THE STORY OF A CLAIM FOR A BRIDLEWAY BETWEEN BW54 BROXHEAD COMMON TO CRADLE LANE, PARISH OF HEADLEY HANTS

PART ONE

> " It must be one of the biggest injustices on a local level of all time. It will show how the continual indulgence by the Courts as far as local councils go has led to the rot seeping into the core of government bodies themselves and how it is not our democratically elected councillors who are running the country but the bureaucrats with their petty grievances and personal ambitions."
>
> Maureen Comber

THE STORY BEGINS

This claim was lodged with Hampshire County Council on 9th October 2000. It was given the reference number of 694.

This was the claim which I had been encouraged to work up by rights of way Officers, to get horse riders off the road C102 where it passes in close proximity to the Headley Park Rifle and Pistol Range, of course in cutting through the woods over Baigents Hill it would also avoid the dangerous hair pin bends on the C102 past Headley Park. The additional

problem here for horse riders was the proliferation of rubbish bins parked alongside the road and the extractor fans from the kitchens.

It is also an important off road link from Broxhead Common to Alice Holt Forest.

10th October 2002 – I wrote to Andrew Smith the Manager of Rights of Way at HCC and the Assistant Map Review Officer Rachel Hawkes separately as follows:

"Dear Andrew,

Thank you for the updated claims list which arrived today and now includes the above claim which somehow seems to have escaped being on the previous list.

I am enclosing a copy of my letter to Rachel as being new she may need your help in answering my query.

You explained to me at the BHS meeting last Monday that claims are dealt with in strict chronological order unless there is a planning application which may compromise their existence. You also regretfully admitted that in the claims department you are still understaffed and underfunded which results in an unsatisfactory service and one of which you could not be proud.

We had quite detailed correspondence regarding this last year when I tried to explain to you that this claim No.694 was somewhat different to the others as it had been made in the light of Mr Justice Sedley's comments that this was a case that could be dealt with by discussion and agreement.

I think that any High Court Judge would find it lamentable indeed to see that discussion or agreement is impossible because Judicial review is seen by you as an 'easy fix' for giving higher priority to the application to record a bridleway, (your letter dated 22.1.01), especially when that application was submitted to help the Hampshire County Council resolve the dangers this gun club gives rise to because of its proximity to the C102.

The Countryside Agency's Draft Access Maps show the suggested route for avoiding the immediate dangers on the C102, as being common land. Local people are still concerned with the effects of the loud sometimes unexpected bangs emanating from the gun club, especially one family with a 14 year old daughter. No other suggestions of how to increase safety of the road users has been put forward by County Surveyors or yourselves.

In the light of my backward moving claim I am seriously considering what more I can do to make you realise the dangers and unpleasantness, which as Mr Justice Sedley, said could be dealt with by discussion and agreement and which seems not to be the case."

To the Assistant Map Review Officer I wrote:

"As you will see from the enclosed copy letter from Sally Plummer dated 23rd October, 2000, the same claim no. 694 is 30th on the list and the time taken to bring the list up to date was estimated at approximately eighteen months to two years. Even if that was a little optimistic it does not explain why the claim is moving backwards, as from your letter I see there are now 32 claims in front of it. Neither does this account for the twenty four which will have been processed during the last two years, - I understand from Andrew Smith that is the number you endeavour to evaluate each year.

I should be grateful if you can shed any light on these circumstances."

16th October 2002 I wrote to the Leader of Hampshire County Council, Ken Thornber asking when this claim would be researched. The responsible authority has a Statutory Duty to research claims within twelve months of their deposit but lamentably they seldom or in my case never do. It can take a decade or more.

He replied on 28th October 2002

"Further to my acknowledgement letter dated 16th October 2002 I am now able to respond in full to you.

I am aware that it is now some time since you made your application but it is working its way up the list. The officers are moving towards the completion of the Review of the Definitive Map for Hampshire which is a high priority for the Council. Once completed this will enable greater in-roads to be made into the number of appllications that are outstanding at the present time. I am confident that officers are doing their best to process these applications as quickly as possible and in the fairest most even handed way.

I understand that Rachael Hawkes has written to you to explain the discrepancy regarding the non-appearance of your application on the list."

The letter from Rachael in relation to my query as to why this application seemed to have disappeared from the list of claims reads as follows:

15th October 2002

Thank you for your letter dated 10th October 2002 regarding claim 694.

Please find enclosed a copy of a printout of the claim statistics from the time of Sally Plummer's letter, (it is dated November 2000 because the statistics are printed out at the end of each month.) As you can see, claim number 694 was actually 40th on the list of claims awaiting investigation. I can only conclude from this that either a typing error or miscalculation took place at the time of your enquiry.

Claim No 694 has progressed 7 places up the list, with two claims being taken out of turn due to development threatening the routes. Officers time has also been employed on claims that have been in hand after going to panel and the production of the consolidation maps for the whole of Hampshire.

I hope this answers your queries."

28th January 2005 I receive a reply from the Map Researching Officer of Hampshire County Council (HCC) who is about to examine my other claim for Bridleways on Broxhead Common. That one like this had very little historical evidence submitted with it but a very adequate number of user claims.

I had suggested that he might like to include 694 (this claim) as well, as it is also for the most part on Broxhead Common.

He says

"thank you for your letter dated 21st January. I have quickly looked through the file for claim ref 694 to familiarise myself with that route. I will not be investigating them together because landownership and issues are different and, as you know, we have a policy of considering claims in date order. (Currently 694 is 16th on the list). However, if I interview anyone with user evidence of both routes, I will take statements for both and ensure that statements for 694 are put in the relevant file ready for the investigating officer.

At the moment I am looking through the many old files held in the record office and this building to build up a picture of what's happened on Broxhead over the last 40 years"

31st January 2005 – I reply by email:

"I am glad to hear that 694 is moving up the list. However part of that claim as far as Headley Park on the southern side of the C102 is in fact under the same ownership as 665. I am pleased that you will check on other user evidence on both as there will be quite a few who will be able to help you with them both. Headley Park own the bit on the other side of the road, so would it be any help at all to do all Whitfield's bit at the same time. Believe me when I say that I am not trying to jump the queue, merely to point out how time and effort may be saved.

11th July 2006 – Colin Piper writes to say he has started investigation into my claim No 694 from BW54 Broxhead Common, Headley to Cradle Lane. (See the Story of a claim for bridleways on Broxhead Common)

26 July 2006 – A further letter informs me that he has not been able to contact nine of the people who signed claim forms as they have not responded to his letter requesting an interview or have moved. He also says he has received 55 forms or statements from the Lithuanians! He is on holiday during August.

31st August 2006 – I reply by email giving the details of twelve of the claimants and asking to see the evidence from the Lithuanians.

