



Order Decision

Inquiry opened on 9 October 2012

Site visits made on 8 and 15 October 2012

by Barney Grimshaw BA DPA MRTPI (Rtd)

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

Decision date: 7 November 2012

Order Ref: FPS/M1900/7/68

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Hertfordshire County Council (Eastwick & Gilston 36, 37, 38 & 39, Hunsdon 26, 27, 28, 29, 30 & 31 and Widford 24) Modification Order 2010.
- The Order is dated 6 August 2010 and proposes to modify the Definitive Map and Statement for the area by adding 4 Restricted Byways and 1 Bridleway on and around the former Hunsdon Airfield as shown in the Order Maps and described in the Order Schedules.
- There were 8 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public Inquiry into this Order on Tuesday 9, Wednesday 10, Tuesday 16, Wednesday 17 and Thursday 18 October 2012 at Hunsdon Village Hall. I made an unaccompanied site inspection on Monday 7 October and a further unaccompanied inspection on Monday 14 October. It was agreed by all parties that a further accompanied inspection after the inquiry was unnecessary.
2. In writing this decision I have found it convenient to refer to points on the claimed ways as shown on the Order Maps. I therefore attach a copy of one of these maps which shows all the Order routes and to which I have added an additional point, D1, which was referred to in evidence.

The Main Issues

3. The requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that rights of way that are not shown on the Definitive Map and Statement subsist along the Order routes.
4. All of the evidence in this case relates to usage of the routes. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the 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.

5. Common law also requires me to consider whether the use of the path and the actions of the landowners have been of such a nature that the dedication of the path by the landowners can be inferred.

Reasons

6. Before the outbreak of the Second World War, a network of footpaths and bridleways existed around Hunsdon on land owned by the Gilston Park Estate. During the war a large area of land was requisitioned by the Air Ministry and Hunsdon Airfield was built (1940-41). As a result, the existing rights of way were largely obliterated although there is no record of them having been formally extinguished.
7. After the war, the airfield was returned to agricultural use and let on four agricultural tenancies by the Gilston Park Estate. The rights of way were not restored but in fact became further obscured as a result of ploughing and cultivation of the land. Accordingly, local people began to use the network of airfield tracks which remained in place instead of the official rights of way, a practice which seems to have suited both path users and farmers. Nevertheless, the first definitive map (1953) and later versions have included the pre-war routes rather than those in use at the time. Although efforts appear to have been made to rationalise the situation, these were not successful. In October 1998, the current owners of the land, Ropemakers Properties Ltd (RPL), took steps to increase the security of the airfield and obstructed some of the Order routes. Then, in November 1998, an application to add the airfield tracks to the definitive map was made on the basis of alleged public use of them for a period of over 20 years and this has led to the making of the current Order.
8. The Order as made proposes the addition to the definitive map of four Restricted Byways and one Bridleway. However, in the light of a recent judgement in the *Whitworth* case in the Court of Appeal¹, Hertfordshire County Council, the Order Making Authority (OMA) has requested that, if the Order is to be confirmed it be modified to describe all five routes as Bridleways. I am aware that there remains a difference of opinion in some quarters regarding the precise interpretation of this court judgement but, in this case, no party has argued in favour of the routes being regarded as having a higher status than bridleway and I have therefore borne this fact and the OMA's request in mind when assessing the available evidence.
9. The five routes included in the Order are as follows:

Route 1 – The Perimeter Route.

A circular Restricted Byway following the perimeter track of the former airfield by way of Points B-C-E-F-G-H-I-J-K-L-M-O-P-B with spurs B-A, C-D1-D (part of which follows the route of existing Footpath 17 Hunsdon) and M-N linking to existing highways. Total length 4,160 metres.

Route 2 – The East-West Runway.

A Restricted Byway running across the former airfield from Point O on Route 1 in an east north-easterly direction by way of Points Q-R to Point J, also on

¹ *Whitworth & Others v Secretary of State for Environment Food and Rural Affairs* [2010] EWCA Civ 1468

Route 1, and then continuing to join an existing Restricted Byway at Point S. Total length 2,165 metres.

Route 3 – The North-South Runway.

A Restricted Byway running across the former airfield from Point H on Route 1 in a south south-westerly direction by way of Points T-Q to Point L, also on Route 1. Total length 1,105 metres.

Route 4 – The Listed Barns Route.

A short Restricted Byway forming a loop off Route 1 from Point E by way of Point U to rejoin Route 1 at Point F. Total length 385 metres.

