

# HERTFORDSHIRE COUNTY COUNCIL



## Rights of Way Service

Modification Order Application  
Reasons for the decision

Grace Avenue, Shenley

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Date 29<sup>th</sup> November 2016

### Application Details

An application has been made to record a public footpath in Shenley which is in the Hertsmere borough of Hertfordshire. An extract of the 2015 Definitive Map is attached and labelled "Investigation Plan" ("IP"). It shows where the route is and it is labelled Point 1 to Point 6.

This application was made by Nicolette Berkley on 1<sup>st</sup> February 2016. It was submitted in the prescribed form and included evidence in support of the application including:

- 57 completed user evidence forms and summary
- Historical maps and photos
- Extracts of Hertsmere Borough Council planning documents and planning policy
- Title documents and conveyancing plans
- Contemporary maps and photos

During the public consultation period with the Investigation Report, the Applicant and Shenley Mansion Management Ltd ("SMM" - the landowners who object to the application) submitted a substantial amount of evidence which is included in this report. Please note that due to the volume of evidence, some has been grouped together (e.g. documents relating to the development of the Hospital site are set out together chronologically, etc.) and therefore the numbering in this report differs from the numbering which was given in the Investigation Report.

### Description of Route

The Application Route is situated in the Porters Park Estate in Shenley on the west side of the B5378 Black Lion Hill, inside the loop of Porters Park Drive. This is the site of the old Shenley Hospital. Permain Close was built in approximately 1995/96. Shenley lies south of the M25 motorway and east of Watling Street.

The Application Route links Porters Park Drive (point 1 on the IP) with Permain Close (point 6 on the IP) via Grace Avenue. Permain Close and Grace Avenue are both private roads. The Application Route mainly runs along surfaced driveway and a short distance of grass between points 4 and 5 on the IP.

The Application Route starts at point 1 on the IP, at the junction between Porters Park Drive and the eastern access to Grace Avenue. Vehicles follow a one way system through Grace Avenue and the eastern access is the vehicular exit onto Porters Park Drive.

The Application Route follows the driveway generally north west and west, sloping up towards the white mansion building. At approximately point 2 there is a new looking sign on the south side of the driveway which reads 'Shenley Manor PRIVATE ROAD No Public Right of Way'. The application suggests that this sign at point 2 was erected in approximately July 2015, however SMM have subsequently submitted evidence which demonstrates that the sign at point 2 was one of two signs on Grace Avenue which were erected in 2013.

The Application Route continues north west along the driveway to point 3 on the IP where it turns north and runs to point 4 on the IP along the surfaced access which leads to a private car park. The Applicant notes that the Ordnance Survey basemap incorrectly labels the car

park as 'The Old Buttery' (which is actually the property name of no.7 Grace Avenue). The Shenley Manor/Hawksmoor Place brochures (extract submitted by Applicant during public consultation) correctly label the Buttery property and describes the parking compound as an enclosed courtyard.

The Application Route then turns north east to cross the grass strip on the south side of the parking compound. Until fairly recently (after January 2007) there was bin storage on the land between points 4 and 5 - the hard standing of the storage area is still present, as can be seen in the photos. The Applicant notes that Hertsmere Borough Council recorded the bin storage as in a "dangerous condition" at 5<sup>th</sup> January 2007 which SMM suggest was the result of vandalism. A strip of grass approximately 2 metres wide runs between the hard standing and a grass embankment, between points 4 and 5. There is another sign saying 'Shenley Manor PRIVATE LAND No Public Right of Way' on the grass to the south of the Application Route between points 4 and 5 on the IP which evidence from SMM indicates was erected in June/July 2015 and was subsequently replaced later than year. In October 2015, a fence and shrubs were planted across the line of the Application Route at point 5.

The Application Route crosses the parking spaces at Permain Close between points 5 and 6 on the IP. On the south east side of the parking spaces there is a wide strip of grass leading to Permain close.

The Applicant has clarified that the Application Route was intended only to extend between points 1 and 5 as shown on the IP, terminating at the edge of the parking bays on Permain Close which are within the freehold of properties on Permain Close. However, for continuity HC has considered the evidence between points 5 and 6. Neither points 5 or 6 currently join recorded public highways.

SMM have pointed out that at the junction between Permain Close (private road) and Pippin Close (a publicly maintainable highway), there are road signs on either side of the access to Permain Close which read "Private Road Residents Only" which SMM estimate have been in place since the construction of Permain Close (circa 1995/96) and certainly since 1999 (landowner statement 2).

### Documentary Evidence

For each investigation, we check at least 10 primary sources of information for any historic evidence relating to the Application Route. You can view the documents listed below at Hertfordshire Archives and Local Studies (HALS) or at the Rights of Way Service (ROW). The documents are listed below with a reference number (if it has one) and where you can find it.

For further information contact:

Hertfordshire Archive and Local Studies (HALS) -  
01438 737333 (or 01923 471333 from area codes 01923 and 020)

[www.hertsdirect.org/services/leisculture/heritage1/hals/](http://www.hertsdirect.org/services/leisculture/heritage1/hals/)

Rights of Way Service (RoW) - 01992 555279 to make an appointment.

If you would like more information about documents and how they are important in investigating public rights of way, please go to the Planning Inspectorate's website and view their Guidance Booklet for Definitive Map Orders: Consistency Guidelines. See

<http://www.planningportal.gov.uk/planning/countryside/rightsofway/rightsofway> which also gives details about related articles and case law.

Where the document shows information relevant to the area of the Application Route, it is listed with the following information:

- The Document's name, date and where it can be found (location and reference)
- Why we consider the document important when making our decision
- What is shown by the document in the area of the Application Route
- Investigating Officer's comments

Investigation into the following historical documents has not provided evidence with regard to the Application Route. Please note that where there is no evidence found relating to the Application Route, this has just been recorded as "no evidence found, and where there are no records for the document listed, this has been recorded as "No records found."

**1. Dury and Andrews Map, 1766 – Ref: HALS – CM26**

No evidence found relating to the Application Route. 'Porters' is annotated on the map but the cartography is not sufficiently clear to relate to Grace Avenue and the Application Route.

**2. Inclosure records**

No records found.

**3. Railway and Canal Plans**

Not consulted as there are no railways or canals in the area of the Application Route.

**4. Highway Diversion/Extinguishment Records**

No records found.

**5. Definitive Map Records 1953 – 1977 – Ref: ROW**

No evidence was found relating to the Application Route

**6. Bryant's Map**

Date: 1822

Ref: HALS - CM88

**6.1 Why we consider this document important**

Andrew Bryant's 1822 map of Hertfordshire was again drawn from an original survey. Its depiction is much more accurate (like an Ordnance Survey map) rather than being schematic. This may be due to survey equipment (theodolites) becoming commercially available in the 1790s. The "explanation" (or legend) lists "Turnpike and Mail Roads", "Good Cross or Driving Roads" and "Lanes & Bridleways". It is unlikely that it shows routes which, at the time, were thought to be footpaths. Like Dury and Andrews' map, Bryant's map was sold to members of the public and cost 3-4 guineas. The commercial nature of the map means that routes shown are likely to be public unless there is strong contemporary evidence which shows that routes are private. As public roads prior to 1835 were maintainable by the parish, it is likely that routes shown are now publicly maintainable.

**6.2 What is shown by this document in the area of the application route?**

The map shows Black Lion Hill to the east of Porters. Porters is annotated and its depiction is described in the key as 'Gentlemens Parks'. The mansion is shown within the Park with two routes of double pecked lines running in an arc on the south side of the mansion between Radlett Lane and the mansion.

The map is not of a sufficient scale to show the detail in the land surrounding the mansion.

### **6.3 HCC's decision**

HCC decided that the map provides evidence of the physical existence of a route leading to and from the mansion, part of which is likely to now be Grace Avenue and therefore provides evidence of the physical existence of the Application Route between points 1 and 3 on the IP. The map does not provide evidence that the Application Route was a public highway.

## 7. Shenley Tithe Map and Tithe Apportionment (map extract submitted with application)

Date: 1840

Ref: HALS - Map DSA4/94/2, Award DSA4/94/1

### **7.1 Why we consider these documents important**

A 'tithe' was literally a 'tenth' of the produce of the land and was paid in kind to finance the Church (crops were stored in 'tithe barns'). The tithe surveys were carried out under the Tithe Commutation Act of 1836 to reform this system to an easier money payment. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid.

In 1837 the Act was amended to allow maps produced to be either 1<sup>st</sup> class or 2<sup>nd</sup> class. They did not have to be made from an original survey. 1<sup>st</sup> class maps are legal evidence of all matters which they portray, and were signed and sealed by the commissioners. They had to be at a scale of at least 3 chains to the inch. 2<sup>nd</sup> class maps were evidence only of those facts of direct relevance to tithe commutation, and are often at 6 chains to the inch. Both 1<sup>st</sup> and 2<sup>nd</sup> class maps have been accepted by the courts as evidence. Unfortunately the proposed convention of signs and symbols to be used, which included Bridle Roads and Footpaths, was not strictly adhered to.

The tithe process received a high level of publicity. This ensured the documents were an accurate record of the agricultural landscape at this period of history. Therefore, although the process was not directly concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights. Non-titheable land deemed to be unproductive could be excluded from the process. No tithe was therefore payable on roads and so it was in the interest of the landowners for these to be shown correctly. Taken together with corroborative evidence, highways that are coloured yellow or sienna can indicate public status. Footpaths and bridleways are not often shown on tithe maps as they did not generally affect the productivity of land and so the calculation of tithe rent.

### **7.2 What is shown by these documents in the area of the application route?**

Porters is shown in the area north west of Shenley Hill. Porters and Shenley Hill are both annotated. Black Lion Hill and Radlett Lane are shown in the area surrounding Porters. Porters is labelled as plot 270 referring to an entry in the accompanying book of reference. The mansion is shown within this plot, with large ponds shown coloured blue on the north east side of the building and various tracks, depicted by parallel pecked lines, leading to and around the mansion and surrounding area. One track resembles Grace Avenue running in an arc on the south side of the mansion.

The main roads through Shenley are shown on the map, uncoloured, between solid parallel lines and without plot numbers. This includes the roads now known as B5378 (London Colney to Shenley), London Road, Radlett Lane, Rectory Lane and Pound Lane.

Plot 270 is referred to in the award as 'Mansion and Premises'. Plot 272, which borders plot 270 on its south east side, is described as Shenley Park. The pecked lines running to the mansion cross plot 272 from a junction with Radlett Lane. The route is shown braced to the land on either side. The map appears to show a formal entrance and gate at the junction between the route to the mansion and Radlett Lane. Small buildings are shown either side of the track and a solid line crosses the route. Plot number 276 is shown in the junction between the gated entrance and Radlett Lane, however there is no reference to plot 276 in the award.

### **7.3 HCC's decision**

HCC decided that the Tithe Map provides evidence of the physical existence of a route leading to and from the mansion, part of which is likely to now be Grace Avenue and therefore provides evidence of the physical existence of the Application Route between points 1 and 3 on the IP.

However, the route on the Map is not shown in the same manner as surrounding public roads. It is shown gated from Radlett Lane and braced to the surrounding land and so provides no evidence that the Application Route was a public highway.

## 8. Inland Revenue Documents

Date: 1909-1910 Ref: HALS - IR1/455 & IR2/61/1

### **8.1 Why we consider these documents important**

The Finance (1909-1910) Act 1910 was passed in order that a tax could be levied on any increase in the value of land when it changed hands. In order to ascertain the value of all land as at 30<sup>th</sup> April 1909, a survey was carried out assessing each piece of land. The OS 2<sup>nd</sup> Edition Plans (usually from 1898) were used as the base maps and annotated. Details were recorded in field books and valuation books. These books included a column which allowed a deduction in tax if a public right of way crossed the land. Every property was given a plot or 'hereditament' number which was then referred to in the valuation books and maps. Hereditaments were coloured on the maps to identify land holdings. Not all land was coloured.

Once a provisional valuation of a property had been reached, landowners were given the opportunity to appeal. The whole process was carried out under statutory authority by the Valuation Department of the Inland Revenue and there were criminal sanctions associated with the falsification of evidence. It would have been negligent to omit such land from the survey, including private roads, which might have had value. However, it was not a criminal offence not to deduct tax if a right of way did cross your property. Consequently, the resultant records carry a high level of evidential weight as to the routes which they show to exist, but are unlikely to be good evidence that rights of way do not exist.

Where a route is shown uncoloured on the plans and excluded from the taxable land this provides very strong evidence of it being public highway. Usually this will be of vehicular status unless there is other contemporary evidence to indicate otherwise. Where footpaths and bridleways cross privately owned land these may be recorded as a reduction to the tax. However, where routes cross large hereditaments it can be difficult to establish which route is considered to be the right of way without additional details.

## **8.2 What is shown by these documents in the area of the application route?**

The 2<sup>nd</sup> edition OS basemap shows and labels Porters. Various routes are shown leading to and around the mansion, part of which resembles what is now known as Grace Avenue. Porters is within plot 487 which is coloured blue. The routes leading to and around the mansion are included in this plot and there are no annotations added to the map in relation to these routes.

Plot 487 is referred to in the accompanying book of reference as 'Porters Park Mansion', owned and occupied by Cecil Raphael. The reference book shows that plots 486 to 492 have been braced together for the purpose of the evaluation. So whilst each plot has a separate description including Mansion, Buildings, Park, Agricultural Land etc, there is one site value of £85,725 recorded for all the plots. One value of £4,075 for Tithe Charge and one value of £1,650 for public rights of way or user are also recorded for plots 486 to 492. Together the plots cover 1168 acres of land.

Plot 369 on the south side of Radlett land does have a route shown on the OS basemap shown as a track which was annotated 'public' by the IR surveyor. There are no such annotations on the land crossed by the Application Route.

## **8.3 HCC's decision**

HCC decided that it is impossible to say from the Inland Revenue documents as to what the £1,650 rights of way deduction relates to across 1168 acres of land. It would appear that this deduction is unlikely to relate to the Application Route as it was not annotated. The documents provide no evidence in relation to the Application Route.