4th September 2006 – email from Colin Piper (CP) thanking me for the above and sending a summary of the evidence from the Lithuanians on a form. I reply on the same day: -

"I have opened the log of the Lithuanian Members, however in your letter you say that it details their knowledge of how the woodland was used and managed. I guess this appears in some of their statements. Please will you send me any evidence of their use and management which you think is important. For my part I can say that the area in question has never been used for anything and is the equivalent of manorial waste. For a couple of weeks most summers scouts or guides camp there. I have ridden through the camp but tended to avoid when this was the case."

He replies that there are 18 statements or statutory declarations from the Lithuanians.

13th September 2006 – 13th November 2006 – by email to CP.

"Thank you for sending me a copy of your draft report for comment. There are a number of errors, omissions etc. to which I would like to draw your attention and I will try and reply during the next two weeks. In the circumstances I think it is premature to bring this claim to Committee before we have resolved the differences so please could you re-schedule it for the January meeting?"

His recommendation was REFUSAL.

Although I submitted very little historical evidence at this time one piece was, I thought particularly relevant. That was a copy of the roadway proceedings in the Quarter Sessions 27th June 1905. This was acceptance of a proposal by the Rural District Council of Alton the Surveyors of Highways acting on resolutions of the Parish Council of Headley, for the stopping up of the road C102 past Headley Park and for a short diversion through the land opposite on Baigents Hill. This would remove the hairpin bends close to Headley Park House. Even the consent of the Trustees of the late owner of the house, Sir Robert Wright, had been obtained.

To me it was historical background information even though sadly the work was never completed. This was evidence that the bends were considered hazardous enough even then, for the proposed diversion to be applied for and granted. Surely also there could be a reasonable assumption that people were already using a track through the woods as a short cut.

So in responding to CP's request for comments on his draft report to Committee I asked why he had left this important piece of information out of his draft report and also made no mention of the recent Judicial Review proceedings with regard to the dangers posed to horse riders on the C102 past the gun club. I also asked him to check on the various land ownership uncertainties.

A reply by email followed:

"Thank you for your prompt response. Didn't mention roadway proceedings of 1905 because I can't see how they are relevant to claim – it doesn't help in any direction. If you think it does please clarify why.

My understanding is that the woodland of Baigent's Hill was bought by the Lithuanian Association at the same time as Headley Park in 1955, but will look again at Land Registry documentation. In any event for the 20 year period, that is 1979 – 1999 it was definitely owned by Lithuanian Association.

I have treated the evidence of signs/notices as neutral. In other words it is difficult to determine what wording was used and how long signs were in place for. Your claim would not I think fail on that issue."

In my reply I asked him to make further inquiries as to land ownership:

"…Mr Paul Podvoiskis assured me that DEF was under the ownership of the Headley Park Club. I had previously assumed it belonged to Mr Whitfield. You say that no-one owns it which does not surprise me as it is pretty clearly part of an old road which shows on all the old maps. The question therefore is, at what point did Headley Park actually purchase the woodland through which ABC runs if it was not included in the 1869 sale? If they thought they owned DEF and don't, maybe they have 'acquired' the wood land opposite also. Certainly I and I suspect the other claimants had no idea it was owned by anyone. It is described as 'common land on the Tithe Map. The 'Private' sign which was in place for a short time was so dilapidated as to be indecipherable and unless one stopped and tried to read it would have been as good as invisible.

I think it is important that we establish how and when the Headley Park Club came to own the land through which ABC runs.

I believe you can have a sight of the deeds under Sec.16 of the Local Gov Act and /or the Misc Provision Act 1976 in order to confirm the ownership and hopefully see how and when the ABC woodland was acquired. I would be most grateful if you could do that.

I also asked why he is fixing 1979 as the start of the 20 year period when the Blue Book says there is no fixed starting point and only a fixed finishing point.

email from CP.

"sorry for the delay in getting evidence from Lithuanian club to you. I've had to clarify with lawyers what can be disclosed under Data Protection Act. Apparently unless the writers of the statements have been informed that their evidence will be in the public domain then we have to delete names and addresses from the statements. I will do the deletions and send them out to you but, in the longer term, I have to write to all those that have submitted evidence and get their approval."

I replied:

"Many thanks, just one question, if these statements cannot be in the public domain, how can they be treated as evidence? Surely the writers must know that they are giving evidence and that it will inevitably be disclosed. I'm obviously missing something, please explain."

14th September 2006 – CP replies:

"we're still feeling our way on this one. Due to Data Protection Act we are not allowed to disclose personal information unless we have that person's authority. We do not have everyone's permission yet so, to be on the safe side, I will remove names and addresses. It could be argued that if someone doesn't want to give personal details then their evidence will have less value than someone who does. Shouldn't be a problem in the future because all our letters and forms will have standard paragraph saying that information will be in public domain unless told otherwise."

28th September 2006 – I email my thanks for sending the anonymous statements from the Lithuanians and say that as I cannot comment individually I would make the following observations in general terms:

1. *All 18 statements are from Club members and employees of Headley Park*
2. *Ten state they have never seen horse riders*
3. *Eight say they have challenged riders whom they saw riding through the woodland*
4. *All refer to the presence of the scout camp*
5. *As far as I can see there is little evidence of riders being challenged at other times of the year.*
6. *It pleases me to see that all challenges were dealt with politely by the horse riders*
7. *They were not expecting to be challenged even though there was a camp in close proximity to the path but not actually obstructing it.*
8. *That they are using the path openly as of right and without permission*
9. *There are references to a notice which I remember as being almost indecipherable saying 'Private Land' at the point where the path exits on to the C103*
10. *The notice in no way inferred that there was no right of access for horse riders along the path.*
11. *One statement says that there was a single bar gate at the access to the camp site*
12. *Another refers to this and both say there was a way to circumnavigate it*
13. *In fact there were many ways a horse rider could circumnavigate it, not least another entrance a few yards to the west which was never gated. It shows clearly on the map. But most of the time the iron bar was on the ground and could be walked over.*
14. *Fencing in disrepair is spoken of. I can say that there was no fencing of note until 1999 when a wire fence was erected.*
15. *Travellers and theft of camp equipment are the reasons given for erecting the fence*
16. *A third is to prevent horse riders from riding through the camp site*
17. *When the land was fenced a gap for walkers was left at approximately the position where the claimed path leaves Cradle Lane. Of course the gap could have been made wide enough for horse riders as it would not have affected the ingress of travellers or miscreants.*

I can say as a horse rider who frequently used the path, that from our point of view we found it somewhat inconsiderate to place the scout camp so close to the path, but as it was only for two or three weeks in the summer most of us avoided using the path during that time even though the camp was usually empty of inhabitants. Presumably they were away canoeing or orienteering."