Route 5 –The Black Hut Wood Route.

A Bridleway forming a longer loop to the north of the former airfield, leaving Route 4 at Point U and running by way of Points V-W-X to join Route 1 at Point I. Total length 2,015 metres.

10. There was agreement between all parties to the effect that the Order routes had been used by the public over a long period, particularly on foot. Although there was some difference of opinion regarding the amount of use of some of the routes and some types of use, notably that by cyclists, horse riders and vehicles, the main arguments on behalf of objectors concerned the nature of public use and whether this could reasonably be described as having been 'as of right' as required by the 1980 Act. Accordingly I have given particular consideration to this aspect in assessing the available evidence.

Evidence of Use

Date when public use was brought into question

11. It appeared to be generally accepted by all parties before the inquiry that public use of the Order routes was brought into question in about October or November 1998. Around this time new fencing was erected along the western boundary of the estate and new gates installed at access Points A, D1, N and S. A new fence and gates were also erected around the buildings of the former Hunsdon Lodge Farm obstructing access to Route 4. Although access to most of the Order routes could still be gained after this date, even if the gates were locked, it seems that these events caused users of the routes to become aware that their right to use them was being brought into question and this led directly to the application for them to be added to the definitive map which was submitted in November 1998.
12. Although there had been gates in place at similar points before 1998 the evidence suggests that these were thought to have been erected solely to deter unauthorised vehicular access and walkers cyclists and horse riders could still gain access by way of gaps alongside the gates if the gates were locked. Accordingly it is my view that the 20 year period of public use required before dedication of the Order routes can be presumed under the 1980 Act therefore runs from October 1978 to October 1998 in this case.
13. Mr S Tinney, who took over the tenancy of most of the airfield in September 1997, gave evidence that from that time he began challenging people using the claimed routes and advising them that they were not public rights of way. At the inquiry, he stated that he had challenged 'handfuls' of people but was

unable to provide any specific details of such challenges. There were also reports of occasional challenges being made by other tenant farmers before 1997 and by representatives of RPL but, again, no specific details could be given. However, all of the people providing evidence of use of the routes stated that they had never been challenged. In these circumstances, it is my view that the actions of Mr Tinney and others were not sufficient to bring public use of the Order routes into question before 1998.

Evidence of Users

14. A total of 81 people provided evidence of use of some or all of the Order routes by completing User Evidence Forms (UEFs) and a further 6 by means of Written Statements and/or appearance at the inquiry. In addition 16 people who had completed UEFs also provided Written Statements and appeared at the inquiry and a further 4 provided Written Statements but did not appear.
15. Users generally completed a separate UEF in respect of each of the Order routes they claimed to have used, resulting in a total of 276 forms being submitted. As not all those providing evidence claimed to have used all of the Order routes, I have considered the evidence relating to each route separately.
16. It was pointed out on behalf of RPL that some inconsistency is apparent in some of this evidence and, at the inquiry, the evidence of some witnesses differed in some respects from that which they had provided in UEFs completed 14 years previously. This is perhaps understandable given the passage of so much time and the fact that witnesses were being asked to recall events dating back to 1978 or even earlier. I have borne these factors in mind when evaluating the evidence but the inconsistencies drawn to my attention did not in my view seriously undermine the value of the available user evidence as a whole.

Route 1.

17. A total of 72 people claimed to have used this route on foot at some time between 1946 and 2005. Thirty two people claimed to have used it throughout the period from 1978 to 1998 and a further 34 for at least some of that period. The frequency of use claimed ranged from daily to yearly but more than half the people claiming to have walked the route said they had done so weekly or more often. Twenty nine people claimed to have used the route on bicycles (7 for the whole period 1978-1998 and 19 for part of it), 10 people claimed to have used it on horseback (4 for the whole period and 6 for part of it) and 7 claimed to have used it in vehicles but only for part of the relevant 20 year period. The frequency of use claimed by cyclists and horse riders was generally less than that of walkers.
18. Use of the route was not spread evenly throughout the 20 year period but, between 36 and 61 people claimed to have used it on foot in each year of the period. Between 10 and 21 claimed to have used it on bicycles, between 5 and 8 on horseback and between 2 and 5 in vehicles.
19. Most users stated that they had seen no notices, gates or other restrictions on their use before 1998, nor had they been challenged by or received permission from farmers. A few people referred to gates having been locked occasionally at access points but that there were still gaps alongside them so their use was not interrupted. A small number also recalled notices reading "*Private Gilston*

Park” but appear not to have considered that these were intended to prevent their access. In addition, a few users were connected with occupiers of the land in some way and it may be that some of their use might be regarded as by invitation rather than ‘as of right’ for this reason.