## 9. Aerial Photographs

Date: 1926 - 1948

Ref: [britainfromabove.org.uk](http://britainfromabove.org.uk)  
(photographs submitted with application)

Date: 1973 – 2010

Ref: HALS/ROW

## **9.1 Why we consider these documents important**

Aerial photographs may confirm the physical existence of a route at the time the photographs were taken. They may also provide evidence relating to any physical features on the route such as signs or structures. Greater evidential value may be placed on aerial photographs where the date and time at which the photographs were taken is known and an accurate record of the position and orientation in relation to the relevant route is provided. An aerial photograph cannot provide evidence of what rights might exist over a route; it can only provide evidence that a route and its physical characteristics existed on the ground at the date the photograph was taken.

## **9.2 What the documents show**

### Britain From Above

Photographs show the hospital site, including the mansion building from various angles and distances taken in 1926, 1934 and 1948.

The earliest photograph taken in 1926 shows Porters mansion before Shenley hospital was built. Grace Avenue (as it is now known) is shown leading to and from the mansion, including that part of the Application Route between points 1 to 3 on the IP. The area crossed by the

Application Route between points 3 and 6 on the IP is wooded and cannot clearly be seen. Part of what is roughly Porters Park Drive (as it is now known) is also shown. The surrounding area is mainly fields and woodland. The walled garden at Shenley Park (on the north west side of Radlett Lane near the café in the orchard) is shown to the south west of the mansion.

The 1934 photographs show the development of the hospital site. Photographs of the main hospital building show the mansion to the north west. Grace Avenue is shown leading to and from the mansion, including points 1 to 3 on the IP. Part of what is roughly Porters Park Drive is also shown. The photographs do not show the existence of that the part of the Application Route extending from Grace Avenue driveway, points 3 to 6 on the IP.

Like the earlier 1934 photographs, the 1948 photographs show Grace Avenue leading to and from the mansion, including points 1 to 3 on the IP. Part of what is roughly Porters Park Drive is also shown. The photographs do not show the existence of that the part of the Application Route extending from Grace Avenue driveway, points 3 to 6 on the IP.

#### 1:2,500 scale aerial photos

1973 – The photo shows the Shenley hospital site, including Grace Avenue which is shown as a wide driveway leading to the mansion. The property which is now no.7 Grace Avenue is shown but the photo predates both the car park compound and Permain Close. There is nothing in the photo to depict a route between points 3 and 6 on the IP. This land is mainly grassland dotted with trees and shrubs.

1990 – The photo is very similar to the 1973 photo, however the Grace Avenue driveway and the driveway to no. 7 Grace Avenue are not as clearly defined as in the earlier photo.

2000 – This photo shows the development of the estate after the hospital site was redeveloped. Grace Avenue, Permain Close and the car park compound are shown. The bin storage on the southern side of the car park compound is shown. There is a grass strip between the bin storage and the small embankment which runs between points 4 and 5 on the IP. The Permain Close parking bays at point 6 on the IP are shown.

2010 – This photo is very similar to the 2000 photo but the bin storage appears to have been levelled and a hard standing remains. There is a faint line south of the bin storage crossing the grass.

The Applicant submits that whilst the large scale aerial photos do not clearly indicate use of the Application Route across the grass between points 4 and 5, evidence of use is shown in photos dating from mid-september 2015 (submitted during the consultation with the investigation report) show evidence of wear and cycle use. An earlier photograph of the vandalised bin storage (circa September 2006) also indicates wear on the grass on the south side of the storage.

### **9.3 HCC's decision**

HCC decided that the photographs provide evidence of the physical existence of Grace Avenue and that part of the Application Route between points 1 and 3 on the IP, and some evidence of use between points 3 and 6 on the IP since 2006.

10. Ordnance Survey (OS) maps

Date: 1872 – 2015

Ref: ROW/HALS

(maps submitted with application)

**10.1 Why we consider these documents important**

The original surveys were carried out by Royal Engineers at the time of the Napoleonic wars in order to better plan the transportation of ordnance around the country. It was only in the early 20<sup>th</sup> century that the OS evolved to become a public service that sold its mapping information to the public. Since the 1960s this mapping information has included public rights of way, which are derived from each county's Definitive Map.

The OS has produced a series of topographic maps at different scales notably the one inch, six inch and 1:2500. The detailed, large scale 1:2500 maps from the 1870s onwards provide the best evidence of the position and width of routes and the existence of any structures on them. These maps provide good evidence of the physical existence of routes at the time the map was surveyed. When compared with earlier, less accurate maps they can help corroborate the existence of routes. OS maps show features that physically exist and may label routes as footpaths and bridleways etc. However, the disclaimer which has been added to all editions since the 2<sup>nd</sup> edition maps (circa 1897/8 in Hertfordshire), along with official guidance to the surveyors of the maps at the time, states that the representation of any track or way is no evidence of a public right of way.

**10.2 What is shown by these documents in the area of the application route?**

1<sup>st</sup> edition OS map, 1872 (submitted by Applicant) – the map shows Porters with woodland surrounding the mansion building. Black Lion Hill is labelled leading to the centre of Shenley, to the east of Porters. There are routes shown in and around Porters, depicted by parallel pecked lines, including two routes leading to the mansion (resembling Grace Avenue) which link to a route running generally east west from Black Lion Hill (resembling Porters Park Drive). A solid line across 'Grace Avenue' may indicate a gate at the junction with the adjoining route, at approximately point 1 on the IP. Nothing is shown on the map which might depict the Application Route between points 3 and 6 on the IP.

2<sup>nd</sup> edition map, 1898 – Porters and Black Lion Hill are shown and annotated as on the earlier map. The route which resembles Grace Avenue is shown but appears to be more significant than the surrounding routes which are shown by parallel pecked lines. 'Grace Avenue' is shown by parallel pecked lines but one of the lines is heavier than the other. It is not so clear on this map whether a solid line is shown across the route at approximately point 1 on the IP.

1925 map, providence unknown (submitted by Applicant) – appears to be based upon the 2<sup>nd</sup> edition OS map. Grace Avenue is shown leading to the mansion and there is no line across the route which would indicate a gate at point 1 on the IP. The building which is marked on the IP as no.7 west of the car park compound is also shown, but the compound is not. The map does not show the Application Route between points 3 and 6 on the IP.

3<sup>rd</sup> edition map, 1935 – This map shows the development of Porters Park into the Shenley Mental Hospital. The extensive buildings of the hospital are shown. Grace Avenue is shown leading to the mansion and there is no line across the route which would indicate a gate at

point 1 on the IP. The map does not show any route extending from Grace Avenue driveway which would relate to the Application Route between points 3 and 6 on the IP. The car park compound is not shown.

The OS 1:10,000 maps from the 1930's -1991 do not show the car park compound, however it is shown on the 2000 map.

2000 1:10,000 scale OS map – shows Permain Close and the car park compound but at a scale of 1:10,000 the map does not show the whole of Grace Avenue driveway by the mansion or the driveway leading to the car park compound.

2015 1:10,000 scale OS colour vector map (submitted by Applicant) – shows the Porters Park Estate as it exists now. Grace Avenue and Permain Close are shown and annotated - as are the surrounding residential roads. The car park compound is shown with the driveway leading to it (points 4 to 5 on the IP). However, at a scale of 1:10,000 no further detail of the Application Route (points 4 to 6 on the IP) is shown.

SMM submitted an OS map used as the basemap for a Land Registry title plan (HD309659). The plan is dated 1993. SMM note that the Application Route between points 3 and 5 on the IP is not shown on the map.

SMM also submitted an OS map produced for HistoricEngland.org.uk dated 2015. The map shows Grace Avenue, Permain Close and the surrounding area which SMM state shows a footpath link between Permain Close and Fielders Way (via Pippin Close), thereby providing a shortcut to local shops and doctor's surgery. Shops and a doctor's surgery are located at the eastern end of Porters Park Drive.

### **10.3 HCC's decision**

HCC decided that the OS maps provide evidence of the physical existence of Grace Avenue (including the Application Route between points 1 and 3 on the IP) from as early as 1872. The 2015 basemap is the first OS map considered which shows the driveway between points 3 and 4 on the IP. None of the OS maps provide any evidence of the physical existence of the Application Route between points 4 and 6 on the IP however, Permain Close was only built in the mid 1990's and was therefore first shown on the 2000 map.

OS maps provide no evidence that the Application Route was a public highway.

## 11. Documents relating to the development of the Shenley Hospital site

Date: 1986 – 1996

### **11.1 What we consider these documents show**

Extracts from 'Securing a good future for Shenley' planning brief

Date: November 1986

Ref: Hertsmere Borough Council  
(copy submitted with application)

The document includes a plan labelled 'Plan 1: Future Structure and Phasing' showing the Porters Park/Shenley Hospital site. The mansion is shown and annotated and described in the key as a 'Public Building' and not 'Residential'. The black & white copy of Plan 1 indicates that the land on the north west side of the mansion was residential (difficult to be sure without

a colour map). The land around the mansion is shown depicted as 'Leisure Uses' in the key. The area is annotated 'phase 2'. Other areas shown in this way are the Chapel and the Park Centre (between the Orchard Tea Room and the Walled Garden). Grace Avenue is shown approximately on its current course.

Land on the estate which was identified as residential is not shown surrounded by land intended for 'leisure use', which is generally shown on the south side of estate within Shenley Park.

The Key/legend on the plan denotes footpaths as 'FP'. 'FP' is labelled in various locations on the plan shown by a pecked line, including a route running in a north east/south west direction across the north west section of Grace Avenue, very close to the mansion. This route has never been recorded on the Definitive Map. There are other routes labelled FP on the plan, within the estate, which have not been recorded on the Definitive Map. However, there are routes shown around the north, west and south edges of the estate which roughly correspond to footpaths and bridleways Shenley 10, 36 & 38 as recorded on the Definitive Map. The Applicant submits that the east-west footpaths as shown on Plan 1 of the document corresponds to the Application Route between points 4 and 6 on the IP.

The four phases of the development are described on page (x) of the document. Paragraph (a) 'Phase 1' refers to 'provision of a 45 acre landscaped rural park with perimeter walk, long distance footpaths and inner footpath network and 'green border'.

(b) 'Phase 2' refers to 324 dwellings, some small business premises, conversion of The Mansion (for use as offices, conference centre, research and development centre, country club, an hotel, private school, or other appropriate institutional health care use).

Page 20 includes details relating to the mansion. Paragraph 4.8 states that community feeling supported finding a use for the Mansion which would create the maximum employment for local people (attracting employment/ replacing lost employment is identified as a priority in the document). Paragraph 4.9 states 'It is important that the setting of The Mansion is conserved, and that the public have access to the gardens, as part of the rural park concept. It is therefore suggested that whoever takes on The Mansion should be offered the adjoining land, with covenants governing its maintenance and the right of public access. No new building should be allowed to the south of The Mansion.'

#### Shenley Hospital Land Sale plans

Date: 1987

Ref: London Metropolitan Archives,  
H49/Shy/P/01/001  
H49/Shy/P/01/024  
(copy submitted with application)

The Shenley hospital site is shown, including the mansion and Grace Avenue. The mansion is abbreviated 'MN' on the plan. The driveway immediately in front of the mansion is abbreviated 'P' for parking. The remainder of the Application Route between Grace Avenue driveway and Permain Close (points 3 to 6 on the IP) is not shown.

Report of Secretary of State for the Environment following inquiry into planning application at Shenley Hospital site.

Date: February 1989      Ref: submitted by SMM

The report shows that the decision on the planning application was made by the Secretary of State rather than Hertsmere Borough Council following a public inquiry held by a Planning Inspector. The Secretary of State generally accepted the Inspector's conclusions and recommendations but added some conditions to the outline planning permission, including the following:

“ 4) The development of this site shall include provision for a comprehensive footpath system to be laid out in accordance with details which shall have been previously submitted to and approved in writing by the Local Planning Authority before any development commences. As approved they shall be laid out concurrently with the landscaping.”

The report shows that at the time it was written, the Mansion was still proposed to be converted for employment use rather than residential.

SMM note that the 1995 Planning and development brief (discussed below), which set out existing and approved footpaths (in accordance with the condition described) did not include the Application Route or any footpath crossing Grace Avenue.

Maps taken from planning documents relating to conversion of hospital grounds

Date: 1992      Ref: HCC (copy submitted with application)

The maps are titled 'WGS 15' and 'WGS 11' 'Rural Park Transfer' and are based on OS mapping. The Shenley hospital site is shown, including Grace Avenue, and various boundaries are marked on the map in different colours. No information is given to explain the use of colour. The common seal of Hertsmere Borough Council is shown on each map.

Extract taken from Shenley Hospital Development (Phase 3) Planning and Development Brief

Date: May 1995      Ref: Hertsmere Borough Council  
(Extract submitted by SMM)

Paragraph 2.0 of the planning brief describes Phase 3 land as land to be sold by the Regional Health Authority, falling into two distinct areas on opposite sides of the spine road (Porters Park Drive). The Mansion being on the north side of the spine road and part of Shenley Park (the chapel) to the south.

Paragraph 4.6 refers to pedestrian links at the Hospital site: “Before development commenced the hospital suffered from being physically isolated from Shenley village. The planning brief therefore proposed a series of pathways crossing the site, and linking up with existing paths outside the hospital. A new pedestrian link has now been created from Shenley Park to the Village and pathways link the new development with the surrounding area. Figure 5 in the brief shows suggested routes for these pathways and Phase 3, at the

heart of the development, should be linked to its surrounding area in accordance with Policy 8 which states: 'The network of pathways should be agreed with Hertsmere'." Appendix C is a map of the site which shows the Conservation Area site (including Grace Avenue), Shenley Park boundary (excluding Grace Avenue driveway), Shenley Hospital site boundary and Existing & approved footpaths. The Application Route is not shown as an Existing and approved footpath.

