

## Rights of Way Committee

<b>Report Title:</b>	Claimed Public Footpaths in the parishes of Chevington, Horringer and Ickworth
<b>Meeting Date:</b>	Wednesday 25 January 2017
<b>Lead Councillor(s):</b>	Councillor Gary Green (Chairman)
<b>Local Councillor(s):</b>	Councillor Terry Clements
<b>Director:</b>	Geoff Dobson, Director of Resource Management
<b>Assistant Director or Head of Service:</b>	Alan Thorndyke, Head of Highway Network Management
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### Brief summary of report

1. The two long standing claims being considered in this report are being investigated now as the result of a Court of Appeal ruling in 2015, which overturned a previous 1993 ruling on how Inclosure Award evidence relating to footpaths is to be considered [see paragraphs 49-50 later in this report).
2. Map 2 attached to this report depicts two routes through Ickworth Park claimed as public footpaths by Mr John Andrews in 2 formal applications dated 28 April 1998. The route referred to as claim 1 shown coloured red, runs from the A143 near the Park's main entrance in a generally south-south-west direction to a point on a track within Ickworth Park. The route referred to as claim 2 is shown coloured blue and also starts on the A143 in Horringer, but further south and then heads generally south west through the Park to a junction with the C661 in Chevington.
3. A route linking the southern end of claim 1 and the C661 in Chevington was considered by an Inspector for the Secretary of State in 2001 and was rejected.
4. The Horringer section of claim 2 outside of Ickworth Park is already recorded on the definitive map as Public Footpath 6, which ends in a cul-de-sac at the boundary of the park. Horringer FP6 was added to the definitive map in 2006 on the basis of user evidence to connect the main road to a permissive path in Ickworth Park.

### Action recommended

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| <ol style="list-style-type: none"> <li>5. It is RECOMMENDED that claim 1 is rejected with all parties being advised accordingly.</li> <li>6. It is RECOMMENDED that an order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add A-B-C-D-E of claim 2 to the definitive map</li> </ol> |
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and statement as a public footpath with the particulars contained in paragraph 66 being incorporated into the definitive statements.

## **Reason for recommendation**

7. It is considered that there is insufficient evidence to show public rights exist for claim 1, but the evidence is sufficient to raise at least a 'Reasonable Allegation' of public rights existing for claim 2.

## **Main body of report**

### **Previous considerations by Suffolk County Council**

8. 1979 review, see later in report.
9. 4 December 1989. None of claim 1 (red route) was recommended other than a small section that continued into Chevington. That section is not a part of the current claim. A short section at the south western end of claim 2 (Blue route) in Chevington (A - B on map 2) was considered to have good evidence and it was recommended that the Parish Council be consulted with a view to adding it to the definitive map, however no further action was taken.

## **Documentary Evidence**

### **Horringsheath and Westley Inclosure Map and Award 1815 (BRO ref: Q/RI 40 & 1118)**

10. Claim 1 (red route) is depicted by a double pecked line feature branching off the main entrance to Ickworth Park and is shown continuing just over the parish boundary. It is annotated "Footpath" but is not set out in the Award.
11. Claim 2 (blue route) is not depicted or set out.

### **Chevington Inclosure Map and Award 1815 (BRO ref: Q/RI 11 & 2323)**

12. Claim 1 (red route) is not depicted or set out.
13. Claim 2 (blue route) is not clearly defined on the map, but a dotted line can be followed for part of the route when viewed in conjunction with reading the description of "Public Footpath C" as set out in the Award (this section has been annotated on map 2 attached to this route between points A - B). The annotation "C" is not visible on the Inclosure map held at the record office. It is possible that other versions of the map were produced.
14. The description reads: *"One other public footpath in Chevington aforesaid marked on the map C. branching out of the Hollybush Queen road and proceeding along the said ninth private road to the corner of the first allotment herein after made to the said John Worledge thence in an east direction by the said last mentioned allotment and the twenty fourth allotment herein after made to the said Earl to the north east corner of the first allotment herein after made to the said John Kemp a minor thence in a southerly direction by the side of the last mentioned allotment to the west corner of the fourth allotment herein after made to Samuel Brooks thence in a easterly direction by the fence of the said last mentioned allotment to the north west corner thereof where it meets the present path leading towards Ickworth Hall."*
15. From the point where the description finishes, a dotted line continues to around point C on map 2, where it joins a long thin plot that resembles a route/track that

continues north east to Martin's Green, which is in the ownership of the Earl of Bristol.