14 November 2006 – a reply by email.

"Will come back to you soon on the date when Headley Park acquired Baigents Hill, assume it's the same date that they bought house. I have documentary evidence that the first camp was held at Baigents Hill in 1955 which I have not included in my report but will now put a paragraph in to that effect. If there is a fixed finishing point and a fixed period of 20 years then the starting point is defined by those dates/figures. Reluctant to defer this item until January – what prevents you from putting together your points in the remaining 2 weeks to Regulatory Committee?"

I replied:

> *"If you refer to The Blue Book page 66, para 3.3.6 it specifically says there is no fixed starting point only a fixed finishing point. On page 73 'it is generally the practice of surveying authorities to consider evidence of use both for periods of 20 yrs and above treating these as relating to the presumption under the statute…' I can find nothing relating to fixed periods of 20 yrs so please refer me to the legislation."*

15th November 2006 – he replies:

> *"The fixed period of 20 years is contained in s31 sub-sections (1) and (2) HA1980 and reproduced in the box at the front of my report. Reluctant to defer because I think it is very unlikely that additional evidence will come to light that would make any difference to the recommendation."*

I replied:

> *"Thank you, I note that the date is calculated retrospectively but with respect there is nothing to indicate that it cannot be more than 20 years in fact it used to be from 1189. Tell me do you not use The Blue Book, most lawyers seem to?*
>
> *I note your reluctance to defer because you think that it is unlikely that more evidence will come to light that will make any difference to the recommendation. Do you mean that whatever comes to light you will refuse it anyway?*
>
> *Whatever I cannot respond within the time frame so I shall have to insist that you defer until the January meeting if there is one."*

16th November 2006 – He replies

> *"No, I don't mean that whatever comes to light I will recommend refusal (only members can refuse the application). Having spoken to some horse riders and some members of Headley Club I believe that I am in possession of the material facts sufficient for me to make a recommendation with some confidence. Do you think you might have additional evidence that might bolster your case? If so, what is the nature of that evidence? S321 HA demands that we look at a specific 20 year period preceding the bringing into question but common law allows us to look at use in any period. I have done that and come to the conclusion that there is nothing in the documentary or user evidence to suggest that the public has acquired a right by that method."*

21st November 2006 – I reply:

> *"You will have to wait for my letter to know the answer to your question with regard to further evidence. In the meantime please will you let us have a sight of the title deeds to the land in question, old photographs are simply not sufficient. You have strong evidence of use both for the claim north and south of the C102."*

He replies

"If you would like sight of the title deeds then you will have to apply to the owners Lithuanian House Limited. The reason that I am recommending that your claim be turned down is because there is evidence that the landowners had no intention of dedicating a right of way to the public. This evidence primarily takes the form of statement from 13 people that they challenged riders using the route but there is also evidence that there were barriers put in place across the main access point."

I replied:

"But they never challenged the 15 riders who have claimed the route. Surely these are solid evidence because you have interviewed most of them and they have produced statements and signed maps, whereas there is no evidence produced of those that are said to have been challenged.

No names, times, dates and all relate to a short time frame while camping was taking place. Also challenges can only be made by the landowner or his agent so club members should not count.

The barrier was not such that would deter a horse and rider, only wheeled vehicles but even then it could easily be moved as it consisted of a single metal bar one end of which was always on the ground and could easily stepped over or circumnavigated. There have never been any 'no horse riding or walking' signs.

I believe as the researching officer with the necessary authority you are the one who should expect to see the title deed of the date of purchase of the land. If it does not exist then we are wasting time and effort whereas if it does so be it. Surely it is necessary to be quite sure of the ownership before you even start the research?"

November 22nd 2006 – by email from CP

"date of ownership will be clarified shortly, I have been told it is from 1955 onwards and I have no reason to doubt that. HCC take the view that members were acting as agents for the landowners in challenging riders on the land. I accept that not all riders were challenged but nonetheless there is good evidence that the owners took steps to control access to the site which included challenges to some riders. Any barrier over used routes is evidence of an intention not to dedicate. If the riders removed those barriers or circumnavigated them by a different route then that is use by force. I am not recommending refusal on the basis of notices. Without contemporary evidence it is not possible to be sure about the wording used but, as you say, if the notices said 'private land' then that does not deny the existence of a public right of way."

22nd November 2006 – I write my comments on the Draft Report:

"Thank you for sending me the draft of your report with regard to the above. There are a number of omissions, errors, and contradictions which I would like to point out, but there are two very significant facts which you have omitted and I think are outstanding.

- *In your report, at Para 5.3 you say the lease does not give horse riders a right of access to Broxhead Common. You will remember that a previous claim for bridleways on Broxhead Common came before the Regulatory Committee on 18th October 2005 which you recommended for refusal, with a proviso that the Committee, through its Executive Member would ensure the provision of more permissive bridleways. A year later this provision has not been addressed, in fact on the contrary 'No Horse Riding' symbols have been placed on every possible path including the ones under appeal. Enquiries as to why this was, elicited the information that this same Regulatory Committee were uncertain as to the terms of the lease and that this matter was being researched. As far as I am aware this matter is still being researched. In addition the refusal of the claim led to an appeal to the Secretary of State by myself, the applicant. Until this matter has*

been addressed and the exact terms of the lease or its intention has been decided, then you are not at liberty to say that horse riders do not have a right of access to Broxhead Common.

- *My second point of relevance is your failure to record any mention of the Judicial Review which took place with regards to the C102 past the gun club. This was a very significant legal event and has a direct connection with the section D – E. I enclose two letters, one from myself dated 16th October 1997 and a reply from Mrs A. Tett of HCC Legal Dept. My letter is asking for a bridleway to be created to alleviate the obvious dangers to horse riders as they use the road past the gun club. In her letter Mrs Tett says she is unable to help because 'The land in question opposite the rifle club is not common land and is privately owned.' Now it appears that this is absolutely not the case, for not only have your researches failed to find a landowner but on the Countryside Agency's maps of registered common land and open country, the line of the path proposed is indeed shown as common land. Lord Justice Sedley, as he now is, gave leave for Judicial Review in the first instance because he said 'that this was a matter which could be resolved by discussion and agreement.' Imagine therefore what it will look like if or when this matter comes once again to appeal, and the chance to resolve it has not even been looked at let alone discussed. It is for this reason that I believe it should be included in your report.*

- *Another omission is the inclusion of historical papers circa 1905 which indicate that planning had been obtained from the justices at the quarter sessions, for a modification to the C102 which would straighten the bends past Headley Park. Of course this was never carried out although it is clear to see that a start had been made. It may be that the work ceased because about this time the estate was put on the market. From the Sale Particulars at the time one can see that very little of the woodland was owned by Headley Park. Most of it was in the ownership of Trottsford Farm.*

  You have been unable to establish who the landowner is for the section D – E. Paul Podvoiskis had assured me that it was owned by the Lithuanian Club which apparently from your researches it is not. I would therefore like to see the title deed to the woodland through which ABC runs, as I notice from your email that the landowners changed the name to Lithuanian House Ltd in 2004 so the 1955 title deeds, which is the date they purchased the property, are not shown. I think it is important that we ascertain that they bought the woodland in 1955 and that it was not added on at a later date as this could mean that they were not in a position to dedicate in any case.