The Planning Brief includes an aerial photograph on the front page which shows Grace Avenue and the surrounding area (pre 1995 and appears to resemble most closely the 1990 1:2,500 aerial photo described at 9.2 above). The photograph appears to show a thick hedge around the north eastern boundary of the land (including the grassed area on the north side of the driveway and south of Permain Close). It appears from the photograph that the hedge may have blocked the Application Route near point 4 on the IP. It is possible that this is the hedge which is referred to in landowner statement 3. The Mansion development plan (also submitted by SMM) shows a hedge, labelled 'new laurel hedge' on the boundary (including hedging on either side of the parking compound at point 4). The bin enclosure is shown on the plan and there is a narrow gap shown between the bin enclosure and the northern face of the proposed new hedge.

SMM state that the planning brief shows that the Hospital site was isolated from the village without connecting footpaths and that Hertsmere did not intend to create a footpath over Grace Avenue or any part of the Application Route, and that the original hedging blocked the Application Route near point 4 on the IP and replacement hedging would have been in place 2 or 3 years later.

Saxon Developments Ltd, Conveyance Plan

Date: 1995

Ref: HCC (copy submitted with application)

The plan shows Porters Park, Shenley Hospital site including the mansion, Grace Avenue and Permain Close. The plan shows rights of access, shared driveways, shared footpaths and trees with preservation orders within the site. The Application Route from Porters Park Drive to the car park compound (including the Application Route between points 1 and 4 on the IP) is shown as a shared driveway. The land crossed by the Application Route between point 4 and 6 on the IP is not shown as a right of access, shared driveway or shared footpath. However, the Applicant states that the plan shows that the intersection between Grace Avenue and Permain Close was not set out with a barrier or hedging separating the two.

Extract from Planning Application for phased development of Porters Park (Shenley Hospital site)

Date: circa 1996

Ref: Hertsmere Borough Council  
(copy submitted with application)

The map extract (appears to be based on OS mapping) is taken from Appendix A to the planning application for the development of Porters Park.

The map shows the site boundary of Shenley Hospital and relates to the phases of development of the estate. The names of various developers and specific locations within the estate are marked on the map.

In the area crossed by the Application Route, the map shows Grace Avenue, depicted by parallel pecked lines, leading from the 'spine road' (Porters Park Drive) to the mansion, which is shown and annotated. This relates to the Application Route between points 1 and 3 on the IP. The map does not appear to show the car park compound or the driveway leading to it from Grace Avenue. The map predates Permain Close which was built later as part of this development.

### **11.2 HCC's decision**

The 1986 'Securing a good future for Shenley' planning brief provides evidence that Hertsmere Borough Council considered public access to the hospital site to be of importance as part of the development, however the mansion was not originally proposed to be residential, at the time of the planning brief. The Application Route is not specifically referred to.

HCC decided that the 1989 Secretary of State's planning condition required the developer to apply to Hertsmere Borough Council to approve a footpath layout. This was done in the 1995 Shenley Hospital Development (Phase 3) Planning and Development Brief and this did not include the Application Route as an existing or approved footpath.

HCC decided that these planning documents provide evidence that the Application Route between points 1 and 4 physically existed but provide no evidence that the Application Route was a public highway.

## **12. Land Registry Title Documents**

Date:           HD 374961   Edition date 04.05.1999  
                  HD 336282   19 October 1998  
                  HD 361695   1998

Ref: Land Registry (copies submitted with application and SMM)

### **12.1 What we consider this document shows**

The title documents HD 374961 relate to Grace Avenue and the area in front of the mansion and the area between Grace Avenue and the south west side of Permain Close. This includes the land crossed by the Application Route between points 1 and 5 on the IP.

Paragraph 8 of schedule 2 of the Charges Register states that 'the driveways included in the title are subject to rights of way'.

The Transfer dated 30 June 1995 between The Secretary of State for Health (i.e. a Minister of the Crown) and Bryant Homes Southern Limited, Admiral Homes Limited and David Wilson Homes Limited is referred to in schedule 4, paragraph 3 of the Schedule of Restrictive Covenants. The purchasers were 'to comply with the Planning Brief 'Securing a Good Future for Shenley' published by Hertsmere Borough Council in November 1986 and the appendix to it published in November 1991.'

The title documents for HD 336282 relate to 1 Grace Avenue. The title includes reference to “a right of way at all times and for all purposes over and along the Driveways”. The driveways include the Grace Avenue entrance and exit driveway. SMM states that if it is necessary for private rights of way to exist over the Grace Avenue driveway, then a public right of way is unlikely to exist.

The title documents for HD 361695 relate to 6 Grace Avenue which includes a private right of way over part of Permain Close in order to access garages. The resident of 6 Grace Avenue reports being challenged by a resident of Permain Close for committing a trespass.

### **12.2 HCC’s decision**

It is unusual for title documents to record public rights, as title documents are a record of private rights and property. HCC decided that it is likely that the ‘rights of way’ referred to in paragraph 8 of the Charges Register refer to easements enjoyed by properties which are accessed via Grace Avenue. This is supported by the examples of numbers 1 & 6 Grace Avenue where private rights of way are set out within the title documents.

HCC decided that the title document for HD374961 provides evidence that the site of Shenley Hospital was owned by the Crown until it was sold in 1995.

HCC decided that these documents provide no evidence that the Application Route is a public highway.

## **13. Shenley Park booklet – The Shenley Walks**

Date: unknown, but likely pre-2001      Ref: submitted by SMM

### **13.1 What we consider this document shows**

There is no date given in the booklet but an online search produced what looks like a more recent version of the same booklet, and the copyright date given on that version is 2001.

The booklet contains walks around Shenley, including the Hospital site. SMM note that there are no walks included in the booklet crossing any part of the Application Route and none close to the Mansion.

### **13.2 HCC’s decision**

HCC decided that this document provides no evidence that the Application Route is a public highway.

## **14. Highways Maintenance Records**

Date:            2006 & 2016            Ref:    ROW

### **14.1 Why we consider these documents important**

Maintenance of a route by the public is strong evidence that it is a highway, although it should be noted that not all highways are automatically maintainable at public expense. However it is important not to confuse ‘maintainable’ (i.e. duty to maintain) with maintained

(i.e. works done). It should also be noted that lack of maintenance of a route does not necessarily mean a route is not highway.

The Highways Act of 1555 provided that parishes and their inhabitants had the responsibility for maintaining all existing public highways. The physical work was to be done by the inhabitants and each parish had to provide an unpaid parish surveyor who was obliged to keep a detailed account of public monies expended. This situation remained largely unchanged until the 1835 Highways Act, which allowed parishes to combine into larger groups for maintenance purposes. The Highways Act of 1862 allowed parishes to combine into Highway Districts under Highway Boards and after 1878 Highway Boards could amalgamate with Rural Sanitary Authorities. The Local Government Act of 1888 introduced elected County Councils, which took over “main” roads, while after the Local Government Act 1894 new Rural District Councils took over all other roads. Responsibility for maintenance of these roads was handed over to the County Councils in 1929.

Under the Highways Act 1835 pre-existing highways continued to be maintained at public expense. Any highways established after that date needed to be ‘adopted’ to show they were liable for repair at public expense. Highway Boards accounts from this period can provide evidence of a route being maintained and is therefore strong indication of public highway. Most routes referred to in this manner are now part of the county’s road network.

The County Council is required under the Highways Act 1980 to keep up to date a list of the streets within Hertfordshire which are highways maintainable at public expense. There are no rules or regulations about what information is required, or how it is to be presented or amended. The County Council holds this information as part of the Hertfordshire Roads Gazetteer, which is itself part of the Hertfordshire Roads Management Database. It is a record of what is maintainable, not necessarily what is maintained. It should be noted that whilst the information is referred to as the “List of Streets”, it is not held as a paper list but kept electronically.

If there is evidence that the application route was a vehicular highway, consideration of whether or not a route was recorded on HCC’s List of Streets has to be given due to the effect of the Natural Environment and Rural Communities Act 2006 (‘NERC’). NERC introduced legislation which automatically extinguishes all mechanically propelled vehicle (‘MPV’) rights, unless they were exempted by one of the exceptions provided. One of these exceptions applies to routes that were recorded on HCC’s List of Streets immediately before 2<sup>nd</sup> May 2006, provided that they were not already recorded as a public footpath, bridleway, or restricted byway. Where there is evidence that a route was a vehicular highway, then under NERC the continued existence of any MPV rights will depend on whether this or any one of the other exceptions provided is met.

#### **14.2 What is shown by these documents in the area of the Application Route?**

In 2006, the List of Streets recorded the whole of Grace Avenue driveway as a “private street”. Permain Close is recorded as “Private”. There was no record relating to the Application Route between 3 and 6 on the IP.

Current highway records for Grace Avenue and Permain Close record them as not being maintainable at public expense. There is no record for the Application Route between points 3 and 6 on the IP.

### **14.3 HCC's decision**

HCC decided that the List of Streets provides evidence that neither Grace Avenue nor Permain Close are maintainable at public expense and provides no evidence relating to the Application Route between points 3 and 6.

### **15. Correspondence between residents of Permain Close and Grace Avenue, including minutes from meetings.**

Date: Jan 2007 – October 2015

Ref: Copies submitted by SMM

#### **15.1 What we consider these documents show**

##### Jan – June 2007:

Correspondence between a resident of Permain Close (User 14) and a resident of Grace Avenue (landowner statement 1) relates to ongoing management and maintenance issues of the land around the properties. Both individuals appear to be acting as representative of their respective neighbours.

In a letter dated 2<sup>nd</sup> January 2007, the Permain Close resident says “We are also considering whether holly bush or some similar prickly hedge should be planted instead of the laurel bushes and a pedestrian gate erected by the side of the hedge and the carpark [approximately point 5 on the IP]. This would allow continued access from residents of Permain Close and would also allow access for the Manor House bins to be collected from Permain Close. A key and security code could be provided to all houses in the Manor and Permain Close. We think this would then prevent the ongoing traffic through our Close and the Manor grounds which in turn would act as a deterrent to any vandalism.”

In a letter dated 20<sup>th</sup> March 2007 the Permain Close resident raised this again: “We are also deliberating putting hedging where the rubbish bin enclosure was to block access to the lawn area [approximately point 5 on the IP]. Do you have any comments to make on this or do you intend to do anything about this area? If anybody would like to join our meeting as a representative of Shenley Manor we would be very pleased to have your input.”

On 2<sup>nd</sup> April 2007, the Grace Avenue resident responded to say “We have no objection if you wish to plant hedging along your boundary from the corner of the car parking area to the tall laurel hedge [approximately point 5 on the IP]. We presume that your intention is to plant a hedge of sufficient thickness and height to prevent people crossing the boundary.”

The final letter submitted is dated 8<sup>th</sup> June 2007 from the Permain Close resident saying “Following my note to you middle of April, I wondered if you had managed to consider the option suggested i.e. wooden fencing across Permain Close entrance and access to Permain Close through Grace Avenue with tarmaced bin site for access.”

SMM state that the letters refer to the residents of Permain Close's suggestion to block the Application Route at point 5 on the IP.

July 2007:

Minutes of the Permain Close residents meeting on 10<sup>th</sup> July 2007 have been submitted by SMM who note that the meeting was attended by nine Permain Close residents (including Users 15, 28, 32, 36 & 63). The issue of gating was minuted: "Again there was a long discussion regarding the gating of Permain Close and of the Manor House. [A resident of Permain Close] attended a meeting at the Manor House regarding gating and stated that they had not come to any conclusion as to how to proceed. It was also considered doubtful that Shenley Trust would agree to the gating of the Manor. Two options were discussed regarding how we could proceed: firstly if Shenley Manor were granted permission to completely gate in their grounds we would ask for access through the entrance at Grace Avenue (where the town houses are situated) to Permain for our cars and attempt to get planning permission to build a wall at the entrance to Permain where it meets Pippin. We would advise the Manor House residents that in principal we would be willing to contribute to their sinking fund for that part of the road in return. All at the meeting felt this was the best option. Secondly, if the Manor sought to deny us access either by car or on foot we would object to their plans and it would also mean that it would not be a viable option to gate the entrance to Permain as it may be deemed confrontational by residents of Pippin."

SMM have submitted notes dated 25<sup>th</sup> July 2007 which they produced to summarise the situation with regards to gates and access, as they viewed it:

"BACKGROUND For reasons of security, protection and privacy the residents of Shenley Manor decided that they would like to totally enclose their private property by erecting wrought iron railings around their drive and putting matching gates at each end of it. This scheme would also involve blocking off Permain Close either with a wall or spikey hedging. Therefore the only people who would have access to Grace Avenue would be those living there.... We were provoked into taking this decision as a result of a number of serious incidences of vandalism over a long period of time...

[a resident of Permain Close] learnt of this proposal and didn't like it. He wants the Permain Close people to have full access to Grace Avenue and he somehow wants to disassociate from Pippin Close. In early June he met [a resident of] Grace Avenue and told her of his plans to achieve this aim and sought to enlist her support. She very clearly did not give it. She did not agree with what he was saying and said so. I believe she also explained that the drive was privately owned and maintained by the residents of the Manor and that certain areas of land at the front of the property were also owned by them.

[the resident of Permain Close] announced that he had been in contact with all the residents of Permain Close and without exception they had all given (or agreed to give) £1,000 each in order to create an access from Permain Close to Grace Avenue... He wanted this money to go towards a road which would provide vehicle and pedestrian access. It was explained to him that Grace Avenue was our private road maintained by us and we would not consider having Permain Close people or anyone else driving along it... He pleaded that we could at least grant pedestrian access... After considerable discussion, to placate him, the Manor residents said that they might consider some form of pedestrian access – but really the general feeling was 'no way'.

It would seem that they [Permain Close residents] do not believe that we [Grace Avenue residents] have a right to enclose our land but they do believe that they have a right to build a wall between them and Pippin Close in an attempt to enclose theirs.