#### **Horringer Tithe Map 1839 (BRO ref: T106/2)**

16. No parts of either claim are depicted on this map.

#### **Ickworth Tithe Map 1850 (BRO ref: T12/2)**

17. No part of CPM144 (red route) is depicted.

18. A thin brown line is depicted for the section C-D-E of CPM 143 (blue route) and is annotated "Foot Path from Chevington". Point C on map 2 is within Chevington showing the route continues west past its Ickworth depiction into a field plot that contains an annotated landmark "Obelisk". Point E is where it joins the definitive Horringer FP6. There is no mention of the footpath with the Ickworth Tithe Apportionment.

#### **Chevington Tithe Map 1839 (BRO ref: T112//2)**

19. Neither claimed route is depicted. The "Obelisk" is annotated in the field plot that the Ickworth map depicted CPM 143 (blue route) entering, but there is no route depicted on the Chevington Map.

#### **Ordnance Survey Mapping**

20. Whilst it is acknowledged that Ordnance Survey (OS) maps are silent on the public or private status of the routes that they depict, they are however the most accurate source of evidence for determining alignment issues by showing what physically existed on the ground at the times of the surveys.

21. A network of lines annotated "FP" are depicted across Ickworth Park, with some matching the alignments of the claimed routes, or parts of them, on some but not all editions. Path alignments across the park have varied over different map editions and are different on modern mapping.

#### **6 inch Ordnance Survey Map 1891, 1905, 1927, 1902/3 with 1950 additions (Sheets 44SW/53NE/54NW)**

22. Claim 1 (red route) can be followed as one of the many footpaths depicted by double pecked lines and annotated "FP" for its entire length on all editions except the 1891 edition, where there is a gap in the route just south of point D.

23. Claim 2 (blue route) is depicted by a single pecked line when alongside a field boundary and by double pecked lines when not, with FP annotations at various points. The route is shown in its entirety on all editions except the 1902/3 with 1950 additions, on which a section is missing south-west from point D to the corner of the Lownde Wood. On all editions a footpath is depicted through the field containing the landmark "Monument" (or "Obelisk" as it was annotated on the Ickworth Tithe Map).

#### **1:2500 Scale Ordnance Survey Map circa 1890, 1903, 1927 (Mapinfo versions)**

24. The depictions are as per the 6 inch surveys for the sheets that are available.

#### **Production of the Definitive Map and Statement**

25. The Horringer Parish Survey Map (IRO ref: 3332/26) shows there were no public rights of way claimed west of the A143.

26. There were no public rights of way at all claimed on the Ickworth Parish Survey Map (IRO ref: 3332/28).
27. The Chevington Parish Survey Map (IRO ref: 3332/11) shows the Chevington section of CPM143 (Blue route) by a red line annotated "9 F.P" and "10 F.P" nearer to the Ickworth boundary. This line has then been highlighted in yellow and then crossed through in pencil for most of its length. Both the yellow highlighting and the crossing through have become accepted by the County Council to indicate that these routes should be omitted from the definitive map. The Parish Survey Statements are not available and the reasoning for omitting this route, along with others nearby on the parish survey map, is not known.
28. No parts of either route featured on the draft, modified or provisional stages of the definitive map production, nor have they featured since on any definitive version of the map.

#### **Horringer 1979 Review material**

29. Claim 1 (red route) was claimed as claim K and was recommended for addition as a footpath. Part of claim 2 (blue route) that has since been added to the definitive map as Horringer FP6, was claimed as claim E, but was not recommended for addition to the definitive map. (Claim E extended to the Ickworth parish boundary, whereas Horringer FP6 ends within Horringer at the edge of the Park.

#### **Ickworth 1979 Review material**

30. Claim 1 (red route) was claimed as claim F and the middle section of claim A, neither were recommended. Claim 2 (blue route) featured as the western and eastern ends of claim A, with the centre section not being part of any of the 1979 review claims. Neither claims A or F were recommended.

#### **Chevington 1979 Review Material**

31. Claim 1 (red route) does not fall within Chevington. Claim 2 (blue route) was claimed as claim J within Chevington and was recommended for addition to the definitive map as a footpath.

#### **1979 Review Summary**

32. The 1979 Review was abandoned before its completion due to a change in legislation, with none of its recommendations taking affect.