  These matters, except for the latter, were included in my claim when it was lodged and I believe that you have omitted them because you do not believe that they have any bearing on the claim. However I would say that the importance of these omissions is that they reveal a little of the history of the locality and show how and why the paths came into existence.

- *In para 11.10 of your report you seem to be in some doubt as to the validity of the members of the Lithuanian Clubs recollections and at the same time find the statements of the 15 claimants that they used the way without force, without secrecy, and without permission questionable. However on a fine balance you say at para 11.7 there is probably sufficient evidence of use by riders to raise a prima facie case that public bridleway rights exist across Baigents Hill. You then go on to rely on a statement from Mr Alkis that the club erected fences to prevent riders access, although his initial reference to fencing refers to the disappearance of camp huts and camp equipment. Mr Krevit also says the fencing was erected because of perceived problems with travellers. In fact all the relevant statements speak of fencing in relation to camp security and the possibility of nuisance by travellers rather than fencing to exclude horse riders. I am sure that I don't need to tell you that fencing for some other purpose is not sufficient to prejudice the claim. In any case before 1999 the woodland was not fenced but open.*

  I wonder if you have considered that when the Lithuanians first came to Headley Park in 1955 seeking refuge from the rigours of war torn Europe, the last thing on their mind would be to question the rights of horse riders who they may have seen from time to time crossing the woodland. In fact there was nothing to suggest that they gave it a second thought. It is only in recent years when they wanted to fence what had always been open woodland that this has become an issue.

The statement by Mrs Gasch is inadmissible because she refers to blocking gaps in 2000/1 when we know that the fencing was already excluding ridden horses as it was erected in 1999.

39 Members of the Club have not seen use by horse riders

There are only two director/managers who say they have interrupted horse riders, a third who was a temporary manageress says she never saw any at all. All the others were either members or employees who because of their close association with the Club would not be able to tender admissible evidence.

- *Para 7.3 You say "Greenwoods Map shows an almost identical fashion to the earlier OS Map of 1810"* ***except that it does show F-G and F – H.***
- *Para 7.11 The lack of mapped path evidence through ABC, F-G should not be thought to be unusual or detrimental to the claim because F – G is today as it was then, common land. ABC was depicted as* ***common land on the Tithe Map.*** *You have not mentioned that. Paths are often not mapped where they cross commons. The line D – F has already been discussed above.*
- *Why have the sections been considered in two parts rather than three to match the number of landowners or lack of them as the case may be?*
- *Para 7.16 – Here you are referring to the Public Inquiry 1997. It is perhaps unwise to refer to a different case which happened at a different time with different circumstances, in order to prove a point. The Inspector at this time felt he had insufficient evidence of use for the whole of that path because where it opened out on to the common riders may have been using several paths, but there could have been no doubt in his mind that riders had ridden the bit you are referring to simply because it was sandwiched between the field edge and the woodland, this was the obvious route to take to access the common itself and was a statutory right of way, albeit labelled footpath and it was part of that claim. In addition it cannot be denied that the route had been advertised as being upgraded to bridleway in the Hampshire Telegraph 12th August 1965 so any riders who had been aware of that may not have realised that a reversal had taken place later in the year, since it was not re-advertised. As far as I remember the path was not signed in any case so it could have been either.*
- *Para 11.9 You say that riders would not have seen the notice which just said 'Private' if approaching from the south west when the gate was open. You are assuming that the notice was on the gate which it was not. It was indecipherable and hung on a tree facing the road covered in ivy or some such vegetation. They would not have seen it at all if approaching from the south west and would have had to stop and examine it, as I did one day out of curiousity, even if they noticed it was there. I believe you agree with me that a notices saying 'Private' would not be sufficient to prejudice the claim for a right of way.*
- *Para 13.2 The 20-year period is to be calculated retrospectively from the date when the right of the public to use the way is brought into question. So the period of 20 yrs is calculated backwards from the date when the right of the public to use the way is brought into question. Thus the 20 yr period of use has no fixed starting point only a fixed finishing point. 'In considering a claim for a modification order adding a path to the definitive map, it is generally the practice of surveying authorities to consider evidence of use both for periods of* ***20 years and above*** *treating these as relating to the presumption under the statute, and also for periods of less than 20 years, treating these as being capable of giving rise to an inference of dedication at common law'*

13.3 There are ***twelve*** *riders who have ridden the route over twenty years or more. Your calculations should take in* ***twenty years or more*** *not refer strictly to the twenty years before the date of challenge.*

13.4 How can you say that "there is some evidence that the horse riders used different access points and routes between A and C. All the riders signed the map of the claim as being the route that they wished to claim?

13.5 Barriers erected for some other purpose such as increased security for the camp site or to prevent the possibility of travellers will not be sufficient to bring the right into question. The barriers to prevent the horse riding were not erected until 1999 as evidenced by witness on both sides.

13.6 Club Members are not agents for the landowner in the strict meaning of the term so the same weight cannot be given to their evidence.

13.7 I do not agree that this demonstrates that the owners had no intention of dedicating a public right of way. What it does demonstrate is a concern for the camp when in situ and possible inhabitancy by travellers. I should also add that the camp site has not planning permission and is littered with loo paper etc. once dismantled. Not so good on health and safety issues.

13.8 Given that you say the evidence of use is insufficient, I hope the foregoing will tip the balance of probability to the side of the claimants

Routes D-E-F-G and F – H

12.2 In your report to the Regulatory Committee on 8th October 2005 with regard to the claimed bridleways on Broxhead Common, page 18 para 10.6 you confirm that natural vegetation is not sufficient to give rise to interruption of use. It must be remembered that the words of the Act do not refer to interruption of use: there is no requirement that the use must have been constant, although it must have been sufficient to satisfy the requirement that the way was 'actually enjoyed'. Within the meaning of the 1980 Act Interruption means "actual and physical stopping of the enjoyment" of the public's use of the way. To bring the right into question the landowner or his nenant must challenge it by some means to bring it home to the public that their use to the right of the way is being challenged e.g.

- *By locking a gate*
- *Putting up a notice denying a right of way*
- *Physically preventing the use*
- *Bringing an action for trespass*
- *Erecting a notice stating that the way is permissive*

The use of a nearby path to circumnavigate the overgrown section is completely acceptable within the law as it is not an avoidance of any of the examples given above.

Considering the section D – E was an old road alignment it is not difficult to imagine that riders had indeed been using it until the storms of 1988/9 blocked it with fallen trees when they then had no other choice than to use the C102 and risk their necks riding close to the gun club on the slippery tarmac amidst the traffic. I therefore question your last statement in this paragraph.