[a resident of Grace Avenue] informs me that on investigation has found a footpath between Pippin Close and Fielders Way. Why can't the Permain Close people use that to reach the southern section of Porters Park Drive instead of using Grace Avenue? It would bring them out closer to the shops and be about the same distance to the synagogue. Therefore we are not denying them pedestrian access to Porters Park Drive by rejecting access to Grace Avenue because it already exists and – obviously – they already have vehicle access from the northern section of Porters Park Drive which would not change.”

Attached to the notes is a copy of a letter, also dated July 2007, from a resident of Grace Avenue to a resident of Permain Close saying “Following the recent meeting of the Shenley Mansion Management residents association it has come to my attention that you used our name to add credence to the proposal of the Permain Close residents that they obtain a road access through the drive of the Manor House.

I am writing this letter to you and your fellow residents in order to clarify our position in case you misunderstood the conversation you had with my wife regarding the matter. My wife told you that under no circumstances would we agree to the residents of Permain Close having a road access to Porters Park Drive through the Manor House grounds and we doubted that our friends and fellow residents would feel different.

Thus finally for the avoidance of doubt we do not, have never and will never support the granting of road access to the residents of Permain Close through the grounds of the Manor House.”

#### October 2009

An email refers to a resident of Permain Close slipping on the banked ridge on the boundary of the land (running along the northern edge of the grassed area just south of points 4 and 5 on the IP) due to damp conditions and a lack of lighting in the area. The email described the location as “the banked ridge that defines the boundary of the Shenley Trust field.”

SMM states that the field on the south side of Permain Close and on the north side of the Grace Avenue driveway is sometimes incorrectly assumed to be part of Shenley Park.

#### November 2011:

An email (from the representative of Grace Avenue residents to the representative of Permain Close residents) concerns substantial work done to a hedge owned by SMM, apparently without the proper permission or knowledge of the owners.

The email also says “We [residents of the Mansion] are also of the opinion that there is no right of way over any part of our land and we reserve the right to enforce this in the future if we wish. This would actually be of considerable benefit to the residents of Permain Close as it would deter everyone using these private areas as a short cut.”

August 2014:

The representative of Permain Close residents emailed the representative of Grace Avenue and asked “are you still perhaps proposing hedging off Permain and the Manor? It would stop all the walk through traffic.”

SMM consider that this email suggests that the residents of Permain Close still wanted to close the Application Route at that time.

July 2015:

The minutes of Shenley Parish Council note that it was attended by residents of Grace Avenue and Permain Close (Users 38, 48, 49 & 61 and landowner statements 1 & 2 were shown to be in attendance).

The minutes show that the residents of Permain Close addressed the Parish Council on the issue of the footpath application, provided some historical background and referred to the planned erection of a hedge or fence to stop access between Permain Close and Grace Avenue. The minutes record that “Mr Shurmer added that some believed that the hedge will be vandalised by those wishing to have access through it. He added that this was not just an issue between the residents of Permain Close and the Mansion House but involved all the residents of Shenley as this access is used by many people.”

Mr Ashman spoke as a resident of Grace Avenue. He told the Parish Council that a surveyor has been asked to stake the SMM boundary lines but these stakes had since been removed.

“The Chair addressed both parties [shown in associated email to be HCC and Hertsmere] and highlighted that there is no Public Right of Way between the 2 sites. Moreover the authorities who the Parish Council have referred the issue to have all stated that this is a neighbour dispute and as such the parties should try to resolve the matter.”

July-October 2015:

A leaflet produced to collect user evidence for the footpath application (distributed in late July 2015) states that it had been produced by a group of local Shenley residents, concerned about a challenge to their access rights, working together to collect evidence of public usage in order to formalise a right of way (with HCC).

The leaflet says of Grace Avenue “Historically this has been a thoroughfare since before the housing development was built.” The leaflet also refers to a date of 3<sup>rd</sup> July when residents of the Manor House put up signs to deter pedestrians from Grace Avenue – claiming no public right of way exists. “After decades of regular use, why should the residents of six properties attempt, without consultation, to restrict public access for the Porters Park community?”

A document containing SMM’s comments on the leaflet and footpath application appears to have been prepared at the request of the Parish Council. It sets out what land SMM owns and who has private rights of access over it and goes on to state “No other right of way exists over any part of the company’s land and no right of way has been acquired through continuous and unopposed use for 20 years or more.” SMM notes that the leaflet does not state exactly where the authors believe a right of way should exist and believe it contains “false statements, gross exaggeration and is consequently very misleading” and has encouraged trespass.

The document challenges the following points made in the leaflet:

- the assertion that signs were erected on 3<sup>rd</sup> July (as stated in the leaflet).  
SMM notes that the sign shown in the leaflet is one of the signs which were erected in August 2013,
- the reference to an historic thoroughfare.  
SMM notes that prior to the housing development, the whole area formed part of a secure mental hospital and Permain Close did not exist. "There was no regular thoroughfare from Porters Park Drive.",
- why the residents of 6 properties should, without consultation, restrict public access.  
SMM notes that the land crossed by the Application Route is private and there is no reason why the owners should consult anyone in order to make legal use of their own land,
- that a public right of way for all residents is in question.  
SMM notes that "This is wholly inconsistent with their [residents of Permain Close] previous actions" [HCC presumes that SMM's reference is to 2007 discussion & correspondence regarding closing the access between Permain Close and Grace Avenue (and possibly between Permain Close and Pippin Close) in a way which would exclude the general public].

The document also describes various incidents under the headings of trespass and criminal damage.

#### October 2015:

The landowner submitted notes made following an incident which took place at 13:00, Monday 12 October 2015. The incident related to the position of a security camera near the boundary between Grace Avenue and Permain Close and the subsequent conversation between two residents (one of Grace Avenue and one of Permain Close):

- The blockage of the right of way [point 5 on the IP] was referred to and the Grace Avenue resident advised that there was no right of way to block
- The existence of private rights of way was discussed
- The proposal to block access to Permain Close (and Grace Avenue) from Pippin Close was discussed
- The date of erection of No Public Rights of Way signs was discussed, including the original invoices for the artwork and the installation.
- The minutes of the July Parish Council meeting were discussed, including confirmation from HCC & Hertsmere that there was no recorded public right of way across the site.

#### **15.2 HCC's decision**

HCC considers that the 2007 letters, minutes and notes provide evidence that the residents of both Grace Avenue and Permain Close were considering blocking the Application Route (at approximately point 5), in order to prevent use of the land by non-residents. The residents of Permain Close were suggesting a pedestrian gate with key code access for residents of Permain Close and Grace Avenue only. The documents also provide evidence that residents of Permain Close were considering making an application to block all access to Permain Close from Pippin Close if SMM agreed to vehicular access to Permain Close via Grace Avenue. The documents all indicate that the residents of Permain Close sought a private access arrangement with vehicles, between Permain Close and Grace Avenue, and this was

rejected by the residents of Grace Avenue. Pedestrian access was requested by a resident of Permain Close which the residents of Grace Avenue said they would consider. This was still the situation in 2014.

HCC decided that the documents from 2007 show that the residents of Grace Avenue made it clear to the residents of Permain Close that they did not have a right of access over Grace Avenue. However, the public were clearly using Permain Close to access Grace Avenue during this time although this use is not specifically identified as the Application Route and there is no reference in these documents to them being challenged.

## 16. Photographs and documents regarding signage

Date: 2002 – 2015

Ref: HCC (submitted with application)

### **16.1 What we consider this document shows**

The Applicant submitted various photographs taken from Google Street view at the junctions between Porters Park Drive and Grace Avenue, relating to the signage on Grace Avenue and the Application Route. The photographs indicate that the signage at Grace Avenue has been altered twice since 2008.

In 2008 there was a blue 'No Entry' sign at approximately point 2 on the IP which was replaced after September 2012. The Applicant then recalls a red sign saying 'Private Property No Entry' or similar (no photograph submitted) which replaced the blue 'No Entry' sign. The current red signs which read 'Shenley Manor PRIVATE ROAD No Public Right of Way' replaced the previous sign on the Application Route and was erected at the western junction between Grace Avenue and Porters Park Drive.

A photograph also shows that in May 2015 there was no signage on the grass near points 4 and 5 on the IP. This corresponds with SMM evidence on the date the sign was erected facing Permain Close.

In response to the consultation with the Investigation Report, the Applicant submitted further photographs of the signage at the junctions between Grace Avenue and Porters Park Drive. The photographs were taken by Hertsmere Borough Council as part of the review of the 2008 planning application and clarify that the only signs in place in December 2008 were blue one-way signs and blue "No-entry" signs. There were no red signs visible in the December 2008 photos.

SMM submitted photographs taken from Google Streetview dated September 2014 which show one of the 'Shenley Manor PRIVATE ROAD No Public Right of Way' signs in place at the western junction between Grace Avenue and Porters Park Drive and one sign at approximately point 2 - though the wording of the sign cannot be seen from the photograph. They also submitted photographs of the signs in place at the junction between Permain Close and Pippin Close which read "PRIVATE ROAD, RESIDENTS ONLY". It is not known exactly when these signs were erected but witness evidence recalls them already in place in 1999 (landowner statement 2).

SMM submitted an extract from Iain Sinclair's book 'London Orbital', published in 2002. Page 153 on the book describes Grace Avenue: "Grace Avenue climbs, padded in leaf-fall from a

spreading oak, towards the house on the hill. PRIVATE ROAD, RESIDENTS ONLY (white on blue). SHENLEY MANOR (gold on green).”

SMM also submitted photographs of people who it claims were ignoring requests not to walk on the driveway and riding bikes near the old bin store and a photograph of the hard standing for the bin store. [SMM believes that the brick bin enclosure, a gate between the enclosure and the car park and the hedge on the boundary were intended to block Grace Avenue from Permain Close]. It is not known when these photographs were taken.

Invoices from Archer Signs & Panels Ltd and Brough Gardens

Date: May and August 2013

Ref: Copy submitted by SMM

**What we consider this document shows**

The invoice from Archer Signs & Panels Ltd includes a statement dated 31/05/2013 describing the products which had been ordered, including:

Two signs: Shenley Manor PRIVATE ROAD No Public Right of Way

One sign: Shenley Manor PRIVATE LAND No Public Right of Way, and

One No entry traffic sign.

The invoice from Brough Gardens dated 12/08/2013 includes a description of the work undertaken to erect the signage:

Dig out and re-fix old post at start of Mansion drive

Fix No Public Right of Way sign to post on in drive

Erect new post at the end of Mansion out drive

Fix No Public Right of Way sign to new post

Supply postcrete cement for the above work

**16.2 HCC's decision**

HCC decided that since 2013 there has been a sign saying 'no public right of way' erected at point 2.

17. Decision Notice for proposed gates and fencing round the Mansion (application TP/08/1484) and background to planning decision (submitted during consultation on Investigation Report)

Date: December 2008

Ref: Hertsmere Borough Council  
(extract submitted with application)

**17.1 What we consider this document shows**

An application was made in September 2008 by residents of Grace Avenue to replace existing fence around the southern edge (Porters Park Drive side) of the driveways with railings and entrance gates.

One of the plans associated with the application indicates that racehorse [sic] style fencing was proposed around the Porters Park Drive side of Grace Avenue with electronically operated vehicular gates and key pad operated side gates for pedestrians. The plans also indicate that the same fencing was proposed to be used to separate Permain Close from

Grace Avenue across the Application Route at point 5 and continuing along the north edge of the lawn south west of Permain Close. The plan also contains a hand drawn note stating that 'there are no public rights of way on this site'.

The decision notice refused planning permission on three grounds:

(1) The proposed gates and railings by reason of their height, position, design and materials would constitute an unacceptable visual intrusion, detrimental to the openness and character of the rural area.

(2) The proposed gates and railings by reason of their height, position, design and materials would constitute an unacceptable visual intrusion detrimental to the visual amenity of the area and the setting of the Listed Building and would fail to preserve or enhance the character of the Conservation area.

(3) The proposed gates and railings would have a detrimental impact on the residential amenities for neighbouring properties and would also result in the loss of existing pedestrian access to and from and across the site.

During the public consultation with the footpath application Investigation Report, the Applicant submitted a background document from Hertsmere Borough Council which records the information which informed the decision notice and copies of three emails (from residents of Permain Close) regarding the planning application. The document includes: a summary of the 18 objections to the planning application for the gates and fences from residents as well as Councils; policy designation for the site including Metropolitan Greenbelt and the Shenley Conservation Area; relevant planning policy including Green Belt, Listed Buildings and Rights of Way; Key Issues including Impact on Openness of the Green Belt and Residential Amenity; Recommendation and Reasons.

Comments in response to the planning application include:

- "we the residents have a right of way over land which we have continuously used since the houses were built and at no time did any of the residents of Shenley Manor object to this."
- "the proposed railings would have the effect of stopping people in the surrounding area of not being able to access The Chapel via Grace Avenue and would have to take a longer walk round via Porters Park Drive."
- "Residents of Permain Close were told by developers that egress and ingress would be via Grace Avenue."
- "The residents of Permain Close are part of the community of Shenley Manor as such we held meetings last year [circa 2007]...During this we were made aware of the possibility of the residents of the Manor House gating off the access. All residents present made the applicant aware of their opposition to this and looked for possible alternatives."
- [the railings] "removes rights of access for properties in Grace Avenue and Permain Close."
- "the character of the space involved is more open parkland or amenity green rather than private garden."
- "there are no recorded public rights of way off Grace Avenue, however, if people have been using this cut through to the shops for 20 years or more without force or secrecy,



bordered by Grace Avenue and Porters Park Drive). A route is shown running from Grace Avenue on the approximate course of the Application Route, outside of the park boundary.

The Applicant considers that the information boards positively encourage walkers to use Grace Avenue as part of the park and there has been a historic perception of pedestrian access to Grace Avenue over many years.

The Trust has confirmed that the purpose of the information boards is to encourage people to walk around the Park and learn something of the history of the Park. Within the Park boundary, the Trust considers the land to be Open Space (with the exception of the nearby Walled Garden). However, the information boards have recently been removed by the Trust at the request of SMM for amendment in respect of the boundary of the Park at Grace Avenue.

