

# HERTFORDSHIRE COUNTY COUNCIL



## Rights of Way Service

### Modification Order Decision Report

Home Wood at Carbone Hill

Author: Helen Denton

Date: 11<sup>th</sup> June 2013

## Application Details

An application has been made to record a series of footpaths through Home Wood at Carbone Hill, Cuffley. An extract of the 2010 Definitive Map is attached. It shows the existing public rights of way in the area as well as the application route.

This application was made by Howard Aiken of Cuffley on 2<sup>nd</sup> February 2009. It was submitted in the prescribed form and relies upon user evidence.

## Description of Route



Plate 1

The application routes run through Home Wood, which lies on the northern boundary of Cuffley, a village a few miles north of the M25 between Potters Bar and Cheshunt. Home Wood is a densely wooded area with a network of paths through it, some of which are well-defined trails with coloured waymarks and, in boggy areas, board walks. Most of the wood is owned by Northaw and Cuffley Parish Council, which encourages public access. There are a number of information boards at the point at which Tolmers Road (recorded on the Definitive Map as Northaw & Cuffley FP2) meets Carbone Hill, one of which declares that the routes in the parish council-owned section of the

wood are permissive.

**The investigation report referred to several routes having been applied for, being the Red and Orange Routes. The applicant has since clarified that his application related solely to the Red Route, which is now described as the application route. The Orange Route is not therefore considered in this decision report.** The application route is part of the network of paths in the wood, most of which are not subject to this application. It runs through the section of the woods that are owned by individuals other than the Parish Council.

The application route leaves Tolmers Road approximately 2 metres off the junction with Carbone Hill (Plate 1). It heads in a south westerly direction parallel to Carbone Hill, meeting the road in two places, opposite Cuffley Camp and at the water stopcock. At this latter point a wire fence over 6 feet in height has been erected across the route (Plate 2). The application route used to continue through the fence into that area of the woodland, but since the fence was erected in 2008 people now divert around the fencing to join the network of paths at an alternative point.



Plate 2

There are no boundaries to the application routes and so only the regularly walked line of the application route can be seen on the ground.

## Documentary Evidence

For each investigation, we check at least 10 primary sources of information. 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.

You will find each document 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

Please note that where there are no records for the document listed, this will just be recorded as "No records found."

## 1. Dury and Andrews Map

Date: 1766 Ref: HALS - CM26

### 1.1 Why we consider this document important

Dury and Andrews' 1766 county map of Hertfordshire, describes itself as 'a *Topographical map of Hartford-Shire, from Actual survey; In which is Expressed all the roads, lanes, churches, noblemen and gentlemen's seats, and every Thing remarkable in the County.*'. It is a map of Hertfordshire made from an original survey, although it is a schematic map (like the London Underground map) rather than one to scale. It shows the basic layout of roads but details like field boundaries were probably decorative. The "explanation" (or legend) lists 'Roads' in 3 categories – "open", "one side enclosed by a Hedge", and "enclosed by Hedges". It does not appear to show routes which, at the time, were thought to be footpaths or bridleways. The map was produced to be sold to members of the public which mean that it is likely the routes shown were both public and publicly maintainable.

### 1.2 What is shown by this document in the area of the application route?

A village described as "Coffley" is shown, as is Newgate Street and a road joining them which is likely to be Carbone Hill. A dotted line showing the parish boundary passes along the northern boundary of a wood, which is probably Home Wood. The application route is not shown.



### 1.3 Decision

HCC decided that Dury & Andrews' map does not provide any evidence relating to the application route.

## 2. Northaw Inclosure Records

Date: 1807  
Act ref: 73905  
Award and Maps ref: 79846

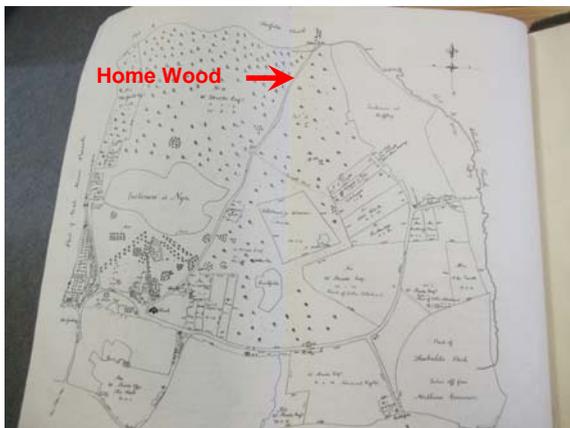
### 2.1 Why we consider these documents important

Enclosure was the process of physically changing the landscape to benefit the development of modern farming practices as technology improved. It was popular from the late medieval period to the 19<sup>th</sup> century and carried out on a parish-by-parish basis. As it changed the layout and size of fields it also changed the routes of roads and rights of way.