20. Evidence given at the inquiry suggested that not all users had consistently followed the route of the spur between Points C and D as alternatives were available by following all or part of Hunsdon Footpath 10 or even another route that no longer exists which linked Footpath 17 to Route 4 and thence to Route 1. It is therefore difficult to quantify precisely the amount of use of this part of the actual Order route during the relevant 20 year period.

Route 2.

21. A total of 63 people claimed to have used this route on foot at some time between the late 1940s and 2005. Thirty four people claimed to have used it throughout the period from 1978 to 1998 and a further 20 for at least some of that period. The frequency of use claimed ranged from daily to yearly but roughly half the people claiming to have walked the route said they had done so weekly or more often. Twenty five people claimed to have used the route on bicycles (6 for the whole period 1978-1998 and 16 for part of it), 12 people claimed to have used it on horseback (3 for the whole period and 9 for part of it) and 5 claimed to have used it in vehicles but only 1 for the whole of the relevant 20 year period. The frequency of use claimed by cyclists and horse riders was generally less than that of walkers.
22. Again, use of the route was not spread evenly throughout the 20 year period but, between 34 and 55 people claimed to have used it on foot in each year of the period. Between 7 and 19 claimed to have used it on bicycles, between 4 and 10 on horseback and between 2 and 4 in vehicles.
23. Most users stated that they had seen no notices, gates or other restrictions on their use before 1998, nor had they been challenged by or received permission from farmers. A few people referred to gates having been locked occasionally at access points but that there were still gaps alongside them so their use was not interrupted. Again, a few users were connected with occupiers of the land in some way and it may be that some of their use might be regarded as by invitation rather than ‘as of right’ for this reason.

Route 3.

24. A total of 54 people claimed to have used this route on foot at some time between the late 1940s and 2005. Twenty six people claimed to have used it throughout the period from 1978 to 1998 and a further 23 for at least some of that period. The frequency of use claimed ranged from daily to yearly but more than half the people claiming to have walked the route said they had done so weekly or more often. Twenty four people claimed to have used the route on bicycles (4 for the whole period 1978-1998 and 17 for part of it), 8 people claimed to have used it on horseback (3 for the whole period and 5 for part of it) and 5 claimed to have used it in vehicles but only for part of the relevant 20 year period. The frequency of use claimed by cyclists and horse riders was similar to that of walkers.
25. Again, use of the route was not spread evenly throughout the 20 year period but, between 26 and 48 people claimed to have used it on foot in each year of

the period. Between 6 and 17 claimed to have used it on bicycles, between 4 and 6 on horseback and between 1 and 3 in vehicles.

26. All users stated that they had seen no notices, gates or other restrictions on their use before 1998, nor had they been challenged by or received permission from farmers. Some people referred to there having been sludge, silage or other materials deposited on or adjacent to the route at times but that it was always possible to get past this and use was not interrupted. Again, a few users were connected with occupiers of the land in some way and it may be that some of their use might be regarded as by invitation rather than 'as of right' for this reason.

Route 4.

27. A total of 41 people claimed to have used this route on foot at some time between the late 1940s and 2005. Twenty one people claimed to have used it throughout the period from 1978 to 1998 and a further 14 for at least some of that period. The frequency of use claimed ranged from daily to yearly but more than half the people claiming to have walked the route said they had done so weekly or more often. Twenty people claimed to have used the route on bicycles (4 for the whole period 1978-1998 and 13 for part of it), 5 people claimed to have used it on horseback (3 for the whole period and 2 for part of it) and 2 claimed to have used it in vehicles but only for part of the relevant 20 year period. The frequency of use claimed by cyclists and horse riders was similar to that of walkers.
28. Again, use of the route was not spread evenly throughout the 20 year period but, between 22 and 34 people claimed to have used it on foot in each year of the period. Between 5 and 14 claimed to have used it on bicycles, 4 on horseback and between 0 and 1 in a vehicle.
29. All users stated that they had seen no notices, gates or other restrictions on their use before 1998, nor had they been challenged by or received permission from farmers. Again, a few users were connected with occupiers of the land in some way and it may be that some of their use might be regarded as by invitation rather than 'as of right' for this reason.

Route 5.