SMM state that the boundary line wrongly implies that there is a footpath along Grace Avenue and that the boundary line should be shown inside the driveway (so the driveway is wholly excluded).

### **18.2 HCC's decision**

HCC decided that the information boards indicate the physical existence of the Application Route, in a simplified schematic form but do not provide evidence of highway status.

## **19. Land Surveyor Map of Grace Avenue**

Date: 2012

Ref: HCC (submitted with application)

### **19.1 What we consider this document shows**

The survey plan based on an OS map shows Grace Avenue to the south east of the mansion. A red boundary line runs around the edge of the driveway and includes the grass between the driveway and the car park compound. A description of fencing and hedging has been annotated onto the plan including the height of laurel hedge, location of low wooden railing and shaped hedges.

No hedges or railings have been marked as crossing the Application Route.

The plan appears to indicate where hedges and fencing were positioned in 2012 around the boundary of Grace Avenue. The Applicant submits that the plan shows there has been no historical barrier across the Application Route at point 5.

### **19.2 HCC's decision**

HCC decided that the plan shows that there was no physical barrier on the Application Route in 2012. However, the plan provides no evidence relating to the Application Route.

## **20. Site Allocations and Development Management (SADM) Policies Plan and emails between SMM and Hertsmere Borough Council**

Date: Policies published 2015

Ref: Hertsmere Borough Council  
(extract submitted with application)

Emails dated May-June 2016

(submitted by SMM)

### **20.1 What we consider these documents shows**

Hertsmere Borough Council's website provides information relating to the Site Allocations and Development Management (SADM) Policies Plan and states its three main purposes: to provide environmental and other criteria, against which all development proposals and planning applications can be judged; to define sites and areas; and to deliver the policies set out in the Core Strategy. The Plan is used by the Borough Council in the determination of planning applications on or after 31 July 2015.

Policy Map G for the Shenley area shows that part of Porters Park estate, including Grace Avenue, is coloured yellow which is defined in the key as referring to policy SADM30 – Heritage Assets Conservation Areas. The land on the south side of the mansion, including the lawn and Grace Avenue is also depicted as referring to policy SADM36 – Local Green Space. These policies apply to the land crossed by the Application Route.

Policy SADM30 – Heritage Sites (page 52, SADM main document)

The policy states that when applications are submitted for proposals affecting any heritage assets, the Borough Council will have regard to the significance of the heritage site and potential harm to it, when assessing the proposal. The Borough Council will not support development proposals which fail to protect, conserve or where possible enhance the significance, character and appearance of the heritage asset and its setting.

Policy SADM36 – Local Green Space (page 61, SADM main document)

The policy states that development proposals which would result in the loss of a Local Green Space defined on the Policies Map will not be permitted unless exceptional circumstances can be demonstrated. Where exceptional circumstances can be demonstrated, a proposal will not be acceptable unless they: (i) are ancillary to the use of the space or to any buildings on that land; (ii) will enhance activities associated with the use of the space; (iii) are appropriate in scale; and will contribute positively to the setting and quality of the space.

SMM's evidence contains a statement describing how the secretary of the Shenley Mansion Management Ltd has disputed the information shown by Hertsmere Borough Council in the SADM. In summer of 2016, Hertsmere Borough Council removed the front garden of No.1 Grace Avenue, the 'field beyond the car park' and the driveway from future plans for Green Space:

In an email to a Hertsmere Borough Council planning officer on 26 May 2016, the secretary for SMM, acting on behalf of the residents at 1 – 6 Grace Avenue identified that they were affected by policies SADM35 & 36 (Major Green Spaces and Local Green Spaces). It appears from the correspondence that the residents of Grace Avenue were not consulted by Hertsmere regarding the inclusion of privately owned land in the SADM.

Hertsmere's response on the 21<sup>st</sup> June 2016 suggested that the privately owned land had been mistakenly assumed to be land which was leased by the Borough Council to Shenley Park Trust and therefore in public ownership. However, the boundary and designation of Grace Avenue as included in the SADM was proposed to be modified, thereby excluding the land identified as private.

A Planning Inspector's report in September 2016 had approved the SADM Policies Plan, subject to a number of modifications. One modification, incorporated into the final adopted Plan, was the removal of the privately owned land at Grace Avenue. On 23<sup>rd</sup> November 2016 Hertsmere Borough Council adopted the SADM Policies Plan. The adopted Plan does not include any part of the Application Route.

## **20.2 HCC's decision**

HCC decided that the Policies Plan does not provide any evidence relating to the Application Route.

## **21. Teddy's Trail from Shenley Park, published walk**

Date: 2015 Ref: Elstree & Borehamwood Town Council  
(extract submitted with application)

### **21.1 What we consider this document shows**

The Town Council has a webpage dedicated to walks in and around Elstree and Borehamwood. The Shenley Park walk is approximately 6.4 miles in length and commences opposite Shenley's former parish church of St Botolph. The description of the walk includes Shenley bridleway 38, running from Cow Banks Wood (on the north side of the Porters Park estate) in a generally south west and south east direction around the edge of the estate to join Porters Park Drive opposite the western vehicular entrance to Grace Avenue.

*'Passing a five-barred wooden gate, you reach Porters Park Drive. Crossing this and proceeding a short distance up Grace Avenue... opposite, you will come to the lawn in front of the white-painted mansion of Porters Park, with a weather vane atop the turret on its roof... Retrace your steps down Grace Avenue and cross Porters Park Drive...'*

SMM have provided email correspondence (dated April-May 2016) between their representative and the contributor to Teddy's Trails, informing that Grace Avenue is a private road and the published walk encourages people to enter onto private land against the wishes of the landowner (i.e. trespass) – indicated on site by the notice "PRIVATE ROAD, No Public Right of Way" on the driveway. The emails show that the contributor contacted Elstree & Borehamwood Town Council in order to suggest revising the wording to the guide pending the resolution of the footpath application.

The contributor has confirmed that HCC's interpretation of the walk is correct; that it does not follow any part of the Application Route.

### **21.2 HCC's decision**

HCC decided that the 2015 published walk does not provide any evidence relating to the Application Route.

## **22. Contemporary Evidence of Use**

### **22.1 Why we consider the evidence important**

Evidence is generally provided through the completion of evidence questionnaires by users and from information provided by the owner of the land. User evidence may support historic evidence of a right of way. However, where there is no historic evidence of a route it is

possible for a public right of way to come into existence if it can be shown that members of the public have used it 'as of right' without interruption (usually) for a period of 20 years. In order for the public's use of a route to have been 'as of right' it must have been:

- **without force** (e.g. not breaking down a fence to access the route)
- **without secrecy** (e.g. not just using the route when landowners were away)
- **without permission** (i.e. not having the permission of the landowner).

Unless there is historic evidence of rights as well, legislation requires there to be evidence of 20 years' use which ends with a 'date of challenge' (section 31 of the Highways Act 1980). The 'date of challenge' is the date at which the landowner challenges the use of the route e.g. by putting up a notice. Where there is no evidence that use has been challenged, section 31(7B) of the Highways Act 1980 specifies that the date of application should be used as the end of the 20 year period.

Under common law a right of way can also come into existence in less than 20 years if it can be shown that there was dedication of the route by the landowner and acceptance of the route by the public.

Under Section 31, after a period of 20 years use, it is presumed that a right of way has come into existence. Where a landowner can produce evidence to show that they have taken steps to prevent the accrual of new public rights of way through use of a route by the public, no such right will be dedicated. Such steps must be overt and make the public aware of the landowner's intentions. They can include placing and maintaining notices on site stating that the route is not public or that it is used with permission; by erecting and locking gates; or by telling people seen using the route that it is not public, etc.

In addition to placing notices on site, section 31(6) of the Highways Act 1980 (following on from the Rights of Way Act 1932) allows landowners to deposit a map and statement with the County Council showing the public rights of way across their land. Following this, declarations need to be made regularly to the effect that no additional ways have since been dedicated. It should be noted that making such deposits and declarations will not affect pre-existing rights.

Below is a summary of the evidence we have received, including a table showing the information provided in the user evidence forms.

## 22.2 Summary of Evidence

There is no section 31(6) deposit on the land crossed by the Application Route.

During the public consultation with the Investigation Report, the Applicant submitted clarification of evidence in respect of users 1, 3, 10, 14, 24, 25, 43, 44, 45, 47, 48, 49, 50, 54 and 55 which is reflect in the table below.

User	Type of use	Frequency of use	Period of use	Comments
1	Foot & bicycle	Weekly	1933- 2015	User's father employed on site until 1965. Permission to use all public areas as lived on site until 1956. Bicycle use ended in 1956. There were never any restrictions on the roads or pathways and use continued

				unhindered. Use of various routes around the site including Grace Ave. An updated map includes the link to Permain Close and indicates use of Application Route through grounds of hospital prior to development of estate. Route wide enough for a car.
2	Foot & bicycle	Daily	1958- 2010	Employed as a nurse on site 1958 - 1993. Map shows use of whole of Grace Ave & link to Permain Cl. Width described as 'roadway for cars'.
3	Foot & motor vehicle	Daily	1962- 1991	Employed on site between 1962 – 1991. Route used to go to work and for pleasure. Used Grace Ave but updated map does not indicate use of points 3 to 4 on the IP. Width described as 'vehicle access road'.
4	Foot	Weekly	1975- 2015	Employed on site 1988 - 1997. Used to go to work at the hospital and go to tea rooms. Used whole of Grace Ave and link through Permain Cl to Porters Pk Dr. Width described as '2 cars wide'.
5	Foot & motor vehicle	Daily	1975- 1983	Used for 'walking over Grace Ave during my employment at Shenley Hospital 1975-1983' and for leisure. Used Grace Ave but map does not indicate use of link to Permain Cl. Width described as 'wide enough for 2 lane traffic'.
6	Foot	Weekly	1975- 2015	Employed at Shenley Hospital 1972 - 1982. Route used for pleasure and work. Recent notices at entrance to Grace Ave saying 'Private Road - No Public Right of Way'. Laurel hedge obstructs route, still in place. Used Application Route and link through Permain Cl to Porters Pk Dr.
7	Foot	Daily	1975- 1998	Employed by hospital until 1996. Route used for work and pleasure. Used all of Grace Ave and link to Permain Cl. Width described as being wide enough for two cars. Refers to a notice in Oct 15 notice saying No Public Right of Way.
8	Foot & bicycle	Daily on foot weekly on bicycle	1977- 2015  Not used Oct 86 - June 87	Daily use also by vehicle but years of use not specified. Tenant on site 1975-1990 & employee on site 1975-1997. Used route for going to work and pleasure. Used Application Route and link through Permain Cl to Porters Pk Dr. Notice erected at end of path July 15. No description of width given.
9	Foot, bicycle & motor vehicle	Daily on foot & with vehicle, weekly on bicycle	1977- 2015  Not used Oct 86 - June 87	1977-1992 on bicycle & 1977-2014 with vehicle. Tenant & employee on site 1977-1990. Used the route to go to work & social club. Grace Ave was part of access path to the school of nursing. Used whole of Grace Ave and link through Permain Cl to Porters Pk Dr. No description of width given but the route was not fenced. Notice erected at end of path July 15.
10	Foot	Weekly	1978- 1988	Employed at hospital 1974-1992. Used all roads and pathways to get to allocated ward, also used for leisure. Land was owned by Health Authority. Used part of

				Grace Ave. Updated map remains unclear regarding the link to Permain Close.
11	Foot	Monthly	1981- 2015	Used for access to tea rooms (in latter years) and hospital social club (in early years) Used Application Route. Refers to notice saying Private Road Access Only.
12	Foot	Monthly	1981- 2015	Used for access to tea rooms (in latter years) and hospital social club (in early years) Used Application Route.
13	Foot	Weekly	1983- 2000	Used for pleasure and dog walking & accessing shops. Used whole of Grace Ave and link to Permain Cl. Width described as 'Grace Ave road'.
14	Foot	Daily	2000- 2015	Period of use amended in 2 <sup>nd</sup> evidence form. Used to access local shops and facilities. Met landowner - general conversation about lighting at Permain Cl. Updated map indicates use of the whole of the Application Route. Notices used to say No Entry – Private Road but these were replaced in July 2015. Width described as 'tarmac road with sufficient width for cars, lorries and bicycles'.
15	Foot & bicycle	Monthly	1992- 2015	1992 - 1996 on foot, 1997 - 2015 on bicycle. The planning ethos for the estate was 'open' land as a community amenity, including planning restrictions against high gates and solid fences. Used Application Route and link through Permain Cl to Porters Pk Dr. A notice at the opening between Permain Cl and Grace Ave erected in summer 2015 saying 'Private Land'.
16	Foot & bicycle	Monthly	1992- 2015	1992 - 1996 on foot, 1997 - 2015 on bicycle. The planning ethos for the estate was 'open' land as a community amenity, including planning restrictions against high gates and solid fences. Used Application Route and link through Permain Cl to Porters Pk Dr. Opening between Permain Cl and Grace Ave approx 15ft wide.
17	Foot	3-4 times yearly	1993- 2015	Used Application Route and link through Permain Cl to Porters Pk Dr. Used for pleasure and delivering leaflets. Width described as 6-8 feet.
18	Foot	Weekly	1994- 2015 Not used Jan 2008 - Feb 2009	Used for pleasure and access to community facilities. Used Application Route and link through Permain Cl to Porters Pk Dr. Notice erected early 2015 indicating the route is private, which has deterred use. Width described as 2 metre concrete path with grass verge either side.
19	Foot	Weekly	1994- 2015 Not used Jan 2008 - Feb 2009	Used for pleasure and access to community facilities. Used Application Route and link through Permain Cl to Porters Pk Dr. Notice erected early 2015 indicating the route is private, which has deterred use. Width described as 2 metre concrete path with grass verge either side.
20	Foot	Weekly	1994- 2013	Used Application Route and link through