12.2 I have dealt with this at point 8 above

13.10 As point 10 above

13.11 As 12.2 above

13.12 It did connect with a public highway at its western end, namely FP54 now BW 54, see point 8 above.

I hope you will re-think your previous assessment and conclude that the 'fine' balance of probability has now tipped the scales in favour of the claimants."

14th December 2006 - a reply from CP of which the last paragraph reads:

"It is my intention to present my report to the next Regulatory Committee meeting on 10th January. I will let you have a copy of the final report but, at the moment the recommendation will remain unaltered. I would remind you that if you would like to make a deputation to the members then you must inform Lindsey Hawke-Davies at least three working days before the meeting."

16th December 2006 – I received a copy of his final report to the HCC Regulatory Committee and I wrote again expanding the points made in my previous letter:

Dear Colin.

Application for a Map Modification Order to record bridleways between Cradle Lane and Bridleway 54 – s.53 Wildlife & Countryside Act 1981

Thank you for your letter dated 14th December in reply to mine dated 22nd November 2006.

1. *I shall be interested to hear the report from the Countryside Area Team Leader (North) at the next Regulatory Committee meeting and in particular why it has taken over a year to address an issue which was made to sound just a matter of form and which I have since been told is somewhat complicated. That is certainly not the impression which you gave to myself or members at the time the claim for Bridleways on Broxhead came to Committee fourteen months ago.*

   I note that you maintain that the lease does not convey a right of access for horse riders, but neither is there any reference to deny a right either. The lease is in fact silent on that as a particular issue. In what context do you mention it?

   I have referred you to:

- *the decision of the Court of Appeal 1978, which gave the public and the landowner, access to Broxhead Common on equal terms*
- *The report of the County Secretary to the Lands Sub-Committee dated 22nd June 1978, which is indicative of the spirit of the agreement proposed in that it wishes the 'fullest range of possible interests to be accommodated'.*
- *The statement from a previous landowner who owned the common for fifty years before 1962. She stated that she believed horse riders had a right of access for what she believed was 'air and exercise'*
- *Copies of letters from the late John Ellis who stated that there were at least 23 tracks across the common which were used by horse riders.*

It is unimaginable, therefore that any lease would have been drawn up which discriminated against any section of the public especially when a right of 'air and exercise' for the public exists within the meaning of the Court of Appeal decision. However as this is an outstanding issue on appeal for a previous claim which you believe is a crucial point, do you not think it would be wise to defer consideration of this claim until such time as a determination by the Secretary of State is forthcoming? It would, I think, be a shame to turn down an opportunity to improve public access on uncertainties and false assumptions.

2. *You say "correspondence regarding the firing range was not included in my report because it has no bearing on whether the public has acquired a right of way through s.31 HA or common law over the route D – E."*
*I have to disagree. On 5th August 1997 Alison Tett swore an Affidavit accepting that there was a possibility that there **was a duty** upon your Council under Section 130 HA 1980 and stating that the situation regarding the gun club had been reconsidered and that your council had reached the decision to take no action. Whilst I accept that your Council does not have a duty to take any proceedings against the gun club to enforce the Council's duty under Sec.130, there is still a serious issue of public safety which I consider has not been properly addressed by your Council.*

The claim of twenty year user refers in part to a section D – E of an old highway which is common land and appears to be without ownership. It would indeed be lamentable if the Regulatory Committee were to make a decision without any knowledge of this outstanding duty of care to public safety. The stretch of ancient highway D – E which has been blocked for many years by fallen trees etc. avoids the proximity of the shooting range and obvious hazards to ridden horses on the C102. In accordance with the advice by Lord Justice Sedley to negotiate, I suggested that the clearance of the obstructive windfall would be an easy and inexpensive way of dealing with the safety issues by removing horse riders from the immediate vicinity of the firing range, the slippery tarmac and the traffic; with the result that the Rights of Way Dept. denied responsibility because the proposed route did not appear on the Definitive Map and the response from Mrs Tett of you legal dept. you have seen.

I note that you say that Mrs Tett is right in that the land is privately owned and that the map with your report is wrong. That may or may not be the case depending on whether we may have sight of the title deed which I would expect to be made available at the same time as proof of purchase of the land through which ABC runs. However Mrs Tett is not correct and did misinform us when she said the land to which I referred, was in private ownership and was not common land, because she had before her a map with the old road alignment clearly highlighted on it and should have been in no doubt as to the exact location of the path referred to. In addition HCC estates/commons registration department had checked it out for me previously and I am sure would have had no reason to inform her differently.

3. *I note that you have mentioned that part of the route ABC serves an obvious purpose in allowing horse riders to by-pass the bends in the road in the locality of the hotel. Surely drawing attention to the historic evidence supplied to you, about the previous intention to eliminate what was considered a hazard even at the beginning of the last century, underlines the problems with the road at this point and focuses attention on possible existing avoidance by cutting across the woodland. The intention to divert the road which is clearly documented in papers from the quarter sessions and the fact that the engineering can be seen on the ground today, which is also depicted on your map, may lead to a presumption that avoidance was already taking place, which is why I drew attention to this in my statement by highlighting several other entry points. That does not mean to say however that my claim should be taken as being other than on the route shown on the map accompanying the statement of all the claimants, for that was the one they used all the time and I used very nearly all of the time.*

4. *You say you "take the view that the club took some steps to deny access to the site, using physical barriers and notices, but they were not successful in completely stopping unauthorised access until 1997." May I ask which notices you are referring to? As far as I remember there were never any notices denying the right of access to horse riders, and by the Club's own submission the gate was to stop access by travellers and to secure the camp when in situ. That is why I have referred to the barrier being on the ground most of the time rather than all the time and in any case that did not appear until the late 1990's whilst the access on the west was never gated and accessible all of the time. You say that "it is not essential for landowners to stop access totally to demonstrate that there was no intention to dedicate a public right of way", but according to the law there has to be some means employed by which it can be made known to some of the users that the owner has challenged their use of the way. None of the claimants have been challenged or made aware that they were not using the way as of right, without secrecy and without permission. There has never been a letter of denial sent to any Council or Local Authority for I am sure you would have quoted it if there had been. No letter to a solicitor. In fact nothing at all of substance to bring home to the public that they were unwelcome. The test you are applying is whether you believe the claimants or the landowner and in so doing you would seem to be acting ultra vires.*

At 13.6 you say the County Council takes the view that members of the Lithuanian club were acting as agents for the landowner. Do you mean the County Council or do you mean it is your own interpretation? Whichever it is there is a strict difference in law between an agent and a club member. A member is a person belonging to a society or club etc., while an agent is a person who acts for another in business or politics. I very much doubt that when the members joined the club they did so in the expectation of acting on behalf of the club in business or political matters etc. Therefore to take the view that members were acting as agents would be a serious error of judgement. Even if that were not the case, then if you are considering evidence of 12 club members that they actually not only saw but challenged horse riders then at the same time one has to consider the 39 who didn't even see a horse.