#### **Landowner Evidence**

33. Mr Andrew King of Ruffins Farm, Whepstead, is a tenant farmer on National Trust Land and completed a landowner's Information form on 24 April 2016. He occupies land crossed by and adjacent to the claimed routes. His view is neutral to the claims, he has seen daily use on foot about which he has taken no action and he has knowledge of the area for 10 years.
34. The National Trust (owners of Ickworth Park) are the majority landowner affected by the claimed routes. Charlotte Webster replied to the consultation on the trusts behalf on 2 May 2016. The reply consisted of a covering letter, completed Landowner information form, plan showing extent of landownership and recent photos taken along the claimed routes with an index plan.
35. The National Trust have owned land crossed by and adjacent to the claimed routes since 1956. They are opposed to the claims.

36. Access is allowed to the whole of the Ickworth Estate for members of the National Trust and to members of the general public who purchase tickets. Signs are positioned at various places, including on the claimed routes, advising that the paths are not dedicated as public rights of way. Highways Act 1980 section 31(6) deposits are in place preventing dedication being acquired by use and National Trust Byelaws also prevent dedication by use.
37. Martin Percival of Hollybush House, Weathercock Hill, Chevington replied to consultation in a letter dated 5 August 2016. The of claim 2 (blue route) clips the north-west corner of his land just west of point C. He points out that any path must have existed a very long time ago as his property is bordered by a very thick impassable thorn hedge and ditch.
38. Dr L Brosan of Ivy Cottage, Martins Green, Chevington, replied to consultation in a letter dated 10 August 2016. She and her late husband bought the property in April 1992. Dr Brosan supplied copies of papers relating to an order and Public Inquiry in 2001. This order was not confirmed. This was the continuation of claim 1 (red route) referred to earlier in the report (see para. 2). An officer telephone conversation with Dr Brosan later established that the current claim 1 does not affect her property.
39. Mr J W Roberts of Millfields House, Hargrave Road, Chevington completed a landowner's information form on 26 August 2016. He has owned and occupied land crossed by and adjacent to claim 2 (blue route) for 40 years with over 20 years of knowledge of the area prior to this. He has never taken any action to prevent public use as he has never seen any. Mr Roberts states that the original path was an estate path for an estate employee who lived in a cottage on the edge of the park, whose only transport was a bicycle. The cottage was demolished over 50 years ago.
40. Penny Makinson of Weathercock Farm, Chevington, replied to consultation in an email dated 1 September 2016. Claim 2 (blue route) runs alongside her land, which she has owned since 2002. She is neutral to the claim and has only seen the occupants of Shoemeadow Cottage (neighbours) and farm vehicles use the route.
41. Miss Joanne Margossian of Monument Cottage in Ickworth Park completed a landowner's information form on 5 September 2016. She has owned and occupied land affected by the route for 1 year, with no knowledge of it prior to that and is opposed to the claim. Miss Margossian has never seen anyone use the route and states that there are fences and gates across the route as it is grazing land.

### **Summary of Landowner Evidence**

42. The landowner evidence deals with the situation on the ground now, or within living memory and therefore not contemporaneous with the Inclosure and Tithe Evidence of around 200 years ago. However, Mr King states he has witnessed daily use by the public, for which he has taken no action.

### **Comments received post circulation of draft report**

43. Mr Andrews (applicant) advised in an email dated 20 November 2016 "I am happy with your presentation of the facts and your conclusions in relation to both claimed paths and see no reason to say more at this stage."

44. Sarah Reilly, (daughter of JW Roberts) advised in an email dated 27 November 2016 that they contest the proposed footpath of claim 2 on two respects. i) As detailed in paragraph 39 above her father has knowledge of the land for 60 years and states that no member of the public has used the route. ii) They also noticed the possible weakness in the evidence for section B-C as detailed in the conclusions to this report (paragraph 61).
45. Charlotte Webster for the National Trust advised in an email dated 7 December 2016, that they did not wish to comment further at this stage, but without prejudice to make further representations and/or object at a later stage.