				Permain CI to Porters Pk Dr for dog walking. Width described as 'normal pavements, concrete base then road'.
21	Foot	Monthly	1995- 2015	Used Application Route and link through Permain CI to Porters Pk Dr for pleasure. Refers to a wire fence and shrubs erected in Oct 2015 on Application Route preventing use. Width described as being wide enough to walk with push chair and dog on lead.
22	Foot	Monthly	1995- 2015	Used Application Route and link through Permain CI to Porters Pk Dr for pleasure. Refers to a wire fence and shrubs erected in Oct 2015 on Application Route preventing use. Width described as being wide enough to walk with push chair and dog on lead.
23	Foot	Twice weekly	1995- 2015	Restrictive covenants in the mansion deeds refer to 1986 planning brief a Good Future for Shenley. Used whole of Grace Ave and link to Permain CI. Challenged in August 2015 when one landowner informed user that the land was private. New signs in July 2015 stated No Public Right of Way, previously stated Shenley Manor Private Road. New hedging planted in summer 2015 prevented access to Shenley Park in the middle of Grace Ave. Grace Ave described as wide enough for a car to pass when walking along it.
24	Foot	Daily	1996- 2000	Moved into Permain CI when houses were first built in 1995/6. Used Application Route for pleasure - including area in front of mansion. Understood from the builders when purchasing property that there was no restriction on moving around the estate. Width described as suitable for cars. Updated map includes use of the western limb of Grace Avenue.
25	Foot	Daily	1996- 2000	Moved into Permain CI when houses were first built in 1995/6. Used for pleasure - including area in front of mansion. Understood from the builders when purchasing property that there was no restriction on moving around the estate. Route described as Grace Ave from Permain CI to the mansion – map provided indicates use of Application Route and link through Permain Close to Porters Park Drive. Width described as wide enough for cars.
26	Foot	Weekly	1996- 2015	Notified by builders & planners that all new developments would not be gated, with free access to foster a homogenised community. Used Application Route to visit friends and neighbours. Refers to notices at entrance to Grace Ave saying 'Shenley Manor Private Road No Public Right of Way' in Apr 2015. The Application Route was obstructed in Oct 2015 - fenced at point 5 on the IP which deterred/prevented use. Width described as

				'access point 12-15 ft wide now fenced/hedged off' (point 5).
27	Foot	Weekly	1996- 2015	Notified by builders & planners that all new developments would not be gated with free access to foster a homogenised community. Used Application Route for pleasure. Refers to notices at entrance to Grace Ave saying 'Shenley Manor Private Road No Public Right of Way' in Apr 2015. The Application Route was obstructed in Oct 2015 - fenced a point 5 on the IP which deterred/prevented use. Width described as 'access point 12-15 ft wide now fenced/hedged off' (point 5).
28	Foot, bicycle & motor vehicle	Daily	1996- 2015	Uses whole of Grace Ave including link to Permain Cl. Use on bicycle from 1997, use with vehicle not as frequent. Used for exercise and access to community facilities. The free and open aspect of access was one of the reasons for purchasing a property on the estate. User was challenged on 25 June 2015 when a resident of the mansion asked whether the user knew they had been cycling on private land (Grace Ave). Refers to no entry signs at either end of Grace Ave erected after 1996. 3rd July 2015 3rd notice erected at edge of Permain Cl. Width described as single lane road.
29	In pushchair, later on foot & bicycle.	Monthly	1996- 2015	Used Application Route for pleasure & exercise. Not used whilst at university. Refers to notice in summer 2015 saying 'Private Land' at the opening between Permain Cl & Grace Ave. Width described as open road and wide open land. Opening between Permain Cl & Grace Ave approx. 15 ft wide.
30	Foot	Daily	1997- 2015	Used whole of Grace Ave and link through Permain Cl to Pippin Cl for work and pleasure. Width described as 'Grace Ave wide enough for two cars to pass'.
31	Foot	Daily	1998- 2015	Didn't use Application Route but alternative route via mansion. Used for pleasure and access to community facilities.
32	Foot & bicycle	Daily on foot, weekly on bicycle	1998- 2015	Used Application Route for pleasure, dog walking and access to community facilities. Refers to Private Property sign in July 2015 at edge of Permain Cl. Width described as single car width.
33	Foot	4/5 times a year	1998- 2015	Used Application Route and link through Permain Cl to Porters Pk Dr for pleasure. Width described as 6-8 ft.
34	Foot	Weekly	1998- 2015	Used whole of Grace Ave and link through Permain Cl to Porters Pk Dr. Used for pleasure and dog walking. Width described as roadway width.
35	Foot & bicycle	Weekly	1999- 2015	Used Application Route and link through Permain Cl to Porters Pk Dr. Used for pleasure and access to community facilities.

36	Foot & bicycle	Daily on foot, weekly on bicycle	1999- 2015	Bicycle use between 2004 & 2010. Used Application Route for pleasure, dog walking and access to community facilities. Exchanged pleasantries with landowner and was invited to walk dogs with landowner on several occasions. Refers to notices in July 2015 at entrance & exit to Grace Ave stating 'No public right of way', previous signs only mentioned Shenley Manor Private Road. Application Route obstructed in June/July 2015 by new hedging on boundary obstructing access to park – but this did not prevent/deter use. Width described as 'Grace Ave wide enough for a car to pass a pedestrian'.
37	Foot	Monthly	2000- 2015	Used all of Grace Ave. Not clear from map whether user used points 4 - 6 as were visiting friends on Grace Ave. Used for pleasure. Width described as car width or more.
38	Foot	Weekly	2002- 2015	Used Application Route for teaching children to ride bicycles, access to community facilities. Passed vehicles on Grace Ave without anything being said and met residents of Grace Ave whilst 'trick or treating'. Refers to notice at junction between Grace Ave & Permain CI saying No Public Right of Way in July 2015. Width described as approx. one car width.
39	Foot	(5-10 times a week) Daily	2002- 2015	Used whole of Grace Ave and link to Permain CI for visiting park as a young child, then accessing community facilities and dog walking. User challenged in Sept 15 when residents of mansion told user Grace Ave was private. The user was filmed and one resident tried to block their way. Prior to September 2015, residents of Grace Ave had just said hello. Refers to notices in July 2015 at entrance & exit to Grace Ave 'No Public Right of Way', before this the signs said Shenley Manor Private Road. The Application Route was obstructed in summer 2015 when new hedging prevented access to Shenley Park land in the middle of Grace Ave. Width described as wide enough for a car to pass a pedestrian.
40	Foot	Daily	2003- 2015	Used Application Route for visiting Shenley Park as a young child and access to community facilities. Refers to notices at the entrance & exit to Grace Ave in July 2015 saying 'No Public Right of Way'. Previously the notices said 'Shenley Manor Private Road'. The Application Route was obstructed in summer 2015 when new hedging prevented access to Shenley Park land in the middle of Grace Ave. Width described as wide enough for a car to pass a pedestrian.
41	Foot	2/3 times weekly	2003- 2015	Used Application Route for pleasure and

				access to community facilities. Refers to a notice - at the beginning of roadway in August 2015 saying 'Private Road'. Width described as 'remains on roadway'.
42	Foot	Weekly	2003- 2015	Used Application Route for pleasure. Width described as 'Grace Ave wide enough for at least one car'.
43	Foot	4/5 times weekly	2004- 2015	Used whole of Grace Ave and link to Permain CI – map provided for clarification. Used for leisure & shopping. Refers to two notices on Grace Ave 'Private Road' and 'One Way System' and in July 2015 - 'No Public Right of Way'. Width described as 1 metre.
44	Foot & bicycle	Daily on bicycle, weekly on foot	2004- 2015	Updated map indicates use of the whole Application Route for pleasure, exercise and access to community facilities. Refers to notices in 2015 saying 'private grounds/private road'. Width described as 'Drive ways wide enough for vehicles'.
45	foot	Monthly	2004- 2015	Updated map indicates use of the whole Application Route and link through Pippin Close to Fielders Way, for visiting friends in Grace Ave.
46	foot & bicycle	Daily on foot, weekly on bicycle	2005- 2015	Bicycle use 2008-2015. Used Application Route for leisure & walking to school. Refers to sign at start of roadway saying 'Private Land' in August 2015. Width described as 'wide enough for a car'.
47	Foot	Daily	2006- 2015	Used Application Route to access local facilities and get bus. Refers to a sign and hedging put up -'Shenley Manor, Private Road. No Public Right of Way' in July 2015. Width described as 'approx. 18ft where Grace Ave and Permain CI meet.'
48	Foot	Daily	2006- 2015	Used Application Route to access local facilities and leisure. Refers to a sign and hedging put up -'Shenley Manor, Private Road. No Public Right of Way' in July 2015. Width described as 'approx. 18ft where Grace Ave and Permain CI meet.'
49	Foot	Daily	2006- 2015	Used Application Route to access local facilities and leisure. Refers to notice in July 2015 at the area between Permain CI and Grace Ave saying that it's private. Width described as approx. 18ft where Grace Ave and Permain CI meet.
50	Foot	Daily	2006- 2015	Used Application Route to access local facilities and get bus. Refers to a sign and hedging put up -'Shenley Manor, Private Road. No Public Right of Way' in July 2015. Width described as 'approx. 18ft where Grace Ave and Permain CI meet.'
51	Foot	Weekly	2007- 2015	Used Application Route and link through Permain CI to Porters Pk Dr for leisure and accessing community facilities. Verbally challenged whilst using Application Route (approx 2015). Refers to notices in 2015 discouraging use of Application Route

				saying 'Private Land' which user believes council records show not to be true. 'No width issues'.
52	Foot	Daily	2009- 2015	Used Application Route to access community facilities.
53	Foot	Weekly +	2009- 2015	Used whole of Grace Ave and link through Permain CI to Porters Pk Dr for pleasure & dog walking. Refers to signs at Permain CI and junction between Porters Pk Dr/Grace Ave in Summer 2015 saying 'Shenley Manor Private Land No Public Right of Way'. Width described as '1 car width in Grace Ave & pedestrian access only into Permain CI'.
54	Foot	Monthly	2010- 2015	Described as used for pleasure. Map provided which indicates use of the whole Application Route. Refers to notice at entrance to Grace Ave 2015 saying 'private road no access'.
55	Foot	Monthly	2010- 2015	Improved map confirms use of Application Route and link through Permain CI to Porters Pk Dr. Used for pleasure. Refers to notice at entrance to Grace Ave 2015 saying 'private road no access'.
56	Foot	Weekly	2010- 2015	Used Application Route and link through Permain CI to Porters Pk Dr. Used for pleasure and dog walking. Refers to signs at Permain CI and junction between Porters Pk Dr/Grace Ave in Summer 2015 saying 'Shenley Manor Private Land No Public Right of Way'. Width described as 'Grace Ave 1 car width. Pedestrian only between Grace Ave and Permain CI'.
57	Foot	Daily	2012- 2015	Used Application Route and link through Permain CI to Porters Pk Dr for dog walking and pleasure. Has taken a different route since the new signs were erected for fear of verbal abuse. Refers to signs at either end of Grace Ave in 2015 saying 'Private Property No Public Right of Way'.

During the public consultation, 6 further user evidence forms were submitted in support of the application:

58	Foot	Daily	2012- 2015	Used whole Application Route. After 2015 was challenged by a landowner who took photos of user and told them to get off private land. Refers to permission to use land being given by previous owner of property on Permain Close. Obstruction referred to as dumped rubbish then bushes & wire fence (refers to point 5 marked on map) which prevented/deterred use. Refers to notices in 2015 saying 'Private Land' 'No Entry'. Width described as normal road width.
59	Foot	Daily	2012- 2015	Used whole Application Route. User informed that Application Route crossed

				open access land belonging to Shenley Park Trust when purchasing property on Permain CI. Refers to 'Private Property' notices and obstruction at point 5 in 2015. Width described as 10 feet at the opening between Permain CI & Grace Ave.
60	Foot & bicycle	Weekly on foot, monthly on bicycle	2002- 2015	Used whole Application Route. Refers to notices in July 2015 at both ends of Grace Ave plus junction with Permain CI "Shenley Manor PRIVATE ROAD, No public right of way", and obstruction in October 2015 by a fence at point 5 which deterred/prevented use. Width described as a little more than car width at Grace Ave and 20 feet between points 4 & 5.
61	Foot & bicycle	Weekly	2002- 2015	Used whole Application Route. User told by resident of Grace Ave that they shouldn't be walking on the land. In July 2015 refers to challenge by a resident of Grace Ave and notices at both ends of Grace Ave plus junction with Permain CI "Shenley Manor PRIVATE ROAD, No public right of way". Refers to obstruction of the Application Route with fencing at point 5 in October 2015, which deterred/prevented use. Width described as a little more than car width at Grace Ave and 20 feet between 4 & 5 on the IP. User views Grace Ave as a key link in the estate and estimates that 25 people use it on a weekend day.
62	Foot & bicycle	Weekly on foot, monthly on bicycle	2002- 2015	Used whole Application Route. Refers to notices at both ends of Grace Ave plus junction with Permain CI "Shenley Manor PRIVATE ROAD, No public right of way" in July 2015. Refers to obstruction of the Application Route with fencing at point 5 in October 2015, which deterred/prevented use. Width described as a little more than car width at Grace Ave and 20 feet between 4 & 5 on the IP.
63	Foot	Weekly	1998- 2016	Used whole Application Route. Refers to notices at both ends of Grace Ave plus junction with Permain CI "Shenley Manor PRIVATE ROAD, No public right of way" in July 2015 and obstruction in October 2015 by a barricade followed by hedging & fencing which prevented/deterred use. Width described as narrow tarmacked road near Manor. User believes Application Route has been available for well over 20 years according to previous legal searches. Open access has been available as part of the Shenley development.