While considering the statements from members of the club I was appalled to read that of Mr G. Gedmintas, who says he actually chased children on ponies away telling them never to return. It has made me wonder whether any or all of the members who have to do with the running of the scout camp have obtained their certificates in child protection It would seem to me this is written evidence not to be the case.

How can the evidence from Mrs Gasch be just as valid as everyone else's when she is saying that she stopped up gaps with logs and rope to prevent riders from entering in 2000 – 2001. You have just agreed that the fencing in 1999 had the effect of preventing access and so of

course any action by her after 1999 would be pointless. Unless of course you mean that her inaccurate recall matches everyone elses.

5. *I have a large scale of Greenwoods which definitely shows the route D-E-F-G. As you say it is also shown on OS 1810, the proposed Turnpike plan, 1870 OS map, 1895 OS map,1905 sale particulars and the1909 OS map. The relevance is that paths which were not of significance to the public were not usually rated important enough to be drawn on the early maps. I therefore think that although they would not in themselves justify making an order based on historical evidence, they do add to the presumption that at some time they were in regular use just because they appear on the maps. In fact I can remember John Ellis telling me that this was the old funeral route from Headley across the common to the twelfth century church of St Nicolas, which is still the burial chapel for the Parish of Kingsley.*

6. *You say that "the fact that the area is shown as common land on the Tithe Map has no bearing on whether the public has acquired rights through use at the end of the 20th century." You may be right if that fact is taken in isolation but the whole point of introducing these snippets of information is that in the end they build into a bigger picture and may possibly add to the balance of probability. Generally speaking paths across common land were not mapped by the early cartographers. It was assumed that people would have the right to cross open land. That is why there are no Inclosure Awards for Broxhead Common or commons in general. The fact that the piece of land through which A-B-C runs was mapped as common land on the Tithe Map would indicate that it was unfenced and people could access it thus strengthening the evidence for the presumption.*

8 *You say that the 1997 public inquiry is very relevant because, after hearing all the evidence the Inspector came to the conclusion that the public had not acquired bridleway rights over the route of FP54, now BW54.*
Committee members who may not be familiar with these complicated issues may, if they were to take your statement at face value, risk being seriously misled

What you have failed to point out is that in that particular claim to upgrade FP54 to bridleway, Inspector Bryant took 1965 as his date of challenge, therefore the time frame was 1945 and before to 1965. Even I would not have been able to contribute to that although I think there was one witness who could. It is also important to observe that in his report the Inspector notes that ***"The Secretary of State has already decided on the evidence before him that there had been sufficient user in the 20 yr. period prior to 1975 for deemed dedication to have occurred****. However he also remarks that there is much less user evidence prior to 1964 and notes the OMA's suggestion that riders roamed the common during that period…… The first date of challenge is therefore 1965 and the relevant period is 1945 – 1965"*

A situation which you must agree is vastly different to the claim we are looking at today where the date of challenge is 1999.

9. *Please explain why you consider that use by the public was not of such a character that it could be inferred that the landowners intended to dedicate public bridleways. The earliest claims are dated from 1945 and 1955 and there are eight riders who claim use from the 1960's until the date of challenge plus seven others from the 1970's onward. How does your statement with regard to character equate with 20 years use and more?*

To quote from Riddall and Trevallyan:

"The provisions of sec.31 of the 1980 Act do not supersede the principles of implied dedication that existed at common law before 1932, these principles being expressly preserved by the Act…….Prima facie the more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise inference of dedication.

In considering a claim for a modification order adding a path to the definitive map, it is generally the practice of surveying authorities to consider evidence of use both for periods ***of 20 years and above****, treating these as relating to the presumption under the statute, and also for periods of less than 20 years, treating these as being capable of giving rise to an inference of dedication at common law." (Page 73 Riddall & Trevellyan)*

With regard to your appraisal of the character of use by the public, I would draw your attention to R v Secretary of State for the Environment ex parte Bagshaw 1994. The applicant applied for judicial review of the Secretary of State's decision. The court upheld the application on the grounds that "it was not for the SOS to show that a presumption of dedication had arisen. It was for him to decide no more than whether a right of way had under sec.53(3)©(1) been reasonably alleged to subsist, that is whether a reasonable case had been made out. Thus an appeal under Sch. 14 it is not for the SOS to take it upon himself to decide the merits of an application for a modification order. If a reasonable case has been made out he must direct the authority to make an order, with the consequence that the merits of the application, and the weight to be attached to the evidence of witnesses, can be decided at a public inquiry". Therefore with respect, I suggest it is not up to a researching officer to decide upon the character of the public or to withhold evidence or information which may or may not be relevant. Surely one should expect that all evidence or information submitted with an application should be logged in the report so that Committee Members can be better informed. If the SOS can only decide whether or not a reasonable case has been made out then certainly you are exceeding your responsibilities to try and do otherwise.

I see you have made a passing reference to this in para 6.3 of your report but then qualified it with the avoidance of making a difficult decision, that qualification however is not part of the settled law.

13.4 My statement is only one of fifteen. In any case it is not detrimental to the claim itself. The route of the claim is the one I nearly always used. I mention the other possible entrance

points to show that it was possible to enter at other points because the woods were not fenced. One exit or entrance point is close to where the engineering works for straightening the road were started circa 1905 and leads to the presumption that horse riders may well have been avoiding these dangerous bends since the birth of the motor vehicle. My reference to using several paths and tracks may have confused you but as we walked the path and I showed you the other exit and entrance points I thought you would have realised that they are all short spurs leading to the one main path through the woodland and which you have described at 4.1 of your report. Indeed looking at the map enclosed with your report you will see that the woodland is so small it could not accommodate any but the claimed route. You will also remember that these short spurs incur the necessity to climb a steep earth bank which is probably something that many riders would avoid. You say that there is now no sign of the track B – A, but surely this is only to be expected when a woodland path is no longer in use. This claim has been on file in your offices since October 2000 and it had not been rideable due to the erection of fences since 1998/9, so eight years of rotting leaves have heavily disguised it. That is only to be expected if statutory duties are prioritised. In any case I note that according to your researches this section of the path is traceable on the 1870 OS map

13.5 I cannot agree that it is irrelevant why a barrier was put across the entrance. To quote once more from Riddall and Trevellyan:

"In order for the right of the public to have been brought into question, the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it (Denning, Fairey v Southampton).