Inclosure could be carried out by agreement, but where this was not possible an Act of Parliament was needed to grant the powers to make the desired changes. Through time such Acts became more popular than agreements. Prior to 1801 these powers were granted to each parish individually by private Acts of Parliament. In 1801 the first General Act was passed which could be used by any parish. Further General Acts were passed in 1836 and 1845. However, private Acts continued to be obtained if the required powers were not granted by the General Acts. They are important evidence to show us what could and could not be done.

Inclosure was recorded through an Award and a Map. The Award is the written record of the changes that were made. It lists the lands that were given to each landowner, the roads and rights of way that were stopped up and those that were set out, or created. The Map (which was not legally required until 1845) shows pictorially the changes made.

As inclosure was a detailed legal process with powers granted by Parliament, it can give us conclusive evidence of a right of way.



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

Northaw was enclosed in 1807 under an 1803 act entitled "An Act for dividing, allotting and inclosing, and otherwise improving the waste and Commonable land within the parish of Northaw, in the County of Hertford". The accompanying map shows Home Wood as part of an enclosure allotted to William Strode. Carbone Hill is shown and set out as the 2<sup>nd</sup> public carriage road. No reference is made in the award to any public rights of way passing through Home Wood, either in the section setting out the highways or in the section describing the

allotted enclosures.

## 2.3 Decision

HCC decided that the inclosure documents do not provide any evidence relating to the application route.

## **3. Bryant's Map**

Date: 1822

Ref: HALS - CM88

### 3.1 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 usually public and publicly maintainable, unless there is strong contemporary evidence which shows that routes are private.



### 3.2 What is shown by this document in the area of the application route?

Carbone Hill and The Ridgeway are shown, as are Great Wood (featuring Justice Hill) and Home Wood. Tolmers Road is not shown is a through-road. The application route is not shown.

## 3.3 Decision

HCC decided that Bryant's map does not provide any evidence relating to the application route.

#### **4. Northaw Tithe Map and Tithe Apportionment**

Date: 1849 Ref: HALS D/P/27/1 and D/P/27/2

##### 4.1 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. 1st 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. 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. In some cases highways are coloured yellow or sienna to indicate public status. Footpaths and bridleways are not often shown on tithe maps as they did not generally affect the calculation of tithe rent.

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

The crossroads that intersect the Ridgeway and Carbone Hill are shown. Carbone Hill is shown running up to the parish boundary, whereupon it is annotated "to Newgate Street". Great Wood and Home Wood are not specifically marked on the map, but are shown as blank areas of land, which are described as "Allotted under the Inclosure Act". There are no plot numbers for these areas of land and no information in the accompanying award.

##### 4.3 Decision

HCC decided that because the area over which the application route passes was not tithed the tithe documents do not provide any evidence relating to the application route.

#### **5. Highway Diversion/Extinguishment Records**

No records were found.

#### **6. Railway and Canal Plans**

There are no railways or canals in the area.

#### **7. Inland Revenue Documents**

Date: 1909-10 Ref: HALS IR1/426, IR2/52/1

##### 7.1 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.

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

Home Wood is shown edged blue and numbered 648. The second edition OS map was used (see section 10 below), and whilst a couple of tracks depicted by double pecked lines are shown, these do not match the application routes. Plot 648 is described as "woodlands" at "Postern gate" in the ownership and occupation of John Henry Johnson of Tolmers, Newgate Street. There are no deductions for public rights of way.

### 7.3 Decision

HCC decided that the Inland Revenue documents do not provide any evidence relating to the application route.

## **8. Highways Maintenance Records**

No records were found relating to the route.

## **9. Definitive Map Records**

The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement to show and describe the public rights of way in the county. The Map is conclusive evidence of what it shows, but is without prejudice to what is not shown.

The process resulting in today's Definitive Map and Statement consists of several stages which are dealt with below:

- a) the Parish Survey
- b) the Draft Map, Provisional Map and first Map and Statement (1953)

c) the Special Review (following the Countryside Act 1968)

## **9a Definitive Map Records – Northaw & Cuffley Parish Survey**

Date: 1953

Ref: RoW

### 9a.1 Why we consider these documents important

Under the National Parks and Access to the Countryside Act 1949 the county was required to show all public paths which were defined as “footpaths”, “bridleways” and “roads used as public paths”. This last term was never properly defined and has resulted in much confusion ever since. There was no requirement to record public vehicular highways.