During the public consultation, SMM submitted 12 written statements regarding the footpath application:

Landowner Statement ref. no	Evidence
Statement 1	<ul style="list-style-type: none"> <li>• Moved to area in 1999.</li> <li>• Recalls a sign in 1999 (until 2004) at junction between Grace Ave driveway entrance and Porters Pk Dr saying “PRIVATE ROAD, RESIDENTS ONLY, SHENLEY MANOR.”</li> <li>• After 2004, new signs at both ends of Grace Ave driveway were erected saying “No Entry” and “Residents Only”. In August 2013, the “PRIVATE ROAD, NO PUBLIC RIGHT OF WAY” sign erected near point 2.</li> <li>• In July 2015, the “PRIVATE LAND, NO PUBLIC RIGHT OF WAY” sign erected near points 4 and 5 – replaced in November 2015.</li> <li>• Rarely uses Grace Ave on foot.</li> <li>• Refers to discussion with User 14 (the then main contact for Permain CI residents group) in 2005, 2007 &amp; 2014 who asked for a hedge/fence to block public access between Grace Ave &amp; Permain CI. A code or key would be used by the residents. SMM rejected the idea as impractical.</li> <li>• Refers to Permain CI residents group discussion of SMM’s 2007 planning application for fencing. The residents group wanted pedestrian and vehicular access over Grace Ave and close the existing vehicular access to Permain CI in order to support SMM’s application.</li> <li>• Refers to a hedge cutting incident in Nov 2011 where SMM told User 43 that there was no public right of way over SMM land.</li> <li>• Refers to purchasing the “PRIVATE LAND, NO PUBLIC RIGHT OF WAY” sign in 2013 and discussing it at that time with User 63. Refers to User 63 strongly opposing erection of the notice as it would look awful to residents of Permain CI, so sign was not erected until July 2015.</li> <li>• Frequently challenged people since retirement in 2006, including children &amp; young adults from Permain CI, Shenley Park Trust volunteers and employees of former Hospital. Names of those challenged generally unknown but included User 28, User 63 &amp; (in 2008 onwards) User 36.</li> <li>• Notes that it is difficult to challenge people using the Application Route, given its location in relation to the Mansion and they can often be visitors to properties on Grace Ave.</li> <li>• 2013 –challenged User 28 who was jogging on Grace Ave.</li> <li>• 2015 - Refers to a meeting on Grace Ave between Users 36, 63, other residents of Permain CI and two Parish Councillors who were informed that they had crossed private land. One Parish Councillor suggested signage which was erected near the boundary with Permain CI.</li> </ul>
Statement 2	<ul style="list-style-type: none"> <li>• Purchased property in 1998 and moved to area in 1999.</li> <li>• Recalls a sign in 1998 (until 2004) at junction between Grace Ave driveway entrance and Porters Pk Dr saying “Shenley Mansion, Private, Residents Only”.</li> <li>• Recalls that the “Private Road, Residents Only” signs at the junction of Permain CI with Pippin CI were in place when witness moved to the area (1999).</li> <li>• Recalls signs in approx. 2006 saying “Shenley Mansion Residents Only”. A further sign saying “No Entry, Residents Only” near junction between Grace Ave driveway exit and Porters Pk Dr.</li> <li>• Refers to meeting User 63 socially approx. 2008-2010 and discussed gating/fencing SMM boundary which User 63 said would be block the view and be unsightly.</li> <li>• 2013 SMM installed signs at both ends of driveway saying “Shenley Manor Private Road No Public Right Of Way”</li> <li>• 2015 SMM installed additional sign saying “Shenley Manor Private Land No Public Right Of Way” on SMM land near the boundary with Permain CI.</li> <li>• States that walkers with or without dogs would never be encouraged to use their front garden (contrary to evidence of User 36). One of the reasons for wanting SMM land fenced was due to dog fouling.</li> <li>• There was an iron gate between the wall of the car park and the wall of the bin area in order to allow residents of the Mansion to get to services behind the car park and/or to maintain the outside walls of the car park. The bin storage was set alight in December 2006/7. The structure was unsafe and SMM decided it was safest to remove the structure.</li> </ul>

	<p>Prior to this, the bin storage and gate created a more defined barrier between Permain CI and Grace Ave than can be seen presently.</p> <ul style="list-style-type: none"> <li>• Refers to challenging staff of Shenley Park Trust in recent years when driving tractors over private land. However since contacting a local councillor, the tractors no longer use the driveway.</li> <li>• A lit and tarmacked path was built to provide a short cut from Pippin CI to Fielders Way for access to shops/local facilities etc.</li> </ul>
Statement 3	<ul style="list-style-type: none"> <li>• Moved to area in 1997 and at the time of viewing the property, the Mansion and grounds was surrounded by security fencing accessible through a gate on the entrance drive, opened by a caretaker. Fencing had helped protect the field to the side of the driveway from use by traveller camps. By October 1997 the fencing had been removed and the grounds were edged with laurel. Recalls that the border with Permain CI was hedged. There was a path leading to the bin area and a grass border with Permain CI. There were cars parked in the bays on Permain CI leaving only a narrow space and no pavement for pedestrians.</li> <li>• At the time of moving there were large green signs at the entrance to the grace Ave driveway saying "Private Road, Shenley Manor, Residents Only." This was removed in 2004 and the sign was replaced (one at each end of the driveway) but which were also later removed. Witness worked during the week so was unaware of non-residents of Grace Ave crossing the land. Would challenge non-residents at weekends but is not aware who these people were.</li> <li>• In the last few years the witness has been home more often and since getting a dog (2014) is familiar with non-residents using Grace Ave as a shortcut or for walking dogs, whom the witness has challenged on the driveway.</li> <li>• Witness has challenged people parking cars in Grace Ave and playing games on the land, specifically since 2013, as well as pedestrians on the driveway.</li> <li>• July 2015 - Refers to a resident of Permain CI stating that a visitor to Grace Ave was trespassing on private land whilst trying to retrieve a loose dog which had wondered from Grace Ave into Permain CI. The incident was reported to the Police.</li> <li>• The signs which are currently in place on the driveway were put up in 2013 and the sign on the field was added in 2015. This was removed shortly after and the incident was reported to the Police. The sign on the field saying "Shenley Manor, Private Land, No public right of way" was replaced and is still there.</li> </ul>
Statement 4	<ul style="list-style-type: none"> <li>• Moved to area in 2003 but viewed the property in 2002 and at that time noted the sign at the entrance to Grace Ave saying that the land was private property and for residents only. This sign was removed in 2004.</li> <li>• New signs were erected in 2013 by the Shenley Manor gardener "Shenley Manor PRIVATE ROAD No Public Right of Way" and an additional sign was put up in 2015 facing Permain CI saying "Shenley Manor PRIVATE LAND No Public Right of Way". This sign had to be replaced soon after.</li> <li>• In 2011, witness challenged a family playing football on the land opposite the Buttery and in 2015 challenged non-residents parking and walking on private land.</li> <li>• In 2016, witness often challenged walkers and cyclists taking a shortcut through Grace Ave.</li> </ul>
Statement 5	<ul style="list-style-type: none"> <li>• Moved to area in 2003 but viewed property several times in 2002.</li> <li>• Recall in 2002 a large green notice at the driveway entrance to Grace Ave saying "Private Road, Residents Only, Shenley Manor". This was removed and had to be replaced in 2013 by the signs, at either end of the driveway, stating the land was private and there was no public right of way. At the driveway exit, the witness recalls that the 2013 sign replaced one which said "No entry, Residents Only". An additional sign was erected in 2015 opposite Permain CI stating "Shenley Manor Private Land No Public Right of Way".</li> <li>• Witness worked until September 2008 and so was away from the property week days. However challenged non-residents at evenings and weekends.</li> <li>• Witness refers to challenging non-residents since moving to the property.</li> <li>• Witness states that they have always made it clear to residents of Permain CI and others, that Grace Ave is private property with no right of way for anyone not living on the property.</li> </ul>

	This included members of the Parish Council who were on the land in summer 2015.
Statement 6	<ul style="list-style-type: none"> <li>• Witness moved to the area in 2014.</li> <li>• Witness was present when other landowners have challenged non-residents.</li> <li>• Witness has been challenged by a resident of Permain CI when using a recorded private right of access crossing part of Permain CI. The witness considers that this demonstrates that Permain CI is considered to be private by its residents.</li> </ul>
Statement 7	<ul style="list-style-type: none"> <li>• Witness moved to the area in 2014.</li> <li>• Witness recalls that there was already a sign at the entrance and exit to Grace Ave driveway stating "Shenley Manor PRIVATE ROAD No Public Right of Way" which are still in place.</li> <li>• Witness recalls a further sign was erected adjacent to the bin area after they moved in, to reinforce the signs already on the driveway – that there was no right of way through the area.</li> <li>• Witness considers that the bin store would have obstructed the footpath Application Route and the parking bays in Permain CI will have prevented ease of access.</li> <li>• In 2015 - witness challenged non-residents walking through Grace Ave</li> </ul>
Statement 8	<ul style="list-style-type: none"> <li>• Witness has been gardener for Shenley Mansion since 2012.</li> <li>• In August 2013, witness recalls being asked to erect two signs at the entrance and exit to Grace Ave driveway. Both signs read "Shenley Manor PRIVATE ROAD No Public Right of Way".</li> <li>• In June 2015, witness recalls being asked to erect a further sign on the field facing Permain CI "Shenley Manor PRIVATE LAND No Public Right of Way". Witness recalls that this sign was removed within a week and was replaced with an identical sign.</li> </ul>
Statement 9	<ul style="list-style-type: none"> <li>• Witness lived in the area between 1997 and 2014.</li> <li>• Witness recalls that initially the bin structure blocked the area between the car park and the boundary hedge between Grace Ave and Permain CI. However the bin storage was vandalised and never replaced.</li> <li>• Witness recalls that Grace Ave has had signs up indicating it was private land since at least 1997 and any non-residents parking on the land were challenged.</li> <li>• Witness recalls that a "gated community" was discussed approximately 10 years ago.</li> </ul>
Statement 10	<ul style="list-style-type: none"> <li>• Witness refers to knowing residents of both Grace Ave and Permain CI.</li> <li>• Witness recalls a discussion with a resident of Permain CI in September 2016 regarding the footpath application. The resident told the witness that he had a right of way over the route which was "in his deeds", adding that "it's our land to walk over".</li> </ul>
Statement 11	<ul style="list-style-type: none"> <li>• Witness refers to receiving a leaflet saying that there is an existing public right of way through Grace Ave (16.1 above). The witness recalls being challenged in summer 2011 by a resident of the Mansion whilst walking on Grace Ave who said that the land was private and asked the witness to leave.</li> </ul>
Statement 12	<ul style="list-style-type: none"> <li>• Witness lived in the area between 1998 and 2006.</li> <li>• Witness recalls a large sign at the entrance to the Mansion saying "Private, Residents Only, Shenley Manor" which disappeared in 2004.</li> <li>• In 2005, witness recalls ordering new signs for the entrance and exit to Grace Ave driveway, The wording at the entrance said "One Way, Residents Only" and at the exit said "No Entry, Residents Only".</li> </ul>

A total of 63 user evidence forms have been received. These relate to evidence, predominantly on foot, dating from 1933 until the evidence was gathered in 2015, in anticipation of the application being made in 2016. User 63 has provided evidence of user to 2016.

Users 1 – 10 stated that they were either employed at Shenley Hospital (or had a family member who was employed at the Hospital) and in some cases they were tenants living on the hospital site as well. Therefore during the years of their employment or tenancy, the land crossed by the Application Route was used in the course of their employment or tenancy when they would have been using the land with the permission of the landowner. This is not

the same as using the Application Route as a member of the public. The short vertical black bars shown on the graph below indicate the date at which each user indicated that their employment or tenancy ended.

Following the public consultation, 58 of the users provided evidence relating to the whole of the Application Route between points 1 and 6 on the IP.

- 26 users provided evidence of use of the Application Route only (NB: point 6 on the IP does not join a public highway)
- 18 users provided evidence of use of the Application Route and a route extending from Permain Close to Porters Park Drive or Pippin Close
- 9 users provided evidence of use of the whole of Grace Avenue linking to Permain Close
- 5 users provided evidence of use of the whole of Grace Avenue and a route extending through Permain Close to either Porters Park Drive or Pippin Close.

The remaining 5 users (Users 3, 5, 10, 31, 37) either took a different route (such as using the whole of Grace Avenue only) or were unclear in their evidence forms about how much of the Application Route they used.

It appears from the user evidence and the landowner witness evidence that public use of Grace Avenue has not been limited to the Application Route (e.g. games on the grass fields and parking by non-residents).

#### How Application Route was used

Of the 58 users who it is clear used the Application Route on foot (with or without additional routes), 22 users provided evidence of daily use, 23 users provided evidence of weekly use, 11 users provided evidence of monthly use and 2 users provided evidence of yearly use. A number of users also supplied evidence of use with bicycle and motor vehicle – a total of 16 of these 46 users provided evidence of bicycle use (3 daily, 8 weekly and 5 monthly) and 2 of these 46 users provided evidence of daily use with a motor vehicle. The landowner evidence refers to challenging non-residents who have parked their cars on Grace Avenue.

#### Challenge

The user evidence suggests that the earliest challenge to public use was in June 2015 when user 28 was verbally challenged by a resident of the mansion (Users 39 and 51 also provide evidence of being verbally challenged in 2015). However, the landowner witness statements provide evidence that the public were challenged on Grace Avenue from 2003 onwards and landowner statement 11 provides evidence of having been challenged on Grace Avenue in 2011.

#### Obstruction

16 users referred to the obstruction of the Application Route by the erection of hedging and fencing (at point 5 on the IP). The evidence varies in describing exactly when the obstruction occurred - between Summer and October 2015. The Applicant states that the obstruction occurred in October 2015 which is supported by the evidence of users 21, 22, 26, 60, 61, 62 & 63. The hedging and fencing is still in place.

Landowner statement 3 refers to hedging and fencing around the boundary of Grace Avenue in 1997, obstructing the Application Route at approximately point 5.

### Notices & signs

39 of the 63 users provided evidence in relation to notices/signs on and around the Application Route. It appears that there have been a number of notices on Grace Avenue indicating a one-way system and indicating that the Avenue is a private road and part of Shenley Manor, however it is not clear when these signs were first erected. Landowner statement 9 gives the earliest date of 1997. However, from photos submitted by the Applicant it appears that by December 2008 the only signs in place at the entrance and exit points on the driveway were blue one-way signs and blue “No-entry” signs.