30. A total of 22 people claimed to have used this route on foot at some time between 1960 and 2005. Eleven people claimed to have used it throughout the period from 1978 to 1998 and a further 6 for at least some of that period. The frequency of use claimed ranged from daily to yearly but more than half the people claiming to have walked the route said they had done so weekly or more often. Six people claimed to have used the route on bicycles (1 for the whole period 1978-1998 and 4 for part of it), 9 people claimed to have used it on horseback (3 for the whole period and 6 for part of it) and 1 person claimed to have used part of the route in a vehicle but only for part of the relevant 20 year period. The frequency of use claimed by cyclists and horse riders was similar to that of walkers.
31. Again, use of the route was not spread evenly throughout the 20 year period but, between 11 and 16 people claimed to have used it on foot in each year of the period. Between 1 and 5 claimed to have used it on bicycles, between 5 and 7 on horseback and between 0 and 1 in a vehicle.

32. All users stated that they had seen no notices, gates or other restrictions on their use before 1998, nor had they been challenged by or received permission from farmers. Again, a few users were connected with occupiers of the land in some way and it may be that some of their use might be regarded as by invitation rather than 'as of right' for this reason.

Conclusions regarding the Evidence of Use

33. Taking account of the user evidence as a whole, it is my view that, on the balance of probability, there was enough public use of all 5 of the Order routes on foot throughout the relevant 20 year period to raise the presumption that they had been dedicated as public footpaths so long as this use was 'as of right' and so long as the landowners did not take sufficient action to show that there was no intention during that period so to dedicate them.
34. With regard to use of the routes on horseback, I do not think that the amount of such use throughout the relevant period was sufficient to raise a presumption that any of the routes had been dedicated as public bridleways as there is only evidence available of use by 4 or 5 people in some years and some of these only used the routes on an occasional basis.
35. There is little evidence of use of the routes by mechanically propelled vehicles. However, with the exception of Route 5, the routes appear to have been used fairly frequently by cyclists and it could be argued that such use might be enough to raise a presumption that these routes had been dedicated as public vehicular routes of some sort. Again, any such presumption could only be upheld so long as this use was 'as of right' and so long as the landowners did not take sufficient action to show that there was no intention during that period so to dedicate the routes. I have not regarded use of the Order routes by cyclists as contributing to a presumption that they had been dedicated as bridleways as Sections 66(1) and (3) of the 1981 Act appear to me to specifically rule out such a consideration.

Whether Use was 'as of right'

Deviation

36. On behalf of objectors it was argued that, as it was generally agreed that until some time in the mid 1990s the definitive paths at Hunsdon Airfield were unmarked and therefore impossible to follow on the ground as well as being obstructed by growing crops for much of the time, path users had the right to deviate on to other land belonging to the same landowner. If this is what people were doing when they used the routes now claimed they were effectively using them by right rather than as of right as required under section 31 of the 1980 Act.
37. The fact that a user might not be aware of the existence of a definitive route that was obstructed would not necessarily take away his right to deviate on to an alternative route that was available. However, a deviation would presumably have to be 'reasonable', although this concept has never been quantified in law in terms of how far from the definitive route it might be reasonable to deviate. In this case, it is in my view arguable that some of the Order routes offer reasonable alternatives to definitive routes but it is difficult to see how other claimed routes could be so regarded. In particular, a combination of Routes 1 and 2 could be seen as an alternative to Hunsdon FP10 or Hunsdon FPs 20 and

11 or Eastwick & Gilston FPs 4 & 1 and High Wych FP22 and a combination of Routes 1 and 3 as an alternative to Hunsdon FP11. I do not, however, see that a similar argument can be applied in the case of Order routes 4 and 5. Also, this argument can only apply to use on foot as the definitive routes in question are themselves footpaths.