In Hertfordshire each parish carried out a survey of the paths which were believed to be public. Sometimes additional surveys were carried out by the Ramblers’ Association or the Youth Hostel Association; or comments were made by them on the parish’s survey. The surveys once completed were sent to the County Council for collating and publishing as the Draft Map.

### 9a.2 What is shown by these documents in the area of the application route?

Carbone Hill and Home Wood are shown on the Ordnance Survey basemap. Tolmer’s Road is marked as Footpath Number 2 and described as commencing “from SE corner of Home Wood on W side of Tolmers Road thence generally N through Wood to Carbone Hill S of Postern Bridge”. The application route is not specifically mentioned, and is not shown on the map.

### 9a.3 Decision

HCC decided that the Parish Survey documents do not provide any evidence for the application route.

## **9b Definitive Map Records – Draft, Provisional and First Definitive Map**

Date: 1953

Ref: RoW

### 9b.1 Why we consider these documents important

The parish surveys were collated into the Draft Map and Statement. Notices were published advertising that the Draft Map and Statement had been produced so that the public (including landowners) could object to what was included or to what was omitted. Hearings were held to consider these objections and recommendations were made based on the evidence presented.

The Draft Map and Statement was amended following the hearings to produce the Provisional Map and Statement. As before, notice of the production of the Provisional Map and Statement was advertised but this time only landowners, lessees and tenants could apply to the crown court to amend the map – the public could not. The map and statement were then amended to reflect the court’s finding.

Please note that these records vary across the county as a full sequence of Draft Map and then Provisional Map has not always been kept.

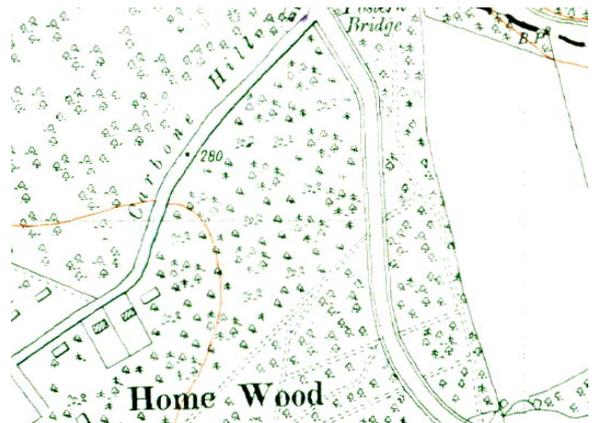
After the amendments to the Provisional Map and Statement were made, the First Definitive Map and Statement for Hertfordshire was produced. The Map and Statement together provide conclusive evidence of the existence of those public rights of way shown at the ‘relevant date’ of 1953; i.e. the information shown was correct at that date.

### 9b.2 What is shown by these documents in the area of the application route?

No objections appear to have been made to the exclusion of the application route from the first Definitive Map.

### 9b.3 Decision

HCC decided that the first Definitive Map documents do not provide any evidence for the application route.



## **9c Definitive Map Records - Special Review**

Date: 1978 Ref: RoW

### 9c.1 Why we consider these documents important

The Countryside Act 1968 created the new designation right of way to be recorded - a "byway open to all traffic". This was the first time that vehicular rights were recorded on the Definitive Map. It also required county councils to carry out a Special Review to reclassify all "roads used as public paths" as either "footpaths", "bridleways" or "byways open to all traffic". In Hertfordshire the Special Review was started in 1977. This was later extended to include all the amendments to the network made by diversions since the first Definitive Map. It also showed if applications had been made to add or amend details of routes. Copies of the Special Review Draft Map showing all these changes were published, inviting objections from the public. Due to the number of objections received and not resolved, the Secretary of State ordered the abandonment of the Special Review in Hertfordshire in 1984. The Definitive Map and Statement was amended to show all changes which did not have outstanding objections, and these were shown on the Definitive Map and Statement produced in 1986.