There are also signs at the junction between Pippin Close and Permain Close saying “Private Road Residents Only” though it is not clear when these signs were first erected (Landowner statement 2 recalls them in 1999).

The user evidence refers to the ‘No Public Right of Way’ sign erected in July 2015 (on the grass, facing Permain Close near points 4 and 5 on the IP). However, the landowner witness evidence and copies of the relevant invoices demonstrate that the first signs saying ‘No Public Right of Way’ were erected in 2013 (one at point 2 on the IP - as indicated by a dashed black line on the graph above) and a third notice was erected facing Permain Close in 2015.

### Width

49 of the 63 users provided evidence in relation to the width of the Application Route. This varied but generally the Application Route is described as being the width of the Grace Avenue driveway, suitable for cars and at least wide enough for a car and a pedestrian/cyclist to pass safely. The junction between Grace Avenue and Permain Close is described as between 12 and 18 feet wide. The narrowest descriptions of width are 1 metre and 6-8 feet.

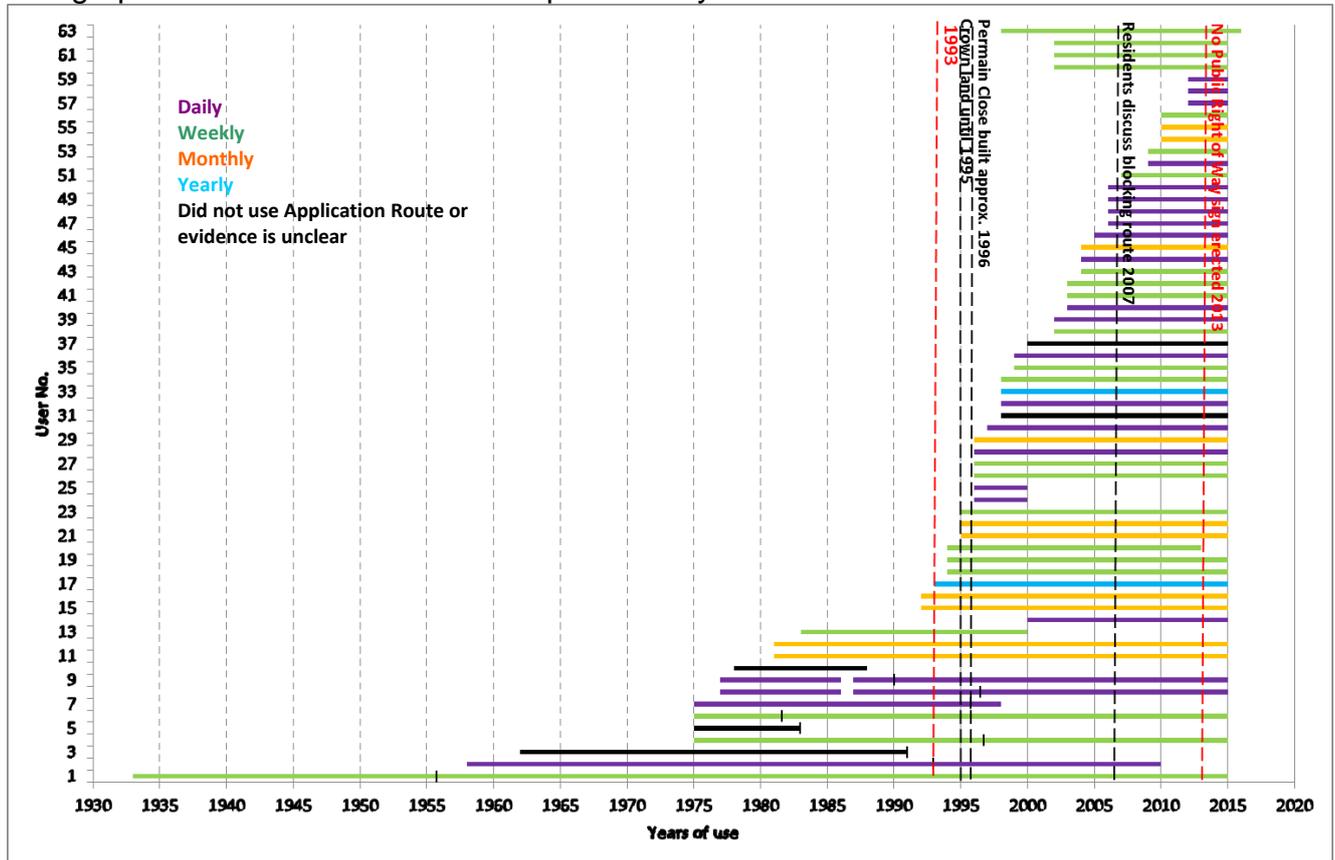
### **22.3 HCC’s decision**

In order to assess whether there has been sufficient evidence of use to raise a presumption that public footpath rights have accrued on the Application Route, HCC first has to establish the date use was ‘challenged’. The user evidence submitted in support of the application generally indicates that use of the Application Route was challenged in 2015 by:

- the erection of hedging and fencing across the Application Route at point 5;
- the erection of a sign on the grass near points 4 and 5, facing Permain Close, which reads “Shenley Manor PRIVATE LAND No Public Right of Way” and
- verbal challenges by residents of Grace Avenue.

However, SMM has submitted invoices dated 2013 for the signs, one of which was which erected (in 2013) at point 2 and reads “Shenley Manor PRIVATE ROAD No Public Right of Way”. HCC decided that the date of challenge was 2013, and therefore the relevant period of use is 1993 - 2013.

The graph below shows the evidence provided by the total of 63 user evidence received .



Grace Avenue, as it is now known, has been shown in various documents since at least the 18<sup>th</sup> century, however Permain Close was built in 1995/96 – as indicated by a dashed black line on the graph above.

Until 1995 (during the relevant period), the land crossed by the Application Route was owned by the Crown – as indicated by a dashed black line on the graph above. It should be noted that dedication of a way as highway which is presumed after public use of 20 years under section 31 of the Highways Act 1980, does not apply to Crown land.

HCC decided that the evidence of use provided by residents of Grace Avenue and Permain Close must be disregarded because the residents already have a private right of way across their respective parts of the Application Route, i.e. residents of Grace Avenue cannot claim a public right of way on Grace Avenue; residents of Permain Close cannot claim a public right of way on Permain Close. The same applies to user evidence which has been provided during a period of employment or tenancy at Shenley Hospital (see evidence of users 1-10 above).

Of the 63 user evidence forms which were submitted in support of the application, 8 witnesses provided evidence that they had used the Application Route for the full 20 year

period of 1993 – 2013 on foot: 1, 4, 6, 8, 9, 11, 12 & 17. The combined use of four people (users 2 + 30 & users 13 + 34) provide two further periods of 20 years use during this period, giving a total of '10' periods of 20 years use. In addition to the evidence of use on foot, user 2 also provided evidence of daily use with bicycle and users 8 and 9 provided evidence of weekly use with bicycle.

None of the users (totalling '10' as described above) were residents of either Permain Close or Grace Avenue. Users 4, 6, 8, 9, 17, 30 and 34 provided evidence of use between point 6 and Pippin Close along the Permain Close roadway. The remaining users did not specifically show that they continued from point 6 to Pippin Close but as non-residents of Permain Close, it is likely that they did so. Users 4 and 8 were either employees of or tenants of the Shenley Hospital for part of the relevant 20 year period.

The evidence submitted by SMM demonstrates a conflict with the evidence of use:

- Landowner statement 11 provides first hand evidence of a challenge to public use by a resident of Grace Avenue in the summer of 2011 where the witness was informed that they were on private property and was asked to leave;
- in 2007 the residents of Permain Close discussed blocking the Application Route and having a key code for a gate between the Grace Avenue and Permain Close; the residents also discussed the possibility of applying to build a wall separating Permain Close and Pippin Close. An access arrangement was widely discussed but rejected by residents of Grace Avenue;
- in 2004/05 landowner statements 1, 2, 5 & 12 provide evidence that there was a sign reading "No entry, residents only" on the eastern limb of Grace Avenue (approximately between points 1 and 2);
- the landowner statements provide evidence that from 2003 onwards, residents of Grace Avenue challenged children, young adults, Shenley Park Trust staff & volunteers, employees of the former hospital, non-residents parking their cars and a number of those who have provided evidence of use;
- at the junction between Permain Close and Pippin Close there are signs on either side of the entrance to Permain Close which read "Private Road Residents Only". Landowner statement 2 provides evidence that these signs have been in place since at least 1999. Members of the public approaching the Application Route from Pippin Close (i.e. non-residents of Permain Close) would have to pass these signs in order to access the Application Route at point 6.

Following an assessment of all the evidence HCC decided that there is not sufficient evidence that there has been 20 years use, as of right and without interruption. Therefore footpath rights have not accrued under section 31 of the HA 1980. Further, the evidence does not show that a right of way could be reasonably alleged to subsist or has been acquired under common law.

### **Conclusion**

The purpose of a highway is for passing and re-passing. Public rights of way (as public highways) should therefore link with other public highways or go to a point of public interest – such as a well or seashore etc. Permain Close is not a public highway and HCC does not consider it to be a point of public interest. HCC therefore considered use extending beyond point 6 to join a public highway – Pippin Close is the public road which joins Permain Close. As discussed above at 22.3, a number of the users provided evidence of use

extending along Permain Close to Pippin Close and beyond. However, since 1999 Permain Close has been signed as a private road for residents only.

The documentary evidence demonstrates that Grace Avenue (points 1 to 3) has physically existed since at least 1822. Some of the more recent documents (OS mapping and photographs) indicate the physical existence of the Application Route between points 3 and 6. However, evidence of physical existence is different to evidence of highway status. For the reasons given above HCC considers that neither the documentary evidence nor the user evidence demonstrates that the Application Route is a public right of way.

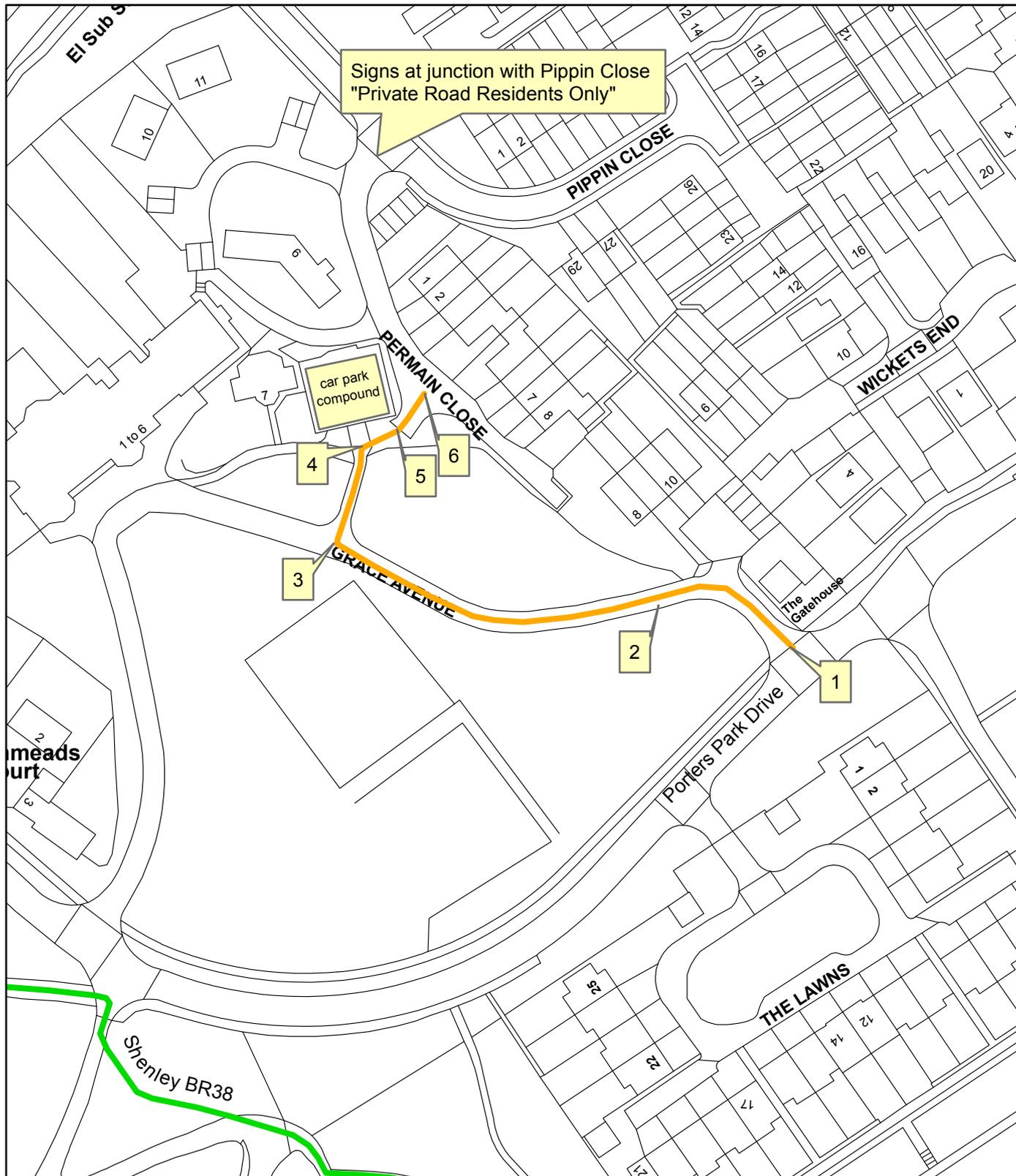
HCC therefore decided not to make an order.

Investigation Plan (HTM/208/MOD)  
Application for a footpath from Grace Avenue to Permain Close, Shenley



Application Route (1 - 6)   
Public bridleway 

Scale 1:1,250



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