### **Legal Considerations and Conclusions**

46. Section 53 of the Wildlife and Countryside Act 1981 provides that the definitive map and statement should be kept under review and modified if there is evidence to support a modification.
47. Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 states that the authority should make an order on the discovery of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
48. The 'Reasonable Allegation' test is the lower of two tests that must be satisfied for an order to be made. If the available evidence suggests there is a 'reasonable allegation' that public rights exist, an order should be made unless there is any incontrovertible evidence to the contrary. This is in effect the test for 'order making', not 'order confirmation'. If objections made on relevant grounds (based on evidence, not personal wishes, suitability or security etc.) are received when the order is advertised, it would have to be shown at a public inquiry, or via a written representations procedure that the evidence in fact supported the higher test of 'a balance of probabilities', which is the test that has to be satisfied to confirm an order.
49. The 'Balance of Probabilities' Test as previously explained is the higher and more stringent test that has to be satisfied. This test is met if the available evidence shows that it is 'more likely than not' that the route is a public right of way.
50. If the County Council makes an order based on the lower test, it will not support the order at the inquiry stage and it will be for the applicant to show that the higher test is met for confirmation.
51. Until the Regulations and Guidance for the 2015 Deregulation Act are issued, the 'Reasonable Allegation Test' is still valid and must be considered.
52. In 1993 the High Court ruled that Inclosure commissioners only had the power to set out roads, nothing less such as bridleways or footpaths.
53. However, in a judgement issued on 1 July 2015, the High Court ruled on a follow up case that section 10 of the 1801 Inclosure Act did authorise a commissioner to set out and appoint public bridleways and footpaths in an award; thereby overturning the previous case law.
54. Regarding Tithe Maps, the Planning Inspectorate's Consistency Guidelines state "the annotation of a road 'to' or 'from' a named settlement is suggestive of public rights".
55. Sections 2.36 and 2.37 of the Planning Inspectorate's Consistency Guidelines deal with 'Rural cul-de-sacs'.

56. Section 2.36 says that the courts have long recognised that, in certain circumstances, cul-de-sacs in rural areas can be highways, but most frequently, such a situation arises where a cul-de-sac is the only way to or from a place of public interest or where changes to the highways network have turned what was part of a through road into a cul-de-sac. Before recognising a cul-de-sac as a highway Inspectors will need to be persuaded that special circumstances exist.
57. Section 2.37 says that in *Eyre v New Forest Highway Board* 1892 Wills J also covers the situation in which two apparent cul-de-sacs are created by reason of uncertainty over the status of a short, linking section (in that case a track over a common). He held that, where a short section of uncertain status exists, it can be presumed that its status is that of the two highways linked by it.
58. Considering the documentary evidence for claim 1 first, there is little evidence in support of the route being a public right of way. The feature annotated “Foot Path” on the Horringer Inclosure Map is not set out in the Award as a public footpath. It could therefore equally have been a ‘private’ footpath. Apart from the Inclosure Map depiction the route can be seen to have physically existed by its depiction on some of the Ordnance Survey maps, but no public rights can be determined from these.
59. Claim 2. North-east of point E does not need to be considered as it was added to the definitive map in 2006 as a cul-de-sac footpath by an inspector’s decision on a user claim linking the A143 with a permissive path at point E.
60. A-B is set out in the Chevington Inclosure Award as a ‘public footpath’, which following the 2015 Appeal Court Ruling is considered to be ‘conclusive’ evidence of a public right of way. The map shows a continuation of a route and the award refers to “Where it meets the present path leading towards Ickworth Hall”, which infers that the users of the public footpath could continue past the point where the route set out in the award finishes.
61. C-E is depicted on the Ickworth Tithe map and is annotated “Foot Path from Chevington”. The Planning Inspectorate’s Consistency Guidelines give some weight to “From” and “To” annotations as evidence of public rights of way. There would be no reason to annotate a private estate path in this way.
62. It could be considered that there is a weakness in the evidence for claim 2 between points B and C, from where the Chevington Inclosure Award’s set out route ceases and the Ickworth Tithe Map Footpath begins, which appears to be in the area of the field containing the “monument/obelisk”. The Ordnance Survey maps consistently show a footpath passing through this field linking the parts of the route evidenced by the Chevington Inclosure and the Ickworth Tithe.
63. The *Eyre v New Forest Highway Board* 1892 ruling can be considered to apply here if it is considered there is sufficient evidence to show the existence of a public footpath from A-B and C-D-E, as there was historically, according to the Ordnance Survey maps, a route between B and C linking the two cul-de-sac paths.
64. With regards to current public use, National Trust tenant farmer Mr King acknowledges seeing daily public use and has taken no action against it. The National Trust states that use is by its members who have permission, or non-members are to purchase tickets from the ticket office. It is noted however that the ticket office is some distance down the Parks drive with the routes being

easily accessed ahead of this. Possible dedication of a route by use is not possible anyway as National Trust byelaws prevent this.

65. To conclude, it is considered that there is insufficient evidence to show that claim 1 (red route) should be recorded as a public right of way and it is therefore RECOMMENDED that this part be rejected.
66. It is considered that the evidence in support of claim 2 (blue route) raises 'at least' a 'reasonable allegation' of Public Footpath rights existing and therefore it is RECOMMENDED that an order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add A-B-C-D-E to the definitive map and statement as a public footpath with the following particulars being incorporated into the definitive statement:

### **Horringer FP6**

Add to the end of existing definitive statement:

; continuing for 245 metres to the parish boundary and Ickworth FP1 at Ordnance Survey Grid Reference 58210,26068.