### 9c.2 What is shown by these documents in the area of the application route?

During the Special Review a claim was made for a footpath through Home Wood. There appears to be some discrepancy as to whether one path was claimed or two, although neither lie on the line of the current application route. Instead the first follows the approximate line of the route leading out of Tolmer's Road on the 1<sup>st</sup> and 2<sup>nd</sup> edition Ordnance Survey map (see section 10 below), whereas the second lies further south on a similar alignment. Nine user evidence forms were supplied to support the application, eight of which attested to use spanning 20 years or more. A letter dated 2<sup>nd</sup> May 1979 to HCC from Mr Kieser suggests that the evidence relates to two paths, and that use was restricted following the erection of barbed wire fences. The correspondence ends at this point and there is no paperwork available to suggest why the application was rejected.

### 9c.3 Decision

HCC decided that because the Special Review documents refer to routes that are not the application route they do not provide any evidence for the application route.

## **10. Ordnance Survey maps**

Date: 1874-80, 1898, 1913-14, 1935, 1970 Ref: RoW

### 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 Ordnance Survey 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. Ordnance Survey 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) 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?

The application route is not shown on any of the Ordnance Survey maps. Tolmers Road is shown on all of them with double pecked lines. The 1874-80 and 1898 editions show a route leading off Tolmers Road in a south westerly direction towards Homewood Lane, but this does not follow the line of the application route. The 1913-14 edition shows a network of paths criss-crossing Home Wood, but these do not lie on the same line as the application route and are probably logging paths used by the foresters of the time. The 1935 edition shows Tolmers Lane as an enclosed track for the first time, but does not show any of the logging tracks used 20 years previously. The 1970 edition echoes this.

### 10.3 Decision

HCC decided that the OS documents show that the application route did not exist as a physical feature on the ground at the time the different editions were surveyed.

## **11. User Evidence and the Landowner's Response to Public Use**

### 11.1 Why we consider the evidence important

#### • *User evidence*

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'. 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 (see section 12 - Landowner Challenge to Public's Use of a Route, below). 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. However, 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.

User evidence is generally provided through the completion of evidence questionnaires. Below is a table summarising the forms we have received.

- *Landowner evidence*

Landowners can take steps to prevent the accrual of new public rights of way through use of a route by the public. 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 would not affect pre-existing rights.

### 11.2 Table

No.	Years used	Frequency	Comments, including width
1	1980-2009 (29 years)	Weekly	Refers to fence obstructing route erected April 2008. Width 2 metres.
2	1990-2009 (19 years)	Weekly	Refers to fence obstructing route erected April 2008. Width 3 feet (1 metre).
3	1976-2008 (32 years)	Weekly in winter; more in summer	Refers to fence obstructing route erected April 2008. Width 2-3 feet (0.6 to 0.9 metre).
4	1974-2013 (39 years)	Weekly	Refers to the chain link fence erected early 2008. Does not provide a width.
5	1990-2000 (10 years)	Monthly	Refers to fence erected 2008. Does not provide a width.
6	1987-2008 (21 years)	Weekly	No details provided. Does not provide a width.
7	1980-1996 (16 years)	Weekly	Moved away in 1996. Refers to chain link fence erected in 2008. Width 6 feet (1.8 metres).

### 11.3 What the evidence shows

- *User evidence*

The application has been supplied with eight user evidence forms, of which there are five periods of 20 year use. One witness subsequently asked for his evidence to be withdrawn. Four witnesses have individually used the route for 20 years or more, whilst witness numbers 2 and 8 can jointly attest to a fully period of 20 year use. This means that five witnesses can attest to a total of five periods of 20 year use, with the earliest period of use commencing in 1974.

All of the witnesses have walked a route through Home Wood, although it is not clear that all of the witnesses have walked the entire application route. Mr Reeve and two witnesses refer to a route that lies between the application route and the Parish Council's white permissive route, and there is evidence that this route has been walked as well as or instead of the application route.

All witnesses bar one refer to a fence that was erected in April 2008 on the blue line on the attached plan. This fence appears to have been erected to enclose part of the privately-owned

woodland, and does not prevent access to the parts of the application route that are outside of this area.

The witnesses do not refer to ever having received permission to use the application routes, or to having been told that the routes are not public rights of way.

- *Landowner evidence*

The owners of the woodland affected by the application were notified according to the Regulations and, subsequent to that, John Reeve and Sheila Tomlinson contacted HCC to make section 31(6) deposits. These are dated 8<sup>th</sup> April 2009 and 14<sup>th</sup> March 2009 respectively. Mr Reeve's deposit relates to the land around which the fence was erected. Mrs Tomlinson's land is crossed by a section of the Red Route further north.