Permission

38. It was also argued on behalf of objectors that the owners and occupiers had been aware over a long period that the definitive ways were unmarked and difficult or impossible to use and that people were using the airfield tracks instead. However, it was stated that this had not been 'as of right' but with their express or implied permission as it was an arrangement that seemed preferable both to farmers and path users. Although there was no evidence of written permission having been granted or of signs or other indications specifically stating that the routes were available by permission, a number of other indications were referred to in support of this argument.
39. Hunsdon Parish Council minutes and letters from Bishop's Stortford and District Footpaths Association to Hertfordshire County Council (HCC) and agents acting for the Gilston Estate suggest that proposals to 'rationalise' the footpath network so as to replace definitive footpaths with the airfield tracks had been made in 1956, 1960 and 1972. However, these seem to have come to nothing for reasons which are not known.
40. In 1983, Hunsdon Parish Council (HPC) produced a booklet, "Hunsdon Walks", with the aim of publicising in the village the public footpaths. The booklet included a general reference to informal arrangements having been made with farmers for diversions to be used where acceptable. With regard to footpaths on the disused airfield, the booklet noted that many paths had been obscured by the construction of the airfield although these were still shown on the official footpath maps. However, it then stated that *"In their place we now have the remains of the airfield runways, perimeter track and access roads used by occupying farmers who have agreed to their use as the preferred alternatives to the original paths"*. 250 copies of the booklet were originally printed and sold through the village shop and certain individuals and it was suggested by one witness at the inquiry that further copies might have been printed later as he had two copies with different coloured covers.
41. Most witnesses who provided Written Statements and/or appeared at the inquiry stated that they had not been aware of the booklet or, if they had, they had not seen or appreciated the reference to arrangements with farmers as they were mainly interested in the maps showing the routes of paths that they could use. Nevertheless, it would appear that the booklet was widely available within Hunsdon and it seems to acknowledge quite clearly that use of the airfield tracks was by agreement with the occupying farmers. Several witnesses also made reference in their UEFs or statements to the fact that it was widely known that the farmers allowed access to the tracks.
42. In February 1991, HCC wrote to each of the tenant farmers of airfield land drawing their attention to their duties under the recently passed Rights of Way Act 1990 and, in particular asking them to make the lines of the definitive paths apparent within 14 days. This provoked a response from one of the tenants to the effect that if a compromise could not be reached he would deny everyone the use of the concrete roads and insist that all walkers use only the

- definitive footpaths and all horse riders only definitive bridle paths. He also stated that he intended to issue copies of the correspondence to all users of the airfield to explain his actions. There is no record of him subsequently having attempted to prevent use of the airfield tracks but it would appear that he must have drawn the correspondence to the attention of at least some path users as a number of them (13) wrote to HCC expressing concern that they would lose the use of the tracks. In response HCC replied that there had been consultation with tenant farmers and the Estate and they had *"come to a sensible and practical solution which will take effect until the rationalisation package is agreed and put forward to the County Council"*. Evidence provided by farmers and representatives of RPL indicates that they believed this 'sensible and practical solution' to mean that they would permit public use of the airfield tracks pending the implementation of a rationalisation scheme involving the closure of definitive routes.
43. Attempts to agree a rationalisation then appear to have been made over the next few years. In July 1992 HPC put forward its own proposals in a letter sent to the tenant farmers, the agents for the landowner and various rights of way user groups. Amongst other things, this letter stated that the concrete tracks were used by villagers every day *"by permission of the farmers"* and that they would like to see them become the official rights of way. In 1994, the agents for the Estate wrote to HCC offered to grant a permissive footpath licence over the airfield paths. The plan referred to in this offer included nearly all the Order routes and some additional ones. Again, these proposals came to nothing but, it would seem that as a result of this activity, the parish council, various user groups, a number of path users and HCC accepted that use of the airfield tracks was available by permission of the farmers.
44. Evidence was given at the inquiry on behalf of Morton Massey Gun Club that they had operated at Hunsdon Airfield since 1979/80 originally on the basis of an informal arrangement with one of the tenant farmers and later with a more formal tenancy agreement. When shooting was taking place, usually on Sunday mornings, they would erect notices and prevent people from using claimed routes in the vicinity but would defer to anyone using a definitive route and stop shooting until they had passed. This was done with the knowledge and support of the tenant farmer and perhaps represents further evidence that public use of the routes was by permission which could be withdrawn at any time.
45. It was generally accepted that there were gates at various points on the Order routes before 1998 and that these may have been locked on some occasions. This does not appear to have caused any interruption to use of the routes, except use in vehicles, as other users could by-pass the gates by means of gaps in the hedges alongside them. It was suggested on behalf of objectors that this was further evidence of the permissive nature of the routes in as much as occupiers of the land felt free to obstruct the routes when they wished but allowed some categories of users to use alternative routes.
46. Overall, it is my view, on the balance of probability, that public use of the Order routes was made with the permission of the landowner and occupiers rather than 'as of right' as required by the provisions of the 1980 Act. In reaching this conclusion I have given particular weight to the 1983 booklet which appears to have been quite widely distributed in the local area and to the negotiations regarding the proposed 'rationalisation' of the rights of way

network in the early 1990s. This latter process involved the parish council, the county council and various representative user groups as well as the landowners and occupiers and all parties then appeared to accept then that the Order routes were not used 'as of right' by the public. In the light of these and other indications, it seems to me that the actions of the landowners and occupiers were sufficiently overt to indicate that public use of the airfield tracks was available as a result of their permission rather than that they merely acquiesced to it.