"Interruption' means 'actual and physical stopping of the enjoyment' of the public's use of the way by the landowner or someone acting lawfully on his behalf, eg an employee acting in the course of his employment. The words do not refer to interruption of use: there is no requirement that the use must have been constant, although it must have been sufficient to satisfy the requirement that the way was 'actually enjoyed'

The interruption must be with the intent to prevent public use of the way. It will not be sufficient if the interruption is shown to have been for some other purpose", .

e.g. prevention of access by travellers or to protect the camp site.

The erection of the gate did not therefore present a physical stopping up of the enjoyment until the whole area was fenced in 1999 by which time there is a recorded 50 odd years of use.

Routes D-E-F-G and F-H

12.2 I note that you believe that the words of the Highways Act do refer to interruption of use. I have explained in the previous paragraph that interruption does in fact mean the cessation of use brought about by a deliberate act by the landowner with the intention of preventing use by the public. It does not infer that the use should be constant or that natural causes, such as fallen trees or overgrowth are capable of denying the presumption within the meaning of the Act. If the fallen trees are not cleared therefore and it is not possible to use the path then that is not detrimental to the claim.

You ask how the claim could succeed if horse riders didn't use the path between 1989 and 1997. Apart from the foregoing the answer is simple, one just has to look back a further twenty years i.e. 1969 – 1989 to find there is massive unchallenged use of the path during this time.

13.12 *You say to be successful a claim must connect with a public highway of the same or higher status than that being claimed. As today it does I presume that you are referring to the time before FP54 was upgraded to bridleway in 1997. You refer once again to the Inspector's decision at the 1997 public enquiry. I have tried to explain how he came to that decision at point 8 but he makes a further significant observation in his report. He points out that the Order route i.e. BW54 is not shown on the 1847 Tithe map for Headley but the 1870 OS 25 inch map shows a number of paths and tracks across the common. One follows the line of the Order route. It is not distinguished in any way from the other tracks. None are numbered. The whole area is listed as "Common". All paths crossing the common are shown included within the adjoining land holdings or hereditaments on the 1909 – 1910 Finance Act map. Without supporting documentation it is impossible to ascertain whether the owners had claimed a reduction in value due to the existence of public rights of way.* ***The letters ' FP' appear next to the Order route on the OS base map used for the Finance Act map. In 1905 OS field examiners had been instructed to insert the initials 'FP'to avoid the chance of footpaths being mistaken for roads traversable by wheeled traffic.*** *All later OS maps eg 1938, 1947, 1961, derive from the 1909 OS 6 inch map revision. All show a number of tracks across the common, one of which follows the line of the Order route.*

The importance of this observation is that the Inspector was convinced that pre-enclosure of the 80 acres, horses had used all of the tracks on the common rather than just one of them and the annotation 'FP' along the claimed route did not deny higher rights but was used to avoid the chance of paths being mistaken for roads.

The fact is that horses had always used the path on the line of BW54 as it was part of the pre-enclosure common. It should also be remembered that ***"The Secretary of State has already decided on the evidence before him that there had been sufficient user in the 20 yr. period prior to 1975 for deemed dedication to have occurred***

It is therefore misleading to say that because of the Inspector's decision any claim cannot succeed. As we have seen his deliberations were limited by the date of challenge set at 1965 and the extent of the available user evidence within that time frame. That is not the case for section D-E-F-G and F – H. for the date of challenge is 1997 and as you so rightly observe at para. 11.1 " the volume of user evidence is probably sufficient to represent use by the horse riding public."

As the Court said in SOS for the Environment v Bagshaw, and in fact you have said at para. 6.3 of your report, Members should make an order so that the merits of the application and the weight of the evidence of the witnesses can be decided at public inquiry.

I also made a deputation to the Regulatory Committee on that day 10th January 2007. I said:

I am Maureen Comber. I have worked in a voluntary capacity for the BHS for over 30 years specialising in improving off road access.

The British Horse Society (BHS) represents the interests of the 4.3 million people in the UK who ride or who drive horse-drawn vehicles. With the membership of its Affiliated Riding Clubs, the BHS is the largest and most influential equestrian charity in the UK. The equine industry is estimated to be worth £4 billion and to employ 150,000 people.

The BHS works for safer on and off-road riding and driving through an improved public rights of way network. The BHS works in partnership with other user groups, local and central government to make rights of way useful and open to all. It has more than 200 access volunteers across the country working to achieve this objective, in both rural and urban areas.

I have many concerns with regard to the handling and assessment of this claim not least among my worries is the fact that, as before, part of the claim runs over common land leased from the landowner by the County Council. It is difficult to see how the Council can adjudicate without coming under some pressure from its Officer's in more than one of its departments.

Despite a previous claim for bridleways on Broxhead Common being under appeal with the Government Office for the North East which will determine whether or not the horse riding public have the right to claim bridleways or use the common for 'air and exercise'; the Officer continues to include the argument that the right is not contained within the lease. He may as well have added that neither does the lease deny the right. Hopefully I will be able to show that whichever is the case, you will feel confident that a reasonable claim has been made out and the Order can be made so that the merits of the application, and the weight to be attached to the evidence of the witnesses can be decided at Public Inquiry. If that proves to be the case it should not incur having to make a difficult decision as is suggested in para. 6.3 of the Officer's report.

I also question whether it is right or reasonable for the Officer to include or ignore material submitted with the claim, for example legal events directly connected with the site, which although they may not have a direct bearing on the claim itself offer a more comprehensive understanding of events and possible supporting evidence.

ok *states "The Authority must consider all the relevant evidence available to it (and must be advised by its officers on the* ***correct*** *application of the law to that evidence). It is not therefore in his authority to withhold evidence on the grounds that it is irrelevant.*

ROUTE ABC

Despite stating that "On a fine balance the Officers take the view that there probably is sufficient evidence of use by riders to raise a prima facie case that public bridleway rights exist across Baigents Hill" the Officer goes on to rebut the claim by asserting that it can be shown that the landowner of Baigents Hill through which ABC runs, had no intention to dedicate.

There can be no doubt that the fencing of the site circa 1999 did mark the last date of challenge for it was no longer possible to access the woodland on horseback. It was that action together with the need to find a solution to the danger to horse riders using the C102, which is in very close proximity to the gun club, that necessitated the making of this claim.

The Officer is using statements from members of the Lithuanian Club as evidence as to challenges and the measures taken to prevent horse riders from using the path. Although this is a moot point by itself, the main issue in this respect is whether the steps taken i.e. notices or gate were:

1. ***Directed at the horse riders themselves***.
   To act as a rebuttal to the presumption, the action of the landowner must be a direct challenge to the users of the way and not a gate or fence put up for some other purpose. Looking at the statements from club members, all without exception say that the gate was put up to protect the camp site from travellers and protection from vandalism. There is no date given for the erection of the single bar gate. In any event there were never any barriers erected from the Cradle Lane entrance at point A until the woodland was fenced in 1999.