During the consultation process Mr Reeve and Mrs Tomlinson presented further evidence of their treatment of the land during their ownership of it. Mr Reeve stated that he had never seen anyone using the application route and that this route did not exist until recently. He had seen people accessing Home Wood via the stopcock, but they would follow a track that ran adjacent to his property's northern boundary to a track that runs north to Tolmer's Road but approximately 10 metres east of the application route. This track can be seen to exist on the ground, although it is not now as well-used as other tracks in the wood. Mr Reeve accepts that people who used this route may have passed slightly within his property on the corner by the stopcock, but says that the path turns slightly north and soon leaves his property.

The Reeves purchased their section of the wood in 1993. They maintain their garden frequently and claim that they have never seen people using the application route. When they purchased the property there were the remains of a chain-link fence running around the plot, although it was by that time broken down. The remains of it can still be seen on the ground. Mr Reeve does not know who erected it or how long it has been in place, but presented a photocopy of an undated sales particular for the plot, in which reference is made to a covenant to fence it. This is supported by Mrs Tomlinson, who presented a copy of the conveyance transferring the land to her father in 1946, in which a similar covenant is included. It is not clear whether the broken chain-link fence is what remains of previous landowners' attempts to abide by this covenant. Mr Reeve maintained a fence around his house garden, but did not build the fence around his section of the wood until 2008. He says that it was not possible to walk in the woods because it was overgrown with brambles that have since been eaten by muntjac deer. He has also provided evidence to say that some access took place from 2006 when he and his son cut a path through the brambles to reach his garden fence, near the south eastern corner of the wood plot, for maintenance purposes. People apparently then began to use this path and so he covered it over with fallen branches and brambles, as well as erecting a "private" sign on a nearby tree.

Mr Reeve has provided evidence from 18 other people regarding access in the woods. Five of these witnesses are relatives, but all others are friends or acquaintances. The long-standing barbed wire fence is referred to by one witness, and another describes using the path to the east of the application route as described by Mr Reeve. Several state that they know of paths outside the Reeve's property, but of none passing over it.

Mrs Tomlinson provided evidence that her section of the woodland had been in her family's ownership since 1946, finally passing into her hands upon the death of her mother in 2000. An extract of the conveyance of the land to her father dated contains a restrictive covenant requiring the landowner to "within three months after completion of the sale erect and thereafter maintain along the boundaries of the said land marked with a T on the said plan good and sufficient fences

(to be previously approved by the Vendors) not less than four feet or more than six feet in height". The plan to the conveyance shows T marks on the eastern, northern and western boundaries of the plot.

Mrs Tomlinson states in her letter that her father erected the fence and periodically checked it until ill health and a family move prevented this in the late 1960s. She argues that the absence of any posts or fence now suggests that it has been forcibly removed at some point in the past, although her family never gave any instructions for this to be done.

#### 11.4 Decision

In order to assess whether there has been sufficient evidence of use to raise a reasonable allegation that public footpath rights have accrued along the application route, HCC first has to establish the date use was 'challenged' by the landowners (see section 11.1 above). HCC decided that the date at which the Tomlinson's stopped checking the fence (the late 1960s) around their plot predated evidence of the earliest use of the land (in 1974), and so did not amount to a challenge by the landowner of the use alleged by the application. Mr Reeve's sign in 2006 was not sufficiently overt to represent a direct challenge to public use. The erection of the fence marked on the plan in 2008 did, however, amount to an effective challenge of public use.

Section 31 of the HA 1980 states that for public rights to accrue over a route there should be evidence of use as of right over a period not less than 20 years. Such evidence of use raises a presumption that public rights have been dedicated by the landowner, unless the landowner can show that he had no intention to dedicate the route during the period in question. As the date of challenge for this case is 2008 the relevant period of use is 1988-2008. Use of the extent of the application route within the fenced-off section of woodland ended in 2008, whilst use of the rest of the route continues to this day.

Following an assessment of the witness evidence HCC decided that there is no presumption that public rights have accrued under section 31 of the HA 1980. Of the 8 user evidence forms that were presented with the application, 4 witnesses attest to using the application route for the full 20 years, with the years of use of a further two combining to also cover the full 20 year period. However, whilst all of the witnesses have walked a route through Home Wood, it is not clear that all of the witnesses have walked the entire application route.

#### **Conclusion**

HCC decided that there is insufficient evidence to make an order to record a public footpath through Home Wood on the Definitive Map.