### **Ickworth FP1**

Commencing at a junction with Horringer FP6 at Ordnance Survey Grid Reference (OSGR) 58210,26068 and progressing in a generally west-south-westerly direction for 490 metres then entering a narrow tree belt and crossing the River Linnet at OSGR 58164,26049; continuing for 559 metres across a field to the edge of a small wood at OSGR 58127,26007; continuing through the wood for 71 metres to OSGR 58122,26002; continuing for 163 metres across a field to the south eastern corner of Lownde Wood at OSGR 58111,25990; passing through the wood for 42 metres to OSGR 58108, 25987 then changing to a generally west-south-westerly direction and continuing for 356 metres on the southern side of Lownde Wood to a junction with Chevington FP18 at OSGR 58073,25979.

Width:

Between OSGR 58210,26068 and OSGR 58164,26049 varying between a minimum of 2 metres and a maximum of 4 metres as shown on OS 1<sup>st</sup> edition County Series.

Between OSGR 58164,26049 and OSGR 58074,25979 varying between a minimum of 1 metre and a maximum of 2 metres as shown on OS 1<sup>st</sup> edition County Series.

NB. Widths based on measurements taken from Ordnance Survey County Series 1<sup>st</sup> edition 1/2500 scale mapping, dated 1890, as the nearest contemporary source to the Inclosure/Tithe maps.



## **Chevington FP18**

Commencing at a junction with Ickworth FP1 at Ordnance Survey Grid Reference (OSGR) 58074,25979 and progressing in a generally west-south-westerly direction for 107 metres to OSGR 58063, 25975; crossing a boundary then changing to a generally west-north-westerly direction and continuing for 60 metres on the southern side of a boundary to another boundary at OSGR 58058,25976; crossing the boundary and changing to a generally south-westerly direction for 396 metres on the north-western side of a boundary to OSGR 58029,25949; changing to a north westerly direction and continuing for 98 metres on the north eastern side of a boundary to OSGR 58023,25956; changing to a generally west-south-westerly direction for 306 metres on the northern side of a boundary to a junction with the C661 at OSGR 57994,25947.

Width:

Between OSGR 58074,25979 and OSGR 58057,25976 varying between a minimum of 1 metre and a maximum of 2 metres as shown on OS 1<sup>st</sup> edition County Series.

Between OSGR 58057,25976 and OSGR 58029,25949 varying between a minimum of 2 metres and a maximum of 3 metres as shown on OS 1<sup>st</sup> edition County Series.

Between OSGR 58029,25949 and OSGR 58023,25956 varying between a minimum of 1 metre and a maximum of 2 metres as shown on OS 1<sup>st</sup> edition County Series.

Between OSGR 58023,25956 and OSGR 57994,25947 increasing from 1 metre to 4 metres as shown on OS 1<sup>st</sup> edition County Series.

NB. Widths based on measurements taken from Ordnance Survey County Series 1<sup>st</sup> edition 1/2500 scale mapping, dated 1885, as the nearest contemporary source to the Inclosure/Tithe maps.

### **Sources of Further Information**

- a) Horningsheath and Westley Inclosure Map and Award 1815 (BRO ref: Q/RI 40 & 1118)
- b) Chevington Inclosure Map and Award 1815 (BRO ref: Q/RI 11 & 2323)
- c) Horringer Tithe Map 1839 (BRO ref: T106/2)
- d) Ickworth Tithe Map 1850 (BRO ref: T12/2)
- e) Chevington Tithe Map 1839 (BRO ref: T112//2)
- f) 6 inch Ordnance Survey Map 1891, 1905, 1927, 1902/3 with 1950 additions (Sheets 44SW/53NE/54NW)
- g) 1:2500 Scale Ordnance Survey Map circa 1890, 1903, 1927 (Mapinfo versions)
- h) Horringer Parish Survey Map (IRO ref: 3332/26)
- i) Ickworth Parish Survey Map (IRO ref: 3332/28)
- j) Chevington Parish Survey Map (IRO ref: 3332/11)
- k) 1979 Review material
- l) Landowner correspondence
- m) Email from Mr Andrews (applicant) dated 20 November 2016
- n) Email from Sarah Reilly (landowner's daughter) dated 27 November 2016
- o) Email from Charlotte Webster (National Trust) dated 7 December 2016