Evidence of lack of intent

47. There is little substantive evidence of any action by the owners of the land crossed by the Order routes prior to 1998 which would indicate their lack of intention to dedicate them as public rights of way of some sort. It has been stated that tenant farmers were required to prevent the creation of such rights but this requirement was not brought to the attention of path users.
48. It is suggested on behalf of RPL that the actions of the landowner and tenants in cooperating with the parish council and participating in the abortive attempts to rationalise the rights of way network was indicative of their lack of intent to dedicate further rights of way except in return for the closure of definitive routes.
49. It was also suggested that the locking of gates on occasions before 1998 would have indicated that the landowner reserved the right to exclude the public from the tracks even though access was still possible. It would appear that it was tenants who erected and locked the gates but it is likely that this action was taken with the knowledge and agreement of the landowner.
50. Overall, it is my view that the erection and locking of gates at various points was sufficient to indicate the landowners' lack of intention to dedicate any public vehicular rights over the Order routes even though some vehicles such as bicycles could still gain access to them by way of gaps. On the other hand, I am doubtful if the manner in which access to walkers and horse riders was allowed was, in itself sufficient to indicate a lack of intention to dedicate public footpath or bridleway rights. However, in view of my conclusion regarding the permissive nature of such access, this will make no difference to my decision.

Common Law

51. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
52. In this case, although there is a considerable amount of evidence of public use of the Order routes over a lengthy period, I have already concluded that the actions of the landowners with regard to this use was to permit it to continue in preference to use of the definitive routes in the area. In these circumstances it would not be reasonable to infer from their actions that they also intended to dedicate the routes as public rights of way.

Other Matters

53. The OMA drew attention before the inquiry to the fact that part of one of the Order routes, Route 1, Points D-D1, followed the line of an existing footpath,

Hunsdon FP17 and therefore the Order ought to have included a reference to section 53(3)(c)(ii) of the 1981 Act. In my view this was a matter that could have been dealt with by a modification of the Order if the Order was to be confirmed.

Conclusions

54. There was enough public use made of all of the Order routes in the period 1978 to 1998 to raise the presumption that they had been dedicated as public footpaths and possibly as routes of a higher status in most cases, so long as other criteria set out in the 1980 Act were satisfied.
55. Public use of Routes 1, 2 and 3 on foot for most of the relevant period could be regarded as legitimate deviation from unmarked and obstructed definitive routes and therefore 'by right' rather than 'as of right' as required by the 1980 Act.
56. Public use of all of the Order routes in the relevant period was available with the express or implied permission of the owners and occupiers of the land and therefore was not 'as of right'.
57. The landowners indicated during the relevant period by way of the erection and occasional locking of gates that they had no intention of dedicating the routes for public vehicular use.
58. Having regard to these and all other matters raised, I conclude that the Order should not be confirmed.

Formal Decision

59. I do not confirm the Order.

Barney Grimshaw

INSPECTOR

Objectors

George Laurence QC and Gordon Bennett

Counsel instructed by Bircham Dyson Bell LLP

Who called:

Mr J Wootton

Savills (agents for RPL)

Mr E Carter

Farmer (adjacent land)

Mr AC Brown

Former Director, Savills

Mr S Tinney

Farmer (airfield land)

Mr C Seward

Treasurer, Morton Massey Gun Club

Interested Parties

Mr L Smith

Chair, Morton Massey Gun Club

DOCUMENTS

Submitted before the inquiry

1. Statement of Case and supporting documents, HCC
2. Proofs of Evidence (25), HCC
3. Statement of Case and supporting documents, RPL
4. Proofs of Evidence (12), RPL
5. Statement of Case on behalf of Hunsdon Microlight Club

Submitted during the inquiry

6. 3 supplementary witness statements, HCC
7. Proposed modified Order, HCC
8. Corrections/omitted sections of previously submitted documents, HCC
9. Plan of airfield routes submitted by Mr Laurence
10. Copy of Hunsdon Village Appraisal, 1991
11. Additional (unredacted) copies of letters, E Carter on behalf of RPL
12. Copy of Defra advice regarding the *Whitworth* case (advice subsequently withdrawn)
13. Closing Submission and additional authorities, RPL
14. Closing Submission and additional authorities, HCC

