consequently a presumption of dedication does not arise.
65. As noted above, the documentary evidence does not show the existence of a track within Baigent's Hill between the turning circle and point F. The plans

³ Mr Alkis is a resident of Vilnius, Lithuania. He did not attend the inquiry but had given evidence at the first inquiry into the Order

submitted with the written evidence of use show that a number of means of access to and from Baigent's Hill were used along with a number of routes within LHL's land. The inability of the claimants to demonstrate that a single defined line was in use casts further doubt upon the weight that can be attached to the user evidence. The available evidence demonstrates an element of roaming between F and the turning circle.

66. Furthermore, the oral evidence is such that it demonstrates that public use of any route through Baigent's Hill on horseback was interrupted by the presence throughout the relevant 20-year period of the Scout and Guide Camp. Although the structures which were built by the Scouts and Guides each year may not have physically obstructed the claimed route, the evidence before me is that any attempted equestrian use of the land whilst the camp was in progress was interrupted as horseriders were turned away. Consequently I consider that for a period of perhaps three weeks of each of the 20 years in issue, the claimed use of Baigent's Hill was effectively interrupted by the Scout and Guide camp.
67. I conclude that the user evidence is insufficient to raise a presumption of dedication. As such it would not be possible for that evidence to demonstrate that a right of way subsists over Baigent's Hill.

Common Law

68. For an inference of dedication to be drawn at common law the burden of proof lies with those who claim the existence of a public right of way to demonstrate that the owner of the land intended to dedicate the route to public use.

Broxhead Common

69. Use of part of the route over Broxhead Common ceased in 1990 following the severe storm of that year. For an inference of dedication to be drawn, it would be necessary for the claimant to demonstrate that the landowner had intended to dedicate a right of way prior to 1990. However, the available evidence with regard to the owner's intentions prior to that date is firmly to the contrary.
70. In a letter dated 24 August 1982 from a Mr Menzies of the Headley & District Bridleways Association to Mr M R Porter⁴ regarding the use of C – B – D by horseriders, Mr Menzies notes that the use of the route was not acceptable to the Headley Wood Estate. In 1984, Mr M R Porter wrote to the then Senior Rights of Way Officer of the Council regarding the steps that the Estate was to take to prevent a right of way coming into being over a path which included B – D. A copy of that letter was sent to Mrs Maureen Dale, who was the local representative of the British Horse Society at the time. In November 1998, Mr M R Porter wrote to Mrs Comber to re-iterate an earlier verbal request for her not to use the made up track B – A or any of the paths that led to it as a short-cut to bridleway 54.
71. These items of correspondence are consistent with there being no intention to dedicate a public right of way over land belonging to Mr Whitfield. There is no evidence before me from which it could be concluded that there had been an express or implied dedication of that part of the route C – B not in the ownership of Headley Wood Farm, the ownership of which was not identified at the inquiry.

⁴ Mr Whitfield's Agent at the time and the father of Mr S H Porter, the current Agent

Baigent's Hill

72. As the user evidence submitted is insufficient to raise a presumption of dedication under the statutory provisions it follows that such user evidence is also insufficient to raise an inference of dedication at common law. The evidence of challenges to use by the public on horseback during the 1980s and 1990s by members of LHL, its Directors and managers are inconsistent with an intention to dedicate a public bridleway.
73. I conclude that it is not possible to draw an inference of dedication of a public bridleway over any part of the claimed route at common law.

Conclusions

74. Having regard to these and all other matters raised at the inquiry and in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

75. I do not confirm the Order.

Alan Beckett

Inspector

APPEARANCES

For the confirmation of the Order:

Mr E Simpson of Counsel, instructed by Godwins Solicitors

Who called:

Mrs A Childs Horserider

Mrs S Booton Horserider

Mr J Colbourne Walker

Mr R Milton Horserider

Mrs J McBeath Horserider

Mrs J Williams Horserider

Miss S Burr Horserider

Mrs M Comber Applicant

Mrs S Cooper Horserider

Against the confirmation of the Order:

Hampshire County Council:

Mr I Austin Solicitor, Hampshire County Council.

Who called:

Mr C Piper Definitive Map Review Officer, Hampshire County Council.

Lithuanian House Ltd:

Mr G Grant of Counsel, instructed by Mr J Montgomery FRICS, MRTPI, Tanner & Tilley Planning Ltd on behalf of Lithuanian House Ltd.

Who called:

Ms V Gasperas Editor, Lithuanian Scouting Magazine and former Commissioner for Lithuanian Girls' Scouting in Great Britain.

Mr V Gedmintas Member, Headley Park Club.

Mr P Podvoiskis Former Manager of Headley Park Club.

Mr M Cornish Legal adviser to Lithuanian House Ltd.

Mr J Montgomery Tilley and Tanner Planning Ltd.

Headley Wood Farm:

Mr S H Porter Agent for Mr A G P Whitfield, owner of Headley Wood Farm.

Documents submitted during the inquiry

1. Annotated copy of the Order plan showing points W, X, Y and Z.
2. Photograph of the style of gate erected at E by Lithuanian House Ltd.
3. Letter from Mrs Comber to Mr Piper dated 28 September 2006.
4. Plan showing the location of camp sites within Baigent's Hill.
5. Sodyba Declaration.
6. Witness statement of Geoffrey Krevit.
7. Extracts from 'Ordnance Survey Maps: A Descriptive Manual' by J B Harley.
8. Letter from Mr Piper to Mrs Comber dated 29 April 2005.
9. Copy of 6 inch to 1 mile Ordnance Survey map c1870.
10. Closing submissions made by Mr. Grant on behalf of Lithuanian House Ltd.
11. Closing submissions made by Mr. Austin on behalf of Hampshire County Council.
12. Closing submissions made by Mr. Simpson on behalf of Mrs. Comber.