2. ***Challenges***. ***Page 67 of The Blue Book*** *at the top of the page illustrates what constitutes an effective challenge. Briefly it says that for a challenge to be effective it must be made within the twenty year period. The only fixed date of challenge from club members is made from Mrs Zokiene in August 1986. If therefore we take this as the date of challenge there is still over forty years of user evidence by eight claimants prior to this to substantiate the presumption under common law.*
   It is necessary to remember that the twenty year period is calculated backwards from the date of challenge, that is there is no fixed starting point only a fixed finishing point.

   Also of course if one takes 1986 as a date of challenge there is no question either of gates or fencing, the Officer's report makes that quite clear.

   Therefore para.13.8 of the report which states that "There is insufficient evidence of use, ***at any period,*** *with which to infer a dedication at common law and, in any event, there is evidence that the landowner had no intention of dedicating a public right of way." is without foundation if applied to the period 1966 – 1986.*

3. *The Officer claims that point A – B is not a physical feature on the ground and one cannot be sure that all riders used the same route. However even though the path is covered in eight years of leaf mould it is still visible on the ground as the enclosed photos show.*

Routes D-E-F-G and F-H *User Evidence. Contrary to the Report only F-G was brought into question by the erection of notices by the landowner after the making of the Creation Order upgrading FP54 to BW 54 in 1997. This is a part of the Common leased to the HCC.*

The date of challenge for D-E-F and F-H must therefore be the lodging of this claim on 9th October 2000.

At para.12.2 of the report the Officer says that because there has not been continuous use of the claimed route for a full 20-year period for that reason alone the claim must fail.

I say that the Officer has misdirected himself, for according to ***Page 63 in The Blue Book*** *"there is no requirement that the use must have been constant although it must have been sufficient to satisfy the requirement that the way was 'actually enjoyed'." Interruption does not refer to interruption of use.*

In a report for a previous claim the Officer has noted that an obstruction by natural means such as vegetative growth is not an interruption within the meaning of the Act and is not a barrier to presumed dedication. This is because it is not a deliberate act by the landowner which acts as a challenge to the public.

Para 13.12 of the Report declares that the claimed route did not connect at its western end with a public highway that carried bridleway rights.

Just because a right of way is annotated with the initials FP does not prevent the existence of higher rights. Pre the enclosure in 1964/5 the Common was criss-crossed with paths and BW54 was one of them. It appears on the Finance Act Map no differently to the other paths. It is a fact that in 1905 OS field examiners had been instructed to insert the initials 'FP' to avoid the chance of paths being mistaken for roads traversable by wheeled traffic. It is on record that horses freely used the common for 'air and exercise' and there is no reason to suppose that BW54 would be an exception.

CONCLUSION

I understand that need is not taken into account when evaluating presumed dedication but it can and should provide a link between what used to be accepted practice and the gradual reduction in the non-motorised publics' right to the use and enjoyment of highways as a whole and their right to the enjoyment of 'air and exercise' in our open spaces.

In concluding I would point out that:

1. *The making of this order would satisfy the need to address the concerns over public safety with regard to the Judicial Review proceedings in 1997*
2. *The route is an important link in the bridleway network connecting Broxhead, Kingsley, Oakhanger, Selborne Commons in the south to Cradle Lane and thence through Alice Holt Forest to the Surrey commons of Frensham, Hankley Hindhead etc.*
3. *The route in question appears on the Rights of Way Improvement Plan for the South Downs*
4. *Economically speaking it presents best value with regard to activating the above*

I would just leave you with quotes from the Inspector's report from the 1997 public inquiry.

Speaking with regard to the Creation Order he says:

"There is massive and virtually unchallenged evidence as to the need for a north/south equestrian link across Broxhead Common….The advantages to the many horse owners resident in this 'Tolkien' area of narrow, twisty country lanes (which are unsuitable for dual user) are considerable."……

"The public themselves have consistently pressed for re-establishment of a link since the permissive route closed in 1989. ***This prolonged campaign suggests a genuine need rather than merely a wished for facility"****……*

"I conclude that the convenience of the local residents (amongst whom I include the motoring fraternity who will also benefit from less horse traffic on local roads);and possibly(given the high horse population in the area within reasonable riding distance of Broxhead Common) the convenience and enjoyment of a substantial section of the public, would be enhanced by the proposed upgrading."

Even the landowner of Broxhead Common, Mr A.J.P. Whitfield noted that the claimed route

"leads north to the busy C102 an acknowledged ' rat run' ……The only riders who would benefit are those who would use Cradle Lane (a Byway Open to All Traffic) but even they would have to traverse the 'fast stretch' of the C102 and the two narrow dangerous bends which link the two rights of way."

Members I implore you, please make the Order so that, as the law requires, if a reasonable case has been made out, the merits of the application, and the weight to be attached to the evidence of witnesses, can be decided at Public Inquiry. Ten years is long enough to wait for this problem of public safety to be resolved and the seriousness of the problem is demonstrated by the action of Judicial Review which seemed to be the only method of engaging the County Council's attention to an intolerable situation.

Note: The Blue Book is the name we give to the book written by John Trevelyan and John Riddall entitled 'Rights of Way – A Guide to Law and Practice'

16th January 2007 – I received a letter from HCC to confirm that the Regulatory Committee had resolved not to make an order for the modification of the Definitive Map.

24th January 2007 – I gave notice of Appeal under paragraph 4 of Schedule 14 to the Wildlife and Countryside Act 1981 to Government Office for the North East. It was given the Case No. NATROW/Q1770/529A/07/11

14th September 2007 – I received a letter from Government Office for the North East which said:

"As the written representations stage of the appeal has been completed; the file has now progressed to the decision stage.

I can inform you that we have commissioned an Inspector's Report on behalf of the Secretary of State for the Department of Environment, Food and Rural Affairs in respect of the above appeal.

Upon receipt of Inspector's Report from the Planning Inspectorate we will write to you to advise you of the date you may expect to receive a decision in respect of the above appeal.

12th August 2008 – I receive a letter as promised above. The last paragraph states:

"The Secretary of State agrees with the Inspector's conclusions and accepts her recommendation. Having taken all the arguments and representations presently before him into account, the Secretary of State has reached the view an Order should be made. Therefore in accordance with the provisions of paragraph 4(2) of Schedule 14 of the Wildlife and Countryside Act 1981he has directed Hampshire County Council to make an Order, under Section 53(2) of, and Schedule 15 to the Act, modifying the Definitive Map and Statement for the area to add a bridleway, as described…"

8th October 2008 – The Order was made

Needless to say I was overjoyed but that was to be short lived because on

12th November 2008 – Hampshire County Council objected to their own Order. The date is of interest because it shows that the decision to object had been made by Officers without referring the matter back to the Regulatory Committee. They do not have delegated powers and the making of the Order was a material change in circumstance.

So why had our well informed defender of public rights of way and open space decided to object to the confirmation of this Order?

END OF PART 1